STATE OF LOUISIANA
DEPARTMENT OF STATE CIVIL SERVICE
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December 7, 2021

VIA Email and Regular Mail

The Honorable John Bel Edwards
Governor, State of Louisiana
P. O. Box 94004
Baton Rouge, LA 70804-9004

The Honorable Patrick Page Cortez
President, Louisiana State Senate
P. O. Box 94183
Baton Rouge, LA 70804

The Honorable Sharon Hewitt
Chairperson, Senate and Governmental Affairs
P.O. Box 94183
Baton Rouge, LA 70804

The Honorable Clay Schexnayder
Speaker, Louisiana House of Representatives
P. O. Box 94062
Baton Rouge, LA 70804-9062

The Honorable John M. Stefanski
Chairman, House and Governmental
Affairs Committee
P. O. Box 94062
Baton Rouge, LA 70804

Re: 2022 Proposed Legislative Recommendations by the Louisiana Board of Ethics

Dear Governor Edwards, President Cortez, Speaker Schexnayder, Sen. Hewitt and Rep. Stefanski:

The Board at its December 3, 2021 meeting, voted to make the following recommendations for legislation to be considered for the 2022 Regular Legislative Session. As you are aware, La. R.S. 42:1134J provides that the Louisiana Board of Ethics "board shall make recommendations to the governor and the legislature for revisions in the Code of Governmental Ethics and other legislation relating to the conduct of public servants and other persons subject to the provisions of this Chapter who are within its jurisdiction."

1. *Notices by electronic mail rather than by certified mail or regular mail*

Issue: The Louisiana Board of Ethics is statutorily required to mail reminders and notices to individuals required to file reports pursuant to the Code of Governmental Ethics and the Campaign Finance Disclosure Act. These notices can be quite costly and time-consuming to process by regular or certified mail. The Board would like to have the ability to send notices to email addresses that are provided to our office.

Currently, concerning registered lobbyists, an email address is provided by the lobbyist. With respect to candidates required to electronically file reports (major and district office level candidates), as well as any other office-level candidates that opt to file campaign finance reports electronically, the email addresses of the candidate and their report preparer are captured by the electronic filing system. Furthermore, Act 381 of the 2021 Regular Legislative Session gave the Board access to the email

addresses of candidates who elected to provide that information when they qualified. With respect to political committees, those that elect to file reports electronically, the chairman, treasurer, and report preparer provide email addresses.

Suggestion: Attached as **Exhibit A** is a list of statutes that require the mailing of certain notices. The Board suggests that those laws be amended to allow the notices to be sent by email if the Board was provided with an email address when the elected official qualified as a candidate for public office, or voluntarily provides it to the Board, or is a lobbyist that uses the electronic filing system, and as long as the Board can establish proof of delivery by email or whether it was read.

2. *Use of email addresses provided when candidates qualify*

Issue: The Board would like to use email addresses of candidates obtained from the Secretary of State's Office to contact the candidate regarding issues involving personal financial disclosures, or other issues involving the Code of Governmental Ethics. Act 381 of the 2021 Regular Legislative Session, effective June 17, 2021, made changes to La. R.S. 18:154(C)(2)(c) to allow the Board of Ethics to receive the email address of candidates, but it was for the limited purpose of "contacting the candidate regarding campaign finance reporting." Although the candidate's email address is published on the Secretary of State's Office's website with respect to election/candidate information, it is not clear that the Board of Ethics can use it for other purposes related to laws under its jurisdiction other than the Campaign Finance Disclosure Act.

Suggestion: The Board suggests that La. R.S. 18:154(C)(2)(c) be amended to remove the restriction that the Board of Ethics use of the email address is limited to issues regarding campaign finance reporting.

3. *Require political committees that are only making independent expenditure to file a designation*

Issue: Currently, the Campaign Finance Disclosure Act does not require a political committee that is only making independent expenditures to file a designation/notification that they are a political committee that is only making independent expenditures. In *The Fund for Louisiana's Future v. Louisiana Board of Ethics*, et al., 14-0368 (E.D. La. USDC, 5/2/14) 17 F. Supp. 562, the group, which asserted that it was a political committee that only made independent expenditures to support candidates, challenged the constitutionality of the limits on contribution to political committees in La. R.S. 18:1505.2K ($100,000 per person per set four-year cycle). The Court concluded that La. R.S. 18:1505.2K is unconstitutional as it applies to independent expenditure-only committees. Therefore, when reviewing for compliance purposes, the Board's staff needs to know if the political committee is operating as an independent expenditure-only political committee. This information would also be beneficial to the public when reviewing reports filed by political committees.

Suggestion: The Board suggests amending the Campaign Finance Disclosure Act to require political committees to disclose the fact that they will only make independent expenditures on its statement of organization that is filed annually. For example, the disclosure could be that the political committee intends to make independent expenditures, and consistent with the 5th U.S. Court of Appeals' decision in *The Fund for Louisiana's Future v. Louisiana Board of Ethics*, et al., 14-0368 (E.D. La. USDC, 5/2/14) 17 F. Supp. 562, it, intends to raise funds in unlimited amounts. The committee would acknowledge that it would not use the funds to make contributions, whether direct, in-kind, or via coordinated communications, to candidates or other political committees.

4. *Require political committees to designate whether they are working in coordination, consultation, or cooperation with the candidate.*

Issue: Current law creates a presumption that a political committee that supports only one candidate is the principal/subsidiary committee of the candidate. La. R.S. 18:1491.3C requires the candidate to submit a written statement that the political committee is not his and disavow the committee to overcome this presumption.
However, this is problematic when the committee is created and the candidate is unaware of the political committee's existence. If the political committee is not affiliated with the candidate and/or the candidate is not aware of the existence of the committee, the question is how does the candidate know they have to file such.

Suggestion: The Board suggests amending the Campaign Finance Disclosure Act to have the political committee be required to file the statement that it is not affiliated with the candidate's campaign for office. Such a disavowal could be made on the statement of organization filed by the committee.

5. *Ability to assess enhanced penalties if a person does not file a personal financial disclosure report*

Issue: The Campaign Finance Disclosure Act has a provision for the imposition of enhanced penalties if a candidate does not file a report after a hearing before the Ethics Adjudicatory Board. La. R.S. 18:1505.4A(4). This provision allows for a penalty not in excess of $10,000 for a report that is not filed after a certain time frame. This penalty is in addition to the per day late fees that are imposed. However, there is not a corresponding provision in the Ethics Code for those individuals that do not file a personal financial disclosure report pursuant to La. R.S. 42:1124, et seq.

Suggestion: The Board suggests enacting a provision that if a personal financial disclosure report is not filed within 30 days of the deadline to file the report, the Board can assess a penalty not to exceed $5,000 after a hearing before the Ethics Adjudicatory Board, similar to the provision in the Campaign Finance Disclosure Act.

6. *Provide for a certain time frame for which an immediate family member must hold a position prior to receiving a promotion*

Issue: La. R.S. 42:1119B(2)(a)(v) allows the immediate family member of a school board member or superintendent to be promoted to an administrative position, provided they were previously employed as a certified classroom teacher, or, if in a parish with a population less than 60,000, as a licensed special education-related services professional. However, there is no minimum time period in which the family member must be a teacher/special education professional before being promoted to an administrative position. Therefore, an immediate family member could be employed as a certified teacher for one day and promoted to an administrative position the next day.

Suggestion: The Board suggests a time frame of employment for 1 year in a position referenced in La. R.S. 42:1119B(2)(a)(i) before being eligible for a promotion to an administrative position as referenced in La. R.S. 42:1119B(2)(a)(v). This 1-year time frame would be similar to the 1-year nepotism exception in La. R.S. 42:1119C.

7. *Time for filing school board nepotism disclosures*

Issue: La. R.S. 42:1119B(2)(a)(iii) provides that when an immediate family member of a school board member or superintendent is employed by their school system, they shall file a disclosure within 30 days after the beginning of each school year. The due date is variable based on the different start dates for each parish/district/charter school. This requires the staff to set a due date based on the different start dates of the 66 public school systems and the various charter schools. This process is burdensome on the Board and its staff.

Suggestion: The Board suggests setting a specific filing deadline for these disclosures, such as by September 15th for the current school year, that would apply to all school board nepotism disclosures

8. *Procedure for reviewing disclosures filed pursuant to La. R.S. 42:1111E(2)*

Issue: La. R.S. 42:1111E(2) provides that an elected official is prohibited from receiving a thing of economic value for assisting a person in a transaction involving his governmental entity, unless he files a written statement with the board prior to or within 10 days after the initial assistance is rendered. Furthermore, La. R.S. 1111E(2)(d) provides that "The board shall review all statements filed in accordance with this Paragraph. If the board determines that a statement is deficient or may suggest a possible violation of this Part, it shall, within ten days of the receipt of such statement, notify the elected official filing the statement of its findings. . . ." However, given the fact that the Board meets once a month, this time frame is unworkable to allow for the Board's review of the statements.

Suggestion: The Board suggests that the Legislature amend this review requirement to be no later than the second regularly scheduled meeting of the Board following the filing of the disclosure. This should allow time for the staff to receive the reports and prepare them for inclusion on the Board's monthly agenda.

9. *Amend the enabling statutes for the Louisiana Board of Ethics to identify the members of the nominating committee*

Issue: La. R.S. 42:1132B(2)(a)(i) provides that the presidents, or their designees, of the following independent colleges/universities, are members of the nominating committee: Centenary College of Louisiana, Dillard University at New Orleans, Louisiana College, Loyola University at New Orleans, Our Lady of Holy Cross College at New Orleans, Our Lady of the Lake College at Baton Rouge, Xavier University of Louisiana at New Orleans, New Orleans Baptist Theological Seminary, Saint Joseph Seminary College, and Tulane University. However, the following have had name changes: Our Lady of Holy Cross, which is now called the University of Holy Cross; Our Lady of the Lake College, which is now called Franciscan Missionaries of Our Lady University; and, Louisiana College, which is now called Louisiana Christian University. The above 10 colleges/universities are also the member institutions of the Louisiana Association of Independent Colleges and Universities.

Suggestion: The Board suggests amending the nominating statute to refer to the independent colleges and universities that are members of the Louisiana Association of Independent Colleges and Universities or its successor association. This will alleviate the need for future legislative changes if one or more of the colleges or universities change their name.

10. *Lobbying training must be fulfilled prior to renewing registration*

Issue: Currently, executive and legislative branch lobbyists are required to take training annually on the provisions of the Code of Governmental Ethics. La. R.S. 42:1170A(4). However, some lobbyists do not take the training within the calendar year.

Suggestion: The Board suggests having the lobbyist check on their registration whether they completed the training requirements for the prior calendar year.

11. *Remove the requirement to file Election Day Expenditure Reports*

Issue: La. R.S. 18:1532 requires the disclosure of certain expenditures on a report filed 10 days after the date of the election. The expenditures that trigger the filing requirement are those made for television, radio, and newspaper ads broadcast or published on election day; for services by election day workers; to organizations for election day activities or services in support or opposition of a candidate; and, for automated calls using prerecorded or artificial voice occurring on election day. The issue is whether there is any utility to these reports since these expenditures are also reported on the comprehensive report that covers the time period in which the expenditure was made.

Suggestion: Given the fact that the expenditures disclosed on an election day report are already included in the comprehensive report for the reporting period in which the expenditure was made, the Board suggests that consideration be given to deleting the requirement to file Election Day Expenditure Reports pursuant to La. R.S. 18:1532.

12. *Amending the definition of "political committee"*

Issue: La. R.S. 18:1483(14)(a)(i) defines a political committee as "two or more persons, other than a husband and wife, and any corporation organized for the primary purpose of . . . " This definition does not take into account other types of legal entities that may be formed to run a political committee. Therefore, the argument could be made that a limited liability company with a single member would not be considered a political committee.

Suggestion: The Board suggests that the law be amended to include as political committees other types of legal entities that may be organized for the primary purpose of supporting or opposing candidates, propositions, recalls of a public officer, or political parties.

13. *Provide for a burden of proof to find a violation of La. R.S. 42:1130.4*

Issue: La. R.S. 42:1130.4 provides that "[n]o candidate in an election shall, with the intent to mislead the voters, distribute or cause to be distributed any oral, visual, or written material containing any statement which he knows makes a false statement about another candidate in an election."
In Ethics Adjudicatory Board Docket No. 2011-6158-ETHICS-A, *In the Matter of Donald Villere*, the EAB concluded that "the standard of actual knowledge is higher than the actual malice standards for defamation of a public figure, such as reckless disregard of the truth, a high degree of awareness of the probably falsity, and entertaining serious doubts about one's statements." *In re Villere*, p. 20.
Further, the EAB acknowledged that the "standard of actual knowledge is also higher than some statutory standards, such as the "should be reasonably expected to know" standard listed in other statutes." *In re Villere*, p. 20-1. This could be an impossible burden for the Board to overcome to find a

violation that a candidate disseminated campaign materials containing false information with the intent to mislead the voters.

Suggestion: The Board suggests that the burden of proof in La. R.S. 42:1130.4 includes "know, or should be reasonably expected to know."

Thank you for your consideration of the Board of Ethics' recommendations. Please feel free to contact me or Kristy Gary, Deputy Ethics Administrator at (225) 219-5600 to discuss or provide you with further information related to these recommendations.

Respectfully,

LOUISIANA BOARD OF ETHICS

Kathleen M. Allen, Ethics Administrator
For the Board

cc: Members of the State Legislature (via e-mail)

Exhibit A

"Mail" Referenced in the Statutes of the Louisiana Board of Ethics

Campaign Finance

1. Annual/Supplemental notices:

R.S. 18:1511.3. Filing of reports; forms; notices

E. The supervisory committee shall notify each person who has qualified for office the preceding year and whose last filed disclosure report reflects a deficit, each person who filed a supplemental report the preceding year which reflected a deficit, and each declared but an unqualified candidate who filed a report the previous year, of the date that the annual report as provided in R.S. 18:1491.6(E) and 18:1495.4(E) is due and of the information required in the report. Each notice shall be **mailed** at least thirty days prior to the date the report is due; however, failure by the supervisory committee to notify a candidate, committee, or other person as required by this Subsection shall not bar or be a defense to any action brought against a candidate, treasurer or chairman of any committee, or other person by the supervisory committee under the provisions of this Chapter.

Code of Governmental Ethics

1. PFD notices

R.S. 42:1124.4 Penalties

A.(1) If a person fails to timely file a financial statement as required by R.S. 18:1495.7 or by R.S. 42:1124, 1124.2, 1124.2.1, or 1124.3, or a person omits any information required to be included in the statement, or the board has reason to believe information included in the statement is inaccurate, the board shall notify the person of such failure, omission, or inaccuracy by sending him by **certified mail** or service of process a notice of delinquency immediately upon discovery of the failure, omission, or inaccuracy.

(2) The notice of delinquency shall inform the person that the financial statement must be filed, or that the information must be disclosed or accurately disclosed, or that a written answer contesting the allegation of such a failure, omission, or inaccuracy must be filed no later than seven business days after receipt of the notice of delinquency. The notice shall include the deadline for filing the statement, filing the answer, or disclosing or accurately disclosing the information.

2. Notices of delinquency

R.S. 42:1157 Late filing fees

B. The staff of the Board of Ethics shall **mail by certified mail** a notice of delinquency within four days after the due date of which the staff knows or has reason to know, for any report or statement due under the laws within its jurisdiction that has not been timely filed.

3. Training Notices of noncompliance

R.S. 42:1170E

(2) If the board discovers that a public servant or lobbyist has failed to complete the training required by this Section, the board shall **mail by certified mail** a notice of noncompliance informing the person that the training required by this Section shall be completed within forty-five business days from the mailing of the notice of noncompliance. The notice of noncompliance shall include the deadline for completion of the training required by this Section. If the person completes the training prior to the deadline contained in the notice of noncompliance, no penalties shall be assessed against the person.

Legislative Lobbying Law

R.S. 24:58 Enforcement

D(3) If the board determines that a person has filed a registration or report required by this Part that is inaccurate or incomplete, the board shall **mail by certified mail** a notice of delinquency informing the person that the inaccuracy must be corrected or the missing information must be provided no later than fourteen business days after receipt of the notice of delinquency. The notice of delinquency shall include the deadline for correcting the inaccuracy or providing the missing information. If the person corrects the inaccuracy or provides the missing information prior to the deadline contained in the notice of delinquency, no penalties shall be assessed against the person.

Executive Lobbying Law

R.S. 49:78 Enforcement

D(3) If the board determines that a person has filed a registration or report required by this Part that is inaccurate or incomplete, the board shall **mail by certified mail** a notice of delinquency informing the person that the inaccuracy must be corrected or the missing information must be provided no later than fourteen business days after receipt of the notice of delinquency. The notice of delinquency shall include the deadline for correcting the inaccuracy or providing the missing information. If the person corrects the inaccuracy or provides the missing information prior to the deadline contained in the notice of delinquency, no penalties shall be assessed against the person.

Local Lobbying Law

R.S. 33:9668 Enforcement

D(3) If the board determines that a person has filed a registration or report required by this Chapter that is inaccurate or incomplete, the board shall **mail by certified mail** a notice of delinquency informing the person that the inaccuracy must be corrected or the missing information must be provided no later than fourteen business days after receipt of the notice of delinquency. The notice of delinquency shall include the deadline for correcting the inaccuracy or providing the missing information. If the person corrects the inaccuracy or provides the missing information prior to the deadline contained in the notice of delinquency, no penalties shall be assessed against the person.