

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MARY ADAMS, ET AL.,)
)
 Plaintiffs)
) CIVIL NO. 1.10-CV-258-JAW
 v.)
)
 MAINE MUNICIPAL ASSOCIATION,)
)
 Defendant)

PLAINTIFFS' FIRST AMENDED COMPLAINT

This is a Complaint for injunctive relief against the Maine Municipal Association (MMA) on account of its monetary contributions to and staff participation in political action committees dedicated either to opposing or supporting Direct Citizen Initiatives arising under Article IV, Part Third, Section 18 of the Maine Constitution. Because of MMA's status as an instrumentality of Maine municipalities and because MMA's income is public in character, the Plaintiffs assert that such contributions and participation are illegal governmental expenditures that violate the individual Plaintiffs' civil rights under the U.S. and Maine Constitutions. In its capacity as a MMA member, Plaintiff Cyr Plantation also asserts that such contributions and participation and, indeed, all MMA's partisan and political activities are *ultra vires* and exceed the corporate purposes stated in MMA's articles of incorporation.

THE PARTIES

Plaintiffs

1. Plaintiff Mary Adams was an original signatory pursuant to 21-A M.R.S.A. § 901 of an application to place the "Maine Taxpayer Bill of Rights Initiative" on a statewide ballot in 2006. She is also a registered voter, property taxpayer and resident of Garland, Maine, which

town is a MMA municipal member and has donated both time and personal funds to promote one or more of the taxpayer initiatives referred to herein.

2. Plaintiff John H. Wibby, Jr. was an original signatory pursuant to 21-A M.R.S.A. § 901 of an application to place the “Maine Taxpayer Bill of Rights Initiative” on a statewide ballot in 2006. He is also a registered voter, property taxpayer and resident of Gray, Maine, which town is a MMA municipal member and has donated both time and personal funds to promote one or more of the taxpayer initiatives referred to herein.

3. Plaintiff Pembroke Schaeffer was an original signatory pursuant to 21-A M.R.S.A. § 901 of an application to place the “Maine Taxpayer Bill of Rights Initiative” on a statewide ballot in 2006. He is also a registered voter, property taxpayer and resident of Brunswick, Maine, which town is a MMA municipal member and has donated both time and personal funds to promote one or more of the taxpayer initiatives referred to herein.

4. Plaintiff Cyr Plantation is a Maine Plantation organized pursuant 30-A M.R.S.A. Chapter 301 and a MMA municipal member.

Defendant MMA

5. Defendant MMA is a municipal league based in Augusta, Maine. It was originally incorporated in 1953 as a “corporation without stock” pursuant to 13 M.R.S.A., Chapter 81. The MMA’s Certificate of Organization (which has not been amended) states:

“The purposes of said corporation are to serve as an association for the promotion of good municipal government; to be a non-political and non-partisan organization dedicated to the purpose of promoting good municipal government by the exchange of ideas and information through the united effort and cooperation of its members”.

6. According to MMA's 2010 Strategic Report, all but four of Maine's 489 municipalities are MMA members.

7. Although MMA is organized as a private corporation without stock, it functions as a governmental or quasi-governmental entity. Specifically:

A. Article IV, Section 3 of MMA's bylaws provide: "The Executive Committee of the Association shall consist of twelve (12) members, including the officers of the Association, with the exception of the Executive Director, and nine (9) Executive Committee members. Throughout their terms of office, each Executive Committee member shall hold the position of municipal officer, as defined in 1 M.R.S.A. §72(12), or the position of town or city manager or chief appointed administrative official, in an active Member municipality."

B. Article IV, Section 2 of MMA's bylaws provide: "The officers of the Association shall be a President, a Vice-President, the Immediate Past President, and the Executive Director. Throughout their terms of office, each officer, with the exception of the Executive Director, shall hold the position of municipal officer, as defined in 1 M.R.S.A. §72(12), or the position of town or city manager or chief appointed administrative official, in an active Member municipality."

C. Article V, Section 2 of MMA's bylaws provides in relevant part: "At each annual election the Vice President and Executive Committee members shall be elected by a mail Ballot. Ballots shall be prepared and mailed by the Executive Director to the chief executive officer of each Municipal member at least Thirty (30) days prior to the day of the annual election. . . . The Ballot may be cast by a

majority of the municipal officers, or a municipal official designated by a majority of the municipal officers of each Municipal member.”

D. 30-A M.R.S.A. § 5722(9) provides in relevant part: “The Legislature recognizes the Maine Municipal Association as a nonprofit advisory organization and declares it to be an instrumentality of its member municipal and quasi-municipal corporations with its assets upon its dissolution to be delivered to the Treasurer of State to be held in custody for the municipalities of the State.”

E. MMA is tax exempt pursuant to 26 U.S.C. § 115.

F. According to MMA’s 2004-2009 Audited Financial Statements, MMA “follows the applicable provisions of Government Accounting Standards Board’s (GASB) U.S. generally accepted accounting principles (GAAP) for state and local governments through its pronouncements (Statements and Interpretations).”

G. MMA’s income is largely derived from (1) dues collected from its municipal members, and (2) administrative fees charged to four insurance trusts affiliated with but separate from the MMA: Maine Municipal Employees Health Trust, Maine Municipal Association Property and Casualty Pool, Maine Municipal Association Unemployment Compensation Group Fund and Maine Municipal Association Workers’ Compensation Fund.

H. MMA is subject to the Maine Freedom of Access Act, 1 M.R.S.A. §§ 401–521.

FACTUAL BACKGROUND

8. MMA maintains an internal Legislative Policy Committee and takes positions on a variety of political issues and actively lobbies the Maine Legislature on issues of concern.

9. MMA maintains a Legislative Initiatives Fund (LIF), which is funded at the Executive Committee's discretion by allocations from MMA's General Fund.

10. During the decade 2000-2009, MMA committed substantial monetary, staff and other resources to four political action committees (PACs) to support or oppose five Direct Citizen Initiatives arising under Article IV, Part Third, Section 18 of the Maine Constitution.

The PACs are:

- A. Citizens to Reduce Local Property Taxes Statewide;
- B. Citizens Unified for Maine's Future;
- C. Citizens United to Protect Our Public Safety, Schools and Communities;
- and
- D. Citizens Who Support Maine's Public Schools.

The initiatives were:

- A. 2003-2004 - School Finance and Tax Reform Act of 2003;
- B. 2004 - An Act to Impose Limits on Real and Personal Property Taxes;
- C. 2006 – An Act to Enact a Maine Taxpayer Bill of Rights;
- D. 2009 – An Act to Provide Tax Relief; and
- E. 2009 – An Act to Decrease the Automobile Excise Tax and Promote Energy Efficiency.

11. MMA (a) coordinated with other interest groups either in organizing or managing the PACs (or both) and the campaign to support or oppose, (b) provided MMA staff support for the PACs and campaigns, including personnel in leadership roles within the PACs, and (c) provided a total of \$1,975,005.14 in cash and in-kind contributions MMA financial and staff resources.

12. The MMA Executive Committee authorized all transfers to the LIF and all participation in and monetary and in-kind contributions to each PAC and campaign.

COUNT I
42 U.S.C. § 1983
(Violation of First and Fourteenth Amendments to the U.S. Constitution)

13. The Plaintiffs repeat and reallege the statements contained in all previous paragraphs herein by reference as though set forth in full.

14. MMA is a “state actor” for purposes of 42 U.S.C. § 1983 in that it (a) is entwined with local government entities in its management and control, (b) has assumed functions of local government, and (c) has a symbiotic relationship with local government in its funding and management. *Brentwood Academy v. Tennessee Secondary School Athletic Association*, 531 U.S. 288 (2001); *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163 (1972).

15. MMA contributions to and participation in PACs supporting or opposing Direct Initiatives violate the individual Plaintiffs’ First and Fourteenth Amendment rights because it is government “taking sides” and conferring an unlawful advantage to one side in the particular initiative question in direct contravention of the nation’s democratic process and contrary to “the root philosophy of a republican form of government”, *Mountain States Legal Foundation v. Denver School District*, 459 F.Supp. 357, 360-61 (D.Colo. 1978), *aff’d on other grounds*, 704 F.2d 501 (10th Cir. 1983), and are “direct governmental interference with an initiative”, *Colorado Taxpayers Union, Inc. v. Romer*, 750 F.Supp. 1041, 1045 (D. Colo. 1990), *appeal dismissed for lack of standing*, 963 F.2d 1394 (10th Cir. 1992).

16. MMA’s conduct demonstrates a repeated pattern of injury for which the individual Plaintiffs have no remedy at law.

17. MMA's actions are of a type "capable of repetition, yet evading review". *Meyer v. Grant*, 486 U.S. 414, 417 fn.2 (1988).

COUNT II
(Declaratory Judgment – 28 U.S.C. §§ 2201-2202)

18. The Plaintiffs repeat and reallege the statements contained in all previous paragraphs herein by reference as though set forth in full.

19. By its actions, MMA has violated the individual Plaintiffs' rights arising under the U.S. Constitution and seek the court's declaration as to the nature and extent of such violation.

COUNT III
(Violation of First and Fourteenth Amendments to the U.S. Constitution)

20. The Plaintiffs repeat and reallege the statements contained in all previous paragraphs herein by reference as though set forth in full.

21. By its actions, MMA has violated the individual Plaintiffs' First Amendment free speech rights as incorporated to the states pursuant to the Fourteenth Amendment.

COUNT IV
(Violation of Maine Constitution Article I, Section 4; Article IV, Part Third, Section 18)

22. The Plaintiffs repeat and reallege the statements contained in all previous paragraphs herein by reference as though set forth in full.

23. By its actions, MMA has violated the individual Plaintiffs' free speech rights contained in Article I, Section 4 of Maine's Constitution, which the Maine Supreme Judicial Court has held to be no less restrictive than the First Amendment to the U.S. Constitution.

24. By its actions, MMA has violated the individual Plaintiffs right to exercise the Direct Initiative Process contained in Article IV, Part Third, Section 18 of Maine's Constitution,

which the Maine Supreme Judicial Court has held to be in the nature of an “absolute right”.
Farris ex rel. Dorsky v. Goss, 60 A.2d 908, 911 (Me. 1948).

COUNT V
(Illegal Expenditures of Public Funds)

25. The Plaintiffs repeat and reallege the statements contained in all previous paragraphs herein by reference as though set forth in full.

26. MMA contributions to and participation in PACs constitute the illegal expenditure of public money for partisan political purposes in the absence of statutory authority. *The Campaign for Sensible Transportation v. Maine Turnpike Authority*, No. CV-91-952, 1991 Me.Super. Lexis 228, *app. dismissed as moot* 658 A.2d 213 (Me. 1995); *Stanson v. Mott*, 551 P.2d 1 (Cal. 1976); *Citizens to Protect Public Funds v. Board of Education of Township of Parsippany-Troy Hills*, 98 A.2d 643 (N.J. 1953); *Opinion of the Maine Attorney General No. 04-5*.

WHEREFORE, the individual Plaintiffs request this court to:

- (a) permanently enjoin the MMA from such further illegal contributions to and participation in PACs or other interference with citizens’ initiatives;
- (b) order repayment of all money illegally expended and the value of services provided to the Treasurer of State in custody for distribution to the municipalities of Maine;
- (c) make a declaration that the Defendant has violated the individual Plaintiffs’ Constitutional Rights, including but not limited to the Plaintiffs’ First and Fourteenth Amendment Rights;
- (d) find that the Defendant has violated the individual Plaintiffs’ rights under the Maine Constitution;

(e) award the Plaintiffs their attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and pursuant to private attorney general doctrine; and

(f) grant them such other and further relief as justice may require.

COUNT VI

(Request for Declaratory Relief by Cyr Plantation - *Ultra Vires* Activities by MMA)

27. The Plaintiffs repeat and reallege the statements contained in all previous paragraphs herein by reference as though set forth in full.

28. 14 M.R.S.A. §§ 5953 and 5954 grant this court authority to determine an entity's rights and legal status, the construction of statutes and "other legal relations".

29. Plaintiff Cyr Plantation is a MMA Municipal Member.

30. MMA's Certificate of Organization provides that the organization will be both "non-partisan" and "non-political".

31. Plaintiff Cyr Plantation alleges that all of MMA partisan and political activities, including but not limited to its PAC contributions and participation, lobbying, maintenance of a Legislative Policy Committee and other sundry political activities, violate the clear restrictions of its corporate charter and are therefore *ultra vires*. *Good Will Home Ass'n v. Erwin*, 266 A.2d 218 (Me. 1970).

WHEREFORE, Plaintiff Cyr Plantation requests this court to:

- (a) declare MMA's partisan and political activities *ultra vires*;
- (b) permanently enjoin the MMA from such further partisan and political activity;
- (c) award Plaintiff Cyr Plantation its attorneys' fees both equitably and pursuant to private attorney general doctrine, and its costs; and
- (d) grant such other and further relief as justice may require.

DATED: September 24, 2010

/s/ David P. Crocker

David P. Crocker
Center for Constitutional Government
The Maine Heritage Policy Center
4 Milk Street, Suite 201
P.O. Box 7829
Portland, ME 04101
(207) 321-2550
dcrocker@mainepolicy.org

Attorney for Plaintiffs