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Subject: Response to Staff Memo
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Reply to Staff Brief, Submitted by Mary Ann Lynch and Larry Benoit

Plain-language reading of the law favors inclusion of all corporations.

A “*Person*” is defined to include a “corporation” or “organization.” In the instant case, Cape Elizabeth is both a “municipal corporation” and an “organization”; the definition’s breadth and the absence of limiting adjectives (such as “private”) suggest the Legislature meant to capture **all** corporations/organizations, public, non profit, as well as private.

The language, “Unless the context otherwise indicates,” does not support the Staff’s position.

Section 1001 says its definitions govern “unless the context otherwise indicates.” This is a clear directive from the legislature regarding how to interpret the definitions. Nothing in the BQC statute’s context signals an intent to *exclude* government entities; indeed, indeed, the primary purpose of the law, disclosure and transparency, support inclusion, rather than exclusion. The staff interpreted this statute by completely ignoring this important legislative directive.

Transparency purpose of campaign-finance law supports inclusion of municipal corporations.

Voters’ right to know who finances referendum advocacy is the core legislative policy. Exempting public entities—who spend taxpayer funds—undermines that purpose by shielding the very actors whose spending the public has the *highest* interest in seeing. In this case, the newspaper advertisements at issue lacked even a simple disclaimer identifying who was placing and paying for the ads.

Modern caselaw trend supports inclusion of municipal corporations.

The 1930s-era presumption that municipalities are not “corporations” has eroded. Federal § 1983 jurisprudence and most state courts now classify municipalities as “persons” for statutory interpretation unless specifically excluded. Maine’s older cases relied on by staff pre-date today’s transparency norms and legal approach.

Legislative history ambiguity.

The 1976 deletions are equally consistent with a housekeeping effort to avoid redundancy—removing words already captured by the new generic definition—rather than a conscious choice to exempt public entities. The memo itself concedes this possibility but treats it as secondary and something to be ignored.

On point Commission precedent actually supports regulation.

The 2009 South Portland decision found a city to be a *person*; that ruling was never amended or changed by the Maine Legislature or overturned by a court. The 2009 ruling of this Commission provided public notice. Ignoring this Commission's own precedent, and following the staff recommendation rewards non-compliance with the 2009 decision of this Commission.

Other Maine statutes show no consistent legislative pattern

Many laws omit explicit reference to government bodies yet unquestionably bind them (e.g., OSHA-style safety rules, environmental standards). The Legislature often relies on broad terms without enumerating every actor.

Functional test endorsed by courts

When a statutory scheme regulates *conduct* rather than *status* (here, spending to influence elections), courts favor functional inclusion of all actors engaging in that conduct—especially where public funds amplify speech.

Practical administrability

Requiring registration clarifies rules for municipal officials and avoids after-the-fact disputes over line-drawing, and it simplifies enforcement: if you cross the \$5 k threshold to influence voters, you file—no entity-type inquiry needed. Nor is there any need to determine the absurd line between education and advocacy. As one Commissioner noted in the last discussion, the hair splitting between advocacy and education borders on the absurd: naturally the municipality is attempting to influence the voters on a matter proposed by the school department.

Political accountability

Municipal leaders are elected, but campaign spending decisions are often made by staff, as was the case here. Disclosure ensures elected officials and the public can oversee those decisions, reinforcing local democratic control.

Federal constitutional risk

An interpretation that exempts public bodies but regulates private speakers could raise First-Amendment viewpoint-discrimination issues; treating all spenders and campaign advertising alike is the safer harbor.

Larry Benoit
Mary Ann Lynch