

JAMES BOPP, JR.¹
Senior Associates
RICHARD E. COLESON¹
BARRY A. BOSTROM¹

Associates
RANDY ELF²
JEFFREY P. GALLANT³
ANITA Y. WOUDEBERG¹
JOSIAH S. NEELEY⁴
JOSEPH E. LA RUE⁵
SARAH E. TROUPIS⁶
KAYLAN L. PHILLIPS⁷
JOSEPH A. VANDERHULST¹
SCOTT F. BIENIEK⁸

¹admitted in Ind.
²admitted in NY and Penn.
³admitted in Va.
⁴admitted in Tex.
⁵admitted in Oh.
⁶admitted in Wis.
⁷admitted in Okla.
⁸admitted in Ill.

BOPP, COLESON & BOSTROM
ATTORNEYS AT LAW
(not a partnership)

THE NATIONAL BUILDING
1 South Sixth Street
TERRE HAUTE, INDIANA 47807-3510

Telephone 812/232-2434 Facsimile 812/235-3685

THOMAS J. MARZEN
(1946-2007)

E-MAIL ADDRESSES
jboppjr@aol.com
rcoleson@bopplaw.com
bbostrom@bopplaw.com
relf@bopplaw.com
jgallant@bopplaw.com
awoudeberg@bopplaw.com
jnneeley@bopplaw.com
jlarue@bopplaw.com
stroupis@bopplaw.com
kphillips@bopplaw.com
jvanderhulst@bopplaw.com
sbieniek@bopplaw.com

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SEP 22 2009

MAINE ETHICS COMMISSION

September 21, 2009

Jonathan Wayne
Executive Director
Commission on Governmental Ethics
135 State House Station
Augusta, ME 04333-0135
207-287-4179

Re: National Organization for Marriage, Inc.

Dear Mr. Wayne:

Please be advised that this firm represents the National Organization for Marriage, Inc. (NOM) and writes this letter on its behalf. NOM has become aware of your letter of August 27, 2009, advising StandforMarriageMaine.com PAC of the allegations being made by Fred Karger and Californians Against Hate, and giving StandforMarriageMaine an opportunity to respond prior to the Commissions meeting on October 1, 2009. We also have also received copies of the emails you provided on September 16, 2009, submitted by Mr. Karger. This is NOM's response to Mr. Karger's allegations.

“‘Contribution’ [under Maine law] includes, but is not limited to:

- A. Funds that the contributor specified were given in connection with a ballot question;
- B. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating, promoting, defeating or influencing in any way a ballot question;
- C. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating, promoting, defeating or influencing in any way a ballot question when viewed in the context of the contribution and the recipient's activities regarding a

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- ballot question; and
- D. Funds or transfers from the general treasury of an organization filing a ballot question report.”

Section 1056-B.2.A. “Any person that is not a political committee who receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$5,000 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must [register as a Ballot Question Committee (BQC) within 7 days and] file reports with the Commission” Sec. 1056-B.

NOM is in Compliance with Maine Law

NOM is a Virginia nonprofit issue advocacy corporation, income tax exempt under IRC § 501(c)(4). It is conducting its Maine activities in good faith compliance with Maine law after requesting and receiving specific legal advice before it began activities. The allegations being made by Mr. Karger are false.

As you state in your letter, “Mr. Karger alleges that ‘the four funders of Stand for Marriage Maine are merely conduits for those wishing to hide their contributions. These entities are laundering money to evade the disclosure of the actual contributors to Stand for Marriage Maine.’” Of course, use of the phrase “laundering money” is pejorative, and apparently intended to allege that NOM is not in compliance with Maine campaign finance law. He relies primarily on unfounded allegation and innuendo.

We respond to Mr. Karger’s specific allegations/observations as follows: Mr. Karger notes large contributions from the National Organization for Marriage (NOM). NOM is a national organization that is active in several states across the country. Its projected budget for 2009 is \$7 million. The vast majority of donations are not designated for activities in any particular state. NOM makes large contributions to various state ballot measure committees from its general treasury and, with a few exceptions discussed below, did not solicit or accept designated contributions for Maine.

Specific mention in your letter is made of the March 13, and March 31, 2009 email solicitations from NOM that mention Maine. They also mention Connecticut, New Hampshire, and Vermont. The emails do not request designated donations for activities in Maine or any other state. The hyperlink, provided in the March 31 email, linked to a NOM donation web page that did not permit designation of donations for any particular project. *See attached copy of the NOM donation page linked at [www. nationformarriage.org](http://www.nationformarriage.org).* Further, just as a simple matter of chronology, these emails were sent before same-sex marriage passed the Maine legislature and before NOM was involved in any way with a referendum effort in Maine. At the time, NOM was

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only involved in grassroots lobbying efforts in Maine, which were not activities that required campaign disclosure of any kind.

Last week, Mr. Karger supplemented his complaint with copies of several NOM emails. We respond as follows: First, one email (7-24-09) doesn't mention Maine at all, thus, any contributions received from that email cannot be counted toward the BQC \$5,000 registration threshold.

Second, three emails don't discuss Maine activities or events, but merely mention Maine in a list with other states, and do not specifically reference the Maine referendum. One email (5-15-09) was devoted to discussing events in New Hampshire, had a general solicitation, and mentioned one time without specific comment Maine, Iowa, New York, New Jersey, and D.C. Another email (5-22-09) focuses on New Hampshire and New York, and has a one sentence general solicitation for activities in Maine. A third email (8-28-09) discusses a Washington Post article and events in Iowa, with a general solicitation for "Iowa, Maine, and everywhere across this great land." Any contributions received from these three emails cannot be counted toward the BQC \$5,000 registration threshold.

Third, three emails (7-8-09, 8-7-09, and 9-4-09) solicited contributions directly to StandforMarriageMaine.com. Two emails (7-24-09, 8-26-09) solicited contributions directly to the NOM NY PAC. And one email (8-26-09) solicited contributions to NOM for activities in New Jersey. Contributions, if any, that went directly to the ME PAC or NY PAC, cannot be counted toward the BQC registration threshold. Contributions solicited for activities in other states cannot be counted toward the BQC registration threshold.

Fourth, five emails (5-6-09, 5-8-09, 6-12-09, 7-10-09, and 8-7-09) solicited contributions for activities in Maine and other states. It is impossible to determine from the responses to these emails which state the contributor was desiring to contributing toward, if any. Since several states were discussed in these emails, the solicitation was not "specifically for the purpose of . . . influencing a [Maine] ballot question." 21-A M.R.S.A. 1056-B.2-A.B. Further, the donation page does not permit designation of contributions, so it is impossible to determine whether funds received were provided "for the purpose of . . . influencing in any way a [Maine] ballot question. 21-A M.R.S.A. 1056-B.2-A.C. For these reasons, any contributions received from these emails cannot be counted toward the BQC registration threshold.¹

Fifth, only two emails (7-17-09 and 7-31-09) may be interpreted to solicit contributions to NOM for the Maine referendum, and any contributions received as a result may count toward the

¹Even if the Commission disagrees with this interpretation, the total contributions to NOM received from these emails is less than the BQC \$5,000 threshold.

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BQC registration threshold. According to NOM's records, only \$295.00 in contributions were received in response to these two emails. No other solicitations were made for ballot measure activities in Maine by email, direct mail, or other means. *If and when the threshold is met, NOM will register as a BQC and file reports as required by Maine law.*

Mr. Karger calls the reporting of large contributions from these organizations "irregularities." But there is nothing irregular here, just unsupported accusations, assumptions, and guesses. Such baseless charges could be made against any referendum PAC that accepts corporate contributions and do not merit investigation. The Commission's Standards for Requests for Investigation detailed in your memo emailed to Fred Karger and dated August 14, 2009 require "setting forth *such facts with sufficient details as are necessary to specify the alleged violation . . . based on personal knowledge*" or other authoritative sources (emphasis added). This standard has not been met, thus, no investigation is justified by Mr. Karger's complaint.

Since Mr. Karger has not shown sufficient facts to justify the Commission's use of agency resources to investigate the National Organization for Marriage, no investigation is warranted.

Section 1056-B is Unconstitutional

In addition, Section 1056-B is unconstitutional because it burdens an association's First Amendment right of free speech by requiring such to register and report as if they were political action committees, when they are not political action committees, and when they do not have the major purpose of influencing a Maine ballot question. Organizations meeting the BQC definition must register with the Commission, appoint a treasurer, identify principal officers, primary fundraisers, and decisionmakers, keep itemized donor and expenditure records for at least four years, file campaign finance reports in the same manner as a PAC (including 24-hour Reports for some expenditures), and continue to file reports until they terminate in the same manner as a PAC. Failure to file a report is subject to a civil penalty of \$10,000.

Section 1056-B is subject to "exacting scrutiny" to ensure that it is "narrowly tailored" to an "overriding state interest." *Volle v. Webster*, 69 F. Supp. 2d 171, 172 (D.C. Me. 1999) (finding Maine's registration statute violates First Amendment) (quoting *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995)). NOM has received less than \$5,000 in contributions from solicitations for the Maine ballot question, and spent a minuscule amount for emails that solicit contributions for the Maine ballot question. Its projected budget of \$7 million for 2009² demonstrates that it does not have the major purpose of influencing a Maine ballot question.

²NOM's total expenditures for 2008 were approximately \$3.5 million.

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Thus, "Maine's registration statute goes considerably beyond what is permitted and is therefore unconstitutional" as it applies to NOM. 69 F. Supp. 2d at 176.

For the above reasons, no investigation is warranted. If I may be of further assistance in this matter, please contact me. Thank you.

Sincerely,

BOPP, COLESON & BOSTROM

A handwritten signature in black ink, appearing to read "Barry A. Bostrom". The signature is written in a cursive, flowing style with a large initial "B".

Barry A. Bostrom

enc.



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Select Gift Frequency

I would like to make a one-time gift for the following amount:

Enter Donation Amount Here:* \$

I would like to make a recurring gift.

Gift Amount* Payment Frequency

\$ Monthly

NOTE: This transaction will count as the first payment toward your total gift amount.

Donor Information

First Name:*

Last Name:*

Email:

Address Line 1:*

Address Line 2:

City:*

State:* -- please make a selection --

ZIP/Postal Code:*

Phone:

Payment Information

Payment Method **Credit/Debit Cards**

Cardholder's Name:*

Credit Card Number:*

CVV Number:* [Explain](#)

Credit Card Type:* **American Express**



Credit Card Expiration:* September 2009

Billing Information

If the billing information is the same as the contact information check this box.
If not please fill out the information below:

Address Line 1:*

Address Line 2:

City:*

State:

Province:

ZIP/Postal Code:*

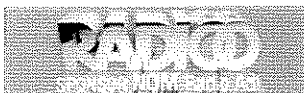
Country:*

Contributions or gifts to the National Organization for Marriage, a 501(c)(4) organization with QNC status, are not tax-deductible. The National Organization for Marriage does not accept contributions from business corporations, labor unions, foreign nationals, or federal contractors; however, it may accept contributions from federally registered political action committees. Donations may be used for political purposes such as supporting or opposing candidates. No funds will be earmarked or reserved for any political purpose.

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