

BOARD OF SUPERVISORS OF ELECTIONS
CITY OF GAITHERSBURG

IN RE:
ELECTION COMPLAINTS

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MEMORANDUM & OPINION
OF THE BOARD OF SUPERVISORS OF ELECTIONS
OF THE CITY OF GAITHERSBURG

In the wake of the City's election on November 6, 2007, the Board of Supervisors of Elections (the Board) received a number of complaints regarding potential violations of the City's election provisions. Pursuant to §6C-3.2, Filing Procedures for Complaints, and §6C-3.3, Investigation of Complaints, the Board has conducted an investigation to determine whether there is sufficient evidence to find that any violations occurred.

Allegations

The complaints can be distilled down to the following allegations of impropriety:

(1) That "One Gaithersburg" (the Coalition of Asian Pacific American Democrats, Service Employees International Union Local 500, Montgomery County Government Employees Organization/United Food and Commercial Workers Local 1994 and Progressive Maryland) made campaign contributions to candidates Ahmed Ali, Carlos Solis and Ryan Spiegel in excess of five hundred dollars (\$500.00), in violation of §6C-8, Limitation on Campaign Contributions.

(2) That Ahmed Ali, Carlos Solis and Ryan Spiegel failed to disclose in a timely manner in-kind contributions.

(3) That Ahmed Ali, Carlos Solis and Ryan Spiegel violated the City's Code by accepting money from political action committees ("PACS").

(4) That One Gaithersburg and its affiliates improperly used nonprofit postage rates to mail campaign flyers on behalf of candidates Ali, Solis and Spiegel.

(5) That One Gaithersburg and its affiliates did not file anything with the City disclosing the amounts of their in-kind contributions.

(6) That Ryan Spiegel's campaign failed to report postage for mailing expenditures.

(7) That Friends of Ryan Spiegel made an in-kind contribution to Ryan Spiegel's campaign which was never disclosed, and as a result, Friends of Ryan Spiegel's kind and in-kind contributions exceeded five hundred dollars (\$500.00), in violation of §6C-8, Limitation on Campaign Contributions.

Code Requirements

The City of Gaithersburg's Code sets forth the requirements for filing for candidacy, as well as the obligations imposed upon contributors and candidates in connection with campaigns. §6C-1.1, Petitions of Candidates - - Form, provides as follows:

A petition of a candidate for elected office in the city pursuant to section 29 of the city Charter shall be in such form as the city manager shall prescribe. Such petition shall be signed by the candidate, shall bear his address and telephone number and shall state the period during which he has been domiciled in the city. It shall also state his name as he wishes it to appear on the ballot. The use of nicknames, titles, degrees or other professional designations shall not be permitted. Such petition shall also be signed by not less than one hundred (100) qualified voters of the city as required by section 29 of the Charter.

With regard to campaign contributions, §6C-8, Limitations on Campaign Contributions provides as follows:

No candidate may accept, in connection with any election, a contribution in cash in excess of five hundred dollars (\$500.00) or an in-kind contribution, or combination thereof, the value of which is in excess of five hundred dollars (\$500.00) from any one person. No person may contribute or promise to contribute in the aggregate, more than five hundred dollars (\$500.00) in cash, or in-kind contributions, valued at more

than five hundred dollars (\$500.00), to any one candidate in connection with any one election. No person may contribute or promise to contribute in the aggregate, more than five hundred dollars (\$500.00) in cash per candidate, or in-kind contributions, or combination thereof, valued at more than five hundred dollars (\$500.00) per candidate, to any one political committee appointed by more than one candidate. No candidate shall accept any contribution in excess of twenty-five dollars (\$25.00) in cash unless it be by check, money order or other written instrument. No candidate shall accept any anonymous contribution in excess of five dollars (\$5.00) in cash nor shall he accept more than three hundred dollars (\$300.00) in anonymous contributions in connection with any election. Any anonymous contribution received by a candidate in excess of the limits stated herein shall be promptly paid over to the city to be used for any lawful purpose.

Logically, there must be a mechanism to require candidates to report the amount of any contributions and expenditures made on behalf of their campaign. §6C-4, Reporting of Contributions and Expenditures, requires:

Every candidate for election to any elective office provided for in the City Charter shall file with the board of supervisors of elections written reports under oath in accordance with this article of all cash contributions received by him, or by any other person acting on his behalf and known to him, for use in connection with his campaign for election, and any expenditures made by him, or known to him to have been made by any person other than himself on his behalf, in connection with such election. Such reports shall be on forms supplied by the board of supervisors of elections. All expenditures, and any contribution or in-kind contribution shall include all items as defined in section 6C-1 of the elections code.

Please note that the City of Gaithersburg's Code, as currently written, does not impose an obligation on contributors (as opposed to candidates) to file anything with the City of Gaithersburg in connection with municipal elections.

Section 6C-5, Time and Manner of Reporting, sets forth when candidates must file

their campaign finance reports and it provides as follows:

(a) The first report of a candidate in a general election shall be filed at the offices of the city board of supervisors and elections on or before the last day to file for elected office.

(b) The second report of such a candidate shall be filed with the board on the last Thursday prior to such general election.

(c) The next report of every candidate in a general election, whether elected or not, shall be filed on the last day of the month following the month in which the general election was conducted.

(d) Thereafter, every candidate shall file on the last day of the fourth month following the reporting period specified in subsection (c), a report of any contributions received or expenditures made by him or any other person on his behalf from the day of filing of his last prior report and any balance remaining in the account. No report shall be required after either: (1) all receipts and disbursements have entirely accounted for and no balance shall remain in the account, or (2) after the expiration of six (6) months following the general election, whichever shall occur first.

(e) The first report filed by any candidate shall include any balance remaining at the expiration of the last reporting period from any prior election and any contributions received and any expenditures made since the date of this last prior report, through the day immediately preceding the date of the filing of such first report. Each subsequent report by any candidate shall include all contributions received and expenditures made from the day of the filing of the last prior report through the day preceding the filing of the subsequent report.

(f) Every such report shall be available for inspection by any person at the city offices during regular business hours.

(g) If the last day of the month on which any report is due shall fall on a Saturday, Sunday or a legal holiday, then such report shall be required to be filed on the next following day when city offices are open for regular business.

The City's Code defines who can make contributions. Specifically, §6C-12, Contributors, provides as follows:

Any corporation, business, other legal entity or a natural person shall have the right to make any contribution to or expenditure on behalf of a candidate, and any candidate may accept a contribution from the above named sources in accordance with Chapter 6C of the City Code.

Factual Background

Ahmed Ali, Carlos Solis and Ryan Spiegel, among others, timely filed petitions for candidacy to run for elective office of the City of Gaithersburg. A group of entities described as One Gaithersburg supported Ali, Solis and Spiegel. Mr. Spiegel was involved with organizations supporting the concept of One Gaithersburg before filing his petition for candidacy. According to Mr. Spiegel, he was contacted in late August, 2007 to serve as the public contact in support of One Gaithersburg's efforts. However, on or about September 23, 2007, Mr. Spiegel decided to run for elective office and no longer served as a contact person for One Gaithersburg.

One Gaithersburg is not, and was not, a legal entity. Instead, it represents a coalition of entities espousing and supporting municipal policy changes within the City of Gaithersburg. According to one brochure, One Gaithersburg endorses the following:

Create more Affordable Housing; Expand Access to Healthcare;
Preserve our Heritage through “Smart Growth” and Slow Growth Strategies;
Provide routine City services to all residents (instead of demanding “proof of citizenship” at every turn - - a huge task beyond the means of our understaffed City government); and
Enhance After School Programs for Kids and make sure our Tax Dollars Create Middle Class - Not Poverty Wage - Jobs.

The Coalition of entities that comprised One Gaithersburg ultimately ended up endorsing Ali, Solis and Spiegel. Those candidates provided organizations associated with One Gaithersburg with photographs and biographical information. This same information was provided to other organizations, as well as media outlets.

Although none of the three candidates provided specific dates, Ali, Solis and Spiegel all contend that they learned “in late October” that organizations involved with One Gaithersburg were going to make in-kind contributions on their behalf to produce flyers and other materials in support of their candidacy. All three further contend that they did not list those in-kind contributions because they did not know the amount of the contributions as of November 1, 2007. Mr. Spiegel’s contention, in that regard, is bolstered by a November 1, 2007 e-mail stating he did not know the amount of the in-kind contributions.

On November 6, 2007, Ryan Spiegel was elected to the City of Gaithersburg Council. Messrs. Ali and Solis were not elected.

In response to complaints received by the Board regarding the conduct of these three candidates generally and specifically that certain organizations contributed more than five hundred dollars (\$500.00) on behalf of each candidate, the Board received letters and other documentation from the respective organizations to the effect that no contributions, in-kind

or otherwise, exceeded five hundred dollars (\$500.00) per candidate, per organization. Additionally, the Board has reviewed invoices from vendors that printed materials at the request of the contributors. It is clear from those invoices that the contributors were billed separately and that the contributors did not exceed the maximum contribution of five hundred dollars (\$500.00) per candidate.

Discussion

For the reasons to be discussed below, the Board of Supervisors of Elections concludes that there is insufficient evidence to conclude that Ahmed Ali, Carlos Solis and Ryan Spiegel violated a provision of the City's existing Election Laws. However, the Board further concludes that certain entities may have improperly contributed money to the campaigns of Ahmed Ali, Carlos Solis and Ryan Spiegel and that it is appropriate to refer those entities (discussed in more detail below) to the State Board of Elections and the Office of the State Prosecutor for appropriate action. Additionally, the Board concludes that it is beyond its jurisdiction to determine whether brochures disseminated on behalf of Ali, Solis and Spiegel were mailed at an incorrect postal rate. The Board, however, concludes that there is a sufficient basis to refer that matter to the United States Postmaster General for review, consideration and, if deemed appropriate, action.

I. Whether the Candidates Received In-kind Contributions in Excess of Five Hundred Dollars (\$500.00).

The Board is unable to conclude that Ali, Solis and Spiegel received contributions in excess of five hundred dollars (\$500.00) per candidate, per contributor. Set forth below is a chart of the contributions:

<u>Name of Contributor</u>	<u>Type of Contribution</u>
SEIU/MD/DC	In-kind contribution of \$333.33 to each candidate (for a total contribution of \$1,000.00) for payment to a vendor for providing campaign literature.
SEIU Local 500 PAC	In-kind contribution of \$500.00 to each candidate for payment to a vendor for printing campaign literature.
UFCW Local 400	Campaign contributions to Friends of Ahmed Ali, Committee to elect Ryan Spiegel and Carlos Solis for Council each in the amount of \$500.00 for payment of printing and distributing campaign flyers.
UFCW Local 27 Political Action Committee	Campaign contributions to Friends of Ahmed Ali, Committee to elect Ryan Spiegel and Carlos Solis for Council each in the amount of \$500.00 for payment of printing and distributing campaign flyers.
Mid-Atlantic Political Action Committee	Campaign contributions to Friends of Ahmed Ali, Committee to elect Ryan Spiegel and Carlos Solis for Council each in the amount of \$500.00 for payment of printing and distributing campaign flyers.
MCGEO UFCW Local 1994	In-kind contribution of \$500.00 to each candidate for purchase of yard sign and tee shirts.
Progressive Maryland	In-kind contribution of \$250.00 for robo calls; \$525.00 for preparation of printing costs associated with campaign flyers and mailers, \$263.50 for printing costs for flyers and mailers, \$75.00 contribution for list services e-mailing, totaling \$1,112.50 among the three candidates.

The above-named contributors have provided statements, invoices and other documentation regarding their contributions to the campaigns of Ahmed Ali, Carlos Solis and Ryan Spiegel. Based upon that documentation, the Board concludes that there is

insufficient evidence to substantiate an allegation that the contributors exceeded the maximum contribution of five hundred dollars (\$500.00), as permitted by §6C-8, Limitations on Campaign Contributions, of the City Code.

II. Whether Ahmed Ali, Carlos Solis and Ryan Spiegel Failed to Disclose in a Timely Manner In-kind Contributions.

Several of the complaints allege that the above-named candidates failed to comply with the Code by not disclosing the above-named in-kind contributions in their November 1, 2007 Reports of Financial Contributions and Expenditures. The Board's investigation reveals that the candidates learned that in-kind contributions were going to be made in mid to late October, but that Ali, Solis and Spiegel did not know the amounts of the in-kind contributions until after November 1, 2007. Although Ali, Solis and Spiegel could not provide a specific date, their contention that they did not know the amounts of the in-kind contributions on or before November 1, 2007 is bolstered by the invoices produced for most of the in-kind contributions. Specifically, the vast majority of the in-kind contributions were made for the production of campaign literature by TextDesign. The invoices from TextDesign are dated after November 1, 2007.¹

¹ Although the candidates steadfastly contend that they did not know of the contributions until "late October," there is an invoice from MCGEO/UFCW Local 1994 dated October 17, 2007. Therefore, the Board determines that it is reasonable to conclude that the candidates may have been on notice in mid October of the support of entities involved with One Gaithersburg.

On the other hand, there is an invoice from Ethix Venture, billed to MCGEO/UFCW Local 1994, in the amount of \$327.00. That invoice is dated October 17, 2007 and appears to have been paid on October 31, 2007.

On November 1, 2007, Fred Felton, Staff Liaison to the Board of Supervisors of Elections, e-mailed all candidates, advising that political committees are limited to a five hundred dollar (\$500.00) contribution per candidate and that candidates have an obligation to report any known expenditures made by political committees. Messrs. Solis and Spiegel responded that they were not aware of the amounts expended on their behalf but they would endeavor to learn the amounts and report them. Additionally, prior to submitting his Report of Financial Contributions and Expenditures, Mr. Spiegel sent an e-mail to an individual associated with One Gaithersburg requesting information regarding the amounts expended.

While candidates cannot be expected to disclose unknown in-kind contributions, the Board is troubled by the lack of due diligence to ascertain and disclose an in-kind contribution that was billed as early as October 17, 2007. However, the Code is silent on what efforts need to be made to discover and confirm in-kind contributions. Moreover, the majority of the expenditures were not billed until after November 1, 2007 and the Board cannot conclude that the candidates were on notice of the amounts of those expenditures. Therefore, while the Board believes that more diligent efforts should have been taken, it cannot conclude that these candidates violated the City's Election Code in light of the lack of specificity contained in §6C-5, Time and Manner of Reporting.

On a somewhat related note, there is an issue of pending in-kind contributions. As Ali, Solis and Spiegel have acknowledged, they knew that organizations were planning to support their campaigns in late October. However, as Messrs. Ali, Solis and Spiegel also point out, there is no obligation in the City Code, as it is currently written, to disclose pending in-kind contributions, and there is insufficient evidence that the contributors advised the candidates of the amounts of their in-kind contributions before November 1, 2007. Nevertheless, in the interest of transparency, the Board believes it is prudent to list known pending, in-kind contributions. With that said, the Board cannot conclude that under the existing Code, there is an affirmative obligation to do so.

III. Whether the Candidates Accepted Money from an Organization in Violation of the City Code and State Law.

The City of Gaithersburg's Code provides that candidates can accept contributions from "[a]ny corporation, business, other legal entity or a natural person." See §6C-12, Contributions. The Board concludes that the contributors listed at pages 7 and 8 of this Opinion qualify as eligible contributors under the City's Code as currently written.

The fact that candidates can accept contributions from those organizations under the City's Code does not fully address the issue, however. Under State law, a political committee established under Maryland law may not make a contribution in a municipal election. The Board has contacted the State Board of Elections and has been advised that Local 500 SEIU, MCGEO Local 1994 and Progressive Maryland are political committees established under Maryland law. While this is clearly beyond this Board's jurisdiction, the

Board has referred the matter to the State Board of Elections and to the Office of the State Prosecutor for further review and consideration.

IV. Whether One Gaithersburg and its Affiliates Improperly Used a Nonprofit Postal Rate to Mail Campaign Literature.

The City's Code is completely silent on the issue. However, Domestic Mail Manual, §703.1.6.3, Cooperative Mailing, provides as follows:

A cooperative mailing may be made at the Nonprofit Standard Mail rates only when each of the cooperating organizations is individually authorized to mail at the Nonprofit Standard Mail rates at the post office where the mailing is deposited.

A cooperative mailing involving the mailing of any matter on behalf of or produced for an organization not itself authorized to mail at the Nonprofit Standard Mail rates at the post office where the mailing is deposited must be paid at the applicable Regular or Enhanced Carrier Route Standard Mail rates.

The Board has been supplied a campaign flyer mailed by MCGEO UFCW Local 1994. The flyer states that it is being mailed at a nonprofit U.S. postage rate. As noted above, this issue is beyond the jurisdiction of the Board because the City's Code does not address postage rates. The Board believes this matter is within the purview of the United States Postal Service. Because there may be validity to the complaint that flyers were improperly mailed at a nonprofit postage rate, this matter has been referred to the United States Postmaster General for review and investigation.

V. Whether One Gaithersburg and its Affiliates Failed to File Anything with the City Disclosing the Amounts of Their In-kind Contributions.

The City's Code, as currently written, imposes no obligations on a contributor to file anything with the City disclosing the amount of its contribution. The onus is on the

candidate to disclose contributions. Therefore, the Board concludes that contributors did not violate the City's Code by failing to disclose the amounts of their contributions.² However, as discussed on page 10 of this opinion, some of the contributors may not have been permitted to make the contributions under State law. Those entities have been referred to the State Board of Elections and the Office of the State Prosecutor.

VI. Whether Mr. Spiegel Failed to Disclose Accurately Postage Charges for His Mailings.

It has been alleged that Mr. Spiegel failed to disclose the proper amount of postage for mailings. The complainant acknowledges that he does not have any personal knowledge regarding the number of flyers that were mailed. While the complainant makes reference to 30,000 mailings, he also acknowledges there is no basis for that number. In response, Mr. Spiegel contends that he conducted a "targeted" mailing of probable voters and that the mailing was less than 5,000. While Mr. Spiegel acknowledges that some of the houses received more than one of the flyers due to an error, the Board concludes that there is no basis to find that Mr. Spiegel omitted and/or inaccurately documented the cost of the mailings on his financial disclosures.

² The Board wishes to acknowledge that at its request several contributors provided statements and documentation in support of their contributions. That information was voluntarily provided to the Board of Supervisors to aid this investigation.

VII. Whether Mr. Spiegel Failed to Disclose an In-kind Contribution from Friends of Ryan Spiegel.

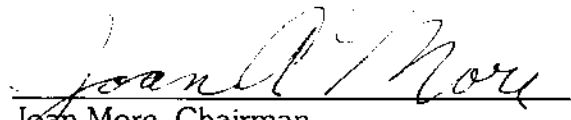
It has been alleged that Friends of Ryan Spiegel made an in-kind contribution of a website to Mr. Spiegel's candidacy and that the contribution was never disclosed on Mr. Spiegel's financial disclosures. It is further alleged that if the contribution was in fact disclosed, Friends of Ryan Spiegel would have exceeded the five hundred dollar (\$500.00) maximum contribution to any one candidate.

The Board concludes that the website was not the property of Friends of Ryan Spiegel and, thus, it could not have been conveyed to Mr. Spiegel as an in-kind contribution within the meaning of the City's Code. Mr. Spiegel has confirmed that he purchased the website with his personal funds a number of years ago. While the website was utilized in connection with Mr. Spiegel's race for the State legislature, that campaign terminated in the Fall of 2006. In the early part of 2007, Mr. Spiegel renewed his membership, utilizing his own personal funds before he had filed a Certificate of Candidacy. Accordingly, the Board finds that Mr. Spiegel did not fail to disclose an in-kind contribution and that Friends of Ryan Spiegel did not contribute more than five hundred dollars (\$500.00) to Mr. Spiegel's campaign.

Conclusion

For all of the foregoing reasons, the Board of Supervisors of Elections unanimously finds that there is insufficient evidence to proceed with further inquiry into allegations 1, 2, 3 in part, 5, 6 and 7. With respect to issue 3, the Board finds that it is appropriate to refer to

the State Board of Elections and the Office of State Prosecutor the issue of whether certain entities violated State law by making contributions in a municipal election. With respect to issue 4, the Board finds that it is appropriate to refer to the United States Postmaster General the issue of whether certain organizations mailed campaign literature in accordance with Domestic Mail Manual.



Joan More, Chairman
Board of Supervisors of Elections

2/22/08

Dated