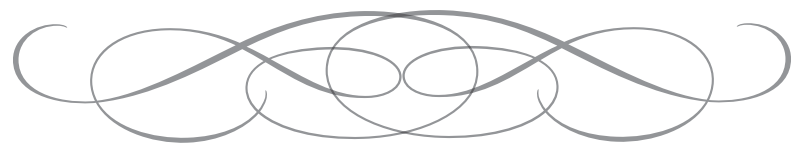


Commission to Study Campaign Finance Law



2011 INTERIM REPORT



Annapolis, Maryland
January 2012

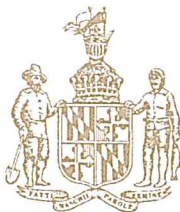
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THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401-1991

Commission to Study Campaign Finance Law

January 29, 2012

The Honorable Martin O'Malley, Governor of the State of Maryland
The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Michael E. Busch, Speaker of the House of Delegates

Gentlemen:

On behalf of the Commission to Study Campaign Finance Law, we respectfully submit the following as the commission's initial report and recommendations.

The commission was established in 2011 and charged with addressing a series of enumerated objectives, *inter alia*: (1) to examine the State Election Code as it relates to campaign finance; (2) to collect information about campaign finance practices and standards in other states and under federal law; (3) to examine issues related to campaign contributions, with emphasis on differences between contributions made by individuals, corporations, political action committees, and others, including current contribution limits and disclosure requirements; (4) to consider policies relating to public financing for campaigns; (5) to examine issues relating to the purpose and function of slates; (6) to examine issues on how best to catalogue, standardize, and make accessible opinions from the Attorney General; and (7) to examine the efficacy of current enforcement mechanisms for violations of Maryland's campaign finance laws.

While constituted only two months ago, the work of the commission has culminated in a number of recommendations designed to improve the administration of certain election processes; improve access of citizens to information about the identity of contributors and contributions made to campaign financing entities; and, lastly, to facilitate submission of reports by campaign finance entities as well as the transfer of information between regulators and campaign finance entities. We believe that given the very brief period during which the commission has operated that these recommendations serve as a harbinger for additional meaningful proposals from the commission in its final report.

This commission is comprised of committed, astute past and present legislators and legislative professionals, business leaders, scholars, and lawyers, who are well versed in campaign finance issues and committed to providing the General Assembly with valuable insights and recommendations. We should be truly grateful for their willingness to engage in

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public service that will no doubt assist the General Assembly in improving the administration of free and fair elections in our State. I would also be remiss in not recognizing the valuable staff support so generously provided to this commission.

On behalf of the commission, I would like to thank you for making improvement of campaign finance laws a priority in our State. On behalf of the commission, I look forward to working with you to implement the recommendations contained in this report.

Sincerely,

Bruce L. Marcus, Chair

BLM/SDK/ncs

Maryland General Assembly

Commission to Study Campaign Finance Law

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State Administrator of Elections
Maryland State Board of Elections

Michael W. Lord, Esq.

Executive Director
Maryland State Ethics Commission

Honorable Martin Madden

Former Senator and Senate Minority Leader
Maryland State Senate (R-13)

Honorable William D. Missouri

Chief Judge and Administrative Judge
(Retired), Maryland's 7th Judicial Circuit

Bruce Robinson

Owner, BruceRobinson.com

Joseph E. Sandler, Esq.

Partner, Sandler, Reiff, Young & Lamb, P.C.

Diana Saquella

Former Manager of Government Relations
Maryland State Education Association

Delegate Michael Summers

Delegate, Maryland House of Delegates (D-47)

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Introduction

In 2011, the Maryland General Assembly passed Joint Resolution 1 (hereinafter known as the “Resolution”) proclaiming that “the time now seems ripe for the General Assembly to take a fresh, comprehensive look at the issue of campaign finance regulation and assess whether additional modifications to the campaign finance laws are in order.” As a result of the enactment, a 17-member commission to Study Campaign Finance Law (hereinafter known as the “commission”) was created. Membership of the commission consists of six individuals each appointed by the President of the Senate and the Speaker of the House, respectively, and five individuals appointed by the Governor. The President of the Senate and the Speaker of the House jointly designated the chair of the commission.

The Resolution gave broad discretion to the commission on how best to study the State’s regulation of campaign finance and to make recommendations on legislative initiatives intended to improve existing Maryland law. The General Assembly expressly tasked the commission with the responsibility of studying certain, specific issues identified in the Resolution, including:

- the adequacy of the current contribution and transfer limits;
- the effectiveness of requirements in Maryland and other states for disclosure of contributions received, and expenditures made, by campaigns;
- the role played by political action committees (PACs) in election campaigns;
- the role and prevalence of “issue ads” and other independent expenditures;
- the purpose and function of slates;
- the public financing of campaigns; and
- the enforcement of the election laws.

The Resolution charged the commission with completing its work over a two-year period (2011-2012). It established requirements that the commission submit an interim report of the commission’s findings and recommendations at the end of 2011, with the second, final report to be submitted at the end of 2012.

After its establishment in late fall 2011, the commission held its first meeting on December 14, 2011. At that meeting, the commission directed commission staff to develop a list of noncomplex and hopefully, noncontroversial proposals which would offer immediate improvements to the existing campaign finance system for commission consideration at its second meeting on January 13, 2012. To that end, commission staff developed a list of

eight items drawn principally from the experience of the Division of Candidacy and Campaign Finance of the State Board of Elections. In general, the proposals address issues inherent in the administration of the State's current campaign finance laws and regulations, with many of the items directly tied to new technology recently acquired by the State Board of Elections to administer campaign finances. An additional proposal related to the limits on cash contributions and raffle tickets was also submitted by a member of the commission.

At the January 13, 2012 meeting, the commission discussed all of the proposed recommendations. While there were varying views on a number of the items, the recommendations set forth below represent the unanimous view of those commission members present at the meeting. The commission members present at the meeting agreed that due to the complexities inherent of the issue that the commission would table consideration of proposals related to limits on cash contributions and raffle tickets.

The commission expects to reconvene after the legislative session to undertake the remainder of its charge, which will be documented in the final report to be submitted at the end of December 2012.

Background and Recommendations

Petitions – Statements of Contributions and Expenditures

Petitions for referendum have taken on a more significant role in Maryland's electoral process both at the State and local level. Under § 7-104 of the Election Law Article, when a petition is filed for a State law referendum or a ballot question relating to a local charter, at the time the petition is filed the person who files the petition must also file a signed statement showing the contributions and expenditures for the petition, including:

- the name and post office address of every contributor to the expense of the petition;
- the amount contributed by each contributor; and
- the name and address of each person to whom any money was paid or promised for providing a service related to the petition.

If the statement is not filed with the petition, the petition cannot ultimately be certified as having satisfied all the requirements of the law and the question cannot qualify to be placed on the ballot.

For State law referendum petitions, the petition and signed statement regarding contributions and expenditures are filed with the Secretary of State. For petitions to place a question on the ballot relating to a local charter, the petition and signed statement are filed at the local board of elections.

Recommendation: In order to have greater transparency and disclosure, legislation should be introduced requiring that statements of contributions and expenditures filed with petitions pursuant to § 7-104 of the Election Law Article be made available online on the State Board of Elections website.

Campaign Contribution Receipts

Under current law (Election Law Article, § 13-222), the treasurer of a campaign finance entity is required to issue a campaign contribution receipt on a form prescribed by the State Board of Elections upon receiving and before depositing contributions from a person who:

- makes one or more contributions, other than the purchase of tickets for a campaign event, in the cumulative amount of \$51 or more; or
- purchases one or more tickets for a campaign event;
 - at a cost of \$51 or more per ticket; or
 - in the cumulative amount of \$251 or more.

Based on feedback and questions received by the State Board of Elections from campaign finance entities, the current requirement has proven to be difficult for campaign finance entities to comply with on a consistent basis.

Recommendation: The General Assembly should consider legislation modifying the timing for sending out campaign contribution receipts to contributors (for example, within 30 or 60 days after a contribution is received or by the due date for the campaign finance entity's next campaign finance report).

Addresses of Responsible Officers of a Campaign Finance Entity

The State Board of Elections is required under State campaign finance law to provide notice to campaign finance entities in certain instances, including prior to the filing deadlines for campaign finance reports and when campaign finance reports are not filed or are filed incompletely. Failure to properly file a campaign finance report can result in late fees and eventually the matter may be referred for prosecution if it is not rectified.

Currently, State law has no affirmative requirement that the responsible officers of a campaign finance entity (the chairman and treasurer) keep their addresses and any other contact information up-to-date with the State Board of Elections. The State board consistently has sent mail to the responsible officers and had it returned because the address the State board has on file is not up-to-date. Additionally, in some instances the lack of receiving notice has been used by recalcitrant filers as an excuse for failure to file reports timely, even though the State board mailed the required notice to the addresses provided by the responsible officers.

Recommendation: The commission recommends that the General Assembly consider legislation that would require the responsible officers of a campaign finance entity to notify the State Board of Elections of any change to their addresses for both U.S. postal mail and email prior to 21 days before the next deadline for the campaign finance entity to file a campaign finance report.

Form of Notice

As mentioned above, State law requires the State Board of Elections, pursuant to § 13-321 of the Election Law Article, to notify a campaign finance entity that a campaign finance report is due, by first class mail at least 10 but not more than 20 days before the filing date of the report.

Being able to provide these notices by email instead of first class mail would increase efficiency and reduce costs for the State Board of Elections. The new, online campaign finance reporting system will allow the State Board of Elections to easily send these notices by email.

Recommendation: The commission recommends that the General Assembly consider amending § 13-321 of the Election Law Article to authorize the State Board of Elections to provide campaign finance entities the option of receiving campaign finance report reminder notices electronically instead of by first class mail.

Timing for the Establishment of a Campaign Finance Entity

Under § 13-202 of the Election Law Article, unless otherwise expressly authorized by law, all campaign finance activity for an election conducted under State law must be conducted through a campaign finance entity and an individual cannot file a certificate of candidacy until the individual establishes, or causes to be established, an authorized political committee (campaign finance entity). For candidates seeking nomination for the general election through the primary election (as a Democratic or Republican candidate), the filing of a certificate of candidacy could be the individual's first official action to give notice that he/she is seeking electoral office. Candidates seeking nomination for the general election through a petition or by a nonprincipal political party according to the party's constitution and by-laws, however, file a declaration of intent to seek nomination prior to filing a certificate of candidacy. For those candidates, the filing of a declaration of intent is the individual's first official action that signifies the individual's intent to seek elective office.

In a gubernatorial election year, the deadline for individuals to file a declaration of intent is in April, the same as the deadline for certificates of candidacy to be filed by individuals seeking nomination in the primary election. However, the deadline for certificates of candidacy to be filed by those individuals who have filed a declaration of intent is much later in the year, in August. In a presidential election year, the deadline for a declaration of intent to be filed is July 1, and the subsequent deadline for a certificate of candidacy to be filed by individuals who have filed a declaration of intent is in August.

Filing of a certificate of candidacy for a primary election candidate and filing of a declaration of intent for a person seeking nomination by petition or by a nonprincipal political party are functionally similar acts and the committee discussed whether it would make sense to require individuals that file a declaration of intent to have established, or caused to be established, a campaign finance entity at that time, rather than prior to the individual's subsequent filing of a certificate of candidacy. State Board of Elections staff pointed out that an individual that files a declaration of intent only files the declaration in person and not the subsequent certificate of candidacy. Administratively, it would make more sense for the State Board of Elections to be able to review the individual's campaign finance entity materials and identify and help correct any deficiencies at that time. The change would also help to prevent individuals seeking nomination by petition or by a nonprincipal political party from engaging in campaign finance activity without having established, or caused to be established, a campaign finance entity (whether knowingly or unknowingly).

Recommendation: The commission recommends that the General Assembly consider amending § 13-202 of the Election Law Article to state that an individual may not file a certificate of candidacy or a declaration of intent until the individual establishes, or causes to be established, an authorized candidate campaign committee.

Contributor Information Transmitted by Employers and Membership Entities

Employers can establish a program for collecting voluntary contributions to one or more campaign finance entities by payroll deductions. (Election Law Article, §§ 13-241, 13-242.) A membership entity can also establish a program for periodically collecting voluntary contributions from its members to forward to an affiliated political action committee. (Election Law Article, § 13-243.) In both cases, the law requires that the employer or membership entity keep records of specified information regarding each contribution, which is then forwarded to the applicable campaign finance entity. With respect to the contributor, however, the law only requires that the name of the contributor be provided and not the contributor's address. Pursuant to COMAR 33.13.02.02(A)(4), campaign finance entities must report both the name and address of each contributor, with the exception of certain smaller contributions that are allowed to be reported as a lump sum without identification of the contributors.

Requiring employers and membership entities to transmit the name and address of contributors to campaign finance entities would simplify reporting requirements for the campaign finance entities.

Recommendation: The commission recommends that the General Assembly consider amending the law to require employers and membership entities to transmit both the names and addresses of contributors, instead of just the names of contributors, to the applicable campaign finance entity.

Retention of Records by Campaign Finance Entities

Treasurers of campaign finance entities are required to keep a detailed and accurate account book of all assets received, expenditures made, and obligations incurred by or on behalf of the entity. With the exception of certain minimal contributions from spins or chances on a paddle wheel or wheel of fortune at a fundraising event (to which separate requirements apply), the account book must state, as to each asset received or expenditure made (1) its amount or value; (2) the date of the receipt or expenditure; (3) the name and address of the person from whom the asset was received or to whom the expenditure was made; and (4) a description of the asset received or the purpose for which the expenditure was made. The account books and related records of a campaign finance entity must be preserved until two years after the campaign finance entity files a final campaign finance report. (Election Law Article, § 13-221.)

Campaign finance entities have indicated that retaining records from the establishment of a campaign finance entity can be cumbersome, particularly for those campaign finance entities that have existed for a long period of time.

A related consideration for retention of campaign finance records is the statute of limitations for certain criminal offenses that could involve campaign financing, directly or indirectly. For example, no statute of limitation exists for certain Maryland offenses, including bribery, embezzlement, and felony theft. The commission decided that a requirement that records be kept until the earlier of 10 years after the creation of a record or 2 years after the campaign finance entity files its final report would be a reasonable balance between the need to preserve campaign finance records for a certain period of time, while at the same time not being overly burdensome on campaign finance entities.

Recommendation: The commission recommends that the General Assembly consider legislation that would amend the recordkeeping requirement for campaign finance entities to require that records be kept until the earlier of (1) 10 years after the creation of any record required to be kept or maintained by the campaign finance entity; or (2) 2 years after the campaign finance entity files its final campaign finance report.

Reporting of Employer/Occupation of Contributors

Currently, State law only specifies that a campaign finance report must include the information required by the State Board of Elections with respect to all contributions received and all expenditures made by or on behalf of the campaign finance entity during the designated reporting period. (Election Law Article, § 13-304.) With the exception of certain small contributions that can be reported as a lump sum without identification of individual contributors, COMAR 33.13.02.02 requires the name and address of the contributor along with other information pertaining directly to the contribution itself.

There is a decided trend across the United States to include further identifying information about a contributor, particularly as to the contributor's employer and occupation. A requirement exists in over 30 states and in federal campaign finance law that the employer and occupation of individual contributors be included on the campaign finance report. The threshold dollar amount differs in each jurisdiction.

Recommendation: The commission recommends that the General Assembly should hold hearings to gain further information concerning a requirement that campaign finance entities report the employer and occupation of each individual that makes cumulative contributions over a threshold amount, including privacy concerns.

Appendix 1. Joint Resolution 1 of 2011

Joint Resolution 1

(House Joint Resolution 7)

A House Joint Resolution concerning

Election Law – Commission to Study Campaign Finance Law

FOR the purpose of creating a Commission to Study Campaign Finance Law; specifying the composition, powers, and duties of the Commission; providing for the staffing of the Commission; requiring the Commission to report its findings and recommendations, including suggested legislative changes, to the Governor and the General Assembly by ~~a certain date~~ *certain dates*; providing for the termination of the Commission; and generally relating to the Commission to Study Campaign Finance Law.

WHEREAS, As the cost of election campaigns escalates, candidates and other persons involved in the political process often must devote an increasing amount of time and effort engaged in campaign fund-raising; and

WHEREAS, There is concern in Maryland and across the country that the cost of election campaigns may discourage potential candidates and present a serious obstacle to efforts to attract a wide and diverse field of candidates for elective office, including women and minorities; and

WHEREAS, Many citizens express concern about the perceived impact and link between campaign contributions and the executive and legislative decision-making process; and

WHEREAS, The people of Maryland ought to be assured that the State's campaign finance laws are structured in a way that enhances public confidence and trust in the executive and legislative decision-making process and that those decision-making processes are not subject to improper and undue influence because of campaign contributions; and

WHEREAS, The time now seems ripe for the General Assembly to take a fresh, comprehensive look at the issue of campaign finance regulation and assess whether additional modifications to the campaign finance laws are in order; now, therefore, be it

RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That:

- (a) There is a Commission to Study Campaign Finance Law.
- (b) The Commission shall consist of the following 17 members:

~~(1) Four individuals appointed by the President of the Senate, at least one of whom shall represent the minority party in the Senate, including:~~

~~(i) At least two members of the Senate of Maryland; and~~

~~(ii) If necessary to fill the four appointments allowed to the President under this item, one or two additional individuals;~~

~~(2) Four individuals appointed by the Speaker of the House, at least one of whom shall represent the minority party in the House, including:~~

~~(i) At least two members of the House of Delegates; and~~

~~(ii) If necessary to fill the four appointments allowed to the Speaker under this item, one or two additional individuals; and~~

(1) Six individuals appointed by the President of the Senate of Maryland, including:

(i) Three members of the Senate of Maryland, at least one of whom shall be a member of the minority party of the Senate; and

(ii) Three additional individuals, at least one of whom shall be a member of the principal minority party in the State;

(2) Six individuals appointed by the Speaker of the House, including:

(i) Three members of the House of Delegates, at least one of whom shall be a member of the minority party in the House; and

(ii) Three additional individuals, at least one of whom shall be a member of the principal minority party in the State;

(3) ~~Nine~~ Five individuals appointed by the Governor, at least ~~three~~ one of whom shall be ~~members~~ a member of a political party other than that of the Governor, including:

~~(i) A member of the State Board of Elections;~~

~~(ii) A member of the State Ethics Commission;~~

~~(iii) A regulated lobbyist; and~~

(i) The State Administrator of Elections, or the State Administrator's designee;

(ii) The Executive Director of the State Ethics Commission, or the Executive Director's designee; and

~~(iv)~~ (iii) Six ~~Three~~ additional individuals.

~~(e) The chair of the Commission shall be designated by the Governor.~~

(c) The President of the Senate and the Speaker of the House jointly shall designate the chair of the Commission.

(d) The State Board of Elections and the Department of Legislative Services shall provide staff for the Commission.

(e) The Commission shall:

(1) Examine the State election code as it relates to campaign financing;

(2) Collect information about campaign financing practices and standards for other jurisdictions, including the federal government;

(3) Consider issues related to campaign contributions, including:

(i) The types of individuals, corporations, political action committees (PACs), unions, and other persons who make campaign contributions for elections in Maryland;

(ii) The role played by PACs in election campaigns in Maryland;

(iii) The adequacy of the current limits on contributions or transfers that may be made by individuals, PACs, or other persons during an election cycle;

(iv) The effectiveness of current disclosure requirements in Maryland and in other states in providing detailed and accessible information to the public regarding ~~beneficiaries~~ contributions to and expenditures by candidates, candidate slates, campaign committees, and political action committees;

(v) The role and impact of technology changes over the years on how campaigns are conducted and how money is raised and spent on elections;

(vi) The role and prevalence of "issue ads" and other independent expenditures under the current Maryland campaign finance laws, particularly in light of the recent United States Supreme Court decision in Citizens United v. Federal Election Commission; and

(vii) An assessment of the system of electronic filing for campaign contributions administered by the State Board of Elections to facilitate full and timely disclosure of campaign contributions;

(4) Examine issues relating to the implementation of a voluntary system of ~~public financing of statewide and legislative election campaigns in Maryland;~~ public financing of campaigns for local, statewide, legislative, and judicial offices, including the costs and practical funding sources available outside of the State's general fund;

(5) Examine issues relating to the purpose and function of slates, including the process by which a candidate is added to and removed from a slate, the practice of creating statewide and regional slates among legislative candidates, and the role encompassed in the party committee model utilized in other jurisdictions for activities currently conducted in Maryland through slates;

(6) Examine issues relating to the enforcement of election laws, including the roles and responsibilities of the State Board of Elections, the Office of the State Prosecutor, and the Office of the Attorney General;

(7) Examine issues relating to opinions from the Office of the Attorney General, including the dissemination of letters of advice;

~~(5)~~ (8) Receive testimony, as the Commission considers appropriate; and

~~(6) Report its findings and recommendations, including any proposed statutory changes to the Maryland campaign finance laws for consideration by the General Assembly in the 2013 2012 Session, to the Governor and, subject to § 2-1246 of the State Government Article, the General Assembly not later than December 31, 2012 2011.~~

(9) (i) Provide an interim report of its findings and recommendations, including any proposed statutory changes to the Maryland campaign finance laws for consideration by the General Assembly in the 2012 Session, to the Governor and, in accordance with § 2-1246 of the State Government Article, to the General Assembly by December 31, 2011; and

(ii) Provide a final report of its findings and recommendations, including any proposed statutory changes to the Maryland campaign finance laws for consideration by the General Assembly in the 2013 Session, to the Governor and, in accordance with § 2-1246 of the State Government Article, to the General Assembly by December 31, 2012.

(f) The Commission shall terminate its existence after June 30, ~~2013~~ 2012
2013; and be it further

RESOLVED, That a copy of this Resolution be forwarded by the Department of Legislative Services to the Honorable Martin O'Malley, Governor of Maryland; the Honorable Thomas V. Mike Miller, Jr., President of the Senate of Maryland; and the Honorable Michael E. Busch, Speaker of the House of Delegates.

Signed by the President and the Speaker, May 10, 2011.