



# Citizen Alert

A report on the state of Rhode Island government

April/May 2009

Volume 17, Number 1

## RI's ethics law stands or falls with Irons case

BY ROBERT A. BENSON, JR.

When former Senate President William V. Irons learned the state Ethics Commission was going to prosecute him for a conflict of interest complaint filed by Operation Clean Government, he asked the state Superior Court to block the prosecution.

Irons' lawyer argued that the "speech in debate" clause in Rhode Island's constitution shields legislative actions (speeches and votes) from ethics investigation and prosecution. Superior Court Judge Francis J. Darigan ruled in Irons's favor in October 2008.

It should be pointed out that this court action occurred even though the state constitution was amended in 1986 creating the RI Ethics Commission, giving it the right to

prosecute all elected and appointed state officials when they violate the state's code of ethics.

The Constitutional Convention delegates who drafted this amendment specifically meant it to apply to legislators, as described in the Rhode Island General Laws (R.I.G.L.) 36-14-5 and 36-14-7.

### Irons misdeeds

Irons knew he was in trouble. He received unusual commissions worth hundreds of thousands of dollars for "arranging" Blue Cross Health Insurance policies for CVS workers, while at the same time killing "pharmacy freedom of choice" legislation, opposed by these two groups. He voluntarily resigned his senate seat.

see **RI ethics law**, page 4



Judge creates ethics loophole for ex-Sen. Pres. Irons

On March 17, Operation Clean Government, through its attorney Tom Dickinson, filed an amicus brief in support of the Rhode Island Ethics Commission's appeal of a Superior Court decision that favored former Senate President William Irons. See brief at [www.ocgri.org](http://www.ocgri.org)

**The Supreme Court hearing is scheduled for May 13 at 9:30 AM**

Licht Judicial Complex, 250 Benefit St., Providence

## Magistrate appointment process smacks of political patronage and nepotism

BY SANDRA L. THOMPSON

With Rhode Island in the throes of economic chaos, other troubling issues are flying under the radar, unnoticed.

An outrageous example is the appointment of Patrick T. Burke, former deputy assistant to House Speaker William J. Murphy, to be a Superior Court Magistrate.

Burke was confirmed quietly and hastily by the Senate on a vote that was not posted in advance on the General Assembly website.

*This process took place in just one week.*

There was one candidate and everyone who needed to know knew that Mr. Burke was a done deal.

### Who you know counts

This process reeks of political favors between the legislative and judicial branches of government. It comes down to who you know, who owes you favors, who wants to trade favors with you, rather than the qualifications of the appointee.

Past magistrate appointments followed a similar questionable pattern, as shown on page 2.

see **Magistrates**, page 2

## OCG Public Affairs Forum probes the RI fiscal train wreck

*What do we need to do to get out of this mess?  
Do state leaders have the answers?*

The public is invited to attend and participate in a provocative discussion on Rhode Island's financial crisis.

### **Rx** for Rhode Island: *Restoring Our Fiscal Health*

Saturday morning, April 25

Breakfast 8:45 a.m. – Forum 10:00 a.m.

Quonset "O" Club

11 James Brown Road, Quonset Point, North Kingstown

### Moderator

**Dan Yorke** - WPRO award winning afternoon talk show host

### Panel

**Frank Caprio** - R. I. General Treasurer

**Elizabeth Dennigan** - Representative, House Finance Committee

**Allan Fung** - Mayor of Cranston

**Leonard Lardaro, Ph.D.** - Professor of Economics, Univ. of R.I.

**Gary Sasse** - Director, R. I. Department of Administration

**John Hazen White, Jr.** - President/CEO, Taco, Inc.

**Reserve by April 18** - \$20 per person

Register online at [www.ocgri.org](http://www.ocgri.org)

or mail check to OCG Forum, PO Box 8683, Warwick, RI 02888

Directions to the Quonset "O" Club at [www.quonsetclub.com](http://www.quonsetclub.com)

Call 861-3900 for information

## President's Corner...

Operation Clean Government promotes "Honest, Responsible and Responsive State Government," according to our mission statement.



Arthur "Chuck" Barton  
OCG President

Most people think of OCG as only promoting honest government because of the publicity surrounding the ethics complaints

OCG has filed over the years.

But OCG takes our other two missions – responsible and responsive – seriously as well.

In February, OCG's board issued a statement in support of the East Providence School Committee because it was taking responsible stands in trying to address the fiscal crisis in East Providence and the state. Regardless of the outcome of the various hearings and court decisions, the East Providence School Committee members deserve to be recognized for their courage and their willingness to be accountable for their actions.

While failures to have honest government grab headlines as fallen politicians head to court, responsible government is more elusive to identify and support.

### Politicians want to be liked

As an elected official for 14 years and an observer for a longer time, I can attest that politicians generally want to be liked and they equate being liked with doing things about citizens' concerns, large and small.

This situation works against responsible government. In wanting to be liked, politicians find it difficult to say no. In responding to concerns of individuals, groups and the public at large, spending grows

for ostensibly good purposes.

Politicians are reluctant to cut programs. They are reluctant to reduce staff. They are reluctant to have difficult contract negotiations with unions. They want to build a legacy and that means doing more, not less.

Very few politicians want to be remembered as the person who eliminated a senior program, or reduced a sports program. They want to be remembered as the person who championed the new library or added playing fields for athletics.

In these difficult times, we need people who are not typical politicians. We need people who take a skeptical look at programs and ask if the cost is worth what the programs accomplish; people who look at what union workers and administrative people are making and ask what needs to be done to pay public employees fairly while having costs affordable to the taxpayer?

East Providence stands out because of the resistance the school committee is meeting in its efforts to rein in costs and balance its budget. There may be cities and towns that are addressing their fiscal problems with their employees without the conflict that East Providence has. If so, both sides should be applauded.

### Leaders need to do what is right

Responsible government requires leaders who do not need to be liked, but need to do what is right for their citizens. Responsible government requires leaders who will make hard decisions, disappoint and even anger individuals and groups who will see themselves as losing something. Responsible government requires leaders whose legacy will not be a program or a building, but will be a well-run, financially sound government that meets the legitimate needs of its citizens without catering to special and vocal interests.

## Now: see OCG's TV shows on your home computer

BY JOHN CARLEVALE

State of the State, OCG's Weekly television show can also be viewed at a time convenient to you on the OCG website, www.ocgri.org.

On the OCG home page, click on the State of the State image be-

low the words "Now Streaming." Click on the "Watch Now" button to view the show you want to watch.

However, if you prefer to watch State of the State on cable TV, or set your timer, the weekly broadcast days, times and channels are below.

Saturday at 11:00 PM on Cox Channel 13, Verizon 32 and Full Channel 9  
Sunday at 8:00 AM on Cox Channel 13, Verizon 32 and Full Channel 9  
Monday at 9:00 PM on Cox Channel 18, Verizon 31 and Full Channel 9  
Thursday at 9:00 PM on Cox Channel 18, Verizon 31 and Full Channel 9  
Friday at 3:30 PM on Full Channel 9

Note: Cox channel 18, local Public Access in Kent County, includes Coventry, East Greenwich, Exeter, North Kingstown, Warwick, West Greenwich, and West Warwick.

## Magistrates, from page 1

### Past questionable appointments

- **R. David Cruise**, chief of staff to then Senate President Joseph A. Montalbano, as Traffic Tribunal magistrate
- **William R. Guglietta**, chief legal counsel to House Majority Leader Gordon D. Fox, as the Traffic Tribunal's chief magistrate.
- **Mary McCaffrey**, sister of Senate Judiciary Chair Michael McCaffrey as Family Court magistrate
- **Patricia Harwood**, wife of then House Speaker John Harwood, as Superior Court magistrate
- **William McAtee**, former state representative as Superior Court magistrate
- **Susan Revens**, wife of then Senator John Revens as Superior Court magistrate
- **Domenic A. DiSandro III**, former Senator and Senate Judiciary Committee Chairman as Traffic Tribunal magistrate

A typical base salary for magistrates is \$128,650, just slightly under that of a judge. Is it any wonder that this position is a generous reward for the well-connected and the favored few? Burke's salary in his new job, which began March 9th, is \$147,947 a year plus benefits.

Serving the leadership in the General Assembly, or being a spouse or relative to a legislative leader, seems to create a career path to highly paid positions in the judicial branch.

### Judiciary budget bypasses the Governor

This cozy relationship between the Judicial and Legislative branches of government was further evidenced in 2005, when the legislature allowed the judiciary to bypass the Governor by sending its budget directly to the General Assembly.

### Judge DeRobbio loses jurisdiction of the Traffic Tribunal

And, when former Chief District Court Judge Albert DeRobbio overlooked former State Senator

James Donelan and Patrick Burke (who was just appointed magistrate in early March) for appointments as Traffic Tribunal Magistrates, the General Assembly came up with a budget article that removed the Traffic Tribunal from Judge DeRobbio's jurisdiction. Coincidence? OCG does not think so.

OCG is pleased to see that matching bills in the House and the Senate are being introduced again to require that magistrates go through the rigorous vetting process of the Judicial Nominating Commission (JNC).

After review, The JNC submits a list of three to five candidates to the Governor to make the selection. The Senate Judiciary Committee schedules a public hearing before voting the advice and consent.

This system is not perfect, but it is far better than the current magistrate selection process, where a few key judges make the nominations using unknown criteria.

The JNC process known as "Merit Selection" was approved by voters in 1994 in reaction to two state Supreme Court justices who were forced to step down due to scandalous behavior.

### The number of magistrates has increased from 2 to 21

Since that time, the number of magistrates has increased from two to twenty-one, which is viewed as an end-run around the more exacting JNC selection process. Magistrates have some of the same powers as judges although they do not preside over trials. They serve a ten year term.

OCG has a history of supporting legislation for "Merit Selection" of magistrates. We hope this is the year these bills will succeed in changing this closed-door process; and that the appointment process will be transparent to all citizens to prevent favors being traded between the judicial branch and the General Assembly.

Contact your legislators and encourage them to support these bills. You can find your legislators' contact information on the OCG website, www.ocgri.org.

### Magistrate Selection process requires that magistrates go through the same vetting process as judges.

2009-H 5433, introduced by Rep. Donna Walsh

2009-S 0607, introduced by Sen. J. Michael Lenihan

## Coming soon...

Be on the *lookout* for the new and exciting **OCG Blog site** which will be up and running very soon. Now you will have an opportunity to comment on issues critical to Rhode Islanders and learn what others have to say about the actions of our government, for better or worse. Be informed! Demand honest and responsible government! Watch for the announcement on the OCG website – www.ocgri.org

## Get rid of the antiquated “straight party” vote

BY BEVERLY CLAY

The straight party lever should have disappeared with the old mechanical voting machines. The straight party voting process on the paper ballot for Rhode Island’s new optical-scan machine is confusing and misleading.

### Old mechanical voting machines

With the old mechanical voting machines, you pulled an actual lever for a straight party vote. You would see an X next to every candidate you voted for. You could change a vote by lifting the lever next to a candidate (removing the X) and then select an opposing candidate by lowering the lever next to his/her name (adding the X).

Voters in the towns that had nonpartisan races (fifteen school committees and five town councils) could see that they had not voted for local offices and could pull the levers for the individual candidates, and get a visual confirmation of their votes.

### New optical scan machines

With the optical-scan voting machines used today, to vote a “straight party” ticket, you mark your paper

ballot by connecting the arrow next to the party of your choice.

### There are four problems with this process

- You cannot see individual candidates for whom you just voted.
- You may not realize that you can change your vote in individual races or understand how to change it.
- If there are five town council members running in the party you selected and you vote for one person not in that party, the optical-scan machine will throw out all of your “straight party” choices for that office.
- If there are nonpartisan races in your city or town, you have not voted for any candidate in those races.

The introduction of the optical-scan machines has created confusion by continuing to include the straight party voting process, while not giving any visual confirmation for whom you have cast your ballot.

This confusion is only one of the many good arguments for eliminating the straight party voting process.

#### Eliminate Straight Party Lever

2009-H 5318, introduced by Rep. Brian Newberry

2009-S 0080, introduced by Sen. David Bates

## Voter Handbook should explain all sides of issues

BY BEVERLY CLAY

OCG’s Voter Information Handbook legislation has been introduced every session since 2001. The legislation would allow arguments for and against referendum questions in the Secretary of State’s “Voter Information Handbook” sent out prior to Election Day. Secretary of State Ralph Mollis has expressed strong support of this legislation.

OCG’s legislation is modeled after California, which allows arguments for and against each question, and also allows rebuttal arguments. Alaska, California, Idaho, Massachusetts, Nebraska, Oregon, and Utah distribute information guides that allow pro and con arguments.

The RI Voter Information Handbook has historically been vague regarding the uses of bond issues that referenda would authorize.

OCG’s interest in this legisla-

tion resulted from frustration with the explanations of the referenda questions in the 2000 general election. Question 2 for \$60 million in bonds described as providing funds for wastewater abatement projects and funding for drinking water projects. Question 3 for \$62.5 million in bonds described as improving highways, roads and bridges.

Pro and con arguments would have informed voters that these funds would actually be used for the startup costs of the Narragansett Bay Commission’s underground rainwater and sewage overflow tunnels and the relocation of Interstate 195.

Passing this legislation would be a positive step towards more transparency on referenda questions on the ballot, allowing the voters a more informed vote.

#### Pro & Con arguments in Voter Information Handbook

2009-H 5368, introduced by Rep. Rod Driver

2009-S 0253, introduced by Sen. Edward O’Neill

## Inspectors General save money in other states

BY ROY PRUETT

In the wake of the United States economic downturn, Rhode Island has the second highest unemployment figures. Leading economists forecast a recession unseen since the 1940s. Citizens across the nation are forced to curb unnecessary spending. Rhode Island, among countless states and municipalities, also must reinvent the way they do business.

The creation of an Office of Inspector General (OIG) in Rhode Island is a necessary step forward to fiscal health. Legislation has been introduced, at the request of OCG, to create such an office. OCG’s survey last fall shows a large number of legislators supporting this idea.

Over the past quarter century, inspectors general, in other states and in the federal government, have saved taxpayers much more than the cost to maintain their office.

Accountability is key to maintaining public trust in our democracy. The Inspector General would supervise, coordinate and/or conduct criminal, civil, administrative and audit investigations and inspections of oversight reviews.

The Inspector General would be both proactive and reactive by reviewing statutes and regulations relating to programs and operations and would make recommendations for the prevention and detection of fraud, waste and abuse.

With Rhode Island’s storied past of corruption and scandal, call or write your Representatives and Senators to support the creation of an Office of Inspector General in Rhode Island.

#### Inspector General legislation

2009-H 5470, introduced by Rep. Laurence Ehrhardt

2009-S 0514, introduced by Sen. Leonidas Raptakis

### Examples of cost savings in other states

#### Indiana

The Inspector General 2007 Annual Report lists:

\$3,241,136 - Total operating Expenses for 2005-2007

\$8,714,218 - Total Savings & Captures for 2005-2007

#### Maryland

Department of Health and Mental Hygiene The Annual Report for Fiscal Year 2008 lists:

\$20,952,007 – cost savings for 2008

#### Ohio

OIG created in 1988. The Annual Report 2008 lists:

\$29.2 million in fiscal repercussions in the DOT

#### Texas

OIG created in 1999 for Health and Human Services. The Annual Report for State Fiscal Year 2009 lists:

FY 2007-\$162,443,827 recovered

FY 2008-\$270,476,172 recovered

#### Massachusetts

“With an operating budget of less than \$2 million, the inspector general’s office more than pays its keep. Within the past year alone, according to the inspector general, Gregory Sullivan...estimates that his office has generated roughly \$1 billion in cost recoveries and savings in its 23-year history.” A Boston Globe editorial “An enforcer of Honesty”, March 12, 2003

## Require General Assembly to publish all committee votes

The committee level is where very important decisions are made. Constituents should know how their legislators vote in the obscurity of the committee room. Sometimes a committee will send a sheet of paper with the vote on a bill to the State House Library, where it is placed in a binder for that committee.

Even if the sheets get sent to the

library, very often they go missing. There appears to be no electronic recording of these votes.

OCG has requested legislation to be introduced that would require the General Assembly to publish all house and senate committee roll call votes.

For transparency, it is necessary to have this legislation pass.

#### Publish roll call votes in Committee

2009-H 5713, introduced by Rep. Rod Driver

# New web sites offer state data as watchdog sites expand probes

BY WILL BARBEAU

The waves have parted and Rhode Islanders – once dampened by turgid pools of secrecy – now seem flooded with new data on state operations. The lead state web site, [www.ri.gov](http://www.ri.gov), links to some 200 state departments, even offering links to popular social networking sites such as Twitter; YouTube; Flickr and Facebook, where registered viewers can watch videos of government in action or get cell phone messages from political leaders.

## Other RI government sites

**The Board of Elections** – [www.elections.ri.gov](http://www.elections.ri.gov), has campaign finance reports.

**The Ethics Commission** – [www.ethics.ri.gov](http://www.ethics.ri.gov) has financial disclosures;

**The General Assembly** – [www.rilin.state.ri.us](http://www.rilin.state.ri.us) offers both laws, bill history, bill status and publishes votes in their Journals.

The official website for **Rhode Island’s Office of Economic Recovery and Reinvestment (OERR)** – [www.recovery.ri.gov](http://www.recovery.ri.gov), is responsible for administering and complying with the American Recovery and Reinvestment Act of 2009 and other state and federal economic stimulus legislation.

**Secretary of State A. Ralph Mollis** – [www.sec.state.ri.us](http://www.sec.state.ri.us) offers lobbying reports and alerts citizens to state and municipal public meetings or agendas.

**The Transparency Portal** – [www.ri.gov/opengovernment/](http://www.ri.gov/opengovernment/) offers open government financial records from RI Offices and agencies. More records for other state agencies to be added in the future. To date, view records at:

- Department of Administration
- Office of the General Treasurer

## Citizen watchdog sites

Meanwhile, citizen watchdog and policy study sites keenly follow political, fiscal and legislative activities:

**Common Cause** – [www.commoncauseri.org](http://www.commoncauseri.org) offers and analyzes legislation.

**The Ocean State Policy Research Institute (OSPRI)** – [www.oceanstatepolicy.org](http://www.oceanstatepolicy.org) is a recently formed think tank that offers these links on their Transparency Train, [www.transparencytrain.org](http://www.transparencytrain.org)

- RI Data – state, city, town & school district financial and contract information
- RI Votes – a database of legislation and voting records of legislators
- LRB Watch – analysis and information on the State Labor Relations Board

**Operation Clean Government** – [www.ocgri.org](http://www.ocgri.org) offers links to every site in this article as well as contact info for legislators, media and other groups. See our 2009 legislator contact info found on the home page

**R.I. Statewide Coalition (RISC)** – [www.risc-ri.org](http://www.risc-ri.org) is an advocacy and watch-dog group while its sister-group, the RISC Foundation, offers a data site, [www.themoneytrail.org](http://www.themoneytrail.org), that includes links to more than 100 governmental, judicial, labor, municipal, advocacy, legislative, political and national sites tracking contracts, budgets, and payrolls and voting records.

# RI ethics law, from page 1

Why did Judge Darigan rule that the speech in debate clause allows Irons to dodge the Ethics Commission prosecution and avoid any penalty associated with the Commission's investigation?

## Martineau seeks early release

The Providence Journal reported on March 6, 2009, that former state House Majority Leader Gerard M. Martineau wants early release from prison. Martineau is serving time after pleading guilty to a conflict of interest scheme where he received \$911,400 in return for acting favorably on legislation supported by CVS and Blue Cross.

Martineau’s attorney cites Judge Darigan’s speech in debate decision in the Irons case, saying he should not have been prosecuted for his legislative actions in the General Assembly. This is a perfect example of why the speech in debate protections should not apply when lawmakers break the code of ethics or other state laws.

## Origin of speech in debate

The speech in debate clause is also in the U.S. Constitution. These clauses evolved out of British Common law. Their origin dates back to the 16th Century when members of Parliament were being executed by the King when they refused to go along with the King's decisions and policies.

The protection afforded by the speech in debate clause was included in the U.S. Constitution to prevent the Executive Branch of government from abusing and harassing the Legislative Branch. The clause was not meant to protect legislators when they sell their legislative services.

## Is Judge’s rule correct?

In Rhode Island, violating the code of ethics is breaking the law.

A conflict of interest resulting in financial gain is essentially a crime like bribery.

How can a judge, decide just the reverse? His decision defies the will of all those Rhode Islanders who voted for the constitutional amendment that created the state's Ethics Commission. His decision allows a select group of state officials – legislators – to ignore the state's conflict of interest laws.

Whose interest was the judge considering when he made this decision – the legislators’ or the public’s?

## Ethics Commission appeals to RI Supreme Court

The Ethics Commission has appealed Darigan's decision to the state's Supreme Court. Operation Clean Government has retained a well-known appellate lawyer, Thomas Dickinson, who filed an amicus brief in support of the Ethics Commission appeal on March 17.

If the state’s Supreme Court overturns the Superior Court decision, it will be a victory for honesty, democracy and the will of the people. If they don’t overturn this decision, it will be a green light for corruption.

## What can you do?

Right now the R.I. Supreme Court is scheduled to hear this appeal on May 13, at 9:30 AM in the Supreme Court Room on the 7th floor of the Licht Judicial Complex located at 250 Benefit St., Providence.

OCG encourages you to take action. Write to your legislators asking where they stand on this issue? Write to your local news media and express your outrage. Don’t let Judge Darigan’s decision result in a permanent “For Sale” sign on the doors of the General Assembly.

## Had enough? You CAN help change Rhode Island – Join OCG

Since 1993, OCG has had a simple straightforward agenda: to promote honest, responsible and responsive state government. By reading the contents of this newspaper you will have learned a little about what this **all-volunteer** organization is doing. Every penny goes to combating and working to reform state government. Please help us to continue the fight for a corruption free Rhode Island state government by joining OCG.

### OCG MEMBERSHIP FORM

YES, I want to join other Rhode Island citizens and help to promote Honest, Responsible and Responsive State Government.

- New member       Renewal
- \$25       \$35       \$50       \$100       \$250       \$\_\_\_\_ Other
- Individual      Family (list all names to be included)

Name(s) \_\_\_\_\_ Home Phone \_\_\_\_\_

Street \_\_\_\_\_ Business Phone \_\_\_\_\_

City/Town \_\_\_\_\_ Email Address \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_

OCG is a non-profit organization, however contributions are not tax deductible because our activities include lobbying.

- Yes, I would like to volunteer some time or participate on one or more of the OCG committees. Please call me.

I heard about OCG from \_\_\_\_\_ April/May 2009

OPERATION CLEAN GOVERNMENT • PO BOX 8683 • WARWICK, RI 02888

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