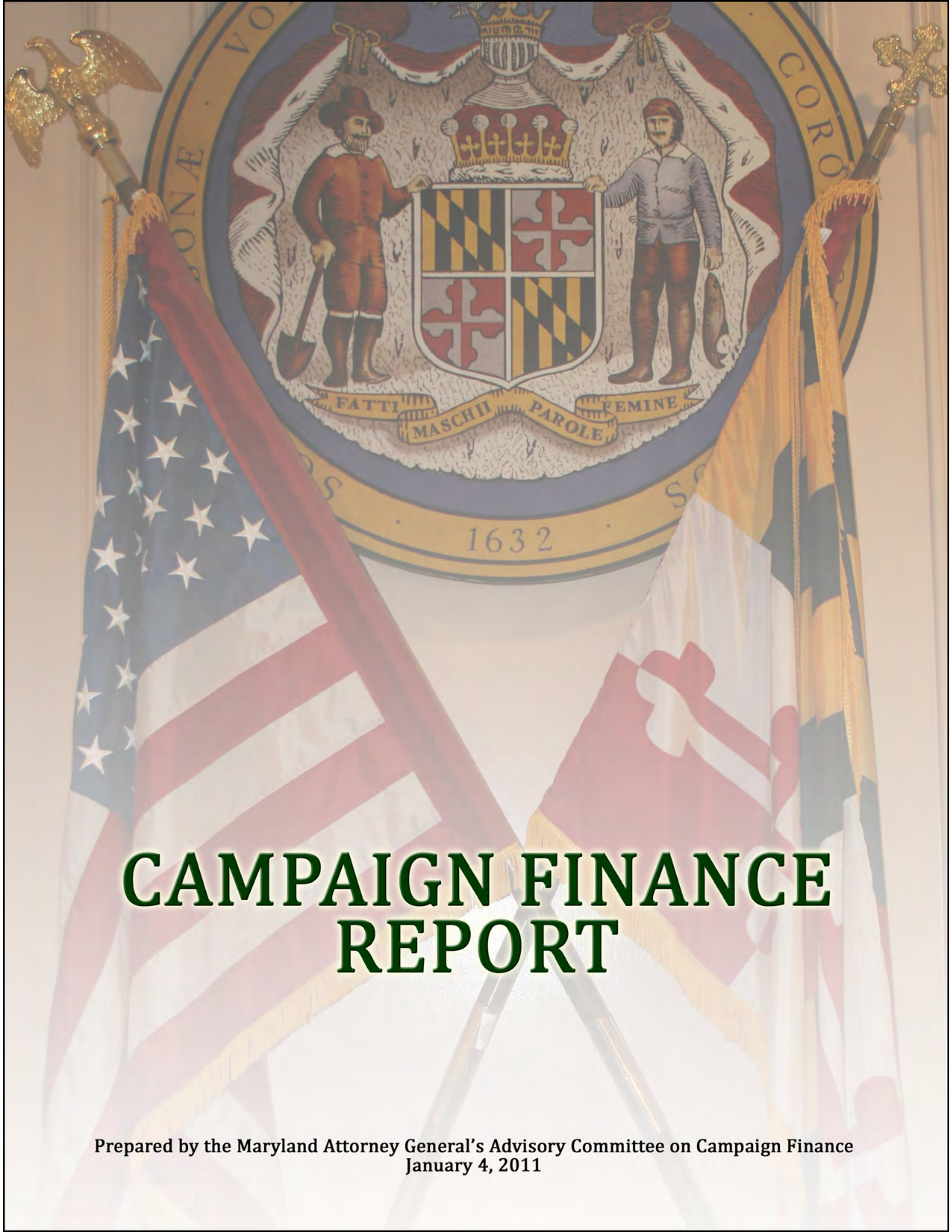

CAMPAIGN FINANCE REPORT

Prepared by the Maryland Attorney General's Advisory Committee on Campaign Finance
January 4, 2011

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INTRODUCTION

Over the last 20 years, the environment in which political campaigns are conducted has changed in significant ways. Campaigns are being waged earlier and earlier in the election cycle,[1] driving candidates to raise more and more funds to sustain their lengthened campaigns.[2] Developments in media and financial technology have made it possible for candidates to raise money in ways not contemplated a generation ago, and to spend that money on media platforms never before imagined and on a scale never before thought necessary. At the same time, these developments have also created new possibilities for providing more timely information to the public, including through the reporting and tracking of campaign contributions and expenditures.

Alongside these changes in campaigning and technology, concurrent developments in the law have altered previous ideas on how campaign finance can or should be regulated. New legal entities have sprung up that enable new forms and combinations of campaign contributions; new rulings have been handed down by the Supreme Court and lower courts that have considerably refined campaign finance jurisprudence; and new legal standards have been developed for federal campaign finance that may have implications for state elections.

In this period of dynamic change, Maryland's campaign finance laws have remained largely untouched. The most recent systematic revision of the campaign finance laws occurred in 1991. And while the Office of the Attorney General ("OAG") and the State Board of Elections ("State Board" or "SBE") have worked to interpret these laws in ways that keep pace with legal and practical developments, these efforts are necessarily *ad hoc* and cannot include fundamental or structural changes to the laws themselves. Accordingly,

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[1] *See generally* THE PERMANENT CAMPAIGN AND ITS FUTURE (Norman Ornstein & Thomas Mann, eds., 2000).

[2] *See Hum. Life of Washington Inc. v. Brumsickle*, 624 F.3d 990, 1007 (9th Cir. 2010) (observing that "spending on political campaigns reached $5.3 billion in 2008, a 27% increase over 2004 spending") (citing Jeanne Cummings, *2008 Campaigns Costliest in U.S. History*, Politico, Nov. 5, 2008).

a comprehensive review of Maryland's campaign finance laws is needed on multiple fronts. Such a review should assist lawmakers considering revision of laws that are out of date or are otherwise ill-suited to today's campaign finance environment. It would suggest ways for the State Board to better monitor campaign fundraising and spending. It would also spotlight areas where the Office of the Attorney General might revisit certain issues and improve access to its advice on recurring questions relating to campaign finance.

Recognizing the need for a thorough study of the campaign finance system, Maryland Attorney General Douglas F. Gansler assembled an Advisory Committee on Campaign Finance in the Fall of 2010 to examine the State's existing laws and to develop a set of non-partisan recommendations to address the most pressing issues. To ensure that the Committee's work would be responsive to the full range of campaign finance challenges, and that its eventual recommendations would reflect a broad consensus, he invited a diverse group of people to the Committee: two State Senators (one Republican and one Democratic); two State Delegates (one Republican and one Democratic); four prominent attorneys experienced in both state and federal campaign finance law and drawn from both Republican and Democratic campaigns; two officials from the State Board of Elections, the deputy state administrator and the director of the Campaign Finance Division; and from the Attorney General's Office, the two deputy attorneys general. To ensure that the Committee's recommendations would reflect collective wisdom rather than the Attorney General's own views, the Attorney General did not participate in any way beyond welcoming the Committee members to the first meeting and receiving the final report.

As an informal body, the Advisory Committee's mandate was not to overhaul the State's campaign finance system, but rather to review the existing statutes, regulations, and legal advice in the spirit of good governance to see where changes in the campaign finance landscape called for revision or modernization of current law. As a Committee organized and staffed by the Office of the Attorney General, its work was primarily legal in focus, considering ways to improve or strengthen the existing system, not to propose reforms that would fundamentally change that structure or that relate to what are more purely

questions of policy. The Committee's findings and recommendations emerge from and respond to the existing legal regime, which is explained at greater length below.

LEGAL OVERVIEW

Campaign finance laws play a vital role in guaranteeing open and fair elections, safeguarding the integrity of the electoral process, and maintaining public confidence in the political system.[3] At the same time, regulation of political speech through campaign finance laws directly implicates fundamental First Amendment rights. As a result, legislation relating to the financing of political campaigns typically involves a careful balancing of important rights and interests, each vital to the democratic process.

Pooling resources for the purpose of supporting or opposing candidates through contributions or political ads is a form of activity protected by the First Amendment guarantees of free speech and free association. Because limits on spending operate directly to reduce the overall quantity of political speech, the Supreme Court in *Buckley v. Valeo* held that restrictions on political spending are subject to strict scrutiny.[4] As a general rule, such restrictions are invalid; neither Maryland nor the federal government caps campaign *spending* by any group. In contrast, restrictions on contributions still leave individuals and groups free to engage in political advocacy in other ways, including through volunteering or funding one's own speech.[5] Thus, regulation of political contributions is reviewed under a slightly less demanding standard—"exacting scrutiny"—which means that contribution

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[3] The Constitution of Maryland directs the General Assembly to "pass Laws necessary for the preservation of the purity of Elections." Md. Const., Article I, § 7. Maryland's first campaign finance law, the Corrupt Practices Act, was enacted more than a century ago. Chapter 22, § 172, Laws of Maryland 1908.

[4] 424 U.S. 1, 75 (1976).

[5] The Court in *Buckley* distinguished spending by non-connected third parties (so-called "independent expenditures") from speech by a candidate, noting that it has less value to candidates and may in fact be counter-productive. On that basis, the Court rejected arguments that spending by a non-connected individual or group could be equated to a contribution. In essence, the Court found that independent speech—speech not coordinated or approved by any candidate—was non-corrupting and therefore could occur without limit.

limits must be closely drawn to directly advance an important government interest. Both Maryland and the federal government regulate extensively in this area.

Apart from direct restraints on spending, campaign finance regulations generally may be justified insofar as they are closely drawn to promote one of three important government interests recognized by the Supreme Court: (1) preventing *quid pro quo* corruption of elected officials, or the appearance of corruption, that may result from large contributions[6]; (2) preventing efforts to circumvent contribution limits[7]; and (3) providing relevant information to the electorate, i.e., informing voters about who is funding the political speech they are being asked to consider.[8] Various provisions of the Election Law Article reflect the General Assembly's commitment to promoting these important interests.[9] For example, to prevent *quid pro quo* corruption or its appearance, the Legislature has enacted laws limiting the amount of contributions or transfers that may be given to a single campaign. To prevent evasion of these limits, Maryland has established attribution rules for corporations (treating corporations with common ownership as a single contributor) and limited transfers between affiliated political committees. The aggregate limit on total contributions is another example of an anti-circumvention measure. Laws on disclosure of funding sources promote enforcement of contributions limits and the public's informational interest.

In its review of Maryland's campaign finance system, the Committee sought to identify areas where revision or supplementation of the existing laws would better promote the fundamental state interests recognized in *Buckley*. No campaign finance system can be effective unless those involved in political campaigns understand clearly

[6] *Buckley*, 424 U.S. at 67.

[7] *Id.* at 67-68.

[8] *Id.* at 67. The various opinions in *Buckley* did not foreclose the possibility that other government interests might be identified to justify campaign finance regulations, but given decades of additional Supreme Court precedent, the three government interests identified in *Buckley* must be considered, for all practical purposes, exclusive.

[9] See 85 Op. Att'y Gen. 26, 28 (2000) (giving a brief history of legislation to regulate campaign finance in Maryland).

what activities are regulated and in what ways. The Report therefore begins with a set of issues where developments in the law, technology, or campaign practices have created potential confusion or uncertainty about how existing laws apply in particular situations. This section of the Report includes recommendations for adapting current laws to deal with newer forms of media, like social networking or mobile phone applications, or to enable campaigns to make greater use of electronic transaction methods. The next section of the Report contains recommendations for enhancing Maryland's disclosure laws, particularly with respect to "independent expenditures" that are not coordinated with a candidate. The Supreme Court's recent decision in *Citizens United*[10] has heightened concerns that such expenditures will become an increasingly important part of future campaigns. Issues related to the State's limits on contributions are discussed in the third section of the Report. Provisions that allow certain persons or groups to exceed the contribution limits or that do not require adequate financial disclosure weaken the entire system. This part of the Report includes recommendations on LLCs and similar entities, the proper role of slates, personal loans to candidates, and the status of nonfederal out-of-state political committees. Finally, the Report details various ways for improving greater compliance, primarily through improving access to interpretive guidance from the Attorney General's Office and the State Board of Elections.

In short, the Committee reviewed the State's campaign finance laws with four goals in mind: (1) improving clarity in the statutes; (2) enhancing disclosure; (3) strengthening existing restrictions; and (4) facilitating greater compliance.

COMMITTEE PROCESS

The Committee first met on September 17, 2010. In this initial meeting, Committee members sought to identify areas where changes in law, technology, or methods of waging campaigns suggested a need to revisit the applicable provisions and governing interpretations of Maryland campaign finance law. This wide-ranging discussion yielded general agreement on issues the Committee should consider; in fact, Committee members,

[10] *Citizens United v. Federal Election Com'n*, __ U.S. __, 130 S.Ct. 876 (2010).

drawing on their collective knowledge of and experience with Maryland's campaign finance system, came to a remarkably quick consensus on the issues the Committee should take up.

The Committee formed two working groups—one to focus on issues that would require legislative changes, the other to focus on issues that could be addressed either by regulation or legal guidance from the Attorney General's Office. The Committee staff researched and prepared issue briefs, which provided relevant background and outlined a non-exhaustive set of options for the working groups to consider in formulating recommendations to propose for the full Committee's adoption. As the work of the Committee progressed, staff continually revised and supplemented the issue briefs, incorporating ideas and suggestions advanced in both the working group meetings and the full Committee meetings. After receiving comments during November and early December from members of the public, and advice from campaign finance experts and other interested persons invited to address the Committee, a draft final report was prepared by staff and adopted by the full Committee.

Early in the process, the Committee decided that the Report's Recommendations should represent a consensus of the members, or at least broad agreement. The Report acknowledges areas where differences among Committee members remain, and seeks to articulate those different points of view.

RECOMMENDATIONS

Below is a discussion of the 16 campaign finance issues the Commission reviewed—and the recommendations that emerged. A complete listing of all the recommendations also appears in Appendix A. In some cases, the recommendations call for legislative or regulatory change.[11] *In other cases, the recommendations call for a reexamination of advice given by the Office of the Attorney General regarding its interpretation of campaign finance law or improvements in the way that advice is made available to the public. What these*

[11] Given their institutional role, the two officials from the State Board of Elections refrained from taking a formal position on any of the recommendations adopted below. The officials were, however, active participants in the research and discussions that led to the recommendations and their input was instrumental to the Committee's deliberations.

recommendations make clear is that campaign finance issues are multi-faceted and that real, lasting reform requires that the institutional players in Maryland's campaign finance system—the General Assembly, the State Board of Elections, and the Office of the Attorney General—all do their part.

Improving Clarity in the Statutes

I. Scope of Campaign Finance Laws

A primary purpose of the First Amendment is to safeguard free and uninhibited discourse on public and political issues.[12] Therefore, when laws have the potential to affect First Amendment rights, the reach of those laws must be as clear as possible to avoid unnecessarily inhibiting public discourse. As the Supreme Court has stated, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."[13] Campaign finance laws implicate the First Amendment insofar as they regulate money associated with political speech.[14] Accordingly, the scope and clarity of campaign finance laws are matters of fundamental importance.

The question of how Maryland's campaign finance laws could be made more clear and understandable was examined from various angles. The Committee's study ranged from a close consideration of the language of the statutes themselves to a look at the public's ability to access relevant information on how the statutes have been interpreted.

Several Committee members observed that it is sometimes difficult to locate Attorney General advice or administrative guidance on how the campaign finance laws

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[12] *Buckley*, 424 U.S. at 14-15.

[13] *Id.* at 41, n.48 (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)).

[14] *See Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 400 (2000) (Breyer, J., concurring) ("[A] decision to contribute money to a campaign is a matter of First Amendment concern—not because money is speech (it is not); but because it enables speech. Through contributions the contributor associates himself with the candidate's cause, helps the candidate communicate a political message with which the contributor agrees, and helps the candidate win by attracting the votes of similarly minded voters."),

apply to particular conduct. Because even the most carefully crafted laws cannot address every campaign finance scenario that arises, Attorney General advice and other guidance is often useful. Thus, one result of the Committee's discussions was a recommendation for making campaign finance advice, particularly from the Attorney General, more readily available online.[15] Another idea that emerged from Committee discussions was the desirability of including more specifics in the statutes themselves or, where appropriate, in State Board regulations.

An illustration of where revision of statutory language would be beneficial is presented by the definition of "political committee" that appears in the Election Law Article. Maryland's campaign accounting, reporting, and disclosure requirements are, in large measure, directed to those groups that are required to register with SBE as political committees. The Election Law Article defines "political committee" as "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."[16] By its literal terms, this definition would seem to encompass, for example, a trade association that decides to promote a specific candidate to its own members, or that spends money on an ad campaign asking voters to reject any candidate who will raise taxes. Yet in neither case would the State require the trade association to register as a political committee.[17]

Under 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

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[15] *See* Section XIII, *infra*.

[16] Md. Code Ann., Elec. Law §1-101(gg).

[17] *See, e.g.*, Letter from Assistant Attorney General Judith Armold to Ross Goldstein, Director of Candidacy and Campaign Finance, State Board of Elections (July 5, 2001) (advising that a trade association would not have to file a political committee with the State Board to engage in isolated political expression).

candidate.[18] Thus, courts have upheld organizational and reporting requirements, contribution limits, and other regulations for groups that either make direct contributions to candidates or that engage in "express advocacy" for or against specific candidates.[19] On the other hand, an organization that exists primarily to promote the interests of its members and that only sporadically engages in political advocacy would not be considered a political committee.[20]

Of course, questions about the application of any law to a particular set of facts are inevitable; mathematical precision is unattainable. Nonetheless, based on briefings from Attorney General staff, public comments, and the experience and expertise of several Committee members knowledgeable in the area of campaign finance, the Committee agreed that additional language clarifying certain fundamental concepts would improve and strengthen the campaign finance laws. Committee discussion focused in particular on the desirability of adding new definitions to §1-101 of the Election Law Article or of expanding existing definitions. The Committee agreed that, to the extent possible, narrowing constructions recognized by the Office of the Attorney General and the State Board should be included either in the statute or, where appropriate, in interpretive regulations adopted by the State Board. Several Committee members also voiced support for including threshold dollar amounts in some provisions to exclude from regulation casual or *de minimis* activity.

The Committee's recommendations further several important objectives. First, the Committee believes that more precise definitions would increase compliance with the statutes and aid in enforcement. Second, these changes would lead to a more uniform understanding of the law by the political organizations that are subject to them, creating a more level playing field. Third, greater clarity would reduce any potential chilling effect on

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[18] *NCRL v. Leake*, 525 F.3d 274, 289 (4th Cir. 2008); but see *Human Life of Washington, Inc. v. Brumsickle*, 624 F.3d 990, 1009 (9th Cir. 2010) (holding that "major purpose" test not required for regulations imposing only disclosure obligations).

[19] *See* 11 C.F.R. § 100.22 (defining "expressly advocating").

[20] Letter from Assistant Attorney General Judith Armold to Ross Goldstein, Director of Candidacy and Campaign Finance, State Board of Elections (July 5, 2001).

protected speech by individuals or groups who may be in doubt as to whether or not certain campaign activities are regulated.

It was the consensus view of the Committee that, rather than submit for consideration by the General Assembly a partial set of proposals to amend various definitions, a more comprehensive review of this specific area should be undertaken. Specific proposals should be developed after a further period of study by the Office of the Attorney General, with the support of members of the Committee and others with relevant expertise. In making this recommendation, the Committee was mindful that decisions about the content and scope of key terms inevitably involve complex policy choices. The Attorney General's Office, for example, can advise the General Assembly on where the constitutional boundaries of permissible regulation may lie, but how near to those limits the State ought to regulate is a matter of policy that requires legislative judgment. Therefore, it is suggested that the comprehensive review proposed by the Committee be carried out in close coordination with relevant members of the State legislature.

RECOMMENDATION:

1. **The Office of the Attorney General should undertake a comprehensive review of Title 13 of the Election Law Article, with input from knowledgeable sources, to recommend specific legislative changes that would clarify what conduct is regulated by the State's campaign finance laws.**

II. Application to New Media

"New media" platforms—electronic (usually Internet-based) means of delivering written, audio, and video content—are greatly facilitating the ability of candidates and political groups to quickly disseminate their messages to voters. These include social media platforms such as blogs, Facebook, Twitter, and Buzz, and video upload sites such as YouTube. In the coming years, other social media platforms are likely to emerge as popular vehicles for campaigning, and Internet-ready cell phones are likely to become popular

targets for political advertising as well. As these platforms increase in popularity, so does the possibility for voter confusion or candidate misuse.

One campaign finance challenge unique to new media is verification of campaign communications. Generally, in order for candidates to advertise via print, radio, or television, they must purchase ad space or ad time through their campaign accounts, and a check from that account readily verifies their identities. But anyone could create an email account, Facebook page, or Twitter account free of charge, and pose as a candidate, thus confusing voters.[21] Although a website hosting a blog may charge a fee, voters have no way of knowing if a blog was paid for by a candidate or by someone else. Some Internet companies are experimenting with methods of combatting this problem.[22] In addition, the State Board has taken steps to reduce its impact in Maryland by issuing sensible regulations that enable authority lines for social media accounts and new media advertisements; indeed, its regulations have made Maryland the first state in the nation to take such a proactive step prior to a state election. As technology continues to evolve, however, more regulations may be needed.

Another challenge presented by new media is identifying communications associated with campaigns. Many citizens and groups unaffiliated with any candidate or campaign regularly tweet, post, or otherwise publicize their views about candidates or political issues. Yet some messages disseminated through these media may be paid for by candidates or by groups actively working for or against a particular candidate, and some "speakers" may not be the citizens or groups they appear to be. In the most recent election cycle, for example, several political groups used Twitter to create the impression of popular

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[21] *See, e.g.*, *Tyra-Lukens and the Face Facebook Page*, EDEN PRAIRIE NEWS, Nov. 4, 2010, *available at* http://www.edenprairienews.com/community/sd42webmaster/tyra-lukens-and-fake-facebook-page.

[22] *See, e.g.*, http://support.twitter.com/groups/31-twitter-basics/topics/111-features/articles/119135-about-verified-accounts (discussing Twitter's "Verified Accounts" service).

support or disdain for particular candidates, a phenomenon known as "digital astroturf."[23] Currently voters have no way of knowing whether a tweet, post, etc., by a citizen or group is unsolicited or done at the behest of a political entity, or whether it is even a genuine tweet or post by that citizen or group. Maryland's definition of "campaign material"—and of associated concepts relating to "publication" or "distribution" of such material—was not drafted with these types of communications in mind. It is not surprising, therefore, that the State Board's authority to require adequate disclaimers or reporting of new media expenditures is limited.

A third campaign finance challenge created by new media involves the mixed use of new media platforms by candidates. Many candidates for elected office already have Facebook, Twitter, and other Internet-based accounts, either for personal use or for use in connection with their official duties. When these accounts are used to send messages or deliver content that could be viewed as "campaign material," it is often unclear whether candidates need to identify that material as such—and thus attach an authority line to them—and whether the accounts themselves need to be reported under campaign finance disclosure rules.[24]

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[23] *See, e.g.*, Jared Keller, *When Campaigns Manipulate Social Media*, THE ATLANTIC, Nov. 10, 2010, *available at* http://www.theatlantic.com/politics/archive/2010/11/when-campaigns-manipulate-social-media/66351/.

[24] New media issues were recently explored by the Subcommittee on Internet Political Activity at California's Fair Political Practices Committee. In a report it released in August, 2010, the Subcommittee recommended that any new campaign finance proposals considered for new media embody at least the following three principles:

> (1) Full and truthful disclosure of campaign activity, including Internet activity, by candidates and political committees, is required to ensure the integrity of democratic institutions and the electoral process.
>
> (2) If regulations require disclosure with respect to paid political communications that are printed or broadcast, then similar paid communications that are disseminated over the Internet should be accompanied by similar disclosures.
>
> (3) [A]void regulating volunteer, grassroots political activity and ensure to the extent possible that the Internet remains a flourishing source of robust and vibrant political discourse among citizens.

Much of the Committee's discussion about new media focused on the fact that what constitutes "campaign material" has expanded rapidly in the last several years, as traditional materials like pamphlets, letters, and print, TV, and radio advertisements have been supplemented by materials like Facebook posts, tweets, YouTube videos, and text messages. And though Maryland law does define "campaign material" to include, in part, material "transmitted by or appearing on the Internet or other electronic medium,"[25] the statute does not readily fit newer patterns of campaign messaging over new media platforms. To reduce uncertainty in this area and enable the State Board to provide better guidance, the General Assembly should revise the campaign finance statute to provide greater specificity as to what conduct by candidates or their campaigns amounts to "publication" or "distribution" of campaign material.[26]

The Committee also observed that the current law relating to retention of sample copies of campaign material[27] was written before such material included items that exist only on the Internet, like tweets, or that exist only on phones, like text messages. In consequence, it is not always clear from the statute how such Internet-based and mobile phone-based campaign material should be retained for the statutory minimum of one year. This is especially problematic for items like posts on Web sites that refresh on a regular basis and do not maintain an archive that goes back as far as a year.

One member of the Committee also expressed concern that the existing penalties for violations relating to distribution of campaign material does not cover misuse of new media to circumvent disclaimer or disclosure requirements. Penalties for improper publication or distribution of campaign material are currently limited to violations of the

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FAIR POLITICAL PRACTICES COMM'N, SUBCOMM. ON INTERNET POLITICAL ACTIVITY, REPORT FROM SUBCOMM. ON INTERNET POLITICAL ACTIVITY 1 (2010). To the extent that these principles are applicable and appropriate in Maryland's context, they have been considered here.

[25] Md. Code Ann., Elec. Law § 1-101(k)(2)(i).

[26] *See id.* § 1-101(k)(1)(iii).

[27] *Id.* § 13-403.

authority line requirements.[28] There are no clear sanctions, however, for improper use of social network accounts to publish materials aimed at promoting one's own candidacy. Likewise, there are no penalties for improper use of social network accounts to publish materials aimed at defeating an opponent's candidacy.

To address these various challenges, the Committee agreed to recommend measures that would give SBE greater flexibility to keep pace with changes in technology affecting campaigns. SBE should be given broader authority to address those aspects of new media that impair voters' ability to verify that a message purporting to be from a particular campaign is genuine, or that conceal from voters the fact that a particular communication was generated by a candidate or political committee. Broader regulatory authority in this area would also enable SBE to help candidates use new media with greater assurance that their activities are in compliance with the law. Finally, the Committee urges SBE to continue playing a proactive role in determining how best to require disclosure for Internet-related campaign expenditures, including ways to ensure that such expenditures are reported with sufficient detail to reveal specific online transactions that should be disclosed to voters, like payments to bloggers or Twitter users.

RECOMMENDATIONS:

2. **The General Assembly should enact legislation directing the State Board to adopt additional regulations in this area and to make recommendations to clarify how the State's campaign finance laws apply to new media.**

3. **Additional disclosure requirements for candidates using new media may be appropriate, including reporting of sub-vendor information, to prevent covert campaigning by candidates and their committees through anonymous sources.**

[28] *Id.* § 13-602(9); *see id.* § 13-401 (describing authority line requirements).

4. A new chapter of the State Board's Campaign Finance Summary Guide[29] should be drafted that specifically addresses issues related to new media.

III. Electronic Financing of Campaigns

Advances in the Internet and mobile technology have made electronic payment and transaction methods increasingly common among the general public. Examples include electronic funds transfers (EFTs) like debit card transfers,[30] Internet-based funds transfers like PayPal transfers,[31] and payments via cell phone.[32] The existence of these newer transaction methods also creates new possibilities for those who contribute money to political campaigns or for campaign treasurers who would like to make campaign expenditures by means other than a physical check. These changes in technology have also facilitated the use of third-party bundling of donations, a process in which citizens donate, usually via the Internet, to an organization that collects their donations and then transfers them en masse to a particular campaign or set of campaigns.

Many of these electronic transaction methods are faster or more convenient than writing checks or using a credit card. However, not all of them guarantee optimal disclosure or security. For example, the Federal Election Commission (FEC) recently determined that contributions via text message are not currently permissible for federal elections because, among other reasons, wireless telephone service providers are not able to verify whether a cell phone account holder is an American citizen, nor are providers able

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[29] MARYLAND STATE BOARD OF ELECTIONS, SUMMARY GUIDE: MARYLAND CANDIDACY & CAMPAIGN FINANCE LAWS (August 2010) [hereinafter Summary Guide].

[30] Debit card transfers allow a person to transfer money directly from a checking account to a campaign account through a secure electronic connection.

[31] PayPal allows a person to use a checking account or credit card to contribute to a campaign account over the Internet from a personal computer. *See* https://www.paypal.com/.

[32] Mobile phone payments, including charitable contributions, can either be made via text messages sent to common short codes (CSCs) or via mobile payment platforms like PayMate. *See* http://www.paymate.co.in/web/index.aspx.

to effectively monitor the timing of such contributions.[33] When assessing new methods of contributing to political campaigns, these potential shortcomings need to be considered.

Currently, any individual in Maryland wishing to contribute more than $100 to a Maryland campaign may do so only by check or credit card,[34] unless the contribution is made through a payroll deduction.[35] For individuals wishing to contribute less than $100, Maryland does not specify the method or form a contribution must take when it is received by the treasurer. The consistent principle governing all contributions, regardless of the amount or method (and except for statutorily permitted exceptions) is that individuals must make their donations payable directly to a campaign finance entity, not to a third party who then transfers the donation to the campaign.

In contrast, political advocacy groups (527s and 501(c) organizations, for example) can raise money online and through other electronic means without the kinds of restrictions faced by Maryland candidates.[36] This disparity may put these candidates and their candidate committees at a disadvantage in raising funds, and may also result in a relatively greater flow of political donations to less transparent and less accountable groups seeking to influence Maryland elections.

Rules controlling disbursements from campaign accounts are similarly restrictive. In general, all disbursements from a campaign account must be made by check. There are, however, situations in which authorized persons may pay for certain expenses from a separate account, although the statute requires that reimbursements for such payments

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[33] FED. ELECTION COMM'N., Advisory Op. 2010-23 (CTIA) (Nov. 19, 2010).

[34] Md. Code Ann., Elec. Law § 13-226(b)(2) ("a person may not, either directly or indirectly, in an election cycle make . . . a contribution of money in excess of $100 except by check or credit card.").

[35] *Id.* § 13-241.

[36] A § 527 group is a political organization that qualifies for certain tax treatment under federal law. See 26 U.S.C. § 527(e). Section 501(c) organizations include charitable, religious, or educational foundations; civic or social welfare organizations; labor organizations; and business leagues or chambers of commerce. 26 U.S.C. § 501(c)(3)-(6). The types of advocacy or political activity allowed to each type of § 501(c) organization vary. In general, however, a group's federal tax status is irrelevant to its treatment under Maryland's campaign finance laws.

must again be made by check drawn on the campaign account.[37] Campaign treasurers reported to at least two members of the Committee that the current restrictions on payment methods make certain transactions unnecessarily difficult or cumbersome. One example might relate to Internet transactions, where in many cases vendors do not accept checks, meaning that the expense cannot be paid for directly out of the campaign account. Another example might involve certain widely used online banking arrangements, where monthly bills can be debited electronically from a checking account.

The Committee agreed that more flexibility is needed with respect to both electronic methods of contributing to campaigns and campaign treasurers' ability to manage their accounts and make payments without exclusive reliance on physical checks. In particular, Marylanders should be able to contribute to political campaigns in the ways they already contribute to charitable causes and other initiatives, using a broader range of electronic payment methods. However, any new contribution methods that are authorized must contain the three core features that make traditional contribution via check or credit card reliable, namely: (i) *authenticity*—the ability to verify or authenticate the identity of the person making the contribution; (ii) *security*—the ability to guarantee that the transaction is not fraudulent or made in error; and (iii) *recordability*—the ability to track and maintain a record (like a receipt) of the transaction.

Authorization of electronic payments should be guided by the same basic principles. The current "check" requirement provides a clear audit trail for any disbursements from the campaign account. It also guarantees that the treasurer retains exclusive control over all funds deposited to the campaign account. The Committee discussed several possible payment methods and whether they should be recommended, including credit cards or charge cards without revolving credit. Some members objected to the use of credit cards because of potential problems with campaign debt. However, the Committee did agree that

[37] First, an authorized person can pay an expense from another account if the transaction is supported by a receipt and the authorized person is reimbursed by check from the campaign account. Md. Code Ann., Elec. Law§ 13-220(b). Second, campaign finance entities are authorized to maintain a petty cash fund of $250 or less for disbursements that, to any one person, total less than $25. *Id*. § 13-220(c).

debit cards or wire transfers should be considered, as well as any other electronic payment methods that the General Assembly finds satisfactory according to the standards proposed.

New methods for making contributions or expenditures should also first be scrutinized by SBE to ensure that the method sufficiently protects against fraud and offers the same degree of accountability for treasurers. Given that electronic methods for making contributions and expenditures change rapidly, and that new methods are likely to be introduced in the coming years, the Committee further agreed that the best way to facilitate campaign-related electronic transactions would be to grant SBE more authority to regulate along the lines described.

RECOMMENDATIONS:

5. **The General Assembly should amend §§13-226(b)(2) and 13-220 to enable contributions and expenditures, respectively, by electronic means that guarantee: (a) the authenticity of the contributor's identity; (b) security of the transaction; and (c) adequate record-keeping. Authorization of specific means for making electronic transactions might be limited to those in accord with federal standards and as specifically approved by the State Board.**

IV. Investing Campaign Funds

Maryland's campaign finance statute states that campaign contributions are to be delivered to the treasurer of the political committee to which the contribution is made; the funds are then to be deposited in a financial institution in a "campaign account" designated by the political committee.[38] The campaign account must be separate and distinct from all other personal accounts of the candidate or the responsible officers. The funds in the campaign account are the property of the political committee and not any individual. As a general rule, any disbursements on behalf of the political committee are to be made by

[38] *Id.* §§13-218(a), 13-220.

check from the campaign account.[39] The essence of these requirements has remained relatively unchanged since the campaign finance statute was first enacted in 1908, although the language has changed somewhat over the years.[40] The statute is silent on whether campaign funds may be invested in the interim between their receipt and their expenditure for campaign purposes.

In applying the statute, the State Board has limited deposits of campaign funds to checking accounts or to other accounts in a financial institution if the accounts are Federal Deposit Insurance Corporation (FDIC)-insured and where the funds are always available without penalty.[41] Additionally, SBE has prohibited the placement of campaign funds in other investment vehicles, such as certificates of deposit, mutual funds and stocks. In 2010, SBE codified the policy in regulations.[42] The SBE policy and regulations can be traced to an informal analysis of the relevant statutes in the Attorney General's Office approximately 30 years ago.

A 1981 internal memo of the Attorney General's Office discussed appropriate "campaign depositories" (as campaign accounts were then called in the State law), in light of the then recent development of NOW accounts and money market accounts. The 1981 memo reasoned that, because campaign contributions were intended by the donors for a particular purpose—funding political campaigns—a treasurer should not put them "at risk" but rather should maintain them in a bank account, insured under federal or State law, from which the funds could be withdrawn by check at any time without penalty. A few months later, that analysis was modified to approve the temporary deposit of campaign

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[39] *Id.* §§13-218(b), 13-220(b)-(c).

[40] The original campaign finance law, often called the Corrupt Practices Act, required that a political committee appoint a treasurer, who was responsible for receiving, holding, and disbursing campaign funds. Chapter 122, Laws of Maryland 1908. The requirement for designation of campaign accounts, originally termed "depositories," was added in 1968. Chapter 613, Laws of Maryland 1968.

[41] Summary Guide § 14.2.

[42] COMAR 33.13.06 (Campaign Accounts).

funds in a money market account if the funds were returned to the campaign bank account prior to making an expenditure for campaign purposes.

In light of this background, the Committee considered whether SBE's policy and regulations on investment of campaign funds should be eased. The General Assembly last session failed to pass legislation that would have amended the campaign finance statute to explicitly permit investment of campaign funds in U.S. Treasury bills and certificates of deposit with terms up to one year.

A review of federal campaign finance regulation reveals a more flexible approach than that followed in Maryland. Federal law requires that campaign funds be deposited in a "depository" account and that all disbursements of campaign funds be made from that account. However, the regulations and advisory opinions of the Federal Election Committee (FEC) permit transfers of campaign funds from depository accounts for temporary investment in various types of investment vehicles (*e.g.*, government securities, money market funds, cash management accounts, certificates of deposit). It is also notable that a 2002 FEC survey of state campaign finance laws revealed that a number of states permit the temporary investment of campaign funds, although some states prohibit campaigns from investing in more speculative vehicles, like publicly-traded stocks.

As noted above, Maryland's election statute is silent on whether campaign funds may be invested after being deposited in a campaign account. When the 1981 memo was written, campaign finance rules were keyed to particular elections and it is likely that few campaign finance entities held significant amounts of funds for any extensive period of time or exceeded the then $100,000 FDIC insurance cap. Since that time, the campaign finance law has been refocused on four-year cycles; continuing political committees that span several cycles are common. Such committees may have funds exceeding the current FDIC insurance cap ($250,000) for significant periods of time.

The underlying policy that the 1981 memo attributed to the campaign finance law – the prudent management of campaign funds to allow their use in accordance with the expectations of the donors – can certainly be served by their investment in vehicles other than bank accounts during such periods of time. Indeed, restriction of funds to bank

accounts may be antithetical to that policy if the amount of funds exceeds the insurance cap. There are many other contexts in which the law requires prudent management of donated funds to carry out the purpose of the donors, but does not restrict investment of the funds to bank accounts. Guidance may be drawn from those contexts.

For these reasons, the Committee favors amending the current SBE regulations to permit the prudent investment of campaign funds in accordance with guidelines established by the State Board. Some Committee members also suggested that the State Board might include the duration or maturity of a particular investment vehicle as part of its guidelines. The election law clearly requires that all campaign contributions be deposited in a campaign account and that all expenditures be disbursed from that account. Accordingly, even if SBE regulations were modified to allow temporary investment of campaign funds, any invested funds would have to be returned to the campaign account before being spent for campaign purposes.

RECOMMENDATION:

6. **The State Board should amend its regulations to permit temporary investment of campaign funds in prudent investment vehicles and specify types of permissible investments.**

V. Exploratory Committees

Before declaring for office, a prospective candidate often seeks to determine his or her chances for winning election. Spending money on such exploratory or "testing the waters" activities is not regulated under Maryland law provided the individual is a "non-candidate."[43] "[M]onies raised exclusively for exploratory activities, and before the individual becomes a candidate, do not count against the person's contribution limits."[44] Nor must the money raised be reported to SBE. Permitted exploratory activities, however,

[43] Summary Guide § 4.2.1.

[44] Summary Guide § 4.2.1.

are limited and include "raising and spending funds for conducting surveys, polls, mailings, or other activities in an effort to determine if the individual is a viable candidate."[45] But "[o]nce the exploratory committee exceeds these limitations and engages in campaign finance activity, registration of an authorized candidate campaign committee is required . . . ."[46]

For campaign finance purposes, the State Board recognizes an individual to be a candidate once the individual has established and maintains a campaign finance entity, even if the individual has not yet decided which particular office the individual will seek.[47] Accordingly, if an individual already has a campaign finance entity, funds raised for any campaign use, including to decide which office to target, are ordinary contributions reportable to SBE and subject to the contribution limits. However, for non-candidates, the line between "exploratory activity" and "campaign finance activity" is sometimes blurry. For these individuals, the question is: "At what point do I need to establish a campaign finance entity?"

The Committee examined several aspects of the problem. The Election Law Article defines neither "exploratory activity," conduct that does not require registration, nor "campaign finance activity," conduct that *does* require a prospective candidate to establish a political committee. A principal focus of the Committee's study, therefore, was how to mark a clearer separation between these two types of activities. A second-order concern was how to better manage the transition from the exploratory phase to actual campaigning.

Under federal law, an individual becomes a "candidate" for federal office whenever the individual or those acting on behalf of that individual have received contributions totaling more than $5,000 or have made expenditures in that amount.[48] Before that, an

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[45] Summary Guide § 4.2.2.

[46] Summary Guide § 4.2.2.

[47] Md. Code Ann., Elec. Law § 1-101(l)(2) ("'Candidate' includes . . . (ii) an individual, prior to that individual filing a certificate of candidacy, if a campaign finance entity has been established on behalf of that individual.").

[48] 11 C.F.R. § 100.3.

individual may "test the waters" for a potential candidacy and is not required to disclose the financing for those activities, though records must be kept for all exploratory finances. Any money raised or spent for "testing the waters" activities is not, during the exploratory phase, deemed a contribution or expenditure that would trigger official candidate status, so long as the individual has not taken actions inconsistent with someone who remains undecided.[49] But when an individual does officially become a candidate, assuming that occurs, at that time all exploratory expenditures must be disclosed and all monies received for exploratory activity are counted as campaign contributions subject to federal limits.[50]

Some of the state models that were considered set specific dollar limits on exploratory activity. Arkansas, for example, requires exploratory committees to register once they pass a $500 threshold. Similarly, Arizona law provides that "[a]n individual who receives contributions or makes expenditures of more than five hundred dollars for the purpose of determining whether the individual will become a candidate for election" must register with the State's election authorities. By contrast, the District of Columbia directs "any individual or group of individuals organized for the purpose of examining or exploring the feasibility of becoming a candidate for an elective office" to register as an exploratory committee; contributions to the exploratory committee are subject to campaign finance contribution limits.

The Committee agreed that more clarity is needed as to what constitutes "exploratory activity." The Committee's recommendation would set a threshold level, above which exploratory activity by "non-candidates" would be subject to regulation by the State Board. Because SBE currently lacks adequate authority to regulate in this area, the Committee further agreed that legislation granting such authority should be enacted.

RECOMMENDATION:

[49] See 11 C.F.R. § 100.72(b) (describing actions that show an individual has decided to become a candidate).

[50] 11 C.F.R. § 100.72(a); 100.131(a); 11 C.F.R. § 101.3.

7. **The General Assembly should authorize the State Board to regulate "exploratory activity" above a certain threshold, and allow the State Board to adopt regulations for the conversion of exploratory committees to political committees as required.**

<u>Enhancing Disclosure</u>

VI. Independent Expenditures

There are two basic approaches to mandating financial reporting of campaign-related activity. The first involves laws regulating those persons or groups that the courts have identified as subject to regulation as "political committees." The second approach ties reporting or disclosure obligations to specific communications that identify a particular candidate for elective office, regardless of the group responsible for the communication. Maryland's disclosure scheme employs only the first approach. Thus, if a group is not required to register as a political committee, its disclosure obligations are minimal.[51] Federal campaign finance laws, and those of a majority of states, incorporate both approaches in their disclosure laws, providing voters with more information about what persons or interests are behind the political messages vying for their attention.

This represents a major shortcoming in Maryland's existing campaign finance disclosure system. Meaningful information is required only from those organizations or groups that file a political committee with the State Board of Elections. In general, this encompasses groups controlled by a party or campaign, groups organized specifically to fundraise and make contributions to state candidates, or groups that have, as their major

[51] The authority line requirement, for example, requires only that each item of "campaign material" identify the campaign finance entity responsible for it, or "as to campaign material published or distributed by any other person, the name and address of the person responsible for the campaign material." Md. Code Ann., Elec. Law § 13-401(a)(ii).

purpose, the election or defeat of specific Maryland candidates and that "expressly advocate"[52] for that result.

This leaves a potentially significant amount of campaign-related activity outside the ambit of Maryland's disclosure regulations. For example, a political organization that acts independently of any candidate, and whose major purpose is something other than the election or defeat of a Maryland candidate, would not be obliged to register as a Maryland political committee. Thus, no financial disclosure reports would be required relative to any independent, non-coordinated political ad sponsored by that organization.[53] A second type of campaign-related activity still outside the ambit of Maryland's disclosure regulations is political advertising that refers to a specific candidate but falls short of a direct appeal to vote for or against that candidate. In neither of these contexts does the Election Law Article require financial disclosures that would inform voters as to what individuals or interests are actually behind the ads.

Federal courts have held that contribution or source limits cannot be applied to groups that make only independent expenditures.[54] However, such groups may be required to disclose some relevant information about their organization and its affiliations, as well as information about those donating funds for the expenditures at issue. A large majority of states and the federal government mandate some level of reporting and disclosure by individuals or groups making independent expenditures. Some jurisdictions

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[52] *See* 11 C.F.R. § 100.22 (defining "expressly advocating" as (a) using phrases like "vote for the President," "re-elect your Congressman," "support the Democratic nominee," or "reject the incumbent," or using "communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s)," or (b) making any communication that, "[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate").

[53] Communications that are prearranged or coordinated with a candidate are in-kind contributions to that campaign. 61 Op. Att'y Gen. 363, 367 (1976). Therefore, the value of coordinated communications must be reported by the receiving committee and are subject to the $4,000 per candidate contribution limit.

[54] See, e.g., *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010).

also have various "reporting triggers" that require immediate supplemental reporting of large contributions or expenditures close to an election, including spending on ads defined as "electioneering communications" under federal law.[55]

The federal disclosure scheme offers a useful comparison. Other than entities regulated as "political committees," any individual who makes independent expenditures in excess of $250 in a calendar year must file an information statement with the Federal Election Commission disclosing, among other things, the identification of each person contributing more than $200 for the purpose of furthering the independent expenditure.[56] This provision will apply to groups that "expressly advocate" for the election or defeat of a candidate or ballot initiative. For groups airing ads defined as "electioneering communications," reporting obligations arise when disbursements for the costs of the ads exceed $10,000 in a calendar year.[57] Finally, independent expenditures above certain dollar thresholds, including by a political committee, that are made shortly before an election may trigger a duty to file additional spending reports before the regular reporting dates.[58]

The Committee agreed that the absence of a reporting requirement for independent expenditures represents a major weakness in the State's current disclosure laws. At the same time, several members of the Committee, and invited speakers, emphasized that a new reporting or disclosure provision for independent expenditures or for "electioneering communications," must apply equally to all organizations, regardless of type or structure. Members also supported adopting specific dollar thresholds for registration and reporting requirements, to exclude *de minimis* campaign finance activity.

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[55] *See* 2 U.S.C. § 434(f)(3) (defining "electioneering communication" as "any broadcast, cable, or satellite communication which . . . refers to a clearly identified candidate for Federal office" and is made within a certain specified period of time before an election); 11 C.F.R. § 100.29 (expanding upon this definition).

[56] See 2 U.S.C. § 434(c).

[57] 2 U.S.C. § 434(f).

[58] 2 U.S.C. §434(g).

RECOMMENDATION:

8. **The General Assembly should enact legislation to require the filing of a disclosure report with SBE by any individual or group that (1) is not registered as a "political committee" with the State Board and (2) makes an "independent expenditure" (i.e., a communication that expressly advocates the election or defeat of a clearly identified candidate for State office or that contains the functional equivalent of express advocacy) or makes an "electioneering communication" (i.e., a communication that refers to a clearly identified candidate for state office; is publicly distributed shortly before an election for the office that candidate is seeking; and is targeted to people the candidate seeks to represent).**

VII. Other Disclosure Improvements

The State Board of Elections tracks individuals' campaign contributions using an electronic database.[59] The data is used to ensure that individuals do not exceed contribution limits. Also, the database provides the public with information on who is giving and in what amounts. The Committee, after considering public comment, including the views of University of Maryland political science researchers, determined that the database could be modified to provide far richer information to the public.

Currently, State law requires political committees to collect and disclose the amount or value of a contribution; the date of its receipt by the campaign; the name and address of the person from whom the asset was received; and a description of the asset received.[60] By contrast, whenever an individual contributes more than $200, the federal system requires collection and disclosure of more identifying information, such as the contributor's employer and occupation, thereby providing the public with a more complete picture of the

[59] The database can be accessed at: www.mdelections.org/campaign-finance/contributor.

[60] Md. Code Ann., Elec. Law § 13-221(2).

flow of campaign money.[61] With this additional information, the public would be better able to determine, for example, which candidates received the most support from various occupational groups (lawyers, doctors, teachers, etc.), or how much of a candidate's campaign money was given by individuals from a particular industry. Such information is often among the most useful in determining how a particular candidate is likely to act once in office.[62] The Committee's recommendation therefore would enhance the public's ability to monitor the presence and nature of influence in Maryland elections.

RECOMMENDATION:

9. **The General Assembly should enact legislation authorizing the State Board to require that political committees collect and report to the State Board employer and occupation information from donors who donate more than a threshold amount.**

Strengthening Existing Restrictions

VIII. Contributions by LLCs & Other Non-Corporation Entities

Under Maryland's campaign finance laws, corporations with multiple subsidiaries and affiliates, or multiple corporations with the same stockholders, are treated as a single entity that can contribute up to $4,000 per candidate and $10,000 overall to all candidates during a four-year election cycle.[63] Limited liability companies (LLC), however, are treated differently, according to past Attorney General advice.[64] Each LLC, regardless of

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[61] 11 C.F.R. § 104.8(a).

[62] As the Supreme Court observed in *Buckley*, disclosure of the source of contributions "allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitates predictions of future performance in office." 424 U.S. at 67.

[63] Md. Code Ann., Elec. Law § 13-226(e).

[64] Letter of Assistant Attorney General Mary O. Lunden to Sen. John Pica (June 9, 1997).

ownership, is considered to be a separate contributor unless it was created as a sham solely to evade the contribution limits of the campaign finance law. Thus, with rare exceptions, each LLC can contribute a maximum of $4,000 per candidate and $10,000 overall during an election cycle.

The Committee agreed that it would be beneficial for SBE to adopt regulations clarifying that the creation or use of an LLC solely for the purpose of making campaign contributions constitutes an election law violation. Members believed that such a regulation would discourage some abuses. However, the Committee also recognized that a broader issue exists with respect to LLCs that serve a legitimate business purpose. It is a common business practice, for example, for one or only a few individuals to own and operate many LLCs. In light of this, a rule that treats all legitimate LLCs as separate contributors creates a loophole that undermines a core principle of campaign finance laws, that every person should be subject to the same contribution limits.[65]

As mentioned above, the problem is most acute where the same individual, or the same small group, owns or controls many LLCs. For instance, real estate developers often create separate LLCs for each building they own—a perfectly legitimate business practice. Even though the same person controls all the LLCs, however, the campaign finance laws, as interpreted by the Office of the Attorney General, treat each LLC as a separate contributor for purposes of contribution limits.[66] Thus, one person owning a cluster of ten LLCs could effectively donate up to $40,000 per candidate and $100,000 overall in a single election cycle. This possibility is not simply theoretical; a recent study found that LLC clusters with common owners made nearly $6 million in contributions during the 2003-2006 election

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[65] *See* Jeremy D. Tunis, *Maryland Political Contribution Loopholes: History, Discussion & Options to tackle the LLC & "Other Business Entity" Ambiguities* 7-9 (January 9, 2007) (discussing early recognition of this loophole by the Office of the Attorney General).

[66] *Id.*

cycle.[67] For instance, one business owner was able to contribute $62,000 to a gubernatorial candidate using 16 different LLCs he controlled.[68]

The Committee discussed at length the inherent unfairness of this loophole: By treating multiple LLCs with common ownership as unrelated entities, but treating multiple corporate subsidiaries with common ownership as functionally part of one corporation, the current law effectively privileges LLC speech over corporate speech. Moreover, the loophole provides LLC owners with the means to far exceed the individual contribution limits that bind all other Marylanders. In short, LLCs face less stringent campaign finance regulation than do corporations.[69]

This discrepancy is in some ways a creature of history. As previously discussed, the last major round of revision to Maryland's campaign finance laws—which included creation of the affiliation rule for corporations—occurred in 1991. At the time, entities like corporations and unions were well established, and their role in elections well understood by members of the General Assembly. By contrast, Maryland did not recognize LLCs as a legal entity until late 1992, when the General Assembly passed the Maryland Limited Liability Company Act.[70] At the time, it is unlikely that members of the General Assembly foresaw how passage of that Act would affect the State's campaign finance laws. And, in fact, when the loophole it created came to light, some legislators began to work to close it.

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[67] Common Cause Maryland, *The Six-Million Dollar Loophole: How Money Moves in Maryland Campaigns Through Limited Liability Companies* (February 16, 2006). Available at: www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/SIX_MILLION_DOLLAR_LOOPHOLE.PDF.

[68] *Id.* at 4.

[69] Several Committee members noted that this state of affairs is particularly worrisome in municipal and county elections with zoning implications, where real estate developers who operate multiple LLCs may have an outsized ability to tilt the elections in their desired direction.

[70] Md. Code Ann., Corps. & Ass'ns § 4A-101 *et seq.*; *see* Tunis, *Maryland Political Contribution Loopholes* at 9.

Indeed, since 1997, the General Assembly has considered at least eight different legislative proposals to close this loophole.[71] None has been adopted.

Concerns over this loophole—particularly as it has been exploited by owners of LLCs—were consistently raised in both written and oral comments received by the Committee. Some commenters felt that the solution lay in better disclosure and monitoring of LLC contributions, which would discourage LLC owners from abusing the loophole. Others felt that the solution lay in more consistent treatment of LLCs as versions of affiliated corporations. Nearly all commenters agreed, however, that this loophole must be addressed.[72]

Public comment also noted that there are many other forms of non-corporation legal entities (e.g., business trusts) that are used for various tax and liability purposes and that, like LLCs, are not covered by the existing attribution rules for corporations. The Committee was thus advised that the best practice would be to apply whatever attribution rule is developed for LLCs to other non-corporation legal entities as well. In many other contexts, the law has developed attribution rules for these other entities that could be used in determining the extent of common ownership.

Apart from the question of ownership entities, some committee members suggested that a similar attribution rule should be applied to other types of organizations and associations where there are observable affiliations of power or control. The Committee considered how an attribution rule might be applied to entities without an ownership structure. Some members believed that a more general affiliation rule based on the extent that two organizations are under the same authority or control should be considered. It was noted that such a concept already appears in §13-227(d) of the Election Law Article where affiliated campaign finance entities are treated as a single entity for purposes of the

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[71] Tunis, *Maryland Political Contribution Loopholes* at 15.

[72] Those commenters who disagreed with the need to close the loophole did so on the basis of practical considerations. They felt that efforts to close the loophole would be difficult to enforce, given the State's complex filing system for LLCs.

transfer provisions.[73] Other members observed that organizations with an ownership structure were sufficiently different from membership organizations or other types of associations that a single rule could not be applied to both ownership entities and non-ownership entities.

Ultimately, the Committee agreed that the various forms of ownership entities should be treated in the same manner and that no policy basis exists for the current discrepancy between the treatment of corporations with common ownership and the treatment of other business entities with common ownership. The Committee thus recommended legislative changes that would close the contribution loophole for LLCs and provide a principled way to ensure that other non-corporation entities cannot exploit a similar loophole. The Committee also agreed to recommend that past advice on so-called "sham" LLCs be codified in regulation.

RECOMMENDATIONS:

10. **The General Assembly should enact a statute that treats LLC clusters and all other legal entities with common ownership or control as single entities for contribution limit purposes. In addition, the statute should similarly treat as a single contributor affiliated entities that are under common control or ownership.**

11. **The State Board should be authorized to adopt regulations codifying past advice prohibiting the creation or use of "sham" LLCs or other non-**

[73] Under that subsection, campaign finance entities are deemed to be affiliated if they "are organized and operated in coordination with each other" or "otherwise conduct their operations and make their decisions relating to transfers and other contributions under the control of the same individual or entity." Md. Code Ann., Elec. Law § 13-227(d)(2). Some Committee members observed that this may be a workable concept in the context of campaign finance entities, which are organized for the purpose of promoting the success or defeat of a candidate, political party, or question at an election. They believed it would be considerably more difficult, however, to apply the concept to business organizations or other entities that have primary purposes unrelated to elections and that may, from time to time, "coordinate and cooperate" with a variety of other entities without common ownership or control.

corporation entities as a means to circumvent contribution limits or conceal a contributor's identity.

IX. Slate Transfers

Candidate slates have long been a feature of Maryland political campaigns. Their basic purpose has been to allow "candidates to combine resources to more effectively and efficiently promote the candidacy of each member of the slate."[74] Their potential role in the campaign finance system, however, changed significantly in 1991 as the result of the reform legislation enacted that year. Before, all political committees could make unlimited transfers to other political committees. The 1991 legislation, however, imposed a general limit of $6,000 on transfers from one political committee to another, with certain exceptions. One exception was for transfers "between or among . . . a slate and the campaign finance entities of its members."[75] Thus, slate members may still make unlimited transfers to one another.

The Committee recognized that slates confer considerable benefits. These include the ability to coordinate and promote a common message or campaign theme, to associate oneself with like-minded candidates and thereby gain support from their constituencies, or simply to obtain the benefits of cooperation and teamwork in arranging and scheduling campaign events. Performing any of these various functions in a highly regulated environment is greatly simplified when joint and individual accounts can be managed and money re-allocated or distributed without regard to transfer limits or accounting of in-kind contributions by the slate. At the same time, individual members retain the necessary flexibility to plan and pay for single-candidate events, or to fundraise individually and contribute to the joint slate account only in proportion to the benefit the candidate expects

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[74] Letter of Assistant Attorney General Jack Schwartz to Delegate John R. Leopold (March 13, 1998).

[75] Md. Code Ann., Elec. Law § 13-227(b)(2)(ii).

to receive from the slate.[76] In general, it appears that slates mostly continue to be used for these entirely legitimate purposes. A study on the use of slates in the 2006 elections suggests that transfers to individual slate members comprised only a small part of overall slate activity.[77]

On the other hand, misuse of slates and the slate transfer exemption represents a potentially serious weakness of the campaign finance system. Large donors can use slates to circumvent the $4,000 individual limit on gifts to a single candidate by channeling funds through slates. Campaign donations become harder to track once commingled with other funds in slates' treasuries, frustrating the policies animating both contribution limits and public disclosure requirements. Moreover, the slate transfer exemption may make lesser-funded slate members overly dependent upon better-funded members for their financial support.

The Governor's Committee study which led to many of the 1991 campaign finance reforms clearly warned against just such threats to Maryland's campaign finance system. As the Committee Report stated:

> The Committee also examined the problems inherent in a particular candidate's campaign acquiring large sums of money and disbursing them without limitation to the campaigns of other candidates. The Committee recommended that candidates and their committees be subject to the same $6,000 . . . transfer limitations that PACs would be subject to, and that in addition they be limited to a maximum of $20,000 in aggregate contributions or transfers to all other candidates or candidate committees.[78]

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[76] *See, e.g.*, 61 Op. Att'y Gen. 372, 377 (1976) (observing that "each candidate member of the slate derives, to some extent, a collective benefit from each dollar contributed to and expended by the slate.")

[77] James M. Curry and Paul S. Herrnson, "Slates and the 2006 Maryland State Elections," Center for American Politics and Citizenship, University of Maryland (2009), available at http://www.capc.umd.edu/mdelection/reports/slates06.pdf.

[78] REPORT OF THE GOVERNOR'S COMMITTEE TO REVIEW THE ELECTION LAWS 34 (January 15, 1987); *see also* Comment, *Maryland Campaign Finance Law: A Proposal for Reform*, 47 Md. L. Rev. 524, 548 (1988) (regarding the "politically explosive issue of candidate-to-candidate transfers" and noting that the

Not all of the Committee's transfer recommendations were ultimately adopted, but the 1991 legislation was clearly intended to address the problem of unlimited candidate-to-candidate transfers.

Included in the reform law were provisions that detail how a slate may be formed and what a candidate must do to join an existing slate, but no restrictions on joining multiple slates, or participating in a slate while not running for office, or using slate funds to benefit only a single candidate, directly or via transfers.[79] Similarly, in interpreting the slate provisions, the Office of the Attorney General has declined to infer restrictions where none was apparent in the statutes.[80] The result is a structure that, as a practical matter, enables candidate committees to make unlimited transfers to any other candidate simply by joining the same slate or creating a new one.

In its deliberations, the Committee sought to identify ways to preserve the utility of slates and yet reduce their susceptibility to misuse. Some members of the Committee thought that misuse of slates could be avoided only by abolishing them, and were prepared to surrender the positive aspects of slates for the sake of preventing misuse. Others thought that the potential for misuse was largely a consequence of the lack of parameters on how slates should operate. In the end, the Committee agreed to recommend more statutory controls on slate transfers, combined with requiring greater disclosure of expenditures, including more detailed reporting of which candidates benefited from each slate expenditure and by how much. These changes, it was agreed, would go a long way to curbing misuse of slates.

Committee "in its unpublished deliberations, cited such activity as an actual campaign finance abuse, whereby large amounts of funds have been transferred to other campaigns predominantly by candidates who held leadership positions or who faced generally noncompetitive races.").

[79] The statute provides that "two or more candidates who have established separate [political committees] may form a slate." Md. Code Ann., Elec. Law § 13-207(b). Elsewhere, the statute addresses how a slate may be created and the steps required to join an existing slate. *Id.* §13-209.

[80] The Attorney General's Office has previously advised that an individual is not required to file a certificate of candidacy before joining a slate, that candidates from different jurisdictions may join together to run as a slate, and that no "ballot commonality" is necessary between co-members of a slate. *See* Letter of Assistant Attorney General Mary O. Lunden to Delegate Robert H. Kittleman (June 17, 1994).

RECOMMENDATIONS:

12. **The General Assembly should enact legislation to require treasurers of slates to identify and report which candidate(s) benefited directly from each slate expenditure and/or transfer, and by what amount for each candidate.**

13. **The General Assembly should enact legislation that provides for when and how slate members exit—or may be forced to exit—a slate, including automatic withdrawal or exit in the event of the retirement or death of a slate member.**

14. **The General Assembly should enact legislation that limits the transfer exemption in an election year to "active" members of the slate, i.e., members who have filed, or will file, a certificate of candidacy for a current election; after the candidate filing deadline, "inactive" members should be treated as non-members for campaign finance purposes (i.e., all transfers or in-kind donations to the slate or its members by the inactive member would be subject to ordinary limits).**

X. Loans to Candidates

Under current law, both individuals and lending institutions can make loans to candidates. Money provided to a candidate as a loan does not count as a campaign contribution, and is therefore unlimited in amount, if it originates from either: (i) a "financial institution or other entity in the business of making loans;"[81] or (ii) third parties, provided candidates personally guarantee the loans and complete repayment by the next election cycle's conclusion.[82] The Committee was concerned in particular about abuses that may arise under the second scenario.

[81] Md. Code Ann., Elec. Law § 13-230(a)(1).

[82] *Id.* § 13-230(a)(2). The Committee did not discuss a loan by a candidate to the candidate's own committee. Although loans and contributions by a candidate or the candidate's spouse to the

Many worry that large loans by wealthy individuals for which a candidate personally guarantees repayment may result in that candidate being beholden to such lenders once in office, particularly since the repayment period can legally extend over two election cycles (i.e., eight years). If a loan is not repaid within that period, there is an additional concern: the difficulty of prosecution of loan-related campaign finance violations. A related problem is that only the lender, and not the candidate, is subject to prosecution for the unpaid loan, to the extent it has become a contribution in excess of contribution limits.

The federal campaign finance system enforces a simple rule: All non-bank loans are considered campaign contributions from the lender.[83] The Committee debated whether Maryland required such a sweeping rule. Some Committee members believed that loans, by and large, were used in legitimate fashion by Maryland politicians and did not require broad fixes. Some Committee members suggested that penalizing candidates who fail to repay loans and extending the period for such prosecution would adequately deter candidates from accepting potentially corrupting loans from third-parties. Others suggested that the best deterrent would be more timely disclosure of large loans. If excessive or otherwise unseemly loans were promptly disclosed, voters when casting their ballots would be able to hold accountable the candidates who had received the loans.

In light of these discussions and comments received, the Committee ultimately agreed that the best way to ensure transparent and responsible use of loans would be to expand liability for unpaid loans, clarify the statute of limitations for loan-related violations to facilitate more robust enforcement, and improve disclosure for large loans.

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candidate's committee must be disclosed and reported, they are not subject to the limits on contributions. *Id.* § 13-227.

[83] *See* 2 U.S.C. § 431(8)(A) (defining a "contribution" as, *inter alia*, a "subscription, loan, advance, or deposit of money"); 11 C.F.R. § 100.82 ("A loan of money to a political committee or a candidate by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business.").

RECOMMENDATIONS:

15. **The General Assembly should enact legislation that enables loan-related violations of campaign contribution limits to be assessed against candidates as well as lenders.**

16. **The General Assembly should codify that the statute of limitations for loan-related violations begins to accrue only after the repayment deadline expires.**

17. **The General Assembly should enact legislation that requires non-bank loans of more than $4,000 by third parties to candidates to be disclosed by the recipient candidate to the State Board within 24 hours, and to be posted by the State Board on its website within 24 hours of receiving the disclosure.**

XI. Out-of-State Political Committees

As mentioned previously,[84] the Election Law Article defines "political committee" broadly as "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."[85] A "campaign finance entity" is one species of "political committee," specifically a "political committee established under [the Election Law] article."[86] The law requires political committees—in order to "receive or disburse money or any other thing of value"—to fulfill certain registration and disclosure requirements.[87] Although "political

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[84] *See supra,* Section I.

[85] Md. Code Ann., Elec. Law § 1-101(gg).

[86] *Id.* § 1-101(h).

[87] *Id.* § 13-207(b). These requirements include: (a) appointing a chairman and treasurer on a form that the State Board of Elections prescribes, *id.* § 13-207(c)(1); and (b) filing a statement of purpose that identifies, among other things, "the identity of each special interest, including any business or occupation, that the organizers of or contributors to the political committee have in common." *Id.* § 13-208(c)(2); *see id.* § 13-207(c)(1)(ii).

committee" and "campaign finance entity" appear to be defined in distinct ways, the Election Law Article uses these two terms interchangeably for compliance purposes.[88]

Under the Election Law Article, campaign finance entities are required to file a statement of organization[89]; have a Maryland chairman and treasurer[90]; keep records of contributions received that detail the identity of their contributors[91]; and file campaign finance reports with SBE at certain statutorily mandated intervals.[92] In return for being highly regulated, they are accorded certain benefits not available to unregulated persons or entities. One of these is the privilege of treating money donations from one campaign finance entity to another not as a regular contribution (subject to the $4,000 individual and $10,000 aggregate contribution limits[93]), but rather as a "transfer." Maryland campaign finance entities may transfer up to $6,000 per recipient per election cycle, with *no* aggregate limit.[94] Thus, in one election cycle, a Maryland campaign finance entity may make multiple $6,000 transfers to any number of different candidates via their campaign finance entities, for totals well above the $10,000 aggregate limit on contributions.

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[88] *See* SUMMARY GUIDE at 17 n.9 ("The Election Law Article refers to both 'political committee' and 'campaign finance entity.' For compliance purposes, there is no difference between these terms under current law. Therefore, they can be read interchangeably wherever they are found in the statute.").

[89] Md. Code Ann., Elec. Law § 13-208.

[90] *Id.* § 13-207(c) (requiring appointment of a chairman and treasurer) & 13-215(a) ("Each chairman, treasurer, and campaign manager shall be a registered voter of the State.").

[91] *Id.* § 13-221 (requiring the treasurer of a Maryland campaign finance entity to keep detailed record books of contributions received, complete with a set of identifying information about the contribution).

[92] *Id.* § 13-304.

[93] Under current Maryland law, a "person"—which includes individuals, unions, nonprofit groups, and businesses, *see* Md. Code Ann., Art. I § 15—may not contribute more than $4,000 to any one campaign finance entity per election cycle and a total of $10,000 to all campaign finance entities per election cycle. Md. Code Ann., Elec. Law § 13-227(a); *see* Section XII, *infra* (discussing contribution limits).

[94] *Id.* § 13-227(c).

Out-of-state political committees are generally unregulated under Maryland's Election Law Article. Unlike Maryland campaign finance entities, they are not required to file a statement of organization, have a Maryland chairman and treasurer, or keep records of contributions and file reports in accordance with Maryland law. Perhaps most significantly, money raised by out-of-state political committees is not subject to Maryland's individual and aggregate contribution limits. Thus, while a Maryland campaign finance entity can only receive a maximum of $4,000 from one donor during an election cycle, an out-of-state political committee can potentially receive much more.

Even so, nonfederal out-of-state political committees are currently able to make "transfers" to Maryland campaign finance entities on an equal, or more than equal, basis as compared to highly regulated Maryland campaign finance entities. Under this state of affairs, the potential exists for a Maryland donor to contribute significantly to an out-of-state political committee that ultimately transfers portions of that contribution to any number of in-state campaign finance entities in cumulative amounts that may greatly exceed the Maryland limits for that contributor.

Comments received by the Committee highlighted this unusual privilege for out-of-state political committees as a cause for concern. This is because, as mentioned, out-of-state political committees are largely unregulated by SBE, so there is no assurance that the money they transfer to Maryland campaign finance entities has been collected or disbursed in ways that comply with Maryland's campaign finance laws. Some Committee members expressed the view that out-of-state political committees should not be permitted to make "transfers" to Maryland campaign finance entities unless those out-of-state groups register with SBE, just as Maryland-based campaign finance entities are required to do.

The Committee concluded that out-of-state political committees should be treated as "persons" for purposes of Maryland's campaign finance laws, and not as in-state campaign finance entities. This can be achieved by deleting § 13-227(a).[95] Adoption of this

[95] While deletion of Md. Code Ann., Elec. Law § 13-227(a) means that the "affiliated" provisions of § 13-227 no longer apply specifically to nonfederal out-of-state political committees, they will still be subject to the $4,000 and $10,000 contribution limits, since their contributions to campaign finance entities will no longer be treated as transfers. Also, to the extent new legislation recommended in

recommendation is consistent with the policy rationale set forth in an Attorney General opinion that pre-dates the current statute, explaining why only Maryland-based political committees should be eligible to make transfers.[96]

RECOMMENDATION:

18. **The General Assembly should amend § 13-227 by deleting subsection (a), thus treating out-of-state nonfederal political committees the same as any other unregistered "person," subject to the ordinary contribution limits of § 13-226(b) and not the transfer limits of § 13-227.**

XII. Contribution Limits

Maryland's contribution limits have not been altered since 1991, when they were set at $4,000 per person to any one candidate and $10,000 in the aggregate to all campaign finance entities during an election cycle.[97] At the time, per capita income for Marylanders was approximately $23,000.[98] In the intervening years, per capita income for Marylanders has risen to above $48,000,[99] but these limits have stayed the same. The price of waging a State political campaign has also gone up during this period. In the 1990 governor's race, for example, the two major party candidates raised a combined total of roughly $4.1

Section VIII regarding affiliated groups is enacted, nonfederal out-of-state political committees would be subject to that rule as well. At least one Committee member, however, favored adding to this recommendation a rule stating that nonfederal out-of-state political committees should be subject to the affiliation provisions of §13-227(d).

[96] *See* 70 Op. Att'y Gen. 96, 98 (1985) (opining that "an out-of-State political committee – one which has not filed in accordance with [state campaign finance laws] – is subject to the [contribution] limitations, even when it channels funds to a State affiliate. The 'transfer' exemption . . . is available only to Maryland-based 'treasurers', 'committees', and 'candidates' that are in compliance with the Act.").

[97] Md. Code Ann., Elec. Law § 13-226(b)(1).

[98] U.S. DEP'T OF COMMERCE, BUREAU OF ECONOMIC ANALYSIS.

[99] *Id.*

million; in 2006, the two major party candidates raised a combined total of roughly $32 million.[100] In light of these changed circumstances, the Committee concluded that the existing contribution limits should be re-examined.

The Committee found aggregate limits to need particular attention. Given the individual limit of $4,000, some Committee members believed that the aggregate limit artificially restricted the ability of some donors to give money to down-ballot candidates. For instance, if donors give $4,000 to both gubernatorial and lieutenant gubernatorial candidates, they cannot then give more than an additional $2,000 in total to all other candidates during the four-year election cycle. Given that marquee state-wide candidates tend to attract the most (and the highest value) donations, the aggregate limit of $10,000 may leave less prominent local candidates—ones who have a harder time raising money to begin with—scrambling to raise money for their campaigns. It also means that Maryland residents seeking to contribute to more than three races may have to donate less than they might to each race. Thus the existing aggregate limits may unnecessarily narrow citizens' political participation.

On the other hand, several comments received by the Committee expressed concern that raising the aggregate limits would invite broadened political participation not by ordinary citizens but rather by wealthy special interests. According to recent reporting, roughly 80% of Maryland donors contribute $1,000 or less per year during the election cycle, and of those most contribute $250 or less.[101] Thus, it was unclear to some whether an increase in the aggregate limit would expand public participation in a meaningful way. To accomplish this, some commenters and at least one Committee member expressed the view that any upward adjustment to the aggregate contribution limit should be accompanied by a pledge to implement some form of public financing for elections.

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[100] David M. Searle et al., "Campaign Finance & the 2006 Maryland Gubernatorial Election," p. 3, Center for American Politics and Citizenship, University of Maryland (2009). These figures are in 2006 dollars.

[101] Elizabeth Scholz & Paul S. Herrnson, "Individual Donors and the 2006 Maryland State Elections," p. 6, Center for American Politics and Citizenship, University of Maryland (2010). The average Maryland donor contributed $367 in 2006. *Id.*

However, the Committee declined to make a specific recommendation on that point at this time.

In its examination of this issue, the Committee also looked to the contribution limits imposed in neighboring or nearby states. Notably, other states on the eastern seaboard have higher aggregate contribution limits than Maryland: Massachusetts allows $12,500, Connecticut allows $15,000, New York allows $150,000, and New Jersey, Pennsylvania and Virginia have no aggregate limits at all.[102] Given that all of these limits are higher, the Committee found that some adjustment of Maryland's aggregate limits may be warranted.

Nonetheless, the Committee found that it lacked the data to determine the extent to which Maryland's aggregate limits might be adjusted. For instance, it lacked firm data on which Marylanders actually run up against the existing aggregate limits. If the existing limits only create a restriction for a tiny fraction of all donors, an increase to the limit may not be needed at this time. Conversely, if the existing limits are shown to create a restriction for many donors, an increase may be advisable.

Even if an increase is needed, which many Committee members suggested was the case, it was unclear how to settle on the "right" amount of an increase. Generally, the Committee believed that any adjustment to the State's contribution limits should be the result of more quantitative analysis. The Committee also agreed that, if the aggregate limit is increased, it should be increased to a figure that is a multiple of the individual limit (currently $4,000). Such an increase would make it easier for donors to keep track of whether they had reached the aggregate limit. It would also make it easier for donors to give the individual per-candidate limit of $4,000 to more than two candidates.

RECOMMENDATIONS:

19. **The State Board is urged, in collaboration with other interested groups, to collect and disseminate data on contributions, including data on the number**

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[102] *See* NATIONAL CONFERENCE OF STATE GENERAL ASSEMBLYS, STATE LIMITS ON CONTRIBUTIONS TO CANDIDATES (updated January 20, 2010). Available at: www.ncsl.org/Portals/1/documents/legismgt/limits_candidates.pdf.

of contributors that reach the aggregate contribution limit and data on costs of campaigning, that would help legislators and the public to determine (a) whether an adjustment of 1991 contribution limits is warranted and (b) what the appropriate adjustment should be, based on the data.

Facilitating Greater Compliance

XIII. Access to Campaign Finance Interpretive Advice

One of the functions of the Office of the Attorney General is to advise the State Board of Elections concerning the campaign finance laws. The Attorney General's Office also frequently responds to requests from candidates or their treasurers for guidance. When the advice is in the form of an official Opinion of the Attorney General, it is published on the Attorney General's website, as well as in book format. When the advice takes the form of a letter or email, however, it has often been less accessible to the general public.

Several Committee members and commenters expressed a desire for broader access to the advice provided on campaign finance. Greater public access could help educate candidates and treasurers on campaign finance rules. While Committee members agreed that SBE's Summary Guide is a valuable resource, most felt that more or better access to Attorney General opinions, advice letters, and memoranda was also needed.

There are certain difficulties in simply publishing all interpretive advice given by the Office of the Attorney General. For one, some advice given in the heat of the campaign season is informal and provided under highly time-sensitive circumstances, without extensive review or reflection. Such advice should not necessarily be given the same weight as an opinion that is issued after considerable research and review. Finally, much of the advice sought is so fact-specific that its utility to the general public is limited at best.

The Committee agreed that as much previous interpretive advice as possible should be made available to the public in a convenient online location. In light of the difficulties raised above, however, the Committee also agreed that the Office of the Attorney General

should vet previous advice before it is published online to ensure its continuing vitality. At the very least, all previous Opinions of the Attorney General interpreting the State's campaign finance laws should be collected and published online, and most advice letters and memos should be published online as well.

RECOMMENDATION:

20. **The Office of the Attorney General should organize and make available online all appropriate legal authority interpreting the State's campaign finance laws.**

XIV. Permitted/Prohibited Spending by Campaigns

Campaign expenditures by a Maryland political committee must serve an "electoral purpose." For candidate committees, the Attorney General has interpreted this to mean that "any lawful expense . . . which enhances a candidate's election chances and would not be incurred if there were no potential candidacy" is a proper expenditure.[103] On the other hand, where expenditures are personal, office-related, in support of a federal or municipal candidate, or simply too remote from the candidate's own electoral prospects, use of campaign funds has been disallowed.

For example, the Attorney General has opined that a candidate committee may not donate to a political party administrative account because such accounts may only be used for non-electoral expenses.[104] Similarly, the State Board allows only *de minimis* expenditures to federal or municipal candidates, to §527 advocacy groups, and to §501(c) organizations.[105] To some, these limitations on politically-related spending seem overly strict.

[103] 68 Op. Att'y Gen. 252, 267 (1983).

[104] 92 Op. Att'y Gen. 92 (2007).

[105] 70 Op. Att'y Gen. 96, 100-02 (1985) (recommending tolerance for non-campaign but "politically-related outlays" of PACs if isolated in occurrence and *de minimis* in amount)

An area of particular concern to public officeholders has been the treatment of activities that serve both official and political purposes. Thus, campaign spending to attend some conferences or events has been permitted and others prohibited, turning in part on whether the event is itself considered a political "networking" opportunity, or whether outside political events held during non-conference time could justify use of campaign funds to cover most of the expense.[106] Sometimes the distinction between events that enhance one's candidacy and those that improve one's knowledge of a key issue or one's effectiveness as a lawmaker appears artificial or it may be difficult to predict whether a particular expense will be allowed. Past application of the "electoral purpose" test has resulted in advice stating that campaign funds may be used to provide "enhanced constituent services" but not ordinary ones,[107] or that a thank-you party for campaign volunteers is proper, but only as a good-will measure for a future run for State office.[108] Much of this advice is reasonable in its context, particularly when it was necessary to relate campaign expenditures to a specific election. However, with continuing campaign committees and a four-year cycle for measure contributions, a more relaxed electoral purpose standard may be warranted.

The federal government and many other states approach this issue from a different angle. For the most part, federal rules on permissible spending do not attempt to identify what is allowed, but focus on what is prohibited. Thus, campaign funds may not be converted to the "personal use" of the candidate, the candidate's family, or anyone else. What constitutes a "personal use" is then specifically defined in statutes and regulations.[109] Under this model, the determination that SBE or a prosecutor would have to make is whether the questioned spending is a prohibited "personal use." The Committee believed

[106] Letter from Assistant Attorney General Sandra Benson Brantley to Delegate Dereck E. Davis (Oct. 29, 2009).

[107] Letter from Assistant Attorney General Judith Armold to William G. Somerville, Counsel to Joint Committee on Legislative Ethics (Dec. 17, 2001).

[108] 78 Op. Att'y Gen. 155, 159 (1993).

[109] See 2 U.S.C. § 439a (regarding permitted and prohibited uses of contributions); 11 CFR § 113.1(g) (defining "personal use").

that this approach would provide a clearer standard. Arguably, this type of rule would also more narrowly target misuse of campaign funds amounting to political corruption.

RECOMMENDATION:

21. **The Office of the Attorney General should undertake a comprehensive review of past advice regarding the "electoral purpose test" to develop a clearer, more consistent standard that the State Board may use to promulgate regulations.**

22. **The General Assembly should enact legislation that gives candidates the discretion to use campaign funds as they deem best for their electoral purposes, but that prohibits "personal use" of the funds. The legislation and State Board regulations should provide guidelines as to what is considered a prohibited "personal use" of campaign funds, similar to the federal model.**

XV. Administrative Accounts

In 1974, the Attorney General determined that political parties' central committees were subject to campaign finance reporting requirements.[110] However, a 1975 opinion determined that contributions "specifically limited to maintaining the party's *normal* headquarters office and staff" should not be "charged against the aggregate contribution limit."[111] The Attorney General explained that contributions from corporations to their PACs for start-up costs and "recurring" administration expenses "would not count against the contribution limit because the contributions would not benefit any particular candidate and because the donor corporation had complete control over the use of the contributions for administrative purposes."[112] Exactly what is and is not administrative expense has

[110] 59 Att'y Gen. Op. 318, 323 (1974).

[111] 60 Att'y Gen. Op. 259, 262 (1975) (emphasis in original).

[112] 92 Att'y Gen. Op. 92, 97 (2007)(discussing 63 Att'y Gen. Op. 263, 271 (1978)).

evolved over the years and still causes some confusion among campaigns.

Following the General Assembly's 1991 campaign finance overhaul, the Attorney General issued an advice letter stating that "an in-kind administrative contribution, in the form of office space, to a party central committee should continue to be treated in accordance with the 1975 Opinion—i.e., reported as a contribution, but not charged to the donor's aggregate limit."[113] Following the Attorney General's advice, SBE's Summary Guide permits administrative contributions under the following conditions:

> A person may make unlimited administrative contributions to a party central committee. For a corporate PAC, only the corporate sponsor may make an administrative contribution. The contribution will not count against the person's $4,000/$10,000 contribution limit. The contribution must be expressly earmarked as an administrative contribution; otherwise it will be considered a normal campaign contribution subject to the limits.[114]

In addition, SBE requires that the political party or corporate PAC must establish separate accounts for the maintenance of administrative funds and must report administrative contributions and expenditures separately from campaign contributions and expenditures.[115] The Summary Guide also lists the types of spending that can be considered administrative expenditures, such as cell phones, office furniture, rent, voter registration activity, and many other expenses.[116] Additionally, SBE's guidelines state that a corporation's administrative contribution to its affiliated political action committee "may be used for the initial startup, such as modifying the payroll computers and obtaining legal advice for establishment of the PAC. The funds may also be used for yearly costs of

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[113] 92 Att'y Gen. Op. at 101 (citing Letter of Assistant Attorney General Elizabeth L. Nilson to Delegate Robert L. Flanagan (July 23, 1991)).

[114] SUMMARY GUIDE § 8.16.2.

[115] SUMMARY GUIDE §§ 8.16.3 & 5.

[116] SUMMARY GUIDE § 8.16.4.

maintaining records, filing reports and salaries."[117]

RECOMMENDATION:

23. **The General Assembly should authorize SBE to promulgate rules codifying its existing guidance relating to administrative contributions and permissible uses of administrative funds.**

XVI. Guidance for Campaign Treasurers

Campaign treasurers are expected to be primarily responsible for fulfilling many of the obligations imposed by the campaign finance laws.[118] Yet, official guidance for treasurers is largely *ad hoc*, at the request of a particular treasurer, and guidance given to one treasurer is not readily available to other treasurers. Furthermore, legal prescriptions and other written guidance are scattered across a variety of formats—statutes, regulations, SBE policies, Attorney General opinions, letters from assistant attorneys general, etc.—making it often difficult for treasurers to find answers to questions on their own, particularly during the heat of the campaign.

Common inquiries made by campaign treasurers include the following: limitations on who may make campaign disbursements[119] and how[120]; limitations on the form and receipt of contributions[121]; lump sum reporting; reporting and reimbursement of candidate

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[117] SUMMARY GUIDE § 8.16.4.

[118] *See, e.g.*, Md. Code Ann., Elec. Law §§ 13-202, 13-214, 13-218, 13-220, 13-221, 13-222, 13-231, 13-301, 13-304.

[119] *See* 76 Op. Att'y Gen. 200 (1991) (a treasurer may not delegate any statutory responsibility to another person, including the candidate, except to duly appointed subtreasurers); *see also* Letter of Ross Goldstein to Senator Allan Kittleman (October 25, 2002) (consultants cannot be used in lieu of treasurers for the disbursement of funds); Letter of Kathleen Dachille to Stephen Montanarelli (June 24, 1999) (all campaign expenditures must be made by the treasurer; accidental campaign expenditures by the candidate are thus not reimbursable).

[120] *See, e.g.*, Md. Code Ann., Elec. Law §§ 13-218 & 13-220(b).

[121] *Id.* §§ 13-226 & 13-232.

expenditures made outside the campaign committee; tax liability and reporting; "permitted" versus "prohibited" expenditures[122]; anonymous contributions and their disbursement[123]; and restrictions on who may serve as treasurer.[124] Answers to these inquiries cannot yet be found in one central location.

The Committee found that what is most needed is greater dissemination of decisions that may have legal consequences for treasurers and more clearly presented answers to the most common inquiries. The Committee decided that the Internet could be used to make advising treasurers a more open and accessible process. An online collection of advice, using concrete examples of uncertainties typically faced by treasurers, would provide much-needed guidance in an efficient, easily-accessible way on treasurers' most pressing concerns. It would also reduce confusion among treasurers, and thus reduce their need to frequently consult SBE about the common issues that arise.

RECOMMENDATION:

24. **The Office of the Attorney General should publish online a compendium of the guidance it has given and will give on treasurer issues, both in the form of Attorney General opinions and letters to particular persons.**
25. **The State Board should draft and publish online a set of examples that illustrate, non-exhaustively, activities that clearly run afoul of treasurer obligations and activities that clearly do not.**

[122] *Id.* § 13-245.

[123] *Id.* § 13-239.

[124] *Id.* § 13-215; *see* Letter of Assistant Attorney General Judith Armold to Tim Mayberry (Feb. 3, 2000) (a candidate for state of federal public office may not act as a treasurer for any other candidate or political committee).

Appendix A: List of Recommendations

1. The Office of the Attorney General should undertake a comprehensive review of Title 13 of the Election Law Article, with input from knowledgeable sources, to recommend specific legislative changes that would clarify what conduct is regulated by the State's campaign finance laws.
2. The General Assembly should enact legislation directing the State Board to adopt additional regulations in this area and to make recommendations to clarify how the State's campaign finance laws apply to new media.
3. Additional disclosure requirements for candidates using new media may be appropriate, including reporting of sub-vendor information, to prevent covert campaigning by candidates and their committees through anonymous sources.
4. A new chapter of the State Board's Campaign Finance Summary Guide should be drafted that specifically addresses issues related to new media.
5. The General Assembly should amend §§13-226(b)(2) and 13-220 to enable contributions and expenditures, respectively, by electronic means that guarantee: (a) the authenticity of the contributor's identity; (b) security of the transaction; and (c) adequate record-keeping. Authorization of specific means for making electronic transactions might be limited to those in accord with federal standards and as specifically approved by the State Board.
6. The State Board should amend its regulations to permit temporary investment of campaign funds in prudent investment vehicles and specify types of permissible investments.
7. The General Assembly should authorize the State Board to regulate "exploratory activity" above a certain threshold, and allow the State Board to adopt regulations for the conversion of exploratory committees to political committees as required.
8. The General Assembly should enact legislation to require the filing of a disclosure report with SBE by any individual or group that (1) is not registered as a "political committee" with the State Board and (2) makes an "independent expenditure" (i.e., a communication that expressly advocates the election or defeat of a clearly identified candidate for State office or that contains the functional equivalent of express advocacy) or makes an "electioneering communication" (i.e., a communication that refers to a clearly identified candidate for state office; is publicly distributed shortly before an election for the office that candidate is seeking; and is targeted to people the candidate seeks to represent).

9. The General Assembly should enact legislation authorizing the State Board to require that political committees collect and report to the State Board employer and occupation information from donors who donate more than a threshold amount.
10. The General Assembly should enact a statute that treats LLC clusters and all other legal entities with common ownership or control as single entities for contribution limit purposes. In addition, the statute should similarly treat as a single contributor affiliated entities that are under common control or ownership.
11. The State Board should be authorized to adopt regulations codifying past advice prohibiting the creation or use of "sham" LLCs or other non-corporation entities as a means to circumvent contribution limits or conceal a contributor's identity.
12. The General Assembly should enact legislation to require treasurers of slates to identify and report which candidate(s) benefited directly from each slate expenditure and/or transfer, and by what amount for each candidate.
13. The General Assembly should enact legislation that provides for when and how slate members exit—or may be forced to exit—a slate, including automatic withdrawal or exit in the event of the retirement or death of a slate member.
14. The General Assembly should enact legislation that limits the transfer exemption in an election year to "active" members of the slate, i.e., members who have filed, or will file, a certificate of candidacy for a current election; after the candidate filing deadline, "inactive" members should be treated as non-members for campaign finance purposes (i.e., all transfers or in-kind donations to the slate or its members by the inactive member would be subject to ordinary limits).
15. The General Assembly should enact legislation that enables loan-related violations of campaign contribution limits to be assessed against candidates as well as lenders.
16. The General Assembly should codify that the statute of limitations for loan-related violations begins to accrue only after the repayment deadline expires.
17. The General Assembly should enact legislation that requires non-bank loans of more than $4,000 by third parties to candidates to be disclosed by the recipient candidate to the State Board within twenty-four hours, and to be posted by the State Board on its website within twenty-four hours of receiving the disclosure.
18. The General Assembly should amend § 13-227 by deleting subsection (a), thus treating out-of-state nonfederal political committees the same as any other unregistered "person," subject to the ordinary contribution limits of § 13-226(b) and not the transfer limits of § 13-227.

19. The State Board is urged, in collaboration with other interested groups, to collect and disseminate data on contributions, including data on the number of contributors that reach the aggregate contribution limit and data on costs of campaigning, that would help legislators and the public to determine (a) whether an adjustment of 1991 contribution limits is warranted and (b) what the appropriate adjustment should be, based on the data.

20. The Office of the Attorney General should organize and make available online all appropriate legal authority interpreting the State's campaign finance laws.

21. The Office of the Attorney General should undertake a comprehensive review of past advice regarding the "electoral purpose test" to develop a clearer, more consistent standard that the State Board may use to promulgate regulations.

22. The General Assembly should enact legislation that gives candidates the discretion to use campaign funds as they deem best for their electoral purposes, but that prohibits "personal use" of the funds. The legislation and State Board regulations should provide guidelines as to what is considered a prohibited "personal use" of campaign funds, similar to the federal model.

23. The General Assembly should authorize SBE to promulgate rules codifying its existing guidance relating to administrative contributions and permissible uses of administrative funds.

24. The Office of the Attorney General should publish online a compendium of the guidance it has given and will give on treasurer issues, both in the form of Attorney General opinions and letters to particular persons.

25. The State Board should draft and publish online a set of examples that illustrate, non-exhaustively, activities that clearly run afoul of treasurer obligations and activities that clearly do not.

Appendix B: Committee Members

Carville B. Collins
Partner, DLA Piper

Carville Collins is a partner in the Baltimore and Annapolis offices of DLA Piper. His practice is largely devoted to representing energy, water, telecommunications, and transportation clients on a wide array of regulatory matters before the Public Service Commission of Maryland and other state regulatory agencies. He also represents a variety of business and association clients before the Maryland General Assembly and state government. Mr. Collins has devoted a significant portion of his practice to federal and state campaign finance, public ethics and election law matters. He has served as legal counsel to numerous Democratic and Republican congressional and Maryland gubernatorial and legislative candidates. He has served as administrator and legal counsel to numerous federal and state political action committees and party committees, and he has advised corporations and PACs on strategy and compliance on political contribution matters. In 1995, Maryland Governor Parris Glendening appointed Mr. Collins to the Governor's Task Force to Review the State's Election Laws, which examined and proposed reforms to Maryland's election laws and procedures.

Jared DeMarinis
Director, Candidacy & Campaign Finance Division, Maryland State Board of Elections

Jared DeMarinis is the director of Candidacy and Campaign Finance for the Maryland State Board of Elections, where he is responsible for the implementation of electoral policy as well as the interpretation of state candidacy and campaign finance laws. He recently presided over the two most expensive gubernatorial elections in Maryland's history. Prior to working at the Maryland State Board of Elections, Mr. DeMarinis worked on several political campaigns and organizations. Additionally, he has represented political parties and candidates, including serving as counsel on a landmark case involving the legal issues of campaign contributions that exceeded the statutory limitation, improper expenditures, and voter fraud in New Jersey. In 2007, Mr. DeMarinis served as an international election monitor for the parliamentary elections in Armenia.

Ronald A. George
Delegate, Maryland House of Delegates (R-30)

Ron George was elected to the House of Delegates in 2006 and reelected in 2010. He has served as a member of the Ways and Means Committee since 2007, and has served on the transportation subcommittee from 2007 to 2008, and the election law subcommittee since 2009. He is also a member of the Sportsmen's Caucus and the Veterans Caucus; founder of the Doctors Caucus in 2010; and a member of the Tax and Fiscal Policy Task

Force of the American Legislative Exchange Council. In addition, Delegate George is a member of the State Commission on the Capital City, 2007. Delegate George is an experienced small business owner, having founded Ron George Jewelers on Main Street Annapolis in 1991. In 2007, he expanded to a second location. In addition, Delegate George ran The State House Inn from 2002 to 2007.

Ross K. Goldstein
Deputy State Administrator, Maryland State Board of Elections

Ross Goldstein has worked in the field of elections for over 12 years in both a policy and administrative capacity. Mr. Goldstein began his career in elections when he became staff attorney to the Florida House Committee on Ethics and Elections. Next, he served as a staff attorney for the Maryland General Assembly where he was assigned to draft election laws and serve as counsel to the Task Force to Revise the Election Code. The task force led to a position with the Maryland State Board of Elections as deputy and then director of the Candidacy and Campaign Finance Division. In 2004, Mr. Goldstein became deputy administrator for the State Board. In that capacity, he works closely with local election officials to develop guidelines, policies, and procedures that ensure efficient administration of election laws.

John B. Howard, Jr.
Deputy Attorney General, Maryland Office of the Attorney General

J.B. Howard served as an assistant attorney general under J. Joseph Curran, Jr., from 1993 to 1999 and returned as one of two deputies to Attorney General Douglas F. Gansler on January 2, 2007. Mr. Howard clerked for the Honorable J. Dickson Phillips, Jr. (now retired) on the United States Court of Appeals for the Fourth Circuit. From 1990 to 1993, he practiced as a litigation associate in the Baltimore office of Hogan & Hartson, taking leave for part of that time to serve as counsel to the congressional committee investigating the Bank of Credit and Commerce International (BCCI) scandal. He taught for several years as an adjunct professor of Legal Writing at the University of Baltimore Law School and as an instructor at the Judicial Institute of Maryland in “Legal Writing for the Judiciary.” From 1999 to 2006, Mr. Howard practiced commercial litigation at Venable LLP in Baltimore.

Allan H. Kittleman
Senator, Maryland State Senate (R-9)

Allan Kittleman has served in the Maryland State Senate since being appointed in October of 2004 to fill the vacancy left by the death of his father, Senator Robert Kittleman. He was elected to the Senate in 2006 and reelected in 2010. Senator Kittleman is a member of the Senate Finance Committee, Executive Nominations Committee, Legislative Policy Committee, Workers’ Compensation Benefit and Insurance Oversight Committee, and Joint

Committee on Administrative, Education and Legislative Review. He served as the Senate Minority Whip and was elected to the position of Senate Minority Leader on September 16, 2008. Prior to his appointment to the State Senate, Senator Kittleman represented District 5 as a member of the Howard County Council from 1998 through 2004.

Bruce L. Marcus

Counsel to the Maryland Democratic State Central Committee

Bruce Marcus is an attorney and principal in the Greenbelt law firm of MarcusBonsib, LLC. Mr. Marcus has served as counsel to the Maryland Democratic Party since 1994 and has been a member of the Democratic National Committee's Lawyer's Counsel. He has represented the interests of national, state and local candidates for public office for over 20 years, including campaign committees for President and Governor. As counsel to political parties and campaign finance units, Mr. Marcus has represented parties in a variety of cases, including election contests, litigation matters involving application of campaign finance law, and suits relating to the conduct and propriety of referenda. Mr. Marcus is a Fellow of the American College of Trial Lawyers. He has been recognized and included in the State of Maryland and District of Columbia's list of Super Lawyers. Mr. Marcus has also served on the Governor's Trial Courts Nominating Commission and on the University System of Maryland's Board of Regents.

Lawrence H. Norton

Former General Counsel to the Federal Election Commission

Larry Norton counsels clients on government regulation of political activity, including federal and state campaign finance, government ethics, and lobbying laws. Since 2007, he has led the Political Law Practice Group at the Washington, D.C. office of Womble Carlyle Sandbridge & Rice PLCC, where his clients include companies and trade associations (and their PACs), advocacy groups, mass media firms, political parties, and candidates. From 2001 through 2007, Mr. Norton served as general counsel of the Federal Election Commission (FEC). He and former deputy general counsel, James A. Kahl, who also practices in Womble Carlyle's Washington office, led the Office of General Counsel in conducting investigations, advising the FEC in connection with rulemakings and Advisory Opinions, overseeing all of the FEC's litigation, and counseling on issues relating to FEC audits and federal funding of presidential primary and general elections. Mr. Norton has over 20 years of experience in all aspects of government regulation, including policy and rulemaking, investigations, and litigation, and is a frequent speaker on issues relating to election law, consumer protection, and financial fraud.

Robert Ostrom

General Counsel to the Maryland Republican State Central Committee (MDGOP)

Robert Ostrum has practiced law in Maryland for more than 40 years. He has served as a partner and principal in several Maryland law firms, general counsel for the United States Maritime Administration during the Administration of President George W. Bush, county attorney of Prince George's County, Republican nominee for U.S. Congress and County Executive of Prince George's County. Mr. Ostrum has also served as general counsel of the Maryland Republican Party from 2000 to 2002 and from 2009 to the present.

Jamin (Jamie) B. Raskin

Senator, Maryland State Senate (D-20)

Elected in 2006 and reelected in 2010, Jamie Raskin is a State Senator representing Silver Spring and Takoma Park. In that capacity, he serves on the Senate Judicial Proceedings Committee. He is also a professor of constitutional law at American University's Washington College of Law where he directs its Program on Law and Government. Senator Raskin is an expert on campaign finance law and the law of elections, and has written several books and dozens of articles on the Constitution and the law of politics.

Jay Walker

Delegate, Maryland House of Delegates (D-26)

Jay Walker was elected to the House of Delegates in 2006 and reelected in 2010. He has served as a member of the Ways and Means Committee since 2007, and on the education subcommittee in 2007 to 2008, the finance resources subcommittee in 2007, and the election law subcommittee since 2009. Mr. Walker has also been a member of the Legislative Black Caucus of Maryland since 2007 and its treasurer since 2010. He is also a member of the Washington Suburban Sanitary Commission Committee, Prince George's County Delegation. Mr. Walker also served on the Task Force on the Establishment of Vocational and Technical Education High School Academies in Prince George's County (2007-09); the Task Force on Student Physical Fitness in Maryland Public Schools (2008); the Task Force to Study Thoroughbred Horse Racing at Rosecroft Raceway (2008); and Board of Directors, Economic Development Corporation, Prince George's County (2009-present).

Katherine Winfree

Chief Deputy Attorney General, Maryland Office of the Attorney General

Katherine Winfree was appointed chief deputy attorney general for the State of Maryland in 2007. She is also an adjunct professor at the American University, Washington College of Law. Ms. Winfree previously served as principal deputy state's attorney for Montgomery County from 1999 to 2007. From 1980 to 1998, she was an assistant United States attorney for the District of Columbia, where she served in the

Appellate, Misdemeanor and Felony Trial, Chronic Offender, Homicide, Economic Crime and Public Corruption Sections. Ms. Winfree also served as chief of the Misdemeanor Trial, Economic Crime and Public Corruption Sections. From 1976 to 1980, she served in the Honors Program of the United States Department of Justice, working in the Criminal Division, Appellate Section.

Committee Staff

Reuel P. Belt
Executive Assistant to the Attorney General

Sandra Benson Brantley
Assistant Attorney General

Jeffrey L. Darsie
Assistant Attorney General

Robert N. McDonald
Chief Counsel, Opinions & Advice
Office of the Attorney General

Raja Mishra
Associate, Office of the Attorney General

Stephen M. Ruckman
Honors Attorney, Office of the Attorney
General

Appendix C: Campaign Finance Article of the Maryland Code

Md. Code Ann., Elec. Law § 13-101 *et seq.*

Subtitle 1. General Provisions

§ 13-101. Scope of title.

(a) *In general.-* This title applies to each election conducted in accordance with this article.

(b) *Exception for campaign finance activity governed by federal law.-* This title does not apply to campaign finance activity required to be governed solely by federal law.

§ 13-102. Independent expenditures by an individual.

Except for a candidate, this title does not prohibit an individual who acts independently of any other person from:

(1) expressing personal views on any subject; or

(2) making an expenditure of personal funds to purchase campaign material.

§ 13-103. Summary of campaign finance law; forms.

(a) *In general.-*

(1) The State Board shall prepare a summary of the election law that relates to campaign finance activity and provide for distribution of the summary.

(2) When a certificate of candidacy is filed, the board receiving the certificate shall provide the candidate with:

(i) a copy of the summary; and

(ii) each form the candidate is required to file under this title.

(b) *Sample forms for local boards.-* The State Board shall provide to a local board samples of such of the forms required under this title as the local board may request.

§ 13-104. Acceptance of electronic signature.

The State Board may accept an electronic signature for any form, document, report, or affidavit required by the State Board under this title.

Subtitle 2. Campaign Finance Organization and Activity

PART I. In General.

§ 13-201. Scope.

Unless otherwise provided by law, this subtitle applies to all campaign finance activity associated with an election under this article.

§ 13-202. Campaign finance entity required.
(a) *Prerequisite - Campaign finance activity.-* Unless otherwise expressly authorized by law, all campaign finance activity for an election under this article shall be conducted through a campaign finance entity.
(b) *Prerequisite - Candidacy.-* An individual may not file a certificate of candidacy until the individual establishes, or causes to be established, an authorized political committee.

§ 13-203. Campaign finance report required.
Each campaign finance entity shall comply with the reporting requirements of Subtitle 3 of this title.

§ 13-204, 13-205.
Reserved.

PART II. Organization.

§ 13-206. Personal treasurer.
Repealed by Acts 2006, ch. 510, § 1, effective January 1, 2007.

§ 13-207. Political committees - In general.
(a) *Applicability.-* This section applies to a political committee other than a political club.
(b) *Prerequisite to activity.-* A political committee may not receive or disburse money or any other thing of value unless the political committee is established in accordance with the requirements of this section.
(c) *Establishment.-* To establish a political committee:
(1) a chairman and a treasurer shall be appointed on a form that the State Board prescribes and that is signed by the chairman and treasurer and includes:
(i) the residence addresses of the chairman and the treasurer; and
(ii) the information required by § 13-208 of this subtitle; and
(2) the form shall be filed with the board where the political committee is required to file campaign finance reports.
(d) *Vacancy.-*
(1) A chairman or treasurer of a political committee may resign by completing a resignation form that the State Board prescribes and filing the form with the board where the political committee was established.
(2) If a vacancy occurs in the office of chairman or the office of treasurer, the political committee promptly shall appoint a new chairman or treasurer in accordance with this section.

§ 13-208. Political committees - Statement of organization.
(a) *Scope.-* This section applies to a political committee other than a political club.
(b) *Requirement.-* A political committee shall provide, with the filing required by § 13-207(c) of this subtitle, a statement of organization that includes its name and a statement of purpose.
(c) *Statement of purpose.-* The statement of purpose shall specify:
(1) each candidate or ballot question, if any, that the political committee was formed to promote or defeat;
(2) the identity of each special interest, including any business or occupation, that the organizers of or contributors to the political committee have in common; and
(3) whether the political committee will participate in presidential, gubernatorial, Baltimore City, or multiple elections.
(d) *Name.-*
(1) A political committee may not use a name that is intended or operates to deceive people as to the political committee's true nature or character.
(2) A political committee established by and for a single candidate shall disclose within the political committee's name the name of the candidate.
(3) A political committee sponsored by or affiliated with another entity or group shall identify within the political committee's name the other entity or group.
(e) *Supplemental information.-* A change in the information reported under this section shall be disclosed in the campaign finance report next filed by the political committee.

§ 13-209. Political committees - Slates.
(a) *In general.-* Two or more candidates who have established separate campaign finance entities may form a slate.
(b) *Joining.-* After establishing a campaign finance entity in accordance with § 13-202(b) of this subtitle, a candidate may join a slate.
(c) *Notice required.-*
(1) To join a slate, a candidate shall file a written notice with the State Board.
(2) The notice shall specify:
(i) the name of the slate that the candidate has joined; and
(ii) the date on which the candidate joined the slate.

§ 13-210. Same - Lobbyists.
(a) *Lobbyist defined.-* In this section, "lobbyist" means a regulated lobbyist as described in the State Government Article.
(b) *Applicability of State Government Article.-* A lobbyist, or person acting on behalf of a lobbyist, may be subject to the limitations on campaign finance activity prescribed in the State Government Article.

§ 13-211. Campaign finance entities - Subtreasurers.
Repealed by Acts 2010, ch. 471, § 1, effective June 1, 2010.

§ 13-212. Same - Campaign manager.
An individual may appoint a campaign manager by:
(1) completing a form that the State Board prescribes and that includes the name and address of that campaign manager; and
(2) filing the form with the board where the individual is required to file a certificate of candidacy.

§ 13-213.
Reserved.

PART III. Campaign Finance Officers - Responsibility, Qualifications, and Eligibility.

§ 13-214. Responsibility.
(a) *Joint and several liability of responsible officers.*- The responsible officers of a campaign finance entity are jointly and severally responsible for filing all campaign finance reports in full and accurate detail and for all other actions of the entity.
(b) *Notice to responsible officers.*- Notice shall be provided to a campaign finance entity by serving the responsible officers.

§ 13-215. Qualifications and eligibility.
(a) *Qualifications.*- Each chairman, treasurer, and campaign manager shall be a registered voter of the State.
(b) *Eligibility - Candidates.*-
(1) Subject to paragraph (2) of this subsection, a candidate may not act:
(i) as the treasurer of a campaign finance entity of the candidate; or
(ii) with respect to any other campaign finance entity:
1. as the campaign manager or treasurer; or
2. in any other position that exercises general overall responsibility for the conduct of the entity.
(2) (i) An incumbent member of a central committee who is a candidate for election to party office may act as the treasurer of that central committee.
(ii) With respect to any campaign finance entity other than the candidate's own campaign finance entity, a candidate for delegate to the Democratic National Convention or a candidate for delegate to the Republican National Convention may act:

1. as the campaign manager or treasurer; or
2. in any other position that exercises general overall responsibility for the conduct of the entity.
(c) *Eligibility - Other campaign finance officers*.- Subject to subsection (b) of this section, the chairman, treasurer, or campaign manager of a campaign finance entity may serve as the chairman, treasurer, or campaign manager of another campaign finance entity.

§ 13-216, 13-217.
Reserved.

PART IV. Campaign Finance Activity and Records.

§ 13-218. Treasurer - Control of contributions and expenditures.
(a) *Contributions.*- All assets received by or on behalf of a campaign finance entity shall be:
(1) delivered to the treasurer; and
(2) maintained by the treasurer for the purposes of the campaign finance entity.
(b) *Disbursements - In general.*-
(1) Assets of a campaign finance entity may be disbursed only:
(i) if they have passed through the hands of the treasurer; and
(ii) in accordance with the purposes of the entity.
(2) Subject to § 13-220(b)(2) and (c) of this subtitle and except as provided in subsection (d) of this section, the treasurer shall make all disbursements for the campaign finance entity.
(c) *Disbursements - Central committee.*- The treasurer of a State or county central committee of a political party may not make any disbursement of the central committee's assets, or incur any liability on its behalf, without authority and direction from the chairman of the central committee.
(d) *Disbursements - Chairman of campaign finance entity.*-
(1) If the treasurer of a campaign finance entity is temporarily unable to perform the duties of the office, the chairman of the campaign finance entity may make a disbursement on behalf of the campaign finance entity in the same manner as the treasurer.
(2) If the chairman makes a disbursement under this subsection, within 7 days after making the disbursement, the chairman shall submit a report to the treasurer for the account book of the campaign finance entity, including:
(i) a statement of the expenditure made under the authority of the chairman;
(ii) the name and address of the person to whom the expenditure was made;
(iii) the purpose for which the expenditure was made; and
(iv) a copy of the receipt for the expenditure that was made.

(3) A chairman who is a candidate may not make a disbursement for a campaign finance entity.

§ 13-219. Subtreasurer - Duties.
Repealed by Acts 2010, ch. 471, § 1, effective June 1, 2010.

§ 13-220. Campaign accounts.
(a) *Requirement.-*
(1) Each campaign finance entity shall designate one or more campaign accounts.
(2) Each designated campaign account shall:
(i) be in a financial institution; and
(ii) be registered in a manner that identifies it as the account of a campaign finance entity.
(3) A campaign finance entity shall deposit all funds received in a designated campaign account.
(b) *Disbursements by check.-*
(1) Subject to paragraph (2) of this subsection and subsection (c) of this section, a campaign finance entity may not directly or indirectly make a disbursement except by check from a campaign account designated under subsection (a) of this section.
(2) A campaign finance entity, or a person authorized by the campaign finance entity, may pay an expense of the campaign finance entity from funds other than a campaign account if:
(i) the expense is supported by a receipt that is provided to the campaign finance entity; and
(ii) the campaign finance entity reimburses the person who paid the expense by check from the campaign account and reports the expense as an expenditure of the campaign finance entity in accordance with Subtitle 3 of this title.
(c) *Petty cash fund.-*
(1) A campaign finance entity may maintain a petty cash fund.
(2) The campaign finance entity shall maintain a separate account book for the petty cash fund.
(3) The petty cash fund:
(i) may not exceed $250 at any time; and
(ii) may be replenished only by check from a campaign account designated under subsection (a) of this section.
(4) Not more than $25 may be disbursed from the petty cash fund in a primary or general election to a single recipient.
(5) Each petty cash expenditure shall be supported by a receipt and reported by category on the appropriate campaign finance report.
(6) This subsection does not authorize an expenditure that otherwise is unlawful under this article.

§ 13-221. Books and records.

(a) *In general.-*

(1) The treasurer of a campaign finance entity shall keep a detailed and accurate account book of all assets received, expenditures made, and obligations incurred by or on behalf of the entity.

(2) Except as provided in § 13-240 of this subtitle, as to each asset received or expenditure made, the account book shall state:

(i) its amount or value;

(ii) the date of the receipt or expenditure;

(iii) the name and address of the person from whom the asset was received or to whom the expenditure was made; and

(iv) a description of the asset received or the purpose for which the expenditure was made.

(3) Each expenditure made from a campaign account shall be supported by a receipt.

(b) *Retention.-* The account books and related records of a campaign finance entity shall be preserved until 2 years after the campaign finance entity files a final campaign finance report under Subtitle 3 of this title.

§ 13-222. Campaign contribution receipts.

(a) *In general.-*

(1) On receiving and before depositing a contribution specified in paragraph (2) of this subsection, a treasurer or subtreasurer shall issue a campaign contribution receipt on the form that the State Board prescribes.

(2) A campaign contribution receipt shall be mailed or delivered to each person who:

(i) makes one or more contributions, other than the purchase of tickets for a campaign event, in the cumulative amount of $51 or more; or

(ii) purchases one or more tickets for a campaign event:

1. at a cost of $51 or more per ticket; or

2. in the cumulative amount of $251 or more.

(3) At the request of a contributor, a treasurer or subtreasurer shall issue a campaign contribution receipt for any other contribution.

(4) A campaign contribution receipt issued under this section is evidence of the contribution.

(b) *Reporting of information.-* The information from a campaign contribution receipt shall be included in the campaign finance report filed by the treasurer or subtreasurer under this title.

§ 13-223, 13-224.

Reserved.

PART V. Contributions - Limits.

§ 13-225. In general.

Except as otherwise provided by law, contributions may be made only in accordance with this Part V of this subtitle.

§ 13-226. Contributions other than transfers.

(a) *Scope of section.-* The limits on contributions in this section do not apply to:
(1) a contribution to a ballot issue committee; or
(2) those contributions defined as transfers.
(b) *In general.-* Subject to subsection (c) of this section, a person may not, either directly or indirectly, in an election cycle make:
(1) aggregate contributions in excess of:
(i) $4,000 to any one campaign finance entity; or
(ii) $10,000 to all campaign finance entities; or
(2) a contribution of money in excess of $100 except by check or credit card.
(c) *Special limit for central committees.-*
(1) Notwithstanding subsection (b) of this section, a central committee of a political party may make aggregate in-kind contributions during an election cycle that are not in excess of:
(i) for a State central committee, $1 for every two registered voters in the State; and
(ii) for a local central committee, $1 for every two registered voters in the county.
(2) For the purposes of paragraph (1) of this subsection, the number of registered voters is determined, regardless of party affiliation, as of the first day of the election cycle.
(d) *Multiple candidacies or entities.-* The limit on contributions to the campaign finance entity of a candidate applies regardless of the number of offices sought by the candidate or campaign finance entities formed to support the candidate.
(e) *Affiliated corporations.-* Contributions by a corporation and any wholly-owned subsidiary of the corporation, or by two or more corporations owned by the same stockholders, shall be considered as being made by one contributor.

§ 13-227. Transfers - Limits.

(a) *Scope.-* In this section, a “campaign finance entity” includes a nonfederal out-of-state political committee.
(b) *Applicability.-* The limit on transfers set forth in subsection (c) of this section does not apply to a transfer:
(1) by a campaign finance entity to a ballot issue committee;
(2) between or among:
(i) political committees that are State or local central committees of the same political party;

(ii) a slate and the campaign finance entities of its members; and
(iii) the campaign finance entities of a candidate.
(c) *In general.-* During an election cycle, a campaign finance entity may not directly or indirectly make transfers in a cumulative amount of more than $6,000 to any one other campaign finance entity.
(d) *Affiliated transferors or transferees.-*
(1) All affiliated campaign finance entities are treated as a single entity in determining:
(i) the amount of transfers made by a campaign finance entity; and
(ii) the amount of transfers received by a campaign finance entity.
(2) Campaign finance entities are deemed to be affiliated if they:
(i) are organized and operated in coordination and cooperation with each other; or
(ii) otherwise conduct their operations and make their decisions relating to transfers and other contributions under the control of the same individual or entity.
(e) *Multiple candidacies.-* The limit on transfers to the campaign finance entities of a candidate prescribed in subsection (c) of this section applies regardless of the number of offices sought by the candidate.

§ 13-228. Same - Transfers by a political action committee to a candidate.
A political action committee that makes a transfer to the campaign finance entity of a candidate or to a slate shall:
(1) display its official name, as filed with the State Board under this subtitle, in a prominent place on the face of the check by which the funds are transferred; and
(2) include in a prominent place on the face of the check the words “political action committee” or the notation “PAC”, to indicate that the transferor is a political action committee.

§ 13-229. Same - Prohibited.
A transfer is not allowed if it is intended to conceal the source of the funds or the intended recipient.

§ 13-230. Loans.
(a) *Treatment - In general.-* A loan to a campaign finance entity is considered a contribution in the amount of the outstanding principal balance of the loan unless:
(1) the loan is from a financial institution or other entity in the business of making loans; or
(2) the loan is to the campaign finance entity of a candidate and:
(i) repayment of the loan is personally guaranteed by the candidate; and
(ii) the election cycle immediately following the election cycle in which the loan was made has not ended.
(b) *Same - Uncharged interest.-*

(1) Subject to subsection (c)(2) of this section, uncharged interest on a loan is a contribution.
(2) Uncharged interest is the amount by which, during a reporting period, the interest actually charged on the loan is less than the interest on the loan computed at the prime rate applicable on the day the loan was made.
(c) *Required terms.-*
(1) Subject to paragraph (2) of this subsection, the terms of a loan to a campaign finance entity shall:
(i) be in writing;
(ii) include the lender's name, address, and signature;
(iii) state the schedule for repayment of the loan;
(iv) state the interest rate of the loan; and
(v) be attached to the campaign finance report required of the entity under Subtitle 3 of this title for the reporting period during which the loan was made.
(2) (i) A loan by a candidate or the candidate's spouse to a campaign finance entity of the candidate is not required to comply with paragraph (1) of this subsection.
(ii) Unless a loan by a candidate or the candidate's spouse to a campaign finance entity of the candidate complies with paragraph (1) of this subsection:
1. the loan may not accrue interest;
2. any interest foregone on the loan is not a contribution under subsection (b) of this section; and
3. the campaign finance entity is not subject to:
A. § 13-310 (a) and (b) of this title so long as the loan has an outstanding principal balance; and
B. subsection (a) (2) (ii) of this section.
(d) *Same - Loans to campaign finance entity of a candidate.-*
(1) A loan may not be made to a campaign finance entity of a candidate, or accepted on behalf of the entity, without the express written consent of the candidate.
(2) The written consent of the candidate constitutes the personal guarantee of the candidate for repayment of the loan only if the document expressly so provides.
(3) A copy of the candidate's written consent shall be:
(i) furnished to the lender when the loan is made; and
(ii) attached to the campaign finance report required of the entity under Subtitle 3 of this title for the reporting period during which the loan was made.

§ 13-231. Personal funds - Use by candidate or spouse.
(a) *Certain uses not subject to contribution limits.-*
(1) Contributions or loans to a campaign finance entity of a candidate from the personal funds of the candidate or the candidate's spouse are not subject to the contribution limits under § 13-226 of this subtitle.

(2) Expenditures from personal funds by the candidate or the candidate's spouse for personal expenses of the candidate for filing fees, telecommunication services, travel, and food are not contributions.
(b) *Accounting by treasurer required.*- A contribution or loan to a campaign finance entity of a candidate by the candidate or the candidate's spouse shall pass through the hands of the treasurer of the entity and be reported in accordance with Subtitle 3 of this title.

§ 13-232. Contributions - When deemed received.
(a) *In general.*- Except as provided in subsection (b) of this section, a contribution is attributable to the election cycle in which it is received.
(b) *Checks.*- A contribution by check is attributable to the election cycle in which the check is issued.

§ 13-233. Right of individual to volunteer.
This Part V of this subtitle does not affect the right of an individual to:
(1) volunteer the individual's time or, for transportation incident to an election, personal vehicle; or
(2) pay reasonable legal expenses associated with maintaining or contesting the results of an election.

§ 13-234.
Reserved.

PART VI. Contributions - Prohibitions.

§ 13-235. During General Assembly session.
(a) *Scope of section.*- This section applies to the following officials:
(1) the Governor;
(2) the Lieutenant Governor;
(3) the Attorney General;
(4) the Comptroller; and
(5) a member of the General Assembly.
(b) *Prohibition.*- Except as provided in subsection (c) or (d) of this section, during a regular session of the General Assembly an official described in subsection (a) of this section, or a person acting on behalf of the official, may not, as to a candidate for federal, State, or local office, or a campaign finance entity of the candidate or any other campaign finance entity organized under this title and operated in coordination with a candidate:
(1) receive a contribution;
(2) conduct a fund-raising event;

(3) solicit or sell a ticket to a fund-raising event; or
(4) deposit or use any contribution of money that was not deposited prior to the session.
(c) *Exception - Candidate for federal or local government office.*- An official described in subsection (a) of this section, or a person acting on behalf of the official, is not subject to this section when engaged in activities solely related to the official's election to an elective federal or local office for which the official is a filed candidate.
(d) *Exception - Contribution from Fair Campaign Financing Fund.*- Under the Public Financing Act, a gubernatorial ticket, during the year of the election only, may accept eligible private contributions and any disbursement of funds by the State Board that is based on the eligible private contributions.
(e) *Violations.*-
(1) As to a violation of this section, the campaign finance entity of the official in violation is liable for a civil penalty as provided in this subsection.
(2) The State Board, represented by the State Prosecutor, may institute a civil action in the circuit court for any county seeking the civil penalty provided in this subsection.
(3) A campaign finance entity that receives a contribution as a result of the violation shall:
(i) refund the contribution to the contributor; and
(ii) pay a civil penalty that equals the sum of $1,000 plus the amount of the contribution.

§ 13-236. State funded entities.
An entity that at any time during an election cycle derives the majority of its operating funds from the State may not make a contribution to any campaign finance entity during that election cycle.

§ 13-237, 13-238.
Reserved.

PART VII. Contributions - Miscellaneous Provisions.

§ 13-239. Anonymous contributions - In general.
Except as provided in § 13-240 of this subtitle, if a campaign finance entity receives a contribution from an anonymous source, the campaign finance entity:
(1) may not use the contribution for any purpose; and
(2) shall remit the contribution to the State Treasurer.

§ 13-240. Same - Money received from gaming activity.
(a) *Scope.*- This section applies to a spin or chance on a paddle wheel or wheel of fortune that is authorized under the laws of this State to operate at a campaign fund-raising event.

(b) *In general.*- Notwithstanding § 13-239 of this subtitle or any other law that prohibits an anonymous contribution, a political committee may accept money received from the sale of a spin or chance, and need not identify the individual purchaser in its account book, if:
(1) the account book of the political committee includes:
(i) the net amount received by the political committee at the event at which the sale was made; and
(ii) the name and address of each individual who attended the event;
(2) no spin or chance is sold at the event for more than $2;
(3) the net income of the sponsoring political committee from spins and chances at the event does not exceed $1,500 in a 24-hour period; and
(4) the total receipts of the sponsoring political committee from spins and chances in that election do not exceed $2,500.
(c) *Proceeds in excess of limits.*- If a political committee raises funds in excess of a limit specified in this section, the political committee shall:
(1) donate the excess to a charity of its choice; or
(2) identify in its account book the amount received from each individual who purchased a spin or chance.
(d) *Regulations.*- The State Board shall adopt regulations to implement this section.

§ 13-241. Payroll deductions - In general.
(a) *Establishment of program for collection by payroll deductions.*- An employer may establish a program for collecting from employees by means of payroll deductions voluntary contributions to one or more campaign finance entities selected by the employer.
(b) *Segregated escrow account.*- Periodic contributions collected by payroll deductions under a program established under subsection (a) of this section shall be combined and accumulated in a segregated escrow account maintained solely for that purpose.
(c) *Records.*- An employer shall keep detailed and accurate records of each payroll deduction made under subsection (a) of this section, including:
(1) the name of the contributor;
(2) the date on which the contribution is withheld;
(3) the amount of the contribution; and
(4) the disposition of the contribution.
(d) *Transmission of contribution.*- Within 3 months after withholding a contribution under this section, the employer shall transmit the contribution to the appropriate campaign finance entity, together with the information recorded under subsection (c) (1), (2), and (3) of this section.
(e) *Solicitation.*- In soliciting an employee to make a contribution to a campaign finance entity by payroll deduction, an employer shall inform the employee of:
(1) the political purposes of the campaign finance entity; and

(2) the employee's right to refuse to contribute to the campaign finance entity without reprisal.
(f) *Prohibited acts.*- An employer may not receive or use money or anything of value under this section if it is obtained:
(1) by actual or threatened:
(i) physical force;
(ii) job discrimination; or
(iii) financial reprisal; or
(2) as:
(i) a result of a commercial transaction; or
(ii) dues, fees, or other assessment required as a condition of membership in a labor organization or employment.

§ 13-242. Payroll deductions - Employee membership entities.
(a) *Definitions.*-
(1) In this section the following words have the meanings indicated.
(2) "Affiliated political action committee" means a political action committee affiliated with an employee membership entity.
(3) "Employee membership entity" means an organization whose membership includes employees of the employer.
(b) *In general.*- If an employer withholds from employees by payroll deduction the employees' dues to an employee membership entity:
(1) the employee also may make contributions by payroll deduction to one or more affiliated political action committees selected by the employee; and
(2) the employer shall collect the contributions and transmit them to the employee membership entity designated by the employee in accordance with the requirements of subsection (c) of this section.
(c) *Separate account.*- Periodic contributions collected by payroll deductions pursuant to a program established under subsection (b) of this section shall be:
(1) combined and accumulated in a segregated escrow account maintained solely for that purpose; and
(2) transmitted to the employee membership entity within 30 days of being withheld, together with the information required under subsection (d)(1) through (4) of this section.
(d) *Records.*- An affiliated political action committee, in conjunction with its employee membership entity and the employer, shall keep detailed and accurate records of each contribution under subsection (b) of this section, including:
(1) the name of the contributor;
(2) the date on which the contribution was made;
(3) the amount of the contribution;

(4) the name of the affiliated political action committee designated by the employee to receive the contribution; and
(5) the date on which the contribution was received by the employee membership entity and the affiliated political action committee.
(e) *Transmittal of contributions - Employer program.-*
(1) Within 30 days after it receives a contribution under subsection (c) of this section, the employee membership entity shall transmit the contribution:
(i) to its affiliated political action committee; or
(ii) if a contribution is designated for a political action committee affiliated with a State or local chapter of the employee membership entity, to the State or local chapter of the employee membership entity.
(2) Within 5 days after it receives a contribution under paragraph (1)(ii) of this subsection, the State or local chapter of the employee membership entity shall transmit the contribution to its affiliated political action committee.
(3) An employee membership entity, including a State or local chapter, that transfers contributions in accordance with paragraphs (1) or (2) of this subsection shall include the information recorded under subsection (d) of this section that is received from the employer.
(f) *Prohibited acts.-* An employer, employee membership entity, or affiliated political action committee, may not solicit, receive, or use employee contributions in a manner that would be prohibited under § 13-241(e) and (f) of this subtitle if performed by an employer.

§ 13-243. Collections by membership entities.
(a) *Definitions.-*
(1) In this section the following words have the meanings indicated.
(2) “Membership entity” means an organization that collects dues from its members.
(3) “Affiliated political action committee” means a political action committee affiliated with a membership entity.
(b) *Collection of contributions.-* A membership entity may establish a program for periodically collecting from its members and accumulating voluntary contributions by the members to an affiliated political action committee if those contributions are collected together with:
(1) membership dues invoiced and collected by the membership entity; or
(2) contributions by the members to a political action committee established under federal law, if that political action committee is also affiliated with the membership entity.
(c) *Record keeping.-* A membership entity shall keep detailed and accurate records of each contribution received under subsection (b) of this section, including:
(1) the name of the contributor;
(2) the date on which the contribution is withheld;
(3) the amount of the contribution; and

(4) the disposition of the contribution.
(d) *Transmittal of contributions.*- Within 30 days after being received, a contribution under this section shall be transmitted by the membership entity, with the information recorded under subsection (c) (1), (2), and (3) of this section, to its affiliated political action committee.
(e) *Solicitation requirements.*- In soliciting a member, by joint invoice for membership dues or for a contribution to an affiliated federal political action committee, to make a contribution to its affiliated political action committee, a membership entity shall inform the member of:
(1) the political purposes of the affiliated political action committee; and
(2) the member's right to refuse to contribute to the political action committee without reprisal.
(f) *Prohibited acts.*- An employee membership entity or its affiliated political action committee entity may not receive or use money or anything of value under this section if it is obtained:
(1) by actual or threatened:
(i) physical force;
(ii) membership discrimination; or
(iii) financial or professional reprisal; or
(2) as dues, fees, or other assessment required as a condition of membership.

§ 13-244.
Reserved.

PART VIII. Expenditures - Miscellaneous Provisions.

§ 13-245. Prohibited expenditures.
(a) *Definitions.*- In this section, "walk-around services" means the following activities if performed for money while the polls are open:
(1) distributing campaign material;
(2) stationing a person, including oneself, or an object in the path of a voter;
(3) electioneering or canvassing as described in § 16-206 of this article;
(4) communicating in any other manner a voting preference or choice; or
(5) performing any other service as a poll worker or distributor of sample ballots.
(b) *Scope.*- This section does not apply to:
(1) meals, beverages, and refreshments served to campaign workers;
(2) salaries of regularly employed personnel in campaign headquarters;
(3) media advertising, including newspaper, radio, television, billboard, or aerial advertising;

(4) rent and regular office expenses; or
(5) the cost of telephoning voters or transporting voters to and from polling places.
(c) *Prohibition.-*
(1) A campaign finance entity, or a person acting on its behalf, may not at any time, directly or indirectly, pay or incur an obligation to pay, and a person may not, directly or indirectly, receive any money or thing of value, for a political endorsement.
(2) (i) A campaign finance entity, or a person acting on its behalf, that pays any person for walk-around services shall make all payments by check from a campaign account designated under § 13-220(a) of this subtitle.
(ii) All payments made under subparagraph (i) of this paragraph shall be reported in accordance with § 13-304 of this title.

§ 13-246. Presentation of claim for payment.
A person who claims that money is due from a campaign finance entity shall present a claim for payment to the treasurer or subtreasurer not later than 30 days after the election for which the liability was incurred.

§ 13-247. Disposition of surplus funds.
After all campaign expenditures have been made and before filing a final campaign finance report under Subtitle 3 of this title, any remaining balance in the account of a campaign finance entity shall be returned pro rata to the contributors or paid to:
(1) if the campaign finance entity is a personal treasurer or a political committee formed to support a candidate or act for a political party:
(i) the State central committee of the political party:
1. of which the candidate is a member; or
2. for which the political committee is acting;
(ii) the local central committee of the political party:
1. of which the candidate is a member in a county in which the candidate resides or which the candidate seeks to represent; or
2. for which the political committee is acting;
(iii) the board of education of a county in which the candidate resides or which the candidate seeks to represent;
(2) a nonprofit organization that provides services or funds for the benefit of pupils or teachers;
(3) a charitable organization registered or exempt from registration under the Maryland Charitable Solicitations Act; or
(4) a public or private institution of higher education in the State if:
(i) that institution possesses a certificate of approval from the Maryland Higher Education Commission; and

(ii) the payment is designated for use by the institution solely to award scholarships, grants, or loans to students attending the institution.

Subtitle 3. General Reporting Requirements

PART I. General Provisions.

§ 13-301. Application.
In this subtitle, the provisions that apply to a "campaign finance entity" also apply to a campaign entity located outside the State with regard to all expenditures within the State.

§ 13-302, 13-303.
Reserved.

PART II. Reporting Requirements.

§ 13-304. Reports to the State Board or a local board.
(a) *Requirement.-*
(1) From the date of its organization until its termination under the provisions of this title, a campaign finance entity, except a political club, shall file a campaign finance report at the State Board at the times and for the periods required by §§ 13-309, 13-312, and 13-316 of this subtitle.
(2) A campaign finance report submitted using an electronic format shall:
(i) be made under oath or affirmation;
(ii) require an electronic signature from the treasurer at the time of the filing of the campaign finance report; and
(iii) be made subject to the penalties for perjury.
(b) *Content.-* A campaign finance report filed by a campaign finance entity under subsection (a) of this section shall include the information required by the State Board with respect to all contributions received and all expenditures made by or on behalf of the campaign finance entity during the designated reporting period.
(c) *Continuing requirement for candidates.-* A campaign finance report prescribed by this subtitle for the campaign finance entity of a candidate is required whether or not:
(1) the candidate files a certificate of candidacy;
(2) the candidate withdraws, declines a nomination, or otherwise ceases to be a candidate;
(3) the candidate's name appears on the primary ballot; or
(4) the candidate is successful in the election.

§ 13-305. Exception to filing requirements.
(a) *Affidavit.-* Instead of filing a report required under § 13-309 of this subtitle, a treasurer may file an affidavit stating that the campaign finance entity has not raised or spent a cumulative amount of $1,000 or more, exclusive of the filing fee, and regardless of the balance of the campaign account, since:
(1) establishing the campaign finance entity; or
(2) filing the campaign finance entity's last campaign finance report.
(b) *Time period for filing.-* The affidavit shall be filed on or before the date a campaign finance report is due to be filed under § 13-309 of this subtitle.
(c) *Election to central committee of political party.-*
(1) This subsection only applies to a campaign finance entity of a candidate for election to the central committee of a political party that is authorized under subsection (a) of this section to file an affidavit instead of filing a campaign finance report on a date specified in § 13-309(a) of this subtitle.
(2) Subject to paragraph (3) of this subsection, a campaign finance entity subject to this subsection is not required to file an affidavit under this section or a campaign finance report on a date specified in § 13-309(a) of this subtitle.
(3) A campaign finance entity subject to this subsection shall file an affidavit under subsection (a) of this section or a campaign finance report on the date specified in § 13-309(c) of this subtitle.

§ 13-306. Reports to campaign finance entities of candidates.
Repealed by Acts 2003, ch. 380, § 1, effective October 1, 2003.

§ 13-307, 13-308.
Reserved.

PART III. Deadlines and Reporting Periods.

§ 13-309. Filing deadlines - In general.
(a) *Filing schedule - All campaign finance entities.-* Subject to other provisions of this subtitle, a campaign finance entity shall file campaign finance reports as follows:
(1) except for a ballot issue committee, on or before the fourth Tuesday immediately preceding each primary election except a presidential primary election;
(2) except for a ballot issue committee, on or before the second Friday immediately preceding a primary election;
(3) for a ballot issue committee only, on or before the fourth Friday immediately preceding a general election;

(4) on or before the second Friday immediately preceding a general election; and
(5) on or before the third Tuesday after a general election.
(b) *Additional deadlines - Campaign finance entities other than continuing political committees.-*
(1) A campaign finance entity is subject to subsection (a) of this section and this subsection only as to the election in which the entity designates that it will participate.
(2) In addition to the campaign finance reports required under subsection (a) of this section, but subject to paragraph (4) of this subsection, a campaign finance entity shall file campaign finance reports on the third Wednesday in January.
(3) (i) If subsequent to the filing of its declaration under § 13-208(c)(3) of this title, a campaign finance entity participates in an election in which it was not designated to participate, the campaign finance entity shall file all campaign reports prescribed under subsection (a) of this section for that election.
(ii) A violation of subparagraph (i) of this paragraph constitutes a failure to file by the campaign finance entity, and the responsible officer is guilty of a misdemeanor and on conviction is subject to the penalties prescribed under Part VII of this subtitle.
(4) If a campaign finance entity has neither a cash balance nor an outstanding obligation at the end of a reporting period, a campaign finance report for that period, clearly marked as "final", shall be filed on or before the due date, and no further report is required.
(c) *Additional deadlines - Continuing political committees.-* In addition to the campaign reports required under subsection (a) of this section, a continuing political committee shall file a campaign finance report on the third Wednesday in January of each year the committee is in existence.

§ 13-310. Same - Final report required.
(a) *Applicability.-* This section applies to the campaign finance entity of an individual if:
(1) the individual is not a filed candidate or the incumbent in any office filled by an election under this article; and
(2) the entity has funds remaining after the payment of all outstanding debts and other obligations.
(b) *Requirement.-* A campaign finance entity shall terminate and file a final campaign finance report within 8 years after the latest of:
(1) the end of the individual's most recent term of office;
(2) the date of the election in which the individual last was a filed candidate; and
(3) the payment of the final debt or other obligation of the entity that was incurred in connection with that candidacy.

§ 13-311. Final report - Disposal of funds.

Before a campaign finance entity files a final campaign finance report, the entity shall pay all outstanding obligations and dispose of all of its remaining assets in accordance with § 13-247 of this title.

§ 13-312. Reporting periods.

(a) *Campaign finance reports under § 13-304.-* Campaign finance reports filed under § 13-304 of this subtitle shall cover the following reporting periods:

(1) the first campaign finance report shall cover the period from the date of organization of the campaign finance entity through the day specified in item (3) of this section;

(2) each subsequent campaign finance report shall cover the period from the closing date of the previous campaign finance report through the day specified in item (3) of this section;

(3) (i) except as provided in item (ii) of this item, each campaign finance report shall cover the period that includes the seventh day before the day the campaign finance report is due; but

(ii) the campaign finance report that is required on or before the second Friday immediately preceding an election shall cover the period through and including the preceding Sunday; and

(4) if no contribution is received and no expenditure is made during the period covered by a campaign finance report, the campaign finance entity shall file a campaign finance report or an affidavit under § 13-305 of this subtitle to that effect.

(b) *Campaign finance report preceded by affidavit.-* A campaign finance report preceded by an affidavit filed in accordance with this subtitle shall cover the period from the closing date of the previous campaign finance report or date of organization of the campaign finance entity through the day specified in subsection (a)(3) of this section.

§ 13-313. Termination of campaign finance entity by the State Board.

(a) *In general.-* The State Board may terminate a campaign finance entity if the State Board determines that good cause exists and that:

(1) the campaign finance entity could be terminated under § 13-309(b)(4) of this subtitle except for the existence of one or more outstanding obligations and each of those obligations is more than 5 years old;

(2) no responsible officer currently is appointed and serving; or

(3) other extenuating circumstances exist to justify terminating the campaign finance entity.

(b) *Enforcement actions unaffected.-* The termination of a campaign finance entity under this section does not limit the right of:

(1) the State Board, or the State Prosecutor or the State's Attorney, to pursue an enforcement action against the former responsible officers of, or any candidate formerly affiliated with, the campaign finance entity; or

(2) a creditor to bring an action against the former responsible officers of, or any candidate affiliated with, the campaign finance entity.

§ 13-314, 13-315.
Reserved.

PART IV. Place of Filing.

§ 13-316. Filing location.
A campaign finance report required by § 13-304 of this subtitle shall be filed with the State Board.

§ 13-317. Local board filings - In duplicate.
Repealed by Acts 2010, ch. 72, § 1, enacted April 13, 2010, and effective from date of enactment.

§ 13-318, 13-319.
Reserved.

PART V. Implementing Provisions.

§ 13-320. Forms.
The State Board shall prescribe the forms for the campaign finance reports and other documents required by this subtitle.

§ 13-321. Notice.
(a) *Duty of board.-*
(1) In accordance with paragraph (2) of this subsection, the State Board shall notify each campaign finance entity that is required under this subtitle to file campaign finance reports of each campaign finance report required to be filed by that entity.
(2) The notice shall be provided by first class mail at least 10 but not more than 20 days before the filing date for each campaign finance report.
(b) Information to be included.- The notice required under subsection (a) of this section shall include:
(1) the filing date;
(2) the telephone number, business hours, and location of the State Board; and
(3) the penalty for failure to file a timely campaign finance report.

§ 13-322. Timeliness.
A campaign finance report is timely if:
(1) regardless of when it is received, the United States Postal Service has affixed a mark on the envelope or on a receipt verifying that the campaign finance report was mailed on or before the filing deadline; or
(2) it is received by the State Board within 3 days after the filing deadline and a private postal meter postmark or a receipt by a private carrier verifies that the campaign finance report was mailed or delivered to the private carrier on or before the filing deadline.

§ 13-323. Receipt.
A board shall provide a receipt for a campaign finance report that is hand-delivered.

§ 13-324. Electronic filing.
(a) *In general.-*
(1) Except as provided in paragraph (2) of this subsection, campaign finance reports required to be filed with the State Board shall be submitted using an electronic storage medium, and in a format, that the State Board approves.
(2) The State Board may exempt a campaign finance entity with *de minimis* financial activity from the requirement to submit campaign finance reports using an electronic medium.
(b) *Provision of media.-* On request the State Board shall supply to a person who is required to file campaign finance reports using an electronic medium the computer software and the disks or other media on which the required information is to be entered.
(c) *Maintenance of records.-* Campaign finance reports received by the State Board in an electronic storage format shall be maintained in accordance with § 13-341 of this subtitle.
(d) *Public access.-* The State Board shall make the campaign finance reports that are maintained in an electronic storage format under subsection (c) of this section widely and easily accessible to the public:
(1) using any existing public or private systems for data dissemination;
(2) on terms that the State Board determines are consistent with the purposes and requirements of this article; and
(3) by making any computer disk submitted by a person available for duplication.
(e) *Compliance.-* The State Board may refuse to accept or process a campaign finance report that is not submitted in accordance with the requirements of this section.
(f) *Specifications and regulations.-* The State Board shall:
(1) develop specifications for submitting campaign finance reports using an electronic medium; and
(2) adopt regulations to implement this section.

§ 13-325, 13-326.

Reserved.

PART VI. Violations.

§ 13-327. Failure to file - In general.

(a) *In general.-* A campaign finance entity that fails to file a campaign finance report or affidavit required by this subtitle is subject to the sanctions provided in Part VII of this subtitle.

(b) *Failure to provide required information.-* The failure to provide on a campaign finance report required by § 13-304 of this subtitle all of the information required of the campaign finance entity by the State Board under this subtitle is deemed a failure to file and renders the campaign finance report overdue, only if:

(1) the State Board notifies the responsible officers in writing of the particular deficiencies; and

(2) the responsible officers fail to file a properly corrected campaign finance report within 30 days after service of the notice.

§ 13-328. Failure to file - Lists of violators.

(a) *In general.-* Within 10 days after the deadline for the filing of any campaign finance report that is required to be filed with the State Board, the State Board shall compile a list of the campaign finance entities that failed to file the campaign finance report and distribute the list, or a portion of the list, to such local boards as is required to implement this subtitle.

(b) *Failure to provide required information.-* For the purposes of subsection (a) of this section, the failure to provide on a campaign finance report all of the information required of the campaign finance entity by the State Board under this subtitle is deemed a failure to file.

§ 13-329, 13-330.

Reserved.

PART VII. Sanctions.

§ 13-331. Late filing fees.

(a) *Imposition.-* In accordance with subsection (b) of this section, the State Board shall assess a late filing fee for a failure to file a campaign finance report or affidavit, as specified in § 13-327 of this subtitle.

(b) *Amount of fee.-*

(1) The fee is $10 for each day or part of a day, excluding Saturdays, Sundays, and holidays, that a campaign finance report or affidavit is overdue.
(2) An additional fee of $10 is due for each of the first 6 days, excluding Saturdays, Sundays, and holidays, that a preelection campaign finance report under § 13-309 of this subtitle is overdue.
(3) The maximum fee payable for a campaign finance report or affidavit is $250.
(c) *Acceptance of overdue reports.-*
(1) The State Board shall accept an overdue campaign finance report or affidavit that is submitted without payment of the late filing fee, but the campaign finance report is not considered filed until the fee has been paid.
(2) After an overdue campaign finance report or affidavit is received under paragraph (1) of this subsection no further late filing fee shall be incurred.
(d) *Responsibility for payment.-* A late filing fee is the joint and several liability of the responsible officers and:
(1) may not be paid, directly or indirectly, by the campaign finance entity; and
(2) is neither a contribution to nor an expenditure of the entity.

§ 13-332. Disqualification - Eligibility to be candidate or treasurer.
An individual may not become a candidate for any public or party office in this State or become a treasurer for a campaign finance entity if, as to any campaign finance report due under § 13-304 of this subtitle from, or on behalf of, that individual during the preceding five calendar years:
(1) there exists a failure to file as specified in § 13-327 of this subtitle; or
(2) the individual has failed to pay a late filing fee that is due.

§ 13-333. Same - Assuming office.
(a) *In general.-* An individual who, within the meaning of § 13-327 of this subtitle, has failed to file a campaign finance report that is due from, or on behalf of, that individual, may not, until the individual corrects the failure to file:
(1) be deemed to be elected to a public or party office in this State;
(2) take the oath or otherwise assume the duties of the office; or
(3) receive any salary or compensation for the office.
(b) *Certification by State Board.-* An official of the State or any of its political subdivisions may not issue a commission or administer an oath of office to an individual until that official receives certification from the State Board that all campaign finance reports due under § 13-304 of this subtitle from, or on behalf of, that individual have been filed.

§ 13-334. Forfeiture of salary.
(a) *Scope.-* This section applies to each individual holding public office in this State who is subject to prosecution under § 13-335(b) of this subtitle.

(b) *Investigation.-* The State Board shall:
(1) investigate each circumstance that causes an individual to become subject to this section;
(2) notify the individual; and
(3) provide the individual an opportunity to be heard.
(c) *Garnishment.-* If the State Board determines, after an opportunity for a hearing, that the individual has failed to file a campaign finance report within the meaning of § 13-327 of this subtitle, was provided notice under § 13-335 of this subtitle, and has not rectified the failure and paid any late filing fee due, the State Board shall direct the appropriate financial officer to withhold the salary of the individual as to that public office until:
(1) the failure to file is rectified and any late filing fee is paid; and
(2) any salary previously paid to the individual for the public office while the individual was in violation is restored to the State or local government involved.

§ 13-335. Referral for prosecution.
(a) *Show cause notice.-*
(1) If the State Board determines that there has been, for more than 30 days, a failure to file a campaign finance report within the meaning of § 13-327 of this subtitle, the State Board shall issue the notice prescribed in paragraph (2) of this subsection to the responsible officers of the campaign finance entity in violation.
(2) The notice shall demand that, within 30 days after service of the notice, either:
(i) the failure to file be rectified and any late filing fee due be paid; or
(ii) the responsible officers show cause why the State Board should not ask the appropriate prosecuting authority to prosecute the responsible officers for a violation of this subtitle.
(3) In its discretion, the appropriate prosecuting authority may refer the matter for action to the Central Collection Unit within the Department of Budget and Management.
(b) *Penalty.-* A responsible officer who fails, without cause, to file the campaign finance report and pay the late fee within 30 days after service of the notice prescribed in subsection (a)(2) of this section is guilty of a misdemeanor and on conviction is subject to the penalties prescribed in § 13-603 of this title.

§ 13-336. Provisions mandatory.
Subject to § 13-337 of this subtitle, the provisions of Part VI and this Part VII of this subtitle and the provisions of this subtitle governing the filing of campaign finance reports are mandatory and not directory.

§ 13-337. Relief from sanctions.
(a) *Judicial determination.-* A sanction may not be imposed for failure to file a campaign finance report or to pay a late filing fee if a court of competent jurisdiction finds just cause for the failure.

(b) *Administrative waiver of late filing fee.*-
(1) On request of a responsible officer subject to the assessment of a late filing fee and with the approval of the State Board, the State Administrator may waive the late filing fee for just cause.
(2) The decision of the State Administrator on a waiver request shall be in writing and state the circumstances surrounding the late filing and the reasons for the decision.
(3) The State Administrator may make a decision on a waiver request without notice or hearing.

§ 13-338, 13-339.
Reserved.

PART VIII. Administrative Procedures.

§ 13-340. Distribution of fees.
Fees relating to campaign finance reports shall be paid to the State Board and be applied to pay the expenses of collection and of any audits of campaign finance reports performed by or at the direction of the State Administrator.

§ 13-341. Retention of documents.
(a) *Requirement.*-
(1) Each board shall receive and preserve all campaign finance reports that are required to be filed with it under this article.
(2) Subject to paragraph (3) of this subsection, the campaign finance reports received by a board shall be kept as part of its records for:
(i) a period not to exceed 5 years after the campaign finance report is filed; or
(ii) a longer period if required by a court of competent jurisdiction or the State Board by regulation.
(3) (i) Notwithstanding paragraph (2) of this subsection, if the campaign finance report is that of a campaign finance entity of a candidate, the board shall keep the campaign finance report as a part of its records for at least 1 year after the expiration of the term of the public or party office for which the candidate sought nomination or election.
(ii) Subparagraph (i) of this paragraph applies whether or not:
1. the candidate is nominated, elected, or completes the term of office; and
2. the campaign finance report relates to more than one candidate.
(b) *Public access.*- Campaign finance reports shall be open for public inspection during the regular office hours of the board that retains them.
(c) *Transfer to State Archives.*- Subject to subsection (a) of this section, a board shall transfer the campaign finance reports filed with it to the State Archives.

(d) *Overdue reports - Separate record.-*
(1) Before transferring a campaign finance report to the State Archives, a board shall make a record of any overdue campaign finance report from the same campaign finance entity and submit a copy of the record to the State Archives and, if made by a local board, to the State Board.
(2) The record shall include:
(i) the name of the campaign finance entity;
(ii) the name of the treasurer;
(iii) an identification of the missing campaign finance report; and
(iv) if no later campaign finance report has been filed by the entity, the amount of any outstanding balance, and any outstanding obligations, shown on the last campaign finance report filed.
(e) *Evidence.-* A copy of a campaign finance report may be used as evidence in a court in accordance with § 10-204 of the Courts Article.

Subtitle 4. Campaign Materials

PART I. General Provisions.

§ 13-401. Authority line.

(a) *Requirement - In general.-*
(1) Except as otherwise provided in this section, each item of campaign material shall contain, set apart from any other message, an authority line that states:
(i) as to campaign material published or distributed by a campaign finance entity:
1. the name and address of the treasurer of each campaign finance entity responsible for the campaign material; and
2. as to each treasurer named under item 1 of this item, the name of each campaign finance entity for which the treasurer is acting; and
(ii) as to campaign material published or distributed by any other person, the name and address of the person responsible for the campaign material.
(2) The authority line may omit an address that is on file with the State Board or a local board.
(3) If the campaign material is too small to include all the information specified in paragraph (1) of this subsection in a legible manner, the authority line need only contain the name and title of the treasurer or other person responsible for it.
(4) The authority line for campaign material that is a commercial advertisement need only contain the information specified in paragraphs (1) and (2) of this subsection for one campaign finance entity or other person responsible for the advertisement.

(b) *Requirement - Campaign material not authorized by candidate.-* Campaign material that is published or distributed in support of or in opposition to a candidate, but is not authorized by the candidate, shall include the following statement:

"This message has been authorized and paid for by (name of payor or any organization affiliated with the payor), (name and title of treasurer or president). This message has not been authorized or approved by any candidate."

§ 13-402. Advertising rates.

(a) *In general.-* Subject to subsection (b) of this section, a person publishing a newspaper or periodical in the State may not charge a candidate for State or local public office a rate for political advertising that exceeds the local rate regularly charged for commercial advertising by the person publishing that newspaper or periodical.

(b) *Advertising or press agency.-* If a candidate uses an advertising or press agency to place a political advertisement, the person publishing the newspaper or periodical may charge the national rate regularly charged by that newspaper or periodical for commercial advertising.

§ 13-403. Retention of copies.

(a) *Requirement.-*

(1) Subject to paragraph (2) of this subsection, each campaign finance entity responsible for, publisher of, and distributor of, an item of campaign material shall keep a sample copy of the item for at least 1 year after the general election next following the date when the item was published or distributed.

(2) For each item of campaign material disseminated through the Internet, the sample copy shall be:

(i) a paper facsimile; or

(ii) a copy on an electronic medium that can be produced as a paper facsimile on request.

(b) *Exception.-* Subsection (a) of this section does not apply to a billboard or a sign.

§ 13-404, 13-405.

Reserved.

PART II. Legislative Newsletters.

§ 13-406. Definitions.

(a) *In general.-* In this Part II of this subtitle the following words have the meanings indicated.

(b) *Incumbent.-* "Incumbent" means a member of the General Assembly.

(c) *Legislative newsletter.-* "Legislative newsletter" means an unsolicited document used by an incumbent, without supervision by, or coordination with, the General Assembly, to disseminate information to a constituent, voter, or potential voter about:

(1) the incumbent's performance in legislative office; or
(2) one or more issues of public interest chosen by the incumbent.

(d) *Publication expense.-* "Publication expense" means an expenditure relating to writing, publishing, printing, issuing, mailing, or distributing a legislative newsletter.

§ 13-407. Scope of part.
Part II of this subtitle does not restrict the use by the General Assembly of any funds appropriated in the State budget.

§ 13-408. Payment of publication expenses.
(a) *Public funds prohibited.-* Publication expenses may not be paid from public funds.
(b) *Permissible funding.-* Publication expenses may be paid from:
(1) a campaign account of a campaign finance entity of the incumbent if the campaign finance entity complies with all other requirements of this title regarding expenditures and campaign material; or
(2) the personal funds of the incumbent or the spouse of the incumbent if, as to each issue:
(i) the incumbent has not filed a certificate of candidacy;
(ii) the legislative newsletter contains a notice that it is disseminated at the personal expense of the incumbent; and
(iii) within 10 days after the first mailing or distribution of the issue, the incumbent files a campaign finance report with the State Board that contains:
1. a detailed list of publication expenses; and
2. an affidavit that no funds for the legislative newsletter have been solicited or received from any source to supplement the personal funds.

§ 13-409. Late filing fee.
(a) *In general.-* There is a $10 late filing fee for each day or part of a day, excluding a Saturday, Sunday, or holiday, that a campaign finance report required by § 13-408 of this subtitle is overdue.
(b) *Maximum.-* The maximum fee payable is $250.
(c) *Personal liability.-* A late fee assessed under this section shall be paid from the personal funds of the incumbent.

Subtitle 5. Local Provisions

§ 13-501. Special provisions - Prince George's County.
As to contributions to the Prince George's County Executive, a member of the Prince George's County Council, or a candidate for either of those offices, Title 15, Subtitle 8, Part IV of the State Government Article may apply.

§ 13-502. Special provisions - Montgomery County.
As to contributions to the Montgomery County Executive, a member of the County Council of Montgomery County, or a candidate for either of those offices, Title 15, Subtitle 8, Part V of the State Government Article may apply.

§ 13-503. Special provisions - Howard County.
As to contributions to the Howard County Executive, a member of the County Council of Howard County, or a candidate for either of those offices, Title 15, Subtitle 8, Part VII of the State Government Article may apply.

§ 13-504. Applicability of Title 15, Subtitle 8, Part VIII of the State Government Article to contributions.
As to contributions to the Frederick County Board of County Commissioners or a candidate for that office, Title 15, Subtitle 8, Part VIII of the State Government Article may apply.

Subtitle 6. Prohibited Acts and Penalties

§ 13-601. False statements, entries and electronic submissions.
(a) *Filings under oath.*- A person may not willfully make a false, fraudulent, or misleading statement or entry in any campaign finance report or other filing that is under oath and is required by this article.
(b) *Electronic submission.*- A person may not make an electronic submission of a prescribed form, affidavit, campaign finance report, or other document on behalf of another person without that person's express consent.
(c) *Penalty.*- A person who violates this section is guilty of perjury and on conviction subject to the penalty provided under the Criminal Law Article.

§ 13-602. Prohibited acts.
(a) *Enumerated.*-
(1) A person may not directly or indirectly give, offer, or promise money, aid, a gift, an advantage, a preferment, an emolument, or any other valuable thing to another person for

the purpose of inducing or procuring that person to vote or refrain from voting for or against:
(i) an individual, question, or measure at an election or political convention; or
(ii) the election of an officer by the General Assembly.
(2) A person may not directly or indirectly receive, accept, request, or solicit money, aid, a gift, an advantage, a preferment, an emolument, or any other valuable thing from another person for the purpose of inducing or procuring a third person to vote or refrain from voting for or against an individual, question, or measure at an election or political convention.
(3) A person may not vote or refrain from voting for or against an individual, question, or measure at an election or a political convention, in consideration of money, aid, a gift, an advantage, a preferment, an emolument, or any other valuable thing paid, received, accepted, or promised to the advantage of that person or of another person.
(4) (i) A person, to defray the costs of a campaign finance entity, may not directly or indirectly pay, give, or promise money or any other valuable thing to any person other than a campaign finance entity.
(ii) Subparagraph (i) of this paragraph does not apply to:
1. dues regularly paid for membership in a political club if all of the money that is spent by that political club in connection with any campaign finance activity is paid through a treasurer as provided in this title;
2. an individual volunteering the individual's time or personal vehicle in accordance with § 13-232 of this title;
3. an employer's accumulation of employee contributions in accordance with § 13-242 of this title; or
4. advertising costs or other expenses incident to the expression of personal views in accordance with § 13-102 of this title.
(5) A person may not directly or indirectly pay or promise to pay a campaign finance entity in a name other than the person's name.
(6) A responsible officer of a campaign finance entity may not knowingly receive a payment or promise of payment and enter it or cause it to be entered in an account book in a name that the responsible officer knows is not the name of the person that made the payment or the promise to pay.
(7) An employer who pays employees in envelopes may not mark on or enclose in the envelopes a political motto, device, or argument that contains express or implied threats intended to influence the political opinions or actions of those employees.
(8) During the 90 days before an election, an employer may not exhibit in the employer's workplace:
(i) a threat, a notice, or information that, on the election or defeat of a particular ticket or candidate:
1. work will cease, wholly or partly;

2. the workplace will close; or
3. employees' wages will be reduced; or
(ii) any other threat, expressed or implied, intended to influence the political opinions or actions of the employer's employees.
(9) A person may not publish or distribute, or cause to be published or distributed, campaign material that violates § 13-401 of this title.
(10) A candidate may not make a payment, contribution, or expenditure, or incur a liability to pay, contribute, or expend, from the candidate's personal funds any money or valuable thing in a manner not authorized by § 13-230 of this title.
(11) An individual may not sign the name of any other individual on any form or other document under this title, without the authority of the individual whose name is signed.
(b) *Penalty.-* A person who violates this section is guilty of a misdemeanor and on conviction is:
(1) subject to a fine not exceeding $1,000 or imprisonment not exceeding 1 year or both; and
(2) ineligible to hold any public or party office for 4 years after the date of the offense.
(c) Prosecution.-
(1) The State Prosecutor may prosecute, in any jurisdiction of the State, a person that the State Prosecutor believes to be guilty of a willful violation of this section.
(2) A State's Attorney may prosecute a person that the State's Attorney believes to be guilty of a willful violation of this section in the county in which the State's Attorney serves.

§ 13-603. Other violations - Criminal penalties.
Except as otherwise expressly provided in this subtitle, a person who knowingly and willfully violates a provision of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $25,000 or imprisonment not exceeding 1 year or both.

§ 13-604. Same - Civil penalties.
(a) *In general.-*
(1) A person who violates a provision of this title without knowing that the act is illegal shall pay a civil penalty in accordance with subsections (b) through (g) of this section.
(2) The penalty imposed under this section may not exceed $5,000.
(3) An infraction described in paragraph (1) of this subsection is a civil offense.
(4) This section does not apply to a violation of another section in which a penalty is expressly provided.
(b) *Civil citation.-*
(1) If the State Prosecutor or the State's Attorney with jurisdiction determines that a person unintentionally, and without criminal intent, has violated a provision of this title, the State Prosecutor, the State's Attorney, or both, shall issue to the person a civil citation that contains:

(i) the name and address of the person cited;
(ii) the nature, time, and place of the violation;
(iii) the manner in which the violation occurred;
(iv) the maximum penalty for the violation;
(v) the manner and time in which to pay the penalty;
(vi) where to pay the penalty; and
(vii) a statement that the person receiving the citation has a right to a trial in the District Court.
(2) The prosecuting authority who issues a citation under paragraph (1) of this subsection shall file it in the District Court.
(c) *Service.-* The citation shall be served in accordance with the Maryland Rules.
(d) *Trial in District Court; adjudication of violation.-*
(1) On receipt of the return of service, the District Court shall schedule the case for trial and notify the person named in the citation of the trial date.
(2) The trial in the District Court shall be conducted in the same manner as set forth for municipal infractions under Article 23A, § 3(b)(8) through (15) of the Code.
(3) The District Court shall remit to the State Board all late fees collected.
(4) An adjudication of a violation under this subsection:
(i) is not a criminal conviction; and
(ii) does not carry with it any of the civil disabilities that arise from a criminal conviction.
(e) *Costs.-* A person who is adjudicated in violation as set forth in a citation issued under subsection (b) of this section is liable for the cost of the District Court proceedings.
(f) *Failure to appear.-* If a person who has been served with a citation fails to appear for trial, the court, at the request of the prosecutor, may dismiss the citation or enter a civil judgment against the person:
(1) in favor of the State Board;
(2) in accordance with the Maryland Rules; and
(3) in an amount not exceeding the maximum fine set forth in subsection (a) of this section and any late fees owed to the State Board.

§ 13-605. Injunction.
(a) *In general.-* The Secretary of State may seek an immediate injunction against any violation of this title.
(b) *Violation of injunction.-* A person who violates an injunction issued under this section:
(1) is in criminal contempt; and
(2) is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $250 or imprisonment not exceeding 30 days or both.

Appendix D: Federal Campaign Finance Laws (Selected Sections)

2 U.S.C. § 431(2). Definitions – Candidate.

When used in this Act: . . . .
(2) The term "candidate" means an individual who seeks nomination for election, or election, to Federal office, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election--
(A) if such individual has received contributions aggregating in excess of $5,000 or has made expenditures aggregating in excess of $5,000; or
(B) if such individual has given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions aggregating in excess of $5,000 or has made such expenditures aggregating in excess of $5,000.

2 U.S.C. § 431(8). Definitions – Contribution.

When used in this Act: . . . .
(8) (A) The term "contribution" includes—
(i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office; or
(ii) the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.
(B) The term "contribution" does not include–
(i) the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee;
(ii) the use of real or personal property, including a church or community room used on a regular basis by members of a community for noncommercial purposes, and the cost of invitations, food, and beverages, voluntarily provided by an individual to any candidate or any political committee of a political party in rendering voluntary personal services on the individual's residential premises or in the church or community room for candidate-related or political party-related activities, to the extent that the cumulative value of such invitations, food, and beverages provided by such individual on behalf of any single candidate does not exceed $1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed $2,000 in any calendar year;
(iii) the sale of any food or beverage by a vendor for use in any candidate's campaign or for use by or on behalf of any political committee of a political party at a charge less than the normal comparable charge, if such charge is at least equal to the cost of such food or bever-

age to the vendor, to the extent that the cumulative value of such activity by such vendor on behalf of any single candidate does not exceed $1,000 with respect to any single election, and on behalf of all political committees of a political party does exceed $2000 in any calendar year;
(iv) any unreimbursed payment for travel expenses made by any individual on behalf of any candidate or any political committee of a political party, to the extent that the cumulative value of such activity by such individual on behalf of any single candidate does not exceed $1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed $2,000 in any calendar year;
(v) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply to any cost incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines, or similar types of general public political advertising;
(vi) any payment made or obligation incurred by a corporation or a labor organization which, under section 441b(b) of this title, would not constitute an expenditure by such corporation or labor organization;
(vii) any loan of money by a State bank, a federally chartered depository institution, or a depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation . . .[1] or the National Credit Union Administration, other than any overdraft made with respect to a checking or savings account, made in accordance with applicable law and in the ordinary course of business, but such loan—
(I) shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors;
(II) shall be made on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule; and
(III) shall bear the usual and customary interest rate of the lending institution;
(viii)[2] any legal or accounting services rendered to or on behalf of—
(I) any political committee of a political party if the person paying for such services is the regular employer of the person rendering such services and if such services are not attributable to activities which directly further the election of any designated candidate to Federal office; or
(II) an authorized committee of a candidate or any other political committee, if the person paying for such services is the regular employer of the individual rendering such services and if such services are solely for the purpose of ensuring compliance with this Act or chapter 95 or chapter 96 of title 26, but amounts paid or incurred by the regular employer

for such legal or accounting services shall be reported in accordance with section 434(b) of this title by the committee receiving such services;
(ix) the payment by a State or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used by such committee in connection with volunteer activities on behalf of nominees of such party: *Provided*, That—
(1) such payments are not for the cost of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;
(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and
(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or particular candidates;
(x) the payment by a candidate, for nomination or election to any public office (including State or local office), or authorized committee of a candidate, of the costs of campaign materials which include information on or reference to any other candidate and which are used in connection with volunteer activities (including pins, bumper stickers, handbills, brochures, posters, and yard signs, but not including the use of broadcasting, newspapers, magazines, billboards, direct mail, or similar types of general public communication or political advertising): *Provided*, That such payments are made from contributions subject to the limitations and prohibitions of this Act;
(xi) the payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of nominees of such party for President and Vice President: *Provided*, That—
(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;
(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and
(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or candidates;
(xii) payments made by a candidate or the authorized committee of a candidate as a condition of ballot access and payments received by any political party committee as a condition of ballot access;
(xiii) any honorarium (within the meaning of section 441i[1] of this title); and
(xiv) any loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, if such a loan is made in accordance with applicable law and under commercially reasonable terms and if the person making such loan makes loans derived from an advance on the

candidate’s brokerage account, credit card, home equity line of credit, or other line of credit in the normal course of the person’s business.

2 U.S.C. § 431(17). Definitions – Independent Expenditure.

When used in this Act: . . . .
(17) Independent expenditure
The term “independent expenditure” means an expenditure by a person--
(A) expressly advocating the election or defeat of a clearly identified candidate; and
(B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.

2 U.S.C. § 434. Reporting Requirements.

(a) *Receipts and disbursements by treasurers of political committees; filing requirements.*
(1) Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection. The treasurer shall sign each such report.
(2) If the political committee is the principal campaign committee of a candidate for the House of Representatives or for the Senate—
(A) in any calendar year during which there is a regularly scheduled election for which such candidate is seeking election, or nomination for election, the treasurer shall file the following reports:
(i) a pre-election report, which shall be filed no later than the 12th day before (or posted by any of the following: registered mail, certified mail, priority mail having a delivery confirmation, or delivered to an overnight delivery service with an online tracking system, if posted or delivered no later than the 15th day before)1 any election in which such candidate is seeking election, or nomination for election, and which shall be complete as of the 20th day before such election;
(ii) a post-general election report, which shall be filed no later than the 30th day after any general election in which such candidate has sought election, and which shall be complete as of the 20th day after such general election; and
(iii) additional quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter: except that the report for the quarter ending December 31 shall be filed no later than January 31 of the following calendar year; and

(B)2 in any other calendar year the treasurer shall file quarterly reports, which shall be filed not later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter, except that the report for the quarter ending December 31 shall be filed not later than January 31 of the following calendar year.
(3) If the committee is the principal campaign committee of a candidate for the office of President—
(A) in any calendar year during which a general election is held to fill such office—
(i) the treasurer shall file monthly reports if such committee has on January 1 of such year, received contributions aggregating $100,000 or made expenditures aggregating $100,000 or anticipates receiving contributions aggregating $100,000 or more or making expenditures aggregating $100,000 or more during such year: such monthly reports shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day of the month, except that, in lieu of filing the report otherwise due in November and December, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year;
(ii) the treasurer of the other principal campaign committees of a candidate for the office of President shall file a pre-election report or reports in accordance with paragraph (2)(A)(i), a post-general election report in accordance with paragraph (2)(A)(ii), and quarterly reports in accordance with paragraph (2)(A)(iii); and
(iii) if at any time during the election year a committee filing under paragraph (3)(A)(ii) receives contributions in excess of $100,000 or makes expenditures in excess of $100,000, the treasurer shall begin filing monthly reports under paragraph (3)(A)(i) at the next reporting period; and
(B) in any other calendar year, the treasurer shall file either—
(i) monthly reports, which shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day of the month; or
(ii) quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter and which shall be complete as of the last day of each calendar quarter.
(4) All political committees other than authorized committees of a candidate shall file either—
(A) (i) quarterly reports, in a calendar year in which a regularly scheduled general election is held, which shall be filed no later than the 15th day after the last day of each calendar quarter: except that the report for the quarter ending on December 31 of such calendar year shall be filed no later than January 31 of the following calendar year;
(ii) a pre-election report, which shall be filed no later than the 12th day before (or posted by any of the following: registered mail, certified mail, priority mail having a delivery

confirmation, or express mail having a delivery confirmation, or delivered to an overnight delivery service with an online tracking system, if posted or delivered no later than the 15th day before)1 any election in which the committee makes a contribution to or expenditure on behalf of a candidate in such election, and which shall be complete as of the 20th day before the election;

(iii) a post-general election report, which shall be filed no later than the 30th day after the general election and which shall be complete as of the 20th day after such general election; and

(iv) in any other calendar year, a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31 and a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year; or

(B) monthly reports in all calendar years which shall be filed no later than the 20th day after the last day of the month and shall be complete as of the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year. Notwithstanding the preceding sentence, a national committee of a political party shall file the reports required under subparagraph (B).1

(5) If a designation, report, or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii) or subsection (g)(1)) is sent by registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, the United States postmark shall be considered the date of filing of the designation, report, or statement. If a designation, report or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii), or subsection (g)(1)) is sent by an overnight delivery service with an online tracking system, the date on the proof of delivery to the delivery service shall be considered the date of filing of the designation, report, or statement.2

(6) (A) The principal campaign committee of a candidate shall notify the Secretary or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of $1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution.

(B) *Notification of expenditure from personal funds.*

(i) *Definition of expenditure from personal funds*. In this subparagraph, the term ‘expenditure from personal funds’ means—

(I) an expenditure made by a candidate using personal funds; and (II) a contribution or loan made by a candidate using personal funds or a loan secured using such funds to the candidate's authorized committee.
(ii) *Declaration of intent*. Not later than the date that is 15 days after the date on which an individual becomes a candidate for the office of Senator, the candidate shall file a declaration stating the total amount of expenditures from personal funds that the candidate intends to make, or to obligate to make, with respect to the election that will exceed the State-by-State competitive and fair campaign formula with—
(I) the Commission; and
(II) each candidate in the same election.
(iii) *Initial notification*. Not later than 24 hours after a candidate described in clause (ii) makes or obligates to make an aggregate amount of expenditures from personal funds in excess of 2 times the threshold amount in connection with any election, the candidate shall file a notification with—
(I) the Commission; and
(II) each candidate in the same election.
(iv) *Additional notification*. After a candidate files an initial notification under clause (iii), the candidate shall file an additional notification each time expenditures from personal funds are made or obligated to be made in an aggregate amount that exceed $10,000 with—
(I) the Commission; and
(II) each candidate in the same election.
Such notification shall be filed not later than 24 hours after the expenditure is made.
(v) *Contents*. A notification under clause (iii) or (iv) shall include—
(I) the name of the candidate and the office sought by the candidate;
(II) the date and amount of each expenditure; and
(III) the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification.
(C) *Notification of disposal of excess contributions*. In the next regularly scheduled report after the date of the election for which a candidate seeks nomination for election to, or election to, Federal office, the candidate or the candidate's authorized committee shall submit to the Commission a report indicating the source and amount of any excess contributions (as determined under paragraph (1) of section 315(i)) (2 U.S.C. § 441a(i)) and the manner in which the candidate or the candidate's authorized committee used such funds.
(D) *Enforcement*. For provisions providing for the enforcement of the reporting requirements under this paragraph, see section 309 (2 U.S.C. § 437g).
(E) The notification required under this paragraph shall be in addition to all other reporting requirements under this Act.

(7) The reports required to be filed by this subsection shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the amount need be carried forward.
(8) The requirement for a political committee to file a quarterly report under paragraph (2)(A)(iii) or paragraph (4)(A)(i) shall be waived if such committee is required to file a pre-election report under paragraph (2)(A)(i), or paragraph (4)(A)(ii) during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.
(9) The Commission shall set filing dates for reports to be filed by principal campaign committees of candidates seeking election, or nomination for election, in special elections and political committees filing under paragraph (4)(A) which make contributions to or expenditures on behalf of a candidate or candidates in special elections. The Commission shall require no more than one pre-election report for each election and one postelection report for the election which fills the vacancy. The Commission may waive any reporting obligation of committees required to file for special elections if any report required by paragraph (2) or (4) is required to be filed within 10 days of a report required under this subsection. The Commission shall establish the reporting dates within 5 days of the setting of such election and shall publish such dates and notify the principal campaign committees of all candidates in such election of the reporting dates.
(10) The treasurer of a committee supporting a candidate for the office of Vice President (other than the nominee of a political party) shall file reports in accordance with paragraph (3).
(11) (A) The Commission shall promulgate a regulation under which a person required to file a designation, statement, or report under this Act—
(i) is required to maintain and file a designation, statement, or report for any calendar year in electronic form accessible by computers if the person has, or has reason to expect to have, aggregate contributions or expenditures in excess of a threshold amount determined by the Commission; and
(ii) may maintain and file a designation, statement, or report in electronic form or an alternative form if not required to do so under the regulation promulgated under clause (i).
(B)1 The Commission shall make a designation, statement, report, or notification that is filed with the Commission under this Act available for inspection by the public in the offices of the Commission and accessible to the public on the Internet not later than 48 hours (or not later than 24 hours in the case of a designation, statement, report, or notification filed electronically) after receipt by the Commission.
(C) In promulgating a regulation under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying designations, statements, and reports covered by the regulation. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(b) *Contents of reports*. Each report under this section shall disclose—
(1) the amount of cash on hand at the beginning of the
reporting period;
(2) for the reporting period and calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), the total amount of all receipts, and the total amount of all receipts in the following categories:
(A) contributions from persons other than political committees;
(B) for an authorized committee, contributions from the candidate;
(C) contributions from political party committees;
(D) contributions from other political committees; (D) As used in this paragraph, the term "report" means, with respect to the Commission, a report, designation, or statement required by this Act to be filed with the Commission.
(E) for an authorized committee, transfers from other authorized committees of the same candidate;
(F) transfers from affiliated committees and, where the reporting committee is a political party committee, transfers from other political party committees, regardless of whether such committees are affiliated;
(G) for an authorized committee, loans made by or guaranteed by the candidate;
(H) all other loans;
(I) rebates, refunds, and other offsets to operating expenditures;
(J) dividends, interest, and other forms of receipts; and
(K) for an authorized committee of a candidate for the office of President, Federal funds received under chapter 95 and chapter 96 of title 26;
(3) the identification of each—
(A) person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution;
(B) political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution;
(C) authorized committee which makes a transfer to the reporting committee;
(D) affiliated committee which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfer;

(E) person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and date and amount or value of such loan;
(F) person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of such receipt; and
(G) person who provides any dividend, interest, or other receipt to the reporting committee in an aggregate value or amount in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of any such receipt;
(4) for the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), the total amount of all disbursements, and all disbursements in the following categories:
(A) expenditures made to meet candidate or committee operating expenses;
(B) for authorized committees, transfers to other committees authorized by the same candidate;
(C) transfers to affiliated committees and, where the reporting committee is a political party committee, transfers to other political party committees, regardless of whether they are affiliated;
(D) for an authorized committee, repayment of loans made by or guaranteed by the candidate;
(E) repayment of all other loans;
(F) contribution refunds and other offsets to contributions;
(G) for an authorized committee, any other disbursements;
(H) for any political committee other than an authorized committee—
(i) contributions made to other political committees;
(ii) loans made by the reporting committees;
(iii) independent expenditures;
(iv) expenditures made under section 441a(d) of this title; and
(v) any other disbursements; and
(I) for an authorized committee of a candidate for the office of President, disbursements not subject to the limitation of section 441a(b);
(5) the name and address of each—
(A) person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure;
(B) authorized committee to which a transfer is made by the reporting committee;

(C) affiliated committee to which a transfer is made by the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds by the reporting committee to another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfers;
(D) person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment; and
(E) person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution was reported under paragraph (3)(A) of this subsection, together with the date and amount of such disbursement;
(6) (A) for an authorized committee, the name and address of each person who has received any disbursement not disclosed under paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of any such disbursement;
(B) for any other political committee, the name and address of each—
(i) political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount or any such contribution;
(ii) person who has received a loan from the reporting committee during the reporting period, together with the date and amount of such loan;
(iii) person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office) in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure and a statement which indicates whether such independent expenditure is in support of, or in opposition to, a candidate, as well as the name and office sought by such candidate, and a certification, under penalty of perjury, whether such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee;
(iv) person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under section 441a(d) of this title, together with the date, amount, and purpose of any such expenditure as well as the name of, and office sought by, the candidate on whose behalf the expenditure is made; and
(v) person who has received any disbursement not otherwise disclosed in this paragraph or paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office) from the reporting committee within the reporting period, together with the date, amount, and purpose of any such disbursement;

(7) the total sum of all contributions to such political committee, together with the total contributions less offsets to contributions and the total sum of all operating expenditures made by such political committee, together with total operating expenditures less offsets to operating expenditures, for both the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office); and
(8) the amount and nature of outstanding debts and obligations owed by or to such political committee; and where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the consideration therefor.
(c) *Statements by other than political committees; filing; contents; indices of expenditures*.
(1) Every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year shall file a statement containing the information required under subsection (b)(3)(A) of this section for all contributions received by such person.
(2) Statements required to be filed by this subsection shall be filed in accordance with subsection (a)(2) of this section, and shall include—
(A) the information required by subsection (b)(6)(B)(iii) of this section, indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;
(B) under penalty of perjury, a certification whether or not such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and
(C) the identification of each person who made a contribution in excess of $200 to the person filing such statement which was made for the purpose of furthering an independent expenditure.1
(3) The Commission shall be responsible for expeditiously preparing indices which set forth, on a candidate-by-candidate basis, all independent expenditures separately, including those reported under subsection (b)(6)(B)(iii) of this section, made by or for each candidate, as reported under this subsection, and for periodically publishing such indices on a timely pre-election basis.
(d) *Use of facsimile machines and electronic mail to file independent expenditure statements*.
(1) Any person who is required to file a statement under sub-section (c) or (g)2 of this section, except statements required to be filed electronically pursuant to subsection (a)(11)(A)(i) may file the statement by facsimile device or electronic mail, in accordance with such regulations as the Commission may promulgate.
(2) The Commission shall make a document which is filed electronically with the Commission pursuant to this paragraph accessible to the public on the internet not later than 24 hours after the document is received by the Commission.
(3) In promulgating a regulation under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying the documents covered by the regulation. Any document verified under any of the methods

shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.
(e) *Political committee*.
(1) *National and congressional political committees*. The national committee of a political party, any national congressional campaign committee of a political party, and any subordinate committee of either, shall report all receipts and disbursements during the reporting period.
(2) *Other political committees to which section 323 (2 U.S.C. § 441i) applies*.
(A) *In general*. In addition to any other reporting requirements applicable under this Act, a political committee (not described in paragraph (1)) to which section 323(b)(1) (2 U.S.C. § 441i(b)(1)) applies shall report all receipts and disbursements made for activities described in section 301(20)(A), (2 U.S.C. § 431(20)(A)) unless the aggregate amount of such receipts and disbursements during the calendar year is less than $5,000.
(B) *Specific disclosure by state and local parties of certain nonfederal amounts permitted to be spent on federal election activity*. Each report by a political committee under subparagraph (A) of receipts and disbursements made for activities described in section 301(20)(A) (2 U.S.C. § 431(20)(A)) shall include a disclosure of all receipts and disbursements described in section 323(b)(2)(A) and (B) (2 U.S.C. § 441i(b)(2)(A) and (B)).
(3) *Itemization*. If a political committee has receipts or disbursements to which this subsection applies from or to any person aggregating in excess of $200 for any calendar year, the political committee shall separately itemize its reporting for such person in the same manner as required in paragraphs (3)(A), (5), and (6) of subsection (b).
(4) *Reporting periods*. Reports required to be filed under this subsection shall be filed for the same time periods required for political committees under subsection (a)(4)(B).
(f) *Disclosure of electioneering communications*.
(1) *Statement required*. Every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of $10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission a statement containing the information described in paragraph (2).
(2) *Contents of statement*. Each statement required to be filed under this subsection shall be made under penalty of perjury and shall contain the following information:
(A) The identification of the person making the disbursement, of any person sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement.
(B) The principal place of business of the person making the disbursement, if not an individual.
(C) The amount of each disbursement of more than $200 during the period covered by the statement and the identification of the person to whom the disbursement was made.

(D) The elections to which the electioneering communications pertain and the names (if known) of the candidates identified or to be identified.
(E) If the disbursements were paid out of a segregated bank account which consists of funds contributed solely by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(20))) directly to this account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to that account during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. Nothing in this subparagraph is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.
(F) If the disbursements were paid out of funds not described in subparagraph (E), the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to the person making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.
(3) *Electioneering communication*. For purposes of this subsection—
(A) *In general*.
(i) The term 'electioneering communication' means any broadcast, cable, or satellite communication which—
(I) refers to a clearly identified candidate for Federal office;
(II) is made within—
(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or
(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and
(III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.
(ii) If clause (i) is held to be constitutionally insufficient by final judicial decision to support the regulation provided herein, then the term 'electioneering communication' means any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate. Nothing in this subparagraph shall be construed to affect the interpretation or application of section 100.22(b) of title 11, Code of Federal Regulations.
(B) *Exceptions*. The term 'electioneering communication' does not include—
(i) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) a communication which constitutes an expenditure or an independent expenditure under this Act;
(iii) a communication which constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Commission, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or
(iv) any other communication exempted under such regulations as the Commission may promulgate (consistent with the requirements of this paragraph) to ensure the appropriate implementation of this paragraph, except that under any such regulation a communication may not be exempted if it meets the requirements of this paragraph and is described in section 301(20)(A)(iii) (2 U.S.C. § 431(20)(A)(iii)).
(C) *Targeting to relevant electorate*. For purposes of this paragraph, a communication which refers to a clearly identified candidate for Federal office is 'targeted to the relevant electorate' if the communication can be received by 50,000 or more persons—
(i) in the district the candidate seeks to represent, in the case of a candidate for Representative in, or Delegate or Resident Commissioner to, the Congress; or
(ii) in the State the candidate seeks to represent, in the case of a candidate for Senator.
(4) *Disclosure date*. For purposes of this subsection, the term 'disclosure date' means—
(A) the first date during any calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000; and
(B) any other date during such calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000 since the most recent disclosure date for such calendar year.
(5) *Contracts to disburse*. For purposes of this subsection, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.
(6) *Coordination with other requirements*. Any requirement to report under this subsection shall be in addition to any other reporting requirement under this Act.
(7) *Coordination with Internal Revenue Code*. Nothing in this subsection may be construed to establish, modify, or otherwise affect the definition of political activities or electioneering activities (including the definition of participating in, intervening in, or influencing or attempting to influence a political campaign on behalf of or in opposition to any candidate for public office) for purposes of the Internal Revenue Code of 1986.
(g) *Time for reporting certain expenditures*.
(1) *Expenditures aggregating $1,000*.
(A) *Initial report*. A person (including a political committee) that makes or contracts to make independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before the date of an election shall file a report describing the expenditures within 24 hours.

(B) *Additional reports*. After a person files a report under subparagraph (A), the person shall file an additional report within 24 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $1,000 with respect to the same election as that to which the initial report relates.
(2) *Expenditures aggregating $10,000*.
(A) *Initial report*. A person (including a political committee) that makes or contracts to make independent expenditures aggregating $10,000 or more at any time up to and including the 20th day before the date of an election shall file a report describing the expenditures within 48 hours.
(B) *Additional reports*. After a person files a report under subparagraph (A), the person shall file an additional report within 48 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $10,000 with respect to the same election as that to which the initial report relates.
(3) *Place of filing; Contents*. A report under this subsection—
(A) shall be filed with the Commission; and
(B) shall contain the information required by subsection (b)(6)(B)(iii), including the name of each candidate whom an expenditure is intended to support or oppose.
(4) *Time of filing for expenditures aggregating $1,000*. Notwithstanding subsection (a)(5), the time at which the statement under paragraph (1) is received by the Commission or any other recipient to whom the notification is required to be sent shall be considered the time of filing of the statement with the recipient.

11 C.F.R. § 100.3. Candidate.

(a) *Definition.* Candidate means an individual who seeks nomination for election, or election, to federal office. An individual becomes a candidate for Federal office whenever any of the following events occur:
(1) The individual has received contributions aggregating in excess of $5,000 or made expenditures aggregating in excess of $5,000.
(2) The individual has given his or her consent to another person to receive contributions or make expenditures on behalf of that individual and such person has received contributions aggregating in excess of $5,000 or made expenditures aggregating in excess of $5,000.
(3) After written notification by the Commission that any other person has received contributions aggregating in excess of $5,000 or made expenditures aggregating in excess of $5,000 on the individual's behalf, the individual fails to disavow such activity by letter to the Commission within 30 days of receipt of the notification.

(4) The aggregate of contributions received under 11 CFR 100.3(a)(1), (2), and (3), in any combination thereof, exceeds $5,000, or the aggregate of expenditures made under 11 CFR 100.3(a)(1), (2), and (3), in any combination thereof, exceeds $5,000.
(b) *Election cycle.* For purposes of determining whether an individual is a candidate under this section, contributions or expenditures shall be aggregated on an election cycle basis. An election cycle shall begin on the first day following the date of the previous general election for the office or seat which the candidate seeks, unless contributions or expenditures are designated for another election cycle. For an individual who receives contributions or makes expenditures designated for another election cycle, the election cycle shall begin at the time such individual, or any other person acting on the individual's behalf, first receives contributions or makes expenditures in connection with the designated election. The election cycle shall end on the date on which the general election for the office or seat that the individual seeks is held.

11 C.F. R. § 100.22. Expressly advocating.

Expressly advocating means any communication that--
(a) Uses phrases such as “vote for the President,” “re-elect your Congressman,” “support the Democratic nominee,” “cast your ballot for the Republican challenger for U.S. Senate in Georgia,” “Smith for Congress,” “Bill McKay in 94,” “vote Pro-Life” or “vote Pro-Choice” accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, “vote against Old Hickory,” “defeat” accompanied by a picture of one or more candidate(s), “reject the incumbent,” or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say “Nixon's the One,” “Carter '76,” “Reagan/Bush” or “Mondale!”; or
(b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because--
(1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and
(2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

11 C.F.R. § 100.29. Electioneering Communication.

(a) Electioneering communication means any broadcast, cable, or satellite communication that:
(1) Refers to a clearly identified candidate for Federal office;
(2) Is publicly distributed within 60 days before a general election for the office sought by the candidate; or within 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate, and the candidate referenced is seeking the nomination of that political party; and
(3) Is targeted to the relevant electorate, in the case of a candidate for Senate or the House of Representatives.
(b) For purposes of this section--
(1) Broadcast, cable, or satellite communication means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system.
(2) Refers to a clearly identified candidate means that the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as "the President," "your Congressman," or "the incumbent," or through an unambiguous reference to his or her status as a candidate such as "the Democratic presidential nominee" or "the Republican candidate for Senate in the State of Georgia."
(3)(i) Publicly distributed means aired, broadcast, cablecast or otherwise disseminated through the facilities of a television station, radio station, cable television system, or satellite system.
(ii) In the case of a candidate for nomination for President or Vice President, publicly distributed means the requirements of paragraph (b)(3)(i) of this section are met and the communication:
(A) Can be received by 50,000 or more persons in a State where a primary election, as defined in 11 CFR 9032.7, is being held within 30 days; or
(B) Can be received by 50,000 or more persons anywhere in the United States within the period between 30 days before the first day of the national nominating convention and the conclusion of the convention.
(4) A special election or a runoff election is a primary election if held to nominate a candidate. A special election or a runoff election is a general election if held to elect a candidate.
(5) Targeted to the relevant electorate means the communication can be received by 50,000 or more persons--
(i) In the district the candidate seeks to represent, in the case of a candidate for Representative in or Delegate or Resident Commissioner to, the Congress; or

(ii) In the State the candidate seeks to represent, in the case of a candidate for Senator.
(6)(i) Information on the number of persons in a Congressional district or State that can receive a communication publicly distributed by a television station, radio station, a cable television system, or satellite system, shall be available on the Federal Communications Commission's Web site, http://www.fcc.gov. A link to that site is available on the Federal Election Commission's Web site, http://www.fec.gov. If the Federal Communications Commission's Web site indicates that a communication cannot be received by 50,000 or more persons in the specified Congressional district or State, then such information shall be a complete defense against any charge that such communication constitutes an electioneering communication, so long as such information is posted on the Federal Communications Commission's Web site on or before the date the communication is publicly distributed.
(ii) If the Federal Communications Commission's Web site does not indicate whether a communication can be received by 50,000 or more persons in the specified Congressional district or State, it shall be a complete defense against any charge that a communication reached 50,000 or more persons when the maker of a communication:
(A) Reasonably relies on written documentation obtained from the broadcast station, radio station, cable system, or satellite system that states that the communication cannot be received by 50,000 or more persons in the specified Congressional district (for U.S. House of Representatives candidates) or State (for U.S. Senate candidates or presidential primary candidates);
(B) Does not publicly distribute the communication on a broadcast station, radio station, or cable system, located in any Metropolitan Area in the specified Congressional district (for U.S. House of Representatives candidates) or State (for U.S. Senate candidates or presidential primary candidates); or
(C) Reasonably believes that the communication cannot be received by 50,000 or more persons in the specified Congressional district (for U.S. House of Representatives candidates) or State (for U.S. Senate candidates or presidential primary candidates).
(7)(i) Can be received by 50,000 or more persons means--
(A) In the case of a communication transmitted by an FM radio broadcast station or network, where the Congressional district or State lies entirely within the station's or network's protected or primary service contour, that the population of the Congressional district or State is 50,000 or more; or
(B) In the case of a communication transmitted by an FM radio broadcast station or network, where a portion of the Congressional district or State lies outside of the protected or primary service contour, that the population of the part of the Congressional district or State lying within the station's or network's protected or primary service contour is 50,000 or more; or
(C) In the case of a communication transmitted by an AM radio broadcast station or network, where the Congressional district or State lies entirely within the station's or

network's most outward service area, that the population of the Congressional district or State is 50,000 or more; or
(D) In the case of a communication transmitted by an AM radio broadcast station or network, where a portion of the Congressional district or State lies outside of the station's or network's most outward service area, that the population of the part of the Congressional district or State lying within the station's or network's most outward service area is 50,000 or more; or
(E) In the case of a communication appearing on a television broadcast station or network, where the Congressional district or State lies entirely within the station's or network's Grade B broadcast contour, that the population of the Congressional district or State is 50,000 or more; or
(F) In the case of a communication appearing on a television broadcast station or network, where a portion of the Congressional district or State lies outside of the Grade B broadcast contour--
(1) That the population of the part of the Congressional district or State lying within the station's or network's Grade B broadcast contour is 50,000 or more; or
(2) That the population of the part of the Congressional district or State lying within the station's or network's broadcast contour, when combined with the viewership of that television station or network by cable and satellite subscribers within the Congressional district or State lying outside the broadcast contour, is 50,000 or more; or
(G) In the case of a communication appearing exclusively on a cable or satellite television system, but not on a broadcast station or network, that the viewership of the cable system or satellite system lying within a Congressional district or State is 50,000 or more; or
(H) In the case of a communication appearing on a cable television network, that the total cable and satellite viewership within a Congressional district or State is 50,000 or more.
(ii) Cable or satellite television viewership is determined by multiplying the number of subscribers within a Congressional district or State, or a part thereof, as appropriate, by the current national average household size, as determined by the Bureau of the Census.
(iii) A determination that a communication can be received by 50,000 or more persons based on the application of the formula at paragraph (b)(7)(i)(G) or (H) of this section shall create a rebuttable presumption that may be overcome by demonstrating that--
(A) One or more cable or satellite systems did not carry the network on which the communication was publicly distributed at the time the communication was publicly distributed; and
(B) Applying the formula to the remaining cable and satellite systems results in a determination that the cable network or systems upon which the communication was publicly distributed could not be received by 50,000 persons or more.
(c) The following communications are exempt from the definition of electioneering communication. Any communication that:

(1) Is publicly disseminated through a means of communication other than a broadcast, cable, or satellite television or radio station. For example, electioneering communication does not include communications appearing in print media, including a newspaper or magazine, handbill, brochure, bumper sticker, yard sign, poster, billboard, and other written materials, including mailings; communications over the Internet, including electronic mail; or telephone communications;
(2) Appears in a news story, commentary, or editorial distributed through the facilities of any broadcast, cable, or satellite television or radio station, unless such facilities are owned or controlled by any political party, political committee, or candidate. A news story distributed through a broadcast, cable, or satellite television or radio station owned or controlled by any political party, political committee, or candidate is nevertheless exempt if the news story meets the requirements described in 11 CFR 100.132(a) and (b);
(3) Constitutes an expenditure or independent expenditure provided that the expenditure or independent expenditure is required to be reported under the Act or Commission regulations;
(4) Constitutes a candidate debate or forum conducted pursuant to 11 CFR 110.13, or that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or
(5) Is paid for by a candidate for State or local office in connection with an election to State or local office, provided that the communication does not promote, support, attack or oppose any Federal candidate. See 11 CFR 300.71 for communications paid for by a candidate for State or local office that promotes, supports, attacks or opposes a Federal candidate.

11 C.F.R. § 100.72. Testing the Waters.

(a) General exemption. Funds received solely for the purpose of determining whether an individual should become a candidate are not contributions. Examples of activities permissible under this exemption if they are conducted to determine whether an individual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such funds received. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the funds received are contributions subject to the reporting requirements of the Act. Such contributions must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received.
(b) Exemption not applicable to individuals who have decided to become candidates. This exemption does not apply to funds received for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting

a campaign. Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:
(1) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.
(2) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.
(3) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.
(4) The individual conducts activities in close proximity to the election or over a protracted period of time.
(5) The individual has taken action to qualify for the ballot under State law.

11 C.F.R. § 100.82. Bank Loans.

(a) General provisions. A loan of money to a political committee or a candidate by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it:
(1) Bears the usual and customary interest rate of the lending institution for the category of loan involved;
(2) Is made on a basis that assures repayment;
(3) Is evidenced by a written instrument; and
(4) Is subject to a due date or amortization schedule.
(b) Reporting. Such loans shall be reported by the political committee in accordance with 11 CFR 104.3(a) and (d).
(c) Endorsers and guarantors. Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement, except that, in the event of a signature by the candidate's spouse, the provisions of 11 CFR 100.52(b)(4) shall apply. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that such agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered a contribution by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors.

(d) Overdrafts. For purposes of this section, an overdraft made on a checking or savings account of a political committee shall be considered a contribution by the bank or institution unless:
(1) The overdraft is made on an account that is subject to automatic overdraft protection;
(2) The overdraft is subject to a definite interest rate that is usual and customary; and
(3) There is a definite repayment schedule.
(e) Made on a basis that assures repayment. A loan, including a line of credit, shall be considered made on a basis that assures repayment if it is obtained using either of the sources of repayment described in paragraphs (e)(1) or (2) of this section, or a combination of paragraphs (e)(1) and (2) of this section:
(1)(i) The lending institution making the loan has perfected a security interest in collateral owned by the candidate or political committee receiving the loan, the fair market value of the collateral is equal to or greater than the loan amount and any senior liens as determined on the date of the loan, and the candidate or political committee provides documentation to show that the lending institution has a perfected security interest in the collateral. Sources of collateral include, but are not limited to, ownership in real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable and cash on deposit.
(ii) Amounts guaranteed by secondary sources of repayment, such as guarantors and cosigners, shall not exceed the contribution limits of 11 CFR part 110 or contravene the prohibitions of 11 CFR 110.4, 110.20, part 114 and part 115; or
(2) The lending institution making the loan has obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts, such as public financing payments under 11 CFR part 9001 through part 9012, or part 9031 through part 9039, contributions, or interest income, provided that:
(i) The amount of the loan or loans obtained on the basis of such funds does not exceed the amount of pledged funds;
(ii) Loan amounts are based on a reasonable expectation of the receipt of pledged funds. To that end, the candidate or political committee must furnish the lending institution documentation, i.e., cash flow charts or other financial plans, that reasonably establish that such future funds will be available;
(iii) A separate depository account is established at the lending institution or the lender obtains an assignment from the candidate or political committee to access funds in a committee account at another depository institution that meets the requirements of 11 CFR 103.2, and the committee has notified the other institution of this assignment;
(iv) The loan agreement requires the deposit of the public financing payments, contributions and interest income pledged as collateral into the separate depository account for the purpose of retiring the debt according to the repayment requirements of the loan agreement; and

(v) In the case of public financing payments, the borrower authorizes the Secretary of the Treasury to directly deposit the payments into the depository account for the purpose of retiring the debt.
(3) If the requirements set forth in this paragraph are not met, the Commission will consider the totality of the circumstances on a case-by-case basis in determining whether a loan was made on a basis that assures repayment.
(f) This section shall not apply to loans described in 11 CFR 100.73.

11 C.F.R. § 101.3. Funds Received or Expended Prior to Becoming a Candidate.

When an individual becomes a candidate, all funds received or payments made in connection with activities conducted under 11 CFR 100.72(a) and 11 CFR 100.131(a) or his or her campaign prior to becoming a candidate shall be considered contributions or expenditures under the Act and shall be reported in accordance with 11 CFR 104.3 in the first report filed by such candidate's principal campaign committee. The individual shall keep records of the name of each contributor, the date of receipt and amount of all contributions received (see 11 CFR 102.9(a)), and all expenditures made (see 11 CFR 102.9(b)) in connection with activities conducted under 11 CFR 100.72 and 11 CFR 100.131 or the individual's campaign prior to becoming a candidate.

11 C.F.R. § 104.8. Uniform Reporting of Receipts.

(a) A reporting political committee shall disclose the identification of each individual who contributes an amount in excess of $200 to the political committee's federal account(s). This identification shall include the individual's name, mailing address, occupation, the name of his or her employer, if any, and the date of receipt and amount of any such contribution. If an individual contributor's name is known to have changed since an earlier contribution reported during the calendar year (or during the election cycle, in the case of an authorized committee), the exact name or address previously used shall be noted with the first reported contribution from that contributor subsequent to the name change.
(b) In each case where a contribution received from an individual in a reporting period is added to previously unitemized contributions from the same individual and the aggregate exceeds $200 in a calendar year (or in an election cycle, in the case of an authorized committee) the reporting political committee shall disclose the identification of such individual along with the date of receipt and amount of any such contribution. Except for contributions by payroll deduction, each additional contribution from the individual shall be separately itemized. In the case of a political committee other than an authorized

committee which receives contributions through a payroll deduction plan, such committee is not required to separately itemize each additional contribution received from the contributor during the reporting period. In lieu of separate itemization, such committee may report: the aggregate amount of contributions received from the contributor through the payroll deduction plan during the reporting period; the identification of the individual; and a statement of the amount deducted per pay period.
(c) Absent evidence to the contrary, any contribution made by check, money order, or other written instrument shall be reported as a contribution by the last person signing the instrument prior to delivery to the candidate or committee.
(d)(1) If an itemized contribution is made by more than one person in a single written instrument, the treasurer shall report the amount to be attributed to each contributor.
(2)(i) If a contribution is redesignated by a contributor, in accordance with 11 CFR 110.1(b) or 110.2(b), the treasurer of the authorized political committee receiving the contribution shall report the redesignation in a memo entry on Schedule A of the report covering the reporting period in which the redesignation is received. The memo entry for each redesignated contribution shall be reported in the following manner--
(A) The first part of the memo entry shall disclose all of the information for the contribution as it was originally reported on Schedule A;
(B) The second part of the memo entry shall disclose all of the information for the contribution as it was redesignated by the contributor, including the election for which the contribution was redesignated and the date on which the redesignation was received.
(ii) If a contribution from a political committee is redesignated by the contributing political committee in accordance with 11 CFR 110.1(b) or 110.2(b), the treasurer of such political committee shall report the redesignation in a memo entry on Schedule B of the report covering the reporting period in which the redesignation is made. The memo entry for each redesignated contribution shall be reported in the following manner--
(A) The first part of the memo entry shall disclose all of the information for the contribution as it was originally reported on Schedule B;
(B) The second part of the memo entry shall disclose all of the information for the contribution as it was redesignated by the contributing political committee, including the election for which the contribution was redesignated and the date on which the redesignation was made.

(3) If an itemized contribution is reattributed by the contributor(s) in accordance with 11 CFR 110.1(k), the treasurer shall report the reattribution in a memo entry on Schedule A of the report covering the reporting period in which the reattribution is received. The memo entry for each reattributed contribution shall be reported in the following manner--
(i) The first part of the memo entry shall disclose all of the information for the contribution as it was originally reported on Schedule A;

(ii) The second part of the memo entry shall disclose all of the information for the contribution as it was reattributed by the contributors, including the date on which the reattribution was received.
(4) If a contribution is refunded to the contributor, the treasurer of the political committee making the refund shall report the refund on Schedule B of the report covering the reporting period in which the refund is made, in accordance with 11 CFR 103.3(b)(5) and 104.3(b). If a contribution is refunded to a political committee, the treasurer of the political committee receiving the refund shall report the refund on Schedule A of the report covering the reporting period in which the refund is received, in accordance with 11 CFR 104.3(a).
(e) For reports covering activity on or before December 31, 2002, national party committees shall disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of $200 in a calendar year to the committee's non-Federal account(s). This information shall include the donating individual's or entity's name, mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.
(f) For reports covering activity on or before December 31, 2002, national party committees shall also disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of $200 in a calendar year to the committee's building fund account(s). This information shall include the donating individual's or entity's name, mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.
(g) The principal campaign committee of the candidate shall report the receipt of any bank loan obtained by the candidate or loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.83 and 100.143, as an itemized entry of Schedule A as follows:
(1) The amount of the loan that is used in connection with the candidate's campaign shall be reported as an itemized entry on Schedule A.
(2) See 11 CFR 100.83(c) for special reporting rules regarding certain loans used for a candidate's routine living expenses.