

Report to the Clerks of the House of Representatives and Senate

By

The Campaign Finance and Disclosure Task Force

December 29, 2014

I. Background

The Campaign Finance and Disclosure Task Force was created by Section 29 of Chapter 210 of the Acts of 2014 (the Act) (Attached as Exhibit A). The Task Force was charged with undertaking "a study of campaign finance and disclosure issues which shall include, but not be limited to: (i) the use of email communications sent using a paid email service provider or email marketing service provider; (ii) disclosure requirements for internet advertisements which are of limited size, including requiring disclosure to be placed on a landing page, rollover display or other technological means that provide the user with disclosure information rather than requiring such information in the original advertisement; and (iii) the feasibility, merits and administrative requirements of applying limits on contributions for each special election primary and general rather than per calendar year."

As required by the enabling legislation, the Task Force included the following members:

Michael J. Sullivan – Director of the Office of Campaign and Political Finance (Chair)

Lisa Gentile, Chief Policy Advisor and Senior Counsel – Designee of the Senate President

Representative Garrett Bradley – Designee of the Speaker of the House

Jeffrey Yull – Designee of the Minority Leader of the Senate

Representative Shawn Dooley – Designee of the Minority Leader of the House

Rebecca Murray, Assistant Director and Associate Legal Counsel in the Elections Division – Designee of the State Secretary

Pam Wilmot, Executive Director of Common Cause Massachusetts – Representative of the election laws advocacy community, designated by the Joint Committee on Election Laws

II. Deliberations of the Task Force

The Task Force held four meetings between November 20 and December 23, 2014. Copies of the minutes of the meetings are attached as Exhibit B.

A. Discussion of specific topics referenced in the Act

(1) *Whether legislation should be proposed to revise disclosure requirements relating to "the use of email communications sent using a paid email service provider or email marketing service provider."*

After discussion, the members unanimously agreed that no change should be made to the campaign finance law regarding this issue. Additional disclosure relating to email communications using a paid email service provider or email marketing service provider was not recommended because members believed that the current statutory and regulatory framework provides sufficient disclosure. In addition, it was felt that the limited amounts spent for email communications do not warrant revision.

- (2) *Whether legislation should be proposed to revise disclosure requirements relating to "internet advertisements which are of limited size, including requiring disclosure to be placed on a landing page, rollover display or other technological means that provide the user with disclosure information rather than requiring such information in the original advertisement."*

The members unanimously agreed that no change should be made to the campaign finance law regarding disclaimers on internet advertisements. Members felt that such a change is not warranted because the present statute and regulations adequately address the issue. OCPF regulations currently require disclaimers on internet advertisements based on the size of the advertisement, regardless of whether the advertisement is a banner or rollover ad.

- (3) *Whether legislation should be proposed to revise contribution limits based on a consideration of "the feasibility, merits and administrative requirements of applying limits on contributions for each special election primary and general rather than per calendar year."*

The members discussed the advantages and disadvantages of changing from the current framework, which is based on calendar year limits, to one providing for limits for each election cycle. They agreed, after discussion, that the current election cycle framework generally should be maintained.

Members agreed, however, that there is an inequity currently in the context of limits applicable for special elections, relating to contributions that may be made to persons seeking election to a State Senate or State Representative seat in two elections in the same calendar year. When a person is a candidate in both a special election and later in a general election in the same calendar year, that candidate (starting in January 2015) can raise \$1,000 from a contributor only one time during the calendar year. If the candidate raises \$1,000 from the candidate's core group of individual contributors prior to the special election and then faces a new opponent in the general election who was not an opponent in the special, the candidate who ran in the special election

is at a disadvantage since he cannot obtain any additional financial support from the core group who contributed before the special election.

Members unanimously agreed that to ensure fairness for such candidates, legislation revising the contribution limit applicable to individuals contributing to candidates who seek election to a State Representative or State Senate seat in both a special election and general election in the same calendar year would be an appropriate improvement to the campaign finance law. The legislation should allow candidates who have a special and general election for state legislative office in the same year to be able to raise contributions based on limits that apply separately for each period.

The initial proposal was that the concept would have applied to the limits for candidates who have a special and general election for the *same* seat in the same calendar year. Representative Bradley proposed, however, that the legislation should permit an exception not only for candidates seeking later election for the same office sought in the special election, but also for candidates running for a different state legislative office, e.g., a person runs for State Senate in a special election, is defeated, and then runs for the House in the general election. The members unanimously approved drafting proposed legislation consistent with Rep. Bradley's proposal.

B. Additional topics discussed

In addition to the specific topics discussed above, as directed by the Act, the Task Force also considered generally whether other campaign finance disclosure issues not defined in the Act warrant legislative attention. Specifically, the Task Force considered whether legislation should be enacted regarding the following additional topics.

- (1) *Disclosure of funds received by groups making electioneering communications, and top 5 contributor disclaimers for direct mail and billboards used to make electioneering communications, independent expenditures, or ballot question expenditures*

Members discussed the issue of groups using direct mail to make electioneering communications, but not providing disclosure regarding the source of funds used to make the electioneering communications. The electioneering communications statute (M.G.L. c. 55, § 18F) states that any group making electioneering communications exceeding \$250, which "receives funds to make electioneering communications," must disclose the donors of funds exceeding \$250. During the first Task Force meeting, Pam Wilmot suggested that Section 19F of chapter 55 be amended to remove the limiting phrase "receives money for the purpose making such electioneering communications."

After discussion, the suggestion for change to Section 18F was withdrawn and replaced with a proposal to revise Section 18G, to expand the disclaimer requirement for direct mail (and billboards) used to make electioneering communications, independent expenditures, or ballot question expenditures. Currently, the statute requires such information to be included on paid television, internet advertising or print advertising. It does not include a requirement for disclaimers on direct mail or billboard advertising, even though groups making political expenditures frequently use direct mail or billboards to make such communications.

After discussion, members voted (5-2) in favor of amending the requirement, in M.G.L. c. 55, § 18G to further define when disclosure of "top contributor" information on electioneering communication and independent expenditure communications, and advertisements relating to ballot questions, should take place. The majority view was that amending the statute will better achieve disclosure.

(2) Revising limits on contributions that may be made by individuals to political party committees

Members of the Task Force discussed an issue that became apparent during the recent state election involving local party committees raising large amounts of money to influence the election of candidates who are not on the ballot in the city or town in which the local party committee is located. Such local party committees (like state party committees) may make unlimited in-kind contributions to benefit candidates.

Members discussed restricting contributions that may be made by local party committees to candidates who are on the ballot in the city or town in which a local party committee is located. Based on concerns raised by members, however, the Task Force did not vote on that proposal.

Rep. Dooley suggested revising the aggregate limit on contributions that may be made by individuals to political party committees during a calendar year from \$5,000 to \$7,500. The proposal would change the limit on contributions that may be made by individuals to local political party committees of the same party from \$5,000 in the aggregate to \$2,500, while maintaining the limit of \$5,000 on what can be contributed to a state party committee. After discussion, Rep. Dooley withdrew the proposal.

(3) Requiring political party committees to disclose name of candidates supported or opposed on party committee campaign finance reports

The campaign finance law does not require party committees to disclose the name of candidates supported or opposed by party committees in such committees' campaign finance reports. Currently, where a party committee makes an in-kind contribution to a candidate, the party committee often discloses the expenditure without identifying the candidate(s) supported, and the statute does not require the recipient candidate(s) to disclose in-kind contributions until they file their year-end reports after the election. OCPF has issued regulations, however, that require state and local party

committees to include that information in their reports. Michael Sullivan proposed codification of the regulation.

The Task Force unanimously agreed that the campaign finance law should be amended to codify OCPF's regulations requiring additional disclosure in campaign finance reports filed by political party committees of in-kind contributions made to candidates. The amendment will provide more timely disclosure.

(4) Contributions from unions and other entities

Pam Wilmot and Rep. Dooley discussed OCPF interpretive Bulletin IB-88-01, which generally allows organizations that do not raise money for political purposes to make aggregate candidate contributions of up to \$15,000 from their general treasuries before becoming subject to the limits on what PACs may contribute. Rep. Dooley suggested two alternative approaches for overturning the bulletin. One approach (Version A) would provide that such an organization's contributions to candidates be limited to \$1,000 per year. The second approach (Version B) would establish a \$1,000 limit for corporations, unions, PACs and lobbyists.

The view articulated in support of the proposals was that the interpretive bulletin is not supported by the statute and allows unions and other entities that are not political committees to make disproportionately large contributions. Those opposing the proposals felt that this issue was considered recently by the legislature and rejected, and also that this is an issue that is too far removed from the issues described in the Act to be considered by the Task Force.

After discussion, Rep. Dooley withdrew Version B. The remaining issue, to recommend legislation consistent with Version A, came to a vote and failed. The vote was 3-3 with one member voting present.

III. Recommendations

The Task Force recommends legislation to allow candidates who have a special and general election for state legislative office in the same year to be able to raise contributions based on limits that apply separately for each period. A copy of proposed legislation is attached in Exhibit C.

In addition, the Task Force recommends the filing of legislation on two topics not specifically listed in the Act. These proposed changes would: (1) amend Section 18G of chapter 55 to include a requirement that the top five donor information for electioneering communication, independent expenditure, and ballot question communications be expanded to require disclaimers on direct mail and billboards; and (2) codify OCPF regulations to state that political party committees making in-kind contributions to support or oppose candidates

must, in their campaign finance reports, include the name of the candidate supported or opposed. These two additional changes approved by a majority of members of the Task Force are attached in Appendix D.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael J. Sullivan", with a long, sweeping horizontal flourish extending to the right.

Michael J. Sullivan
Chairman