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

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: July 12, 2016

Re: Complaint by Michael Hiltz concerning Email List

INTRODUCTION

This memo summarizes information received by the Commission concerning the use of an email list by Rep. Diane Russell for her State Senate campaign and offers some thoughts of the Commission staff about going forward. We would be pleased to take any further action you would like to direct in this matter.

Rep. Russell was competing in the June 14, 2016 primary election against Rep. Ben Chipman and Dr. Chuck Radis (a retired physician) for the Democratic nomination for State Senate, District 27. In the primary, Rep. Chipman received the most votes, followed by Dr. Radis, and then Rep. Russell.

On Friday, June 10 (four days before the election), the Ethics Commission received the enclosed request from Michael Hiltz that the Commission investigate whether Rep. Russell had failed to report receiving a valuable email list which she used for fundraising. The Senate campaign filed reports on January 15 and June 3, 2016, and did not report receiving an in-kind contribution of an email list in either report.

At a meeting on June 14 (the day of the primary), you met and voted to investigate the issue of the email list. I followed up with a June 24 questionnaire to Ms. Knox, and she provided a response last week, which is attached and referred to in this memo as the "July

8 Response."[1] In addition, at the end of the attached materials you can find some preliminary written information provided by Ms. Knox on June 13, 2016. That information seems to be supplanted by her July 8 Response.

Our focus is on two compliance issues:

- Did the State Senate campaign receive an in-kind contribution from Rep. Russell or her PAC that should have been disclosed in campaign finance reports filed by the candidate?
- If the contribution was from the PAC, did the contribution exceed the contribution limit of $375 per election?

RELEVANT LAW

Definition of contribution applicable to candidates. For candidates, the term "contribution" is defined as:

> (1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state…office…
>
> (4) The payment by any person other than a candidate or a political committee, of compensation for the personal services of other persons that are provided to the candidate or political committee without charge for any such purpose;

(21-A M.R.S.A. § 1012(2)(A)(1) & (4))

[1] To avoid any confusion, please be aware that July 8 is the date on the cover page of the response, but pages 2-10 contain the date of July 5, 2016 in the header.

Definition of in-kind contribution. Commission rules define the term "in-kind contribution" as:

> Unless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee.

(Commission Rules, Ch., 1, Section 6(4))

Requirement to report all contributions received. State Election Law requires candidate campaign finance reports to include the following information about certain contributions received:

> (5) **Content.** A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of $50. . . .

(21-A M.R.S.A. § 1017(5))

Contribution limits on candidates. State Election Law sets a limit on contributions a candidate may receive from any source in an election. This contribution limit does not apply to contributions from the candidate and the candidate's spouse or domestic partner,

who may give unlimited amounts. The limit is adjusted for inflation every two years. For 2016, the contribution limit to legislative candidates is $375 in each election. (21-A M.R.S.A. § 1015(1) & (2))

SUMMARY OF REP. RUSSELL'S JULY 8 RESPONSE

Rep. Russell states that in 2011 she began keeping a list of like-minded activists that she had identified through her use of MoveOn.org. She had communicated with these people concerning issues of mutual concern, such as the federal budget or marijuana legalization. She subsequently contacted them through MoveOn to invite them to sign up for her personal database/list. This list generally consisted of the individuals' names and email addresses. In the July 8 Response, she refers to this list as her "personal database," which she says was formed for the purpose of mobilizing like-minded individuals to take political action (*e.g.*, calling elected officials, signing a petition or attending community gatherings). According to Rep. Russell, the list included 9,047 names in 2011.

Rep. Russell argues that this personal database is intellectual property which she owns, because she created and developed it through her personal efforts over the years by identifying like-minded activists through MoveOn.org:

> The data itself was compiled over a period of many years through careful outreach to particular types of activists. While the individual lists may be available to others, it was Ms. Russell's curation and building upon those liss which created the value it has today.

Rep. Russell explains that she has maintained *two* databases:

(1) this personal database (which she started in 2011 and continually expanded through MoveOn.org into this year), and
(2) a database that has been maintained by the Working Families PAC.

She says that in 2013, she shared a copy of her personal database with the Working Families PAC. She notes that it is common for politically active individuals and

organizations to share or rent lists with others who have common goals. Rep. Russell argues that sharing her personal database with her PAC did not extinguish her ownership rights to the personal database. She states that the personal database qualifies as a trade secret under Maine Law, because it is a compilation of data with economic value that she has kept privately and that is password-protected through a hosting service, Action Network.

In the July 8 response, Ms. Knox described some of the PAC's expenses about which I inquired in my June 14 questionnaire:

- On pages 8-9, Ms. Knox provides some explanation of 18 expenditures totaling $15,041 made in 2013-2014 by the Working Families PAC to vendors such as NationBuilder and One Click Politics that were identified by Commission staff as *possibly* being related to the email list maintained by the PAC. Ms. Russell responds (bottom of page 8) that all of these 2013-2014 services were directed toward the database that was maintained by Working Families PAC, and *not* the personal database used by the State Senate campaign for fundraising.
- On page 2 of her response, Ms. Knox states that by 2014 the database of the Working Families PAC had grown to 97,000 names. That year, Rep. Russell saved this list on a USB flash drive and did not use it to raise funds for her State Senate campaign.
- On page 10, Ms. Knox provides a brief description of the "online organizing" for which the PAC paid Rep. Russell a total of $10,929 between 7/18/2013 and 11/17/2015. Ms. Knox states that the PAC paid Ms. Russell $25 per hour for her time communicating with list members through action alerts and petitions. Also, on page 2, Ms. Knox indicates that the PAC also paid Ms. Russell in 2013-2014 to raise funds for the PAC.

Ms. Knox states in pages 2-3 that in May 2014, Rep. Russell uploaded a copy of her original 2011 list of 9,047 activists to the hosting service Action Network. Between May 2014 and 2016, Rep. Russell built this personal database from 9,047 names to 143,671 names through continued contact with activists through MoveOn.org and their

subsequent joining of her personal database (bottom of page 2 and top two paragraphs of page 3). In fall 2015, Ms. Russell became a candidate for State Senate and shared a copy of her personal database with her Senate campaign for fundraising purposes. When it was used for fundraising in 2016, Ms. Knox states on page 7 that the list contained approximately 130,000 names.

Rep. Russell's explanation that she kept two email lists – her personal database and a database developed by the Working Families PAC – is corroborated by a January 21, 2016 email that she sent to a Commission employee (Political Committee and Lobbyist Registrar Benjamin Dyer), who was conducting a compliance review of her PAC's spending and sought a clarification why the PAC had received $7,441.00 from Democrats.com. The Commission staff views this explanation as credible because it was submitted five months before this controversy began when there was no incentive to shade the description:

> [*Question from Ben Dyer*] Finally, in its 2016 January Quarterly report, the Working Families PAC indicated it received a $7,441 contribution with a note "Mail List Exchange" from Democrats.com. Could you please provide addition information about this contribution? Was this a contribution to the PAC, a payment for goods or services by Democrats.com to the PAC, or something else?
>
> **[***Answer from Diane Russell***]** That was the simplest explanation I could give. Here's the more complicated version. I have two sets of very sizable email lists, one that is my personal email list I've cultivated that I use for advocacy, and now Senate fundraising. The second is one that has been built up through the Working Families PAC. The first includes national and local contacts while the Working Families PAC list is largely national with a small local number. Democrats.com purchased the national list outright from the WFP for $7400 (roughly) plus 15,000 new email addresses.

The email is attached directly after this memo for your reference.

DISCUSSION

Rep. Russell acknowledges that the data used by her campaign for fundraising had economic value. Prior to the July 20 meeting, she will be assessing its value and is willing to amend the report to include this as an in-kind contribution from her.

The Commission staff is comfortable with this outcome, because it re-affirms that under some circumstances candidates, PACs and others may need to report their receipt of valuable lists of potential supporters or donors as in-kind contributions if the data is going to be used for electioneering or fundraising. This outcome would also reinforce that it was an error by the candidate not to report it as an in-kind contribution when she filed the campaign finance report on January 15 and/or June 3, 2016.

We find Rep. Russell's explanation of why she did not report the contribution as plausible (page 5 of July 8 Response, fourth full paragraph). Candidates sometimes are not accustomed to viewing their use of something they own as an in-kind contribution. We view this reporting omission as likely unintentional.

If you would like to probe further whether the data should be viewed as an asset belonging to the PAC, we are happy to perform any action you would like but we do not see a strong rationale for further investigation. Primarily, that is because Rep. Russell has provided

- a plausible factual account that she kept two lists (corroborated by her January 21, 2016 email) and that the email data used for her Senate campaign was developed by her, through her own efforts and expense in hosting Action Network, and
- a reasonably convincing theory that *she* owns the list that she used for fundraising purposes.

It is unclear whether further investigation would uncover evidence leading to a convincing conclusion that the PAC must be viewed as the owner of the information used

by her State Senate campaign. Any such conclusion by the Commission could be challenged by the candidate through a proceeding in Maine Superior Court. Also, there is no evidence that Rep. Russell used her PAC to hide any financial activity or circumvent the contribution limits.

The Commission staff intends to stay alert to the possibility that candidates are receiving in-kind contributions through cooperating with PACs or political parties. The compliance of each situation case needs to be judged based on the unique factual circumstances. We do not believe that the Commission would be hampered in investigating future wrongdoing by terminating its investigation of this matter.

Thank you for your consideration of this memo.

Wayne, Jonathan

From: misswrite76@gmail.com on behalf of Diane Russell <dianerussell207@gmail.com>
Sent: Thursday, January 21, 2016 7:46 PM
To: Dyer, Benjamin P
Cc: Eiranne Hart (eiranne.hart@yahoo.com); Wayne, Jonathan; Lavin, Paul; Burke, Emma
Subject: Re: Working Families PAC Fine Payment, Fundraising, and January Quarterly Filing Questions

Hi Benjamin,

The answers are written below next to your questions. Please let me know should you need further explanation. Thank you.

Cheers,
~Diane

On Thu, Jan 21, 2016 at 10:51 AM, Dyer, Benjamin P <Benjamin.P.Dyer@maine.gov> wrote:

Dear Rep. Russell and Ms. Hart,

As you are aware, at its December 16, 2015 meeting, the Commission assessed a $2,000 penalty against the PAC for the incomplete filing of its 2014 October Quarterly report. A copy of the determination letter, mailed on December 16, 2015, is attached hereto. I write to inquire as to the status of the penalty payment by the Working Families PAC. As noted in the letter, payment was requested within 30 days of the PAC's receipt of the determination letter. Please respond with the date the PAC will pay the penalty.

I'd like to make $1,000 payment, but I don't see the penalty # in the letter. If I can get that, I'll make an online payment immediately. Indeed to request a payment plan for the remaining $1,000. In reality, I need about a month's extension.

> We received a copy of a fundraising email Rep. Russell sent via ActionNetwork.org. This email mentions your support for Bernie Sanders and solicits contributions from readers. The donation page, reached from the link at the bottom of the email, indicates that the donations are to benefit "Diane Russell." Who is this email soliciting contributions for: Rep. Russell's campaign account, the Working Families PAC, Bernie Sanders, or some other person or entity? Are contributions received through this or similar solicitations shared with any other person or entity (other than ActBlue's standard fees)?

The fundraising email is exclusively for my State Senate campaign. It appears the candidate authorization accidentally got left off the footer. I'll fix that going forward. Let me know if there's anything I need to do to fix the most recent one.

As for the contributions, they are direct to the campaign through ActBlue. They are not shared with anyone else.

> Finally, in its 2016 January Quarterly report, the Working Families PAC indicated it received a $7,441 contribution with a note "Mail List Exchange" from Democrats.com. Could you please provide addition information about this contribution? Was this a contribution to the PAC, a payment for goods or services by Democrats.com to the PAC, or something else?

That was the simplest explanation I could give. Here's the more complicated version. I have two sets of very sizable email lists, one that is my personal email list I've cultivated that I use for advocacy, and now Senate fundraising. The second is one that has been built up through the Working Families PAC. The first includes national and local contacts while the Working Families PAC list is largely national with a small local number. Democrats.com purchased the national list outright from the WFP for $7400 (roughly) plus 15,000 new email addresses.

> Thank you for your time, prompt response and cooperation with this request for additional information. If you have further questions, please contact me.
>
> Sincerely,
>
> Benjamin P. Dyer
>
> Political Committee and Lobbyist Registrar
>
> Maine Ethics Commission
>
> Mailing: 135 State House Station
>
> Augusta, Maine 04333
>
> T: (207) 287-6221
>
> benjamin.p.dyer@maine.gov

June 10, 2016
Jonathan Wayne
Maine Ethics Commission

Dear Mr. Wayne,

Please consider this a formal request for an investigation into, and sanction of, a violation committed by Diane Russell's campaign for the District 27 State Senate primary.

The specific questions and activities I would like to see addressed as part of this investigation are bolded and highlighted throughout this document:

- **What is the value of the email list used by the Diane Russell campaign to raise in excess of $87,000 for this primary?**

Diane Russell has publicly stated that her email list is about 200,000 names long, with emails throughout Maine, the United States and even abroad.

According to email marketing company Inbox Interactive, the value of an email list can be calculated as follows:

"For consumer email lists, prices run about $100 to $150 CPM (that's "cost per mille," which is fancy-talk for "cost per thousand"). So, that's 10 to 15 cents apiece for a one-time rental of the email address. And if you have very specific "selects," then the price can go up quickly."

At the lower figure of 10 cents per name, Diane Russell's email list is worth approximately $20,000 for a one-time use. However, Diane Russell uses her email list repeatedly, often several times each week.

In the above example, the term "selects" refers to targeting of the email addresses. Diane's list is highly targeted to individuals who support the legalization of marijuana, support the candidacy of Bernie Sanders, or support other liberal causes.

This suggests that the value of the targeted list is even higher than estimated here.

- **Where did the email list come from?**

In Diane Russell's campaign finance reports, among copious listings of individual contributions, there is no contribution of an email list to be found anywhere.

There is no indication that the list was donated as an in-kind contribution from a third party. In any case, the limit for in-kind contributions is $375, and the email list is worth far more than that amount.

There is no expenditure indicating that the list was purchased or rented from a third party.

There is also no expenditure indicating that individuals were paid to build the list. In any event, building a list of the size described would be nearly impossible for a campaign with limited resources and time.

- **Does the email list constitute an illegal contribution to the campaign?**

I contend that the email list was built by Diane Russell herself, over the past few years, as part of the activities of her so-called "Working Families PAC."

Working Families PAC has paid Diane Russell $7,747 for "online organizing," which in all likelihood was email list building.

As described in an earlier complaint of mine, the Working Families PAC operates under a misleading (and possibly fraudulent) "mission statement," which is to help elect Democrats win seats in the Maine State House. Meanwhile, Diane uses the PAC to pay herself and personal expenses like food, entertainment and travel.

If it did come from the Working Families PAC, there is no filing from either Working Families PAC, or the Diane Russell campaign, to indicate this.

Regardless of where the list came from, it clearly came from somewhere. However, there is no indication anywhere in her campaign filings to suggest the source of this very valuable list. This suggests the contribution of something of very high value to the campaign, with no acknowledgment of its source.

It is important to note that the campaign could not operate at its current level without the funds raised from the aforementioned email list.

- **If failing to report the value of the email list is a violation, I ask that you find Diane Russell in violation, and assess the proper penalty.**

- **Does misrepresenting the employment status of individual contributors constitute a false or fraudulent filing?**

In the 11-day pre-primary report from Diane Russell's campaign, $14,711 of the identified donations (ones for more than $50 each) came from individuals listed as "not currently employed."

Since unemployed people tend not to spend money unnecessarily, this seems like a suspiciously large amount of money.

Indeed, a cursory Google search of names and addresses quickly finds that at least some of these individuals are in fact employed. If so, why are they listed as unemployed?

I request that the Maine Ethics Commission investigate and resolve these questions, and any other relevant questions that may arise from them, before the primary election takes place on Tuesday, June 14th.

Thank you.

Sincerely,

Michael Hiltz
45 Pleasant Avenue
Portland, ME 04103
(207) 615-7351

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

June 24, 2016

By Email and Regular Mail
Katherine R. Knox, Esq.
Bernstein Shur
PO Box 9729
Portland, ME 04104-5029

Dear Ms. Knox:

As you are aware, at the June 14, 2016 meeting of the Ethics Commission, the members voted to investigate Rep. Diane Russell's use of an e-mail list to solicit contributions for her Senate campaign. This letter is to request factual information and legal argument from Rep. Russell to assist the Commission in determining whether her use of the list constituted a reportable contribution from her or the Working Families PAC. Any contribution from the PAC would be subject to a $375 limit for the primary election.

This matter is being scheduled for the July 20, 2016 meeting of the Commission at the Commission's office 45 Memorial Circle in Augusta. Please provide the response to this request along with the response to Michael Hiltz's first complaint by Friday, July 8.

Factual Information Requested

Please provide any information Rep. Russell believes is relevant to the question whether her use of the list should be viewed as a contribution, including the following:

- Describe Rep. Russell's use of the list and the types of information contained in the list (*e.g.*, name, mailing address, email address, demographic information, etc.).

- How many individuals did the list contain when it was used for fundraising during 2016. If an exact number cannot be determined because the number varied during this year, please provide a range.

- In its campaign finance report filed on 1/15/2016, the Working Families PAC reported receiving $7,441 from Democrats.com on 10/17/2015. Please describe this transaction (*i.e.*, who sold what to whom, to whom was the check or wire transfer made payable, were there any restrictions on the use of the list placed on the purchaser). Did the list sold to Democrats.com contain the same or nearly the same information as the list used by Rep. Russell to fundraise for her Senate campaign?

- Aside from the PAC's sale to Democrats.com, has Rep. Russell sold the email list to any other organization or individual? If so, please provide the names of the purchasers and the sale price.

- If Rep. Russell were to purchase an email list that is comparable to the one she used for fundraising in 2016, please estimate what the cost would be. In other words, what is the value of the list that she used to raise funds for the primary?

- How many fundraising emails for her Senate campaign did Rep. Russell send using the email list?

- In Table 1 (attached) is a list of payments by the Working Families PAC to vendors which sometimes provide services related to fundraising, communications or databases. If these vendors provided services to the PAC that were related to the email list, please describe the type of services that were provided by the vendor. (If the services to the PAC were unrelated to the email list, please indicate that.)

- With respect to NationBuilder, it appears that the monthly costs paid by the Working Families PAC increased over time. Over seven months, the payments to NationBuilder totalled $4,844.00. The last two payments to NationBuilder were for $999.00. The NationBuilder website indicates that the monthly payment of $999.00 is for the Enterprise level of services and lists a large variety of services, far beyond hosting, that would be available to PAC. What services beyond hosting did the PAC use (*e.g.*, voter data supplied by NationBuilder, list segmentation, email analytics, fundraising websites, social media integration, etc.). Many of these services are available for the lower price levels. Was hosting the email list the only service provided by NationBuilder or utilized by the PAC? Why would the PAC pay this high cost to this vendor when alternatives in the marketplace, such as Action Network, would charge only $10 per month?

- Prior to March 2013, did Rep. Russell pay NationBuilder or any other similar provider for any services related to email lists with her personal funds for which the PAC did not reimburse her?

- The PAC made three expenditures of $249.00 each to One Click Politics in 2014. The expenditures were described as "online organizing tool" and "internet action service." One Click Politics also has a variety of service levels. How did the PAC use the services provided by One Click Politics? If the services provided related to the email list, please describe how they were related.

- Table 2 lists payments that the Working Families PAC made to Diane Russell for "online organizing." Please describe the work provided by Rep. Russell for which she received these payments.

Legal Argument and Equitable Concerns

You are invited to present any legal argument that you believe is relevant to whether the use of the email list amounted to a contribution from Rep. Russell or her PAC. Based on the June 14 discussion, the staff *suggests* addressing the following topics. Please do not feel constrained by these suggestions or obliged to use these issues as an outline.

- If Diane Russell takes the view that the email list is not an in-kind contribution from the Working Families PAC, please provide a legal rationale for that view.

- If the email list is not an in-kind contribution from the candidate, please provide any legal argument why not.

- As context during the Commission's June 14, 2016 meeting, you raised the issue that Legislators keep lists of supporters and other constituencies for various outreach and communication purposes (presumably through email services such as gmail or constant contact). Are those situations comparable to Rep. Russell's list, taking into consideration the number of names in her list and the PAC's large payments for labor and hosting?

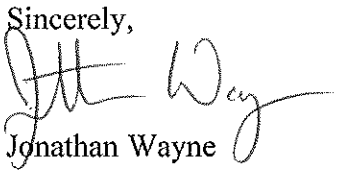
- The Commission has provided guidance to candidates that receiving valuable services could constitute an in-kind contribution (*see* Attachment 3). Is it unfair to expect a candidate in Rep. Russell's position to understand that this particular email list constitutes a thing of value that should be disclosed in a campaign finance report?

In-Person Appearance

The Commissioners request that Rep. Russell attend the July 20 meeting to answer any factual questions.

Thank you for your cooperation with this request. Please call me or email me if you have any questions.

Sincerely,



Jonathan Wayne
Executive Director

cc: Hon. Diane Marie Russell
Michael Hiltz

Attachment 1

Payments by Working Families PAC

These payments may be related to the development, maintenance and use of the e-mail list.

Date	Payee	Amount	Remark in Campaign Finance Report
03/18/13	NationBuilder	$449.00	(Reimbursement made to DR 5/31/2013)
04/27/13	NationBuilder	$99.00	(Listed a debt to DR)
05/14/13	NationBuilder	$600.00	Database, petition, email, web-site
05/28/13	PowerThru	$1,500.00	Online organizing consulting
06/07/13	NationBuilder	$799.00	(Reimbursement made to DR 6/7/2013)
06/28/13	PowerThru	$1,500.00	Online organizing (Debt)
07/10/13	NationBuilder	$899.00	Web/data platform
07/15/13	PowerThru	$3,000.00	Fundraising (Debt)
07/25/13	Starting Points Op	$2,447.00	Phone fundraising
08/06/13	NationBuilder	$999.00	Web/data platform
09/04/13	NationBuilder	$999.00	Web/data platform
02/01/14	GG Direct	$1,000.00	(No remark in report; listed as debt)
02/06/14	One Click Politics	$249.00	Internet action service
03/07/14	One Click Politics	$249.00	Internet action service
04/11/14	One Click Politics	$249.00	Online organizing tool
07/08/14	ActionNetwork.org	$1.00	Online petition service
08/07/14	ActionNetwork.org	$1.00	Web services
09/08/14	ActionNetwork.org	$1.00	Web services
	Total	**$15,041.00**	

Attachment 2

Payments by Working Families PAC to Rep. Russell

These payments may be related to the development, maintenance and use of the e-mail list.

Date	Payee	Amount	Remark in Campaign Finance Report
7/18/2013	Diane Marie Russell	$580.00	Online campaigns
7/28/2013	Diane Marie Russell	$100.00	Online campaigns
8/7/2013	Diane Marie Russell	$300.00	Online campaigns
8/9/2013	Diane Marie Russell	$200.00	Online campaigns
9/10/2013	Diane Marie Russell	$400.00	Online campaigns
9/11/2013	Diane Marie Russell	$400.00	Online campaigns
1/18/2014	Diane Marie Russell	$225.00	Online organizing
2/3/2014	Diane Marie Russell	$250.00	Online organizing
2/18/2014	Diane Marie Russell	$100.00	Online organizing
3/13/2014	Diane Marie Russell	$290.00	Online organizing
3/18/2014	Diane Marie Russell	$100.00	Online organizing
3/28/2014	Diane Marie Russell	$50.00	Online organizing
5/7/2014	Diane Marie Russell	$50.00	Online organizing
5/28/2014	Diane Marie Russell	$75.00	Online organizing
7/10/2014	Diane Marie Russell	$85.00	Online organizing
7/11/2014	Diane Marie Russell	$465.00	Online organizing
7/21/2014	Diane Marie Russell	$100.00	Online organizing
7/26/2014	Diane Marie Russell	$300.00	Online organizing
7/31/2014	Diane Marie Russell	$400.00	Online organizing
8/1/2014	Diane Marie Russell	$800.00	Online organizing
8/8/2014	Diane Marie Russell	$200.00	Online organizing
8/12/2014	Diane Marie Russell	$100.00	Online organizing
8/22/2014	Diane Marie Russell	$200.00	Online organizing
9/2/2014	Diane Marie Russell	$300.00	Online organizing
9/17/2014	Diane Marie Russell	$400.00	Online organizing

Date	Payee	Amount	Remark in Campaign Finance Report
9/18/2014	Diane Marie Russell	$200.00	Online organizing
9/21/2014	Diane Marie Russell	$300.00	Online organizing
10/5/2014	Diane Marie Russell	$400.00	Online organizing
10/19/2014	Diane Marie Russell	$100.00	Online organizing
10/21/2014	Diane Marie Russell	$100.00	Online organizing
11/22/2014	Diane Marie Russell	$200.00	Online organizing
11/26/2014	Diane Marie Russell	$100.00	Online organizing
4/28/2015	Diane Marie Russell	$22.50	Online organizing
6/22/2015	Diane Marie Russell	$80.00	Online organizing
10/20/2015	Diane Marie Russell	$150.00	Online organizing
10/27/2015	Diane Marie Russell	$850.00	Online organizing
11/9/2015	Diane Marie Russell	$700.00	Online organizing
11/17/2015	Diane Marie Russell	$1,256.62	Online organizing
	Total:	$10,929.12	

BERN
STEIN
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Katherine R. Knox
(207) 228-7229 direct
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July 8, 2016

Jonathan Wayne
Executive Director
Maine Ethics Commission
135 State House Station
Augusta, ME 04333

Re: Diane Russell – Complaint Regarding Use of Lists for Fundraising

Dear Mr. Wayne:

On behalf of my client, Diane Russell, I write to provide further information regarding the complaint filed by Michael Hiltz questioning Ms. Russell's use of a list for fundraising purposes. We are also in receipt of the specific factual questions which arose out of the Commission's June 14, 2016 meeting. Because, after further research, we believe those questions to be less relevant to the pending question, I have answered them in a separate attachment to this letter.

When I appeared before the Commission on June 14, 2016, we were on an expedited hearing schedule and were responding with the information we were able to gather in 48 hours. With more time, we have been able to do much more extensive research and fact-gathering enabling us to provide you a more comprehensive and accurate picture of the database at issue and how it was used for fundraising purposes.

RELEVANT FACTS

As you are aware, in 2011, Diane Russell began creating and maintaining a database of like-minded activists through her use of MoveOn.org – a free service available to the public. She actively built and managed that database by communicating with and reaching out to individuals within the database about issues of federal and state importance (e.g. sequestration, budget talks, background checks on gun sales, medical marijuana). As I described in the June 14, 2016 meeting, Ms. Russell does not own or have direct access to this database – she can only blindly communicate with its members. Because of those restrictions, Ms. Russell then began to develop her own

individual database by inviting interested MoveOn members to sign up for her personal database/list. If MoveOn members choose to be included in Ms. Russell's list – they had to affirmatively indicate that by clicking through to join.

It is that *personal* database which is the heart of the questions being considered by this Commission. This database was not – and is not – a traditional *donor* list. It was formed for the purpose of mobilizing like-minded individuals to take action in areas of importance to Ms. Russell (e.g. calling elected officials, signing a petition or attending community gatherings).

Two years later, in 2013, the Working Families PAC was formed and Ms. Russell shared a *copy* of the database with the newly formed PAC. For reasons we will expand upon later, that database sharing did not mean that Ms. Russell gave over all possession and control of the list to the PAC. She simply shared a copy with the PAC all the while maintaining her own rights to share that database with others – rights that flow directly from her creation of the data in 2011.

For the next year or so, the PAC contracted with Ms. Russell to continue to maintain and build its copy of the database. She was paid to reach out to individuals, on behalf of the PAC, for both issue outreach and fundraising (for the PAC). In turn, the PAC paid NationBuilder to host and manage their copy of the data. That data consists largely of national contacts with a limited number actually residing locally.

In 2014, finding the costs of maintaining that data too high – the contract with NationBuilder was cancelled and 97,000 names were saved onto a USB flash drive. *The PACs data remains on that USB drive and has never been used by Ms. Russell's campaign to fundraise.* [1]

Later in 2014, Ms. Russell discovered an alternative platform for database management called Action Network. She opened a *personal* account with Action Network and on May 26, 2014, uploaded her copy of the original 2011 list which contained information on 9047 activists. With costs significantly reduced, Ms. Russell again turned to MoveOn.org to reach out to like-minded activists and continue to build her personal network. Wanting to build a more locally focused list, she chose not to upload the NationBuilder data but instead used a variety of locally focused lists available to her at that time.[2]

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[1] This is different information than was presented by to this Commission on June 14, 2016. After a thorough review of the Action Network account – it is clear that the NationBuilder data was never entered into the new database.

[2] While the exact composition of Ms. Russell's list is a protected trade secret (see legal argument section), an example of some lists used were prior democratic convention lists, local supporter lists and Bernie Sanders delegates. None of these lists were purchased.

Between 2014 and 2016, Ms. Russell continued to build her database from 9047 activists to the current number of 143,671.[3] The data grew in those two years by her continued contact with local activists through MoveOn.org and their subsequent joining of her personal list.

In fall 2015, Ms. Russell became a candidate for State Senate and again shared a *copy* of her database with her state senate campaign. The campaign then began to fundraise off of its copy of the list.

LEGAL ARGUMENTS

1. The Database Created in 2011 is the Intellectual Property of Diane Russell, Not the Working Families PAC.

There is no dispute that the list is a trade secret. A "trade secret" is defined under Maine law as "information, including . . . a . . . compilation[,] . . . that:

1. [d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; <u>and</u>

2. [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy." 10 M.R.S. § 1542(4) (2016).

The first element in the definition of a trade secret requires that the information have value by virtue of the fact that others can't easily recreate or access the same information. In this case, the database (or "list") created by Ms. Russell in 2011 certainly has actual economic value. The data itself was compiled over a period of many years through careful outreach to particular types of activists. While the individual lists may be available to others, it was Ms. Russell's curation and building upon those lists which created the value it has today.

Secondly, a trade secret only exists if the owner of the information (e.g., Diane Russell) takes reasonable steps toward keeping the information confidential or secret (e.g., requiring a username and password to access the list online – and keeping that username and password confidential). In other words, even if the information is commercially beneficial and considered highly confidential, the information will not be considered a "trade secret" if anyone can access it. In this case, the database exists in Action Network, a site which requires registration along with username and password. It is

[3] It is critically important to note that the contents of the database changes day to day and week to week. Many new activists may sign up through an action invite and thousands typically "unsubscribe" from week to week. That means that the data must continually be updated and managed in order for it to be useful. A snapshot of the database in 2014 would show very different data than an equivalent snapshot in 2016.

most certainly not accessible to the public and Ms. Russell has been quite careful to keep access to her database extremely limited and protected.

Having met both elements of the trade secret test, the database is intellectual property with ownership rights vested solely in Ms. Russell.

2. *The Act of Sharing of a Copy of Her Intellectual Property with the Working Families PAC Does Not Diminish Ms. Russell's Rights in That Property.*

A trade secret, like other intellectual property, is assignable in whole or in part. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1003 (1984). An assignment is "an act or manifestation by the owner of a right (the assignor) indicating [her] intent to transfer that right to another person (the assignee)." *Doughty v. Sullivan*, 661 A.2d 1112, 1124 (Me. 1995). An assignment is "the sale of legal and equitable title [of such right]", whereas a license is "the permission to use [or exercise such right] within a defined time, context, market line[,] or territory." 2 *Rights of Publicity and Privacy* § 10:17 (2d ed. 2016).

Individuals and organizations often rent, sell, or share lists developed by the organization to further specific positions or common goals. Absent a contrary agreement, renting, selling, or sharing the lists does not extinguish the developer's ownership rights in the intangible property. See Planned Parenthood Fed'n of Am., Inc. v. C.I.R., 77 T.C.M. 2227 (T.C. 1999) (explaining that Planned Parenthood's "master and rental lists are intangibles in which [it has] ownership rights" even though it makes its lists available to third parties).

In this instance, the sharing a copy of the data with the Working Families PAC (and her state senate campaign) does not constitute an act or manifestation indicating Diane's intent to transfer legal and equitable title. The parties did not execute an assignment agreement and there were no written or verbal communications showing that Diane meant to give up all of her rights to the list. Without an affirmative assignment, all ownership rights remain with Ms. Russell.

Additionally, the payments by Working Families PAC to NationBuilder and Ms. Russell for list management and online organizing have no effect on Ms. Russell's underlying ownership rights. The PAC paid Ms. Russell and NationBuilder for their services to maintain and build *the copy of the list owned by the Working Families PAC*. Those payments are in no way related to Ms. Russell's original copy of the database – a database she continues to own – regardless of the fact that the PAC has a copy.[4] As

[4] It should be noted that the "lists" owned by Ms. Russell and the Working Families PAC list now contain very different types of data – and are in fact – no longer carbon copies of each other. The list building

stated previously, Ms. Russell did not upload the Working Families PAC data into her original database.

Ms. Russell reserved all of her ownership rights in the original database as evidenced by the lack of express assignment of rights and her clear intention to maintain those rights. For all these reasons, legal and equitable title to the database remain with Ms. Russell. She is the lawful owner of the list and properly and lawfully shared a copy of that list with her state senate campaign.

3. *The Use of Ms. Russell's Database to Fundraise for Her State Senate Campaign in Not a Prohibited Contribution.*

As you are well aware, the state's election laws provide, in relevant part, that "[a]n individual may not make contributions to a candidate in support of the candidacy of one person aggregating . . . more than [$375] for a legislative candidate[,]" 21-A M.R.S.A § 1015(1)(2016). This limitation, however, *"does not apply to contributions in support of a candidate by that candidate or that candidate's spouse or domestic partner*." Id. (emphasis added). Similarly, "[n]o individual may make contributions to candidates aggregating more than $25,000 in any calendar year[,]" *but "[t]his limitation does not apply to contributions in support of a candidate by that candidate* or that candidate's spouse or domestic partner." *Id.* § 1015(3) (emphasis added).

As a result, Ms. Russell is entitled to make unlimited contributions to her own campaign.

Even understanding that unlimited contributions are allowed, Ms. Russell should have disclosed the use of the list as an in-kind contribution to the campaign. That inadvertent oversight stemmed from the fact that most candidates aren't used to considering something that they themselves own as an asset to be disclosed – even when they are aware of and careful about in-kind gifts by others. Ms. Russell simply overlooked that fact that the use of the list should have been disclosed. To that end, Ms. Russell is certainly willing to amend her initial report to show an in-kind contribution from herself to the campaign.

Despite all the public pronouncements and criticisms about how Ms. Russell fundraised so successfully – she acted properly and lawfully when she shared a copy of her list with the campaign for fundraising purposes. All donors were properly reported and the public was always aware of where the money to finance her campaign came from. She retains all right and title to the original database/list as her intellectual property – despite having shared it with the PAC and the campaign. Given all the facts above, we respectfully request that this Commission find no wrongdoing occurred and allow Ms.

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done by the PAC contains data that is not present on Ms. Russell's original list. This fact makes for a sometimes confusing discussion but does nothing to undermine the underlying legal arguments.

Russell to amend her initial state senate campaign finance report to add the list sharing as an in-kind contribution.

Thank you for your consideration and I look forward to discussing this with you further on July 20, 2016.

Sincerely,

Katherine R. Knox

ATTACHMENT #1

- Describe Rep. Russell's use of the list and the types of information contained in the list (e.g. name, mailing address, email address, demographic information, etc.)

  Ms. Russell shared a copy of the list with her state senate campaign. The list used by the campaign generally contains only names and email addresses.

- How many individuals did the list contain when it was used for fundraising during 2016. If an exact number cannot be determined because the number varied during this year, please provide a range.

  Approximately 130,000

- In its campaign finance report filed on 1/15/2016, the Working Families PAC reported receiving $7,441 from Democrats.com on 10/17/2015. Please describe this transaction (i.e. who sold what to whom, to whom was the check or wire transfer made payable, were there any restrictions on the use of the list placed on the purchaser). Did the list sold to Democrats.com contain the same of nearly the same information as the list used by Rep. Russell to fundraise for her Senate campaign?

  The list sold to Democrats.com was the Working Families PAC's copy of the list (national contacts plus 15,000 Maine emails) and there were no restrictions on its use. The payment was made payable to the Working Families PAC and was disclosed on its corresponding PAC report. The payment amount was offered, without prompt, by Democrats.com.

  The list sold to Democrats.com is not the same as the list used by the campaign for fundraising – and the information contained in each is different. Generally, the Working Families PAC copy of the list contains more data with fuller information on each individual than Ms. Russell's list.

- Aside from the PAC's sale to Democrats.com, has Rep. Russell sold the email list to any other organization or individual? If so, please provide the names of the purchasers and the sale price.

  The Working Families PAC has not sold its copy of the list to any other parties.
  The campaign has not sold its copy of the list to any parties.
  Ms. Russell has not sold the list to any parties.

- If Rep. Russell were to purchase an email list that is comparable to the one she used for fundraising in 2016, please estimate what the cost would be. In other words, what is the value of the list that she used to raise funds for the primary?

  This is an extremely complicated question with no clear answer. A variety of factors, however, seem important to this determination. First, this was not (and is not) a donor list, it is an activist list. Prior to the fundraising efforts, there was no way to know whether individuals interesting in calling their local representatives about a child welfare issue could be converted into donors to a local political campaign. Second, the campaign was attempting to fundraise off of a copy of the list – which means that many other people were in a position to also be simultaneously fundraising off the same list. Logic follows that the more people have the list and are using it to ask for money, the less valuable it is.

  Finally, the Commission needs to be cautious about retroactively valuing a list and using the fundraising totals as a guide post. That information was simply not available to Ms. Russell or the campaign when the copy of the list was given. There was absolutely no guarantee at the time of the sharing that the list would be fruitful – and that is the place from which the list needs to be valued.

  While this is a complicated question, the listing of an in-kind contribution from Ms. Russell to the PAC will need a hard number and we will endeavor to have a suggested number for your consideration at the June 20, 2016 meeting.

- How many fundraising emails for her Senate campaign did Rep. Russell send using the email list?

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- In Table 1 (attached) is a list of payments by the Working Families PAC to vendors which sometimes provide services related to fundraising, communications or databases. If these vendors provided services to the PAC that were related to the email list, please describe the type of services that were provided by the vendor. (If the services to the PAC were unrelated to the email list, please indicate that.)

  All of these payment relate to the Working Families PAC's copy of the list which is not the list used by the state senate campaign to fundraise. If the Commission is still interested in these payments – we are happy to provide that information at the July 20, 2016 meeting. Please note that there are three payments for $1 to "ActionNetwork.org" which relate to an attempt to set up a new management account. That set up proved difficult and the PAC never transferred its copy of the list or opened an account.

- With respect to NationBuilder, it appears that the monthly costs paid by the Working Families PAC increased over time. Over seven months, the payments to NationBuilder totaled $4,844.00. The last two payments to NationBuilder were for $999.00. the NationBuilder website indicates that the monthly payment of $999.00 is for the Enterprise level of services and lists a large variety of services, far beyond hosting, that would be available to the PAC. What services beyond hosting did the PAC use (e.g., voter data supplied by NationBuilder, list segmentation, email analytics, fundraising websites, social media integration, etc.) Many of these services are available for the lower price levels. Was the hosting the email list the only service provided by NationBuilder or utilized by the PAC? Why would the PAC pay this high cost to this vendor when alternatives in the marketplace, such as Action Network, would charge only $10 per month.

  The Working Families PAC chose to use NationBuilder as it presented itself as a sophisticated database management tool. In particular, the PAC was able to access (but not save or integrate) voter data and social media integration – both were services it utilized. NationBuilder also allowed the PAC to tag individuals based on their issues of interest – which is very useful when using a list for issue outreach. Eventually, the costs became too high.

- Prior to March 2013, did Rep Russell pay NationBuilder or any other similar provider for any services related to email lists with her personal funds for which the PAC did not reimburse her?

  Yes, she used Constant Contact for about two years but found it did not have functionality she needed.

- The PAC made three expenditures of $249.00 each to One Click Politics in 2014. The expenditures were described as "online organizing tool" and "internet action service." One Click Politics also has a variety of service levels. How did the PAC use the services provided by One click Politics? If the services provided related to the email list, please describe how they were related.

  One Click Politics was used for a very short time because it purported to offer an enhancement that if one sent an email to a list – it allowed a click through directly to the action requested. For example, if an action email went out saying "call your local legislator," One Click was supposed to provide direct access to the phone or email (making the action more likely). The functionality quite simply didn't work and so it was terminated.

- Table 2 lists payments that the Working Families PAC made to Diane Russell for "online organizing." Please describe the work provided by Rep. Russell for which she received these payments.

  The PAC paid Ms. Russell for her time communicating with list members through action alerts and petitions. Ms. Russell charged the PAC $25 per hour for that work.

ActBlue

Diane Russell for State Senate

For years, Diane Russell has worked to build an economy that works for everyone while building a track record of getting things done in Augusta.

The Nation magazine named her their Most Valuable State Representative in the country in their 2011, and now she's running for state senate. **Will you chip in today?**

$15 [edit]

2 Personal Information

Email Address

Email Address is required.

First Name | Last Name

Number, Street, Apt. | Zip

City | State

United States

Phone Number

Campaign finance law requires us to collect your occupation and employer.

☐ **Click here if you are retired or not employed**

Occupation | Employer

« back

Continue

Contribution Rules

1. This contribution is made from my own funds, and funds are not being provided to me by another person or entity for the purpose of making this contribution.
2. I am at least eighteen years old.
3. I am a U.S. citizen or lawfully admitted permanent resident (i.e., green card holder).

Maine Revised Statutes

Title 21-A: ELECTIONS

Chapter 13: CAMPAIGN REPORTS AND FINANCES

§1012. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 161, §6 (NEW).]

1. **Clearly identified.** "Clearly identified," with respect to a candidate, means that:

A. The name of the candidate appears; [1985, c. 161, §6 (NEW).]

B. A photograph or drawing of the candidate appears; or [1985, c. 161, §6 (NEW).]

C. The identity of the candidate is apparent by unambiguous reference. [1985, c. 161, §6 (NEW).]

[1985, c. 161, §6 (NEW) .]

2. **Contribution.** The term "contribution:"

A. Includes:

(1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office or for the purpose of liquidating any campaign deficit of a candidate, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;

(2) A contract, promise or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;

(3) Funds received by a candidate or a political committee that are transferred to the candidate or committee from another political committee or other source; and

(4) The payment, by any person other than a candidate or a political committee, of compensation for the personal services of other persons that are provided to the candidate or political committee without charge for any such purpose; and [1995, c. 483, §3 (AMD).]

B. Does not include:

(1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;

(2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the individual on behalf of any candidate does not exceed $250 with respect to any election;

(3) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if the charge to the candidate is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed $100 with respect to any election;

(4) Any unreimbursed travel expenses incurred by an individual in the course of providing voluntary personal services to a candidate and paid for by that individual, if the cumulative amount of these expenses does not exceed $350 with respect to any election;

Maine Revised Statutes

Title 21-A: ELECTIONS

Chapter 13: CAMPAIGN REPORTS AND FINANCES

§1015. LIMITATIONS ON CONTRIBUTIONS AND EXPENDITURES

1. **Individuals.** An individual may not make contributions to a candidate in support of the candidacy of one person aggregating more than $1,500 in any election for a gubernatorial candidate, more than $350 for a legislative candidate, more than $350 for a candidate for municipal office and beginning January 1, 2012 more than $750 for a candidate for municipal office or more than $750 in any election for any other candidate. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse or domestic partner. Beginning December 1, 2010, contribution limits in accordance with this subsection are adjusted every 2 years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by $25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

[2011, c. 382, §1 (AMD) .]

2. **Committees; corporations; associations.** A political committee, political action committee, other committee, firm, partnership, corporation, association or organization may not make contributions to a candidate in support of the candidacy of one person aggregating more than $1,500 in any election for a gubernatorial candidate, more than $350 for a legislative candidate, more than $350 for a candidate for municipal office and beginning January 1, 2012 more than $750 for a candidate for municipal office or more than $750 in any election for any other candidate. Beginning December 1, 2010, contribution limits in accordance with this subsection are adjusted every 2 years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by $25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

[2011, c. 382, §2 (AMD) .]

3. **Aggregate contributions.** No individual may make contributions to candidates aggregating more than $25,000 in any calendar year. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse or domestic partner.

[2007, c. 443, Pt. A, §12 (AMD) .]

4. **Political committees; intermediaries.** For the purpose of the limitations imposed by this section, contributions made to any political committee authorized by a candidate to accept contributions on the candidate's behalf are considered to be contributions made to that candidate. If the campaign activities of a political action committee within a calendar year primarily promote or support the nomination or election of a single candidate, contributions to the committee that were solicited by the candidate are considered to be contributions made to the candidate for purposes of the limitations in this section. For purposes of this subsection, solicitation of contributions includes but is not limited to the candidate's appearing at a fundraising event organized by or on behalf of the political action committee or suggesting that a donor make a contribution to that committee.

For the purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, that are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate are considered to be contributions from that person to the

Maine Revised Statutes

Title 21-A: ELECTIONS

Chapter 13: CAMPAIGN REPORTS AND FINANCES

§1017. REPORTS BY CANDIDATES

5. **Content.** A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of $50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name of each payee and creditor and any refund that a payee has made to the candidate or an agent of the candidate. If the payee is a member of the candidate's household or immediate family, the candidate must disclose the candidate's relationship to the payee in a manner prescribed by the commission. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A. The candidate and the treasurer are jointly and severally responsible for the timely and accurate filing of each required report.

[2011, c. 522, §1 (AMD) .]

5-A. **Valuation of contributions sold at auction.** Any contribution received by a candidate that is later sold at auction must be reported in the following manner.

A. If the contribution is sold at auction before the commencement of the appropriate reporting period specified in subsections 2 to 4, or during that period, the value of the contribution is deemed to be the amount of the purchase price paid at auction. [2007, c. 443, Pt. A, §16 (AMD).]

B. If the contribution is sold after the termination of the appropriate reporting period specified in subsections 2 to 4, the value of the contribution is the difference between the value of the contribution as originally reported by the treasurer and the amount of the purchase price paid at auction. Unless further reports are filed in relation to a later election in the same calendar year, the disposition of any net surplus or deficit in excess of $100 resulting from the difference between the auction price and the original contribution value must be reported in the same manner as provided in subsection 2, paragraph F or subsection 3-A, paragraph E, as appropriate. [2009, c. 190, Pt. A, §7 (AMD).]

[2009, c. 190, Pt. A, §7 (AMD) .]

6. **Forms.** Reports required by this section not filed electronically must be on forms prescribed, prepared and sent by the commission to the treasurer of each registered candidate at least 7 days before the filing date for the report. Establishment of or amendments to the campaign report filing forms required by this section must be by rule. Persons filing reports may use additional pages if necessary, but the pages must be the same size as the pages of the form. Although the commission mails the forms for required reports to candidates who are exempt from filing electronically, failure to receive forms by mail does not excuse treasurers, committees and other persons who must file reports from otherwise obtaining the forms or from late filing penalties.

Rules of the commission establishing campaign report filing forms for candidates are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 443, Pt. A, §16 (AMD) .]

7. **Reporting exemption.**

[1991, c. 839, §34 (AFF); 1991, c. 839, §20 (RP) .]

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 1: PROCEDURES

SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS

1. The date of a contribution is the date it is received by a candidate, an agent of the candidate, a candidate's committee, a party committee and its agents, or a political action committee and its agents.

2. A loan is a contribution at the time it is made unless the loan was made by a financial institution in the State of Maine in the ordinary course of business. Loans continue to be contributions until they are repaid. Loans are subject to the candidate contribution limitations, except for loans made by the candidate, the candidate's spouse, or a financial institution in the State of Maine in the ordinary course of business. The Commission may consider any reported loan to be a cash contribution if it remains unpaid four years after the election in which it was incurred.

3. Candidates and political action committees must report the name, address, occupation and employer of each individual contributor who gives, in the aggregate, more than $50 for the reporting period. The reporting is required for private contributions raised by privately financed candidates and for seed money contributions to candidates participating in the *Maine Clean Election Act*. Candidates, political action committees, ballot question committees, and party committees must make a reasonable effort to obtain the employment information of the contributor when required by statute. The reasonable effort must include requesting the employment information and providing a convenient means for the donor to provide the information, such as a paper form to be submitted with a contribution or text fields to enter the information on an online fundraising screen. If a candidate or committee is unable to obtain the information from the contributor in response to a candidate's or committee's request, the candidate or committee shall indicate "information requested" in the occupation and employer sections of the campaign finance report. If the Commission staff believes that due to the amount of missing information further inquiry is warranted, the Commission staff shall verify whether the candidate or committee has made a reasonable effort to obtain the information.

4. Unless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee.

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June 13, 2016

Jonathan Wayne
Executive Director
Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine

RE: Preliminary Response from Diane Russell for State Senate – Hiltz Complaint #2

Dear Mr. Wayne:

On behalf of my client, Diane Russell, I write to provide a preliminary response to the questions posed in your letter dated June 10, 2016.

1. Please describe the email list used by Rep. Russell to solicit funds for her State Senate campaign, including an explanation of who owns the list.

Sometime in 2011, Ms. Russell created an online petition using the digital organizing platform MoveOn.org ("MoveOn"). MoveOn describes itself as a do it yourself organizing platform to create petitions and campaigns to drive social change. Individuals can create petitions expressing support or opposition for issues, organizations or individuals can invite other MoveOn members to sign the petition – at no cost or obligation to any of those involved.

The petition created by Ms. Russell urged other MoveOn members to voice objection to the proposed sequestration cuts in the federal budget. That petition garnered approximately 375,000 "signatures" – which included not only a signer's name but their mailing address and email as well (although Ms. Russell had no direct access to that personal information). Again, there is, and was, no cost to set up or maintain the petition or to sign on. As is typical with MoveOn, Ms. Russell could correspond with signers and send new petitions but she did not have access to identifying information and could not import that information to create her own list outside the platform.[1] That information was completely protected and maintained by MoveOn.

[1] To clarify, as Ms. Russell explained to Commission staff in her correspondence of January 21, 2016, there are technically two lists. The first list lives on and is controlled by MoveOn. Ms. Russell can

In order to have more access to signers, Ms. Russell created her own landing page and invited any interested MoveOn signers of her petitions to sign up and share their information with her directly. For the next several years, Ms. Russell continued to create and circulate petitions on MoveOn which provided the option to be included in her personal list. That list, which eventually became quite large, was initially housed on Nation Builder – an online list management service. Nation Builder charged a variety of fees for hosting the list which eventually surpassed $1,000 a month.

Nation Builder was responsible only for hosting and did not provide any enhancement services. The list was built completely by Ms. Russell by circulating petitions on issues of importance to her.

After approximately one year, Ms. Russell stopped using Nation Builder (and the list) because of its high hosting cost. For a period of time after that, the list sat inactive and unused. Eventually, Ms. Russell discovered Action Network – which provides list hosting services for a significantly reduced cost of $10 per month. At that point, she loaded the list onto the Action Network site where it remains today.[2] Ms. Russell pays the $10 monthly hosting fee out of her personal funds.

Again, the list clearly belongs to Ms. Russell personally. She developed it in order to highlight a federal issue of personal interest to her. She oversees and controls the list and who is added to it. She has complete control over how the list– which was created entirely by voluntary response to her email invitation – is used. The only nexus to the Working Families PAC was that PAC funds were used to reimburse her for the hosting cost for Nation Builder.

At its core, whether the list sits with Ms. Russell or in the Working Families PAC is a distinction without a difference. The Working Families PAC *is* Ms. Russell. It is not an incorporated entity – it is managed and run entirely by Ms. Russell. It is directly associated with Ms. Russell both in publically available filings and in the media. And Ms. Russell manages both the list and the PAC. As such, while the list may have lived on Nation Builder or Action Network, and received some maintenance support through PAC funds, the list belongs to Ms. Russell.

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communicate with members of that list but cannot access the personal information of individuals on the list. The second list was created when MoveOn signers sent their information directly to Ms. Russell for inclusion into her personal list. It is the second list which is under consideration and review by the Commission.

[2] The names and emails on that list are in constant flux. People are regularly adding and removing themselves from the list as they become aware of and engaged in issues raised by Ms. Russell's petitions and calls to action.

2. ***To the extent that the information is available, has Rep. Russell or Working Families PAC incurred expenses to develop the email list?***

No – neither Ms. Russell nor the Working Families PAC has incurred expenses to develop the email list. As stated above, Ms. Russell has only incurred expenses to maintain the list, and currently those costs are minimal and paid by Ms. Russell. There are certainly services which will conduct list enhancement – but Ms. Russell has not used them. She has incurred expenses for list scrubbing – removing old and inaccurate emails to reduce bounce backs and returns – but not for list development.

3. ***A description of the efforts the campaign made to collect employer/occupation data from contributors.***

As you know, Maine law requires campaign finance reports to include, among other things, the occupation of all contributors who have given more than $50.00. (21-A M.R.S.A. § 1017(5)). In light of an understanding that this information may be difficult for candidates to obtain or confirm, Ethics Commission rules further clarify that candidates are responsible for making a "reasonable effort to obtain the employment information of the contributor(s)" which "must include requesting the employment information and providing a convenient means for the donor to provide the information" (such as provision of a specific "occupation" field on paper and online contribution forms).

In this case, the majority of contributions to the campaign originated with ActBlue. For Maine Ethics Reporting, the campaign uses the address and employment information that the contributor inputs into the system on a standard form they fill out when they make their donation. Those forms, as required, have specific, designated fields to request and collect information provided by the contributor about their employment.

Below is an outline of the information requested of ActBlue contributors at the time they contribute to a campaign or candidate:

Contribution Info:
Order Number:
Refcode:
Page:
NAME:
DATE and TIME:
AMOUNT of CONTRIBUTION:
Billing Address"
Occupation/Employer:
Contact Info:
Contribution Info:

While the law requires candidates to indicate "information requested" in their campaign finance report when they are *unable* to obtain employment information, in this case, Ms. Russell followed state law and Ethics rules and *was* able to obtain employment information of contributors. If any contributors erroneously self-reported being "not currently employed" when they, in fact, were, they did so without Ms. Russell's knowledge. Further and most importantly, Ms. Russell is not responsible for investigating, confirming, or reporting such an error nor should she be held accountable for such.

We hope the information provided in this memo adequately answers any questions you have about Ms. Russell's actions. Because there is no evidence to support the conclusion that Ms. Russell acted in violation of Maine law or rule, we urge the Commission to end the investigation today and deny pursuit of further action.

Sincerely,

Katherine R. Knox