



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Agenda Item #2

To: Commission
From: Jonathan Wayne, Executive Director
Date: November 2, 2024
Re: Complaint against CapeVoters.com

On November 1, 2024 (yesterday), the Ethics Commission received a complaint requesting an investigation into campaign finance reporting by CapeVoters.com, which is the ballot question committee registered with the Ethics Commission in opposition to the November 5, 2024 school construction referendum in Cape Elizabeth. The complaint raised three compliance issues, discussed below. CapeVoters.com promptly provided the Commission staff with information and invoices, and Commission staff interviewed a sales representative at Spectrum Marketing Companies, the mail house used by CapeVoters.com. Because CapeVoters provided information and documents over the course of several emails and this complaint is being heard on an expedited basis, CapeVoters' emails are summarized in this memo and not separately attached.

Commission staff appreciates that the complaint was motivated by not seeing certain communications to voters reflected in campaign finance reporting. Based on the information received yesterday, Commission staff recommends taking no action on the complaint.

Applicable Law

Ballot question committees are required to file an initial campaign finance report when they register, regularly scheduled quarterly reports, and reports due 11 days before and 42 days after an election. 21-A M.R.S. § 1059. The campaign finance reports are required to include contributions and expenditures, which are defined to include the receipt of cash or other things of value and payments of money to influence elections and unpaid debts or obligations. §§ 1052(3) and (4), 1060. In the last thirteen days before an election, 24-Hour Reports are required for any single contribution of \$5,000 or more or any single expenditure of \$1,000 or more. § 1059(2)(E). The Commission has a rule defining in-kind contribution as the receipt of goods or services at

less than the usual and customary charge. 94-270 C.M.R. ch. 1, § (6)(4). A discount or price given to a candidate or political committee that is regularly offered to other customers is not an in-kind contribution.

Staff Analysis and Recommendations

(1) Website. The complaint asks why CapeVoters.com did not report any expenses for its website, www.capevoters.com. When I called Mary Ann Lynch, the committee treasurer, she said the website had been put together by a volunteer and she didn't know whether any expenses had been incurred, which she acknowledged could have been an oversight. She contacted the volunteer, Kejda Gjermani, who responded with an email that was forwarded to me directly. Ms. Gjermani paid GoDaddy \$44.53 to reserve the capevoters.com domain name for three years (a receipt for this payment was attached to the email). Ms. Gjermani said she paid no additional charges in connection with the website because she "used free Wordpress tools."

Yesterday, Ms. Lynch amended CapeVoters' initial campaign finance report, originally filed on September 23, 2024, to include an in-kind contribution in the amount of \$44.53 from Kejda Gjermani. This campaign finance report also contains \$5,900.00 in cash contributions and unpaid obligations totaling \$4,781.50. Commission staff views the \$44.53 addition to the report to be a minor change. Because the originally filed report substantially conformed to the reporting requirements for ballot question committees, staff recommends viewing the report as timely filed and taking no action on this issue – consistent with the Commission staff's regular practice when minor amendments are made to campaign finance reports by PACs, candidates, and others.

(2) No 24-Hour Report filed for third mailing. The complaint requests the Commission investigate why CapeVoters.com did not file a 24-Hour Report for a third mailing opposing the referendum that was received by Cape Elizabeth voters around five days before the election.

CapeVoters' treasurer, Mary Ann Lynch, explained to me in an email that the mailing was paid for by a supporter, Sandi Dunham. She forwarded to me an email receipt for \$2,129.92 from Spectrum Marketing Companies. Three snippets from the receipt are copied below:

Receipt

Transaction ID: csd88rf0i475e0tu05vg
Merchant: Spectrum Marketing Companies
Merchant Website: spectrummarketing.com
Merchant Phone: (603) 602-0042
Transaction Date: 10/24/2024 13:31:25 EDT
Transaction Type: Sale
Subtotal: \$2,193.60
Tax: \$0.00
Convenience Fee: \$63.68
Amount Authorized: \$2,193.60
Amount Captured: \$2,193.60
Base Amount: \$2,129.92
Total: \$2,193.60

Payment Information

Cardholder Name: Sandy Dunham

Billing Address

Sandy Dunham
Cape Voters
2 Olde Colony Ln
Cape Elizabeth ME 04107

Ms. Lynch said CapeVoters had already entered this transaction as an in-kind contribution in the Ethics Commission's eFiling system, which we verified. The in-kind contribution from Sandi Dunham with a value of \$2,129.92 will be disclosed by CapeVoters.com when it files its 42-day post-election report by December 17, 2024.

Ballot question committees are required to disclose in a 24-Hour Report any single contribution received of \$5,000 or more or any single expenditure made of \$1,000 or more. CapeVoters.com was *not* required to file a 24-Hour Report for Sandi Dunham's purchase because it is an in-kind contribution to CapeVoters valued at \$2,129.92, which is below the \$5,000 threshold for 24-hour reporting of contributions. Maine campaign finance law allows CapeVoters to disclose this transaction in the report due 42 days after the election. Prior to the filing of the complaint, CapeVoters' treasurer had engaged in extensive email correspondence with Heidi Hoefler on the Commission's staff confirming that CapeVoters did not need to file a 24-Hour Report for this transaction. Commission staff recommends no further action on the 24-hour reporting issue.

(3) *Suspected discount.* CapeVoters.com reported purchasing from Spectrum Marketing Companies two mailings at \$2,129.92 each. The complaint asks the Commission to consider

whether CapeVoters received the mailing at a discount or below-market rate not generally available to the public, which would constitute an unreported in-kind contribution.

In response, the treasurer for CapeVoters sent me invoices for both mailings and told me in an email: “We have not been provided with any discounts or special payment schedules or arrangements.” This was confirmed by an unscheduled interview I conducted yesterday when I called Ms. Kerry Marsh, the sales representative of Spectrum Marketing Companies whose name appears on the invoices I received.

I explained to Ms. Marsh the context for my call and that I had received from CapeVoters an invoice indicating CapeVoters had purchased a mailing consisting of 4,096 pieces at a unit price of \$0.52 per piece, for a total charge of \$2,129.92. Ms. Marsh said this was an example of “saturation mailing,” which is sent to every household in an area. The cost per-piece is less because the postage is less expensive for a saturation mailing. She said that Spectrum did not provide a discount to CapeVoters. When asked, Ms. March replied there was nothing unusual about the unit price of \$0.52 per piece. Based on this information, Commission staff recommends taking no action on the issue of whether CapeVoters received an unreported in-kind contribution of discounted mail services.

November 1, 2024

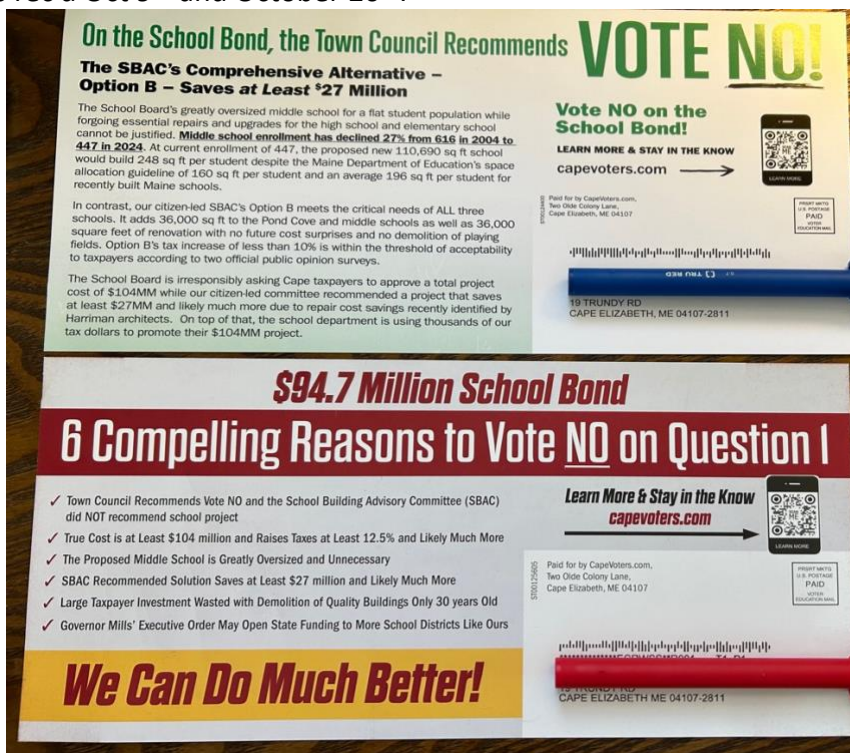
Dear Ethics Commission –

I am reporting the following concerns about the registered Ballot Question Committee, CapeVoters which is advocating against a local school bond referendum in Cape Elizabeth, Maine:

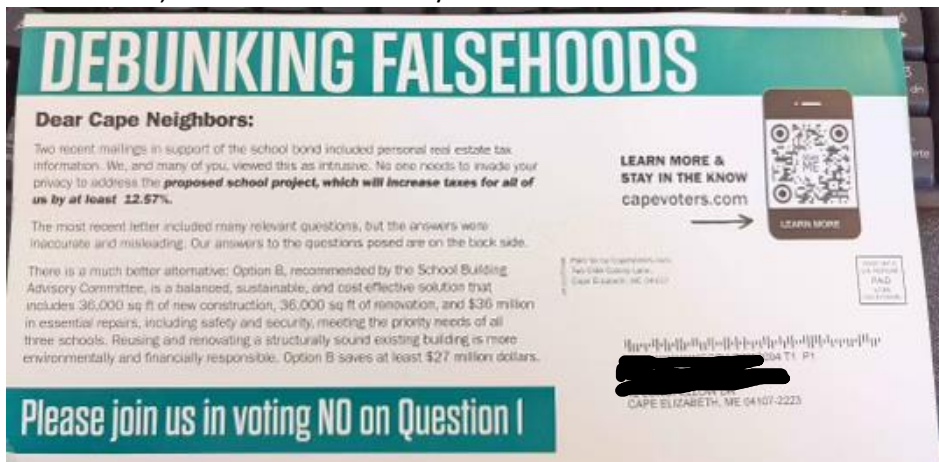
- 1) Website (CapeVoters.com) – this is a website that appears to have been registered on or about August 25th and it serves to host information advocate against the school bond. Their direct mailers also link to this website. However, CapeVoters has not reported any debts, payments, or in-kind donations associated with registering a domain or hosting a website.
- 2) Failure to report expenses in excess of \$1,000 within 24 Hours – beginning October 23, 2024, all expenditures, including commitments for expenditures, in excess of \$1,000 are to be reported to the Maine Ethic Commission within 24 hours. On October 31, 2024, a direct mailer was widely received by residents, but there has been no declaration of this debt/expense.

Previously, CapeVoters sent two direct mailers, the first with an expense date of October 4, 2024, which was received on or about October 9, 2024 and the second with an expense date of October 20, 2024, which was received on or about October 26, each for \$2,129.92. ***As noted above, a third mailer was received by Cape residents on or about October 31, but CapeVoters has not declared this as a debt, nor filed a 24-hour report to capture an expense since October 22.*** Based on their prior payment/ mailing schedule I'd anticipate the expense was incurred around October 25th. It is of course possible that the expenditure was less than \$1,000, but given that each of their prior mailers cost the exact same amount, I suspect this one also cost \$2,129.92.

Mailers rec'd Oct 9th and October 26th:



Third mailer, rec'd on or about 10/31:



- 3) Direct Mailer Costs – As noted above, CapeVoters has reported two mailers, each at a cost of \$2,129.92. These mailers were so widely received throughout town that it would seem that they were sent to each household which would be in excess of 3,000 addresses. In my experience, the cost of postage alone could be that much for their 5.5 in x 11 in double-sided mailers. The declared expenditure is low enough that I question whether CapeVoters is receiving some sort of bulk-discount for volume or a below-market rate that would not be available to the general public.

The individuals who constitute CapeVoters produced town-wide mailers for the School Bond issue prior to the referendum going onto the ballot, and it is widely known that the same individuals have ordered campaign materials (lawn signs and direct mailers) in bulk for other local candidates and issues herein Cape Elizabeth this election season. It would make sense that CapeVoters has received a significantly reduced rate due to the volume of their business with Spectrum Marketing in NH, **but if they are paying rates not available to the general public, I believe it should be reported as an in-kind donation.**

In addition, it's possible CapeVoters is paying all their Spectrum Marketing costs on a payment plan – because the initial costs reported costs of signs (9/13) was actually quite high: \$2,524.00, but then maybe that defrayed the costs of the subsequent mailers? If that is the case, CapeVoters should have then declared the full expense when it was planned/incurred and the payments would have just been payments to the initial debt. Either way – I could be mistaken as I do not know how the exact number of households these mailers went to nor do I have access to their records; I just have access to price quotes for similar services from other providers which reflect a much higher price for a town-wide mailer than reported by CapeVoters.

Thank you for your consideration of these issues.

Regards,

Elizabeth Biermann