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December 15, 2011

Robert Hahn
Executive Director
State Ethics Commission
45 Calvert Street, 3rd Floor
Annapolis MD 21401

Re: Complaint Against Montgomery County Ethics Commission

Dear Mr. Hahn:

In accordance with Maryland State Code Sec. 15-401(a), Maryland Citizens for a Responsible Government (MCRG) files this complaint against the Montgomery County Ethics Commission (County Commission) for its multiple violations of the Maryland Public Ethics Law.

BACKGROUND

On November 13, 2007, the Montgomery County Council enacted Bill No. 23-07, addressing the legal codification of gender identity. The Bill had been introduced by Montgomery County Councilmember Duchy Trachtenberg. Dana Beyer, herself a transgender woman, was Councilmember Trachtenberg's Special Assistant and played a significant role in drafting the Bill.

MCRG filed both an October 7, 2008 complaint and a March 23, 2009 supplemental complaint against Beyer and Trachtenberg with the County Commission (copy of complaint and amendments attached). In 2008 and 2009 MCRG additionally provided tapes of 911 calls (in addition to the submitted transcripts); a tape of interview with Verlon Mason, affidavits from Alberta Bertruzzi and Craig Koch about the Arliss Giant incident and provided examples of harassment organized by Beyer through intermediaries to further interfere with citizens freedom to engage in political activity (question 4, March 26, 2009 responses to interrogatories- see attached).

As detailed in the original complaint Beyer, a public employee working for the Montgomery County Council, violated Montgomery County's Public Ethics Law by personally intimidating, threatening, and coercing Montgomery County citizens who were collecting signatures for, or

signing, a petition to place County Bill No. 23-07 (the gender identity law) on the November ballot as a referendum for citizens to vote on.

In addition to working as a public employee in her capacity as Special Assistant to County elected official, Beyer is also the Vice President of Equality Maryland, an organization that provided substantial information in support of the Bill and financed a lawsuit against MCRG's petition referendum in order to stop it.

Among other things, MCRG's complaint showed that Beyer misused her official position for private gain, in violation of Montgomery County Ethics Code Section 19A-14(a), and intimidated citizens in order to interfere with their freedom to engage in political activity, in violation of Section 19A-14(e), such conduct falling far below the ethics standards imposed to ensure public trust in the County, its officials, and employees.

STATEMENT OF FACTS

In accordance with Section 15-205(a)(4) of the Maryland Public Ethics Law and its general authority, the Ethics Commission is requested by this filing to review the Montgomery County public ethics law and County Commission in light of the below facts:

On March 8, 2011, the County Commission dismissed MCRG's complaint against Beyer, citing its belief that the Complainant's witnesses were not persuasive because they did not use what the Commission personally deemed to be the proper pronouns in reference to Beyer, a transgender woman. *See* Commission's Memorandum and Order (M&O), attached. Accordingly, the County Commission's decision was not issued on written findings of fact and conclusions of law based on the record as required by Sec. 19A-10(i) of the Montgomery County Ethics Code, but on the Commission's own preferred pronoun usage. The County's public ethics law does not reference the proper use of pronouns. Hence, the Commission failed to implement the ethics law as written. MCRG filed for reconsideration of the complaint, but the County Commission rejected it without comment or explanation. *See* attached MCRG Request for Reconsideration dated April 7, 2011.

On its face, Sec. 19A-14(e) of the Montgomery County Ethics Code's conflict-of-interest provision reads:

A public employee must not intimidate, threaten, coerce or discriminate against any person for the purpose of interfering with that person's freedom to engage in political activity.

However, in its decision, the County Commission added the words "as a function of being on the job, self-identifying as a public employee, or entailing the prestige of office" to the end of the above provision. *See* M&O at p. 17, attached. The County Commission did not cite any legislative history or legal precedent to justify its sudden rewriting of the County's public ethics law. Yet by adding this language to Sec. 19A-14(e) of the Code without any advance notification, the County Commission dismissed MCRG's complaint because it deemed that Beyer's harassment did not occur within the conditions of the added language. The County

Commission therefore drafted on-the-spot language to modify the County's public ethics law to suit its own ideal of how the ethics law should have been written. The County Commission must maintain and implement the ethics law, not redraft it in the middle of litigation in order to justify a Commission decision after-the-fact. If the law is rewritten whenever the County Commission renders a decision and without prior approval from any entity, the County's public ethics law becomes useless and unfair, and fails to provide reliable guidance on public ethics behavior. Further, any amendments or modifications to the local ethics statute must receive approval from this Commission.¹

In its Complaint, MCRG submitted numerous affidavits, news articles, cell phone videos, transcripts of 911 calls made by citizens, and blog entries written by Beyer and her associates to prove that Beyer was harassing citizens collecting petition signatures and stalking them in violation of the County's ethics laws 19A-14(e). *See* Complaint and M&O at 3. Two vital pieces of evidence submitted with the Complaint were a transcript of the 911 call Steve (Harold) Schaal made to request help against Beyer's threats and physical assaults against him at a grocery store where he was collecting signatures for the petition, and a cell phone video showing Beyer threatening and intimidating citizens gathering petition signatures at a grocery store. *See* February 17, 2008 transcript of 911 Emergency Phone Call by Schaal, at request of Peggy Lyles, custodian of the records, Montgomery County Police, submitted as an attachment to the Complaint. *See also* <http://www.youtube.com/watch?v=uYqz2rffZ0w> (After meeting with the grocery store manager, Beyer angrily confronts petitioners to tell them she contacted the Giant corporate office which would now be sending an email to all of their stores [to remove petitioners], and that she had just spoken to the manager at this store who would soon ask them to leave.)

Yet the Commission ignored all of this evidence, the incriminating video at <http://www.youtube.com/watch?v=uYqz2rffZ0w>, multiple affidavits from citizens who had been harassed, and evidence of blog writings by Beyer's associates demonstrating Beyer's intimidation of citizens in many different locations throughout the county. This evidence, which clearly proved a violation of the County's ethics laws 19A-14(e) ("A public employee must not intimidate, threaten, coerce or discriminate against any person for the purpose of interfering with that person's freedom to engage in political activity") **was not considered or allowed to be presented at the final County Ethics hearing** because the Commission deemed that intimidation can only be considered an ethics violation if it occurs as "a function of being on the job, self-identifying as a public employee, or entailing the prestige of office," although these qualifying conditions are not in the County Ethics Code.

Hence, based on this unofficial revision of the Code without any public notice, the County Ethics Commission excluded multiple incidents of citizen intimidation by Beyer both from general consideration and the final ethics hearing, as detailed in the Complaint and amendments to the Complaint. Instead, the Commission chose to focus on only one incident of harassment (the Arlis Giant incident). The Commission then excluded Craig Koch's corroborating testimony about the Arliss Giant incident, and further excluded specific witness testimony and affidavits (from Steve Schall and Verlon Mason) because they personally disliked the witnesses' use of pronouns, without citing any rule of law mandating preferred pronoun usage in areas of gender confusion.

¹ *Special Ethics Law Memo*, October 1, 2010, State Ethics Commission, p. 5.

The lead Montgomery County counsel James Savage did not attend the final ethics hearing. In fact, the County/MCRG case against Dana Beyer was prosecuted ineffectually by a much younger and less experienced attorney, Kathryn Lloyd who failed to submit the Steve Schall/Arliss Giant 911 tape which corroborates his testimony. The tape was particularly important because the commission chose to exclude Steve Schall's testimony. The omission of the tape was brought to Lloyds attention at the hearing by MCRG president Ruth Jacobs and Lloyds still failed to submit the tape. Because of concerns about counsel bias, intimidation and incompetency, MCRG had requested a special counsel in accordance with Section 19A-10(a)(3) of the Montgomery County Code in July of 2009, but this request was refused by the Ethics Commission.

Accordingly, MCRG requests that this Commission decertify or deny certification of Montgomery County's public ethics law and investigate the actions of the Montgomery County Ethics Commission, which consists of members Nina A. Weisbroth, Kenita V. Barrow, Antar C. Johnson, and Stuart Rick. The citizens of Montgomery County must be assured that the impartiality and independent judgment of public officials and employees will be maintained.

I affirm that the statements contained herein are true to the best of my knowledge and belief,

Dr. Ruth Jacobs
President
Maryland Citizens for a Responsible Government

Attachments

cc:

Ms. Barbara McNally
Executive Secretary
Montgomery County Ethics Commission
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