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June 18, 2021

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

VIA ELECTRONIC MAIL

Re: Investigation of Stop the Corridor and two as yet unnamed political consulting firms

Dear Jonathan:

On behalf of Clean Energy Matters, I am writing to express our concern about the appropriateness of keeping confidential the identities of the two political consulting firms that are now a subject of this investigation. This request for confidentiality is not authorized by 21-A M.R.S. § 1003(3-A), the statute governing investigations by the Commission, and wholly indefensible under the State Public Records Laws. Moreover, we believe any continuing grant of confidentiality to these two entities – that are simultaneously refusing to comply with duly executed subpoenas by the Commission – is a noticeable departure from prior investigations and will create a dangerous precedent.

21-A M.R.S. § 1003(3-A) is the relevant section of Chapter 13 governing confidential records of a Commission investigation. The statute establishes that “investigative working papers” of the Commission are confidential, but then goes on to narrowly define that term to specific categories:

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.

21-A M.R.S. §1003(3-A) (emphasis supplied).

The identities of the two political consulting firms that are part of the Commission's investigation and that are obligated to produce documents pursuant to Commission subpoenas do not fit within this definition. In crafting the "confidential records" provision of the Commission's investigative authority, the Legislature specifically limited the definition of "investigative working papers" to the four categories set forth above. The names of the political consulting firms do not constitute financial information, would not reveal sensitive political campaign information¹, and are not otherwise subject to any evidentiary privilege. As such, there is no statutory basis for withholding the names of the political consulting firms.

Further, there is no precedent for the Commission to continue to grant such a request for confidentiality. If the Commission were meeting in person and not virtually, the entities in question would have to appear in person before the Commission or, at a minimum, have an attorney do so. As you are aware, 1 M.R.S. § 403 requires that all public proceedings must be open to

¹ Any argument that revealing the identity of a political consultant could reveal "sensitive political or campaign information" proves the broader point of the Commission's investigation, namely that Stop the Corridor was engaged in initiating or influencing a citizen's initiative campaign.

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the public. Accordingly, the identities of the entities would in the ordinary course become public. We believe that, consistent with the State's open meeting laws, the identity of the entities should be treated as public information despite the Commission's virtual meetings.

Extending confidentiality to the political entities despite the language of the relevant statute and despite normal practice establishes unfortunate precedent. Lacking any basis in the law, the Commission's decision whether or not to provide confidentiality in future proceedings will be difficult – if not impossible – to apply in an evenhanded manner. In addition, it is against the spirit of the Commission's efforts to ensure that the public is provided information that it is entitled to know.

Stop the Corridor's repeated refusal to provide information as requested and repeated challenges to the Commission's statutory authority are consistent with a broader strategy to delay any meaningful investigation of its contributions and expenditures until after November 3, 2021. With this in mind, we ask that you reconsider the appropriateness and legal justification for the ongoing request of confidentiality of its political consulting groups.

Sincerely,

A handwritten signature in blue ink, appearing to read "Newell A. Augur".

Newell A. Augur
Legal Counsel
Clean Energy Matters