



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

To: Commission
From: Jonathan Wayne, Executive Director
Date: October 29, 2024
Re: Agenda Item #8 - Complaint about Cape Elizabeth Referendum Advertising

The November 5, 2024 town ballot in Cape Elizabeth will include a referendum on whether the town may borrow money for school construction. An opponent of the referendum, Mary Ann Lynch, filed a complaint with the Commission regarding two pro-referendum advertisements in the Cape Courier newspaper. She asks the Commission to determine whether they contain the full identifying information (*i.e.*, name and address) of the people who funded the ads.

The staff's preliminary investigation indicates that each ad was a self-initiated effort by local parents to ask their fellow voters in town to support the referendum and three local candidates for school board. The names of the people who financed the advertisements appeared in the body of the ads, but no addresses were included. Commission staff recommends finding that the advertisements violated the disclosure requirements but assessing no monetary penalty.

Relevant Law

Application of State Campaign Finance Law to Local Referenda

Maine's campaign finance disclosure requirements apply to municipal referenda in towns and cities of any size. 30-A M.R.S. § 2052(2). A new law took effect roughly one year ago to cover Maine's smaller municipalities.

State disclosure requirements apply to municipal candidate elections only in Maine's larger towns and cities (with a population of 15,000 or more). They do not apply in municipalities with a population of less than 15,000, like Cape Elizabeth. 30-A M.R.S. § 2052(1).

Disclosure Requirements for Ballot Question Communications

When a person makes expenditures exceeding \$500 for a paid communication expressly advocating for or against a ballot question, the communication must state the name and address of the person who made or financed the expenditure for the communication. 21-A M.R.S. § 1055-A(1). The Commission is authorized to assess a penalty of up to \$5,000 for a violation of this requirement. § 1055-A(3)

Staff Analysis and Recommendations

First Ad. One ad is entitled Neighbors Say Yes to Critical School Infrastructure. It is “signed” by seven couples who state their support for the referendum and three local candidates for school board.

I interviewed two of the 14 people listed. The first person I spoke to referred me to Joy Engel, whom he described as the organizer of the advertisement. Ms. Engel was very cooperative. She said the ad arose through a conversation among parents at a school bus stop who wanted to speak up in support of the referendum. The total cost of the ad was \$903.00, which was divided among the seven couples listed in the ad.

I explained to Ms. Engel that, under state campaign finance law, ads that explicitly support a referendum must include the name and address of the person who financed the ad. Ms. Engel apologized and said she didn’t know addresses were required. She offered to contact the Cape Courier and have them print the couples’ addresses in the next issue. I told her my opinion was that was unnecessary because the next issue would be published November 13, 2024 after the election.

Staff recommendation: Commission staff believes the listing of the seven couples at the bottom of the ad accurately implies that they paid for the ad. The ad does not fully comply with 21-A M.R.S. § 1055-A(1), however, because no address was included. Because there was no concealment of who paid for the ad and the violation was unintentional, staff recommends finding that the ad violated 21-A M.R.S. § 1055-A(1) and not assessing any monetary penalty. I did not ask Joy Engel to participate in your October 30 meeting, because my opinion is that the violation was minor and the Commission has a full agenda. If the Commission would like to consider a monetary penalty, I recommend postponing this part of the complaint until the Commission’s next meeting, so Ms. Engel has an opportunity to respond.

Second Ad. The second ad is entitled “Say Yes to S” and includes a long list of names. The ad advocates for a yes vote in favor of the school referendum and three school board candidates whose names begin with “S.” It appears that more than 125 names are listed, some with spouses or partners. The ad contains a statement that “This grassroots effort/advertisement was not paid for or authorized by any candidates. Questions? CapeSaysYesToS@gmail.com.”

I interviewed Rob Krauser who organized the ad with his friend, Scott Mazuzan. They sent texts to “a bunch of friends” and asked if they would be willing to sign their name to the ad and/or contribute money to defray the cost. Around 20 people said they would help pay, and they provided money to Mr. Krauser through the venmo mobile phone app. He paid the Cape Courier \$1,128 for the ad. The average amount paid by each person was around \$56 per person.

Mr. Krauser said he and Mr. Mazuzan engaged in no other financial activity to promote the school construction referendum. He confirmed that “Say Yes to S” is not an organization. It is a slogan to help like-minded people remember who to vote for.

Prior to contacting Mr. Krauser and Joy Engel, I spoke with Tara Simopoulos, the publisher of the Cape Courier newspaper. She said she felt badly because she was unaware of the name and address requirement for these types of ads and did not advise the advertisements’ sponsors that names and addresses needed to be included in the ads

Mr. Krauser said he and Mr. Mazuzan had emailed Ms. Simopoulos about purchasing the ad. They explained that they would be “crowdfunding” the ad and the names of more than 100 supporters would be listed. In the email chain, which was provided to me, Mr. Krauser asked Ms. Simopoulos asked if they needed to include an email address in the ad as contact information. Ms. Simopoulos responded “I would include an email as well. Just covers all the bases.” When interviewed, Mr. Krauser said he believed no other identifying information was necessary based on the publisher’s advice.

Staff recommendation: complying with the requirement to “state the name and address of the person who made or financed the expenditure for the communication” is not as straightforward for this ad which was financed by a couple dozen people and which includes 125+ names. Having interviewed Mr. Krauser, Commission staff believes he acted in good faith and relied on advice from the newspaper as to what needed to be included in the ad.

The opinion of the Commission staff is that the ad does not comply with 21-A M.R.S.

§ 1055-A(1) because no address was included. Had we been consulted, we might have suggested something a disclaimer along the lines of: “Political advertisement organized by Rob Krauser, [address] and funded by community members listed above.”

In light of (1) Mr. Krauser’s reliance on advice from the newspaper, (2) the fact that the names of the 20 or so funders are included in the ad, and (3) the violation was unintentional, Commission staff recommends finding that the ad violated 21-A M.R.S. § 1055-A(1) and assessing no monetary penalty.

I asked Mr. Krauser whether he had coordinated on the advertisement with Advancing Cape Elizabeth Schools, a ballot question committee on file with the Ethics Commission that has reported spending \$8,491 to promote the referendum. The individual who serves as the principal officer of the ballot question committee is one of the 125+ names listed. Mr. Krauser said he and Mr. Mazuzan had not coordinated with the ballot question committee.

In her complaint, Ms. Lynch asserts that the Advancing Cape Elizabeth Schools should have reported the newspaper ad as an in-kind contribution. Based on the information provided by Mr. Krauser, Commission staff recommends taking no action on this issue. His explanation is that he and Mr. Mazuzan were acting on their own and not at the request or suggestion of the Advancing Cape Elizabeth Schools. This seems to be a case of two groups within the same town promoting the same objective: one is an organized ballot question committee (Advancing Cape Elizabeth Schools) and the other is a couple of friends (Mr. Krauser and Mr. Mazuzan) who reached out informally to a larger circle of friends. The fact that Mr. Krauser and Mr. Mazuzan included in the advertisement the names of one or two people involved in Advancing Cape Elizabeth Schools is insufficient to demonstrate that Mr. Krauser and Mr. Mazuzan intended to give a thing of value to Advancing Cape Elizabeth Schools.

From: Mary Ann Lynch <maryannlynch5788@gmail.com>

Sent: Friday, October 25, 2024 6:30 PM

To: Currier, Martha <Martha.Currier@maine.gov>; Wayne, Jonathan <Jonathan.Wayne@maine.gov>

Cc: Hoefler, Heidi <Heidi.Hoefler@maine.gov>

Subject: Re: Potential Complaint

Dear Mr. Wayne:

I write to bring to your attention potential violations of the election law governing the regulation of ballot question committees and advertising regarding ballot questions.

In the most recent edition, October 23, of the Cape Elizabeth Cape Courier, (circulation 4000+), there were 2 full page ads in support of a “yes” vote on the school bond ballot question. The Cape Courier can be found at : <https://capecourier.com/>, though as I write this, the most recent newspaper edition, dated October 23, has not yet been posted to the website, although it was in mailboxes on Thursday. (The newspaper staff are fairly informal as to when the newspaper gets posted to the web page, I suspect it will be posted by Monday). In any event, I have sent you a hard copy of the ads which I hope you will receive on Monday in the mail.

Neither ad contained the proper financial disclosure, as required by law, regarding who paid for the ads. One ad, on page 17, was a full color, full page ad, which, according to the published ad rates, goes for \$1128. The second, full page B & W ad on page 27, costs \$903 according to the ad rate sheet found here: <https://capecourier.com/advertise/ad-rates/>. I believe both ads violate campaign finance law in that they are over \$500 in cost and do not provide the required financial disclosures.

Secondly, I am concerned that at least one ad, and perhaps both, are coordinated with the Advancing Cape Education (ACES) campaign , a registered BQC, under your jurisdiction. The color ad, on page 17 contains the names of Shawn Boucher, who is Treasurer of ACES. Elizabeth Biermann, an attorney and the Principal Officer of ACES, also appears in the ad, as well as Nicole Boucher, their communications person. (you will find both Ms. Biermann and Ms. Boucher prominently featured on the ACES web site). <https://www.advancingcape.com/about-us> It is my belief, that if there is close coordination, than such ads should properly be attributed as an in kind contribution to ACES. There are many other names in the ad that are featured on the ACES web site. The second ad, the B & W, page 27 ad, (also without the proper financial disclosure) contains names that also appear in the first ad, and people who have campaigned vigorously for a “yes” vote.

Thank you for your attention to our concerns about transparency in the reporting and disclosure of advertising activity.

Mary Ann Lynch, Treasurer

CapeVoters

Neighbors Say Yes to Critical School Investment

Our neighborhood is very much like our town: we are a diverse blend of individuals, families, and retirees - we want the best for our community.

With that community spirit in mind, we fully support the school board's proposed bond. Experts agree we need to replace our aging school buildings. This plan represents a responsible financial investment, gives the town a new middle school with a generational impact, and makes essential upgrades to Pond Cove and the High School. It achieves all of these things without disrupting or displacing current students' learning.

Our town can no longer afford to put off this investment. Each year of delay represents millions in additional costs for taxpayers. This is no longer a question of "if" - it is a question of "when."

That "when" is now.

It is because we support thoughtful, transparent, and financially responsible leadership that we also endorse the candidacies of Sahrbeck, Scifres, and Swayze for town council.

For the benefit of our students and our town's financial future, please join us and say YES to the S: Schools, Sahrbeck, Scifres and Swayze

Erin and Yona Belfort
 Anna and Chris Boniakowski
 P. Joy Engel and Ben Hagopian
 Ginny Gill and Jason Kriskey
 Evelyn and Brian Gurr
 Kira and Ezra Hug
 Lauren Wendell and Pat Hackett

responsible fiscal policy · YES to transparency · YES to respect ·
 investments · YES to expert input · YES to thoughtful progress ·
 ctable processes · YES to public feedback · YES to active listening ·
 n · YES to supporting infrastructure · YES to collaboration ·

Yes to "S"



Elizabeth
Scifres



Schools
Question 1 & 2



and neighbors in support

Andrea Adams	Tony and Kathy Ornatek	Anne Carney & David Wennberg
Blitz Brewer	Natalie Hoch and Rob Krauser	Terry Garmey
Andrew Patten	Scott Mazuzan and Eliza Matheson	Kate and Jay Brandeis
Suzi Van Wye	The Voltz Family	Doug Babkirk
Nancy Rallis	Brendon & Laena Pomeroy	Amanda Alter
Heather and Garth Altenburg	Crosley & Emily Jackson	Kathy & Bruce Sahrbeck
David & Elizabeth Biermann	Johann Sabbath & Yasmin Mahal	Michele Pezzuti-Morse
Jess and Kevin Davis-Knowlton	Adam & Sarah Moran	Shannon Wilk
Bruce Dunphey	Tim & Melinda Nudd	Meghan Connelly
Maura Bisogni	Kate & Josh Benthien	Terri & Tyler Patterson
Megan McConagha	Heather & Ethan Reeves	David Hillman
Sarah Hanson	Lauren & Mal Todaro	Erin Plummer
Adam Fisher	Jules Tortolani & Lee Schroeder	Chip Brewer
Nina and Bob Trowbridge	Ben & Robin Austin	Ali Garmey Chardon
Deborah Cavanaugh	Eric & Melanie Tennyson	Irene Moon
Elly Pepper and Jay Tansey	Katie Reeves	Jo Morrissey
Kevin W Concannon	Kristina & Kevin Justh	Lucie Scholz

Barbara Leen	Neena Sullivan	Coreen McCreechey	David & Elizabeth Biermann	Jonathan Sabbagh & Jacqui Patten	Shannon Wilk
Jess & Dave Johnson	Stephanie Austin	Trudi Rakke	Jess and Kevin Davis-Knowlton	Adam & Sarah Moran	Meghan Connelly
Sarah and Aaron Crawford	Catherine and Greg Miller	Andrew Davis	Bruce Dumphrey	Tim & Melinda Mudd	Terril & Tyler Patterson
Cherie & Ashlynn Gustafson	Lauren Wendell	Ed Gilman	Maura Bisogni	Kate & Josh Benthien	David Hillman
Kara and Jeremy Law	Patrick Hackett	Jill Darling	Megan McConaha	Heather & Ethan Reeves	Erin Plummer
David and Jessica Butzel	Tom and Mike Reynolds	Susan Saffel	Sarah Hanson	Laurin & Matt Todaro	Chip Brewer
Peter and Annie Curry	Alison and Michael Tumas	Cori Ketcham	Adam Fisher	Jules Tortolani & Lee Schroeder	Alli Garmey Clanton
Maria and David Glaser	Eliza Rauscher	Suzanne M. Murphy	Nina and Bob Trowbridge	Ben & Robin Austin	Irene Moon
Marianne Schuman	Dana T. Wright	Liz Matheson	Deborah Cavanaugh	Eric & Melanie Temnyson	Jo Morrissey
Shawn & Nicole Boucher	Miranda Ferguson	The Castoldi Family	Ely Pepper and Jay Tansey	Katie Reeves	Lucie Scholtz
Laura Marston	Christine Groff	Michelle L. and Curtis Brown	Kevin W Concannon	Kristina & Kevin Justh	Ezra & Kira Hug
Christina Long	Kevin and Jason Welborn	Monica Eguren	Melany B. Robinson	Robin Fernald	Lynda Hastings
Simon Hodshon	Devin Snyder	Chris Hillman	Amy Hodshon	Sean Hanson	Meaghan and Jake Hayward
Rachel Weitsak	Ricardo Calderon	Anna Crowley Redding	Kate Sauder	Alex & Carly Vargas	Jen and Jeff Mitchell
Scott Bender	Drew Robinson	The Sahlin Family	Margaret Angell	Joe & Lisa Geoghegan	Taylor Neff
A and Michelle R Gorski	Kate Garmey	Kristin Riley	Jenn and Matt Gyrnek	Sam & Hanna O'Meara	Melissa Kim
and Chris Boniakowski	Dana Schauf	Nathan and Sarah Robbins	Dave Patterson	Jon Dienstag	Emily Day
Catherine Adams	Ali Carignan	Meighan and Stephen Rock	Joy Engel and Ben Hagopian	Caitlin & Brandon Sweet	Jessica Govind
Ben Blouin	Todd and Sarah Gagne	Jamryn Dawes	Jillian and Dave Gilman	Kate Kerkam	Heather Payson
Michele Frost	Kendra and Jeff Davis	Mike and Andie Mahoney	Michael Ferguson	Kiah Gardner	

THIS GRASSROOTS EFFORT/ADVERTISEMENT WAS NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE.
 Questions? CapeSaysYes10@gmail.com

30-A M.R.S. § 2502. Campaign reports in municipal elections

1. Reports by candidates. A candidate for municipal office of a town or city with a population of 15,000 or more is governed by Title 21-A, sections 1001 to 1020-A, except that registrations and campaign finance reports must be filed with the municipal clerk instead of the Commission on Governmental Ethics and Election Practices. A town or city with a population of less than 15,000 may choose to be governed by Title 21-A, sections 1001 to 1020-A by vote of its legislative body at least 90 days before an election for office. A town or city that votes to adopt those provisions may revoke that decision, but it must do so at least 90 days before an election subject to those sections.

A. [2009, ch. 366, § 10 (RP).]

2. Municipal referenda campaigns. Municipal referenda campaign finance reporting is governed by Title 21-A, chapter 13, subchapter 4.

3. Public access to records. A town or city that receives registrations or reports pursuant to this section must keep them for 8 years.

21-A M.R.S. § 1055-A. Political communications to influence a ballot question

1. Communications to influence ballot question elections. Whenever a person makes an expenditure exceeding \$500 expressly advocating through broadcasting stations, cable television systems, prerecorded automated telephone calls or scripted live telephone calls, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, for or against an initiative or referendum that is on the ballot, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, except that telephone calls must clearly state only the name of the person who made or financed the expenditure for the communication. A digital communication costing more than \$500 that includes a link to a publicly accessible website expressly advocating for or against an initiative or referendum that is on the ballot must clearly and conspicuously state the name of the person who made or financed the expenditure, unless the digital communication is excluded under subsection 2. Telephone surveys that meet generally accepted standards for polling research and that are not conducted for the purpose of influencing the voting position of call recipients are not required to include the disclosure.

2. Exceptions. The following forms of political communication do not require the name and address of the person who made or financed the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: clothing, envelopes and stationery, small promotional items, tickets to fundraisers and electronic media advertisements where compliance with this section would be impracticable due to size or character limitations and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section. "Small promotional items" includes but is not limited to ashtrays, badges and badge holders, balloons, campaign buttons, coasters, combs, emery boards, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers and swizzle sticks.

3. Enforcement. A violation of this section may result in a penalty of no more than \$5,000. In assessing a penalty, the commission shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it.