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(via USPS and e-mail: Jonathan.Wayne@maine.gov)

Maine Commission on Governmental Ethics
and Election Practices
135 State House Station
Augusta, Maine 04333-0135

Re: Supplement to NGLTF Complaint

Dear Members of the Commission,

I am writing on behalf of the National Organization for Marriage (“NOM”) to supplement the record in NOM’s request to re-open the matter of a potential investigation of the National Gay & Lesbian Task Force (“NGLTF”) Action Fund and Foundation. NOM would simply like to highlight a few things ahead of the August 27, 2014 meeting so that nothing new or unexpected is presented there.

First, on the issue of the timeliness of NOM’s complaints featuring NGLTF, it would have been quite hypocritical of NOM to have filed complaints against other groups who were active in Maine during 2009 regarding the marriage ballot question. In October 2009, two of the five Commissioners indicated that NOM’s activities appeared to be consistent with Maine law and how many groups were operating at the time. NOM’s position throughout the investigation has been that they did not raise more than \$5,000 from emails referring to a Maine ballot question (which has been borne out by the evidence) and that their activities were otherwise unregulated under Maine law. It was only after the Commission’s final determination that NOM, and other groups for that matter, were put on notice of the extent of the Commission’s application of Maine’s ballot question committee definition. Furthermore, the Commission has an enforcement role and obligation itself. Affidavit of Jonathan Wayne ¶ 10, *NOM v. McKee*, No. 9 Civ. 538, Doc. 19 (D. Me. Oct. 26, 2009) (“Most often, enforcement matters are generated internally by the Commission staff.”).

Second, by its own admission, the Action Fund states that its staff salaries are paid by the Foundation. The Action Fund’s Form 990 shows monthly expenses for the year of a greater

amount than could be covered by the Action Funds balance in its accounts as of May 2009 in addition to making direct contributions to Maine political committees. So either the Action Fund indeed raised more than \$5,000 between May and October 2009 or it received more than \$5,000 from the Foundation to cover overhead during that time. Either way, in light of the Action Fund's activities in Maine (which, by its own admission, were a majority of its activities in 2009), its public communications referring to the marriage ballot question in Maine, and the fact that it made direct contributions to Maine political committees, means that it triggered registration and reporting obligations under at least Subsection C of the "contributions" definition. 21-A M.R.S. § 1056-B(2-A)(C).

Finally, the original complaint against NOM filed in August 2009 stated nothing more than that NOM had made large contributions to a Maine political committee and that, therefore, it must have received underlying "contributions" that needed to be reported. In response, the Commission staff itself requested further information from the complainant showing facts about NOM's fundraising activities that may have mentioned a Maine ballot question. The complaint supplement attached several emails in response. NOM has done the same here with regard to NGLTF. It has shown that the Action Fund or Foundation made direct contributions to Maine political committees in 2009 and that their public communications, including web-based communications and emails frequently referred to a Maine ballot question in 2009. In addition, all evidence related to NOM's major donors, including internal strategy documents, donor thank you letters, and bank account information, was obtained after the start of the investigation. Similarly, it cannot be known whether any donations were made to NGLTF that share common facts with NOM's donations that were considered "contributions" by the Commission from the information provided by NGLTF here. For example, some of the donations received by NGLTF before May 2009 could have been made in a way that triggered "contribution" status under Maine law as applied against NOM by the Commission. NGLTF's response is actually very similar to the response NOM made before the investigation.

If you have any questions, we can give clarifications at the hearing on August 27, 2014.

Sincerely,

Joseph A. Vanderhulst
jvanderhulst@actrightlegal.org

cc: Phyllis Gardiner (via E-mail: Phyllis.Gardiner@maine.gov)