

INTERIM REPORT OF THE CITY OF BOWIE ELECTIONS TASK FORCE

Prepared by Gerard F Devlin, Task Force Chair

Mayor Robinson, members of the Bowie City Council

I am privileged to present for your consideration the interim report of the ETF

First off let me congratulate you on the panel you chose to handle this important civic task. At first blush I had reservations about a committee of this size handling a subject as complex and many sided as this. Yet the committee has worked well together and we have three subcommittees who have worked effectively to bring the matter to a conclusion. It is clear that Council chose the members wisely and with considerable thought and I feel the final product will reflect that fact

I expect the final report will be before you before Labor Day. Of course with such a large and diverse body of volunteers all of whom are engaged in both professional and civic activities arranging meeting dates has been as you would expect yet because of the always effective assistance of the City Clerk, Hon. Pamela Fleming, we have worked through this difficulty. In every way she has been the *sine qua non* of the Task Force

By way of procedure, we have broken the Task Force into three standing subcommittees;

Campaign Reporting,

Hon Jack Jenkins, Chair

Members:

Leon Buck, vice chair

Dufour Woodley

Fair Campaign Practices And Reporting,

Eddie Pounds, Esq. Chair

Members:

Hon. Joan B. Pitkin, vice chair
Betsy Burian
Janelle Patterson
Maurice Branch
Bruce Russell
Victoria Herman

Structural Changes,

Hon. Richard Padgett, Chair

Members:

Jerome Madlock, vice chair
Janis Hagey
John L. Rouse

Task Force Chair and vice chair are ex officio members of all three subcommittees

The subcommittees have each met and forwarded an informal report which is attached. In addition a legal opinion on subjects of interest to Task Force members has been requested and received from the City Attorney, Robert Levan, Esq which is also attached.

While the subcommittee recommendations are merely recommendations they do give an insight into what an important segment of the Task Force are thinking on these pending issues

The full Task Force will meet on July 23, 2008 to begin wrapping up the Final Report which will be forwarded to Council upon its completion

Respectfully submitted,

GERARD F. DEVLIN

ELECTIONS TASK FORCE CHAIR

Fair Campaign Practices and Enforcement Sub-Committee
04 June 2008 Notes

Discussion and agreement on the following issues

- No spending caps will be set on campaign spending for Council and mayoral positions
- No caps on outside contributions
- Bruce M will research the wording of the McCain/Feingold wording that would cover partisan support in the line of organizations sending out literature, flyers, purchasing adds, etc
- Prohibition of direct or indirect contributions from partisan political - City of Bowie code should be revised to reads as follows
"It shall be unlawful for any partisan political organizations or legal entities to contribute any money or other thing of value to any candidate in any city election "
 - Maximum individual campaign contribution will be equal to U S Federal Law
- Prohibited practices were discussed and the decision was made to adapt the wording for the City of Rockville's section 8-101

Sec 8-101 Prohibited practices

The following persons shall be guilty of prohibited practices and shall be punished in accordance with the provisions of this section

(1) *Offering bribe* Every person who shall, directly or indirectly, by himself or by another, give or offer or promise to any person any money, gift, advantage, preferment, aid, emolument or any valuable thing whatever, for the purpose of inducing or procuring any person to vote, or refrain from voting, for or against any person, or for or against any measure or proposition at any City election

(2) *Accepting or soliciting bribe* Every person who shall, directly or indirectly, receive, accept, request or solicit from any person, candidate, committee, association, organization or corporation, any money, gift, advantage, preferment, aid, emolument, or any valuable thing whatsoever, for the purpose of inducing or procuring any person to vote, or refrain from voting, for or against any

pamphlet, circular, card, sample ballot, dodger, poster, advertisement or any printed, multigraphed, photographed, typewritten or written matter or statement or any matter or statement which may be copied by any device or method now known for printing or copying or which may hereafter be used for making copies of printed or written matter in any form whatever for publication or distribution, relating to or concerning any candidate, including a write-in candidate, or prospective candidate for public office or for the acceptance or defeat of any proposition unless such pamphlet, circular, card, sample ballot, dodger, poster, advertisement, or other form of publication described in this article clearly indicates the name of the candidate, person or campaign committee responsible for the literature and contains, but set apart therefrom, an authority line which shall include the name and address of the person, treasurer, or campaign manager responsible for the publication or distribution of the same, except that if the person, treasurer, or campaign manager has furnished the address to the City Clerk, the literature need not contain an address. The requirements of this section shall not apply to any individual publishing or distributing campaign literature promoting the success or defeat of any principle or proposition submitted to a vote at any City election, provided that such campaign literature is published and distributed independent of, and not in coordination with, any campaign committee or other entity.

- There will be no payment for walk-around services on election day - the decision was made to adapt the wording for the City of Rockville's section 8-80

Sec 8-80 Payment for walk-around services on election day

(a) *Prohibited* No candidate, or campaign committee, or any person acting on behalf of any of the foregoing may at any time, directly or indirectly, pay or incur any obligation to pay, nor may any person receive, directly or indirectly, any sum of money or thing of value in return for a political endorsement or for walk-around services or any other services as a poll worker or distributor of sample ballots, performed on the day of the election

(b) *"Walk-around services" defined* For the purpose of this section, walk-around services include any of the following activities when performed for money on the day of the election, while the polls are open

(1) Distributing to any person any item enumerated in paragraph 8-101(7)

(2) Communicating a voting preference or choice in any manner

(3) Stationing any person or object in or along the path of any voter or

(4) Electioneering or canvassing within the meaning of Article 33, Section 24-23(a)(4) of the Annotated Code of Maryland, as amended

(c) *Exceptions* 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 but not limited to newspaper, radio, television, billboard, or serial advertising

(4) Rent and regular office expenses; or

(5) Cost of phoning voters or transporting voters to and from polling places

- Regarding the wording for enforcement and penalties the decision was made to adapt the wording for the City of Gaithersburg section 6C-13

Any person who willfully violates any of the provisions of the chapter, unless otherwise specified in the City Charter or elections ordinance, shall be guilty of a municipal infraction and upon conviction may be fined not to exceed \$1,000 00 Any officer or employee of the city government who is convicted of a misdemeanor under the provisions of this chapter shall immediately upon conviction thereof cease to hold such office or employment In addition thereto, the city may institute injunctive, mandamus or any other appropriate action or proceedings at law or equity for enforcement of this chapter or to correct violations of this chapter, any court of competent jurisdiction shall have the right to issue restraining order, temporary or permanent injunctions or mandamus or other appropriate form of remedy or relief

- Disposition of surplus funds the decision was made to adapt the wording for the City of Gaithersburg section 6C-12

Disposition of surplus funds

Prior to the time of filing the final report required, any surplus funds remaining after payment of all campaign expenditures shall be

1 Returned, pro rata, to the contributors by the treasurer or

2 Paid to a charitable organization registered pursuant to article 41 section 103B of the annotated code of Maryland, as amended or to a charitable organization exempt from such registration pursuant to article 41 , section 103 of the annotated code of Maryland as amended or

3 Paid to a local board of education or to a recognized nonprofit organization providing services or funds for the

person, or for or against any measure or proposition at any City election

(3) *Acting on bribe* Every person who, in consideration of any money, gift, advantage, preferment, aid, emolument, or any valuable thing whatsoever, paid, received, accepted, or promised to the advantage of himself or any other person, shall vote or refrain from voting for or against any person, or for or against any measure at any City election

(4) *Making contribution other than to treasurer* No person shall, directly or indirectly, pay, give, contribute or promise any money or other valuable thing to defray or towards defraying the costs or expenses of any candidate or campaign committee to any person, committee, company, organization or association, other than to a treasurer

a This subsection shall not apply to dues regularly paid for membership in any campaign committee if all money expended by such committee in connection with the costs or expenses of any campaign or election is paid out only through its treasurer as provided in this article

b This subsection shall not apply to any contribution received by a candidate or the candidate's authorized agent provided that the candidate or authorized agent shall immediately turn the contribution over to the treasurer

(5) *Political contributions in false name* Every person who shall, directly or indirectly, by himself or through another person make a payment or promise of payment to a treasurer or candidate in any other name than his own, and every treasurer or candidate who shall knowingly receive a payment or promise of payment and entered the same or caused the same to be entered in his accounts in any other name than that of the person by whom such payment or promise of payment is made

(6) *Coercing employees* Every person who, being an employer, pays his employees the salary or wages due in pay envelopes, upon which there is written or printed or in which there is enclosed any political motto, device or argument containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employees, or within ninety (90) days of an election puts or otherwise exhibits in the establishment or place where his employees are engaged in labor any handbill or placard containing any threat, notice or information that if any particular ticket or candidate is elected or defeated work in his place or establishment will cease, in whole or in part, his establishment will be closed up, the wages of his employees will be reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees

(7) *Campaign literature* Every person who publishes or distributes or causes to be published or distributed any

benefit of pupils or teachers or

4 Paid to any public or private institution of higher education in the state for scholarship or loan purposes

- Failure to file the final campaign financial accounting report within 60 days from the day of election (whether one has won or not) will pay a fine of \$500 and not be allowed to run for City Office until the fine and report have been paid and submitted

Campaign Reporting Sub-Committee Recommendations

Objective #1 Immediate review of campaign financial reports and automatic rejection of reports which clearly do not meet legal requirements.

Recommended Code Provision:

"Within forty-eight hours of submission by the Candidate, not counting Saturdays and Sundays, the Election Board or other designated oversight body will review campaign financial reports and return any such reports which do not meet fundamental legal reporting requirements as required by City Code.

Objective #2. Immediate rejection of financial reports which simply display lump sum expenditures to public relations or advertising firms without itemization of services provided.

Recommended Code Provision:

'Candidate financial reports which simply display lump sum funds spent or obligated to campaign consultants, public relations firms or other such entities without reasonable itemization of services provided shall be immediately rejected and returned to the subject Candidate as failing to meet campaign reporting guidelines.

Objective #3: Immediate rejection of financial reports which suggest that funds for specifically identified purposes may not have passed through the hands of the Treasurer as required by City Code.

Recommended Code Provision:

'Candidate financial reports which, with the exception of filing fees, do not clearly reflect that funds and itemized expenditures have properly passed through the hands of the Treasurer will be immediately rejected and returned to the subject Candidate as failing to meet campaign reporting guidelines.

Objective #4: Establishment of mandatory (as opposed to voluntary) monthly financial reporting requirement following a filing for office.

Recommended Code Provision:

'Candidates shall file a monthly financial report reflecting all contributions and expenditures by the 15th of each month following the filing for office. A copy of the subject report will be posted on the City's website by close of business the following Monday

Objective #5: Establishment of specific sanctions for failure to meet campaign report filing deadlines.

Recommended Code Provision:

'Failure to meet the campaign financial reporting deadline will be considered a violation of the City Code and, on the first offense punishable by a warning and requirement of the filing of the required report within forty-eight (48) hours not county Saturdays or Sundays; on the second offense a \$500.00 fine, and on the third offense disqualification as a candidate.

Objective #6: To allow the press and public adequate time to examine campaign expenditures, provision for a longer period between the final pre-election financial report and the election.

Recommended Code Provision:

'The newly elected Mayor and City Council will be sworn in on the first Monday of the month following their election to office.

First Six
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The Structure Subcommittee of the Election Task Force met last week and these are options offered

Options to address inequities (cost, work, etc.) involved with election of At-Large vs. District Council Members:

- 1) For 2009 each of the at-large Council members could represent and run for office in one half (population) of Bowie. The city could be divided east to west or north to south into two parts to do this.
- 2) For the census of 2010 Bowie could be divided into three equal (population) parts, with each yielding two City Council members.

The structure subcommittee agreed that seven should remain the number of members on the City Council and candidates for Mayor should continue to run at-large citywide.

Bowie City elections could be moved to Saturday to permit more people to vote. (This may not be good because Saturday is Sabbath for some citizens)

Efforts should be made to provide election-related information to as many citizens as possible. This would include using as many new technologies as possible. One of the points of emphasis would be to make election information appeal to younger voters via the web, etc.

**WITH MORE THAN 361 DAYS REMAINING IN THE TERM THE
MAYOR AND CITY COUNCIL SHALL DIRECT THE CITY CLERK
AND THE BOARD OF ELECTIONS TO SECHEDULE A SPECIAL
ELECTION TO CHOOSE A REPLACEMENT WITHIN 45 DAYS OF
THE OCCURRENCE OF THE VACANCY**



FUNK & BOLTON

ATTORNEYS AT LAW

June 19, 2008

To: Pamela A. Fleming, City Clerk; David J. Deutsch, City Manager
From: Victor K. Tervalo, Esquire
Thru: Robert H. Levan, City Attorney RHL
RE: Questions Concerning City Elections

Several questions outlined below have been posed by the Elections Task Force concerning the City of Bowie's election practices or would-be election practices. The answers are informed by the fact that, to a large extent, municipal elections in Maryland are not governed by state or federal law. The reach of federal election campaign law is limited to elections involving federal offices. Maryland election law regulates state and county elections, not municipal elections.¹ Nonetheless, rights involving the First Amendment, Equal Protection, and matters regulated under the Voting Rights Act of 1965 can all bear on municipal election practices. With that in mind, what follows provides an opinion on the questions raised.

(1) In barring legal entities from contributing to City campaigns would such groups like the Sierra Club be affected? And if so, what phrasing would cover corporations, businesses, and developers?

A ban on "legal entities" intentionally or otherwise mimics provisions in federal election campaign laws that bar national banks, corporations, and labor organizations from contributing to federal elections.² See 2 U.S.C. Section 441b. The Federal ban applies to all corporate entities and not just those organized for profit, including charities and other non-profit entities. See generally Federal Election Commission v. Beaumont, 539 U.S. 146

¹ Baltimore City is the exception. State law regulates elections in Baltimore. Nonetheless, state law can impact, if not regulate, municipal elections. A recent letter from an Assistant Attorney General pointed out that a campaign finance entity created under state law was unable to contribute funds to municipal election campaigns because the state law did not apply to municipal elections (other than Baltimore City elections). According to the letter, if the state law does not reach municipal elections, an entity established under the state law can not make contributions to municipal elections. See Letter to Kevin Karpinski, dated December 18, 2007 from Mark J. Davis, Assistant Attorney General.

Maryland state law does not prohibit contributions from corporations, although it limits the amount of contribution possible.

(2003). As the Court in *Beaumont* pointed out, the special characteristics of the corporate structure have been judged by Congress since 1907 to threaten the integrity of the political process. *Id.* at 153-54. The ban on corporations does "further duty in protecting the individuals who have paid money into a corporation or union for purposes other than the support of candidates from having that money used to support political candidates to whom they may be opposed." *Id.* at 154. As noted above, the federal law is not applicable to municipal elections in Bowie, but it illustrates, if nothing else, that a total ban on corporate contributions does not violate First Amendment Free Speech rights.

In direct answer to the question posed above, the phrase "legal entities" is synonymous with the term "corporations" and would cover any entity organized under law including non-profit corporations like the Sierra Club (organized under California law) as well as those organized for profit such as real estate developers and other businesses.

If the City wanted to cover only for-profit organizations in a ban on campaign contributions, the suggested language would be "any legal entity or corporation organized for purposes of commercial or monetary profit." In my view it is legally questionable to pick and choose which types of corporations (e.g., profit vs. non-profit) should be subject to any ban on campaign contributions. In such an event the City will need to justify distinctions it makes between corporate types; yet, whatever distinctions it may make to support its disparate treatment may not overcome several important facts: First, the fact that many people contributing to corporate entities such as the Sierra Club or IBM are contributing for purposes other than the support of specific candidates; and second, and perhaps more importantly the corporate structure, regardless of its profit or non-profit status, allows for the significant accumulation of financial capital that can be used to influence the political process.

(2) *Can there be a limit on the amount of funds expended by a candidate?*

No. This question involves Free Speech and to date the Supreme Court has repeatedly struck down spending limits on candidates, most recently two years ago in *Randall v. Sorrell* 548 U.S. 230 (2006).

(3) *Can there be limits on the total amount of funds received by a candidate?*

To date the law allows limits on the total amount of funds a candidate receives *from each contributor*, but a restriction on the total amount of funds received from all contributors can restrict Free Speech.

A candidate certainly can agree voluntarily to limit the amount of money his or her campaign might receive; for example, a Presidential candidate can agree to accept public campaign financing. In this instance the amount of campaign revenue that a candidate could receive and spend thereby would be limited by the amount of public funds available. However, barring a voluntary limit, a legal restriction on the amount of funds that can be amassed by candidates privately amounts to a cap on how much a candidate can spend on a campaign. As question (2) above pointed out, spending limits are unconstitutional.



(4) *Does Section 6-72(c) of the City Code violate the U.S. Constitution?*

Section 6-72(c) reads as follows

(c) Limits. No candidate for election to a municipal office shall contribute more than \$2,500 to the candidate's own campaign, either directly by payment to the candidate's campaign accounts, or indirectly by payment to the candidate's campaign accounts, or indirectly by payment or other expenditure to any third party where such payment or expenditure is designed or intended to be used to further the campaign of such candidate, from that candidate's personal funds, in any election.

Note also that Section 6-73 establishes a \$1,000 limit on campaign contributions from any source, except as provided in Section 6-72.

Contribution limits generally are permissible under Buckley v. Valeo, 424 U.S. 1 (1976). The federal government, Maryland state government, and most other states have laws that limit campaign contributions. A badly divided Court in Randall, however struck down a Vermont law that imposed contribution limits of \$200 per election cycle for candidates for state representative, \$300 for candidates for state senate, and \$400 for gubernatorial candidates and other candidates for statewide office. These limits were the lowest in the nation, the Court noted. 548 U.S. at 250. The court listed several factors that were involved in its decision, including whether contribution limits would significantly restrict the funding available to challengers to run competitive campaigns against incumbents. *Id.* at 249. Nonetheless, nothing about the limits established for municipal elections in the City of Bowie would seem to reach constitutional proportion. The limits are well above those at issue in Randall. In my view Section 6-72 legally is sound.

(5) *Are at-large elections constitutional?*

Yes. Twelve of Maryland's 23 counties still elect local officials by at-large voting; many municipalities do as well. There is no state or federal law that requires ward or district elections. The 1965 Voting Rights Act, however, prohibits voting practices that discriminate against minorities. Minority voting strength can be diluted under at-large voting rules, given the racial composition of a particular community and the history of voting practices in the community. If it can be established that that a majority voting block makes it improbable, if not impossible, that minority candidates can be elected in a community then the community is not at liberty to use at-large voting rules. In such cases communities choose to elect by ward or district. But alternative voting schemes also are available to Maryland municipalities, such as cumulative voting, limited voting, and the single transferable vote, to name a few. To date no community in Maryland has chosen to use them.

