

Staff Counsel
Noel H. Johnson
Kaylan L. Phillips
Joseph A. Vanderhulst

Of Counsel
Eric C. Bohnet
Cleta Mitchell

August 25, 2014

(via USPS and e-mail: Jonathan.Wayne@maine.gov)

Maine Commission on Governmental Ethics
and Election Practices
135 State House Station
Augusta, Maine 04333-0135

Re: Supplement to HRC Complaint

Dear Members of the Commission,

I am writing on behalf of the National Organization for Marriage (“NOM”) to supplement the record in NOM’s request for an investigation of the Human Rights Campaign, Inc. (“HRC”) for its activities in 2009 related to the marriage ballot question that year. NOM would simply like to highlight a few things ahead of the August 27, 2014 meeting so that nothing new or unexpected is presented there.

First, on the issue of the timeliness of NOM’s complaints featuring HRC, it would have been quite hypocritical of NOM to have filed complaints against other groups who were active in Maine during 2009 regarding the marriage ballot question. In October 2009, two of the five Commissioners indicated that NOM’s activities appeared to be consistent with Maine law and how many groups were operating at the time. NOM’s position throughout the investigation has been that they did not raise more than \$5,000 from emails referring to a Maine ballot question (which has been borne out by the evidence) and that their activities were otherwise unregulated under Maine law. It was only after the Commission’s final determination that NOM, and other groups for that matter, were put on notice of the extent of the Commission’s application of Maine’s ballot question committee definition. Furthermore, the Commission has an enforcement role and obligation itself. Affidavit of Jonathan Wayne ¶ 10, *NOM v. McKee*, No. 9 Civ. 538, Doc. 19 (D. Me. Oct. 26, 2009) (“Most often, enforcement matters are generated internally by the Commission staff.”). Once the broad reach of the Commission’s application became clear through its determination against NOM, NOM immediately urged that the standards be applied consistently to the other groups who participated in the very same election.

Second, the original complaint against NOM filed in August 2009 stated nothing more than that NOM had made large contributions to a Maine political committee and that, therefore, it must have received underlying “contributions” that needed to be reported. In response, the Commission staff itself requested further information from the complainant showing facts about NOM’s fundraising activities that may have mentioned a Maine ballot question. The complaint supplement attached several emails in response.

NOM has done the same here with regard to HRC. It has shown that HRC made direct contributions to Maine political committees in 2009 and that its public communications that year, including web-based communications and emails, frequently referred to a Maine ballot question in 2009. The Commission opened its investigation against NOM based on the same evidence.

All evidence related to NOM’s major donors, including internal strategy documents, donor thank you letters, and bank account information, was obtained after the start of the investigation. Similarly, from the responses provided by HRC here, it cannot be known whether any donations were made to HRC that share common facts with NOM’s donations that were considered “contributions” by the Commission.

1. The Commission found that three major donations made to NOM were “contributions” under Subsection C because they were made on the same day that NOM made contributions to a Maine political committee. In the same way, if HRC received donations in temporal proximity¹ to its contributions to Maine political committees in 2009, those donations should be considered “contributions” under Maine law. This cannot be known absent a review of HRC bank account activity.
2. The Commission found that one major donation to NOM, from a recurring donor, was a “contribution” under Subsection B and C based on: (1) an internal budget plan that the donor did not see, (2) national strategy documents that were distributed to major donors, and (3) an account of a telephone conversation with the donor about which there is no evidence that Maine was discussed in any way. In the same way, if HRC’s internal budget plans and strategy documents mentioned the 2009 ballot question in Maine, and these were made known to major donors at any time, or the circumstances suggest that donors may have been made aware of them, those donations should be considered “contributions” under Maine law. Only an investigation can reveal these facts. In addition, here, HRC had a recurring donation that was publicly touted as being a matching gift for donations to be used in Maine to oppose the ballot question.
3. Finally, the Commission found that another major donation to NOM was a “contribution” under Subsection B and C based on a thank you letter sent to the donor following the donation. The only evidence concerning any actual communications with

¹ The Commission has not indicated the degree of temporal proximity that will transform a donation into a “contribution” under Maine law.

the donor prior to the donation is sworn testimony that nothing was said that would have led the person to believe that the donation would be used to support a Maine ballot question. In the same way, if any of HRC's communications with donors mentioned a Maine ballot question, any donation from those donors should be considered a "contribution" under Maine law. These facts cannot be determined from HRC's responses here.

If you have any questions, we can give clarifications at the hearing on August 27, 2014.

Sincerely,

Joseph A. Vanderhulst
jvanderhulst@actrightlegal.org

cc: Phyllis Gardiner (*via E-mail: Phyllis.Gardiner@maine.gov*)