



**Judicial
Watch**[®]
*Because no one
is above the law!*

September 24, 2012

Paul M. Vettori, Chairman
State Ethics Commission
45 Calvert Street, 3rd Floor
Annapolis, MD 21401

Re: Complaint Alleging Violation of Section 15-506, State Government
Article, Maryland Code Annotated, by Governor Martin O'Malley

Dear Chairman Vettori:

Judicial Watch is a not-for-profit, educational foundation that seeks to promote integrity, transparency, and accountability in government and fidelity to the rule of law. Judicial Watch has an eighteen-year record of combatting government corruption both on the national and state level. Judicial Watch also has approximately 24,000 supporters in the State of Maryland.

On behalf of Judicial Watch's Maryland supporters and the public interest, Judicial Watch hereby submits this complaint pursuant to Section 15-401 of the State Government Article of the Maryland Code and requests an investigation and hearing into a violation of Section 15-506 of the State Government Article by Governor Martin O'Malley.

Section 15-506 of the State Government Article states, "An official or employee may not intentionally use the prestige of office or public position for that official's or employee's private gain or that of another." By definition, the Governor of Maryland is an official and falls within the scope of this provision. *See* Md. Code Ann, State Gov't §§ 15-102(bb) & 15-102(ll). Private gain obviously includes personal political objectives, such as seeing a favored candidate win an election or achieving the desired outcome of a ballot question.

In this regard, on January 4, 2012, the State Ethics Commission issued a memorandum to all state employees, board members, and candidates plainly stating, "As a practical matter, [Section 15-506] prohibits the use of State time, materials, equipment, or facilities for political purposes." *See* January 4, 2012 Memorandum as attached as Exhibit A. State materials obviously include official State letterhead, and, thus, the Commission has already concluded that officials and employees of the State of Maryland are prohibited from using official State letterhead to campaign for specific political candidates and ballot questions. *Id.*

Despite this clear prohibition, on September 18, 2012, Governor Martin O'Malley sent a letter to members of the Democratic State Central Committee, which is the governing body of the Maryland Democratic Party, expressly advocating for the Governor's personal political

objectives. See September 18, 2012 Letter from Governor O'Malley as attached as Exhibit B ("The Letter"). The Letter is on official State letterhead. It contains the Great Seal of the State of Maryland as well as the name, address, and telephone number of the official who used the stationery. In this instance, the letterhead clearly indicates that the sender was Governor O'Malley:

MARTIN O'MALLEY
GOVERNOR

STATE HOUSE
100 STATE CIRCLE
ANNAPOLIS, MARYLAND 21401-1925
(410) 974-3901
(TOLL FREE) 1-800-811-8336

The recipients of the Letter, as well as anyone else who happened to review the Letter, would have no doubt that the Letter was being sent by the Governor of Maryland in his official capacity.

With respect to the substance of the September 18, 2012 letter, it could not be clearer that the purpose of the Letter was political. The Letter states:

I don't need to remind you how important this election is. Whether it's protecting the investments we make together in our schools, re-electing Senator Cardin, Congressman Van Hollen, and President Obama, or helping elect a new Democratic Congressional majority by sending John Delaney to Congress – the work we do together during this election cycle will determine what type of work we're able to do together for the people of our State in the years to come.

I'm writing to ask not only for your vote, but for your voice.

In addition to asking the governing body of the Maryland Democratic Party to vote for specific political candidates, the Governor requests that each member campaign **FOR** specific questions on the November 2012 ballot. In other words, Governor O'Malley used his official letterhead to reach out to Marylanders and ask them to vote for specific political candidates and for specific ballot questions.

It is clear that, at a minimum, Governor O'Malley violated Section 15-506, by using both the prestige of his office and official State letterhead to achieve his personal political objectives. At this time, it is unknown to what extent Governor O'Malley used other State time, materials, equipment, or facilities to campaign for specific political candidates and for specific ballot questions. We do not know whether other officials or employees expended time during the business day to draft or send the September 18, 2012 letter. Nor do we know whether State

Paul M. Vettori
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printers, paper, and envelopes were used. Nor do we know whether State monies were used to pay for the postage necessary to send the letter. Accordingly, we request an investigation and hearing into a violation of Section 15-506 of the State Government Article by Governor Martin O'Malley.

Thank you for your prompt attention to this matter.

Sincerely,

JUDICIAL WATCH, INC.



Thomas Fitton
President

Enclosures

EXHIBIT A

STATE ETHICS COMMISSION

45 CALVERT STREET, 3RD FLOOR
ANNAPOLIS, MARYLAND 21401
410-260-7770 / 1-877-669-6085

January 4, 2012

TO: State Employees, Board Members and Candidates

SUBJECT: Political Activity

Generally, political activity questions involve consideration of the Election Law Article and the State Personnel and Pensions Article, particularly §§2-304 and 2-307(b) of the State Personnel and Pensions Article. The Office of the Attorney General can provide specific guidance regarding the provisions of the Election Law Article or State Personnel and Pensions Article.

In some instances, the Public Ethics Law (State Government Article-Title 15), primarily §15-506 (use of prestige), §15-502(b) (secondary employment), and §15-507 (use of confidential information) may impact political activities of State employees and officials. Additionally, candidates for State office must review §§ 15-713 and 15-714 of the Public Ethics Law, which relate to campaign finance activities of individual regulated lobbyists, and § 15-715, which relates to campaign finance disclosure. The Federal Hatch Act, agency rules, or other statutes may also have an impact on political activity. For example, the Hatch Act can restrict certain political activity of persons whose employment involves an activity financed in whole or in part by federal funding. (This memo does not attempt to cover the impact of the Hatch Act on political activity.)

The State Personnel and Pensions Article generally authorizes participation in political campaigns by State employees but does not allow political activity on State time or job location. The statute also prohibits requiring an employee to contribute to a political campaign or render political services. Similarly, §15-506 of the Public Ethics Law prohibits employees from using their positions to benefit themselves or others. As a practical matter, this restriction prohibits the use of State time, materials, equipment, or facilities for political purposes.

Volunteer Campaign Involvement

State law permits State employees to provide volunteer services for campaigns. The Ethics Commission has ruled consistently that the Public Ethics Law does not limit this activity as long as the official or employee does not use State time, materials, facilities, or other resources and the volunteer does not improperly use the State position for political purposes. State employees may not use their State position, State time, State

materials, or State equipment in any way to involve people or other employees in political campaigns. For example, supervisors should not take any action that would suggest that they are urging or requiring subordinates to engage in campaign activity. Law enforcement and other uniformed personnel may not use State uniforms or equipment in political advertising. State officials and employees may not use confidential information for political activity purposes.

Activity as a Paid Campaign Worker

This type of activity involves the same issues and limitations as volunteer activity, such as no misuse of position and no use of State time, facilities or materials. Additionally, because paid campaign work is employment, an official or employee must also consider and evaluate the employment restriction provisions in §15-502(b) of the Public Ethics Law. For example, an employee may not have campaign employment with an entity that does business with the employee's State agency or that would impair the employee's ability to do the State job. It is possible that campaign employment, such as working for a campaign staff while continuing in a State position, could raise questions about the ability of an employee to be objective in the employee's State job. Both paid workers and volunteers must maintain a clear separation between working at a State job and handling matters for a campaign or campaign. Obviously, one way to reduce the potential for problems is to utilize, with the employing State agency approval, a formal extended leave of absence for paid campaign activities.

Running for Office or Holding Office While Remaining a State Employee or State Official

Generally, the Public Ethics Law and other State laws have been interpreted to allow State employees and officials to run for public office provided they do not use State time, facilities, equipment, or otherwise misuse their State position or confidential information. The State has chosen to treat ethics and campaign finance regulations as separate activities. The State Ethics Commission has advised candidates who have State employment or board memberships that they should avoid interaction between their State duties and campaign contributions. Because of the potential application of the prestige provisions of the Ethics Law to non-elected officials and employees, the Commission has advised candidates not to solicit contributions from people whom they might contact in their official capacities or to participate in matters involving donors or those refusing to make contributions.

Whether a successful candidate may serve and remain in a State position requires case-by-case analysis. For example, the State Ethics Commission has ruled that a Public Service Commission Hearing Examiner could not remain in his State position and serve as a County Councilman. (Commission Opinion No. 85-13.) On the other hand, the Commission has ruled that a County Executive could remain as a University Professor while serving as a county official. (Commission Opinion No. 84-2.) Other opinions prohibit a full-time City Councilman in a large jurisdiction from simultaneously serving

as a State employee (Opinion 00-3), a State police officer from serving as a City Councilman assigned to public safety (Opinion 00-7) and a State employee working at the Department of Housing & Community Development (DHCD) from serving on a Town council where the Town participated in several DHCD programs and the employee worked in a unit in which some programs were initiated and monitored (Opinion 01-1). Other significant restraints on holding a State job while serving as an elected official may arise under the requirements of the State Constitution that prevent the holding of an elected position while holding a State job if that job is considered to be an office of profit. (Questions regarding the constitutional requirements should be referred to the Attorney General.)

Summary

In summary, election laws, personnel laws and regulations, the Public Ethics Law, the Federal Hatch Act, the Maryland Constitution, agency rules, and other laws and regulations may have an impact on political activity. Questions about the impact of the Public Ethics Law should be referred to the State Ethics Commission. Questions about other State laws, or other requirements should be referred to the Attorney General or other appropriate agencies. Questions about the Hatch Act may be referred to the U.S. Office of Special Counsel, 1730 M Street, NW, Suite 218, Washington, DC 20036, 1-800-854-2824.

EXHIBIT B



MARTIN O'MALLEY
GOVERNOR

STATE HOUSE
100 STATE CIRCLE
ANNAPOLIS, MARYLAND 21401-1925
(410) 974-3901
(TOLL FREE) 1-800-811-8336

TTY USERS CALL VIA MD RELAY

September 18, 2012

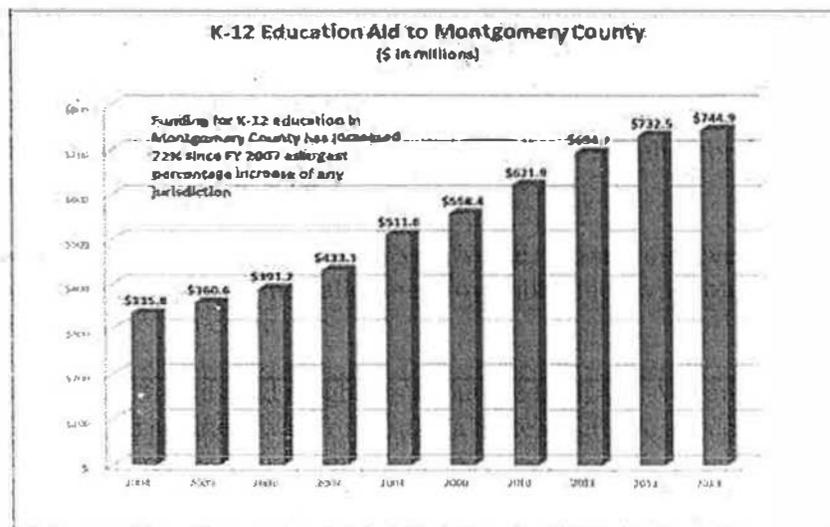
Dear Friend:

Thanks for all that you do on the Central Committee. I don't need to remind you how important this election is. Whether it's protecting the investments we make together in our schools, re-electing Senator Cardin, Congressman Van Hollen, and President Obama, or helping elect a new Democratic Congressional majority by sending John Delaney to Congress – the work we do together during this election cycle will determine what type of work we're able to do together for the people of our State in the years to come.

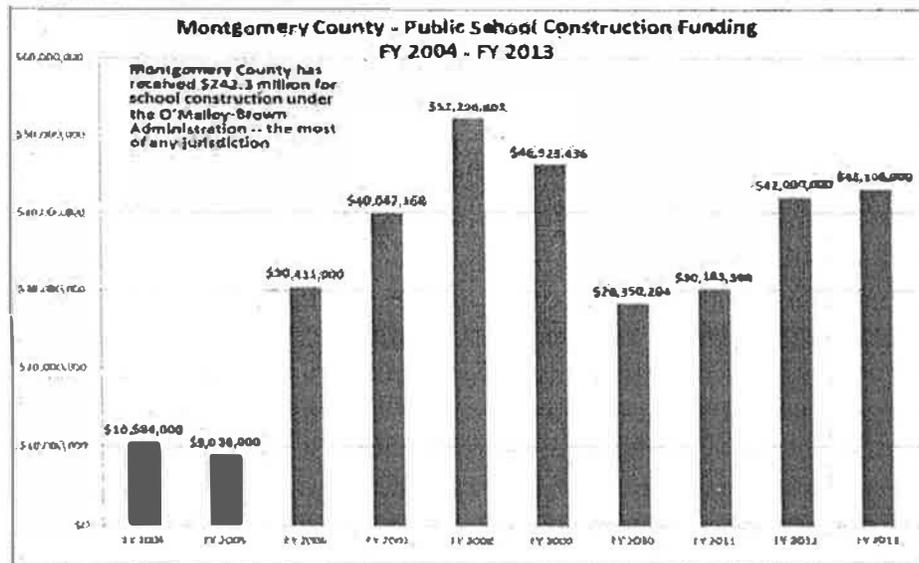
I'm writing to ask not only for your vote, but for your voice. I firmly believe that when our neighbors learn the facts about the questions on the ballot this November, they will vote with us to move our State forward. That's where you come in.

I hope you will talk to your friends and neighbors about the DREAM Act, and why voting FOR Question 4 is the fairest and smartest way forward in a State where we are committed to expanding opportunity to more people rather than fewer.

We also have an opportunity to expand opportunity – and create jobs – by voting FOR Question 7; an initiative that will allow us to protect the record investments we are making together in Montgomery County public education. If you take a look at the chart below, we have increased our investment in Montgomery County schools by 72% since FY2007. That's a larger percentage increase than any jurisdiction in Maryland – and it's an investment we need to protect:



We have also increased our investment in Montgomery County school construction. Since 2007, together as a State, we have invested \$242.3 million in Montgomery County school buildings – more than any other Maryland jurisdiction.



We have made these investments in times when the Bush recession has compelled us to cut state spending on virtually every other priority – \$8 billion in all, which is more than any previous Maryland administration has ever cut.

The reason I am asking for your help on Question 7 is that it will allow us to generate the revenues we need to protect these investments in public education. But that's not all it will do. It will also allow us to create more than 12,000 good Maryland jobs while keeping Maryland dollars in Maryland (instead of allowing them to be used to build roads and schools in other states).

The out-of-state interests that are spending so heavily against this initiative do not have Maryland's best interest in mind. You and I do. That's why I hope you'll join me in talking to friends and neighbors about voting FOR Question 7.

I hope you will also spread the word about why voting FOR Question 5 matters. By electing John Delancy, we can do our part in firing the Tea Party Republican Congress and replacing them with a new Democratic Majority. But in order to send John to Congress, first we have to beat back a last ditch Republican effort to overturn our new, bipartisan Congressional map – a fair map that reflects our diversity, creates more competitive districts, and was upheld by the United States Supreme Court.

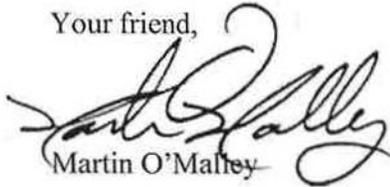
We also have an opportunity on Wednesday to vote for an initiative which is rooted in the beliefs we share in the dignity of every individual, equal rights under the law, and religious freedom. We have an opportunity to be the first state in America to successfully defend Marriage Equality legislation at the ballot box. We have an opportunity to vote FOR Question 6. Because, for a free and diverse people, for a people of many faiths, for a people committed to the principle of religious freedom, the way

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forward is always to be found through greater respect for the equal rights of all; for the human dignity of all.

Thanks again for what you do for Montgomery County, for Maryland, and for the goals we share to move America forward, not back!

Your friend,

A handwritten signature in black ink, appearing to read "Martin O'Malley". The signature is fluid and cursive, with a large initial "M" and "O".

Martin O'Malley