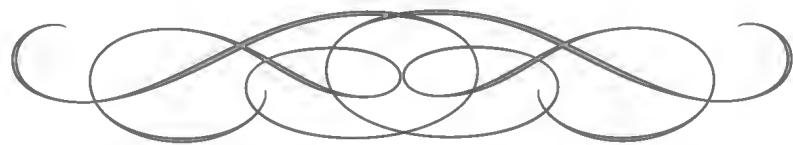


Commission to Study Campaign Finance Law



FINAL REPORT



Annapolis, Maryland
December 2012

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THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401-1991

Commission to Study Campaign Finance Law

December 31, 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 commission's final 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.

The commission submitted an interim report and recommendations to you on January 29, 2012. Included in the interim report were recommendations designed to improve the administration of certain election processes; to improve public access to information about the identity of contributors and contributions made to campaign finance entities; and to facilitate submission of reports by campaign finance entities as well as the transfer of information between regulators and campaign finance entities. The commission was gratified that a number of the recommendations found in the interim report became law as a result of legislation passed in the 2012 session. (The specific enactments are noted in the section concerning the Commission Process that follows on pages 3 and 4 in this report.) The commission is grateful to the General Assembly and the Executive Branch for their support, commitment, and leadership in implementing changes to improve election campaign finance administration.

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
December 31, 2012
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During 2012, the commission gathered information, reviewed submissions, and considered a wide range of issues concerning campaign finance. Throughout its tenure, the commission has worked in a very collegial, cooperative, and goal-directed manner, all in keeping with the fine Maryland tradition of collaborative and respectful discourse. The commission took great pride in the fact that it functioned in a bipartisan and bicameral fashion, reaching general consensus on the broad range of complex and difficult issues addressed in this report. It is our hope that these final recommendations will assist the General Assembly in enacting legislation that serves to improve the State's campaign finance laws and enhance public confidence in the campaign finance system. Many of the proposals will serve to update and tighten rules governing campaign contributions, independent expenditures, slates, campaign finance reports, and the State's law designed to combat "pay to play" political corruption.

I would also like to express my profound appreciation to all of you for appointing commission members who worked diligently and professionally. Citizens of our State were well-served by the collective knowledge and wisdom demonstrated by the commission members, who were willing to engage in public service on behalf of our State. I also would like to express our gratitude to the commission staff for its outstanding support to the commission. Its dedication was unwavering and the quality of its work superior.

Finally, on behalf of the commission, I thank each of you for making improvements in the State's campaign finance laws one of your priorities moving forward. I continue to be available and look forward to working with you to implement the recommendations contained in this report.

Sincerely,



Bruce L. Marcus, Chair

BLM/TEK/ncs

Maryland General Assembly

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Introduction

The Maryland General Assembly established the Commission to Study Campaign Finance Law, under Joint Resolution 1 of 2011, to study the State's regulation of campaign finance, including a number of specific issues, and make recommendations for improvements. The resolution cited concerns about escalating campaign costs requiring those engaged in the political process to devote increasing amounts of time and effort to campaign fundraising; the potential for campaign costs to hinder efforts to attract a wide and diverse field of candidates; and the perceived impact and link between campaign contributions and the executive and legislative decision-making process. The resolution indicated that "[t]he 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."

The commission convened in December 2011, submitted its interim report in January 2012, and now submits its final report for the General Assembly's review. The commission sought input on a variety of the issues it considered from a wide range of sources, considered approaches undertaken in other states and at the federal level, engaged in thorough discussion of each issue, and, in most cases, was able to reach consensus on the recommendations contained in this report. The input received over the course of the commission's work from subject matter experts, other State agencies, and organizations and individuals with an interest in the State's campaign finance system has been extremely helpful to the commission and the commission is very grateful to those individuals and organizations for their contributions to the commission's work. A list of the individuals and organizations that provided testimony and information to the commission is included in **Appendix A**.

In the fall of 2010, the Attorney General formed an Advisory Committee on Campaign Finance that examined and made recommendations with regard to many of the same issues the commission reviewed. The January 2011 *Campaign Finance Report* of the Attorney General's Advisory Committee on Campaign Finance has been an invaluable resource for the commission and provided a foundation from which the commission built its efforts. Guided by its own mandate, and with the aid of additional testimony and input, the commission sought to review issues anew and reach its own independent conclusions.

The commission suggests that consideration be given to the timing of any changes implementing recommendations in this report in order to avoid potential confusion or difficulty for those who administer or who are required to comply with the changes. The commission's recommendations regarding contribution limits specifically refer to the timing of any adjustments to the contribution limits, recommending that they only be made at the beginning of an election cycle. However, timing may be an important consideration for other changes as well.

The commission would like to thank its primary staff, Jared DeMarinis (State Board of Elections), Theodore E. King, Jr., Stanford D. Ward, and Scott D. Kennedy (each with the Department of Legislative Services), as well as Nancy C. Scaggs (Department of Legislative Services) who assisted with the preparation of commission meeting materials and this report, for their tireless work. Leah Carliner also deserves thanks for providing research and organizational support during her internship with the State Board of Elections. The commission lastly would also like to thank one of its members in particular, Joseph E. Sandler, for lending his expertise and editorial skills in the drafting of this report.

Commission Process

The commission first met on December 14, 2011. At that meeting, commission staff briefed the commission on the topics that the commission was directed to examine under Joint Resolution 1 of 2011. At the initial meeting, commission staff from the State Board of Elections (SBE) also briefed the commission on the new online campaign finance reporting system that had recently become operational. The new system was designed to make campaign finance reporting easier, as well as to ensure that campaign finance information would be more accessible and transparent to the public.

Because of the delay in starting its activities following the 2011 session, the chairman suggested, and the commission agreed, to convene in early January 2012 to consider whether there were any campaign finance reforms that the commission might propose in an interim report for consideration by the General Assembly in the 2012 session. At the December 2011 meeting, the commission further agreed to submit a letter to the Presiding Officers of the General Assembly to ask for a delay – from December 31, 2011, to January 31, 2012 – in submitting the commission's interim report.

At the commission meeting on January 6, 2012, the commission settled on a list of eight items to present to the General Assembly for consideration in the 2012 session, including proposals to:

- require online posting of petition fund reports;
- lengthen the period of time for campaign finance entities to issue a campaign contribution receipt to a contributor (*enacted in Chapters 338 and 339 of 2012*);
- require timely notice to SBE by the responsible officers of a campaign finance entity regarding any change in their contact information (*enacted in Chapters 338 and 339 of 2012*);
- provide the responsible officers of a campaign finance entity the option to receive notices from SBE regarding campaign finance report deadlines by email rather than by regular postal mail (*enacted in Chapters 338 and 339 of 2012*);
- require that a campaign finance entity be established at the time a certificate of candidacy or declaration of intent is filed;
- require that, for contributions received by payroll deduction, the contributor's name and address be provided to the political committee receiving the contributions (*enacted as Chapters 88 and 89 of 2012*);
- shorten the time period that a political committee must retain campaign records (*enacted as Chapter 322 of 2012*); and

- suggest that the General Assembly review and consider whether to adopt legislation to require that for each contribution reported, the campaign finance entity include the occupation and employer of the contributor (*a requirement that was enacted as Chapters 320 and 321 of 2012*).

Following the January 6, 2012 meeting, the commission suspended its activities until after the 2012 General Assembly session. On May 18, 2012, the commission held an organizational meeting to develop a plan for completing its work. To that end, starting in June and ending in September 2012, the commission held seven sessions to gather information and consider options for addressing the issues identified in its authorizing resolution. At the first of those series of meetings in June, the commission engaged experts and other interested persons from Maryland and organizations around the country to discuss a wide range of topics, including:

- contribution limits (including whether contribution or transfer limits should apply to out-of-state political committees);
- contributions by limited liability companies and other noncorporate entities;
- independent expenditures;
- public financing of election campaigns;
- slates;
- enforcement of the election laws;
- campaign finance reporting schedules; and
- disclosure of small contributions by campaign finance entities.

After the initial series of meetings, the commission met over the remainder of the summer and into the fall to consider the testimony and materials it had received from the outside participants as well as additional issue briefs, background information, and draft policy proposals presented to the commission by the commission staff. In the course of those deliberations, the commission reached consensus on the recommendations set forth in this report. The recommendations address or relate to many of the issues identified in Joint Resolution 1 for consideration or examination. A couple of points listed in Joint Resolution 1 for consideration – technology changes and SBE’s electronic campaign finance reporting system – while not addressed in the commission’s recommendations, were the subject of staff briefings before the commission that highlighted recent changes in those areas. The commission respectfully presents its recommendations to the General Assembly for its consideration.

Discussion and Recommendations

Contribution Limits

In General

Under § 13-226 of the Election Law Article, a person, including an individual, labor organization, or corporation, may contribute up to \$4,000 to any one Maryland campaign finance entity and up to \$10,000 to all campaign finance entities in the aggregate, within a four-year election cycle. These limits have been in place since 1991. Prior to that time, the law provided that a person could contribute up to \$1,000 to a single candidate in a primary, general, or special election and up to \$2,500 in aggregate contributions to all recipients in any primary or general election.¹

The National Conference of State Legislatures (NCSL) presented to the commission a table that sets forth the limits on contributions to candidates in all 50 states.² According to NCSL's testimony, the national *median* of contribution limits to gubernatorial and legislative candidates per election cycle is \$5,000 and \$2,000, respectively, and the national *average* of the limits for gubernatorial and legislative candidates per election cycle is \$8,722 for gubernatorial candidates, \$4,277 for senate candidates, and \$3,764 for house candidates.³

In the 20 years since Maryland last modified its campaign contribution limits, the U.S. Department of Commerce, Bureau of Labor Statistics calculates that the nationwide Consumer Price Index has risen by over 68%, meaning that \$100 in 1991 is equivalent to approximately \$168 today. Moreover, during that 20-year period, Maryland per capita personal income has more than doubled, rising from about \$23,300 in 1991 to just over \$51,000 in 2011.

In its *Campaign Finance Report*, the Attorney General's Advisory Committee on Campaign Finance discussed whether the State's contribution limits should be adjusted in light of the significant increase in Maryland per capita income over the past 20 years, particularly given the significant increases in campaign costs since 1991.⁴ The advisory committee gave particular attention to the aggregate limit of \$10,000 and noted that given the number of contested elections in Maryland, the \$10,000 aggregate amount may limit the funding that is available to less prominent local candidates, especially for those donors that give up to the individual limit of \$4,000 to candidates for more prominent offices. The advisory committee further noted that a number of the states in the eastern region of the United States have higher aggregate contribution limits than Maryland or no aggregate limits at all, including: Massachusetts (\$12,500); Connecticut (\$15,000); New York (\$150,000); and New Jersey, Pennsylvania, and Virginia (no aggregate limit).

¹ See Ch. 617, Acts of 1991.

² http://www.ncsl.org/Portals/1/documents/legismgt/Limits_to_Candidates_2011-2012.pdf

³ Written testimony submitted by Jennie Drage Bowser, National Conference of State Legislatures, to the Commission to Study Campaign Finance Law, pg. 2 (June 13, 2012).

⁴ Maryland Attorney General's Advisory Committee on Campaign Finance, *Campaign Finance Report*, pgs. 41-44 (2011).

After lengthy discussion, the commission came to a consensus that the individual and aggregate limits should be increased. Commission members' reasons for support of an increase generally consisted of one or more of the following: (1) the limits have not been increased in over 20 years and, due to inflation, have effectively decreased over time; (2) an increase in the aggregate limit would allow for broader participation of individuals or entities in the political process, providing them more flexibility to contribute to greater numbers of candidates; and (3) it is preferable to have money in the political process flowing through a regulated and more transparent system of direct contributions to candidates as opposed to less regulated and less transparent independent expenditures.

In addition, sentiment was expressed by some members that any increase in the contribution limits must be accompanied by reform addressing the concern about persons contributing beyond the contribution limits through multiple business entities (discussed further within this report under "Business Entity Contributions"). However, this position did not reflect the consensus of the commission as a whole.

The commission also considered the issue of whether to provide for future adjustments to the contribution limits, such as through periodic, automatic adjustments based on an inflation index, or other means. There were competing sentiments among commission members with respect to indexing the contribution limits. On the one hand, it was thought that indexing would make sense to prevent the limits from effectively decreasing over time by staying the same in the face of inflation, but a competing consideration was raised that indexing could result in very specific, not easily remembered, dollar limits that could be less preferable for administration of, and compliance with, the contribution limits. As shown below, the commission came to a consensus on a recommendation that the General Assembly consider either (1) indexing; (2) some other form of automatic adjustment (such as specific, periodic dollar amount or percentage increases); or (3) prescribing in the law that the General Assembly periodically revisit the limits and consider adjustments.

Recommendations

- **The General Assembly should consider that (1) the limit on the amount that a single donor may contribute to any *one* campaign finance entity be increased to an amount between \$5,000 and \$7,000 per election cycle; and (2) the limit on aggregate contributions that a person may make to *all* campaign finance entities be increased to an amount up to as high as \$25,000 per election cycle.**
- **In addition to increasing the individual and aggregate contribution limits, the General Assembly also should consider (1) indexing the contribution limits; (2) using some other method to trigger automatic increases in the contribution limits over time without the General Assembly having to revisit them; or (3) prescribing in law that the General Assembly review and consider at prescribed intervals revisions to the contribution limits, taking into account changes in the Consumer Price Index,**

any increases in the contribution limits in other states, and the economic climate of the State.

- **Any adjustment in contribution limits should be made effective as of the beginning of a four-year election cycle, rather than being introduced in the middle of an election cycle.**

Transfer Limits

In addition to the contribution limits in Maryland described above, the Election Law Article also provides that during an election cycle a campaign finance entity may not transfer a cumulative amount in excess of \$6,000 to any other *single* campaign finance entity.⁵ At present, there is no aggregate limit on the amount that may be transferred to *all* other campaign finance entities, allowing a single campaign finance entity to make a transfer of up to \$6,000 to each of an unlimited number of other campaign finance entities. “Affiliated” campaign finance entities are treated as a single entity to determine the amount of transfers made or received by the campaign finance entity.⁶

The commission considered whether the transfer limit should also be increased if the contribution limits are increased. There was some sentiment expressed that the transfer limit should be increased consistent with increases in the contribution limits (which would keep it higher than the individual contribution limit). However, some members questioned why campaign finance entities should continue to have an advantage over regular contributors with respect to how much money they can provide to a campaign. It was also pointed out that regardless of what the limit on transfers from one campaign finance entity to another is in relation to the limit on contributions from a person to a campaign finance entity, campaign finance entities still have an advantage in that they are not subject to a limit on aggregate transfers to all campaign finance entities whereas a person is subject to a \$10,000 limit on aggregate contributions. The commission ultimately decided not to make a specific recommendation with respect to an adjustment of the transfer limit, but instead to simply suggest that the General Assembly consider whether or not an adjustment ought to be made to the transfer limit in correlation with any increase in contribution limits.

Recommendation

- **The commission does not make a specific recommendation regarding a change in the amount of the transfer limit. However, it does suggest that if the General Assembly decides to make changes to the individual and aggregate contribution limits, it ought to at least *consider* whether a similar or corresponding change should be made to the transfer limit.**

⁵ Md. Code Ann., Election Law, § 13-227.

⁶ *Id.*

Out-of-state Political Committees

As noted by the Attorney General's Advisory Committee on Campaign Finance in its *Campaign Finance Report*, out-of-state political committees generally are unregulated under Maryland's Election Law Article. As a result, contributions made to an out-of-state political committee are not subject to the individual (\$4,000 per campaign finance entity) and aggregate (\$10,000 to all campaign finance entities) contribution limits applicable to contributions made to Maryland campaign finance entities.⁷ At the same time, however, under current State law, for purposes of the *transfer* limits, a "campaign finance entity" is deemed to include a nonfederal out-of-state political committee and as a result, nonfederal out-of-state political committees are allowed to make transfers of \$6,000 each to an unlimited number of Maryland campaign finance entities. Thus, a Maryland resident (or a resident from another state) could potentially make contributions to an out-of-state political committee far in excess of the individual and aggregate limits allowed under Maryland law and then the out-of-state political committee could in turn make an unlimited number of transfers back to Maryland campaign finance entities, effectively allowing the contributor to evade the State's campaign contribution limits.

The Attorney General's advisory committee recommended that the State election law be amended to explicitly provide that nonfederal out-of-state political committees be treated the same as any other unregistered "person," and thus subject to the regular per donor limits on contributions to individual campaign finance entities and to the aggregate limit on contributions to such entities during a four-year cycle. As noted in the advisory committee's *Campaign Finance Report*, this treatment would be consistent with the policy rationale enunciated in an opinion of the Attorney General in 1985 that predates the current statute in which the Attorney General explained that only Maryland-based political committees should be eligible to make transfers.⁸ The commission concurs with this recommendation.

Recommendation

- **A nonfederal out-of-state political committee should be treated like any other "person" for purposes of campaign contribution limits rather than being governed by the transfer limit applicable to Maryland campaign finance entities.**

Business Entity Contributions

Under current Maryland campaign finance law, contributions by a corporation and any wholly owned subsidiary of the corporation, or by two or more corporations owned by the same stockholders, are considered as being made by one contributor and subject to the \$4,000/\$10,000 contribution limits. Past Attorney General advice, however, indicates that this attribution rule

⁷ Maryland Attorney General's Advisory Committee on Campaign Finance at pg. 40.

⁸ *Id.* at pgs. 40-41 (citing 70 Op. Att'y Gen. 96, 98 (1985)).

does not apply to limited liability companies (LLCs) or other noncorporation business entities.⁹ Therefore, the same person or group may own or control multiple LLCs, partnerships, or other unincorporated business entities, for legitimate business purposes, and may give up to the \$4,000/\$10,000 limits from *each* of those entities. An LLC or any other type of noncorporation business entity, however, cannot be created solely for the purpose of making campaign contributions.¹⁰

In its testimony before the commission, the Office of the State Prosecutor indicated that its experiences investigating and enforcing the campaign finance limits “leave no doubt that there are a number of persons who, through their control of multiple business entities, are able to donate hundreds of thousands of dollars in campaign contributions.”¹¹

In the past, consideration has been given to proposals that would have subjected all business entities to a rule under which two or more business entities that are under common ownership or control are treated as a single contributor for purposes of the contribution limits.¹² While most proposals have focused on business entities, cross-filed bills in 2011 would have also required that contributions by two or more entities other than business entities be considered as being made by one contributor if the entities were organized and operated in coordination and cooperation with each other and made their decisions concerning contributions under the control of the same individual or entity.¹³

In its review, the commission looked at how other states treat contributions from business entities for purposes of contribution limits and also researched and discussed the differences between different types of business entities. Research conducted by the National Conference of State Legislatures revealed that other states’ treatment of contributions from LLCs, and business entities in general, varies considerably.¹⁴ A small number of states, for example, have no contribution limits at all, while some simply ban contributions from corporations or business entities in general. In those states that allow contributions from at least certain types of business entities and have contribution limits, some of the state laws – in the case of LLCs, partnerships, and/or sole proprietorships – simply attribute contributions from those entities to the individual members, partners, or owners of the business. In other cases, state laws define circumstances under which contributions from separate business entities are aggregated, or treated as being made by a single contributor, for purposes of the contribution limits, based on some degree of common control or ownership among the entities.

⁹ Letter from Assistant Attorney General Mary O. Lunden to Sen. Pica (June 9, 1997).

¹⁰ COMAR 33.13.10.02.

¹¹ Written testimony submitted by Thomas M. McDonough, Deputy State Prosecutor, to the Commission to Study Campaign Finance Law, pg. 3 (June 26, 2012).

¹² Recent legislative proposals provided that two business entities would be treated as being a single contributor if one was a wholly owned subsidiary of another or if 80% of the ownership or control was in common. See, e.g., HB 602 of 2012, SB 339 of 2011, HB 322 of 2011, SB 216 of 2010, and HB 373 of 2010.

¹³ SB 663/HB 723 of 2011.

¹⁴ *Limited Liability Companies: Summary of Their Treatment Under State Campaign Finance Laws* (appendix to written testimony submitted by Jennie Drage Bowser, National Conference of State Legislatures) (June 2012).

After considering the differences between different types of business entities, the commission agreed that there was no sound policy reason to continue the different treatment under current State law of corporations and unincorporated business entities. The commission also agreed that the law should prevent circumvention of the contribution limits through the making of contributions by separate business entities under common management or ownership.

The commission considered at length the question of how to define “common management or ownership.” While it does not recommend a specific definition, the commission did agree on the general principles that should guide the construction of such a definition, as follows.

Recommendations

- **For purposes of the contribution limits, contributions from two or more business entities should be treated as being made by a single contributor if the entities are under common management (including boards of directors, officers, managing members, managing partners, or other persons who direct the business) or ownership.**
- **If the General Assembly were to define common management or ownership by a certain percentage of common ownership or control, the commission recommends a percentage of no less than 50%. A higher percentage would limit application of the attribution rule to those cases in which the same person or small group of people actually control or are in a position to control the contribution decisions made by multiple entities.**

Slates

The Election Law Article defines a slate as “a political committee of two or more candidates who join together to conduct and pay for joint campaign activities.” A slate is a campaign finance entity¹⁵ and regulated in the same manner as any other campaign finance entity, but the current law has not adequately addressed issues arising with respect to the practical operation of slate committees. As a result, there are few effective constraints on the formation and operation of slates. For example, a candidate can join, and remain on, a slate even though they are not participating in the current election.

Slates are widely used in Maryland elections. A study by the University of Maryland’s Center for American Politics and Citizenship on the use of slates in the 2006 elections found that

¹⁵ The terms “campaign finance entity” and “political committee” can be read interchangeably. They are both used under the Election Law Article, and, for compliance purposes, there is no difference between the terms under current law. See Maryland State Board of Elections, *Summary Guide to Candidacy and Campaign Finance Laws*, section 3.1 (http://www.elections.state.md.us/summary_guide/index.html).

465 candidates, or almost one-third of the candidates, were members of at least one of the 118 active slates during the 2006 election cycle.¹⁶ A more recent report, focusing only on General Assembly candidates during the 2010 elections, shows that just over 40% of candidates participated in at least one slate and almost 30% participated in two or more slates.¹⁷

Despite the use of slates being a well-established campaign financing mechanism in Maryland, concern has been expressed about the potential misuse of slates. The Attorney General's Advisory Committee on Campaign Finance, for example, recognized and discussed the utility of slates and the benefits of coordination and cooperation that they provide, but also discussed their susceptibility to misuse and the fact that such susceptibility represents a "potentially serious weakness of the campaign finance system."¹⁸

Transfers between campaign finance entities of slate members and a slate itself are not subject to the \$6,000 transfer limit, or any other limit, thereby allowing for unlimited movement of funds between the slate and slate members' individual campaign finance entities. While slates report receipts and expenditures like any other campaign finance entity, there are no requirements or reporting with regard to which slate members benefit from expenditures and in what proportion.

The current exemption from the transfer limit of transfers between slates and the individual campaign committees of slate members effectively allows unlimited transfers of funds between candidate committees through the use of slate committees. A slate committee can receive unlimited funds from the candidate committee of one of its candidate members; and then either transfer funds to the candidate committee of another slate member or expend the slates' fund disproportionately to benefit the campaign of that other candidate.

Federal law does not permit such effectively unlimited transfers of funds between candidate committees, nor do the laws of most states. Moreover, allowing such unlimited transfers circumvents the \$6,000 transfer limit without serving the underlying objective of the slate committees provision, which is to facilitate the pooling of resources by candidates running in the same district or area or sharing another common interest. Concern has also been raised about funds in such situations originating from slate members who are not active candidates in an election.

The commission discussed a number of reforms to prevent potential misuse of slates to distribute money to, or for the benefit of, other candidates, in excess of the \$6,000 transfer limit, rather than for joint campaigning. The most obvious choice for reform would be to establish a limit on transfers between a slate and a slate member's campaign finance entity higher than the generally applicable \$6,000 limit and to also require that members of a slate be active candidates.

¹⁶ James M. Curry and Paul S. Herrnson, Center for American Politics and Citizenship, University of Maryland, *Slates and the 2006 Maryland State Elections*, pgs. 3-4 (2010).

¹⁷ Zachary J. Sivo and Paul S. Herrnson, Center for American Politics and Citizenship, University of Maryland, *Campaign Fundraising and Spending by 2010 Maryland General Assembly Candidates* (2011).

¹⁸ Maryland Attorney General's Advisory Committee on Campaign Finance at pgs. 33-36.

This would limit the potential for slates to be used by candidates to distribute significant amounts of their campaign funds to, or for the benefit of, other candidates but still provide candidates who form a slate for joint campaigning at least some additional room beyond the \$6,000 transfer limit to pool their resources.

If such an option were adopted, however, gubernatorial ticket slates consisting only of the candidate for Governor and candidate for Lieutenant Governor should be exempt from the slate transfer limit since candidates for Governor and Lieutenant Governor are required by law to form a joint gubernatorial ticket. The concern about the use of slates to distribute significant amounts of campaign funds to other candidates rather than for joint campaign activities should not apply to such a slate. All expenditures, in the case of a gubernatorial ticket slate, would inherently be benefitting both candidates since they are running for office together and are elected together.

Other options for reform include (1) disclosure of which members of a slate benefit from each expenditure; and (2) a requirement that slate membership be limited to those running in the same election who will appear on the same ballot together (“ballot commonality”).

Disclosure of which slate members benefit from slate expenditures could provide greater disclosure of situations in which slate expenditures are being directed to benefit a specific member of the slate rather than all of its members. Such transparency would help inhibit the misuse of slates to evade the transfer limits, as discussed above.

A ballot commonality requirement generally would allow candidates to form a slate together only if they will appear together on a ballot. In other words, they could form a slate if they are either running to represent the same district or jurisdiction as the other candidate or candidates or the district or jurisdiction they are running to represent overlaps with the district or jurisdiction the other candidates are running to represent so that some group of voters will be voting a ballot with each of their names on it. Such a requirement would prevent nonactive candidates from distributing significant amounts of money into slates and limit the use of slates to instances where the candidates are trying to reach some common group of voters, consistent with the concept of joint campaigning.

A ballot commonality requirement, by itself, would not entirely eliminate the potential for misuse, since there would still be the opportunity for unlimited movement of funds between those candidates with ballot commonality. A ballot commonality requirement would also prevent candidates who do not have ballot commonality, but might want to form a slate for joint campaigning because they share policy or other interests, from joining together in a slate. Such candidates could alternatively form a political action committee, which would be subject to the \$6,000 limit on transfers between campaign finance entities.

Recommendation

- **The law governing the use of slates should be reformed because of the potential for slates to be used to distribute significant amounts of campaign funds to other candidates in excess of the \$6,000 transfer limit. The most obvious choice for reform would be to establish a limit on transfers between a slate and slate members' campaign finance entities (higher than the \$6,000 transfer limit) and require that members of a slate be active candidates. A slate formed by a gubernatorial ticket, however, consisting only of the candidate for Governor and candidate for Lieutenant Governor, should be exempt from the transfer limit. Other reform options for the General Assembly to consider include (1) disclosure of which members of a slate benefit from each expenditure; and (2) a limit on the formation of slates to circumstances in which the slate members have some form of ballot commonality.**

Caucus Committees

A proposal was made in testimony before the commission to amend the law to recognize political party caucuses in each house of the General Assembly ("caucus committees") as a special new form of campaign finance entity. The caucus committees would be modeled after the congressional campaign committees maintained by the major parties at the federal level (National Republican Congressional Committee, Democratic Congressional Campaign Committee, Democratic Senatorial Campaign Committee, and National Republican Senatorial Committee). Similar committees also exist in certain other states.¹⁹

The caucus committees would have at least two features that would set them apart from regular campaign finance entities, including slates, and, to a certain extent, would make them akin to State and local party central committees (campaign finance entities of the parties at the State and local level): (1) the ability to maintain nonelectoral, administrative accounts; and (2) special in-kind contribution limits for contributions from the caucus committees to individual candidates.

Currently, pursuant to Attorney General opinions and State Board of Elections (SBE) policy, party central committees, unlike most other campaign finance entities, can maintain administrative accounts. The accounts can receive unlimited contributions (not subject to the

¹⁹ See, e.g., Ohio Revised Code, §§ 3517.01(B)(15), 3517.10(D)(3)(d), 3517.102 ("legislative campaign fund"), and Ohio Secretary of State, *Ohio Campaign Finance Handbook*, chapter 4 (2010) (<http://www.sos.state.oh.us/SOS/CampaignFinance/filingRed/CFGuide.aspx>); Kentucky Revised Statutes, §§ 121.015(3)(b) and 121.150(23)(c) ("caucus campaign committee"), and Kentucky Registry of Election Finance, *Caucus Campaign Committee Guide to Campaign Finance* (2006) (<http://kref.ky.gov/NR/rdonlyres/319E530C-E8F4-4A49-84D0-A52FD5ED74D4/0/CCCGuide.pdf>); Michigan Compiled Laws, §§ 169.224a, 169.252a, 169.269 ("political party caucus committee"); Revised Code of Washington, §§ 42.17A.005(8) and 42.17A.405(4)(a) and (5)(a) ("caucus political committee").

\$4,000/\$10,000 limits) provided that the accounts are kept separate from other funds and are used only for nonelectoral expenses such as employee salaries; office equipment and supplies; rent, utilities, and building maintenance; voter registration activity; and generic issue polling.²⁰

The congressional and senatorial campaign committees at the federal level can make direct contributions to candidates, subject to a relatively modest limit (\$5,000, per primary or general election, for House candidates, and currently \$43,100, per primary *and* general election, shared by the senatorial and national party committees, for Senate candidates), but can also make in-kind contributions (referred to as “coordinated party expenditures”) up to much higher amounts, for general election campaigns.²¹ Those limits on coordinated party expenditures are shared with the national party committee for that party.²² The coordinated party expenditures are similar to direct contributions, but the congressional and senatorial campaign committees or national party committees make expenditures on behalf of the candidate and in coordination with the candidate instead of transferring funds to the candidate’s committee.²³

The commission, overall, agreed to recommend that the political party caucuses in the General Assembly be allowed to establish “caucus committees,” and thereby provide a more clearly defined campaign finance entity that is better suited than the slate committee model to the unique needs of legislative party caucuses. One commission member, however, disagreed with the recommendation to the extent that it would give General Assembly political party caucuses an advantage over other groups in terms of their ability to support candidates’ campaigns. The commission also recommends that parameters for administrative accounts be established by SBE by regulation. Currently, the parameters are defined by a combination of Attorney General opinions and advice and SBE policy, but have not been established in SBE regulations.

If caucus committees are established, and are authorized in the law to maintain administrative accounts, consideration should also be given as to whether or not political party central committees and political action committees of corporations should also have that authority in statute (both are currently allowed to maintain administrative accounts pursuant to Attorney General opinions and SBE policy).

Recommendations

- **The General Assembly should adopt legislation allowing for caucus committees to be established by General Assembly party caucuses, similar to the congressional campaign committees at the federal level, with administrative accounts and special,**

²⁰ Maryland State Board of Elections, *Summary Guide to Candidacy and Campaign Finance Laws*, Section 8.16 (http://www.elections.state.md.us/summary_guide/index.html).

²¹ Code of Federal Regulations, Title 11, Parts 109 and 110; *see also*, Federal Election Commission, *Federal Election Commission Campaign Guide: Political Party Committees*, chapters 7 and 9 (July 2009); *see also*, <http://www.fec.gov/pages/brochures/contriblimits.shtml> (Contribution Limits 2011-2012) and http://www.fec.gov/info/charts_441ad_2012.shtml (2012 Coordinated Party Expenditure Limits).

²² http://www.fec.gov/info/charts_441ad_2012.shtml (2012 Coordinated Party Expenditure Limits).

²³ Federal Election Commission at p. 44.

higher in-kind contribution (i.e., coordinated expenditure) limits similar to those now applicable to the state and local party central committees. If administrative accounts are authorized in the law for caucus committees, consideration should be given as to whether or not political party central committees and political action committees of corporations should also have that authority in statute.

- **The State Board of Elections should establish parameters for the accounting of and use of administrative accounts, by regulation.**

Independent Expenditures

Background

The Supreme Court held in *Citizens United v. FEC*²⁴ that independent expenditures by corporations, and by organizations using corporate funds, do not give rise to corruption or the appearance of corruption and accordingly that prohibiting or limiting such expenditures violates the First Amendment. The U.S. Court of Appeals for the District of Columbia Circuit subsequently held in *SpeechNow.org v. FEC*²⁵ that because of this holding in *Citizens United*, contributions to a political committee that makes only independent expenditures may not be limited. Political committees that make only independent expenditures and, therefore, may accept unlimited contributions, are known as Super PACs.

Not all entities that make independent expenditures are required to form a political committee. As stated in the *Campaign Finance Report* of the Attorney General's Advisory Committee on Campaign Finance, "[u]nder the First Amendment, government generally may not regulate a group as a political committee unless the group is controlled by a candidate or, as its major purpose, engages in activity that is unambiguously related to the election or defeat of a particular candidate."²⁶ A group that makes expenditures related to a ballot issue also may not be required to form a political committee unless its major purpose is promoting or opposing a ballot issue.

Because entities that make independent expenditures are not necessarily required to form political committees, the General Assembly adopted reporting requirements applicable to any entity that makes expenditures intended to influence an election. Chapter 575 of 2011 requires reporting of two types of expenditures that are not coordinated with a candidate or a political committee:

²⁴ 558 U.S. 310 (2010).

²⁵ 599 F.3d 674 (2010).

²⁶ Maryland Attorney General's Advisory Committee on Campaign Finance at pgs. 8-9.

- “independent expenditures” are defined as express advocacy communications that explicitly urge the success or defeat of a clearly identified candidate or ballot issue²⁷ by using words such as “vote for,” “vote against,” “elect,” “defeat,” etc. Reportable express advocacy communications include any form of public communication, including a television ad, newspaper ad, mass mailing, billboard, etc.²⁸
- “electioneering communications” are defined as communications that do not use language explicitly urging a vote for or against a candidate or ballot issue but refer to a clearly identified candidate or ballot issue in the 60 days preceding an election. Reportable electioneering communications include only broadcast, cable, or satellite communications (television or radio).²⁹

Chapter 575 requires a person to file a report with the State Board of Elections (SBE) when the person makes aggregate independent expenditures or electioneering communications of \$10,000 or more in an election cycle. An additional report is due when aggregate independent expenditures or electioneering communications of \$10,000 or more are made since the previous report.³⁰

Federal law requires reporting of independent expenditures and electioneering communications in federal elections. Maryland’s definitions of “independent expenditure” and “electioneering communication” are closely modeled on, but are not identical to, the federal statutory definitions. The federal reporting threshold and reporting schedule are different from those in Maryland law.³¹

According to the National Institute on Money in State Politics, 43 states require some disclosure of independent expenditures.³² There are 19 states that require reporting of electioneering communications.³³ After *Citizens United*, 21 states strengthened their disclosure laws for independent political spending, according to the Corporate Reform Coalition.³⁴

A National Institute on Money in State Politics study of independent political spending in 20 states where the data is readily available found that \$185 million was spent independently in

²⁷ Md. Code Ann., Election Law, § 1-101(bb).

²⁸ Md. Code Ann., Election Law, § 13-306(a)(5).

²⁹ Md. Code Ann., Election Law, § 13-307(a)(3).

³⁰ Md. Code Ann., Election Law, §§ 13-306(b) and (d) and 13-307(b) and (d).

³¹ See 2 U.S.C. §§ 431(17) and 434(f) and (g).

³² Kevin McNellis, National Institute on Money in State Politics, *Best Practices for Independent Spending: Part Two* (2012).

³³ *Id.*

³⁴ Robert M. Stern, Corporate Reform Coalition, *Sunlight State by State After Citizens United*, pgs. 6-7 (2012).

candidate elections in the 2010 election cycle, and \$2.8 million was spent independently on ballot questions in the 2010 election cycle.³⁵

Recommendations

- **Maryland law should be amended to recognize that political committees that make only independent expenditures are not subject to contribution limits.**

This recommendation would codify the holding in *SpeechNow* and preclude a potential legal challenge to Maryland's law.

- **Maryland's statutory definition of "political committee" should be amended to conform to case law.**

Maryland's definition of political committee is "a combination of two or more individuals that assists or attempts to assist in promoting the success or defeat of a candidate, political party, or question submitted to a vote at any election."³⁶ This definition is unconstitutionally overbroad. As noted above, an entity generally may not be regulated as a political committee unless it is controlled by a candidate or has as its major purpose the election or defeat of a candidate or ballot issue.

- **Require reporting of contributions aggregating over \$10,000 to entities other than political committees making independent expenditures or electioneering communications.**

Current Maryland law requires only very limited disclosure of the sources of funds used by entities other than political committees to finance independent expenditures and electioneering communications. A person making independent expenditures or electioneering communications is only required to report donations the person received "for the purpose of furthering" independent expenditures or electioneering communications.³⁷ As a result, only donations specifically earmarked for independent expenditures or electioneering communications in Maryland must be reported. In practice, this means that very few donations will be reported, because an entity that wishes to avoid disclosure will simply raise funds nominally for the "general purposes" of the organization rather than for any particular independent expenditure campaign and consequently will not report anything.

³⁵ Kevin McNellis and Robin Parkinson, National Institute on Money in State Politics, *Independent Spending's Role in State Elections, 2006-2010* (2012).

³⁶ Md. Code Ann., Election Law § 1-101(gg).

³⁷ Md. Code Ann., Election Law, §§ 13-306(a)(2) and 13-307(a)(2).

The Federal Election Commission has interpreted the electioneering communication disclosure provisions of the Bipartisan Campaign Reform Act³⁸ in a similar manner. When an organization other than a political committee makes an electioneering communication relating to a federal candidate, no disclosure of the source of the funds – the contributors whose money is used for the communication – is required unless the contributions were earmarked for that particular expenditure. In addition, under the Federal Election Campaign Act, an organization that makes an independent expenditure relating to a federal candidate does not need to disclose the source of funds used to make the independent expenditure unless it received contributions that were earmarked for that expenditure.³⁹ As a result of the state of the federal law, hundreds of millions of dollars have been spent on political advertising by nonprofit organizations, principally organizations exempt from tax under section 501(c)(4) or (c)(6) of the Internal Revenue Code, with no disclosure of the source of the funds. This situation has been the subject of considerable controversy and ongoing litigation.⁴⁰

To avoid this result in Maryland, the commission's recommendation would require disclosure of all contributions to an entity making electioneering communications or independent expenditures aggregating over \$10,000, regardless of whether the contributions were earmarked for, or made for the express purpose of furthering, independent expenditures. At a minimum, a sufficient amount of contributions to account for an entity's electioneering communications or independent expenditures should be disclosed, regardless of the purpose for which the contributions were made. The proposed federal Disclose Act contains disclosure provisions similar to those included in this recommendation.⁴¹

- **Require rapid reporting of large contributions and expenditures by independent expenditure political committees, other groups that make independent expenditures, and ballot issue committees.**

Independent expenditure committees, other groups that make independent expenditures, and ballot issue committees may accept unlimited contributions and subsequently may make large expenditures shortly before an election. Under the current reporting schedule, the voters would not have timely information about these expenditures or the persons who paid for them, especially during the period after the last campaign finance report but before the election. This recommendation builds on the precedent set by the General Assembly in the August 2012 special session, when it required persons supporting or opposing the ballot question on the expansion of gaming to report aggregate contributions or expenditures over \$10,000 within 48 hours.⁴² The recommendation would also

³⁸ 2 U.S.C. § 434(f)(2)(E) and (F) (2005).

³⁹ 2 U.S.C. § 434(c)(2)(C) (2005).

⁴⁰ See summary of *Van Hollen v. FEC* at http://www.fec.gov/law/litigation/van_hollen.shtml.

⁴¹ Disclose 2012 Act, H.R. 4010, 112th Cong. § 2 (2012).

⁴² 2012 Md. Laws, Ch. 1, 2nd Sp. Sess., § 7.

establish rapid reporting requirements that are comparable to those that exist at the federal level and in other states. Current federal law requires a person to file a report within 24 hours of spending \$10,000 on electioneering communications in a calendar year and an additional report within 24 hours of spending an additional \$10,000 on electioneering communications since the previous report.⁴³ Federal law also requires a person to file a report within 48 hours of spending \$10,000 or more on independent expenditures up to the twentieth day before an election, and an additional report within 48 hours of spending an additional \$10,000 on independent expenditures since the previous report up to the twentieth day before an election. After the twentieth day before an election, a report must be filed within 24 hours each time independent expenditures aggregate to \$1,000 or more.⁴⁴ Several states have also adopted rapid reporting requirements for independent political spending.⁴⁵

- **Establish penalties for failure to file independent expenditure reports that are proportionate to the seriousness of the violation.**

Persons who fail to file independent expenditure or electioneering communication reports are subject only to the same penalties that apply to the responsible officers of a political committee.⁴⁶ These penalties include late fees up to \$250 per report.⁴⁷ In addition, if a report is not filed within 30 days of the deadline, SBE is required to issue a notice to the person responsible for filing the report. If the person subsequently knowingly and willfully fails to file the report within 30 days after service of this notice, the person is guilty of a misdemeanor and on conviction is subject to a fine of up to \$25,000 or imprisonment for up to 1 year or both.⁴⁸ The late fees may be an insufficient incentive for timely filing, while the criminal penalties may be excessive relative to the seriousness of the offense. Again, the General Assembly set a precedent for this recommendation in the August 2012 special session when it established a penalty equal to 10% of the amount of any contribution or expenditure related to the ballot question on gambling that is not reported timely.⁴⁹ In addition, federal law generally allows for a civil penalty up to the amount of any expenditure involved in the violation. If a violation is knowing and willful, the civil penalty may be up to 200% of the expenditure involved in the violation.⁵⁰

⁴³ 2 U.S.C. § 434(f).

⁴⁴ 2 U.S.C. § 434(g).

⁴⁵ Stern, *supra* note 34.

⁴⁶ Md. Code Ann., Election Law, §§ 13-306(i) and 13-307(i).

⁴⁷ Md. Code Ann., Election Law, § 13-331.

⁴⁸ Md. Code Ann., Election Law, § 13-335.

⁴⁹ *Supra* note 42.

⁵⁰ 2 U.S.C. § 437g(5).

- **Expand the definition of “electioneering communication” to include print advertisements, direct mail, and phone banks.**

Maryland’s definition of “electioneering communication” includes only television and radio ads that are capable of being received by at least 50,000 people.⁵¹ Persons seeking to influence races for the General Assembly or local offices through independent spending are unlikely to spend large amounts of money on radio or television ads but may nonetheless have a significant impact on an election through expenditures on direct mail, a phone bank, or print advertising. These expenditures would not have to be reported under current law. Several states include mail, phone banks, and print advertising in their definition of “electioneering communication.”⁵²

- **Establish a lower threshold for reporting independent spending on local races and General Assembly races, such as \$5,000 in aggregate expenditures.**

Maryland only requires reporting of independent expenditures and electioneering communications that aggregate \$10,000 or more in an election cycle.⁵³ Independent expenditures under \$10,000 may have a significant impact on a General Assembly race or a local election, but do not have to be reported. All the states have a lower threshold for reporting independent spending than Maryland currently does.⁵⁴ Some states also have a lower threshold for reporting expenditures in state legislative or local races than in statewide races.⁵⁵

Enforcement

Responsibility for enforcing State campaign finance laws is shared between the State Board of Elections (SBE) and the Office of the State Prosecutor (OSP). SBE is charged, under the Election Law Article, with managing and supervising elections in the State and ensuring compliance with the requirements of the article by individuals involved in the election process. OSP is specifically charged under State law with investigating and prosecuting election law violations. Although State’s Attorneys also have authority to prosecute campaign finance violations, they defer to OSP and rarely, if ever, pursue election law cases. SBE refers campaign finance violations to OSP, and the office also receives complaints from other sources.

The commission received testimony from OSP and considered two of the areas raised by OSP for improvement in enforcement of campaign finance laws and election laws in general:

⁵¹ Md. Code Ann., Election Law, § 13-307(a)(3).

⁵² McNellis, *supra* note 32.

⁵³ Md. Code Ann., Election Law, §§ 13-306 and 13-307.

⁵⁴ Stern, *supra* note 34.

⁵⁵ *Id.*

(1) the statute of limitations for criminal offenses under State election laws; and (2) providing SBE with authority to issue civil penalties under certain circumstances.⁵⁶

The statute of limitations applicable to criminal offenses under State election laws is currently two years. OSP's testimony, however, indicated that in many cases this time period can be too short to ensure that there is adequate time to effectively uncover and thoroughly investigate allegations of campaign finance violations. Violations are often uncovered only through campaign finance reports (which could possibly be filed up to a year after a violation) or, for more serious violations that would not be disclosed on a campaign finance report, through someone with knowledge of the violation coming forward, which may not occur until well after the violation. The commission agreed on extending the statute of limitations for election law violations to three years as a reasonable, measured increase to give OSP more time to uncover and investigate violations. Three years is a relatively common statute of limitations under Maryland law. Notably, the current statute of limitations for prosecution to impose a civil fine for campaign finance law violations is three years.

In its testimony, OSP also discussed the possibility of SBE being given authority to pursue civil citations where campaign finance entities have failed to file campaign finance reports, and there is no evidence of fraudulent intent and the violator is not a flagrant repeat offender. OSP suggested, and the commission agrees, that this approach is more efficient and cost-effective than referring all such unresolved violations to OSP. The commission modified and expanded on this suggestion, recommending that SBE be given civil enforcement authority with respect to other categories of offenses as well, particularly if such offenses are relatively easy to establish and often do not warrant criminal investigation and/or prosecution. Such violations would include violations of campaign finance law evident from the face of campaign finance reports.

This proposal would leave any violation warranting criminal investigation to OSP and would limit SBE's issuance of civil citations to violations where there is little room for rebuttal so that a prosecution is unlikely to be necessary. The supplemental parts of the commission's recommendation (shown below) are intended to ensure that (1) the monetary penalties imposed are not too significant; (2) there is room for SBE to use discretion whether or not to impose a penalty if a violator can show just cause for the violation (as is currently the case with late filing fees); and (3) if SBE has decided to impose a penalty, the violator would have the option of contesting the citation in District Court.

⁵⁶ OSP additionally raised the issue of persons making contributions beyond the contribution limits through multiple business entities, which is addressed earlier on in this report under "Business Entity Contributions."

Recommendations

- **The statute of limitations applicable to criminal offenses under State election laws should be increased from two years after the offense was committed to three years after the offense was committed.**
- **The State Board of Elections (SBE) should be given the authority to issue civil citations with monetary penalties for certain offenses that are relatively clearly evidenced (*e.g.*, violations shown on campaign finance reports, unfiled campaign finance reports, etc.) and that do not warrant criminal investigation and/or prosecution.**
 - **A maximum penalty for the citations should be set in statute, allowing SBE to seek or set penalties less than the maximum for different offenses.**
 - **The General Assembly should take into account the late filing fee amounts and processes applicable to campaign finance reports filed pursuant to the Election Law Article and financial disclosure and lobbyist filings under the Maryland Public Ethics Law when determining an appropriate maximum penalty and process for the civil citations.**
 - **A person issued a citation should have the option to contest a citation in District Court, which would transfer the responsibility for seeking a civil penalty to the Office of the State Prosecutor.**

Public Financing

The commission's charge under Joint Resolution 1 of 2011 with respect to public financing is to examine issues relating to the implementation of a voluntary system of 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. The commission received testimony from a number of individuals and organizations in support of public financing as well as testimony from the executive director of the agency that administers New York City's public financing program, who described the program and how it is administered and funded.

Supporters of public campaign financing cite a number of benefits it can provide to the political process, not least of which is increased public confidence in the process. This potential for increased public confidence served as a basis for the commission's discussion of this issue and directly relates to one of the motivations for the General Assembly's creation of the commission, that "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” (preamble to Joint Resolution 1 of 2011).

Maryland currently has a public financing program for gubernatorial tickets (Governor/Lieutenant Governor candidates) that has been in place for nearly four decades. The program has been used only once, in the 1994 gubernatorial election. Money in the Fair Campaign Financing Fund which holds funds for the program has recently been used for other elections-related purposes. Most recently, the General Assembly committed \$2 million of the \$4.9 million balance in the fund to be transferred out of the fund in fiscal 2014 to pay for a new voting system, which will leave a balance of approximately \$2.9 million, a total that would be short of the amount needed to fully fund a gubernatorial ticket in 2014 (approximately \$3.75 million). The money in the Fair Campaign Financing Fund was generated from contributions made through a “tax add-on” on the State personal income tax form and interest earned on those contributions. However, the tax add-on was repealed in 2010 when funding began to be redirected for other purposes.⁵⁷

A previous commission created by the General Assembly in 2002, the Study Commission on Public Funding of Campaigns in Maryland, made recommendations in 2004 for a system of public funding of statewide and legislative election campaigns. Legislation proposing public campaign financing systems (for the most part only for legislative campaigns) has been introduced in each year since. However, no proposals have passed to date.

The public financing discussions of our commission centered around (1) how to fund a public financing program; (2) the viability of the current gubernatorial program and whether it should be retained; and (3) what other options for public financing there might be aside from the gubernatorial program, such as a pilot program for State legislative races or General Assembly authorization for counties to create their own programs.

Funding a public financing program is an unavoidable hurdle in the design and implementation of a program. For example, the New York City program is widely used by city candidates, paid more than \$27 million to 139 candidates in the last citywide election in 2009, and appears to have relatively significant administrative costs based on the New York City Campaign Finance Board’s overall budget. Fiscal and policy notes for recent legislation introduced in the Maryland General Assembly proposing a State legislative public financing pilot program identified the cost for additional State Board of Elections personnel alone as being \$730,000 over three years (the duration of the pilot program).⁵⁸

The commission did not reach agreement on a solution for funding a public financing program. Much of the discussion focused on the use of the remaining funds in the Fair Campaign Financing Fund. There were competing sentiments on the use of that money. On the

⁵⁷ Ch. 484, Acts of 2010.

⁵⁸ See SB 270/HB 195 of 2012.

one hand, it was suggested that the funding for the one public financing program the State currently has for gubernatorial candidates should be preserved for that program and that the State should even reconsider its recent commitment of \$2 million from the fund to another purpose (a new voting system). Alternatively, it was argued that the remaining money in the fund could be more effectively used for a legislative program in that it would be able to fund multiple candidates' campaigns. Abandoned property revenue, an option that has been proposed in past public financing legislation, was also suggested as a possibility.

As to whether or not the current gubernatorial program should be retained, the commission overall determined that it should be retained, with the hope that there will come a point in time when State finances are such that the State has the ability to more fully finance this type of system. There was sentiment expressed by one member, however, that the program should be eliminated and the law repealed since the program is not functioning. Another member similarly viewed the gubernatorial program as not functioning and unsustainable without a funding mechanism, and believed that a better use of the money in the Fair Campaign Financing Fund would be a State legislative public financing pilot program that would require less funding per candidate and be able to be applied more broadly.

With respect to other public financing options aside from the gubernatorial program, the commission decided early on in its discussions that public financing should not be used for judicial elections, particularly circuit court judge elections in Maryland. Circuit court judge vacancies are filled by the Governor appointing a replacement with the assistance of a judicial nominating commission. Pursuant to the Maryland Constitution, however, those vetted and appointed judges then face the prospect of a challenge for their seat in a contested election soon after their appointment. In the commission's discussions, the general sentiment was that this system can be at odds with retaining well-qualified judges on the bench and that the availability of public financing could increase the likelihood of appointed judges having to face challengers in contested elections. It was also noted that very little money is spent on appellate court retention elections and there are not orphans' court judges elected in every jurisdiction in the State,⁵⁹ which would prevent the establishment of a State-financed program that would be uniformly available across the State.

Support was expressed by some members for public financing for General Assembly candidates, at least in the form of a pilot program. However, as previously noted, a consensus was not reached on funding for a program at the State level. Ultimately, the commission agreed to recommend that the General Assembly authorize the counties (including Baltimore City) to establish programs for public financing for county offices as the preferred option to foster possible further exploration of public financing in the State outside of the current gubernatorial program. Such an authorization has been proposed in the General Assembly in the past. Under this option, funding of the program would be the responsibility of any county that decided to implement such a program.

⁵⁹ Circuit court judges sit as the orphans' court in Montgomery and Harford counties.

Recommendations

- **The existing structure for public financing of gubernatorial campaigns should be maintained, with the hope that there will come a point in time when State finances are such that the State has the ability to more fully finance a public financing system for candidates seeking election to State offices.**
- **Publicly financed elections should not include judicial races.**
- **Counties should be authorized to establish public financing programs for county offices.**

Disclosure of Small Contributions

Background

Regulations adopted by the State Board of Elections (SBE) permit a campaign finance entity to report certain small contributions as a lump sum on a campaign finance report without identifying the name and address of the contributor or the amount of each contribution. Contributions that may be aggregated include (1) contributions from a single contributor aggregating less than \$51 in an election cycle; (2) purchases of tickets to a campaign event of less than \$51 if the cumulative amount per person is less than \$251; and (3) subject to certain limitations, the purchase of a spin or chance on a paddle wheel or wheel of fortune.⁶⁰ However, a campaign finance entity is still required by law to record the name and address of each contributor and the amount of each contribution in its account books, regardless of the amount of the contribution, with the exception of certain sales of spins or chances at a campaign event.⁶¹

There is no limit to the aggregate amount of small contributions that may be reported as a lump sum. Some campaign finance entities have reported hundreds of thousands of dollars in lump sum contributions. Legislation has been introduced in each session of the General Assembly since 2010 to limit the aggregate amount of contributions that may be reported as a lump sum in an election cycle to \$25,000.⁶²

Recommendation

- **The commission recommends that the General Assembly enhance disclosure of small contributions by curbing the practice of reporting certain small contributions**

⁶⁰ COMAR 33.13.02.02B.

⁶¹ Md. Code Ann., Election Law, §§ 13-221 and 13-240.

⁶² HB 788 of 2010, HB 481 of 2011, and HB 538 of 2012.

as a lump sum without identifying the contributor and the amount of each contribution.

The commission notes for the General Assembly's consideration the following options for limiting lump sum reporting, without endorsing any particular approach:

- a. **Ban lump sum reporting but make small contributions subject to less stringent disclosure requirements.**

For contributions aggregating less than \$51 in an election cycle, a political committee would only be required to report the contributor's name and the amount of the contribution. The committee would not have to report the contributor's address, as is generally required. This approach would enhance disclosure while minimizing the recordkeeping burden on political committees.

- b. **Limit the use of lump sum reporting to contributions from raffles, or purchases of spins or chances on a paddle wheel or a wheel of fortune.**

This option would generally require disclosure of small contributions while allowing lump sum reporting to continue to be used for gambling-related fundraising activities where keeping records of small contributions would be particularly difficult for a political committee. Current law strictly limits gambling-related fundraising by a political committee. The cost of an individual raffle ticket may not exceed \$5 and an individual may not purchase more than \$50 worth of tickets.⁶³ The cost of a spin or chance may not exceed \$2. A political committee that receives more than \$2,500 from spins or chances in an election cycle must donate the excess to charity or identify each purchaser of a spin or chance in its account books.⁶⁴

- c. **Limit the aggregate amount of small contributions that may be reported as a lump sum in an election cycle to \$10,000.**

This option would prevent large sums from being reported without the contributors being identified while permitting limited use of lump sum reporting as a convenience to political committees.

- d. **Authorize SBE to audit the account books of a political committee to ensure that proper records of small contributors are being kept.**

Political committees are required to maintain account books containing detailed information on contributions and expenditures, including small contributions that may be

⁶³ Md. Code Ann., Criminal Law, § 12-106(b).

⁶⁴ Md. Code Ann., Election Law, § 13-240.

reported as a lump sum on campaign finance reports. SBE lacks authority to audit the account books of a political committee. If SBE had this authority, it could ensure that a committee is only reporting eligible contributions as a lump sum. Providing SBE with the authority to audit a political committee's account books would have implications beyond lump sum reporting, since it would allow SBE to scrutinize the books to help determine whether a committee is in compliance with any campaign finance law.

e. Simplify the law governing the issuance of contribution receipts and lump sum reporting.

Current law specifies that a political committee must issue a receipt to a contributor who makes aggregate contributions of \$51 or more in an election cycle or purchases one or more tickets to a campaign event at a cost of \$51 or more per ticket or in the cumulative amount of \$251 or more.⁶⁵ This law is also the basis for lump sum reporting, because only contributions for which a receipt must be issued are required to be listed separately in a campaign finance report.⁶⁶ Eliminating the special provision for tickets to a campaign event and simply requiring the issuance of a receipt to any contributor of an aggregate amount of \$51 or more in an election cycle would provide a clear rule for political committees to follow in issuing receipts and for lump sum reporting.

Campaign Finance Reporting Schedule

In General

Pursuant to § 13-309 of the Election Law Article, all political committees must file an annual campaign finance report that is due on the third Wednesday in January. When to file additional campaign finance reports depends on the election in which the political committee participates. For those elections in which the political committee is participating, reports are due (1) on the fourth Tuesday (*i.e.*, four weeks) prior to the primary election, except in the case of a presidential primary election; and (2) on the second Friday (*i.e.*, approximately one and a half weeks) prior to the primary election. Ballot issue committees, however, are not required to file pre-primary reports. Reports also are due for all political committees (including ballot issue committees) on the second Friday (*i.e.*, approximately one and a half weeks) prior to a general election and on the third Tuesday (*i.e.*, three weeks) after a general election. Also, as a result of an enactment in 2010, ballot issue committees must file an additional pre-general report that is due on the fourth Friday (approximately three and a half weeks) prior to the general election.⁶⁷

⁶⁵ Md. Code Ann., Election Law, § 13-222(a).

⁶⁶ Md. Code Ann., Election Law, § 13-222(b).

⁶⁷ Md. Code Ann., Election Law, § 13-309 as enacted by Ch. 409, Acts of 2010.

Gubernatorial Election Cycle

The overwhelming majority of political committees in the State participate in the gubernatorial election. In 2011, the gubernatorial primary election was moved from “the second Tuesday after the first Monday in September” to “the last Tuesday in June.”⁶⁸ As a result of the change in the date of the gubernatorial primary, a much longer period – over four months – was created between the date when the second of the two campaign finance reports filed prior to the primary election is due (around mid-June) and the date when the next campaign finance report – the pre-general election report – is due (in late October, about one and a half weeks prior to the date of the general election). To address this longer period between a campaign finance entity’s reporting of its campaign contributions and expenditures in the gubernatorial election year, the commission makes the following recommendation.

Recommendation

- **An additional reporting deadline should be established during the gubernatorial election year that would fall in late August, roughly halfway between the date when the existing final pre-primary campaign finance report is due (June 13, 2014, for the 2014 gubernatorial election) and the date when the pre-general campaign finance report is due (October 24, 2014 for the 2014 gubernatorial election). If this proposal is adopted, the dates pertinent to the filing of campaign finance reports in the gubernatorial election year would be as specified in the chart below.**

⁶⁸ Ch. 169, Acts of 2011.

Recommended 2014 Gubernatorial Reporting Schedule

<u>Report Type</u>	<u>Due Date</u>	<u>Transaction Beginning Date</u>	<u>Transaction Ending Date</u>
Annual	01/15/2014	01/10/2013	01/08/2014
Pre-Primary 1	05/27/2014	01/09/2014	05/20/2014
Pre-Primary 2	06/13/2014	05/21/2014	06/08/2014
<i>Pre-General</i>	<i>late-August</i>	<i>06/09/2014</i>	<i>in accordance with current law*</i>
Ballot Issue Report	10/10/2014	01/09/2014	10/03/2014
Pre-General	10/24/2014	<i>in accordance with current law*</i>	10/19/2014
Post-General	11/25/2014	10/20/2014	11/18/2014

*Under current law, with the exception of a report filed on the second Friday prior to an election, the transaction ending date for a report is seven days prior to the report deadline. The transaction beginning date for a report is the date following the transaction ending date for the previous report.

Presidential Election Cycle

Although the reporting deadlines for political committees (other than ballot issue committees) have not changed significantly for a number of years, in 2007 the first pre-primary report in a presidential election year was eliminated in legislation that moved the presidential primary from March to February.⁶⁹ If that pre-primary presidential election report had not been eliminated, the report deadline would have fallen on the day prior to the annual January report. The annual reporting deadline in January was first established in 2002 to replace certain other periodic reporting requirements for years in which there was no statewide election and for campaign finance entities formed for a single election that continued to have a cash balance or outstanding obligations after the election.⁷⁰

However, in 2011 the presidential primary was moved again, this time to “the first Tuesday in April.”⁷¹ Prior to the 2008 presidential elections, the campaign finance reporting schedule for candidates in the presidential election was equivalent to the schedule for the gubernatorial election. But, when the change-over to an April presidential primary was made in 2011, the first pre-primary report that previously had been in place when the presidential primary was in March was not restored.

⁶⁹ Ch. 219, Acts of 2007.

⁷⁰ Ch. 483, Acts of 2002.

⁷¹ Ch. 169, Acts of 2011.

On a related note, as a result of recently enacted legislation, beginning in 2016 the Baltimore City municipal elections will be held in the presidential election year rather than in the year after the gubernatorial elections.⁷² This change may result in a disparity between Baltimore City candidates, if they will have to file the first pre-primary report, and other candidates on the 2016 ballot for the limited number of State and county offices decided during the presidential election (mostly board of education and judicial offices) who would not have to file the first pre-primary report. The commission agreed to recommend that the first pre-primary report be restored as a requirement for presidential elections, which would make the pre-primary reporting schedule the same for gubernatorial, presidential, and Baltimore City elections.

In light of the commission's recommendation regarding an additional pre-general report in late-August in a gubernatorial election year, the commission also recommends that, similar to the recommendation for the gubernatorial election year, an additional pre-general report in late-August be required in presidential election years, establishing consistency in pre-general election reporting across the gubernatorial, presidential, and Baltimore City elections. Similar to gubernatorial election years, there is a long period between the filing of the second pre-primary report and the existing pre-general report in presidential election years.

Recommendation

- **The current provision in law that exempts political committees from the requirement to file a pre-primary report four weeks prior to the presidential primary election should be repealed, thereby making the requirements for filing pre-primary campaign finance reports equivalent for gubernatorial, presidential, and Baltimore City elections. Also, in light of the commission's recommendation regarding an additional pre-general report in late-August in a gubernatorial election year, an additional pre-general report in late-August should also be established in presidential election years, for consistency. If these changes are made, the schedule for the filing of campaign finance reports for a political committee in the 2016 presidential election year would be as specified in the chart below.**

⁷² Chs. 548 and 549, Acts of 2012.

Recommended 2016 Presidential Year Reporting Schedule

<u>Report Type</u>	<u>Due Date</u>	<u>Transaction Beginning Date</u>	<u>Transaction Ending Date</u>
Annual	01/20/2016	01/15/2015	01/13/2016
<i>Pre-Primary</i>	<i>03/08/2016</i>	<i>01/14/2016</i>	<i>03/01/2016</i>
Pre-Primary	03/25/2016	03/02/2016	03/20/2016
<i>Pre-General</i>	<i>late-August</i>	<i>03/21/2016</i>	<i>in accordance with current law*</i>
Ballot Issue Report	10/14/2016	01/14/2016	10/07/2016
Pre-General	10/28/2016	<i>in accordance with current law*</i>	10/21/2016
Post-General	11/29/2016	10/22/2016	11/22/2016

*Under current law, with the exception of a report filed on the second Friday prior to an election, the transaction ending date for a report is seven days prior to the report deadline. The transaction beginning date for a report is the date following the transaction ending date for the previous report.

Disclosure of Contributions by Persons Doing Public Business

Background

Title 14 of the Election Law Article is a statute designed to combat “pay to play” political corruption by imposing special disclosure requirements for contributions by persons doing business with the State or its political subdivisions. The law defines a person as “doing public business” if the person has cumulative contracts with the State, a county, a municipal corporation, or another political subdivision of \$100,000 or more in any 12-month period.⁷³ A person doing public business is required to file a report of campaign contributions with the State Board of Elections (SBE) if the person makes cumulative contributions of more than \$500 to a candidate or incumbent office holder during the two-year period before the person begins doing public business or while the person is doing public business.⁷⁴ Reports are due at the time a person begins doing public business and twice annually thereafter until the person is no longer doing public business.⁷⁵

⁷³ Md. Code Ann., Election Law, § 14-101(g).

⁷⁴ Md. Code Ann., Election Law, §§ 14-101 and 14-104.

⁷⁵ Md. Code Ann., Election Law, § 14-104.

A central feature of Title 14 is the requirement that contributions made by certain persons affiliated with a government contractor are considered as being made by the contractor and are reported by the contractor. Contributions made by officers, directors, and partners of a contractor are attributed to the contractor. Contributions made by employees, agents, or other persons at the suggestion or direction of a contractor are attributed to the contractor. And contributions by certain subsidiaries are attributed to the contractor.⁷⁶

The commission determined that meaningful measures should be taken to improve compliance with Title 14. The commission also agreed that it is important to be sensitive to the challenges faced by small contractors. The commission wanted to avoid recommending any measures that would disrupt a contractor's business operations. The following recommendations reflect the commission's belief that Title 14 can be properly enforced without placing an undue burden on contractors.

Recommendations

The commission makes the following recommendations to improve compliance with Title 14 and also clarify and streamline the statute:

- **Require verification of filing when a person begins doing public business.**

Require verification through SBE's website that the report required by Title 14 has been filed before a person may begin work on a contract that causes the person to be "doing public business." This requirement would be similar to the current law that requires verification that a contractor has paid all taxes due before a contract is awarded.⁷⁷

- **Provide for electronic filing of Title 14 reports.**

Electronic filing will be more efficient and make it easy for government agencies to verify that a report has been filed before allowing work to commence on a contract that causes a person to be "doing public business."

- **Modify the definition of "doing public business."**

Current law defines a person as "doing public business" when the person's cumulative amount of contracts with State, county, and municipal governments and any other political subdivision exceeds \$100,000.⁷⁸ This makes it difficult to determine whether a person is required to file if the person holds multiple contracts with different governments or governmental entities. The definition could be altered to define "doing public business" as holding any one contract over a certain amount with the State, a

⁷⁶ Md. Code Ann, Election Law, § 14-105.

⁷⁷ Md. Code Ann., State Finance and Procurement, § 13-222.

⁷⁸ Md. Code Ann, Election Law, § 14-101(g).

county, a municipal corporation, or any other political subdivision. The value of a contract that would qualify a person as “doing public business” could be set at \$200,000 or higher to account for inflation since Title 14 was enacted in 1973 and to exclude more small contractors from the reporting obligation. A lower amount might be appropriate for local governments. One commission member dissented from the recommendation to increase the value of a contract that qualifies a person as “doing public business” on the grounds that it would result in less disclosure and the burden on businesses of having to comply with the reporting requirements appeared to be relatively minimal.

- **Modify the definition of “contract.”**

The current definition of “contract” includes a “sale, purchase, lease, or other agreement.”⁷⁹ The definition could be amended to clarify that grants or licenses are not included in the definition.

- **Simplify the criteria for determining when a person is required to file.**

Current law only requires a person “doing public business” to file a report if the person has actually made cumulative contributions of \$500 or more to a candidate or public office holder.⁸⁰ To make it simpler to determine when a report is due from a contractor, a rule could be established requiring all contractors holding a contract over a certain amount to file, whether they have made any reportable contributions or not.

- **Require reporting of only the most relevant contributions.**

Current law requires persons “doing public business” to report cumulative contributions of more than \$500 to all State or local candidates and office holders.⁸¹ The law could be amended to require reporting of contributions only to officials of the government with which the contractor is actually doing business. This would ease the reporting burden on contractors while ensuring that the most relevant contributions are still disclosed. For example, if a contractor has contracts only with a single county, require reporting of contributions only to officials of that county. If a contractor has contracts only with the State, require reporting of contributions only to State officials.

- **Enhance administration and enforcement of the statute.**

SBE does not have the same tools to administer and enforce the reporting requirements of Title 14 that it has for campaign finance reports. The law could be amended to allow SBE to (1) audit the reports; (2) require submission of amended reports if inaccurate or

⁷⁹ Md. Code Ann., Election Law, § 14-101(e).

⁸⁰ Md. Code Ann., Election Law, §§ 14-101(b) and 14-104.

⁸¹ Md. Code Ann., Election Law, § 14-104(c)(1).

incomplete reports are submitted; and (3) impose fees for late filing. In addition, some administrative functions that are currently performed by other agencies could be transferred to SBE. An example of a function that could be transferred is the authority to grant a waiver of certain reporting requirements, which is currently the responsibility of the Attorney General.⁸²

Attorney General Advice

The Office of the Attorney General frequently provides advice regarding the State's campaign finance laws and election laws in general, whether it be to the State Board of Elections, candidates, campaign finance entity treasurers, or others. The advice can be provided in multiple forms, depending on the circumstances. Advice could be provided in an informal email under time constraints, for example, or through a published Attorney General opinion after considerable research and review.

In its report, the Attorney General's Advisory Committee on Campaign Finance indicated that as much of the Attorney General advice as possible should be made available to the public in a convenient online location. The committee noted that "[g]reater public access could help educate candidates and treasurers on campaign finance rules."⁸³ However, the committee did also recognize that informal advice given under highly time-sensitive circumstances, without extensive review and reflection, should not necessarily be given the same weight as an extensively researched and reviewed opinion. In addition, the committee noted that much of the advice is so fact-specific that its utility to the general public is limited.

Recommendation

- **The commission embraces and endorses the recommendation of the Attorney General's Advisory Committee on Campaign Finance that all appropriate legal authority interpreting the State's campaign finance laws be organized and made available online by the Office of the Attorney General. Consistent with Maryland's dedication to public access to government records and information, such access to Attorney General interpretive advice would provide useful guidance, in a user-friendly manner, to persons seeking to comply with the law. The commission also suggests consideration be given to extending such availability to election law matters in general, in addition to campaign finance matters. Finally, the commission recognizes that this effort could simply be implemented administratively, at the Office of the Attorney General's discretion, and does not necessarily require legislative action.**

⁸² See Md. Code Ann., Election Law, § 14-104(c)(2), relating to a waiver of a requirement to report the nature and amount of public business done with each governmental entity.

⁸³ See Maryland Attorney General's Advisory Committee on Campaign Finance at pgs. 44-45.

Appendix A. Individuals and Organizations that Provided Testimony and Information to the Commission

Kenneth B. Abel, Attorney (business law)
American Federation of State, County and Municipal Employees
Matt Berg, Justice at Stake
Henry Bogdan, Maryland Nonprofits
Jennie Drage Bowser, National Conference of State Legislatures
James Browning and Michael Lore, Common Cause Maryland
Carville B. Collins, Attorney (campaign finance and election law)
Maryland State Prosecutor Emmet C. Davitt and
Deputy State Prosecutor Thomas M. McDonough, Office of the State Prosecutor
Allen Dickerson, Center for Competitive Politics
Dirk D. Haire, Attorney (on behalf of the Maryland Republican Party)
Paul S. Herrnson, Center for American Politics and Citizenship, University of Maryland
John B. Howard, Jr., Office of the Attorney General
Sean Johnson, Maryland State Education Association
Melissa Price Kromm, North Carolina Voters for Clean Elections
Amy Loprest and Matt Sollars, New York City Campaign Finance Board
Mimi Marziani and David Earley, Brennan Center for Justice
Aaron Scherb, Public Campaign
Nancy Soreng, League of Women Voters of Maryland
Cliff Terry, Sierra Club, Maryland Chapter (*archived written testimony)
Ron Wineholt, Maryland Chamber of Commerce

Appendix B. 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.