



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

Special Commission Meeting 10/15/2021
Agenda Item #1

To: Commission
From: Jonathan Wayne, Executive Director
Date: October 14, 2021
Re: Request for Investigation of Say No to NECEC

On October 6, 2021, the Maine Commission on Governmental Ethics and Election Practices (the “Commission”) received a request for an investigation (the “Complaint”) from Clean Energy Matters, a registered political action committee (“PAC”), alleging that Say No to NECEC, a nonprofit corporation, has failed to register as a PAC or as a ballot question committee (“BQC”) after receiving a payment of \$140,000 from a closely affiliated PAC, No CMP Corridor. In a second letter dated October 12, 2021, Clean Energy Matters sought guidance from Commission staff whether certain payments by No CMP Corridor should be viewed as in-kind contributions to Say No to NECEC (payments by No CMP Corridor for signs, entrance fees at fairs, and for someone to coordinate volunteers).

In an October 13, 2021 letter from its counsel, James T. Kilbreth, Say No to NECEC responds that it is a tax-exempt volunteer organization that has a three-year history of educating the public on the negative effects of the CMP corridor project and activating volunteers to testify in state and federal permitting proceedings. According to Say No to NECEC, its volunteers also engage in activities on their own time and without compensation to support the passage of Question 1 on the November 3, 2021 ballot. Sandi Howard is one of the leaders of the organization.

In his letter, Mr. Kilbreth explains that in 2019 when the first NECEC initiative was being organized, Ms. Howard and an associate, Darryl Woods, formed the No CMP Corridor PAC to comply with Maine campaign finance reporting requirements and tax requirements. According to counsel, all expenditures to promote Question 1 on the Nov. 3, 2021 ballot are paid for by the No CMP Corridor PAC. Recently, these expenditures

have included campaign signs, fees to participate in fairs, and gift cards for volunteers. Mr. Kilbreth states that Say No to NECEC does *not* spend money on costs to promote the initiative. Those are paid for by the affiliated PAC, No CMP Corridor.

Mr. Kilbreth explains that the \$140,000 payment by No CMP Corridor to Say No to NECEC is for general operating expenditures, particularly legal fees. He two payments of legal fees totaling around \$58,600 already made by Say No to NECEC.

LEGAL REQUIREMENTS

Standard for Initiating an Investigation. The Commission is required to review every request to investigate an alleged violation of campaign finance law and to conduct an “investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.” 21-A M.R.S. § 1003(2).

PAC Definition

A person, including any corporation or association, other than an individual, that has as its major purpose initiating or influencing a campaign and that receives contributions or makes expenditures aggregating more than \$1,500 in a calendar year for that purpose shall register as a PAC within seven (7) days of meeting that threshold. 21-A M.R.S. § 1052(5)(A)(4).

BQC Definition

A person, including an individual or organization, not defined as a PAC that receives contributions or makes expenditures more than \$5,000 for the purpose of initiating or influencing a campaign is required to register as a BQC.... 21-A M.R.S. § 1056-B.

Contributions, generally. The term “Contribution” includes:

- A. A gift, subscription, loan, advance or deposit of money or anything of value made to a political action committee, except that a loan of money by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- B. A contract, promise or agreement, expressed or implied whether or not legally enforceable, to make a contribution to a political action committee;
- C. Any funds received by a political action committee that are to be transferred to any candidate, committee, campaign or organization for the purpose of initiating or influencing a campaign; or
- D. The payment, by any person or organization, of compensation for the personal services of other persons provided to a political action committee that is used by the political action committee to initiate or influence a campaign. 21-A M.R.S. § 1052(3)

Contributions to a BQC. The BQC statute specifies that the definitions of contribution and expenditures in 21-A M.R.S.A. §§ 1052(3) and (4) apply to BQCs. 21-A M.R.S. § 1056-B(2). In addition, under subsection 2-A, the term “contribution” also includes:

- 1. Funds that the contributor specified were given in connection with a campaign.
- 2. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a campaign.
- 3. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a campaign when viewed in the context of the contribution and the recipient’s activities regarding a campaign.
- 4. Funds or transfers from the general treasury of an organization filing a BQC report. 21-A M.R.S.A. § 1056-B(2-A).

Contributions in the Name of Another. A person may not knowingly:

- 1. Make a contribution in the name of another person;

2. Permit the person's name to be used to accomplish a contribution in violation of paragraph A; or
3. Accept a contribution made by one person in the name of another person. 21-A M.R.S. § 1004(3).

Registration. Within seven days of receiving or spending \$1,500 as a major purpose PAC (21-A M.R.S. § 1052(A)(4)) or of receiving or spending \$5,000 for the purpose of influencing a ballot question campaign, an organization must register as an appropriate entity with the Commission. 21-A M.R.S. §§ 1052-A(1), 1056-B.

PRELIMINARY OBSERVATIONS

My own reaction to the correspondence received is that Say No to NECEC has provided a simple, plausible explanation for the \$140,000 it has received from No CMP Corridor. It says that it has used – and will use the remainder of – the \$140,000 to pay for legal fees relating to DEP and Ethics Commission proceedings. I do not see that Clean Energy Matters has provided any convincing reason to doubt that explanation. I also find it plausible that the leaders of Say No to NECEC have realized they need to finance all initiative-related expenses from their PAC, No CMP Corridor. I do not see that Clean Energy Matters has presented any evidence suggesting that Say No to NECEC has spent money to promote the initiative.

For those reasons, I have doubts that Clean Energy Matters has met the burden of showing sufficient grounds for believing that a violation may have occurred. In my opinion, I do not see that payments by No CMP Corridor for campaign signs, entrance fees, and volunteer coordination should be viewed as a contribution to Say No to NECEC. Those are not gifts of money or things of value to Say No to NECEC. Rather they are payments by an affiliated political fund (No CMP Corridor) toward a common political goal that have already been publicly reported, as required by campaign finance law. Thank you for your attention to this matter.

October 6, 2021

Jonathan Wayne
Executive Director
Maine Ethics Commission
45 Memorial Circle
Augusta, ME 04330

Re: Complaint Against Say No to NECEC

Dear Jonathan:

On behalf of Clean Energy Matters, I am writing to request that pursuant to its authority under 21-A MRSA § 1003, the Commission undertake an immediate investigation into the activities of a group operating under the name 'Say No to NECEC.' We believe this entity is obligated to file as a political action or ballot question committee pursuant to M.R.S. 21-A § 1004 (4).

Say No to NECEC is registered as a public benefit corporation with the Secretary of State. The organization is run by Sandi Howard, a New Hampshire resident employed at Keane State College in New Hampshire. Notably, Sandi Howard also is listed as the principal officer on No CMP Corridor, a political action committee actively engaged in influencing Question 1 on the November ballot.

The recent October quarterly filing from No CMP Corridor indicates a \$140,000 contribution to Say No to NECEC on September 23. The entry was described as a "contribution to support general operating expenditures." The total amount of cash contributions received by No CMP Corridor thus far in 2021 is \$328,530. No CMP Corridor contributed nearly half of its cash on hand to Say No to NECEC.

Notably, two days before making this contribution, No CMP Corridor received a \$150,000 contribution from Mainers for Local Power (MLP). MLP is the leading political action committee supporting Question 1 and made \$9.8 million in expenditures during the 3rd quarter.¹ Upon information and belief, No CMP Corridor may not have had

¹ Based on Ethics Commission reports, No CMP Corridor received the \$150,000 contribution on September 21; MLP's filing indicates that the contribution was made on September 13.

sufficient cash on hand to make the contribution to Say No to NECEC, but for the infusion of cash from MLP.

21-A M.R.S.A. §1004 3(A) states that a person “may not knowingly make a contribution in the name of another person.” We believe that these two transactions clearly indicate a violation of this provision of law. Further, it is highly unusual for a political organization to make a “contribution” of this amount to another organization in the waning days of an election and for those funds to be put towards “operating expenditures” that have nothing to do with influencing an election as defined in 21-A M.R.S.A. §1052 4-A. The suspicious nature of this transaction is exacerbated by the fact that the principal officer of the contributing and receiving entity is the same person.

It should be troubling to the Commission and the voters of Maine that “Say No to NECEC” - a group whose very name constitutes “express advocacy” - would not have filed with the Commission as a political action or ballot question committee after Labor Day if it intended to remain active in the two months leading up to the election. Upon information and belief, the Say No to NECEC Facebook page currently serves as a place for NECEC opponents to interact and to coordinate volunteer-driven campaign activities like letters to the editor and distributing campaign signs. This group has now received a significant infusion of cash less than 40 days before the election - traceable directly to the fossil fuel companies bankrolling the leading opposition PAC - but continues to hide behind the façade of a “grassroots” organization uninvolved in the election.

As part of its investigation, the Commission should examine the activities of “Say No to NECEC” since September 7, the purpose of this recent transfer of funds and the alleged “operational expenses” referenced in the filing, among other inquiries. In the context of the ballot measure regarding the construction of the clean energy corridor, the current and future activities of “Say No to NECEC” in the sixty day period before the election appear susceptible of no reasonable interpretation other than an appeal to vote against that project.

Given the impending election, we would ask that the Commission consider this matter at its October meeting or, alternatively, at a special meeting pursuant to Rule 94-270, Chapter 1, Section 3, Part 2. Transparency as to the funding sources for this ballot measure – a concern dating back to the investigation of Stop the Corridor that began twenty one months ago – is crucial for Maine voters to make an informed decision on Question 1.

If your staff or the Commission need any further supporting documentation or information pursuant to this request, please do not hesitate to let me know. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Newell A. Augur', with a long horizontal flourish extending to the right.

Newell A. Augur
Legal Counsel



October 8, 2021

James T. Kilbreth, Esq. (Sent via E-mail)
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, ME 04101-2480

Re: Request for Investigation – Say No to NECEC

Dear Mr. Kilbreth:

The Maine Commission on Governmental Ethics and Election Practices received the enclosed request by Clean Energy Matters (CEM) to investigate Say No to NECEC. CEM contends that Say No to NECEC should have registered with the Commission as a political action committee (PAC) or as a ballot question committee (BQC) because of the contribution that it received on September 23, 2021 from No CMP Corridor PAC, totaling \$140,000. This letter is to provide Say No to NECEC with an opportunity to respond to the request for investigation and to provide any factual information or legal argument that it believes is relevant.

Commission’s Decision Whether to Investigate

The Commission will consider whether to conduct an investigation during a special meeting on Thursday, October 14, 2021. 21-A M.R.S. § 1002(1). This meeting will be conducted via Zoom. The Commission staff recommends that you and Sandi Howard participate in the meeting to respond to the request for investigation and to answer any questions from the Commissioners. The meeting will begin at 1:00 p.m.

Relevant Law

Standard for Initiating an Investigation. The Commission is required to review every request to investigate an alleged violation of campaign finance law and to conduct an “investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.” 21-A M.R.S. § 1003(2).

PAC Definition

A person, including any corporation or association, other than an individual, that has as its major purpose initiating or influencing a campaign and that receives contributions or makes expenditures aggregating more than \$1,500 in a calendar

year for that purpose shall register as a PAC within seven (7) days of meeting that threshold. 21-A M.R.S. § 1052(5)(A)(4).

BQC Definition

A person, including an individual or organization, not defined as a PAC that receives contributions or makes expenditures more than \$5,000 for the purpose of initiating or influencing a campaign is required to register as a BQC.... 21-A M.R.S. § 1056-B.

Contributions, generally. The term “Contribution” includes:

- A. A gift, subscription, loan, advance or deposit of money or anything of value made to a PAC, except that a loan of money by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- B. A contract, promise or agreement, expressed or implied whether or not legally enforceable, to make a contribution to a PAC;
- C. Any funds received by a PAC that are to be transferred to any candidate, committee, campaign or organization for the purpose of initiating or influencing a campaign; or
- D. The payment, by any person or organization, of compensation for the personal services of other persons provided to a PAC that is used by the PAC to initiate or influence a campaign. 21-A M.R.S. § 1052(3)

Contributions to a BQC. The BQC statute specifies that the definitions of contribution and expenditures in 21-A M.R.S. §§ 1052(3) and (4) apply to BQCs. 21-A M.R.S. § 1056-B(2). In addition, under subsection 2-A, the term “contribution” also includes:

- 1. Funds that the contributor specified were given in connection with a campaign.
- 2. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a campaign.
- 3. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a campaign when viewed in the context of the contribution and the recipient’s activities regarding a campaign.
- 4. Funds or transfers from the general treasury of an organization filing a BQC report. 21-A M.R.S. § 1056-B(2-A).

Contributions in the Name of Another. A person may not knowingly:

1. Make a contribution in the name of another person;
2. Permit the person's name to be used to accomplish a contribution in violation of paragraph A; or
3. Accept a contribution made by one person in the name of another person. 21-A M.R.S. § 1004(3).

Request for Response

Please submit a written response to the request for investigation by Monday, October 11, 2021. You are welcome to submit any factual information or legal argument you believe is relevant to the Commission's decision whether to investigate. In addition, the Commission staff recommends addressing the following points:

- What was the purpose of the \$140,000 transfer from No CMP Corridor to Say No to NECEC? In your answer please be as specific as possible. If you are willing to voluntarily provide invoices/receipts for Say No to NECEC's activity, from September 6, 2021 through present, that would better inform the Commission's decision. These records could be kept confidential pursuant to 21-A M.R.S. § 1003(3-A).
- What communications, if any, occurred between Mainers for Local Power and No CMP Corridor and/or Say No to NECEC regarding the \$150,000 contribution made to No CMP Corridor on or about September 21, 2021?
- Generally, please describe the activities/functions of Say No to NECEC from September 6, 2021 through present.

Thank you for your cooperation with this request. I look forward to receiving your response on or before October 11, 2021. Please let me know if you have any questions.

Sincerely,

Michael J. Dunn

Michael J. Dunn, Esq.
Political Committee and Lobbyist Registrar

Enc.

cc: Newell A. Augur, Esq. (w/o enc.)

October 12, 2021

Jonathan Wayne
Executive Director
Maine Ethics Commission
45 Memorial Circle
Augusta, ME 04330

Re: Complaint Against Say No to NECEC

Dear Jonathan:

On behalf of Clean Energy Matters, we would appreciate additional guidance from the Commission Staff with regard to Say No to NECEC's receipt of non-monetary contributions.

21-A M.R.S.A. §1052 5 (A)(5) defines a political action committee to include any person that receives contributions in excess of \$5,000 in a calendar year for the purpose of influencing an election. 21-A M.R.S.A. §1056 B establishes a similar threshold for a ballot question committee. The Commission has previously interpreted this language to include items of value, services and other non-monetary contributions.

The Say No to NECEC Facebook page is replete with references to the availability and distribution of lawn signs that are meant to influence the upcoming election (examples have been provided in the file accompanying this letter). The disclaimer on these signs indicates that they were paid for by No CMP Corridor. Even if the distribution of the signs is carried out by volunteers, the signs themselves have a monetary value. Given the significant challenges in the national supply chain for the cardboard, metal and plastic necessary to make political material, our campaign's experience would suggest that the current value is approximately \$5 per sign.¹

Additionally, Say No to NECEC has actively participated in a number of public events over the past two months at which campaign activity took place and lawn signs and other political material was distributed. Again, even though Say No to NECEC

¹ The recent October quarterly filing from No CMP Corridor indicates a \$9,312 expenditure for signs on August 17, 2021. The July quarterly filing from No CMP Corridor indicates a \$2,853 expenditure for signs on May 3, 2021.

members may have been volunteering at these events, there was a definitive monetary cost for the political activity that took place. That cost was absorbed entirely by No CMP Corridor; the PAC reported \$1,750 on its October quarterly filing in booth registration fees paid to participate at the Farmington Fair, the Skowhegan Fair, the Cumberland Fair and the Fryeburg Fair.² Say No to NECEC's Facebook page includes multiple posts asking members to help staff these events and to come by "our" booth (examples have been provided in the file accompanying this letter).

A further service of value potentially rendered by No CMP Corridor to Say No to NECEC was coordination and organization of volunteers. Based upon its July and October filings, No CMP Corridor has spent \$21,600 on "volunteer coordination" since April 2021. Ostensibly, Say No to NECEC also received assistance to recruit and organize its volunteers as part of this effort, both to distribute signs and cover public events.

We would appreciate the Commission Staff's guidance as to whether the receipt of political signs by Say No to NECEC for distribution and placement throughout the state should be viewed as a "contribution" as defined in 21-A M.R.S.A. §1052 5 (A)(5) and 21-A M.R.S.A. §1056 B. The receipt and distribution of approximately 1,000 signs would likely surpass the \$5,000 threshold set forth in statute. Similarly, we would appreciate guidance as to whether Say No to NECEC's participation at the above named public events – which undoubtedly were meant to influence an election and which would have required an expenditure of funds but for the booth payment by No CMP Corridor – constitutes receipt of a "contribution" by Say No to NECEC.

If these questions require additional time for the Commission Staff to provide appropriate guidance or for Say No to NECEC to provide a response (should it be inclined to provide one), we would not be opposed to a brief postponement of the hearing on this matter currently scheduled for October 14, 2021.

Thank you in advance for your consideration.

Sincerely,



Newell A. Augur
Legal Counsel

² Say No to NECEC's Facebook page also indicates participation at several other events that do not have a corresponding expenditure for booth rental on No CMP Corridor's October quarterly report.



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

October 7, 2021

By Email

Newell A. Augur, Esq.
Pierce Atwood
157 Capitol Street, Suite 3
Augusta, ME 04333

Dear Ms. Augur,

Thank you for your complaint dated today requesting an investigation into Say No to NECEC because it received a payment of \$140,000 in late September from an affiliated political action committee. After conferring with the Commission Chair, I am writing to request any additional information that would support your request.

Do you have any evidence suggesting that Say No to NECEC has spent or will spend any portion of the \$140,000 on services or activities to promote the initiative? For example, have you seen any printed material or advertisements promoting the initiative that were paid for by Say No to NECEC? Have you received any indication that Say No to NECEC has paid staff or consultants to engage in activities to promote the citizen initiative?

I ask, because an organization is not required to register and file campaign finance reports with our office merely because its members engage in no-cost express advocacy for or against a ballot question. Your complaint refers to a Facebook page containing many messages from volunteers in support of the initiative, but that is a free service. In responding to your second complaint in January 2021, Say No to NECEC represented that Sandi Howard volunteers her time without compensation.

Thank you, if you can provide any information along these lines. Please respond by letter or email by Monday, October 11, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Wayne'.

Jonathan Wayne
Executive Director

cc: James T. Kilbreth, Esq.

October 13, 2021

Via Email and U.S. Mail

Michael J. Dunn, Esq
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333-0135

RE: Say No to NECEC

Dear Mr. Dunn,

This is in response to your letter of October 8, 2021, enclosing a copy of a complaint from CMP about Say No to NECEC. The answers to your specific questions and the additional questions posed by Mr. Wayne are set out below. Please keep the attachments confidential pursuant to 21-A M.R.S. § 1003(3-A).

*** What was the purpose of the \$140,000 transfer from No CMP Corridor to Say No to NECEC? In your answer, please be as specific as possible. If you are willing to voluntarily provide invoices/receipts for Say No 50 NECEC's activity, from September 6, 2021 through present, that would better inform the Commission's decision.**

The purpose of the \$140,000 transfer of funds from No CMP Corridor PAC to Say No to NECEC was to support the non-profit's ongoing operating expenses, including the payment of legal fees associated with the DEP appeal proceedings and responding to ethics inquiries. As you can see from the attached Say No to NECEC September 2021 bank statement, the \$140,100 and some additional donations were deposited on 9/27/21. On the following day, 9/28/21, check #122 was paid to BCM Environmental and Land Law in the amount of \$54,586.11 for legal services solely associated with the DEP proceedings. Additionally, check #124 was processed to Drummond Woodsum in the amount of \$3,963.10 for legal services for the summer inquiry made by the Ethics Commission to Say No to NECEC.

The remaining funds will be necessary to continue to support legal services for the DEP appeal, which is pending, and for the license suspension proceeding initiated by the DEP on August 13, 2021, to determine whether CMP's license should be suspended as a result of the Court's decision in *Black v. Cutko*. Say No to NECEC members are actively participating in that suspension proceeding, which has a hearing scheduled for October 19. As a result, Say No to NECEC is and will be incurring substantial on-going legal expenses that will continue for the foreseeable future. In addition, now these funds will be needed to fund legal services to aid in a response to this unfounded complaint by CMP.

October 13, 2021

Page 2

• What communications, if any, occurred between Mainers for Local Power and No CMP Corridor and/or Say No to NECEC regarding the \$150,000 contribution made to No CMP Corridor on or about September 21, 2021?

Attached is a request from Say No to NECEC to Darryl Wood, Treasurer of No CMP Corridor, for funds to support general operating expenses. Darryl Wood approved the check of \$140,000 to be paid from the PAC. "Say NO to NECEC Sept 2021 donor request" attached. Also attached is a December 2020 request sent to Mainers for Local Power and other possible donors.

• Generally, please describe the activities/functions of Say No to NECEC from September 6, 2021 through present.

As the Commission is aware, Say No to NECEC has a 3 year history of activity to educate the public on the CMP corridor, activate volunteers to submit testimony at the DEP, LUPC, PUC, Maine Legislature, Army Corps of Engineers, Presidential Permit- Department of Energy. Our volunteers have also been involved as citizen intervenors at the DEP for the proceedings, and are involved in the current permit appeal and license suspension proceeding. Our volunteers also continue to devote their own time to spread the word about the negative impacts of the CMP corridor and since September 6, 2021, have engaged on their own time and without compensation to support passage of Question 1 on this fall's ballot.

None of that effort involves the expenditure of funds in connection with the referendum. As stated above, Say No to NECEC has only spent funds on general operating expenses NOT associated with the referendum. For example, payments for legal services at the DEP proceedings (to BCM Environmental and Land Law) and Ethics Commission inquiries (to Drummond Woodsum), and accounting services.

With respect to Mr. Wayne's questions, Say No to NECEC is a 501 (c)(3) volunteer organization. In 2019, when the first signature collection effort took place, Ms. Howard formed No CMP Corridor PAC with Darryl Wood solely for referendum-based expenses in order to comply with state and federal tax and campaign finance reporting requirements. No CMP Corridor files reports with the Commission identifying its contributions and expenditures in connection with the referendum. As Mr. Wayne puts it, it is a reporting vehicle to comply with the campaign disclosure laws and has done so in connection with both referenda on the corridor.

One can examine the PAC filings from No CMP Corridor to see that its volunteer coordinator part-time staff are paid from the PAC and signs are purchased by the PAC, as are all other referendum-based expenses. No CMP Corridor has reported any gift card that was given to a volunteer who sat at a county fair booth; any expense related to fair booth exhibit fees, fair entrance, fair materials are all claimed in the PAC filings.

For that reason, Mr. Augur's complaint seems bizarre, particularly his focus on signs. Since as demonstrated above, the recent contribution to Say No to NECEC was not for purposes of influencing the election, Mr. Augur now seems to seek to create a new category of contribution that would result in a registration requirement—the value of signs distributed to volunteers. He

October 13, 2021

Page 3

acknowledges that the people putting up the signs are unpaid volunteers but goes on to suggest that somehow this amounts to a reportable contribution: “The Say No to NECEC Facebook page is replete with references to the availability and distribution of lawn signs that are meant to influence the upcoming election.” But campaigns and candidates rely heavily on volunteers to put up signs, attend events, etc. To suggest that letting people know about the availability of signs somehow makes the value of the signs—already disclosed in the reports of the entity that in fact paid for them—a contribution to a volunteer organization triggering a registration requirement would stretch the law far beyond any legitimate disclosure purpose. That is particularly true because the value of the sign to any individual is de minimis, and it is the individual volunteers who actually receive the signs. To the extent there is an effort to coordinate that kind of activity, it is paid for and reported by the PAC. To conclude that use by volunteers of materials the cost of which has already been disclosed amounts to a contribution triggering registration simply extends the law far beyond both its plain meaning and its intent.

For all these reasons, we respectfully request that the complaint be dismissed.

Sincerely,

/s/ James T. Kilbreth

James T. Kilbreth

JTK/sab

Enclosures

Title 21-A Maine Revised Statutes

§ 1003. Investigations by commission

1. Investigations. The commission may undertake audits and investigations to determine whether a person has violated this chapter, chapter 14 or the rules of the commission. For this purpose, the commission may subpoena witnesses and records whether located within or without the State and take evidence under oath. A person or entity that fails to obey the lawful subpoena of the commission or to testify before it under oath must be punished by the Superior Court for contempt upon application by the Attorney General on behalf of the commission. The Attorney General may apply on behalf of the commission to the Superior Court or to a court of another state to enforce compliance with a subpoena issued to a nonresident person. Service of any subpoena issued by the commission may be accomplished by:

- A.** Delivering a duly executed copy of the notice to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person;
- B.** Delivering a duly executed copy of the notice to the principal place of business in this State of the person to be served; or
- C.** Mailing by registered or certified mail a duly executed copy of the notice, addressed to the person to be served, to the person's principal place of business.

2. Investigations requested. A person may apply in writing to the commission requesting an investigation as described in subsection 1. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

...

3-A. Confidential records. Investigative working papers of the commission are confidential, except that the commission may disclose them to the subject of the audit or investigation, other entities as necessary for the conduct of an audit or investigation and law enforcement and other agencies for purposes of reporting, investigating or prosecuting a criminal or civil violation. For purposes of this subsection, "investigative working papers" means documents, records and other printed or electronic information in the following limited categories that are acquired, prepared or maintained by the commission during the conduct of an audit, investigation or other enforcement matter:

- A.** Financial information not normally available to the public;
- B.** Information that, if disclosed, would reveal sensitive political or campaign information belonging to a party committee, political action committee, ballot question committee, candidate or candidate's political committee, or other person who is the subject of an audit, investigation or other enforcement matter, even if the information is in the possession of a vendor or 3rd party;

- C. Information or records subject to a privilege against discovery or use as evidence; and
- D. Intra-agency or interagency communications related to an audit or investigation, including any record of an interview, meeting or examination.

The commission may disclose investigative working papers or discuss them at a public meeting, except for the information or records subject to a privilege against discovery or use as evidence, if the information or record is materially relevant to a memorandum or interim or final report by the commission staff or a decision by the commission concerning an audit, investigation or other enforcement matter. A memorandum or report on the audit or investigation prepared by staff for the commission may be disclosed at the time it is submitted to the commission, as long as the subject of the audit or investigation has an opportunity to review it first to identify material that the subject of the audit or investigation considers privileged or confidential under some other provision of law.

...

§ 1004. Violations

The violation of any of the following subsections is a Class E crime.

...

- 3. **Contributions in another's name.** A person may not knowingly:
 - A. Make a contribution in the name of another person;
 - B. Permit the person's name to be used to accomplish a contribution in violation of paragraph A; or
 - C. Accept a contribution made by one person in the name of another person.

...

§ 1004-A. Penalties

The commission may assess the following penalties in addition to the other monetary sanctions authorized in this chapter.

...

- 3. **Contribution in name of another person.** A person that makes a contribution in the name of another person, or that knowingly accepts a contribution made by one person in the name of another person, may be assessed a penalty not to exceed \$5,000.

...

§ 1052. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

...

3. Contribution. “Contribution” includes:

- A.** A gift, subscription, loan, advance or deposit of money or anything of value made to a political action committee, except that a loan of money by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- B.** A contract, promise or agreement, expressed or implied whether or not legally enforceable, to make a contribution to a political action committee;
- C.** Any funds received by a political action committee that are to be transferred to any candidate, committee, campaign or organization for the purpose of initiating or influencing a campaign; or
- D.** The payment, by any person or organization, of compensation for the personal services of other persons provided to a political action committee that is used by the political action committee to initiate or influence a campaign.

4. Expenditure. The term “expenditure:”

A. Includes:

- (1)** A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of initiating or influencing a campaign;
- (2)** A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in this paragraph; and
- (3)** The transfer of funds by a political action committee to another candidate or political committee; and

B. Does not include:

- (1)** Any news story, commentary or editorial distributed through the facilities of any broadcasting station, cable television system, newspaper, magazine or other periodical publication, unless these facilities are owned or controlled by any political party, political committee, candidate or the spouse or domestic partner of a candidate;
- (2)** Activity designed to encourage individuals to register to vote or to vote, if that activity or communication does not mention a clearly identified candidate;
- (3)** Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;

- (4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by a political action committee in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the political action committee on behalf of any candidate does not exceed \$250 with respect to any election;
- (5) Any unreimbursed travel expenses incurred and paid for by a political action committee that volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election; and
- (6) Any communication by any political action committee member that is not made for the purpose of influencing the nomination or election of any person to state or county office.

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5. Political action committee. The term “political action committee:”

A. Includes:

- (1) Any separate or segregated fund established by any corporation, membership organization, cooperative or labor or other organization whose purpose is to initiate or influence a campaign;
- (4) Any person, including any corporation or association, other than an individual, that has as its major purpose initiating or influencing a campaign and that receives contributions or makes expenditures aggregating more than \$1,500 in a calendar year for that purpose; and
- (5) Any person, other than an individual, that does not have as its major purpose influencing candidate elections but that receives contributions or makes expenditures aggregating more than \$5,000 in a calendar year for the purpose of influencing the nomination or election of any candidate to political office; and

B. Does not include:

- (1) A candidate or a candidate’s treasurer under section 1013-A, subsection 1;
- (2) A candidate’s authorized political committee under section 1013-A, subsection 1, paragraph B;
- (3) A party committee under section 1013-A, subsection 3; or
- (4) An organization whose only payments of money in the prior 2 years for the purpose of influencing a campaign in this State are contributions to candidates, party committees, political action committees or ballot question committees registered with the commission or a municipality and that has not raised and accepted any contributions during the calendar year for the purpose of influencing a campaign in this State.

§ 1052-A. Registration

A political action committee shall register with the commission and amend its registration as required by this section. A registration is not timely filed unless it contains all the information required in this section.

1. Deadlines to file and amend registrations. A political action committee shall register and file amendments with the commission according to the following schedule.

A. A political action committee as defined under section 1052, subsection 5, paragraph A, subparagraph (1) or (4) that receives contributions or makes expenditures in the aggregate in excess of \$1,500 and a political action committee as defined under section 1052, subsection 5, paragraph A, subparagraph (5) that receives contributions or makes expenditures in the aggregate in excess of \$5,000 for the purpose of influencing the nomination or election of any candidate to political office shall register with the commission within 7 days of exceeding the applicable amount.

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§ 1056-B. Ballot question committees

A person not defined as a political action committee that receives contributions or makes expenditures aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign shall register as a ballot question committee and file reports with the commission in accordance with this section. For the purposes of this section, “campaign” does not include activities to influence the nomination or election of a candidate. A person whose only payments of money for the purpose of influencing a campaign in this State are contributions to political action committees or ballot question committees registered with the commission or a municipality and who has not raised and accepted any contributions for the purpose of influencing a campaign in this State is not required to register and file campaign finance reports under this section. For the purposes of this section, expenditures include paid staff time spent for the purpose of initiating or influencing a campaign.

1. Filing requirements. A report required by this section must be filed with the commission according to the reporting schedule in section 1059. After completing all financial activity, the ballot question committee shall terminate its campaign finance reporting in the same manner provided in section 1061. The ballot question committee shall file each report required by this section through an electronic filing system developed by the commission unless granted a waiver under section 1059, subsection 5.

1-A. Ballot question committee registration. A person subject to this section who receives contributions or makes expenditures that exceed \$5,000 shall register with the commission as a ballot question committee within 7 days of receiving those contributions or making those expenditures. A ballot question committee shall have a treasurer and a principal officer. The same individual may not serve in both positions unless the person establishing the ballot question committee is an individual. The ballot question committee when registering shall identify all other individuals who are the primary decision makers and fund-raisers, the person establishing the ballot question committee and the campaign the ballot question committee intends to initiate or influence. The ballot question committee shall amend the registration within 10 days of a change in the information required in this subsection. The commission shall prescribe forms for the registration, which must include the information required by this subsection and any additional information reasonably required for the commission to monitor the activities of the ballot question committee.

2. Content. A report required by this section must contain an itemized account with the date, amount and purpose of each expenditure made for the purpose of initiating or influencing a campaign; an itemized account of contributions received from a single source aggregating in excess of \$50 in any election; the date of each contribution; the date and purpose of each expenditure; the name and address of each contributor, payee or creditor; and the occupation and principal place of business, if any, for any person who has made contributions exceeding \$50 in the aggregate. The filer is required to report only those contributions made to the filer for the purpose of initiating or influencing a campaign and only those expenditures made for those purposes. The definitions of “contribution” and “expenditure” in section 1052, subsections 3 and 4, respectively, apply to persons required to file ballot question reports.

2-A. Contributions. For the purposes of this section, “contribution” includes, but is not limited to:

- A.** Funds that the contributor specified were given in connection with a campaign;
- B.** Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a campaign;
- C.** Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a campaign when viewed in the context of the contribution and the recipient’s activities regarding a campaign; and
- D.** Funds or transfers from the general treasury of an organization filing a ballot question report.

3. Forms. A report required by this section must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

4. Records. A person filing a report required by this section shall keep records as required by this subsection for 4 years following the election to which the records pertain.

A. The filer shall keep a detailed account of all contributions made to the filer for the purpose of initiating or influencing a campaign and all expenditures made for those purposes.

B. The filer shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50.

5. Liability for penalties. The commission may hold the treasurer and principal officer of a ballot question committee and any for-profit, nonprofit or other organization that established the ballot question committee jointly and severally liable with the ballot question committee for any fines assessed against the ballot question committee for a violation of this chapter.

§1060-A. Campaign for direct initiative or people’s veto; reporting by major contributors

This section governs the reporting of contributions aggregating in excess of \$100,000 for the purpose of initiating or influencing a campaign for a people’s veto referendum under the Constitution of Maine, Article IV, Part Third, Section 17 or a direct initiative of legislation under the Constitution of Maine, Article IV, Part Third, Section 18.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. “Contribution” has the same meaning as set out in section 1052, subsection 3 and also includes but is not limited to:

(1) Funds or anything of value that the contributor specified were given in connection with a campaign for a people’s veto referendum or direct initiative campaign;

(2) Funds or anything of value provided in response to a solicitation that would lead the contributor to believe that the contribution would be used specifically for the purpose of initiating or influencing a people’s veto referendum or direct initiative campaign; and

(3) Funds or anything of value that can be reasonably determined to have been provided by the contributor for the purpose of initiating or influencing a people’s veto referendum or direct initiative campaign when viewed in the context of the contribution and the recipient committee’s activities during the campaign.

B. “Major contributor” means a person, other than an individual, that makes one or more contributions aggregating in excess of \$100,000 to a ballot question committee or political action committee for the purpose of initiating or influencing any one people’s veto referendum campaign or any one direct initiative campaign.

2. Notice to major contributor. Within 5 days of receiving more than \$100,000 in the aggregate from a major contributor, the recipient committee shall provide written

notice to the major contributor of the reporting requirement under this section and shall submit a copy of the notice to the commission. If the \$100,000 aggregate amount is exceeded as a result of a contribution received during the last 13 days before an election, the recipient committee shall, within 24 hours of receiving the contribution, provide written notice of the reporting requirement to the major contributor and submit a copy of the notice to the commission. The commission shall prepare a sample written notice for this purpose.

3. Required reports. A major contributor shall file a report containing the information required in subsection 4 on or before the next regularly scheduled filing deadline under section 1059, subsection 2 occurring after the major contributor receives notice of the reporting requirement. If a major contributor has received a notice from a recipient committee or the commission during the last 13 days before an election as required under subsection 2, the major contributor shall file a report within 2 business days of receiving notice from the recipient committee or commission. The commission shall prescribe and prepare forms for these reports and may require major contributors to file reports electronically.

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5. Noncompliance. The commission may assess a civil penalty against a major contributor that does not file a timely report required under this section. The preliminary penalty is 10% of the total contributions required to be reported, up to a maximum of \$50,000. Within 14 calendar days of receiving notice of the preliminary penalty from the commission, the major contributor may request that the penalty be waived in full or in part. In considering a request for a waiver, the commission shall consider, among other things, any lack of notice to the major contributor of the reporting requirement, the number of days that the report was filed late and the amount of the contributions required to be reported. A major contributor requesting a determination may either appear in person or designate a representative to appear on the major contributor's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. After a commission meeting, notice of the final determination of the commission and the penalty, if any, imposed pursuant to this subsection must be sent to the major contributor. If a determination is not requested, the preliminary penalty calculated by the commission is final. The commission shall mail final notice of the penalty to the major contributor. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C. The commission may assess a civil penalty in the same amount against a recipient committee that has not provided written notice of the reporting requirements to the major contributor as required by subsection 2, using the same procedures as set out in this subsection for penalties against the major contributor.

§ 1062-A. Failure to file on time

1. Registration. A political action committee required to register under section 1052-A, 1053-A or 1053-B or a ballot question committee required to register under section 1053-A or 1056-B that fails to do so or that fails to provide the information required by the commission for registration may be assessed a fine of no more than \$2,500. In assessing a fine, the commission shall consider, among other things, whether the violation was intentional, the amount of campaign and financial activity that occurred before the committee registered, whether the committee intended to conceal its campaign or financial activity and the level of experience of the committee's volunteers and staff.

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if it is disproportionate to the level of experience of the person filing the report or to the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A.** A valid emergency of the committee treasurer determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;
- B.** An error by the commission staff; or
- C.** Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service.

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4. Maximum penalties. The maximum penalty under this subchapter is \$10,000 for reports required under section 1053-A, 1056-B or 1059, except that if the dollar amount of the financial activity that was not timely filed or did not substantially conform to the reporting requirements of this subchapter exceeds \$50,000, the maximum penalty is 100% of the dollar amount of that financial activity.

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