



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: May 27, 2025
Re: Request for Postponement (Declined by Chair); Comment by Staff on Previous Advice

This afternoon, the Commission received an emailed request for a continuance from Mary Ann Lynch and Robert Benoit because of their interest in responding to points made by the Commission staff in its memo to the Commission and the response of the Cape Elizabeth Superintendent. Chair William Schneider considered the request but declined to grant the continuance. The matter continues to be scheduled for the Commission's meeting tomorrow morning.

Commission staff would like to provide one comment because we do not believe we have used different standards in providing advice. On March 21, 2025, the Commission's Political Committee and Lobbyist Registrar, Heidi Hoefler, corresponded by email with Ms. Lynch (pages ETH 40-45 of the packet materials). Ms. Lynch emailed to ask about proposed newspaper advertising concerning the timing of a possible referendum. Ms. Hoefler was unsure what Ms. Lynch was asking and requested a couple of times for clarifications. Ms. Hoefler also noted generically that certain activities to initiate a ballot question are reportable. She did not, however, offer any advice to Ms. Lynch with respect to how the law ought to be applied to the proposed advertising.

On April 4, 2025, people opposed to the June 10, 2025 referendum registered as a ballot question committee, CapeVoters BQCII. That day, Heidi Hoefler spoke with Jessica Sullivan, the committee's treasurer. Ms. Sullivan advised that the ballot question committee had made the decision to register and report as expenditures the costs of two advertisements described by Ms. Lynch. Ms. Hoefler sent a confirming email later that day noting that the BQC had opted to register *even though, technically, it may not have been required to register*. Ms. Hoefler gave no specific advice to CapeVoters BQCII that it needed to report its advertisements concerning the timing of the potential referendum.

From: [Mary Ann Lynch](#)
To: [Wayne, Jonathan](#); [Hoefer, Heidi](#); [Currier, Martha](#)
Cc: [Larry Benoit](#); [Jessica Sullivan](#); [Michael Hussey](#)
Subject: Request for a continuance
Date: Tuesday, May 27, 2025 12:07:30 PM

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Request for Continuance

We write to respectfully request a continuance in the matter regarding whether the Cape Elizabeth School Department should be required to register and file as a Ballot Question Committee.

We were notified Wednesday, May 21, before a long holiday weekend of tomorrow's scheduled meeting. Staff's recommendation, contained in a lengthy 18 page memo, along with the Superintendent's responses, raise significant questions of fact and law, as well as entirely new issues, that require more time to reasonably respond. Moreover, Staff's recommendation and the Superintendent's response were not posted until late in the day on May 22.

In addition, we request the Commission order further investigation by staff for the reasons noted below.

The staff's recommendation rests on two key arguments:

First, Staff expresses "ongoing discomfort with regulating public entities as ballot question committees, absent clearer direction from the Legislature." Notably, Staff's "discomfort" is in direct contradiction to the only legal precedent of this Commission directly on point in this matter, namely, that a municipality is a "person" that qualifies as a ballot question committee. In light of this clear legal precedent, Staff's "discomfort" is surprising.

Legal Analysis. The law applies to a "person." 21-A MRS 1152. A "person" includes a "corporation." Section 1001(3). Cape Elizabeth has been formed as a municipal "corporation." In a 2009 decision of this commission, the Commission concluded that the City of South Portland was a "person" under the definition of Section 1001(3). The 2014 DIFW decision is not on point, as it was an agency of the state and nowhere is there a suggestion that the law applies to the state. The 2009 South Portland decision is the Commission's only on point precedent of which we are aware.

Although the Staff suggests that there needs to be clear direction from the Legislature on the Commission's previous decision, we strongly disagree. The plain language could not be clearer: the law applies to a "person," and a person includes a "corporation." Cape Elizabeth is a corporation, and thus falls plainly within the statute. No further clarification is needed; the Legislature has spoken clearly. This is the plain meaning, and to ignore the plain meaning of the language is to ignore the law. Had the Legislature disagreed with the 2009 Commission decision, it could have acted to change the law, and if the staff had "discomfort" over this Commission's 2009 ruling, surely it would have recommended that the Commission seek

clarification from the Legislature.

Second, Staff argues that the jurisdictional spending amount, \$5,000 was not reached. But staff has not done the due diligence required in detailing the costs of the ads. Further — and surprisingly, Staff has not included ads placed before there was an official ballot question, despite having previously advised CapeVotersBQCII earlier this year that the law contemplated regulating such ads. Surely, the same rules must apply to the Cape Elizabeth School Department; otherwise we have a double standard.

Staff has also excluded ads simply because they do not explicitly appear to note the election date, or say vote “yes.” We address this Staff position in detail below. Suffice to say here that it appears that staff did not click on the QR code in the ads.

In reaching its conclusion “that the chances that the school department spent more than \$5,000 to influence either election seem low,” (Page 8 SM) the staff noted, “some of the early ads in each year ran more than three months before the referenda and don’t mention the referenda at all. We question whether those ads should be considered” for the purposes of influencing” the referenda.” Page 8 SM. This conclusion stands in stark contrast to the staff’s determination that two ads CapeVotersBQCII ran, also more than 3 months before the election, were subject to commission jurisdiction. The staff wrote, “ For BQCs the statute contemplates prior to a question on the ballot counting towards the in excess of \$5000 activity.” Staff e-mail of March 21, 2025.

Also, the billing information provided to the Commission Staff is not sufficiently detailed --(time billed and rate) to adequately break out the cost of design and production services, as well as placement costs, for determining the \$5000 threshold. The staff was reduced to guessing about the cost of production and design. The staff reports that the amounts in question would not likely reach \$5000, despite the fact that each ad costs in excess of \$1000, and 3 or 4 ads, with design and production services very likely would exceed \$5000. We will need to submit a FOAA to the Department for more detailed hourly billing, unless the staff demands these necessary billing details from the Department. We encourage the Commission to ask the Staff to seek additional, detailed billing information.

Additionally the staff drew many subjective conclusions regarding the nature of the ads. See chart on Page 13 SM. Any objective reader would conclude these ads are intended to influence the election. Of course they are intended to influence the election, otherwise, why bother? We would like an opportunity to respond in more detail regarding the staff chart and subjective conclusions.

Staff’s conclusion, Page 14 SM, that the ads barely mention the June 10 election and do not tell readers how to vote is weakened by contemporaneous communications from the school board and in the language available to anyone who clicks on the ads’ QR code.

Staff takes the following positions:

ads without an election date and a message to vote “yes” are only informative and educational in nature and not intended to influence the voters;

the ads-barely mention the November 5, 2024 and June 10, 2025 referenda; and

the ads do not tell Cape Elizabeth residents how to vote Page 2 SM.

Staff clearly did not check the QR code and the link to other material. The QR code in the May 21, 2015 Cape Courier ad leads to a web page that states clearly and unambiguously: *"On June 10th, residents will have the opportunity to vote on a bond to replace the Middle School. . . . The School Board believes passing it is crucial to ensuring safe, high-quality learning environments for our students. Why this Bond Matters: . . ."* (Boldface type in the original.) A QR code is intended to provide further information, on a web page, and must be read alongside information to which the QR code is attached. In this case, the QR code provides the date of the election and a call to action: "passing is crucial" —i.e., voting "yes" is crucial.

The text attached to the above QR code in the May 21, 2025 Cape Courier ad undercuts Staff's conclusion that there is no specific advocacy concerning the referenda and that there is no language telling readers where or how to vote. Pages 11-12 SM. To the contrary, the web page language, linked to the ad via a QR code. "On June 10th, residents will have an opportunity to vote. . . . The School Board believes passing it is crucial. . . "

Moreover, Staff reached the opposite conclusion about two ads CapeVotersBQCII ran earlier this year, before there was even a referendum scheduled. The ads did not contain a date of an election, nor did the ads say vote "No." We voluntarily approached the staff with the question of whether this kind of ad, before there was a ballot question, was a covered activity that needed to be included in determining whether or when we would reach the \$5000 threshold. Staff advised that ads, even in the absence of a scheduled election, and in the absence of language telling voters how to vote, were a covered activity, and an attempt to influence a ballot question. Staff wrote, "For BQCs, the statute contemplates certain efforts *prior* to a question on the ballot counting towards the in excess of \$5000 activity- initiating a campaign." (emphasis added). Staff email Mar 21, 2025. We followed staff advice and reported accordingly. The School Departments's ads must be held to the same standard; otherwise we have a double standard.

New Issue. The School Superintendent has raised a new issue and has wrapped his and the Board's political advertising into the work of the School Building Advisory Committee (SBAC). This is patently untrue and we would like the opportunity to provide documents and sworn affidavits to show this is untrue. The Town Council authorized the SBAC to communicate regarding the various options. Yet the day after the SBAC recommended an option of renovation and new construction, (not, as the School Board wished, an entirely new school building,) the Superintendent and Board took steps to disband the SBAC. It turned off the members' email the very next day, and ended any further work by the SBAC by clawing back funds appropriated to the SBAC. To suggest now, that the political advertising by the Board and Superintendent "is consistent with the approach of the SBAC" (Page 2 Staff Memo of May 22, 2025, hereafter "SM") is not supported by the factual record, and the Superintendent's raising this, puts new facts in dispute. We would like an opportunity to provide additional evidence to show the falsity of this claim.

The Superintendent also claims "he was not aware there was any possibility that the SBAC's public education campaign could require the school department to register as a ballot question committee. Page 2 SM. Once again, he wraps the campaign in the work of the SBAC, when that committee was effectively disbanded in May, 2024, months before there was a ballot question. More importantly, the interim town manager wrote on August 20, 2024 to the

superintendent and counseled the Superintendent that advertising activities such as were being conducting could be subject to registration, and the town manager advised the superintendent to seek advice from this commission!

The manager wrote: *Anything in print should indicate that the ad or material is funded by the Cape Elizabeth School Building Project Account. You might also wish to check with the Maine Ethics Commission to be sure to stay within the guidelines of their interpretations of expenditures which are intended to influence voters. They are quite strict and I am sure their staff can give guidance.* Michael McGovern email to Chris Record, dated August 20, 2024. We would like an opportunity to supplement the record on this issue, particularly in light of the superintendent's response that he was not aware of any possibility that the school department would need to register, and the failure of every one of their full page ads to contain any disclaimer re source of funding. We also note, no ad placed by the School Dept. contains the legally required "Authorized and paid for by... " language. Not one ad contains a disclaimer! To suggest that the School logo, used by every booster group in Cape Elizabeth is an adequate disclaimer is simply absurd.

In the Superintendent's response, (we cannot determine the date) he unequivocally states, "[N]owhere does the department encourage anyone to vote yes on any question." Response of the Superintendent, date unclear. To the contrary, each Cape Courier ad, has a QR code, which link provides the date of the election and the following information:

"On June 10th, residents will have the opportunity to vote on a bond to replace the Middle School. . . . The School Board believes passing it is crucial to ensuring safe, high-quality learning environments for our students. (Boldface in the original.) Why this Bond Matters: . . ."

We would like to augment our filing to provide this information to the staff and Commission and show the inaccuracy in the Superintendent's response. In the alternative, the Commission can request that the Staff review the QR code information linked with each ad.

This campaign is ongoing. On May 21, 2025, the School Department ran another full page color ad in the Cape Courier, at a cost of more than \$1000, with a QR Code linking to a web page with the election date and statement that the School Board believes passage is "crucial." There will be one more edition of the Cape Courier prior to the June 10 election. We would like an opportunity to supplement our filing with these ongoing and additional ads, which staff should count towards the \$5000 jurisdictional threshold. It is important, in determining the jurisdictional amount, that the Commission see and measure *all* of the political advertising activity in this campaign, and not cut off its inquiry weeks before the election. We request that the Commission require the staff to supplement its jurisdictional finding with any additional ads/mailings, etc. published before the election.

In Conclusion. On May 22, at 2:51 p.m. we received notice that the Commission was to meet on our complaint on Wednesday, May 28th at 9 a.m. At that time, the Staff documents were not yet posted and available to us. They were posted sometime later in the day. An email with several false statements sent by Attorney Elizabeth Bierman, dated May 23, was sent to the Commission and at some point over the holiday weekend it was posted. We have been given less than one week's notice of the Staff recommendation, and with the holiday weekend, only 2 business days between receiving Staff's lengthy decision and the scheduled hearing. We have had only one business day to respond to Attorney Bierman's letter, which contains

several inaccuracies.

We respectfully request a continuance so that we may update the information before the Commission, as discussed above, to show that the \$5000 threshold has been established. In addition, we request the Commission require the Staff to augment its recommendation with more detailed billing and analysis. We will be prepared to address the staff memo at a June meeting.

Finally, a continuance to June would also obviate Staff's fear that an "adverse decision" could impact the election.

Contrary to the accusation of Attorney Bierman, our complaint is not intended "to silence" the School Department. It is intended to make sure that there is only one standard applied to election speech for-compliance with the disclosure requirements in Maine Election Law. We seek only a single standard, a level playing field, in which all who are seeking to influence an election are held to the same rules of disclosure and accountability and transparency.

Thank you for your thoughtful consideration.
Respectfully submitted,

Robert L. Benoit
Mary Ann Lynch

From: Mary Ann Lynch <maryannlynch5788@gmail.com>
Sent: Friday, April 4, 2025 5:19 PM
To: Hoefler, Heidi <Heidi.Hoefler@maine.gov>
Cc: Jessica Sullivan <jessicasullivan441@gmail.com>
Subject: Re: CapeVotersBQCII - Brief Summary of Discussion Earlier Today

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Thanks, Heidi, for the info.

On Fri, Apr 4, 2025, 5:04 PM Hoefler, Heidi <Heidi.Hoefler@maine.gov> wrote:

Hi Jessica,

Totally digging the new BQC name! 😊

As we discussed earlier today:

- Although BQC II may not technically be required to register, given the activity and the optics, the decision was made to register at this time and file reports.
- The “paid for by Cape Voters” ad in the March 26, 2025 edition of the Cape Courier will be reported as an expenditure of BQC II.
- The ad running today will be reported as an expenditure of BQC II.
- The previously reported BQC I expense for BQC I’s web domain for 3 years does not need to be reported as an expense or donation to BQC II.

I think that covers the big ticket items we discussed.

Enjoy your weekend!

Heidi

Heidi Hoefler

Political Committee & Lobbyist Registrar

Maine Ethics Commission

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