

# EDITORIAL

## THE GENERAL ASSEMBLY'S STRUCTURAL CONFLICTS OF INTEREST

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Virginia is not a state saddled with a reputation of ethically challenged legislators, but our part-time citizen legislature is structurally conducive to conflicts of interest. This reality was brought to the forefront in November 2009 when Delegate Phillip Hamilton resigned from the House of Delegates following revelations that he directed state appropriations into his own pocket.<sup>1</sup> There is little doubt that the majority of legislators are scrupulous in their efforts to avoid such conflicts, but they must navigate treacherous waters to do so. Significant modifications to the structure and ethical standards of the General Assembly are necessary to correct this problem.

A state steeped in tradition, Virginia enjoys the fiction of a gentleman's legislature: once a year, regular folks from across the Commonwealth come together, deal with the business of running the state, and return to their farms, law practices, or medical offices. Like most states of its size, Virginia has a part-time legislature.<sup>2</sup> Though it meets for either 45 or 60 days each year, legislators spend annual average of two-thirds of each workday on legislative matters.<sup>3</sup> For their work, delegates are paid \$17,640 annually,<sup>4</sup> while senators are paid \$18,000,<sup>5</sup> or about \$13.50 per hour.<sup>6</sup>

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1. Julian Walker, *Del. Phil Hamilton Quits House Amid Ethics Inquiries*. VIRGINIAN-PILOT, Nov. 17, 2009, at A1, available at

[http://findarticles.com/p/articles/mi\\_8014/is\\_20091117/ai\\_n42122123/?tag=content;col1](http://findarticles.com/p/articles/mi_8014/is_20091117/ai_n42122123/?tag=content;col1).

2. National Conference of State Legislatures, Full and Part-Time Legislatures,

<http://www.ncsl.org/?tabid=16701> (last visited July 16, 2010).

3. *Id.*

4. Virginia General Assembly, House of Delegates General Information,

[http://legis.state.va.us/1\\_home/gen\\_info\\_house.html](http://legis.state.va.us/1_home/gen_info_house.html) (last visited July 16, 2010).

5. Virginia General Assembly, Senate General Information,

[http://legis.state.va.us/1\\_home/gen\\_info\\_senate.html](http://legis.state.va.us/1_home/gen_info_senate.html) (last visited July 16, 2010).

This requires that legislators be independently wealthy, have outside employment, have a spouse to support them, or live on very little income. Thirteen members of the General Assembly are worth more than one million dollars;<sup>7</sup> the majority of whom maintain other employment.<sup>8</sup>

Legislators are frequently assigned to committees that address areas in which they have experience or extensive knowledge; typically a legislator's committee assignment correlates to his or her line of work.<sup>9</sup> For example, Senator Dick Saslaw, the chair of the Senate Commerce and Labor Committee,<sup>10</sup> owns a chain of gas stations throughout Northern Virginia.<sup>11</sup> Senator Ralph Northam is a pediatric neurologist and Assistant Professor of Neurology at Eastern Virginia Medical School,<sup>12</sup> who also serves on the Senate Education and Health Committee.<sup>13</sup> Senator Henry Marsh III and Delegate Dave Albo chair the Senate and House Courts of Justice Committees, respectively; both are attorneys in Virginia.<sup>14</sup> Virginia is well-served by these legislators' expertise, but problems remain. Ethical issues and government oversight are critical issues that must be resolved. How well is Virginia served by legislators who regulate themselves, or by establishing laws to their own potential benefit?

Delegate Hamilton holds a Masters Degree in Educational Administration from the College of William and Mary, and he spent his career as a school administrator.<sup>15</sup> He was elected to the Virginia House of Delegates in 1988, whereupon he became a member of both the Education

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6. Assuming 2,000 total work hours per year, with 1,340 hours devoted to legislative work.

7. Bill Sizemore, *Meet Virginia's 13 millionaire lawmakers*, VIRGINIAN-PILOT, Feb. 19, 2010, at A8, available at [http://findarticles.com/p/articles/mi\\_8014/is\\_20100219/ai\\_n49912028/?tag=content;coll](http://findarticles.com/p/articles/mi_8014/is_20100219/ai_n49912028/?tag=content;coll).

8. Who's My Legislator, Virginia General Assembly, <http://conview.state.va.us/whosmy.nsf/main?openform> (complete survey on file with author).

9. *Id.*

10. Meet Senator Saslaw, <http://www.dicksaslaw.com/about-saslaw.html> (last visited July 16, 2010).

11. *Id.*

12. About Senator Northam, <http://ralphnortham.com/About.htm> (last visited, July 16, 2010).

13. Richmond Sunlight, Senate Education and Health Committee, <http://www.richmondsunlight.com/committee/senate/education/> (last visited July 16, 2010).

14. Richmond Sunlight, Senate Courts of Justice Committee, <http://www.richmondsunlight.com/committee/senate/courts/> (last visited Mar. 17, 2010); Richmond Sunlight, House Courts of Justice Committee,

<http://www.richmondsunlight.com/committee/house/courts/> (last visited Mar. 17, 2010); Senate of Virginia, Senator Henry L. Marsh, III,

[http://sov.state.va.us/SenatorDB.nsf/\\$\\$Viewtemplate+for+WMembershipHome?OpenForm](http://sov.state.va.us/SenatorDB.nsf/$$Viewtemplate+for+WMembershipHome?OpenForm)

(click on Marsh, Henry L., III) (last visited Mar. 17, 2010); Virginia House of Delegates, Delegate David B. Albo, <http://dela.state.va.us/dela/MemBios.nsf/MWebsiteTL?OpenView> (click on Albo, David B.)

15. DailyPress.com, 93rd District, <http://www.dailypress.com/news/elections/dp-voter-guide-2009-93rd-district,0,5867463.htmlpage> (last visited July 31, 2010).

Committee and the Appropriations Committee.<sup>16</sup> Despite the fact that Old Dominion University (ODU) is not located in his district,<sup>17</sup> Delegate Hamilton introduced a \$1,000,000 budget amendment in early 2007 to establish a new program at the University called the Center for Teacher Quality and Educational Leadership.<sup>18</sup> The veteran lawmaker petitioned the administration at ODU for a faculty position in August 2006; only a few months later, in December 2006, the budget amendment was introduced.<sup>19</sup> Delegate Hamilton then informed his contact at ODU that the amendment had been filed and he outlined his salary requirements for his new position.<sup>20</sup> Through e-mail correspondence, ODU made clear that his employment—as an independent contractor—was contingent on the passage of the budget amendment.<sup>21</sup> He subsequently worked for ODU for two years, with an annual salary of \$40,000.<sup>22</sup> An audit conducted by the University could not determine what Hamilton did during his two years of employment—his office had gone unused for the bulk of that period.<sup>23</sup>

Local media in Hampton Roads uncovered this story over the course of several months prior to the November 2007 election, in which Hamilton was up for reelection. It was two months after the story broke before the House Ethics Advisory Panel met for the first time.<sup>24</sup> Although former Governor Tim Kaine could have launched a state investigation, he demurred, saying he was worried it would look bad for him, a Democrat, to investigate a Republican a shortly before an election, and he felt that it was an issue for voters to decide.<sup>25</sup> Hamilton lost the election to his Democratic challenger with 46 percent of the vote.<sup>26</sup> Hamilton resigned from his seat a

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16. Legislative Information System – 2007 General Assembly Members, <http://leg1.state.va.us> (follow “2007” hyperlink under “Other Session”; then follow “General Assembly Members” hyperlink under “2007 Session”; then follow “Phillip A. Hamilton” hyperlink under “House Members”).

17. Virginia Division of Legislative Services, House District Descriptions, [http://dlsgis.state.va.us/Ref/list\\_Hou\\_descriptions.htm](http://dlsgis.state.va.us/Ref/list_Hou_descriptions.htm) (follow “ninety-third” hyperlink) (last visited July 31, 2010).

18. Virginia General Assembly, Center for Teacher Quality and Educational Leadership, <http://leg1.state.va.us/071/bud/budsum/HBMem.PDF> (last visited July 31, 2010).

19. Hugh Lessig & Kimball Payne, *Job Talks Preceded ODU Bill*, DAILY PRESS (Hampton Roads, VA), Aug. 21, 2009, available at [http://www.dailypress.com/news/dp-local\\_hamiltononline\\_0821aug21,0,6608958.story](http://www.dailypress.com/news/dp-local_hamiltononline_0821aug21,0,6608958.story).

20. *Id.*

21. *Id.*

22. Kimball Payne, *ODU Cites ‘Mistakes’ With Del. Hamilton*, DAILY PRESS (Norfolk, VA), Sep. 18, 2009, available at [http://articles.dailypress.com/2009-09-18/news/0909170217\\_1\\_hire-educational-center-educational-leadership](http://articles.dailypress.com/2009-09-18/news/0909170217_1_hire-educational-center-educational-leadership).

23. *Id.*

24. Posting of Adam Rhew to WordPress.com, <http://en.wordpress.com/tag/phil-hamilton> (Oct. 1, 2009, 7:56 EST).

25. Editorial, *Find The Facts, Lay Them Out*, ROANOKE TIMES, Nov. 22, 2009, available at <http://www.roanoke.com/editorials/wb/227093>.

26. Kimball Payne, *Robin Abbott Defeats Besieged Phil Hamilton in 93rd District*, DAILY PRESS

few weeks later, leading the legislature to drop the ethics investigation, since the committee believed that it lacked the power to investigate members if they leave office.<sup>27</sup> The Department of Justice is investigating the matter.<sup>28</sup>

For two years the House of Delegates allowed one of its members to work at an organization that he had single-handedly funded by introducing, reviewing, and voting on a budget amendment explicitly for its benefit. When faced with evidence that this was so, months prior to an election, the House waited several months before convening an ethics review, and failed to take any action in the matter prior to the election. The governor failed to act for overtly political reasons, and the federal government had to intervene. Nothing about this process worked. The system employed by the state government failed in every step of the way.

Another conflict arose during the same period, although with less attention. Delegate Dave Albo was the architect of and force behind the “abuser fees,” the unpopular and hefty fines that the legislature approved in 2007 to levy against individuals who violate traffic laws.<sup>29</sup> Shortly after the bill passed, Delegate Albo announced plans to more than double the number of locations of his law firm, Albo & Oblon, LLP<sup>30</sup> for the first time since its 1995 founding, establishing offices in Tidewater, the Roanoke Valley, Fredericksburg, and the Shenandoah Valley to focus on criminal and traffic law.<sup>31</sup> Albo himself specializes in “Criminal and Serious Traffic Law.”<sup>32</sup> The abuser fees were rescinded in the 2008 session, but Albo continues to advocate for their reestablishment.<sup>33</sup>

Under current law, legislators can be employed by the state, the very entity that they oversee. They can marry a lobbyist—literally be in bed with special interests. They can accept unlimited contributions from any

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(Newport News, VA), Nov. 4, 2009, available at [http://articles.dailypress.com/2009-11-04/news/dp-local\\_elex-house-93\\_1104nov04\\_1\\_phil-hamilton-93rd-district-democrat-robin-abbott](http://articles.dailypress.com/2009-11-04/news/dp-local_elex-house-93_1104nov04_1_phil-hamilton-93rd-district-democrat-robin-abbott).

27. Walker, *supra* note 1.

28. Kimball Payne & Cathy Grimes, *Hamilton E-mails Spark NN Schools Subpoena*, DAILY PRESS (Newport News, VA), Sept. 5, 2009, available at [http://www.dailypress.com/news/dp-local\\_hamilton\\_0905sep05\\_0\\_4954329.story](http://www.dailypress.com/news/dp-local_hamilton_0905sep05_0_4954329.story).

29. Tom Jackman, *Hefty fees in Store for Misbehaving Va. Drivers*, WASH. POST, June 23, 2007, available at

<http://www.washingtonpost.com/wp-dyn/content/article/2007/06/22/AR20060622011781.html?nav=emailpage>.

30. Whose website can be found at [virginiadui.com](http://virginiadui.com), an indication of their focus.

31. About Albo & Oblon, LLP, <http://www.albo-oblon.com/albo.html> (last visited July 31, 2010).

32. David B. Albo, Albo & Oblon LLP, <http://www.albo-oblon.com/albo.html> (last visited July, 31 2010).

33. Press Release, Werkheiser for Delegate, Albo Calls for Renewed Abuser Fees (Sept. 24, 2009), available at <http://gregforddelegate.com/breaking-albo-calls-renewed-abuser-fees> (last visited July 31, 2010).

individual, business, or organization. Those who are attorneys can represent clients before state agencies.<sup>34</sup> None of these actions are illegal or, under the norms of the legislature, unethical. Although a dozen ethics bills were introduced to the 2010 General Assembly in response to the Hamilton investigation,<sup>35</sup> those that passed dealt with the process of handling ethics accusations, rather than actually tightening ethical standards.<sup>36</sup> None of the proposed pieces of legislation would have done anything to prevent Hamilton's actions.<sup>37</sup>

Eliminating conflicts of interest in the General Assembly requires decoupling legislators' employment interests from their ability to make decisions in their capacity as legislators that affect that employment. There are no doubt many ways to accomplish this, but several stand out: prohibit legislators from serving on committees in which they have an ongoing financial interest; prohibit legislators from participating in the consideration of bills that could benefit them personally; prohibit legislators from working for state government; and prohibit legislator-attorneys from representing clients in matters in which the Commonwealth is a party.

The challenge in doing so is to avoid establishing a legislature that is only accessible to the wealthy—people who do not need to work—and to likewise avoid preventing the legislators with the greatest knowledge on a topic from serving on relevant committees. One method of accomplishing this might be to increase legislator pay significantly, while simultaneously prohibiting outside employment. Whatever the method, one thing is certain: until the fundamental conflict between committee membership and employment is eliminated, the legislature will continue to find itself dogged by ethical questions.

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34. Anita Kumar, *Virginia General Assembly Goes Slow on Tough Ethics Reform*, WASH. POST, Mar. 13, 2010, available at

<http://www.washingtonpost.com/wp-dyn/content/article/2010/03/12/AR2010031204139.html>.

35. See H.B. 617, 2010 Gen. Assem., Reg. Sess. (Va. 2010); H.B. 643, 2010 Gen. Assem., Reg. Sess. (Va. 2010); H.B. 740, 2010 Gen. Assem., Reg. Sess. (Va. 2010); H.B. 813, 2010 Gen. Assem., Reg. Sess. (Va. 2010); H.B. 814, 2010 Gen. Assem., Reg. Sess. (Va. 2010); H.B. 815, 2010 Gen. Assem., Reg. Sess. (Va. 2010); H.B. 816, 2010 Gen. Assem., Reg. Sess. (Va. 2010); H.B. 1140, 2010 Gen. Assem., Reg. Sess. (Va. 2010); S.B. 4, 2010 Gen. Assem., Reg. Sess. (Va. 2010); S.B. 186, 2010 Gen. Assem., Reg. Sess. (Va. 2010); S.B. 508, 2010 Gen. Assem., Reg. Sess. (Va. 2010).

36. See Kumar, *supra* note 33.

37. See *id.*

