



MARYLAND DEMOCRATIC PARTY

July 24, 2014

Via Electronic and U.S. Mail

Jared DeMarinis, Director
Candidacy and Campaign Finance Division
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, Maryland 21401

RECEIVED

JUL 24 2014

STATE BOARD OF ELECTIONS

Dear Mr. DeMarinis:

The Maryland Democratic Party (“MDP”) files this complaint against Larry Hogan and Boyd Rutherford, Republican nominees for Governor and Lieutenant Governor, respectively; their gubernatorial ticket committee, Hogan-Rutherford Committee to Change Maryland (“Hogan-Rutherford”); their individual candidate committees, Larry Hogan for Governor (“Hogan for Governor”) and Boyd Rutherford for Lieutenant Governor (“Rutherford for Lieutenant Governor”); and Change Maryland, a Maryland limited liability company and political organization organized pursuant to Section 527 of the Internal Revenue Code (“Change Maryland”) for violations of the Campaign Finance Title of the Election Law Article.

While the State Board of Elections (“SBE” or “Board”) just recently released findings on July 10, 2014 regarding complaints filed against Change Maryland (discussed below), additional information has come to the attention of the MDP that was not available to the Board as it considered those earlier complaints. This additional information supports MDP’s complaint that the above-named entities have violated Maryland campaign finance law by variously unlawfully engaging in campaign finance activity without establishing a campaign finance entity; by failing to report in-kind contributions; by failing to report expenditures or pay for assets purchased; and by distributing campaign material without the required authority line. The MDP asks that the Board take immediate action to sanction this unlawful behavior and ensure full compliance with Maryland campaign finance law.

1. Poll Conducted by Change Maryland and Provided to Hogan for Governor

On July 10, 2014, the Board issued findings with respect to two complaints filed against Change Maryland (“*SBE Findings*”). The complaints, one filed by private citizens and one by Mr. Hogan’s challengers in the Republican gubernatorial primary, alleged that Change Maryland engaged in campaign finance activity¹ on behalf of Mr. Hogan and his potential candidacy for Governor and that Change Maryland had operated in coordination and cooperation with Hogan for Governor and had failed to disclose contributions received and expenditures in accordance with Maryland law. *SBE Findings* at 1.

The *SBE Findings* focused on a poll commissioned by Change Maryland on September 23, 2013 to determine Mr. Hogan’s viability as a candidate for Governor. *Id.* at 1. Mr. Hogan became a candidate for public office on January 10, 2014 (by establishing an authorized campaign committee), and a candidate for Governor on February 3, 2014 (by filing a certificate of candidacy). *Id.* at 2, n. 3.

¹ Defined as “the raising and spending of money in connection with an effort to promote or assist in the promotion of the success or defeat of a candidate, political party or question.” State Board of Elections Summary Guide, § 1.2.

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Because Mr. Hogan became a candidate after the poll was conducted, the Board determined the poll was exploratory, or a way for Mr. Hogan to “test the waters” of candidacy. *Id.* at 1-2.

The *SBE Findings* explained that Maryland law does not recognize authorized “exploratory committees,” and that on the advice of the Attorney General any exploratory or “testing the waters” activities must be conducted by non-candidates and are not subject to contribution limits. *Id.* at 2. While acknowledging that Change Maryland “did engage in exploratory activities for the benefit of Mr. Hogan,” the Board found that it did “not have a reasonable basis to believe that a violation occurred” because the activities, *i.e.* the September 23, 2013 poll, took place before Mr. Hogan was a candidate for Governor. *Id.* at 2.

After Mr. Hogan became a candidate for Governor, however, it appears that Change Maryland actually provided this internal poll, *the results of which were not made public* to Hogan for Governor – an in-kind contribution² that was never reported. In a press release issued on May 12, 2014, Hogan for Governor released a poll, and in its release claimed that Mr. Hogan had cut “Lt. Governor Anthony Brown’s lead in half.” (Available at: http://www.hoganforgovernor.com/poll_maryland_in_play_for_gop_as_larry_hogan_cuts_lt_governor_anthony_brown_s_lead_in_half_single_digit_race_for_maryland_governor). This claim, that the Lieutenant Governor’s lead has been “cut in half” compares the results of the poll released on May 12 with some earlier poll – a poll for which Hogan for Maryland clearly did not pay, as the committee did not report any payments to pollster Wilson Perkins Allen Opinion Research before May 6, 2014, when a \$11,195 payment was made for the poll released May 12, 2014. The earlier poll referenced by Hogan for Governor is undoubtedly the September 23, 2013 poll, conducted by the same pollster and paid for by Change Maryland, Mr. Hogan’s single member LLC. Hogan for Governor’s failure to report this in-kind contribution is a violation of Elec. Law §§ 13-304(b) and 13-604.1(b)(5).

Nor was the value of the poll included when Hogan-Rutherford³ purchased the assets of Change Maryland for \$79,720.00. *See*, Memorandum to Jared DeMarinis, Director of Campaign Finance, MD SBE from John Wobensmith, Treasurer, Larry Hogan for Governor to Change Maryland, dated April 3, 2014, attached hereto as *Exhibit 1* (“Asset Purchase Memo”). The memo indicates that three assets were purchased from Change Maryland: 1) the Change Maryland Facebook Page with 75,000 “likes,” valued at \$75,000; 2) the Change Maryland Website, valued at \$3,720; and 3) the Change Maryland mailing list, consisting of 450 names, and valued at \$1,000. The poll, a statewide poll likely valued at over \$10,000, was notably absent from the list of assets purchased.

It also appears that there were additional Change Maryland assets that were not included when Hogan-Rutherford purchased the assets of Change Maryland. For example, at

² Maryland law defines a “contribution” as “the gift or transfer, or promise of gift or transfer, of money or other thing of value to a campaign finance entity to promote or assist in the promotion of the success or defeat of a candidate, political party or question.” Elec. Law § 1-101(o).

³ Though the Asset Purchase Memo indicated that Hogan for Governor would purchase the assets of Change Maryland, reports filed with SBE indicate instead that the Hogan-Rutherford committee has instead made those payments. According to reports filed with SBE, Hogan-Rutherford made an \$18,164.05 payment to Change Maryland listed as an “asset purchase” on 4/7/14, a second payment to Change Maryland listed similarly for \$7,568.35 on 5/20/14, and a third payment on 6/6/14 for \$7,820.63.

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<http://shop.changemaryland.org> Change Maryland sells t-shirts and other apparel, as well as bumper stickers and baseball caps. The website indicates that these items are “in stock,” yet there is no mention of this stock in the list of assets purchased from Change Maryland by Hogan-Rutherford. See Asset Purchase Memo.

2. Campaign Finance Activity Conducted by Change Maryland

Change Maryland conducted campaign finance activity on behalf of Mr. Hogan and Hogan for Governor at times after Mr. Hogan had announced his candidacy, but had yet to establish a campaign committee and/or file a certificate of candidacy and before Hogan for Governor and/or Hogan-Rutherford made arrangements to purchase the assets of Change Maryland. Change Maryland conducted this campaign activity without establishing a campaign finance entity as required by Elec. Law § 13-202(a) (“all campaign finance activity for an election under this article shall be conducted through a campaign finance entity.”).

In November 2013, Change Maryland issued a press release announcing that Mr. Hogan would be running for Governor (available at: <http://www.changemaryland.org/2013/11/hogan-to-launch-governors-bid-in-january/#.U866YYBdWqc>). In addition, in December 2013, Change Maryland posted a Washington Post article to its Facebook page, in which Anthony Brown was attacked by his Democratic primary opponent Doug Gansler. See screenshot attached hereto as *Exhibit 2*. Finally, on January 16, 2014, the Change Maryland Twitter Account sent out the following tweet “The fight to #ChangeMaryland has moved! Check us out on your new handle - @Hogan4Governor #md politics.” See screenshot attached hereto as *Exhibit 2*.

In addition, at times after Mr. Hogan filed a certificate of candidacy for Governor, but before Hogan for Governor and/or Hogan-Rutherford arranged to purchase the assets of Change Maryland, the Change Maryland Facebook page, the Change Maryland Twitter account and the Change Maryland website all carried the Hogan for Governor authority line. Change Maryland and Hogan for Governor were clearly working in “cooperation and coordination,” sharing information and campaign material. This despite the fact that Change Maryland never established a Maryland campaign finance entity, and resulting in additional unreported in-kind contributions from Change Maryland to Hogan for Governor in violation of Elec. Law §§ 13-202(a); 13-304(b)(1); 13-604.1(b)(5).

3. Use of Incorrect Authority Line

Finally, as discussed above, at various times before and after Mr. Hogan became a candidate for Governor, the Change Maryland Facebook page, the Change Maryland Twitter account and the Change Maryland website all featured the Larry Hogan for Governor authority line, despite the fact that Hogan-Rutherford, not Hogan for Governor, purchased the assets of Change Maryland. See, screenshots attached hereto as *Exhibit 3*; note 2, supra. As of this writing, the Change Maryland website still features the Larry Hogan for Governor authority line. These incorrect authority lines violate Elec. Law § 13-401(a), which requires the authority line to be from the campaign finance entity “responsible for the campaign material” in this instance, Hogan-Rutherford, as that is the committee that arranged to purchase and is paying for the Change Maryland assets.

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The Maryland Democratic Party urges the Board to investigate this matter thoroughly, including determining whether:

- Change Maryland unlawfully engaged in campaign finance activity, as defined by the Board, without establishing a campaign finance entity in violation of Elec. Law § 13-202(a);
- Hogan for Governor failed to report in-kind contributions of the September 23, 2014 poll, given to the committee by Change Maryland after Mr. Hogan became a candidate for Governor, in violation of Elec. Law §§ 13-304(b)(1) and 13-604.1(b)(5);
- Hogan for Governor and/or Hogan-Rutherford failed to report expenditures for the purchase of Change Maryland assets in violation of Elec. Law §§ 13-304(b)(1) and 13-604(b)(5);
- Hogan for Governor failed to report in-kind contributions for campaign finance activity conducted on its behalf by Change Maryland after Mr. Hogan became a candidate for Governor, in violation of Elec. Law §§ 13-304(b)(1) and 13-604.1(b)(5); and
- The Change Maryland Facebook page, Twitter account and website contained the incorrect authority lines after Hogan-Rutherford purchased the assets of Change Maryland in violation of Elec. Law §§ 13-401(a) and 13-604.1(b)(6).

If an investigation based on the above information confirms that violations of the law have occurred, the Maryland Democratic Party urges the Board to impose the full civil penalties provided by law and/or refer this matter to the State Prosecutor for enforcement.

Thank you for your time and prompt attention to this serious matter.

Sincerely,



Yvette Lewis, Chair
Maryland Democratic Party

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MEMORANDUM

TO: Mr. Jared DeMarinis, Director of Campaign Finance, MD SBE
FROM: John Wobensmith, Treasurer, Larry Hogan for Governor to Change Maryland
SUBJECT: Asset Purchase by Larry Hogan for Governor from Change Maryland
DATE: April 3, 2014
CC: Steve Crim, Campaign Manager, Larry Hogan for Governor to Change Maryland

Weeks prior to starting Larry Hogan for Governor (HFG), the HFG compliance team reached out to the Maryland State Board of Elections (SBE) for guidance to better understand SBE's characterization of Change Maryland (CM) in view of Maryland campaign finance laws and regulations. The goal of these conversations was to do everything possible to ensure that any transaction between CM and a future Larry Hogan for Governor (HFG) political committee was in accord with SBE's interpretation of applicable campaign finance law relative to interactions between campaign finance entities and non-campaign finance entities. HFG was advised that a campaign finance entity could purchase assets from a non-campaign finance entity at fair market value in order to not receive an in-kind contribution from CM.

Based upon the explicit guidance received from SBE by our compliance team, immediately upon registering as a campaign finance entity with the SBE, HFG entered into an Intent to Sell/Purchase Agreement (Agreement) with CM, a not for profit limited liability company organized under the laws of the state of Maryland. The purpose of the Agreement was to facilitate the purchase of certain assets from CM by HFG. The assets included of CM's website platform, Facebook page, and supporter mailing list.

To ensure an arms-length, fair market value transaction, HFG sought the independent valuations of unconnected commercial vendors for the digital assets and the mailing list. Two commercial vendors returned valuations as follows:

1. Change Maryland Facebook Page -- 75,000 "Likes"

One vendor returned a valuation of \$1 per "like." The second vendor returned a valuation of 0.20 - \$1.00 per "like." To reach a consistent value, HFG determined that \$1.00 was a fair market valuation for the CM Facebook Page purchase.

2. Change Maryland Website -- 4,500 total "hits"

Both vendors indicated that website "hits" are not specific enough in nature to use as a basis for valuation. Therefore, both returned a value of \$0.00 for the site. As such, the fair market value of the website is the amount that HFG would have

expended for a website of similar scope and construction type. This amount is \$3,720.00.

3. Change Maryland Mailing List – 450 names

The vendor indicated that the list would sell for \$1,000.00 – \$1,500.00 and that the names would rent for \$100.00 - \$150.00 per thousand names.

Based on the advice and information of independent, commercial vendors, CM has fairly determined the fair market value of the digital assets, website, and of the supporter mailing list as \$79,720 and HFG has begun making payments to complete the sale of these assets.

Exhibit 2

Change Maryland Tweet promoting Hogan campaign



Change Maryland @ChangeMaryland · Jan 16

The fight to #ChangeMaryland has moved! Check us out on our new handle - @Hogan4Governor #mdpolitics



Change Maryland Facebook post attacking Hogan's Democratic rivals



Change Maryland shared a link.

December 6, 2013

"After spending the early months of his campaign on the defensive, Maryland gubernatorial candidate Douglas F. Gansler has pounced on an issue on which he believes his leading rival is vulnerable: the botched rollout of the state's online h... [See More](#)



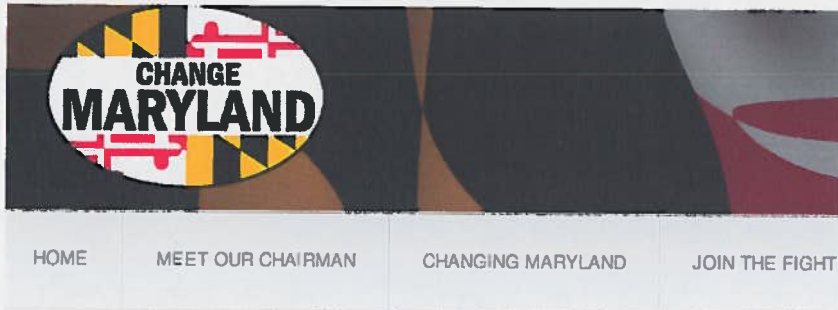
Gansler campaign accuses Brown of ducking responsibility for Md.'s health-exchange flaws
www.washingtonpost.com

Lieutenant governor concedes that he bears some blame for the technical glitches.

Like · Comment · Share

79 14 1 Share

[Change Maryland press release announcing Hogan bid for governor](#)



Hogan to Launch Governor's Bid in January

No Comments



ANNAPOLIS – Larry Hogan, founder and Chairman of Change Maryland, said he would launch a campaign for governor in January 2014 during the citizen organization's Fall Harvest Party at the DoubleTree Hotel in Annapolis on Friday evening. Hogan, a successful businessman and lifelong citizen activist, spoke to a sold-out crowd of over 1,000 people at the event. The party was the largest political event of the year.

"My friends here tonight, and a countless number of our 65,000 folks from every single county all across the state have encouraged me to consider running for Governor of Maryland next year," Hogan said. "Many people seem to think that it may be the only way we will have a chance to bring real reform and meaningful change to Maryland."

Hogan founded Change Maryland in 2011 because he "believed that we needed an independent, bi-partisan voice that would advocate for sound, fiscally responsible, common sense government." Since its inception, the group has received much attention; it made national news in 2012 after the release of its Tax Migration Study, which showed 31,000 taxpayers leaving the state after the O'Malley-Brown Administration's historic tax increases.

"We cannot just sit back and allow an arrogant and out-of-touch monopoly to run this great state into the ground without putting up a fight," Hogan said. "I believe that a majority of Marylanders, regardless of party, are finally ready to say enough is enough! And that the time has come for all of us, to stand up together, and fight back for a change!"

Larry Hogan has been a business owner for over 25 years and has attracted hundreds of new businesses and created thousands of new jobs in Maryland. He has spent a lifetime working to make Maryland a better place from leading citizen referendums to reforming government and limiting taxes.

Tags: [Change Maryland](#), [election 2014](#), [Larry Hogan](#), [maryland gubernatorial election](#)

Categories: [Press Releases](#)

Exhibit 3

Change Maryland Website

The screenshot shows the homepage of the Change Maryland website. At the top, there is a navigation bar with links for "Home", "Research", "News", "Sign In", and "CQ.com". Below the navigation bar, the main content area features a large white box with text and a signature. The text discusses the state's fiscal policies and the need for change. The signature is of Larry Hogan, Founder & Chairman of Change Maryland. Below the signature, there are navigation links: "HOME", "MEET OUR CHAIRMAN", "CHANGING MARYLAND", "JOIN THE FIGHT", and "STAY INFORMED". At the bottom, there is a small logo and text indicating the campaign is paid for by Larry Hogan for Governor and John C. Wobensmith, Treasurer.

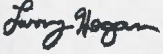
the same sales tax and spend policies, year after year.

The sad truth is that the one-party monopoly that rules Annapolis has a lousy record of lost jobs, higher spending, record tax increases and broken promises. It's unacceptable and Marylanders deserve better. I think it's time we said "enough is enough." The time has come for us to stand up together and fight back for a change.

This is not just a fight about the differences between the right and the left. This fight is about the difference between right and wrong. It isn't just another fight between Republicans and Democrats. It's more important than that. This is a fight for Maryland's future.

My hope is that you won't give up on our state and that you will become a part of this important fight for Maryland's future. With your help, with all of us working together, I truly believe that we can send a loud and clear message to Annapolis and that we can Change Maryland to be better.

Sincerely,



Larry Hogan
Founder & Chairman
Change Maryland

HOME MEET OUR CHAIRMAN CHANGING MARYLAND JOIN THE FIGHT STAY INFORMED

Paid for by Larry Hogan for Governor
John C. Wobensmith, Treasurer

Change Maryland Facebook Page

The screenshot shows the Facebook page for Change Maryland. The page header includes the profile picture, the name "Change Maryland", and the "About" tab. Below the header, there are three main sections: "About", "Basic Info", and "Contact Info".

About

The campaign fighting to bring fiscal responsibility and common sense to Annapolis!
Authority: Larry Hogan for Governor, John C. Wobensmith, Treasurer.

Mission

Together, we can Change Maryland!

Description

We need YOU to Change Maryland.

Join the grassroots movement that's fighting to bring fiscal responsibility and common sense to Annapolis. Change Maryland was born out of the frustrations of average Marylanders who are fed up with politics as usual in our state, want to stand together, and fight back for a change.

Our elected leaders are not solving the problems - they are causing them and makin... [See More](#)

Basic Info

Joined Facebook: 03/12/2011
Location: Annapolis, Maryland

Contact Info

Phone: (855) 234-6426
Email: info@changemaryland.org
Website: <http://www.HoganforGovernor.com>

Change Maryland Twitter Account

Tweets >

Following >

Followers >

Favorites >

Lists >

Tweet to Change Maryland

Who to follow · Refresh · View all

-  **HuffPost College** @HuffPost... x
Follow
-  **Cristina Marcos** @cimarcos x
Follow
-  **Megan Amram** @meganamram x
Followed by Stephanie Paone and ...
Follow

Popular accounts · Find friends

Washington Trends · Change
Google



Change Maryland
@ChangeMaryland

We've taken the fight to Change Maryland to the next level! Join us
@Hogan4Governor · Authority: Larry Hogan for Governor; John C. Wobensmith, Treasurer
Annapolis, MD · hoganforgovernor.com

1 TWEET 0 FOLLOWING 2 FOLLOWERS

Tweets

 **Change Maryland** @ChangeMaryland 27m
The fight to #ChangeMaryland has moved! Check us out on our new handle - @Hogan4Governor #mdpolitics
Expand