



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

Minutes of the October 1, 2009, Meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Burton M. Cross Office Building, Room 208,
111 Sewall Street, Augusta, Maine

Present: Michael Friedman, Esq., Chair; André Duchette, Esq.; Walter F. McKee, Esq.; Hon. Francis C. Marsano; Hon. Edward M. Youngblood. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:00 a.m., Chair Michael Friedman convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the July 30, 2009 and September 8, 2009 Meetings

Mr. Marsano moved to accept the minutes of July 30 and September 8 meetings as drafted. Mr. McKee seconded. Motion passed unanimously (5-0).

Agenda Item #2. Investigation of Maine Leads

Mr. Friedman explained that this agenda item was essentially the Commission's deliberation on the Maine Leads matter (whether Maine Leads was required to register and file campaign finance reports as a political action committee or as a ballot question committee). At its September 8, 2009 meeting, the Commission held a hearing on this matter and heard testimony from Roy Lenardson. Mr. Friedman said that both sides had provided the Commission with extensive submissions both before and after the hearing. In addition, the staff has provided a recommendation for the Commission. Mr. Friedman allowed counsel for both sides to provide brief statements.

Mr. Benjamin Grant, Esq., who represents Rep. Deborah Hutton, the complainant, thanked the Commission for allowing his client to remain a participant throughout the proceedings and thanked the staff for their excellent work. Mr. Grant said their belief remains that Maine Leads operated as a political action committee (PAC) from the end of 2007 to June 30, 2008. However, he stated that they do endorse the staff

OFFICE LOCATED AT: 45 Memorial Circle, Augusta, Maine
WEBSITE: WWW.MAINE.GOV/ETHICS

recommendation that Maine Leads should have filed as a ballot question committee (BQC) since this result would at least provide public disclosure of Maine Leads' political activity. He said Maine has a history of good government, clean campaigns, and fair oversight of campaign finance laws. He encouraged the Commission to make a decision that would foster disclosure and ensure that all Maine voters receive the information they deserve before the vote in November.

Mr. Daniel I. Billings, Esq., who represents Maine Leads, thanked the staff for how they conducted this investigation. He said this matter comes down to an issue of statutory interpretation and possibly, depending how the Commission interprets the statute, a constitutional issue. He said the term "ballot question" is not defined in the statute and a "plain meaning" approach should be used in interpreting that term, which would lead a reasonable person to understand the term to mean a question on the ballot to be voted on. He said in 2007 there were no ballot questions. He said that the staff had provided a comprehensive review of the legislative history of the relevant statutes but that he disagreed with the staff's conclusion about how to interpret the term "ballot question." He said that most people looking at the current statute would not know the history of this statute and would take the simple words "ballot question" at their plain meaning. He said that because this statute deals with important First Amendment rights, it is very important that it not suffer from vagueness. He said the constitutional issue could be avoided by adopting a more narrow interpretation of the term "ballot question." He said that, although he questions the staff's legal analysis of the statute, if one accepts that legal analysis, the staff's factual analysis falls into place and is reasonable and correct under that interpretation. Mr. Billings reserved his client's right to appeal other issues depending on how this matter proceeds; however, he said if the Commission decides that Maine Leads is a BQC, his client is willing to file the BQC reports within the week.

Mr. Friedman thanked all the participants in this investigation for their cooperation, responsiveness, and the quality of their legal analysis. He said the initial issue before the Commission is to determine whether Maine Leads does qualify as a PAC.

Mr. Youngblood complimented the staff's excellent work in presenting the issues in a comprehensive and understandable manner. He said there may be constitutional issues; however, these are not for the Commission to determine. He said the Commission's determination as to whether Maine Leads qualifies as a PAC needs to focus on the statutes. He said he agreed with the staff's definition and analysis of how to

determine an organization's major purpose and that he concluded Maine Leads does not fit into the category of a major purpose organization.

Mr. McKee agreed. He said that his initial analysis was that an organization can become a PAC if they stray too far from their major purpose. He said that after reviewing the staff's analysis and recommendation, he believed that the Commission should exercise caution in coming to that conclusion. He said it may be that organizations sometimes take on significant roles on various issues but that will not convert them into a PAC. He said considering the large amount of money involved here, it looked as if Maine Leads was heading in that direction. However, given the policy considerations addressed by the staff, the balance should tip in favor of a finding that the major purpose of Maine Leads was not advocacy in support of the initiative and that it was not a PAC. He said that he would support the staff's recommendation that the Commission determine that Maine Leads is a ballot question committee.

Mr. Marsano commented on the excellent quality of the final written submissions and closing oral statements from both attorneys. He said he found Mr. Grant's suggestion compelling, *i.e.*, that the Commission first make a determination that Maine Leads is a ballot question committee, thus rendering the other question as to the nature of Maine Leads' major purpose moot. He said that addressing the policy issues regarding the definition of major purpose may be better left to the Legislature or the Commission under a different set of circumstances. He said that he hoped the Commission would decide in favor of Mr. Grant's position that Maine Leads is a ballot question committee.

Mr. Friedman said that it was possible for someone looking at Maine Leads' spending in 2007 and 2008 to conclude that it was a PAC. However, when a multi-purpose organization is formed, one cannot look at a snap shot of its activity. It is necessary to look at the activity over a period of time. He said that he was not prepared to find that Maine Leads' major purpose was the support or defeat of a ballot question.

The Commission members discussed whether a motion should be made that addressed the issue of whether Maine Leads' major purpose was to influence an election. Mr. Friedman and Mr. McKee thought that since the issue had been brought before the Commission in the complaint, the Commission should dispose of the question with a vote. Mr. Marsano said that he thought the better course would be to first address the

question of whether Maine Leads qualified as a ballot question committee, in which case, if the vote were in the affirmative, the issue of Maine Leads' major purpose would be moot.

Mr. McKee made a motion that the Commission determine that the major purpose of Maine Leads was not to advocate for the passage or defeat of a ballot question. Mr. Youngblood seconded the motion.

The motion passed (4-1). Mr. Marsano opposed the motion.

Mr. Friedman explained that the next determination was to find whether Maine Leads should be filing under § 1056-B as a ballot question committee.

Mr. McKee made a motion that the Commission determine that Maine Leads was required to file campaign finance reports as a ballot question committee. Mr. Marsano seconded.

Mr. Friedman said that this was a difficult issue for him because, on one hand, it would seem that a "ballot question" is a question that is to appear on a ballot. While on the other hand, it would seem that we should be able to look back earlier than that in order to apply the statute. For his purposes in deciding on this issue, he thought that a "ballot question" occurred later in the process than earlier.

Mr. Marsano said while there is some basis for the background constitutional issue, it is not of significance in the Commission's determination process. He said that in moving forward and taking a vote on this issue, the Commission should assume that the statute is constitutional and that the definition proposed in the staff's memorandum is sufficient for the purpose of voting on this issue.

Mr. Friedman agreed that for the Commission's determination, this statute should be considered constitutional.

The motion passed (4-1). Mr. Friedman opposed the motion.

Mr. Friedman said that Maine Leads would have two weeks to file its reports.

Agenda Item #3. Request to Investigate Stand for Marriage Maine PAC and Its Contributors (National Organization for Marriage)

The Commission received a request from Fred Karger of Californians Against Hate to investigate the Stand for Marriage Maine political action committee (PAC) and some of its contributors. The staff invited responses from the PAC and one of its major contributors, the National Organization for Marriage.

Mr. Fred Karger explained that his organization has been watching the finances of the National Organization for Marriage (NOM) for some time because it was very involved in California's Proposition 8 campaign (proposing an amendment to the California Constitution that would prohibit same-sex marriage). He said he got concerned when he looked at the first campaign report filed by Stand for Marriage Maine. He said that NOM raised the bulk of the money to support Proposition 8 in California and is now leading the fight against same-sex marriage across the country. He said NOM's finances have always been clouded in mystery and the organization has been reluctant to provide tax return information as required by federal law. He said he just learned prior to this meeting that NOM did provide 2007 and 2008 returns recently, to coincide with the Ethics Commission meeting. He said NOM claims it raised \$3.5 million in 2008 and will spend \$7 million in 2009. However its 2008 Form 990 shows less than the \$3.5 million it claims. He also said NOM has not kept promises to release their 990 forms to journalists and other members of the public. He said NOM has sent out e-mail solicitations that mention Maine; however it claims that very few of the solicitations resulted in contributions that would count toward the \$5,000 threshold amount to qualify as a ballot question committee. Mr. Karger said NOM claims that out of the hundreds of e-mail solicitations sent out to request contributions, only two were specifically related to the Maine election and only \$295 was raised. He found that very unlikely. He said Brian Brown, the executive director of NOM, held a press release recently stating that NOM had passed a huge milestone because over 500,000 activists had joined his organization. Mr. Karger said with this many supporters joining NOM, the amount of the contributions that were reported does not seem realistic. He said NOM is trying to avoid Maine election law requirements. He said Mr. Bostrom, the counsel for NOM, claims that money being raised for the Maine election are not covered under Maine reporting requirements. Mr. Karger believes Mr. Bostrom's letter to the Commission in which he writes, "no other solicitations were made for ballot measure activities in Maine by email, direct mail or other means" is untrue. Mr. Karger said that in a newsletter put out by NOM, it states that in Maine, "your support for NOM is critical for the effort" which appears to be a direct solicitation to raise money in Maine. He said so far, NOM has donated \$250,000 to Stand for Marriage

Maine. Mr. Karger also explained that the State of Iowa Ethics & Campaign Disclosure Board has also investigated financial irregularities in NOM's reporting in August. Mr. Karger said he has been involved in political campaigns for 30 years and has read and filed many campaign finance reports in many different states and has never seen such blatant disregard for election laws. He also said California's Fair Political Practices Commission has an ongoing investigation into NOM's activities as well.

Mr. Barry Bostrom, Esq., counsel for National Organization for Marriage and Stand for Marriage Maine PAC (SMM), said Mr. Karger's allegations boil down to one question which is whether NOM solicited and/or received designated contributions for PAC activities. He said with the exception of possibly two e-mails, it has not. He said it is the policy of NOM not to accept designated contributions. He said NOM is a national organization active in all 50 states on various issues relating to same-sex marriage and traditional marriage and has raised substantial funds for this issue. He said expenditures in Maine are minuscule and were for e-mails which act as newsletters to inform people of activities about this issue within Maine. He said the NOM contributions to the Stand for Marriage Maine PAC did not come from money raised through these e-mails but came from major donors and national organizations with an interest in this issue. He said NOM does not solicit in any particular state because it is active in many states. He said these national organizations provide contributions in significant amounts to defend traditional ideas of marriage and that is the reason why NOM is able to give large contributions to SMM. He said this policy of not accepting designated contributions is stated on the donation page of the NOM website. Mr. Bostrom said that since NOM has not solicited or received any contributions designated for the Maine referendum in excess of \$5,000, it is not required to register and report as a BQC. He said NOM's goal is to comply with all state laws and if that threshold amount is met, they will register in Maine as a BQC. He said that the purpose of Mr. Brown's affidavit was to provide evidence that the threshold has not been met. He and his client agree with the staff's recommendation that there is no probable cause to initiate an investigation.

Mr. Bostrom said Mr. Karger is not as interested in the enforcement of campaign finance law as he is in identifying contributors to the people's veto effort. He said that California's Proposition 8 campaign reporting requirements resulted in publication of contributors' names, address, phone numbers and e-mail addresses. Because this information was publicly available, he said, some Prop 8 supporters reported experiencing negative backlash.

Brian Brown, Executive Director of NOM, said his organization contacted the Commission staff several months ago for clarification of Maine campaign finance law requirements. He said it has been months since the original complaint was filed in California against his organization and no activity has been determined to be in violation. He also said he has been in contact with the Iowa Ethics Commission and NOM has registered as a political corporation in that state. NOM was very careful not to accept designated contributions. He said the e-mails sent out in Maine were soliciting for the Stand for Marriage Maine PAC and when contributions were made, they were reported. He said his organization is not trying to avoid Maine campaign finance laws and the e-mails sent out encourage people to donate directly to Stand for Marriage Maine PAC and those names will be disclosed. He also said their 990's are available on the website and they have tried to comply with all state and federal reporting requirements. He said this complaint is baseless and full of unfounded allegations.

Danielle Truskovsky, a political columnist for the Washington Blade, explained that she has visited the office of NOM to obtain its 990 forms. She said Californians Against Hate requested these records back in March and to her knowledge still has not received the requested information from NOM. She said she personally visited NOM's national headquarters office in Princeton, New Jersey three times to make a request in person and no one was ever available at that office which appeared to be a barren empty space. She said she spoke to Brian Brown at his Washington, D.C. office and was told that the documents were not available at that time. She said the IRS released a copy of NOM's amended 2007 tax return which she has reviewed. When she spoke with Mr. Brown, he indicated that there was an additional amendment. She said that the 2007 return, which covered a period of six months, had been amended three times. She said according to the National Center for Charitable Statistics, only 1% of foundations and charities amend their returns and usually those that do only amend their reports one time. However, NOM has amended its return three times, which is rare. Ms. Truskovsky also provided some additional materials for the Commission, including an article she wrote entitled, "*Follow the Money, Federal government must investigate NOM's financial practices,*" and read from an e-mail distributed by NOM and addressed to supporters with regard to Stand for Marriage Maine PAC. The e-mail outlines NOM's role in the successful effort to obtain the signatures for the people's veto and gave credit to NOM's supporters for their financial support of this effort. She questioned how is it possible that NOM is the largest contributor to Stand for Marriage Maine providing \$160,000, but is the only organization not registered as a PAC or BQC in Maine.

Mr. Bostrom responded to Ms. Truszkovsky's comments. He said with regard to the IRS filing, Schedule B is confidential under IRS code and is not required to be provided by a non-profit when filing a 990 form. He said with regard to \$160,000, this contribution was from the general treasury and is exempt from Maine law threshold amounts.

Mr. Brown said he has been in constant contact with the IRS. He said that he has discussed with the IRS the issue of being harassed for the 990's and requests taking up too much staff time. Mr. Brown said that was the reason NOM decided to post them on its website. He said that there is nothing that they are hiding. In fact, he said, that when journalists have asked, NOM has gotten the 990's out to them. He said some of the requests for the 2008 990 were made prior to the return being filed and so NOM could not have provided it.

Mr. McKee asked Mr. Brown why, despite repeated requests, NOM did not provide the 2007 990 that had been filed. He asked whether Mr. Brown's testimony is that this document has been provided every time it was requested. He said it appears there are two very different views as to whether the return was provided when requested.

Mr. Bostrom said he did not have personal knowledge regarding any requests since those would go directly to NOM's headquarters.

Mr. Brown said his office has been working directly with the IRS because some times it is not clear exactly what information needs to be provided. He said what needed to be provided was the redacted copies of the Schedule B and the entire 990. He said many requests included the 2008 tax return and once that was filed, NOM would get all of the documents to the person making the request. Some requests may have been responded to later than the 30 day window but that was due to the amount of processing. NOM's goal was transparency. Now the 990's are on the website.

Mr. McKee asked why, if some of the requested documents were ready, NOM would delay providing them even if some other documents requested were not yet ready to be released.

Mr. Brown said the 2007 documents have been provided to many journalists. He said NOM is not trying to hide anything and has complied with reporting obligations.

Mr. Duchette asked when the 990's were finally posted on the website.

Mr. Brown said they just went up but was not sure of the posting time. He said that NOM has been going back and forth with the IRS about what had to be provided in the redacted 2008 990, which was ready the previous week. He said that NOM would send the 990 in the mail when it was requested.

Mr. Bostrom said non-profits may receive a six-month extension from when the 990's are due.

Mr. Friedman said the Commission's task is to determine whether there are sufficient grounds for believing a violation may have occurred.

Mr. McKee said that, in other cases, when the Commission has had to determine whether there were sufficient grounds for an investigation, most Commission members approached the question using a probable cause standard. In this case, he had to ask himself whether the information that has been provided by both sides left him with more questions than answers. He said that he was left with more questions. He said the content of the newsletter that Mr. Karger handed out that relates to the Maine election in addition to the other information provided to the Commission satisfied the probable cause standard for him. He said there are very large amounts of money being put into this campaign here in Maine and the questions regarding NOM's activities need further investigation.

Mr. McKee moved that the Commission determine there are sufficient grounds for believing that a violation may have occurred. Mr. Marsano seconded.

Mr. Marsano agreed with Mr. McKee. He said lines from a novel come to mind, "discriminating indeed is that man who in the shadows can discern that all cats are not grey." He also said both sides as well as Ms. Truszkovsky made compelling arguments, however, agreed with Mr. McKee that an investigation should be initiated.

Mr. Youngblood said he saw no reason, even after listening to all the testimony and reviewing the staff's memo, to get involved in a lengthy investigation of this issue. He did not find anything in the testimony or the documents that pointed to a violation.

Mr. Duchette stated he would support an investigation. Ultimately, he said, it may prove that the statutes are not adequate to cover issues like this, however, he was troubled by entities that appear to circumvent the disclosure requirements of the state's campaign finance laws. He was also troubled by the language in the e-mails that assured people that their contributions would be confidential and would not be disclosed. Mr. Duchette said that he was concerned about creating a slippery slope that would allow for the formation of entities in the future to engage in fundraising and be the major contributor to a registered PAC but which would not be required to disclose its contributors.

Mr. Friedman agreed with Mr. Youngblood. He said requests for investigation made close to the elections are always suspect since it generates a great deal of publicity for both parties. He said the request is within the statutory framework but feels Mr. Karger has the burden to show there is evidence for believing a violation may have occurred. He said he does not see that evidence in the materials presented to the Commission. Mr. Friedman said during any election in Maine there are large amounts of national money coming in all the time. He said the Democratic and Republican Committees make \$100,000 or more in contributions to PACs to support legislators or gubernatorial candidates and there is no identification of contributors and this is permitted under the current statute. He said he was swayed by NOM's evidence that it is a national organization that does accept large amounts of money from a variety of sources and distributes the money through appropriately registered PACs. He said he does not believe there are sufficient grounds for believing any violation of the campaign finance law may have occurred.

The motion passed 3-2. Mr. McKee, Mr. Marsano, and Mr. Duchette in favor of the motion. Mr. Friedman and Mr. Youngblood opposed.

Mr. Wayne requested further clarification and direction from the Commission regarding the scope of the investigation. He stated that NOM's fundraising is the subject of concern for some Commission members, and asked for more direction on the specific types of fundraising that the investigation should focus on. He

said it is likely that major donor fundraising has taken place through different means. In 2008, NOM's California political action committee received very large donations, some in the hundreds of thousands of dollars from individuals. He said that NOM most likely used a variety of fundraising activities such as face-to-face meetings, telephone calls, direct mail, etc. He asked whether the Commission would like the staff to take a broad approach or whether the Commission was more concerned about the e-mail solicitations and newsletters.

Mr. McKee said he would be interested in hearing what staff felt would be the appropriate scope of the investigation in order to undertake a fair inquiry.

Mr. Wayne explained he felt the scope should be broad in order to determine where the money NOM contributed to Stand for Marriage came from. He said NOM has contributed at least \$250,000 and possibly more and it is likely that that amount did not come only from e-mail solicitations. He said under the Commission's rule, Chapter 1, section 5, "*once any matter is reached on the agenda of a Commission meeting the Commission will control any further investigation or proceedings on a case by case basis; the Commission may authorize its Chair, Director, or any ad hoc committee of its members to conduct further investigative proceedings on behalf of the Commission between Commission meetings.*" He said in the Maine Leads matter, the Commission requested the staff conduct the investigation within the staff's own discretion and asked whether this would be the case with this investigation as well.

Mr. Marsano said he would support a staff investigation using its own discretion as it did in the Maine Leads matter. He said that he would recommend that the staff get back to the Commission at the November meeting with its analysis of the issues in this case and the Commission could at that time determine the appropriate scope of the investigation. He said time is not of the essence in this case. He did not think that any material results would emanate from this investigation that would effect the outcome of the November election.

Mr. Wayne said staff could provide an analysis for the Commission at its next meeting in November or sooner.

Mr. Wayne also wondered if it would be appropriate, due Mr. Brown's national activities, for Mr. Bostrom, Mr. Brown's counsel, to accept a subpoena on Mr. Brown's behalf.

Mr. McKee confirmed this would be acceptable and Mr. Bostrom indicated he would do so.

Agenda Item #4. Request to Investigate Organizations Opposed to TABOR

David Crocker of TABOR NOW requests that the Commission investigate four organizations that have spent money to oppose the Taxpayer Bill of Rights initiative (Maine People's Alliance, Maine Can Do Better, Maine Center for Economic Policy, and the Center for Budget and Policy Priorities) to determine if they were required to register and file campaign finance reports as ballot question committees.

Mr. David Crocker, Esq., state chair for the TABOR NOW campaign, stated he had no further evidence to add to the proceedings. He accepts the representations and submissions of the four organizations complained against. He said the goal is not to make peccadilloes into a hanging offense nor to impugn the integrity of these organizations. He expressed his concern about the statute's clarity. He said that if these organizations, which are sophisticated, have difficulty complying with Section 1056-B, he is concerned about how smaller organizations or individuals would fare. He said election laws need to be clear and provide a bright line. He said he supported the staff's recommendation in this matter.

Ms. Kate Knox, Esq., of Bernstein Shur, counsel for the organizations named in this complaint, said they agreed with the staff recommendations as well. She said ballot question committee reports have been filed for those organizations that were in violation.

Mr. Friedman said the agenda item is worded as a request to investigate these organizations and the staff recommendation is to find two organizations in violation of registering as a ballot question committee. He asked Ms. Knox whether the Commission should come back another day for the 1056-B violation issue and decide only on the request for an investigation today. He said Mr. Crocker is willing to waive his request for an investigation and asked whether Ms. Knox was willing to do the same and go forward to the staff recommendation.

Ms. Knox stated they would since all organizations are in agreement with the staff recommendation.

Mr. Friedman asked about the penalty phase of the late filings and whether that should be held at a later date.

Ms. Knox said there would be no penalty assessed due to the statute that was in effect at the time of the violations.

Mr. Youngblood made a motion to accept the staff recommendation and find that Maine Peoples Resource Center and Center for Budget & Policy Priorities violated 21-A M.R.S.A. § 1056-B by not registering as a ballot question committee. Mr. McKee seconded.

The motion passed unanimously (5-0).

Mr. Friedman asked whether Ms. Knox had the correct interpretation of the penalty.

Mr. Wayne confirmed that there is no penalty to assess.

Agenda Item #5. Request for Waiver of Late-Filing Penalty/Lobbyist John Anton

Mr. Wayne said Mr. Anton's assistant was supposed to attend the meeting but was not here. John Anton became the registered lobbyist for the Maine Affordable Housing Coalition in 2009. His monthly lobbying report due September 15, 2009 was filed two days late. The preliminary penalty amount for the late filing is \$100. Mr. Anton requested a waiver because "[t]he administrative support person who ensured the timely filing of these reports left [the] organization." Mr. Anton has filed all other reports on time since 2009.

Mr. McKee moved that the Commission assess a \$100 penalty. Mr. Youngblood seconded.

Mr. Friedman said the person responsible was aware of the deadlines and should not get out of paying a penalty.

Motion passed unanimously (5-0).

Agenda Item #6. Questions from 2010 Gubernatorial Candidate Lynne Williams

Mr. David Bright, manager of Lynne Williams' gubernatorial campaign, had some questions for members of the Commission relating to qualifying for Maine Clean Election Act funding. He asked for some additional clarification regarding giving campaign paraphernalia to seed money contributors.

Mr. Wayne said the campaign could use seed money to make permanent improvements to a privately owned vehicle but not MCEA funds.

Mr. McKee expressed concern over the Commission's involvement with hypothetical discussions regarding guidance and advice to campaigns.

Mr. Friedman said the staff is available to provide assistance to the campaigns and they should make their own decisions in consultation with the Commission staff.

It was not necessary for the Commission to take any action on this agenda item.

Agenda Item #7. Presentation of Audit Reports

The Commission staff presented two audit reports of 2008 legislative candidates, Senator Lisa Marraché and Eric Lusk. The reports contain minor findings of violation.

Mr. Youngblood moved that the Commission accept the reports presented. Mr. McKee seconded.

The motion passed unanimously (5-0).

Other Business

New Chair

Mr. Friedman said that this was his last meeting as a member of the Commission and thanked the staff and counsel for their professional work during his tenure. He said he will remain for a few weeks to provide the Commission with a quorum before the election, should the need arise.

Mr. Youngblood nominated Mr. McKee as the next chair of the Commission. Mr. Marsano seconded.

The motion passed 4-0-1 with Mr. McKee abstaining.

Meeting Requirements

Mr. Marsano addressed the issue of meeting prior to the election.

Mr. Wayne read from the statute, *“the Commission shall meet in Augusta for the purpose of this chapter at least once per month in any year in which primary and general elections are held and every two weeks in the 60 days preceding an election.”*

Mr. Marsano said this statute could be read such that the requirement to meet every two weeks in the 60 days before an election would only apply in years in which there was a primary and general election. The two phrases could also be read independently.

Mr. Friedman said during an off-election year, meetings would be held with nothing on the agenda. He said closer to the election there may be reason to meet; however, it would not be practical to hold meetings unless an agenda warranted it.

Mr. Youngblood said that the Commission decided back at the beginning of the year that monthly meetings were not necessary due to the fact that this was a non-election year. He said it still is not an election year.

Legislative Resolve Regarding Executive Branch Ethics

Mr. Wayne updated the Commission with regard to the Executive Branch ethical standards issue and requested clarification from the Commission on the role of the Ethics Commission. He said his report to the Legislature would include a description of what statutes and personnel guidelines are currently in place in Maine, what other states have done and describe ideas on how the Legislature could proceed if they so chose.

Mr. McKee said the Commission should not be suggesting any specific legislation.

Mr. Wayne agreed and said he would provide a draft copy of the report for the Legislature to the Commission.

Mr. Marsano said he hoped this report would ultimately provide a useful response to the Legislature but at the same time, he did not believe that the Ethics Commission should tell the Legislature what it should do with respect to executive branch ethics.

Mr. McKee moved to adjourn. Mr. Duchette seconded. Meeting adjourned at 11:15 a.m.

Respectfully submitted,

Jonathan Wayne, Executive Director

Attachment: Handouts from Fred Karger & Danielle Truszkovsky

Hand Out for Item #3

Provided by Fred Kauger 10-1 Meeting

The State of Marriage

Your impact for marriage and liberty in battleground states



Why Marriage Matters



NOM Working with 'People's Veto' Coalition to Reclaim Marriage from Maine's Political Elites

The National Organization for Marriage is working around the clock with a coalition of pro-family organizations to protect Maine residents' freedom to vote down the state's new same-sex marriage law.



NOM is providing staff, volunteers, and other resources to the Maine Marriage Coalition, which is collecting the 55,000 petition signatures needed to put the state's new same-sex marriage

law before the voters in November. Maine's state constitution provides for a "Voter Veto" of any legislation.

National gay rights organizations are pouring funds into Maine to deny voters their constitutional freedom to take marriage back from the liberal politicians and the handful of activists who put them in power. Your support for NOM is critical to the success of this effort. ■

Kids need a mom and a dad.

Children need a secure home life. Social science, however, has found that only one in four gay unions lasts beyond seven years. The vast majority of married men and women stay together for 10 years or more, and half remain married for more than 20 years.

Victory in California!



The California Supreme Court ruled 6-1 in favor of the voters of America's largest state, upholding the constitutional amendment defining marriage as the union of one man and one woman. The Court rejected claims made by Prop. 8 opponents seeking to nullify the votes of 7 million Californians. NOM was the largest source of funds for Prop. 8 and a key organizer—helping turn a "lost cause" into a resounding victory at the polls and now in the court.

NOM sets stage for repealing New Hampshire law



NOM has activated thousands of New Hampshire citizens in a bid to win enough legislative seats in 2010 to repeal a recent same-sex marriage law. Breaking promises to voters, the governor and legislature squeaked through a gay marriage law despite citizen protests. But NOM has already helped defeat powerhouse gay activist groups in a special N.H. Senate race, and prospects for "flipping" enough seats to repeal the law are promising. Stay tuned!

Fighting for Iowa's vast pro-marriage majority



Just hours after the Iowa Supreme Court forced same-sex marriage on the overwhelmingly pro-family state, NOM launched state and national campaigns helping to lay the groundwork for a constitutional amendment that would reverse the court's ruling. Within weeks, hundreds of thousands of messages jammed the e-mail inboxes of key legislative leaders, demanding an end to their obstruction of a marriage-protection amendment to the Iowa Constitution. Only 26 percent of Iowans favor same-sex marriage, according to a recent survey. NOM will keep the pressure on until marriage is again protected in Iowa.

Item 3

Provided by Fred Karger
Oct 1. Meeting

JAMES BOPP, JR.¹
Senior Associates
RICHARD E. COLESON¹
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JOSEPH A. VANDERHULST¹
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¹admitted in Ind.
²admitted in NY and Penn.
³admitted in Va.
⁴admitted in Tex.
⁵admitted in Oh.
⁶admitted in Wis.
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sbieniek@bopplaw.com

August 31, 2009

W. Charles Smithson
Director and Counsel
Iowa Ethics and Campaign Disclosure Board
510 East 12th, Suite 1A
Des Moines, IA 50319
515-281-4028

Re: National Organization for Marriage, Inc.

Dear Mr. Smithson:

Please be advised that this firm represents the National Organization for Marriage, Inc. Thank you for your letter dated August 27, 2009, enclosed, providing a clarification of Iowa laws governing political corporations under Iowa law. Our goal is compliance with Iowa law in regard to political corporations and political action committees. Unfortunately, some people and organizations continue to make unfounded and scurrilous accusations regarding NOM's activities in Iowa and in other states. To date, neither NOM nor any of its connected political action committees has ever been fined or found out-of-compliance with state or federal election laws even though we have been active in many states. These accusations and complaints are intended to inhibit our freedom of speech and freedom of association. But we intend to aggressively safeguard these rights, while complying with all state and federal laws.

Specifically, in response to the points you raise.

1. The National Organization for Marriage is an IRC § 501(c)(4) organization that by the provisions in its articles and bylaws does not accept donations from business corporations. Thus, in accordance with those provisions, NOM receives no funding from business corporations and is therefore in complete compliance with Iowa law.

W. Charles Smithson
Iowa Ethics and Campaign Disclosure Board
August 31, 2009
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2. NOM's independent expenditures are being paid for by funds from its general treasury. No funds have been solicited by NOM for Iowa independent expenditures, and no designated contributions have been received for Iowa independent expenditures.

In sum, we have complied with all state election laws. Please address any future correspondence to me. Thank you.

Sincerely,

BOPP, COLESON & BOSTROM

Barry A. Bostrom

enc.

IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

An Independent Agency of the Executive Branch

W. CHARLES SMITHSON
Executive Director
& Legal Counsel

510 East 12th, Suite 1A
Des Moines, Iowa 50319
Telephone 515-281-4028
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BOARD MEMBERS:
James Albert, Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper
Saima Zafar

August 27, 2009

Brian Brown
Executive Director
National Organization for Marriage
1100 H Street NW, Ste. 700
Washington, DC 20005

Re: Clarification of Iowa Campaign Issues

Dear Mr. Brown:

The purpose of this letter is to clarify a couple of campaign issues and avoid potential problems in light of questions the Iowa Ethics and Campaign Disclosure Board has received concerning a solicitation statement made by your organization.

1. As part of the certification as a political corporation under rule 351—4.50, I want to remind you that an “insignificant and insubstantial amount” of NOM’s income is permitted to come from business corporations. Thus, as you solicit for your organization please keep this in mind in the event that you are going to continue to be active in Iowa elections.

2. The statement was made that your organization does not have to disclose donors. However, if you are going to engage in express advocacy activities in Iowa that is only partially correct. If people are going to donate to your organization for express advocacy activities in Iowa and those donations exceed \$750 in the aggregate in a calendar year, your organization will be required to form a PAC and disclose those contributors. The independent expenditure process in Iowa is not a vehicle to shield political contributors. It is a way for a group to disclose an expenditure it makes outside of a direct contribution to an Iowa committee. However, if you are accepting more than \$750 for political activities in Iowa, then you become a “permanent organization temporarily engaging in political activity” and would be required to disclose the contributors to your Iowa activities under Iowa Code sections 68A.402(9) and 68A.102(18). To continue to file an independent expenditure statement for future elections in Iowa would mean that your organization is not raising more than \$750 from outside sources for such purposes.

If you have any questions or concerns with this information, please notify me.

Sincerely,



W. Charles Smithson
Director & Counsel for the Board

August 31, 2009

W. Charles Smithson
Iowa Ethics and Campaign Disclosure Board
510 East 12th, Suite 1A
Des Moines, IA 50319

Re: National Organization for Marriage

Dear Mr. Smithson,

We wish to file a formal complaint against the National Organization for Marriage. NOM has complete disregard of Iowa law as they engage in express advocacy in our state, while refusing to release the identity of their donors, as is legally required in Iowa.

NOM has a history of funneling secret money throughout the country to engage in similar activity. They refer to their Iowa campaign as a "targeted intervention" into Iowa politics yet refuse to disclose who is behind their activity. Iowa voters deserve better than this and have enacted laws to prevent this type of deception.

As your office has outlined in a letter dated August 27, 2009, to Brian Brown, Executive Director of the National Organization for Marriage:

1. As a political corporation under rule 351—4.50, an "insignificant and insubstantial amount" of NOM's income is permitted to come from business corporations.
2. If NOM is accepting more than \$750 for political activities in Iowa, they become a "permanent organization temporarily engaging in political activity" and would be required to disclose the contributors under Iowa Code sections 68A.402(9) and 68A.102(18).

Based upon your letter and our findings, it appears as though NOM is attempting to operate in Iowa as a political corporation pursuant to Iowa Code Section 68A.503. As your letter states, NOM would be required to become a political committee if it receives over \$750 in contributions accepted "for express advocacy activity in Iowa."

On August 20, 2009, NOM self-reported they invested \$86,060 in TV and radio advertisements to influence an Iowa House special election. At the same time, they have repeatedly stated in solicitations that they have "the ability to protect donor identities" and have attempted to use their independent expenditure in Iowa as a vehicle to shield political contributors. We believe NOM has raised more \$750 to be qualified as a political committee under Iowa Code Section 68A.503.

Attached is a copy and below is a link to NOM's solicitation:

<http://www.nationformarriage.org/site/c.omL2KeN0LzH/b.5396321/k.BD98/Iowa.htm#burgmeier>

In addition, here is a link to their advertisement:

<http://www.youtube.com/watch?v=jaRRJF8NnDs&feature=channel>

NOM has complete disregard for Iowa law, while flaunting it to their donors across the country. Iowa voters deserve to know who is secretly funding NOM's agenda in our state. Disclosure is the bedrock of campaign finance laws of our state.

We request a thorough investigation into their activities, including detailed accounting of any and all contributions and their sources, as Iowans clearly deserve to know who is funding last minute advertising to try and influence tomorrow's election. We have copied Attorney General Tom Miller on this request and also respectfully ask his office to review NOM's illicit actions as well for other potential violations of Iowa law.

Sincerely,

Brad Clark
One Iowa

Connie Ryan Terrell
Interfaith Alliance of Iowa Action Fund

Cc: Attorney General Tom Miller



NATIONAL
ORGANIZATION
FOR MARRIAGE

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[Home](#) > [NOM Launches Reclaim Iowa Project](#)

NOM Launches Reclaim Iowa Project!

August 24, 2009 — Taking the battle for marriage back to the heartland, the National Organization for Marriage today launches its Reclaim Iowa Project.

The Reclaim Iowa Project is a multi-year campaign to pass a state constitutional amendment reversing last spring's same-sex marriage ruling from the Iowa Supreme Court. Iowans overwhelmingly oppose same-sex marriage, but a handful of politicians are determined to block any effort to give the people of Iowa a say in the matter. According to the latest polling, 67% of Iowans favor putting a marriage amendment on the ballot for a decision by all Iowa voters — not just a handful of judges.

Over the past several months, with the help of Congressman Steve King, NOM has laid the groundwork for its Reclaim Iowa Project, making over a million automated phone calls to Iowa families, and identifying 100,000 new supporters in Iowa.

Now it's time to take the next step.

Will you stand with us today?

Click here to join us with a monthly donation of \$10, \$30, or even \$100 a month to help save marriage!

NOM TV Ad Campaign Supporting Stephen Burgmeier

On September 1st, Iowans from three rural southeastern counties will vote in a special election in State District 90. We are proud to support Republican Stephen Burgmeier, who has made a strong commitment to giving Iowans the chance to vote on same-sex marriage.

Today, NOM is launching a TV and radio ad campaign in Iowa District 90, contrasting Stephen Burgmeier's support for a marriage amendment with Iowa Governor Chel Culver's very public "reluctance" to give Iowa voters a say in the matter. If elected, Burgmeier promises to be an outspoken advocate for marriage and family for the Republican party in the months leading up to the 2010 elections.

The NOM ads will run over the remaining 10 days of the campaign, ensuring that marriage features prominently in the closing days of the race.

If you live in Iowa and know anyone in the 90th, make sure they vote for Stephen Burgmeier on September 1st. Also, you can donate directly to his campaign by clicking here!

Help Make a Difference for Marriage!

This is the type of targeted intervention that your generous contributions make possible. Our opponents have long known that personnel drives policy — and they've been working for more than a decade to take out the best and brightest pro-family voices in targeted stealth campaigns. But now we have the ability to fight back!

Your gifts to NOM allow us to rapidly intervene not just in legislative debates, but also in key races across the country where a handful of house or senate seats could make the difference between whether a same-sex marriage bill or state marriage amendment passes or fails.

Best of all, as a 501(c)(4), NOM has the ability to protect donor identities, ensuring that you, your family, and your business is not targeted by gay marriage advocates for harassment.

Your gift of \$35, \$50 or even \$500 today will help fund more TV ads like the one we're airing in Iowa to help elect pro-family legislators all across the country. Please click here to make your gift today!

DONATE NOW!

Advocacy Center!

DONATE ▶

RADIO
SUPPORT THE RADIO AD!

TV AD
SPONSOR A NOM TV Ad!

Facebook Myspace Twitter YouTube

NATIONAL ORGANIZATION FOR MARRIAGE

Home | Pressroom | NOM Blog | About Us | Donate | Get Informed | Get Involved

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Request for Public Inspection or Copy of Exempt or Political Organization IRS Form

▶ Type or print clearly. Request may be rejected if the form is incomplete or illegible.



TIP You may not have to complete Form 4506-A to get the copies you need.

- **Internet.** Form 8871, Political Organization Notice of Section 527 Status, and Form 8872, Political Organization Report of Contributions and Expenditures, are available for inspection and printing from the Internet. The website address for both forms is www.irs.gov/polorgs.
- **Public disclosure by the organization.** Exempt or political organizations must make their returns, reports, notices, and exempt applications available for public inspection. You can visit the organization to inspect the material instead of requesting it from the IRS. The organization may be able to mail the copies to you.

1 Exempt or political organization. If a multiple request, please attach list of names, forms, and tax years.

Name National Organization for Marriage	Employer identification number (if known) 26 : 0240498
Address 20 Nassau Street Suite 242	
City or town, state, and ZIP code Princeton, NJ 08542	

2 Requester

Name Danielle Truskovsky	Contact person
Address	Phone
City or town, state, and ZIP code	Date September 29, 2009

- 3 Category of requester:** Commercial user Non-commercial scientific institution
You must check a box. Educational institution Media All others

4 Reason for request. All requesters except for commercial users must provide an explanation of how the records will be used to avoid being charged the commercial rate. Attach additional sheets if necessary.

For column research: NOM is currently under an active investigation by the State of CA (IA and ME may investigate as well). The group has failed to release its returns for 2008 -- there may be multiple amendments.

Lines 5-9. For each applicable form, check the box(es) for the item(s) you are requesting. You may request more than one form. For each form requested, check either the copy, inspection, or CD/DVD box and enter the specific tax year(s), as indicated. If ordering a partial set on CD/DVD, indicate the format, state(s), and month(s) requested.

5 Form 990, Form 990-EZ CD/DVD Format: Alchemy Raw
 Copy Inspection
 Tax year(s) requested: **2008 ; plus all amendments**
 State(s): _____; _____; _____
 Months: _____; _____; _____

6 Form 990-PF CD/DVD Format: Alchemy Raw
 Copy Inspection
 Tax year(s) requested: _____; _____; _____
 State(s): _____; _____; _____
 Months: _____; _____; _____

7 Form 990-T (501(c)(3) organizations filed after August 17, 2006) CD/DVD Format: Alchemy Raw
 Copy Inspection
 Tax year(s) requested: _____; _____; _____
 State(s): _____; _____; _____
 Months: _____; _____; _____

<p>8 Form 5227 (for tax years beginning after December 31, 2006) <input type="checkbox"/> Copy <input type="checkbox"/> Inspection Tax year(s) requested: _____; _____; _____</p>	<p>9 Form 1023; 1024 or Determination Letter <input type="checkbox"/> Copy <input type="checkbox"/> Inspection Tax year(s) requested: _____; _____; _____</p>
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IRS Use Only

The form requested above was inspected by (name of requester)	IRS office where inspection was made
Signature of employee present at inspection	Date

Follow the money Federal gov't must investigate NOM's financial practices

By DANIELLE TRUSZKOVSKY

Sep. 18, 2009

BEFORE WRITING THIS column, I sat and stared at my computer screen for what seemed like ages trying to figure out a way to make the topic of IRS regulations seem a bit more interesting.

Let's face it, most people just don't want to read about a subject as dry as tax law. Unfortunately, one of the only ways to detect questionable practices by organizations like the National Organization for Marriage is to first acquire the group's tax return, research it in detail, and make public the findings. Not surprisingly, NOM's initial return generated more questions than answers.

Obtaining the return has been an ongoing process spanning many months. On March 25, 2009, the group Californians Against Hate sent a certified request to NOM at their headquarters (20 Nassau St., Suite 242, Princeton, N.J.) for a copy of their 2007 tax return (Form 990). Under IRS regulations, NOM was required to release this information to the group within 30 days or face penalties of \$20 per day. As of this week, NOM had not turned over their return to Californians Against Hate.

Back in April, I personally visited the NOM headquarters in Princeton to request a copy of the 990. Although I visited suite 242 numerous times during normal office hours, no one ever answered the door at the tiny, one-room space. It was surprising that a supposed "national" organization that donated hundreds of thousands of dollars in elections around the country and ran multi-million dollar media campaigns did not have even one person at their tiny office to manage this huge effort. If the national headquarters is essentially empty, then who is doing the work and where is all of the money coming from?

I made another attempt in May to reach someone at the NOM Princeton office to no avail — the only reason the group's 2007 return is currently available to the public is because the IRS released a copy at the end of August.

After reviewing the 2007 return, there were several questions I had, so once again I decided to visit NOM, this time at their new office at 1100 H St., N.W., Suite 700 in Washington, D.C. As in Princeton, this office also is shared space. In fact, NOM's name doesn't appear at all on the list of tenants or even on the door. Unlike in Princeton, when I knocked on suite 700 someone actually answered. I was greeted by NOM Executive Director, Brian Brown.

WHAT INTERESTED ME most was the fact that the 2007 filing that I possessed was an amended return stamped as received by the IRS on June 11, 2009 — more than a year after the initial 990 should have been filed. Would Brown be willing to release the original filing?

Brown: “No. There’s no sense in releasing an original return because this is now the return.”

Me: “But, if it’s dramatically different than the original ...”

Brown: “Well, you may be interested in knowing what it is, but we’re not releasing it.”

Me: “OK. Is it dramatically different than the original return?”

Brown: “No, I know that for example there were changes in addresses ... We changed addresses, I know there were also changes to some ... some vendors I think had been incorrectly put in as independent contractors when they should not have been put in as independent contractors. There were errors like that that are ... that are relatively common and we corrected them and we gave them back to the IRS and that’s why the return is amended but we’re not going to be releasing the original return.”

Me: “Is there any reason why you went back over [the return] a year later?”

Brown: “We constantly are checking through them and making sure there ... there aren’t any errors.”

Upon further inspection, Brown revealed that the 990 I possessed was not the final return, there was another amendment. So what was changed on this newest form, which remains unavailable? Apparently, the itemization of highest paid independent contractors is deleted because they were the aforementioned miscategorized vendors. This section included a \$166,000 payment to Common Sense America for consulting services. Not surprisingly, Common Sense America is one of the groups that is listed as sharing office space with NOM in Princeton. Brown admitted that he was “president and volunteer” for the organization, but denied that NOM was funneling money to its board members. The return also listed the NOM salary for Brown as \$57,292.

AS IF THE NOM tax filings weren’t confusing enough, Brian indicated that there were actually a total of three amendments to the 2007 return. If this information is correct, it brings the total of NOM filings for the tax year June-December 2007 up to a whopping four returns — one initial and three amended. According to the National Center for Charitable Statistics, “less than one percent of returns received by the IRS are amended at a later date.”

And how many returns are amended three times? Unfortunately, it is so rare that a foundation amends its return three times that neither the IRS nor NCCS provide these statistics. More importantly, why would an organization need to amend its filing so many times unless it was either purposefully attempting to conceal or revise potentially damaging information or numerous egregious errors? Either way, this begs the questions: Where is the oversight and why aren’t there more compelling regulations for charitable organizations to make their records transparent and available to the public?

NOM is an organization with a mission to pass discriminatory legislation in all states that propose that same-sex couples have the same civil rights as opposite-sex couples. Currently NOM is under an active investigation by California to determine if the group was set up by the Mormon Church to pass Proposition 8. Nearly 75 percent of the money used to help pass Prop 8 in California came from Mormon donors — mostly from outside of the state.

NOM has been accused of money laundering in Maine and the state's Commission on Governmental Ethics & Election Practices is considering an investigation into NOM to see if it has violated Maine's campaign finance laws by purposefully attempting to conceal donor names. Currently, 99 percent of the money being used in Maine to support anti-gay legislation has come from NOM and three major religious contributors: James Dobson's Focus on the Family, the Knights of Columbus and the Roman Catholic Diocese of Portland. The Iowa Ethics & Campaign Disclosure Board also is questioning NOM's practices for attempting to conceal out-of-state donors in violation of the state's campaign finance laws.

NOM also is now working in D.C., New Jersey, New York, Vermont, Rhode Island and New Hampshire. Although individual states are doing their part in oversight, they are limited by their boundaries and resources and, unfortunately, the anti-gay legislation that NOM backs is extremely time sensitive. Meanwhile, the group is allowed to operate virtually unmonitored by the federal government. NOM's agenda involves an important public issue — swaying elections state by state — and its practices have come under fire in every state in which they operate.

Since the group seems to be pioneering the way to circumventing the democratic process, one can only wonder when the federal government will take notice.

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