MULTISTATE

UMaine system lobbyist barred nursing school from endorsing immunization bill

Last February, the University of Maine's nursing program was asked to endorse a bill that would remove the religious and philosophical exemptions for mandatory immunizations in the state's public schools and universities.

Some nursing faculty thought their department signing on to the Maine Immunization Coalition, the group soliciting their endorsement, might help the policy pass, so they ran it up the chain to the administration. "It would be very helpful to the originators if we could sign on, but since this particular piece of legislation may have both media and legal repercussions, I thought it best to check with you," UMaine School of Nursing director Mary Walker wrote to the University of Maine's public relations director, Margaret Nagle.

Nagle in turn sent the request to University of Maine System Director of Government and Community Relations Samantha Warren, who quickly shut the endorsement attempt down.

"As you can all appreciate (likely better than I), this is a complicated issue for the University of Maine System and for many of us as individuals," she wrote in a February 19 mass email. "We have nursing faculty who believe this is in the best interest of public health and campuses who are concerned this will be a barrier to the adult students we are increasingly focused on serving. Many of us are parents."

She stressed, "As a reminder, while individual students and employees of the UMaine system are of course allowed to engage with the Legislature on any bill in their personal capacity as private citizens, the Chancellor's Office through me coordinates our official positions on all bills including this one."

Internal communications examined by Beacon show that the University of Maine System administration and some university presidents believed that the legislation, LD 798, could complicate enrollment, particularly for adult students, a concern they felt outweighed the science-based public health arguments of their nursing faculty.

This decision, as with other, similar recent advocacy choices including lobbying against paid time off for student workers, would seem to contradict the University System's own policy manual. According to Board of Trustees Rule 214, the system's legislative advocacy is supposed to give the "health and safety of students and employees" the highest consideration.

An effort to exempt higher ed

The vaccine bill was introduced as a reaction to an immunization opt-out rate in Maine has been rapidly climbing, growing from 5 percent of kindergarten students in 2018 to 5.6 in 2019.

The rates are even higher on Maine's campuses. More than 1,500 of the university system's students currently take advantage of one of the existing allowed exemptions, most of them philosophical. Warren told members of the legislature's Education Committee that this includes roughly 25 percent of students at the University of Maine at Augusta, 15 percent of students at the University of Maine at Machias and 10 percent of students at the University of Southern Maine.

The legislation quickly became a political lightning rod in the State House. Hundreds of anti-vaccination activists, as well as many vaccine supporters, flocked to Augusta to speak on the bill in a marathon public hearing on March 13 that lasted about 13 hours.

Ahead of the bill hearing, Warren recognized that the issue was politically loaded. She told her superiors that she would try to manage the impact by talking with the bill's sponsor, state Rep. Ryan Tipping (D-Orono), who, as Beacon reported in the first story of this series, she was also lobbying on overtime expansion.

"I am meeting with Ryan Tipping on a whole host of issues. I am thinking the easiest approach may be to try to leave higher ed out of the proposed changes as the current policy seems to work for us, and K-12 seems to be where the greatest issues are," she wrote to University of Maine at Augusta President Rebecca Wyke, who reached out to her immediately after hearing of the bill. "[W]e will not compromise a system position. Just wanted you to be aware of our concerns," Wyke said.

In another email to her colleagues, Warren suggested that getting Maine's public university students exempted would not be an easy sell. "With the Governor implementing Medicaid expansion, I think there is a sense among many in the Legislature that there are no barriers to health care services, including vaccinations," she wrote, "and the sense I got was pushing an undue burden exemption would not get traction."

As she prepared to give her public testimony, in which she and the UMaine system would take a neutral position, Warren shared her remarks with her colleagues.

The university system's Chief Student Affairs Officer Rosa Redonnett wrote back, telling Warren, "overall folks think you did a good job capturing this and are pleased that we are not speaking against it." She continued, "Great concern from our on campus student health providers ([Director of the Health Center at the University of Maine at Presque Isle] Linda Mastro and [Director of Health Services at USM] Lisa Bellanger) that they weren't contacted. They very much fear outbreaks and of course are the front line folks who have to deal with it when it happens."

Warren responded, "I likely talked to 25 or so people for this bill and admittedly focused on addressing the areas of concern not support but will add a line to really reinforce we support immunization."

This focus on enrollment concerns first (more specifically tuition dollars) and public health second echoes a larger trend in higher education. Following the Great Recession, public universities across the country saw their funding slashed in state budgets. This lifted tuition's share of higher education funding, which has almost doubled nationally since the 1990s. Schools, under pressure not to raise tuition rates, became increasingly dependent on a combination of cost-cutting austerity and maximizing enrollment. Consequently, the needs of students, staff and even public health initiatives have been thrown into competition over fewer resources.

"If the pie is getting smaller every year, due to inflation, then people are going to be fighting over different pieces that are increasingly underfunded," said Rep. Tipping, who said he wasn't surprised by the wariness of university administrators. "We need to have a conversation about revenue, if we want to actually achieve our goals."

'There's a lot of fear that you can't say anything'

Ahead of the public hearing on the vaccination bill, some faculty who wanted to publicly testify reached out to Warren for clarification on what it meant to engage in their "personal capacity."

Warren wrote to law professor Jennifer Wriggins, "We understand that some members of our campus community do feel a moral or professional obligation to speak on this bill and they are encouraged to do so as private citizens and not as representatives of the institution (ie. I am Sam Warren and I am a resident of Portland and a mother of three)."

Warren seemed to be steering her away from using her academic title and position within her department. Wriggins responded, “I was a bit confused by the part of the message … that said ‘i.e. I am Sam Warren and a resident of Portland and a mother of three’.” She added, “I want to be clear that my plan if I testify is to identify myself as a Professor of Law and Portland resident who teaches health care law at the University of Maine School of Law and say that I am speaking on behalf of myself.”

Wriggins was well within her rights to insist on speaking publicly and using her title while doing so. In fact, one of the purposes of the system of tenure at Maine’s campuses is to enable professors to speak out on controversial issues without fear of institutional censorship.

According to faculty representatives, the moves by administrators like Warren to discourage educators from speaking out on public issues are part of an ongoing on-campus controversy, one which came into public light last year.

The president of the faculty union, the Associated Faculties of the Universities of Maine, Jim McClymer said a widely-reported policy change adopted by the system’s Board of Trustees in March, 2018 has created confusion and trepidation around what faculty are allowed to speak publicly about, and in what capacity. The policy established that the system’s official position on a political matter could only be made through the chancellor’s office, though faculty can speak as experts in their fields and engage in political activity as long as it is not during work time.

“We as faculty get to speak for ourselves. And as academic units, we can speak on issues,” he said. “The nursing faculty could have said, ‘We the members of the nursing department, based on our professional opinion, strongly support or oppose this bill.’ That would have been perfectly fine.”

Warren and other system administrators didn’t mention this option when prohibiting the department from making an endorsement.

“The university system hasn’t done a very good job clarifying what their intent was with this policy. And I’m not sure it’s fully understood by administrators,” McClymer added. “I think there’s a lot of fear that you can’t say anything. That could take an important voice — a voice of expertise — out of the debate, and that’s not acceptable as a university. Things that are within our academic bailiwick, we’re supposed to speak about as a way of providing a service to the public.”

Dan Demeritt, the system’s public affairs director, says the administration’s intention is not to muzzle faculty or create fear of speaking out. “A notable strategic change at the State House has

been the System's commitment to contributing to policy discussions," he told Beacon by email. "In March of 2018 the Board unanimously adopted a policy recognizing the subject matter expertise of faculty and encouraging members of the University community to be a resource for policy and legislative leaders."

Removing the public health hat

On March 13, Warren testified "neither for nor against" the bill. "We have serious concerns that eliminating the exemptions from school immunization requirements will create access barriers to the very Mainers who would most benefit from public postsecondary education," she said.

Despite its mission to be the "state's center for learning, discovery, and service to the public," the university system's position stood in contrast to the state's major public health organizations, such as the Maine Center for Disease Control and Prevention, the Maine Nurse Practitioner Association and Maine Medical Center, which all supported the bill.

The Maine Community College System (MCCS) had similar cost concerns and also took a neutral position on the bill, but asked lawmakers for additional funding to immunize their students if the law passed. The UMaine system did not ask for more funding for their student health facilities — just as they had not when opposing a statewide overtime expansion bill.

"I will be honest and say that I don't think the community colleges are going to be of great help to us here. My new counterpart there [MCCS Director of Government Relations Becky Smith] comes from the public health world, and is having a hard time removing that hat," wrote Warren in an email to top administrators and university presidents.

Warren also noted that the Maine State Chamber of Commerce backed up her testimony after the system sent the corporate lobby "talking points" on their position.

The vaccination bill removing both exemptions was signed into law in May by Governor Janet Mills after passing the Maine Senate by a single vote. In September, opponents seeking to repeal the law gathered the requisite number of signatures to trigger a statewide "people's veto" referendum, which will be held in March.

'The question for the university system is, are you living your values?'

The day before the UMaine system took a neutral position on the bill at the State House, Warren reached out to Tipping one last time. She thanked him and reaffirmed the system's commitment to public health.

“Thanks for your courage and the inclusive way you approach these important issues,” she wrote. “[W]e think it’s important to stand in support of immunization while raising our concern in a thoughtful, data-driven and solution-oriented way.”

She did not mention that at that moment she was considering testifying in support of a Republican bill, LD 897, which would have prevented local school boards and municipalities from implementing their own immunization requirements if they were stricter than anything enacted by the state.

“[A]t the same time as [the vaccination bill’s] hearing is another on a bill … that will expand the medical exemption process,” Warren wrote to top administrators. “[I]t is a bill I think I will have us suggest support for in this larger context.”

The GOP bill, which was killed in committee, was opposed by the Maine Center for Disease Control and Prevention, the Maine Medical Association, the Maine Department of Education, and the American Academy of Pediatrics, among others.

Once again, Maine’s public university system, under a state government that had normalized the underfunding of higher education, appeared to be putting its service to the public secondary to an austerity mindset — just as it had with the economic justice of its students and workers.

Observers of the university’s lobbying position say the choice of administrators to see the immunization bill as a financial concern rather than a public health boon, and to discourage its own experts from speaking out rather than working with them to improve the policy, encapsulates the system’s broader reactionary stance.

“The question for the university system is, are you living your values?” asked Maine AFL-CIO executive director Matt Schlobohm. “They obviously feel squeezed in this four-decade run of austerity in Maine and across the country. But I think the question for them, and for us as a state, is how do we collectively respond to that? There’s a much different path that involves advocating for taxing the wealthy to generate the revenue that we all need to fully fund critical public goods like higher education.”

Berrios in-law pushes to legalize sweepstakes machines while running PAC tied to Madigan

A businessman whose lobbying efforts to legalize sweepstakes machines are part of the federal criminal case against state Rep. Luis Arroyo also runs a political action committee with close ties to Illinois House Speaker Michael J. Madigan.

James T. Weiss — a son-in-law of Joseph Berrios, the former Cook County Democratic Party chairman and county assessor — owns and operates sweepstakes machines. Weiss also runs the Alliance of Illinois Taxpayers, which has raised hundreds of thousands of dollars, largely from personal injury law firms allied with Madigan. Other donors include individuals with ties to Madigan's political organization.

Weiss is chairman and treasurer of the PAC. His mother Mary Murray is president. The secretary is John Hynes, a Chicago firefighter who is part of Madigan's political organization and a friend of the speaker's son Andrew Madigan.

Murray and Hynes are on the PAC's board of directors with Jennifer Scaccia, the office manager of the Del Galdo Law Group that's headed by attorney Michael Del Galdo, who serves as the municipal attorney for the town of Cicero and several other suburbs. Del Galdo's law firm has given money to the Weiss PAC.

The PAC has raised $630,000 since it was created seven years ago and has given money to help elect candidates including Cicero Town President Larry Dominick. The PAC also spent nearly $20,000 on fliers in 2016 to defeat state Rep. Kenneth Dunkin after the Chicago Democrat broke ranks with Madigan and sided with Republican Gov. Bruce Rauner on key votes.

Weiss, a Bridgeport native whose grandfather Edward Murray was a deputy treasurer under former Chicago Treasurer Miriam Santos, has had several contracts with the Chicago Public Schools allowing him to park cars on school playgrounds around Wrigley Field and other sporting venues.

A year ago, Weiss created another company, Collage LLC, which has spent more than $80,000 lobbying state legislators to legalize sweepstakes machines, which look like now-legalized video poker machines. The sweepstake companies operate in a gray area in which they are neither illegal or legal, but they are outlawed by the city of Chicago.

Weiss lobbied Ald. Gilbert Villegas (38th), whose proposal last year to legalize sweepstakes machines in Chicago failed.

Arroyo, a Chicago Democrat who also was lobbying city officials to legalize sweepstakes machines on behalf of V.S.S., a company owned by John Adreani, who was fired from the Chicago Police Department over his connections to a convicted drug dealer.

Arroyo was arrested last Monday, charged with attempting to bribe an unnamed state senator to introduce legislation to legalize sweepstakes machines. Arroyo allegedly told the senator — who was secretly recording their conversations for federal investigators — he'd be paid $2,500 a month by Arroyo's client. The Sun-Times has identified the senator as Terry Link, a Democrat from Vernon Hills, though Link says he was not the senator.

Madigan threatened to oust Arroyo, who resigned his Illinois House seat on Friday.

Weiss operates valet parking companies with restaurateur Iman Bambooyani, and they have more than $2 million in contracts through next year to use specific public school parking lots. A Sun-Times investigation last year found they had used a convicted sex offender to park cars on a playground just east of Wrigley Field.

Weiss comes from a politically connected family. His mother Mary Murray once worked for a commissioner at the Metropolitan Water Reclamation District of Greater Chicago, and her father Edward Murray worked in the city treasurer's office until Santos fired him. He ran an unsuccessful campaign to oust Santos, then became a cash manager for the Chicago Public Schools. Edward Murray also had ownership stakes in two restaurants at Navy Pier.

About four years ago, Weiss married former state Rep. Toni Berrios, whose father was the Cook County assessor who ruled on property tax appeals filed by law firms including the speaker's firm, Madigan & Getzedanner. Joseph Berrios lost his re-election bid last year.

The former assessor is a lobbyist in Springfield, representing the Illinois Gaming Machine Operators, which opposes efforts to legalize sweepstakes machines.

Weiss and his mother also run two Bridgeport charities, aided by powerful political allies including Cook County Commissioner John Daley and his nephew Ald. Patrick Daley Thompson (11th), Andrew Madigan and former state Rep. Dan Burke, D-Chicago, brother of Ald. Edward M. Burke (14th). One of the charities, Benton House, is a former settlement house that operates an emergency food pantry. The other is a scholarship fund.

California interest groups near the $300-million mark in Sacramento lobbying

Any way you slice the numbers inside the latest reports on lobbying California's state government, it's clear that the influence industry is big business. And it's getting bigger by the day.

Interest groups spent an average of about $2 million every day the Legislature was in session this year on lobbying — adding up to almost $33 million a month and a total of $296.4 million from January through September, a period spanning the legislative year for 2019.

That's about a 14% increase from the same time frame in 2017, which was also the first year of a two-year legislative session in Sacramento. Go back to 2015 and lobbying expenses have risen by about 24% in just four years.

Here's a safe prediction: Once the final 2019 reports are filed, the year could easily break last year's spending record for efforts to woo California lawmakers and top state officials.

BIG BUCKS TO LOBBY ON HEALTHCARE, EDUCATION, ENERGY

Healthcare groups were a dominant force in Sacramento this year, with combined January-to-September lobbying expenses of $34.8 million. Big bucks were spent by perennial powerhouses like the California Medical Assn. and the California Hospital Assn. But notable, too, was the spending by two of the nation's largest kidney dialysis companies, DaVita and Fresenius Medical Care.

Both staunchly opposed Assembly Bill 290, signed into law by Gov. Gavin Newsom last month, which imposes new rules affecting dialysis clinics in California that are operated by both companies. The bill's focus on how companies are reimbursed for services provided to some patients attracted attention from a variety of healthcare interests. Pfizer, one of the world's largest pharmaceutical companies, listed AB 290 as one of the bills followed by its lobbyists, who were paid a total of more than $535,000 this year. The company was far from the only big player keeping an eye on the debate. Kaiser Permanente, which spent $1.2 million on lobbying this year, supported the bill along with other health insurance companies.

No stranger to the upper echelons of lobbying, the California Teachers Assn. spent more than $6.2 million to sway lawmakers on education issues. Few were as high-profile as the effort to impose new rules on the operation and growth of charter schools in California, long a goal of the teachers union. The group succeeded in getting Newsom's signature on Assembly Bill 1505, which will give local school districts new power over the expansion of charter schools.

Charter school groups spent about $900,000 on lobbying, with additional dollars spent by organizations representing business and local government.

Significant money was spent, too, lobbying legislators and state government on energy issues. California's big three investor-owned utilities — Pacific Gas & Electric, Southern California Edison and San Diego Gas & Electric — spent a combined $6.1 million on lobbying. That's a pretty big drop from the $21 million spent by the utilities in 2018 (more than half being spent last year by PG&E) as the Legislature debated a far-reaching law on utility rules in preventing wildfires. Chances are, though, the companies will ramp up their efforts again next year as Newsom has vowed to revisit those rules.

GOVERNMENT LOBBIES GOVERNMENT… A LOT

As is often the case, it's not the most visible interest groups that are tops in what they spend to lobby. Big business and labor unions get most of the attention, but the single largest sector of lobbying is local and regional governments paying to have their voices heard in Sacramento.

Since January, government sector lobbying expenses have topped $43.2 million. Tops on the spending list: the League of California Cities, the Metropolitan Water District of Southern California and most of the state's most populous counties.

A STATE HAND IN RUNNING PG&E?

When the big utility companies return to lobbying lawmakers next year, it's unclear who will be calling the shots at PG&E, the state's largest provider of electricity.

On Friday, a clearly frustrated Newsom invited just about everyone involved in the bankruptcy of the troubled utility to meet with him in Sacramento this week in hopes of sorting out their differences over what happens next. There are expectations PG&E's financial woes should be settled by early next summer. He also tapped his cabinet secretary, Ana Matosantos, to add the informal title of "energy czar" to her portfolio of duties.

And the governor made it clear he's willing to have his staff consider the once unthinkable: have the state assume some level of control over the company.

"PG&E, as we know it, may or may not be able to figure this out," he said. "If they cannot, we are not going to sit around and be passive."

Newsom's got his hands full, says Times columnist George Skelton, who argued last week that it's unlikely any previous governor has faced so many disasters at the same time.

Sandy Clements: Citizen lobbyists push to get money out of politics

I lobbied my representatives on Capitol Hill! So what led me to D.C. and to the halls of Congress?

I've always assumed, despite corruption occasionally making headlines, that our democracy was robust and resilient. That though our country frequently failed to live up to the ideals we espoused, progress was being made toward those ideals. Busy with my own life, I was content to leave the work of achieving that progress to others.

But now, it has become frighteningly clear that the corrupting influence of money in politics is posing an existential threat to our democracy. Headlines blare the same breaking news about issues that have obvious solutions — solutions supported by the vast majority of citizens of all political and demographic stripes. Yet our elected representatives refuse to enact the will of the people. This, and the dark-money fueled influence of foreign governments, hostile to our form of government, scared me into becoming a more engaged citizen.

That is how I found myself participating in the National Citizen Leadership Conference and Lobby Day on Capitol Hill last month. The conference was sponsored by American Promise and several other organizations actively working to improve our democracy. American Promise (americanpromise.net) is a cross-partisan, citizen-powered movement advocating for a constitutional amendment (the 28th) allowing limits on political spending to ensure that "We the People" — not corporations, unions or wealthy special interests — govern the United States of America.

During the day-and-a-half conference we heard from a broad swath of Americans actively improving our democracy. And in preparation for our big day on Capitol Hill, we Lobby Day participants were schooled on how to conduct a meeting with our members of Congress.

On Lobby Day, we marched from the Capitol steps, past the Supreme Court to the Senate Hart building to celebrate the New Hampshire state legislature calling on Congress to pass a constitutional amendment allowing limits on political spending. We then fanned out across Capitol Hill to lobby our members of Congress.

Our "asks" were to urge them to co-sponsor an existing bipartisan bill calling for this amendment, to sign onto a statement of principles in support, or to propose language they would support. We urged them to reach across the aisle. Passage in Congress requires two-thirds

voting in favor and ratification in the states requires three-quarters of state legislatures voting in favor. This must be a cross-partisan effort.

My fellow Floridians and I lobbied the staff for Sens. Rick Scott and Marco Rubio. We also lobbied staff for Reps. Ted Yoho (my representative) and Lois Frankel (their representative). Former New Hampshire Republican state Sen. Jim Rubens joined our meeting with Sen. Rubio's staff to discuss the Republican-flavored issues motivating his call for this amendment. After our long day crisscrossing Capitol Hill, we celebrated with a scoop Ben & Jerry's Ice Cream served by Ben Cohen himself!

I will contact my representatives' offices in a few days to follow-up on this important issue that has broad cross-partisan support among American voters. Thus far, 20 states have passed resolutions calling for Congress to pass an amendment limiting the influence of money in politics. More than 800 localities representing 46% of the US population have passed resolutions and/or voted in favor of such an amendment.

Our area is among the 14 localities in Florida that have called for such an amendment (see united4thepeople.org). The Gainesville City Commission passed a resolution in 2013 and citizens of Alachua County voted overwhelmingly in favor of such an amendment in 2014. These efforts were the result of advocacy by Move To Amend — Gainesville.

Attempts to pass a resolution in the Florida Legislature have thus far been unsuccessful. But, we must not give up on our state nor allow these local successes to fade from memory.

I have begun the process of establishing an American Promise Association in our area. These associations advocate for the 28th Amendment in their local communities by meeting with elected officials and candidates, writing letters to the editor or other media pieces, and via community engagement such as giving talks to local groups or "tabling" at local events.

This cross-partisan, citizen-powered movement needs you and your talents to advance this important issue. Help build this movement in our area and work to expand it across the state of Florida. Contact me at sandy.WeThePeople@gmail.com if you are interested in joining this movement or to provide a local speaking opportunity.

Federal Circuit Issues Controversial Decision Involving Expressly Unallowable Costs

In its second significant cost allowability decision of the year, the Federal Circuit held that salaries associated with lobbying activities are expressly unallowable under Federal Acquisition Regulation (FAR) 31.205-22. Although the decision is limited to salary costs associated with

lobbying activities, its rationale creates uncertainty for other types of costs subject to a FAR Part 31 Cost Principle that uses similar "associated with" language. Contractors should anticipate closer scrutiny from auditors, who may feel emboldened by the Federal Circuit's decision to characterize costs as expressly unallowable. The decision may also have implications for compliance with Cost Accounting Standard 405.

Although many types of cost may be generally unallowable, a smaller subset of costs are expressly unallowable. An expressly unallowable costs is "a particular item or type of cost which, under the express provisions of an applicable law, regulation, or contract, is specifically named and stated to be unallowable." Contractors are subject to penalty if they submit to the government any expressly unallowable cost. Congress made clear that the penalty was intended for limited circumstances where the regulations explicitly prohibit inclusion of a type of cost; providing alcohol as an example.

FAR 31.205-22(a) provides that costs "associated with" a list of lobbying and political activities are unallowable. FAR 31.205-22 does not specifically name and state salary, or any other type of cost; it merely states "associated with." The narrow question presented to the Federal Circuit was whether salary costs of employees engaging in such lobbying activity qualify as expressly unallowable costs.

Even though FAR 31.205-22 does not expressly name and state salary or compensation as unallowable, the Federal Circuit nevertheless held that such salary costs are expressly unallowable:

The definition in FAR § 31.001 of an "expressly unallowable cost" refers to "a particular item or type of cost." These two categories of costs confirm that an "expressly unallowable" cost includes more than an explicitly stated "item." Costs unambiguously falling within a generic definition of a "type" of unallowable cost are also "expressly unallowable." Here, salaries of in-house lobbyists are a prototypical lobbying expense. Subsection 22 disallows "costs associated with" activities such as "attempt[ing] to influence . . . legislation . . . through communication with any member or employee of the . . . legislature" or "attend[ing] . . . legislative sessions or committee hearings." Salaries of corporate personnel involved in lobbying are unambiguously "costs associated with" lobbying.

The Federal Circuit's reasoning raises at least four implications moving forward.

First, whereas the FAR defines expressly unallowable costs as those "specifically named and stated to be unallowable," the Federal Circuit seems to have adopted a broader test that encompasses "[c]osts unambiguously falling within a generic definition of a 'type'" deemed unallowable. Now, instead of asking only which types of costs are specifically named and stated

as unallowable, contractors must apparently also consider what types of cost unambiguously fall within generic definitions of types of unallowable costs. The Federal Circuit's attempt to distinguish an item from a type of cost appears specious. And, the Federal Circuit seems to have muddied the differing concepts of unallowable costs, directly associated costs, and expressly unallowable costs.

Moreover, the Federal Circuit's approach strikes as a contradiction of the plain language of the definition of an expressly unallowable cost, and is inconsistent with Congressional intent. The reason that Congress included the "specifically named and stated language" was to avoid penalizing contractors where the regulations lack specificity. The onus is on the government to draft cost principles that are precise.

Relevant here, the Federal Circuit's decision clarified in dicta that its holding effectively overturns, in part, the ASBCA's 2015 decision that bonus and incentive compensation (BAIC) are not "expressly unallowable" under FAR 31.205-22. The ASBCA had concluded such costs did not meet the definition of expressly unallowable because "neither 'BAIC' cost nor 'compensation' cost is specifically named and stated as unallowable under this cost principle, nor are such costs identified as unallowable in any direct or unmistakable terms." Without considering the underlying rationale, the Federal Circuit was not persuaded: "That decision is not binding on this court, and in any event, is contrary to the plain language of Subsection 22 to the extent that it concludes that salaries in the form of bonus and incentive compensation for lobbying and political activities are not 'expressly unallowable.'"

Second, the Federal Circuit's reasoning could impact other cost principles that speak in terms of costs "associated with" a particular activity. FAR 31.205-1, for example, speaks to the allowability of public relations activities "associated with areas such as advertising, customer relations, etc." FAR 31.205-27 governs "expenditures in connection with" business organization costs. Although the Federal Circuit's decision is tied to the language of FAR 31.205-22, the Defense Contract Audit Agency (DCAA) is guaranteed to rely on this case with abandon to assert that a host of costs are expressly unallowable.

Third, despite the concern of DCAA overreach, the Federal Circuit's conclusion seems inherently tied to its understanding of the relationship between lobbying and lobbyists: "salaries of in-house lobbyists are a prototypical lobbying expense." Inherent in the decision is the Federal Circuit's inability to identify any other types of costs associated with lobbying. Thus, in the eyes of the Federal Circuit, salary would qualify as expressly unallowable under the "prototypical lobbying expense" standard. Furthermore, the Federal Circuit examined the history of the cost principle, which, under DAR 15.205.51 specifically disallowed the "applicable portion of the salaries of the contractor's employees . . . engaged in lobbying." Thus, to the extent there is a silver lining to this case, it is that it may be limited to salaries, and is dependent on the unique

history of the prohibition. It still leaves open the question of what other types of cost are so "unambiguously falling" within an "associated with" type of cost.

Finally, this case implicates CAS 405. That standard directs the segregation of expressly unallowable costs from billings, claims, and proposals. The uncertainty that the Federal Circuit has created regarding the definition of an expressly unallowable cost—which is identical in CAS 405—could lead to an implosion of alleged noncompliances with CAS 405, itself subject to compound daily interest.

Contractors should consider reviewing their accounting systems and implementing a more risk averse posture with respect to allocation of any types of costs that could be characterized as "unambiguously falling" within a type of cost identified as unallowable, or as a "prototypical expense" of an expressly unallowable costs.

Democratic sweep sets up confrontation with corporate giant that has loomed over Virginia politics for a century

The stunning victory on Tuesday by Virginia Democrats, seizing control of both chambers of the state legislature and bringing the state under unified party control, sets up a new confrontation with a powerful adversary: Dominion Energy.

Dominion Energy, the privately owned utility company, has long cast a shadow across the state, buying favor in both parties as the most generous donor in state history, writing its own lax regulatory rules, and funneling consumer bills into billions of dollars of investor dividends and executive compensation.

The election results mark a turning point that will likely transform into a brutal legislative fight in 2020 over the future of energy policy, corporate consolidation, and climate change. Virginia Democrats were once just as loyal to the energy giant as Republicans, dutifully passing nine-figure tax breaks year after year for Dominion, alongside other giveaways directly requested by the company's lobbyists. Dominion lobbyists have crushed attempts to allow consumers to use "net metering," or the use of rooftop solar power to send electricity back to the grid in exchange for credits, and passed laws specifically crafted to dodge limits on pollution by coal power plants.

Over the last two election cycles, however, an increasing number of General Assembly Democrats have declared that they will reject campaign donations from Dominion and Appalachian Power, a subsidiary of another utility giant, AEP. Since 2017, the Democratic Party of Virginia has rejected Dominion money as well. In order to force the company to return money to consumers and comply with the demand to eventually generate all of its energy from

carbon-free sources, Democratic legislators say they need to break free of Dominion's political grip.

Gov. Ralph Northam has called for standards this year that would require utilities to eventually source 100 percent renewable energy over the next three decades. Now, with his first Democratic legislature, that may finally be feasible and enforced through law.

Clean Virginia, an advocacy group, boasted after the results last night that nearly 50 candidates who rejected Dominion money won elections, including many running in competitive seats.

"What's important for progressive leaders in Virginia of all political affiliations to commit to is not allowing Dominion to write the clean energy script to benefit its own profit motives," said Cassady Craighill, a spokesperson for Clean Virginia. "Virginia could reach Governor Northam's ambitious and necessary clean energy goals lightyears faster if we didn't rely on one monopoly with a captive customer base to implement it."

Delegate Mark Keam, D-Vienna, a moderate incumbent in the legislature who adopted the pledge to reject Dominion money, sounded a note of caution. "It's not enough to just have Democrats in charge," Keam said. "It's really important that Democrats who care about climate crisis who are willing to take a risk and do something big and bold are in charge of drafting our policies."

The raw power and influence of Dominion is hard to overstate. President Donald Trump's current attorney general, William Barr, is a former member of the Dominion board, and was paid $1.2 million in cash and stock for his time with the firm. Dominion paid over $1 million to SKDKnickerbocker, the Democratic consultancy led by Anita Dunn, Obama's former communications director, to help advertise its controversial Atlantic Coast gas pipeline. In every year that the Virginia Public Access Project, a nonprofit campaign finance disclosure watchdog, has kept records, Dominion has been the largest or second largest corporate donor in state politics.

The company also strategically hands out cash to nonprofit groups and civic leaders to curry favor with policymakers. One local leader of a Virginia Boys & Girls Club who testified in favor of Dominion's Atlantic Coast pipeline, for example, received a $10,000 grant from the company in 2018.

This year, in its capacity as a corporate donor, Dominion, along with its executives and lobbyists, handed out over $2.6 million in Virginia elections, largely benefitting the GOP. They also gave significant donations to some Virginia Democrats, including current Minority Leader state Sen. Dick Saslaw, D-Alexandria, a close ally of Dominion.

In a statement to The Intercept, the company defended its political giving record and business practices.

“Sound energy policy isn’t a partisan issue. It’s the result of conversation with stakeholders on both sides of the aisle, identifying problems and analyzing possible solutions to get the best outcome for the Commonwealth, customers and the environment,” said Dominion spokesperson Rayhan Daudani. “Over the course of our company’s 100-year history, we’ve had an excellent record of working with both parties to meet our customers’ needs, and we look forward to working with the newly elected and returning legislators in the coming session.”

The attempt to rein in the power of Dominion, which serves utility markets in Idaho, North Carolina, Ohio, South Carolina, Utah, Virginia, West Virginia, and Wyoming, comes as politicians across the country are contemplating the challenges posed by monopoly power and privately held energy utilities.

Dominion history can be traced to the great anti-trust battles of President Franklin Roosevelt’s New Deal, when insurgent populist Democrats forced the breakup of monopoly transit and electric utilities across the country. When the bill to break up the “power trusts,” known as the Wheeler-Rayburn Act, was proposed in 1935, it sparked the most expensive and bitter lobbying battles to date. Consultants hired by the utilities flooded Congress with a quarter million fake telegrams, claiming to show opposition to the legislation from ordinary Americans. The utility monopolies spent $5 million, or close to $100 million today, to try to defeat the reform. They were unsuccessful.

Though it’s all but forgotten now, the corporation now known as Dominion played a central role in that fight. The Intercept reviewed Federal Trade Commission reports, congressional investigations, lobbying records, and news archives to piece together Dominion’s sordid history over the course of the 20th century: first as part of a rapacious monopoly trust, through its subsequent breakup in the 1930s, and its more recent reemergence as a dominant political interest group.

The official company history of Dominion claims various corporate ancestors, including the Appomattox Trustees, a company chartered by Virginia following the Revolutionary War to improve the navigation of state waterways for the transport of rum and tobacco and early trolley companies that once formed the basis of Richmond’s public transit system in the 19th century.

The true trajectory of the firm started in 1904, when a number of Virginia railway companies and power utilities ran into financial trouble. Sensing an opportunity, Frank Jay Gould, the son of infamous Gilded Era robber baron Jay Gould — known perhaps best for his quote, “I can hire

one half of the working class to kill the other half" — used his family's fortune to buy up Virginia rail, power, and transit firms in receivership.

Gould established the new company, Virginia Railway and Power Company, in 1909, and appointed his cousin William Northrop as its first president. In 1925, an investor group led by a firm called Stone & Webster purchased the corporation from Gould, and began merging the company with power utilities throughout Virginia and North Carolina using a holding company based in Delaware. The investor group, using its Delaware holding company, not only controlled the firm first formed by Gould, which had been rebranded as Virginia Electric & Power Co., or VEPCO, but also electric utilities in Georgia, Florida, Louisiana, Texas, Wyoming, South Dakota, Nebraska, Colorado, Kansas, Missouri, Iowa, and Washington. In addition, the company owned toll roads and other corporate assets in Massachusetts and beyond.

The mergers came at a time when a small number of investors were gobbling huge swaths of the economy and exploiting the concentrated power to extract exorbitant utility rates from consumers. In Washington state, for instance, the same holding company that controlled VEPCO used its local utility, Puget Sound Traction, Light & Power, to lobby for laws that restricted public ownership of utilities.

The House Judiciary Committee's Subcommittee on the Study of Monopoly Power found that the Stone & Webster-controlled monopoly served no economic sense other than the enrichment of its investors, given its utility properties were not "interconnected or economically capable of interconnection with those of any other such company." The company, the report noted, had been administering utilities in New York City offices that were as far as 3,100 miles from their customers.

The monopoly-busting New Deal law, the Public Utility Holding Company Act of 1935 — the official name of the Wheeler-Rayburn Act — instructed the newly formed Securities and Exchange Commission to break up the holding companies, forcing electric utilities to divest from concentrated geographic areas and comply with an array of state and federal regulations designed to prevent economic exploitation of consumers.

The law splintered VEPCO from the Stone & Webster cartel. Though the company filed successful lawsuits with the federal government to merge with a smaller utility in Virginia, as well as to block competition from nonprofit utilities, the company remained a largely state-based utility through much of the 20th century. The rapid expansion of the firm did not return until the deregulation era of the 1990s, at which point the business had rebranded as Virginia Power and Dominion Energy.

The company had long enjoyed influential status in state politics, counting the elite law firm Hunton & Williams (now known as Hunton Andrews Kurth LLP), at which Supreme Court Justice Lewis Powell, author of the "Powell Memo" charting business political strategy, served as partner, as its registered lobbying firm in Richmond. But the push to deregulate the utility started in Virginia in late 1997, when then-Dominion Board Chair Thomas Capps consolidated control of the company and pushed the legislature for a series of changes that rolled back state rules that required the company to reduce customer rates.

The company tapped state Delegate Kenneth Plum, D-Reston, whose largest lifetime donor has been Dominion, to sponsor legislation to deregulate the company. In 1998, Capps blamed low profits on state regulators, promising political changes that could result in higher returns. "We know how to make money," Capps told shareholders, according to the Richmond Times-Dispatch. "All we have to do is get the regulators off our back."

After deregulation passed in 1999, Dominion continued to push for a variety of laws to boost shareholder profits at the expense of ratepayers and taxpayers. In 2007, the company proposed a partial re-regulation, with a special clause that allowed the utility to charge consumers for new power plants with much larger guaranteed profits for Dominion. The company also won special legislation in 2013 to write off $400 million in storm-related costs and $300 million the following year to cut its own taxes using the partially completed North Anna power plant.

Dominion has flexed its muscle on the federal level and in other states in which it operates, as well. In 2005, Dominion spent over $500,000 to help push through President George W. Bush's Energy Policy Act, which repealed the New Deal limitations on utility holding company consolidation. Last year, Dominion hired former Gov. Jim Hodges to help secure regulatory approval to purchase of SCANA, the largest utility in South Carolina — a deal that finalized in January. Over the last decade, the company has lobbied regulators to win a series of mergers and acquisitions across the country, with utility and energy assets in half a dozen states.

In anticipation of the Democratic sweep, Dominion has released a series of press statements touting its commitment to climate change policies and renewable energy. Last year, the firm agreed to a deal to invest some excess profits into clean energy, but with the caveat of further limiting the power of state regulatory agencies to review its conduct.

"Legislators who want to make fast progress on climate change by adopting a renewable energy standard, challenging Dominion's unnecessary gas pipeline, or reforming its ironclad monopoly, will face severe resistance," said David Pomerantz, executive director of the Energy and Policy Institute, a utility energy watchdog group.

“Now that reformers have real power,” said Pomerantz, “the question is: will they stand up to Dominion and its allies, or buckle and take the path of least resistance?”

On a conference call with Dominion investors on Friday, an analyst from J.P. Morgan Chase & Co. asked if the company’s management had concerns that the “political environment in Virginia” could shift, and specifically about the upcoming legislative elections. Thomas Farrell, the chief executive of Dominion, dismissed any concerns about trouble ahead.

“We have a long history of working with whatever party is in the majority in whatever of the two houses, with Democratic governors, Republican governors, Democratic leaders, and Republican leaders,” said Farrell. “So don’t expect any changes to our plan.”

Illinois House Republicans push ethics proposals in response to ongoing federal corruption probe

Seizing on a federal public corruption probe that has embroiled Democrats from City Hall to the state Capitol, Illinois House Republicans on Thursday proposed a series of changes to state ethics rules they say would provide greater transparency and help prevent future abuses of power.

With superminorities in both chambers of the General Assembly and only three days remaining in the fall veto session, GOP lawmakers are unlikely to be able to advance their proposals before the legislature adjourns for the year. But they are attempting to drive the conversation on reforming state government as the majority Democrats deliberate over how to proceed.

The proposals from House Republicans include requiring lawmakers to provide more detailed information about their financial interests on annual statements of economic interest; instituting special elections to fill vacant seats in the House and Senate; loosening the control House committee chairs have over the fate of bills; and barring lawmakers and close family members from working as lobbyists at the local level.

House Republican Leader Jim Durkin of Western Springs called the measures “common-sense, straightforward government ethics reforms that are long overdue.”

“If the Democrats are serious about at least trying to restore some confidence in the public, we shouldn’t have to wait till next January, next spring," Durkin said.

The measures all are tied to developments in the ongoing corruption probe that has shaken Springfield in recent months, though they also reflect frustrations Republicans have long expressed as they've seen their ideas stifled by Democratic leaders.

"We picked a handful of items that are relevant to the investigations that are happening today, that are things that members of both parties have talked about being reasonable solutions," Deputy House GOP leader Tom Demmer of Dixon said.

The proposals are "low-hanging fruit" that lawmakers can act on now "to show the people across this entire state that we're taking this seriously," Demmer said.

In August, Democratic Sen. Thomas Cullerton of Villa Park was indicted in an alleged union ghost payrolling scheme. In September, FBI and IRS agents raided the Capitol office of Democratic Sen. Martin Sandoval, looking for evidence of a host of federal crimes, though Sandoval has not been charged. And late last month, federal authorities charged then-Rep. Luis Arroyo, like Sandoval a Chicago Democrat, with bribery for allegedly paying off a state senator to support legislation that would benefit one of Arroyo's City Hall lobbying clients.

At the same time, authorities are investigating the lobbying practices of ComEd and Exelon and have raided the homes of close associates of House Speaker Michael Madigan, sources have told the Tribune. A source said agents sought information related to Madigan in a May raid on the Michigan Avenue office of the City Club of Chicago.

At least three of the Republican proposals have direct connections to the case against Arroyo, who resigned his House seat Friday, a week after his arrest.

The longtime lawmaker is charged with bribing a state senator, who was cooperating with federal authorities, to support legislation that would regulate sweepstakes gambling machines. Arroyo was receiving $2,500 a month to lobby Chicago officials on behalf of a company in that industry, records show.

State lawmakers currently are barred from working as paid state lobbyists, and one GOP proposal would extend that prohibition to include lobbying cities and counties.

Republicans also want to do away with the current system of filling vacant House and Senate seats. As it stands, local party leaders get to choose a replacement when a member of their party vacates a seat midterm.

In the case of Arroyo, who resigned his House seat but remains the Democratic committeeman for the 36th Ward, that means he can play a major role in choosing his successor. Cook County Democratic leaders have asked Arroyo to step down from his party position.

Under the House GOP plan, vacancies would be filled through special elections governed by the same rules as party primaries.

They also want to require public disclosure of any communication between members of the legislature and state agencies regarding contracts.

The House Republican proposals follow a plan Senate Republicans put forth last week that would give more independence the legislative inspector general, who is charged with investigating allegations of wrongdoing in the General Assembly. Currently, the inspector general must get approval from a bipartisan panel of eight lawmakers before opening investigations or issuing subpoenas.

While the limited time left on the calendar could make passing the bills next week challenging, Durkin said lawmakers have shown the ability to move quickly when there's a shared sense of urgency.

At the end of the spring legislative session in late May and early June, he said, lawmakers approved "a $45 billion capital bill and negotiated a balanced budget in 36 hours because there was a will between the parties to get something important done."

"So there is a precedent that if the Democrat majority feels that this is an important issue, they'll get it done," Durkin said. "But the burden's on them."

Democratic Gov. J.B. Pritzker has said he wants lawmakers to undertake a comprehensive overhaul of the state's ethics laws in the spring, but in the meantime, he wants them to approve enhanced disclosure requirements for those who lobby state officials when they return to Springfield next week.

"I'm going to try very hard to push through some beginning to the ethics reforms that I think we need, but like I said, it's only a beginning," Pritzker said Wednesday at an unrelated event in Plainfield.