

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’ STATEMENT OF MATERIAL FACTS
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Plaintiffs Mary Adams, John H. Wibby, Jr., Pembroke Schaeffer and Cyr Plantation, by and through counsel, offer this Statement of Material Facts in support of their Motion for Summary Judgment in the above-captioned matter.

I. Plaintiffs

A. Mary Adams

1. Mary Adams (“Adams”) was an original signatory pursuant to 21-A M.R.S.A. § 901 of applications to place the “Maine Taxpayer Bill of Rights Initiative” on a statewide ballot in 2006 and “An Act to Provide Tax Relief” on a statewide ballot in 2009. (Adams Declaration ¶¶ 6, 7; App. 142, 169).

2. For all applicable periods covered in this civil action, Adams was a registered voter and resident of Garland, Maine (Adams Declaration ¶ 2)

3. For all applicable periods covered in this civil action, Garland was a Maine Municipal Association (“MMA”) municipal member (MMA Response to Plaintiffs’ Second Set of Interrogatories Answer to Interrogatory No. 3, App. 22)

4. For all applicable periods covered in this civil action, Adams was a property taxpayer in both Garland and Dover-Foxcroft, Maine. (Adams Declaration ¶ 2)

5. Adams has donated time, effort and/or personal funds to promote or defeat one or more of the taxpayer initiatives referred to in paragraph 10 of the Plaintiffs' Amended Complaint. (Adams Declaration ¶¶ 4, 6, 7)

B. John H. Wibby, Jr.

6. Plaintiff John H. Wibby, Jr. ("Wibby") 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. (Wibby Declaration ¶ 5; App. 142)

7. For all applicable periods covered in this civil action, Wibby was a registered voter and resident of Yarmouth or Gray, Maine (Wibby Declaration ¶¶ 2, 3)

8. For all applicable periods covered in this civil action, Gray and Yarmouth were MMA municipal members (MMA Response to Plaintiffs' Second Set of Interrogatories Answer to Interrogatory No. 3, App. 22)

9. For all applicable periods covered in this civil action, Wibby was a property taxpayer in Yarmouth, Maine until 2005 and a property taxpayer in both Yarmouth and Gray, Maine, thereafter. (Wibby Declaration ¶ 2)

10. Wibby has donated time, effort and personal funds to promote one or more of the taxpayer initiatives referred to in paragraph 10 of the Plaintiffs' Amended Complaint. (Wibby Declaration ¶¶ 4, 5, 6)

C. Pembroke Schaeffer

11. Plaintiff Pembroke Schaeffer (“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. (Schaeffer Declaration ¶5; App. 142)

12. For all periods covered in this civil action, he was also a registered voter, property taxpayer and resident of Brunswick, Maine (Schaeffer Declaration ¶¶2, 3), which town was a MMA municipal member (MMA Response to Plaintiffs’ Second Set of Interrogatories Answer to Interrogatory No. 3, App. 22).

13. Schaeffer has donated both time and personal funds to promote one or more of the taxpayer initiatives referred to in the Plaintiffs’ Amended Complaint. (Schaeffer Declaration ¶¶4, 5, 6, 7)

D. Cyr Plantation

14. Plaintiff Cyr Plantation is a Maine Plantation organized pursuant 30-A M.R.S.A. Chapter 301. (Deveau Declaration ¶ 2)

15. For all applicable periods covered in this civil action, Cyr Plantation was a MMA municipal member. (Deveau Declaration ¶ 2; Defendant’s Answer to Plaintiffs’ Amended Complaint ¶ 4 (hereinafter, “Amended Answer”)).

II. Defendant Maine Municipal Association

A. Organization, Governance and Legal Status

16. Defendant MMA is a municipal league based in Augusta, Maine. (Amended Answer ¶ 5; Bowley, “Maine Municipal Association Celebrates 75 Years”, *Bangor Daily News* 2011-02-03, App. 1016)

17. MMA incorporated itself in 1953 as a “corporation without stock” pursuant to 13 M.R.S.A., Chapter 81. The MMA’s 1953 Certificate of Organization 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”.

(App. 969; Amended Answer ¶ 5)

18. For all periods covered in this civil action, the MMA’s Executive Committee (hereinafter “EC”) “is established in the MMA Bylaws as the governing body of the Maine Municipal Association. The Committee is composed of twelve elected or appointed municipal officials including a President, Immediate Past President, Vice President and nine Executive Committee members (three three-year staggering terms). Executive Committee members are elected by the membership by mail ballot in advance of the MMA Annual Business meeting.”

(Parties Joint Stipulation ¶ 41; MMA Answers to Plaintiffs’ First Set of Interrogatories, Interrogatory 2, App. 16)

19. MMA is subject to the Maine Freedom of Access Act (“FOAA”), 1 M.R.S.A. §§ 402(3), 408, and has had a formal FOAA policy since 2006. (EC Minutes 2008-06-25

(hereinafter “Minutes”), App. 858)

20. 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.”

21. For all applicable periods in this civil action, nearly 100 percent of Maine’s municipalities were municipal members of the MMA. (MMA Strategic Plan 2009, 2010, App. 991, 1010; Austin Letter to Maine Ethics Commission 2006-12-01, App. 152; Bowley, “Maine Municipal Association Celebrates 75 Years”, *Bangor Daily News* 2011-02-03, App. 1016)

B. MMA Financing

22. For all applicable periods in this civil action, MMA municipal members paid membership dues to the MMA using a formula based on population and other factors (MMA 2010 Dues Formula, App. 1014; Bowley, “Maine Municipal Association Celebrates 75 Years”, *Bangor Daily News* 2011-02-03, App. 1016).

23. For all applicable periods covered in this civil action, Garland, Dover-Foxcroft, Gray, Yarmouth and Brunswick paid municipal membership dues to the MMA (MMA Response to Plaintiffs’ Second Set of Interrogatories Answer to Interrogatory No. 3, App. 22)

24. For all applicable periods in this civil action, MMA charged administrative fees to four insurance trusts affiliated with the MMA: Maine Municipal Employees Health Trust (the “Health Trust”), Maine Municipal Association Property and Casualty Pool (the “PC Pool”), Maine Municipal Association Unemployment Compensation Group Fund (the “UC Fund”) and Maine Municipal Association Workers’ Compensation Fund (the “WC Fund”) (collectively the “Trusts”) (MMA 2002-2009 Financial Statements, App. 213, 225, 242, 260, 279, 299, 319, 339; Table of Administrative Fees Paid 2002-2009, App. 355).

25. From 2002-2009, MMA member dues and administrative fees accounted for 90% or more of MMA’s annual revenue, with the remainder coming from event income, publications

and the like. (MMA 2002-2009 Financial Statements, App. 211, 223, 240, 258, 277, 297, 317, 337).

26. All of MMA's revenue is tax-exempt (or "tax excluded") pursuant to 26 U.S.C. § 115, which is a tax exemption (or "tax exclusion") used by government entities or instrumentalities. (MMA Answers to Plaintiffs' Second Set of Interrogatories, Interrogatory 1, App. 21; MMA Financial Statements 2002-2009, App. 213, 225, 242, 258, 277, 297, 317, 337).

27. "Effective in 1995, the Governmental Accounting Standards Board (GASB) issued Statement No. 29, The Use of Not-For-Profit Accounting and Financial Reporting Principles by Governmental Entities. This Statement allows governmental entities that had previously been following accounting principles generally accepted in the United States of America applicable for not-for-profit organizations the option of continuing that practice with some modifications or following governmental accounting and reporting requirements. The Maine Municipal Association elected to continue to apply not-for-profit accounting principles in its reporting; therefore, the accounting policies of the Association conform to accounting principles generally accepted in the United States of America applicable to nonprofit governmental organizations." (MMA 2002-2003 Financial Statements, App. 213, 225)

28. "Maine Municipal Association adopted the provisions of Governmental Accounting Standards Board Statements No. 34, 36, 37, and 38 as well as GASB Interpretation 6 as of and for the year ended December 31, 2004. This resulted in changes in the Association's format and content of the financial statements." (Auditor Letter, MMA 2004 Financial Statement, App. 233)

29. "The Association follows the applicable provisions of Government Accounting Standards Board's (GASB) generally accepted accounting principles (GAAP) for state and local

governments through its pronouncements (Statements and Interpretations). Additionally, the Association follows the pronouncements of the Financial Accounting Standards Board (FASB) issued through November 30, 1989 (when applicable) that do not conflict with or contradict GASB pronouncements. The Association has elected not to follow subsequent private-sector guidance.” (MMA 2005-2009 Financial Statements, App. 260, 279, 299, 319, 339)

30. The Trusts’ income is tax exempt (or “tax excluded”). (Health Trust: *Hall v. Maine Municipal Employees Health Trust*, 93 F.Supp.2d 73, 77, fn 5; Health Trust 2002-2009 Financial Statements, App. 364, 370, 375, 381, 385, 390, 395, 400); PC Pool: PC Pool 2002-2009 Financial Statements, App. 408, 412, 417, 422, 427, 431, 435, 439); UC Fund: UC Fund 2002-2009 Financial Statements, App. 447, 451, 455, 459, 463, 467, 471, 475); WC Fund: UC Fund Financial Statements, App. 483, 488, 492, 496, 500, 504, 508, 512)

31. During the applicable period of this civil action, Garland, Dover-Foxcroft, Gray, Yarmouth and Brunswick each purchased insurance products from one or more of the Trusts and paid premiums thereto. (Tables of Premiums Paid 2002-2009, App. 359, 403, 442, 478)

32. The EC allocates revenue funds to various “designated funds” at its discretion, one such designated fund being the “Legislative Initiatives Fund” (hereinafter “LIF”). (Amended Answer ¶ 9; MMA Financial Statements, Appendix. 2002: 214, 217, 218; 2003: 226, 230; 2004: 238, 243, 249; 2005: 256, 260, 268; 2006: 275, 279, 285; 2007: 295, 300, 308; 2008: 320, 325, 328; 2009: 335, 340, 353)

C. MMA Political Activities

33. MMA maintains a Legislative Policy Committee (hereinafter “LPC”) composed of two municipal officials elected from each of the 35 Maine state senate districts. (Amended

Answer ¶ 8; MMA Answers to Plaintiffs' First Set of Interrogatories, Interrogatory 2, App. 17; Lockwood Letter to Anthony Plante 2007-02-01, App. 160)

34. The LPC is responsible for determining MMA's position on legislation and initiatives. (MMA Answers to Plaintiffs' First Set of Interrogatories, Interrogatory 2, App. 17; Lockwood Letter to Anthony Plante 2007-02-01, App. 160); MMA 2009 and 2010 Strategic & Business Plans, App. 984, 1004).

35. MMA's advocacy/lobbying services are conducted by its State and Federal Relations Department ("SFRD") and its focus is the Maine Legislature. (MMA Answers to Plaintiffs' First Set of Interrogatories, Interrogatory 2, App. 17; MMA 2009 and 2010 Strategic & Business Plans, App. 984, 1004).

36. MMA lobbies the Maine Legislature during the legislative session and SFRD staff appear before state agencies and communicate with the Maine congressional delegation on federal issues. (MMA Answers to Plaintiffs' First Set of Interrogatories, Interrogatory 2, App. 17; Amended Answer ¶ 8).

37. Members of the EC received legislative and policy updates and/or met with politicians. (EC Minutes 2002: 2002-01-24, App. 516; 2002-02-13, App. 520); 2002-03-21, App. 524; 2002-04-25, App. 528; 2002-11-21, App. 559; 2002-12-19, App. 567; 2003: 2003-02-26, App. 579; 2003-04-17, App. 583; 2003-5-13, App. 583; 2003-09-17, App. 618; 2003-11-20, App. 628; 2004: 2004-02-19, App. 647; 2004-09-23, App. 675; 2004-11-18, App. 684; 2004-12-16, App. 689; 2005: 2005-01-13, App. 696; 2005-02-16, App. 700; 2005-06-30, App. 728; 2005-09-16, App. 737; 2005-09-26, App. 740; 2005-10-31, App. 742; 2005-11-17, App. 751; 2005-12-15, App. 758; 2006: 2006-01-19, App. 764; 2006-02-15, App. 767; 2006-03-23, App. 775; 2006-04-27, App. 780, 782; 2006-07-27, App. 800; 2006-11-16, App. 822; 2006-12-14, App. 830;

2008: 2008-01-24, App. 836; 2008-06-25, App. 859; 2008-08-07, App. 860; 2008-10-36, App. 871, 872; 2008-12-18, App. 883; 2009: 2009-01-11, App. 889; 2009-01-29, App. 891; 2009-05-28, App. 917; 2009-08-27, App. 934; 2009-10-01, App. 942; 2009-12-17, App. 963).

38. “The MMA Executive Committee is involved with advocacy efforts relating to public policy. This is accomplished through periodic meetings with the Governor and with members of the Congressional delegation, adoption of positions regarding federal issues, and when it articulates the Association’s position on broad policy issues, bond issues and ballot questions that will go before the statewide electorate.” (MMA 2009 and 2010 Strategic & Business Plans, App. 984, 1004)

D. Initiative Campaign Activities.

(i) 2002-2004 - School Finance and Tax Reform Act of 2003 (the “55% Funding Initiative”)

39. On May 16, 2002, the LPC unanimously voted to recommend to the EC that MMA proceed with the development of a citizen initiative for tax reform. (Herman Memo to EC 2002-05-22, App. 62; Minutes 2002-05-30, App. 534; Herman, “Why Tax Reform”, *The Townsman* 2002-06, App. 1018)

40. On May 30, 2002, the EC unanimously approved the LPC recommendation and adopted the LPC’s plan to develop and enact tax reform through a direct citizens’ initiative and approved the formation of a steering committee to provide ongoing advice to the EC and LPC. (Minutes 2002-05-30, App. 534; Herman, “Why Tax Reform”, *The Townsman* 2002-06, App. 1018; Herman Memo to Steering Committee 2002-06-05, App. 65)

41. MMA staff organized an “internal team” to provide support services for the initiative effort. (Lockwood Memo to Tax Reform Internal Team 2002-06-12, App. 71)

42. The EC approved a budget unit within the MMA’s 2002 operating budget to which internal initiative costs should be charged and approved initial expenditures from the LIF. (Minutes 2002-06-20, App. 540)

43. The EC approved the formation of a political action (PAC) committee for the purpose of submitting the citizens’ initiative petition to the Maine Secretary of State and do so in collaboration with the Maine State Chamber of Commerce and/or other organizations. (Minutes 2002-08-07, App. 543; Lockwood Memo to MMA Tax Reform Steering Committee 2002-08-08, App. 82)

44. The MMA engaged in outreach to municipal officials for initiative signature gathering. (Lockwood Memo to Androscoggin County Key Municipal Officials & Chief Elected Officials 2002-08-28, App. 84; Lockwood Memo to Key Municipal Officials & Chief Elected Officials 2002-09-10, App. 87)

45. On September 6, 2002, Dana Lee submitted the 55% Initiative Petition to the Maine Secretary of State with signatories Lee, Gary Brown and Susan Lessard being MMA EC members. (55% Initiative Petition, App. 49; EC Minutes 2002-08-07, 2002-09-25, App. 543, 545)

46. On September 17, 2002, the MMA incorporated the PAC “Citizens to Reduce Local Property Taxes Statewide” (hereafter, the “PAC”) with Christopher Lockwood, MMA’s Executive Director, acting as an incorporator and sitting on its Board of Directors. (PAC Articles of Incorporation 2002-09-17, App. 55; Defendant’s initial disclosures ¶ 2)

47. The MMA engaged in outreach to school boards and superintendents for signature gathering. (Lockwood Memo to School Board Members and Superintendents 2002-09-24, App. 88)

48. On September 25, 2002, the EC approved further and potentially unlimited expenditures from the LIF to support the PAC. (Minutes 2002-09-25, App. 546)

49. The MMA's internal team formulated campaign strategy. Herman Email to Internal Team 2002-11-11, App. 89)

50. On November 21, 2002, Christopher Lockwood briefed the EC on his efforts to encourage the Maine Education Association to join the PAC and to provide organizational and financial support. (Minutes 2002-11-21, App. 558)

51. On November 21, 2002, "Chris Lockwood shared information on some anti-MMA activists who are questioning MMA's active involvement in the PAC and using taxpayers' money to support the PAC efforts. He cautioned that MMA might experience some negative reaction from its own membership." (Minutes 2002-11-21, App. 558)

52. On December 10, 2002, Christopher Lockwood discussed with the EC the initiative "worst case" budget, which is identified as \$1,082,000. (Minutes 2002-12-10, App. 564)

53. On December 19, 2002, Christopher Lockwood announced to the EC that the Maine Education Association has officially joined the PAC and has agreed to make a modest financial contribution and that Mark Gray, MEA Executive Director, has been appointed to the PAC Board of Directors. (Minutes 2002-12-19, App. 569; Minutes 2003-01-23, App. 573-574)

54. The MMA collected endorsements and developed partnerships with other organizations, organized a PAC "letterhead committee" as a mechanism to show statewide

support and worked with the Maine Education Association both to formulate a common strategy with the Legislature and develop a proposal to be presented to the National Education Association. (Minutes 2003-02-26, App. 578-579)

55. On June 6, 2003, the EC authorized (a) the transfer of \$475,049.00 to the LIF from the 2002 General Fund, (b) transfer of an amount not to exceed \$339,617.00 from the General Fund Expendable Fund Balance to the LIF, and (c) the Executive Director to draw on the LIF for contributions to the PAC in an aggregate amount not to exceed \$989,166.00, including \$110,000.00 contributed to date and \$879,166.00 to be transferred as required with the concurrence of the MMA President and Chair of the Steering Committee. (Minutes 2003-06-03, App. 600-601)

56. The EC was briefed on the ongoing and concluded campaign. (Minutes 2003-09-02, App. 613-616; Minutes 2003-09-17, App. 618; Minutes 2003-11-20, App. 628-629; Minutes 2003-12-08, App. 632; Minutes 2003-12-18, App. 638; Minutes 2004-01-15, App. 640; Minutes 2004-01-22, App. 643; Minutes 2004-02-19, App. 646; Minutes 2004-03-17, App. 650; Minutes 2004-05-26, App. 655; Minutes 2004-05-28, App. 660; Minutes 2004-06-17, App. 662)

57. On November 20, 2003, the EC approved a \$20,000.00 transfer from the general fund to the LIF for support of the PAC. (Minutes 2003-11-20, App. 629)

58. On March 17, 2004, the EC authorized the MMA Executive Director to draw on the LIF in an amount not to exceed \$100,000.00 for contributions to the PAC for the purposes of promoting the 55% Initiative on the June 2004 ballot and to identify a grassroots consultant. (Minutes 2004-03-17, App. 650-651)

59. The PAC produced and aired a series of campaign television ads for use both in the November 2003 and June 2004 elections. (55% Initiative Campaign Videos, DVD)

60. The MMA urged a “yes” vote on the 55% Initiative. (Herman, “Vote ‘Yes’ on Question 1” *The Townsman* May 2004, App. 1031)

61. According to the Maine Commission on Governmental Ethics and Election Practices, the MMA’s 2002-2004 monetary and in-kind contributions to the PAC totaled \$1,429,455.50. (Ethics Commission Letter 2010-11-03, App. 966)

(ii) 2004 - An Act to Impose Limits on Real and Personal Property Taxes (the “Palesky Initiative”)

62. On May 26, 2004, the EC discussed the progress of the Palesky Initiative. Christopher Lockwood informed the board that the MMA legal staff was providing a legal opinion on the constitutional provision governing the time for having a citizen initiative appear on the ballot. (Minutes 2004-02-19, App. 646-647)

63. On May 26, 2004, the EC authorized the MMA Executive Director to draw on the LIF for contributions to the 55% Initiative PAC “or to any anti-tax cap coalition as deemed appropriate by the MMA Executive Director” in an amount not to exceed \$150,000 with the concurrence of the MMA President and Campaign Strategy Team chair. (Minutes 2004-05-26, App. 655)

64. On July 15, 2004, Christopher Lockwood briefed the EC in detail “on the coalition to oppose the Palesky Initiative and the campaign strategy for the next several months” with an ad hoc steering committee being in place since June 2004 with the “common goal” being “to defeat the Palesky Initiative”. The EC authorized the MMA to join the “anti-Palesky” PAC “Citizens United to Protect Our Public Safety, Schools and Communities” (the “PAC”) and authorized the MMA Executive Director to join the PAC board of directors and/or other

positions in the PAC. The EC further authorized the MMA Executive Director with the concurrence of the MMA Officers to expend an additional amount not to exceed \$150,000 from the LIF for a total of \$210,000.00 in support of the PAC. (Minutes 2004-07-15, App. 668-670; *See also* Lockwood Memo to EC 2004-07-07, App. 118; Lockwood Email to Geoff Herman, et al. on Ad Hoc Steering Committee 2004-07-16, App. 121; Chris Lockwood Email to Theresa Chavarie, et al. 2004-08-10, App. 130)

65. The PAC was incorporated on July 12, 2004 by the Maine Secretary of State with Christopher Lockwood of the MMA and Mark Gray of the Maine Education Association being on the PAC board of directors. (PAC Articles of Incorporation, App. 108; PAC 2005 Annual Report, App. 114).

66. On August 17, 2004, Christopher Lockwood briefed the EC on MMA disbursements to the PAC and the efforts of the State and Federal Relations Staff on the development of an outreach grassroots effort to MMA membership. (Minutes 2005-08-17, App. 671; *See also* Herman Memo to Chief Elected Municipal Officers 2004-07-23, App. 128)

67. On September 23, 2004, Christopher Lockwood and Geoff Herman briefed the EC on PAC activities, including funding and media buys and “the progress of MMA’s grassroots efforts to defeat the Palesky Initiative”. (Minutes 2004-09-23, App. 674-675)

68. In response to Maine Attorney General Opinion 04-5, the MMA publicly cautioned its members to avoid use of public resources for “partisan advocacy” in connection with the Palesky initiative, “the primary goal” of such advocacy being “to achieve a certain outcome - either a ‘yes’ vote or a ‘no’ vote - on November 2.” (Herman, “Speaking Out on Palesky”, *The Townsman* October 2004, App. 1035)

69. The PAC produced and aired a series of campaign television ads for use in the Palesky campaign. (Palesky Initiative Campaign Videos, DVD)

70. On November 18, 2004, Christopher Lockwood provided an “Anti-Palesky Campaign Recap” and the EC discussed – among other matters – “Mary Adams’ Tax Payers Bill of Rights referendum”. (Minutes 2004-11-18, App. 683-684; *See also* Lockwood, “Tax Cap Defeated, Thanks to You”, *The Townsman* November 2004, App. 1038)

71. According to the Maine Commission on Governmental Ethics and Election Practices, the MMA’s 2004 monetary contributions to the PAC totaled \$196,200. (Ethics Commission Letter 2010-11-03, App. 966)

(iii) 2005-2006 - “An Act to Enact a Maine Taxpayer Bill of Rights” (“TABOR I”)

72. On November 17, 2005, “Chris Lockwood provided information on discussions held by representatives of Citizens United, the political action committee which opposed the Palesky initiative, and their recent discussions to expand the purpose of the PAC to include opposing the TABOR initiative. The Executive Committee concurred with the direction outlined and the Maine Municipal Association’s continued involvement in the political action committee.” (Minutes 2005-11-17, App. 751)

73. On December 12, 2005, “Chris Lockwood provided information on a recent conference call of the Citizens United Board of Directors in which they voted to broaden the mission of the Political Action Committee to fight TABOR, if the Secretary of State certifies the Initiative. Discussion was held on outreach efforts to the business community and municipalities in general.” (Minutes 2005-12-15, App. 757; *See also* Austin Letter to Maine Ethics Commission 2006-12-01, App. 152-153)

74. On February 15, 2006, “Chris Lockwood noted that we are still awaiting the Secretary of State’s certification of the signatures for TABOR. A meeting of the Citizens United PAC is scheduled for February 22 and the Board of Directors should have the proposal from Larry Benoit and will look to take action at that time. Dana Connors is looking to identify 2-3 business members to serve on the Board.” (Minutes 2006-02-15, App. 765)

75. On February 22, 2006, Christopher Lockwood sought direction from the EC on how he should vote as a PAC board member on challenging the Secretary of State’s certification of the TABOR I initiative signatures. (Minutes 2006-02-22, App. 770-771)

76. On March 16, 2006, the PAC held its kick-off rally and Geoff Herman made a presentation on the MMA’s behalf. (Minutes 2006-03-23, App. 773)

77. On April 27, 2006, Christopher Lockwood provided to the EC an update on – among other things - the activities of the PAC to “defeat TABOR”. (Minutes 2006-04-27, App. 780)

78. On June 1, 2006, Geoff Herman updated the EC on TABOR activities and “noted that Mary Adams’ message is getting a lot of support” and “indicated the importance of developing a strong ground game.” The EC voted to “reaffirm MMA’s participation in the Citizens United Political Action Committee” and authorized “the Executive Director to contribute up to \$85,000” from the LIF to the PAC subject to timing issues. (Minutes 2006-06-01, App. 790-791).

79. On June 29, 2006, Geoff Herman informed the EC the “TABOR campaign is underway” and that “[t]he Association is fully engaged both with membership directly and as a partner with the Citizens United Coalition.” Christopher Lockwood informed the EC that the

MMA officers “gave approval to transmit \$25,000 as the first installment of MMA’s financial pledge to the Citizens United PAC.” (Minutes 2006-06-29, App. 794-796)

80. On September 5, 2006, the EC authorized an additional \$25,000 contribution to the PAC and authorized the Executive Director with the concurrence of MMA’s officers to release as much of the committed funding as necessary to cover the costs of the PAC’s initial TV ad. (Minutes 2006-09-05, App. 805-806)

81. The PAC produced and aired a series of television ads for use in the TABOR I campaign. (TABOR I Initiative Campaign Videos, CD)

82. On September 21, 2006, Christopher Lockwood informed the EC that “the MMA is working with MEA and several other organizations to develop a possible alternative proposal” to TABOR I. (Minutes 2006-09-21, App. 807-808)

83. On October 5, 2006, Chris Lockwood and Geoff Herman discussed with the EC a possible alternative proposal to TABOR and the EC voted to endorse a “draft proposal developed by a group of organizations including the Maine Municipal Association, Maine Education Association, Maine Hospital Association, Maine Service Centers Coalition, and the Maine Better Transportation” subject to “the acceptance of the proposal by the Maine State Chamber”. (Minutes 2006-10-05, App. 814; *See also* Minutes 2006-09-21, App. 807-808; Lockwood Memo to EC 2008-03-27, App. 181-182)

84. On November 16, 2006, Chris Lockwood provided “a wrap-up on the TABOR campaign and noted that the Board of Directors of Citizens United is taking the necessary steps to dismantle the [PAC]”. He also noted that “the proponents would undoubtedly try again during the 2008 Election, which leaves the Association with one year to be involved in solid legislative changes that would discredit another challenge.” (Minutes 2006-11-16, App. 822-823)

85. According to the Maine Commission on Governmental Ethics and Election Practices, the MMA's 2006 monetary and in-kind contributions to the PAC totaled \$132,495.38. (Ethics Commission Letter 2010-11-03, App. 966)

(iv) 2009 – “An Act to Provide Tax Relief” (“TABOR II”) and “An Act to Decrease the Automobile Excise Tax and Promote Energy Efficiency” (“Excise Tax”)

86. “Three citizen initiatives circulated over the last 14 months by the Maine Heritage Policy Center have been submitted to the Secretary of State’s Office and will in all likelihood be placed on the statewide ballot in November 2009. Two of those initiatives affect municipal government: the so-called TABOR II proposal and a separate proposal that would cut motor vehicle excise tax revenues by 40%. (The focus of the third initiative is on the availability of out-of-state health insurance markets.) It appears the proponents of the three initiatives consider the three proposals to be ‘of a piece’ and somehow interconnected. In response, therefore, it is probably the case that the opponents of one or more of the several initiatives will organize as a coalition and work in collaboration to defeat the three initiatives. Because the excise tax initiative poses such a significant threat, MMA will likely engage in that campaign.” (MMA 2009 Strategic & Business Plan, p.3, App. 978)

87. On January 29, 2009, and prior to certification of initiative signatures, Christopher Lockwood briefed the EC on “the development of campaign efforts regarding possible citizens initiatives ballot measures” and “provided information on meetings between the Maine Education Association (MEA) to initiate campaign efforts to begin outreach efforts and identify a campaign manager and funding sources.” (Minutes 2009-01-29, App. 891; *See also* Lockwood Memo to File 2009-01-27 on ad hoc committee activities, App. 183)

88. On February 26, 2009, “in anticipation of various proposed citizen initiatives”, the EC authorized the Executive Director to enroll the MMA “as a member of a Political Action Committee (PAC) focused on the TABOR II and Excise Tax citizen initiatives” and authorized expenditure “up to \$25,000 from the LIF in conjunction with this effort.” (Minutes 2009-02-26, App. 898; *See also* Lockwood Memo to EC 2009-02-19, App. 184)

89. On April 16, 2009, Christopher Lockwood provided an update on the “organizational efforts related to the Excise Tax and TABOR II citizen initiatives” and “noted that the ad hoc committee is made up of management and lobbyist staff of the Maine Municipal Association, Maine Education Association, Maine State Employees Union, Engage Maine, and Maine Service Center Coalition.” The MMA provided \$10,000 to an existing political action committee controlled by the Maine Education Association “as a clearing house for the campaign until a more structured campaign and [PAC] is in place.” (Minutes 2009-04-16, App. 907-908; *See also* Herman, “Campaign ‘09: Excise Tax & TABOR II, *The Townsman*, August-September 2009, App. 1040)

90. On May 28, 2009, the EC authorized the further expenditure of \$25,000 with the concurrence of the MMA officers from the LIF in “conjunction with the Excise Tax and TABOR II citizen initiatives.” (Minutes 2009-05-28, App. 917-918; *See also* Lockwood Memo to EC 2009-05-18, App. 187)

91. On July 24, 2009, “Citizens Unified for Maine’s Future” (the “PAC”) was incorporated by the Maine Secretary of State. (PAC Articles of Incorporation, App. 171) Upon dissolution of the PAC, Mark Gray of the Maine Education Association was listed as president and Christopher Lockwood of the MMA as treasurer with the PAC’s registered office address being that of the MMA: 60 Community Drive, Augusta, ME. (PAC Articles of Dissolution 2010-

06-01, App. 177; *See also* Minutes 2009-06-25, App. 926; Lockwood Memo to EC 2009-07-22, App. 189)

92. The MMA again publicly cautioned its members against use of public resources for “partisan advocacy” in connection with the ongoing initiative campaigns. (“Partisan Advocacy - What Officials Can & Cannot Do”, *The Townsman* June 2009, App. 1039)

93. The MMA served as the PAC’s fiscal agent. Lockwood Memo to EC 2009-07-22, App. 189)

94. On August 17, 2009, the EC authorized an additional payment of \$60,000 to the PAC. (Minutes 2009-08-17, App. 930)

95. “The primary reason for requesting an additional authorization” was “to strengthen the PAC’s position in advance of an August 20 meeting in Washington, D.C. with the political directors of the major national labor organizations. At that meeting, Mark Gray (Executive Director of the Maine Education Association who is also serving as the Chairman of the PAC Steering Committee) and Toby McGrath (PAC campaign manager) will be requesting \$700,000 in funding from these organizations. Mark Gray has indicated that the PAC’s position will be strengthened if it could point to funds raised from organizations/businesses based in Maine.” (Lockwood Memo to EC 2009-08-12, App. 200)

96. On August 27, 2009, Christopher Lockwood advised the EC that the campaign “is looking to raise \$2.5 million for the campaign and that approximately \$700,000 has been raised to date. He noted that a majority of the funding is needed to run the media campaign. It was noted that the funds raised would be used to run both the Excise Tax and TABOR II campaigns without any restraints being made by contributors.” (Minutes 2009-08-27, App. 933-934)

97. On October 1, 2009, Christopher Lockwood provided a campaign update to the EC and presented to the EC the four campaign TV ads developed for the campaign (Door Bell, Fine Print, Teacher and Tow Truck). The EC authorized a contribution of \$60,000 to the PAC “to complete MMA’s pledged financial support”. The MMA Staff provided to the EC a confidential memo discussing current PAC financing and contributors, polling and prospective donors. (Minutes 2009-10-01, App. 940-941; 2009-09-28 Confidential Memo on Campaign Finances and Polling, App. 202-205)

98. “Discussion was held on the Association’s position for spending public funds to support the campaign. Geoff Herman and Chris Lockwood provided a response noting one of the main purposes of MMA is to advocate to strengthen Maine’s local government and that this is an extension of those advocacy efforts.” (Minutes 2009-10-01, App. 941)

99. On October 22, 2009, the EC authorized the Executive Director to contribute additional amounts up to \$20,000 in the aggregate to the PAC from the LIF. (Minutes 2009-10-22, App. 948)

100. The PAC produced and aired a series of campaign television ads for use in the TABOR II/Excise Tax campaign. (TABOR II/Excise Tax Initiative Campaign Videos, CD)

101. According to the Maine Commission on Governmental Ethics and Election Practices, the MMA’s 2009 monetary and in-kind contributions to the PAC (and the Maine Education Association PAC) totaled \$181,854.50. (Ethics Commission Letter 2010-11-03, App. 966)

E. Ultra Vires Partisan and Political Activities

102. Beginning about 2005, Cyr Plantation complained to the MMA about its lobbying activities and legislative positions on certain issues affecting Cyr Plantation, including truck weights, excise taxes on certain vehicles and personal property taxes, on the grounds that such positions and activities were not in the best interests of Cyr Plantation and rural and agricultural communities. (Deveau Declaration ¶ 4)

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/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