

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
TRIAL COURT OF THE COMMONWEALTH
CIVIL ACTION NO. 15-0494E

1A AUTO, INC., and
126 SELF STORAGE, INC.,

Plaintiffs,

v.

MICHAEL SULLIVAN, Director,
Office of Campaign and Political Finance,

Defendant.



COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, by and through their undersigned counsel, hereby file this Complaint against Defendant and allege as follows:

INTRODUCTION

1. This civil rights action seeks to vindicate the constitutional rights of businesses to participate on equal footing with unions and other groups in the political process.
2. On its face and as enforced by Defendant, G.L. c. 55, §8 imposes an outright ban on political contributions by business corporations to candidates, parties, and political committees, both directly from their general corporate treasuries and indirectly from business-controlled political action committees ("PACs").
3. Unincorporated groups, including labor unions, are allowed to contribute thousands of dollars to candidates, parties, and political committees, both directly from their general treasuries and indirectly from union-controlled PACs.

4. There is no legitimate justification for allowing unions to contribute thousands of dollars to candidates, parties, and political committees, while completely banning any contributions from businesses.

5. This lopsided ban on political contributions violates Plaintiffs' rights of equal protection, free speech, and free association protected by the Massachusetts and United States constitutions.

JURISDICTION AND VENUE

6. This Court has jurisdiction over Plaintiffs' claims for relief pursuant to G.L. c. 12, §11I, G.L. c. 231A, §1 *et seq.*, G.L. c. 212, §3, G.L. c. 214, §1, G.L. c. 214, §5, and 42 U.S.C. §1983.

7. Venue is appropriate pursuant to G.L. c. 223, §1.

PARTIES

8. Plaintiff 1A Auto, Inc., is a family-owned Massachusetts business corporation. It sells auto parts in Pepperell, Massachusetts. It does not solicit or receive funds for any political purpose. But for Defendant's enforcement of G.L. c. 55, §8, 1A Auto, Inc., would directly and indirectly contribute money or other valuable things for the purpose of aiding the nomination and election of numerous persons to public office, and aiding the interests of political parties. But for Defendant's enforcement of G.L. c. 55, §8, 1A Auto, Inc., would make such contributions to candidates, PACs other than independent expenditure PACs, and party committees. But for Defendant's enforcement of G.L. c. 55, §8, 1A Auto, Inc., would establish, finance, maintain, and control a PAC to make such contributions.

9. Plaintiff 126 Self Storage, Inc., is a family-owned Massachusetts business corporation. It rents self-storage units in Ashland, Massachusetts. It does not solicit or receive funds for any political purpose. But for Defendant's enforcement of G.L. c. 55, §8, 126 Self

Storage, Inc., would directly and indirectly contribute money or other valuable things for the purpose of aiding the nomination and election of numerous persons to public office, and aiding the interests of political parties. But for Defendant's enforcement of G.L. c. 55, §8, 126 Self Storage, Inc., would make such contributions to candidates, PACs other than independent expenditure PACs, and party committees. But for Defendant's enforcement of G.L. c. 55, §8, 126 Self Storage, Inc., would establish, finance, maintain, and control a PAC to make such contributions.

10. Defendant Michael Sullivan is the Director of the Office of Campaign and Political Finance. Defendant Sullivan is responsible for enforcement of Massachusetts statutes and regulations regarding disclosure and regulation of campaign expenditures and contributions, including G.L. c. 55, §8. Defendant Sullivan is empowered to enforce these laws through, *inter alia*, issuance of rules, regulations, interpretative bulletins, and advisory opinions. Defendant Sullivan is currently enforcing the laws, practices, policies, and procedures complained of in this action. Defendant Sullivan is sued in his official capacity.

FACTS

11. In pertinent part, G.L. c. 55, §8 provides:

[N]o business or professional corporation, partnership, limited liability company partnership under the laws of or doing business in the commonwealth and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party.

12. The statute imposes an outright ban on political contributions by business corporations to candidates, parties, and political committees, both directly from a business's general corporate treasury and indirectly through a PAC.

13. Due to Defendant's enforcement of G.L. c. 55, §8, business corporations "may not contribute to candidates, PACs (other than independent expenditure PACs), or party committees." See IB-88-01.

14. Exhibit 1 accurately reflects IB-88-01 and Defendant's current enforcement practices, policies, and procedures.

15. Due to Defendant's enforcement of G.L. c. 55, §8, businesses may not establish, finance, maintain, or control a PAC that supports candidates, other PACs (other than independent expenditure PACs), or party committees. See AO-90-30.

16. Exhibit 2 accurately reflects AO-90-30 and Defendant's current enforcement practices, policies, and procedures.

17. Due to Defendant's enforcement of G.L. c. 55, §8, non-profit organizations, PACs, and unincorporated organizations with business members are likewise barred from contributing to candidates, PACs (other than independent expenditure PACs), or party committees. See AO-98-01.

18. Exhibit 3 accurately reflects AO-98-01 and Defendant's current enforcement practices, policies, and procedures.

19. A corporation that violates G.L. c. 55, §8 can be fined up to \$50,000; any officer, director, or agent of the corporation can be fined up to \$10,000 and/or imprisoned for one year.

20. As enforced by Defendant, G.L. c. 55, §8 allows labor unions and other unincorporated associations to make political contributions to candidates, PACs, or party committees, both directly and through union-controlled PACs. See AO-97-21.

21. Exhibit 4 accurately reflects AO-97-21 and Defendant's current enforcement practices, policies, and procedures.

22. As enforced by Defendant, G.L. c. 55, §8 allows any union to directly contribute the lesser of 10 percent of its revenue or \$15,000 per year from funds not solicited for a political purpose to candidates, PACs, or party committees. See IB-88-01.

23. Direct contributions from unions to candidates, PACs, or party committees in the aggregate amount of \$15,000 per year or less do not create a cognizable risk of corruption.

24. If a union exceeds the 10-percent/\$15,000 limit on direct contributions, its subsequent contributions are subject to ordinary contribution limits and all of its spending becomes subject to disclosure requirements. See IB-88-01.

25. Annual political contribution limits for individuals are: \$1,000 per candidate, \$5,000 per party, and \$500 per PAC. See G.L. c. 55, §7A(a)(1)–(3); 970 Mass. Code Regs. 1.04.

26. Spending by a union-controlled PAC is separate from and in addition to the 10-percent/\$15,000 limit set out in IB-88-01. See AO-97-21.

27. Annual political contribution limits for PACs are: \$500 per candidate, \$5,000 per party, and \$500 per PAC. See G.L. c. 55, §7A(a)(1)–(3); 970 Mass. Code Regs. 1.04.

FIRST CLAIM FOR RELIEF
(Equal Protection)
(Massachusetts Declaration of Rights, Art. 1)

28. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if the same were fully set forth here.

29. Plaintiffs are entitled to the equal protection of law guaranteed by Article 1 of the Massachusetts Declaration of Rights.

30. Article 1 of the Massachusetts Declaration of Rights requires that the same political contribution limits apply to unions and businesses.

31. On its face and as enforced by Defendant, G.L. c. 55, §8 prohibits Plaintiffs from making political contributions to candidates, parties, or committees while allowing unions to make such contributions in excess of ordinary limits.

32. For purposes of regulating political contributions, businesses and unions are functionally equivalent organizations.

33. The statutory classifications imposed by G.L. c. 55, §8 and enforced by Defendant impinge upon Plaintiffs' political speech.

34. The statutory classifications imposed by G.L. c. 55, §8 and enforced by Defendant are not narrowly tailored to prevent corruption or the appearance thereof.

35. By applying different contribution limits to unions and businesses, Defendant currently maintains and actively enforces a set of laws, practices, policies, and procedures under color of state law that deprive Plaintiffs of equal protection of the law, in violation of Article 1 of the Massachusetts Declaration of Rights.

36. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of the unconstitutional laws, practices, policies, and procedures complained of in this action.

SECOND CLAIM FOR RELIEF
(Equal Protection)
(Fourteenth Amendment)

37. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if the same were fully set forth here.

38. Plaintiffs are entitled to the equal protection of law guaranteed by the Fourteenth Amendment to the United States Constitution.

39. The Fourteenth Amendment requires that the same contribution limits apply to unions and businesses.

40. By applying different contribution limits to unions and businesses, Defendant currently maintains and actively enforces a set of laws, practices, policies, and procedures that deprive Plaintiffs of equal protection of the law, in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983.

41. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of the unconstitutional laws, practices, policies, and procedures complained of in this action.

THIRD CLAIM FOR RELIEF
(Freedom of Speech and Association)
(Massachusetts Declaration of Rights, Art. 16 and 19)

42. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if the same were fully set forth here.

43. Plaintiffs' political speech is protected by Articles 16 and 19 of the Massachusetts Declaration of Rights.

44. On its face and as enforced by Defendant, G.L. c. 55, §8 prohibits Plaintiffs from making political contributions to candidates, parties, or committees.

45. The contribution ban imposed by G.L. c. 55, §8 and enforced by Defendant impinges upon Plaintiffs' political speech.

46. The contribution ban imposed by G.L. c. 55, §8 and enforced by Defendant is not narrowly tailored to prevent corruption or the appearance thereof.

47. By prohibiting Plaintiffs from making political contributions to candidates, parties, or committees, Defendant currently maintains and actively enforces a set of laws, practices, policies, and procedures under color of state law that deprive Plaintiffs of the rights of free speech and association, in violation of Articles 16 and 19 of the Massachusetts Declaration of Rights.

48. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of the unconstitutional laws, practices, policies, and procedures complained of in this action.

FOURTH CLAIM FOR RELIEF
(Freedom of Speech and Association)
(First and Fourteenth Amendments)

49. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if the same were fully set forth here.

50. Plaintiffs' political speech is protected by the First and Fourteenth Amendments to the United States Constitution.

51. By prohibiting Plaintiffs from making political contributions to candidates, parties, or committees, Defendant currently maintains and actively enforces a set of laws, practices, policies, and procedures under color of state law that deprive Plaintiffs of the rights of free speech and association, in violation of the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.

52. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of the unconstitutional laws, practices, policies, and procedures complained of in this action.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court enter judgment in their favor as follows:

A. Declare that Defendant's application of different political contribution limits to unions and businesses deprives Plaintiffs of equal protection of the law, in violation of Article 1 of the Massachusetts Declaration of Rights;

B. Declare that Defendant's application of different political contribution limits to unions and businesses deprives Plaintiffs of equal protection of the law, in violation of the Fourteenth Amendment;

C. Declare that, by prohibiting Plaintiffs from making political contributions to candidates, parties, or committees, G.L. c. 55, §8 deprives Plaintiffs of the rights of free speech and association, in violation of Articles 16 and 19 of the Massachusetts Declaration of Rights;

D. Declare that, by prohibiting Plaintiffs from making political contributions to candidates, parties, or committees, Mass. G.L. c. 55, §8 deprives Plaintiffs of the rights of free speech and association, in violation of the First and Fourteenth Amendments to the United States Constitution;

E. Preliminarily and permanently enjoin Defendant, his officers, agents, servants, employees, and all persons in active concert or participation with him from enforcing different political contribution limits for unions and businesses;

F. Preliminarily and permanently enjoin Defendant, his officers, agents, servants, employees, and all persons in active concert or participation with him from enforcing G.L. c. 55, §8 against Plaintiffs;

G. Award Plaintiffs their costs, attorneys' fees, and other expenses in accordance with law, including 42 U.S.C. §1988 and G.L. c. 12, §11I; and

H. Order such additional relief as may be just and proper.

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Respectfully submitted,

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By their attorneys,



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February 24, 2015

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
EXHIBIT 1



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INTERPRETIVE BULLETIN

**The Applicability of the Campaign Finance Law to
Groups That Do Not Engage in Political Fundraising**

This bulletin defines when activity supporting or opposing Massachusetts candidates and candidate committees, PACs or political party committees by organizations that do not raise money for a political purpose becomes subject to the provisions of M.G.L. c. 55, the campaign finance law. In particular, where an organization makes expenditures, but does not raise funds to support or oppose candidates, political action committees or political parties, this bulletin defines (1) whether, when and to whom the organization must report its financial activities, (2) what the reporting obligations are, and (3) the relevant limitations on financial activities.

Summary

An organization that does not solicit or receive funds for any political purpose (i.e. to support or oppose candidates, political action committees, or political parties, whether in Massachusetts or elsewhere), does not need to organize a separate Massachusetts political committee to contribute to, or make independent expenditures to support or oppose, Massachusetts candidates and candidate committees, PACs and party committees ("political entities").

If the total amount of the organization's financial activity, including contributions to political entities and independent expenditures made to support or oppose such entities becomes "more than incidental," the organization becomes subject to limitations on what it may contribute to political entities, and to the reporting requirements that apply to PACs. The organization remains subject to these limitations and requirements until one year after the last year that the organization's financial activity does not exceed the incidental threshold. Financial activity is "more than incidental" if it exceeds, in the aggregate, in a calendar year, either \$15,000 or 10 percent of such organization's gross revenues for the previous calendar year, whichever is less.



Part I of this bulletin describes when a group or organization is considered a "political committee" under the campaign finance law. These guidelines apply to groups, unions, associations or other types of organizations, including non-profit corporations, "social welfare," i.e., "501(c)(4)," or other tax-exempt organizations established under Section 501(c) of the Internal Revenue Code, and also to political organizations created under Section 527 of the Internal Revenue Code.

The bulletin also provides guidance for organizations that make independent expenditures or contributions¹ to political entities, but do not engage in political fundraising, i.e., for organizations that do not solicit or receive funds to support or oppose the nomination or election of Massachusetts candidates, political parties, or political action committees. As discussed below, such an organization, even if it is not required to organize as a political committee, may become subject to limits on what it may contribute to political entities and also to the reporting requirements of the campaign finance law if the organization's financial activity is "more than incidental."

Organizations that receive any amount of money from entities that are prohibited from contributing to candidates may not use such funds to make contributions. The campaign finance law states that business and professional corporations, and LLPs, LLCs, and partnerships, may not contribute to candidates, PACs (other than independent expenditure PACs) or party committees. See M.G.L. c. 55, § 8. An organization which has a general treasury that contains funds derived from such entities may not make contributions to candidates, PACs or political parties.

Section 8 prohibits indirect as well as direct contributions by business or professional corporations, LLPs, LLCs, or partnerships to candidates, PACs (other than independent expenditure PACs), or political parties. This means that an entity that receives corporate or partnership funds may not, by segregating those funds into a separate account, make contributions from an account that does not contain the prohibited funds. See AO-98-18. Business corporations or other entities that may not contribute to candidates under Section 8, may, however, make independent expenditures to support or oppose candidates.

This bulletin does not address the disclosure requirements or limitations of political committees, whether organized in Massachusetts or elsewhere², or expenditures that may be made by groups to support or oppose ballot questions.³

I. When must a group or organization formally register as a Massachusetts political committee?

The Massachusetts campaign finance law defines a political committee, in part, as "any committee, association, organization or other group of persons, including a national, regional, state, county or municipal committee, which *receives contributions or makes expenditures* for the purpose

¹ "Contributions" include in-kind or monetary contributions, and also coordinated expenditures.

² Political committees are regulated by the campaign finance law and by regulations issued by this office. Unregistered political committees may not contribute to Massachusetts candidates and committees, other than ballot question committees, unless they do so through an affiliated Massachusetts PAC duly organized with OCPF and operated in accordance with M.G.L. c. 55 and 970 CMR. See IB-82-01.

³ See IB-90-02 for information on the disclosure and reporting of such expenditures.

of influencing the nomination or election of a candidate, or candidates.”⁴ A strict application of this definition would, however, place an extraordinary burden, not intended by the Legislature, on non-political organizations making only incidental expenditures for a political purpose. Accordingly, ***OCPF considers groups and organizations that make contributions or independent expenditures but do not solicit or receive funds for any political purpose differently than groups and organizations that actively engage in political fundraising.***

Any organization that intends to solicit or receive money or any other thing of value to influence the election of a Massachusetts state, county or municipal candidate or candidates, or to support or oppose a PAC or political party, must comply with the provisions of Chapter 55, formally organize a political committee, and appoint a treasurer prior to soliciting or receiving any funds for a political purpose. See M.G.L. c. 55, §§ 5 and 7. A determination of whether an organization is required to file campaign finance reports as a political committee depends on an assessment of various factors, including the timing and content of solicitations. See 970 CMR 1.22 (stating that a tax-exempt or other organization is considered a political committee if it solicits or receives funds for the purpose of making contributions or independent expenditures in Massachusetts).

In addition, groups or organizations that solicit or receive money or any other thing of value to influence elections in other states or nationwide or to support political parties, whether or not registered as a political committee in another jurisdiction, must comply with the provisions of Chapter 55 and formally organize a Massachusetts political committee, with a separate, segregated account, prior to making contributions to a Massachusetts candidate, candidate committee, PAC, or party committee. See IB-82-01.

For example, a union, like any group, may not solicit or receive funds for the purposes of influencing Massachusetts elections without first organizing a political committee in accordance with M.G.L. c. 55. It is not uncommon, however, for unions to use their general treasury fund to make contributions or independent expenditures to support or oppose candidates. For a union to make contributions or independent expenditures in Massachusetts without first organizing a separate political action committee, the union must make the expenditures from an account containing funds that were not raised for a political purpose, such as the union’s general treasury fund.

Groups or organizations that do not plan on making contributions but wish to make ***independent expenditures***, do not need to organize separate political committees if they do not solicit or receive contributions for that purpose. These groups will, however, as discussed below, become subject to certain provisions of the campaign finance law applicable to political committees once their political expenditures become “more than incidental.”

An organization that raises funds to make only independent expenditures must organize as an “Independent Expenditure PAC.” See 970 CMR 2.17 and IB-10-03. The requirement to organize an independent expenditure PAC exists for 501(c)(4) and other organizations that raise money to make independent expenditures, even if making such expenditures is not the primary purpose of the organization. As an independent expenditure PAC, such an organization will be required to disclose not only independent expenditures made, but also contributions received for that purpose.

⁴ The definition of “political committee” includes political party committees, PACs, independent expenditure PACs, people’s committees and ballot question committees.

II. What are "more than incidental" political expenditures?

Contributions and independent expenditures made by an organization that is not a political committee are "more than incidental" if they are made (1) for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political action committee or political party and (2) they exceed, in the aggregate, in a calendar year, *either \$15,000 or 10 percent of such organization's gross revenues for the previous calendar year, whichever is less (the "incidental threshold").*⁵

This standard balances the public interest of disclosure and regulation of campaign finance activity in Massachusetts with the administrative and legal burdens imposed on organizations participating financially in the Commonwealth's political process.

All contributions (whether monetary or in-kind) and independent expenditures made during a calendar year are included in the determination of whether the incidental threshold has been exceeded. Contributions by an organization to candidates, PACs, and political party committees are included, as well as independent expenditures made by the organization to support or oppose candidates. In addition, any liability incurred by the organization on behalf of or to oppose a candidate or political committee (other than a ballot question committee) is included in the computation of whether the incidental threshold is exceeded for the calendar year in which the liability is incurred. Such liabilities are included even if the actual expenditure to discharge such liability is not made until a later calendar year, e.g., if a liability is incurred in 2014, but the amount owed is paid in 2015, the amount is counted only in 2014.

III. What expenditures are not counted in determining whether the incidental threshold is exceeded?

Expenditures not included in the incidental threshold analysis include (1) payments made or liabilities incurred, in connection with electioneering communications, (2) expenditures not related to the nomination or election of Massachusetts state, county or municipal candidates, (3) expenditures not made to or for the benefit of political committees organized in Massachusetts, (4) expenditures made to the federal account of a political committee of a political party, (5) expenditures made to discharge liabilities incurred in a previous calendar year and, (6) expenditures made for the purpose of opposing or promoting a ballot question, irrespective of whether such question appears on a Massachusetts ballot or elsewhere, and (7) donations to a legal defense, inauguration or recount fund. In addition, costs resulting from communications between a membership organization and its members and their families are not deemed to be "contributions" or "expenditures" for the purpose of the campaign finance law, and, therefore, are not included in the determination of whether an organization has exceeded the incidental threshold. See M.G.L. c. 55, § 1.

IV. What are the consequences of exceeding the incidental threshold?

Contributions made to political entities after exceeding the incidental threshold *shall be subject to the contribution limitations set forth in M.G.L. c. 55, § 6 applicable to political action committees*

⁵ For a new organization, i.e., an organization that has been in existence for less than a full calendar year, the incidental threshold is \$15,000 or 10 percent of the organization's gross revenues for the *current* calendar year, whichever is less.

making contributions to candidates, candidate committees and other political committees.

Independent expenditures and contributions to independent expenditure PACs, however, may continue to be made without limit, regardless of whether the incidental threshold has been exceeded. In addition, once the incidental threshold is exceeded, organizations must, as discussed below in Part IV(B), report all contributions to, and independent expenditures made to support or oppose, candidates, party committees or PACs.

A. Limit on Contributions.

Prior to exceeding the threshold, a group may contribute any amount up to the threshold to one or more candidates or committees without becoming subject to the limitations in M.G.L. c. 55, § 6. However, once the threshold is exceeded, contributions to any one candidate, candidate committee, or political action committee (not including an independent expenditure PAC) would be limited to an additional \$500 in the calendar year in which the limit was exceeded, and aggregate contributions to all committees of any one political party, including those on the state and local level, would be limited to an additional \$5,000 in the calendar year in which the limit was exceeded. These limitations would apply in subsequent calendar years until one year after the first calendar year in which the threshold is not exceeded.

For example, if an organization, whose incidental threshold is \$15,000, exceeds a total of \$15,000 in contributions and/or independent expenditures to candidates, PACs and political party committees in 2014, the organization would become subject to the limits that apply to PACs as of the date the threshold is exceeded. If the organization, prior to October 1, 2014, made contributions to candidates of \$7,000 and then on October 1 makes its first independent expenditure of the year, of more than \$8,000, the organization, as of October 1, will have exceeded the incidental threshold. The organization could contribute no more than an additional \$500 to any one candidate or PAC (other than an independent expenditure PAC), and no more than \$5,000 in the aggregate to committees of any one political party, between October 1, the date it exceeded the threshold in 2014, and December 31, 2014. In addition, the organization would then be subject to these same limitations during 2015, and every year thereafter until one year after the incidental threshold is not exceeded in a particular year. Therefore, if the organization's threshold is \$15,000 and its activity is \$15,000 or less in 2015, the organization would not be subject to the limitations in M.G.L. c. 55, § 6 in 2016, assuming the contributions and independent expenditures do not exceed the incidental threshold in 2016.

If an organization makes a contribution to a candidate or political committee in an amount that causes the organization to exceed the incidental threshold, the portion of the contribution over the incidental threshold would be subject to the contribution limits contained in M.G.L. c. 55, § 6. For example, after an organization whose incidental threshold is \$15,000 has made \$10,000 in contributions and independent expenditures in a calendar year, the most it could subsequently give to a single candidate during the remainder of that year (assuming no other contributions or independent expenditures were made) would be \$5,500, the balance of the incidental threshold plus the amount of the annual PAC limit to candidates.

B. Reporting requirements.

In addition to being subject to contribution limits, once an organization has exceeded the incidental threshold, it must submit reports in accordance with the schedule set forth in clause (e) of the

second paragraph of M.G.L. c. 55, § 18.⁶ Once the incidental threshold is exceeded, the organization must file a report disclosing the total amount of contributions and independent expenditures made by the organization during the reporting period, using Form CPF 111, including contributions and independent expenditures made prior to reaching the incidental threshold as well as all those made after the threshold is met. See Form CPF 111, "*Report of Association or Other Group Making Contributions to or Expenditures on Behalf of Candidates, PACs & Political Party Committees.*"⁷

When the report reflects financial activity supporting or opposing candidates or committees that file with OCPF, the report is filed (in paper form) with OCPF, but it is scanned and posted on OCPF's website. If all financial activity in a report relates to local candidates in one municipality who do not file with OCPF, an organization must file the form with the city or town clerk or election commission in the city or town where such expenditures are made, in accordance with the schedule set forth in clause (b) of the second paragraph of M.G.L. c. 55, § 18.⁸

In any year prior to a year in which an organization initially exceeds the incidental threshold, an organization is not required to periodically report contributions or independent expenditures made on behalf of political action committees, party committees, or candidates on CPF Form 111. **The obligation to file a report begins when the organization's expenditures exceed the incidental threshold and continues until one year after the next year that the organization's expenditures do not exceed the incidental threshold.** For example, if an organization whose incidental threshold is \$15,000 makes political expenditures of more than \$15,000 in 2014, the reports must be filed for 2014, and in each year thereafter until one year after the incidental threshold is not exceeded. If in 2015 the organization makes political expenditures totaling \$10,000, the organization would still be required to file in 2015, but not in 2016, assuming the expenditures remain less than the incidental threshold in 2016.

Independent expenditures in amounts exceeding \$250 during a calendar year must, however, always be reported on a separate form, regardless of whether an organization has exceeded the incidental threshold. See M.G.L. c. 55, § 18A. If an organization makes an independent expenditure(s) over \$250 during any calendar year advocating the election or defeat of a clearly identified candidate or candidates, the organization must electronically file, within seven business days after such expenditure(s) exceed \$250 during a calendar year, a Form CPF 18A, "*Report of Independent Expenditures*" with this office. If expenditures are made to support or oppose a candidate who files with a local election official, a paper form M18A must be filed with the city, town or district clerk or election commission. In addition, the statute as amended by Chapter 28 of the Acts of 2009 requires the filing of reports of independent expenditures when independent expenditures exceeding

⁶ Such reports must be filed (in paper) on or before the eighth day preceding a primary or caucus, the eighth day preceding a biennial state election, and, as a final report, the twentieth day of January in the following year complete as to the thirty-first day of December of the prior year. In addition, the organization would be required to file midyear reports by July 20 of each odd-numbered year, in accordance with clause (h) of the second paragraph of M.G.L. c. 55, § 18. Completed forms are scanned by OCPF and posted on OCPF's website.

⁷ The report does not disclose the source of funds received by the organization since the organization has not received "contributions" subject to the campaign finance law, i.e., it has not received money or other things of value for the purpose of influencing the nomination or election of a candidate or candidates.

⁸ Such reports must be filed on or before the eighth day preceding a city or town preliminary or primary, including a caucus, the eighth day preceding a city or town election, and if a city election, by the twentieth day of January in the following year complete as to the thirty-first day of December of the prior year, and if a town election, by the thirtieth day following said election.

\$250 are made after the tenth day, but more than 24 hours, before the date of any election. These reports must be filed within 24 hours of making the independent expenditures. For organizations that have exceeded the incidental threshold, the Form CPF 18A must be filed in addition to the CPF Form 111 that is required to be filed periodically in accordance with the schedule set forth in clause (b) of the second paragraph of M.G.L. c. 55, § 18. As stated in Section II, above, independent expenditures count towards an organization's incidental threshold.

V. Forms.

Form CPF 111 is filed in paper form. A copy of the form is attached to this bulletin. Reports of independent expenditures that relate to expenditures made to promote the election or defeat of any candidate who files with OCPF must be electronically filed with this office.

VI. Verification and Record Keeping.

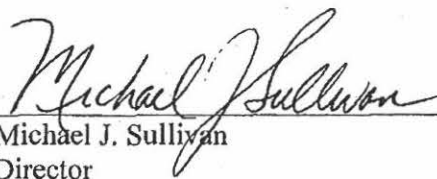
Each organization subject to the guidelines discussed in this bulletin shall keep records of its political expenditures for six years following the date of the relevant election.

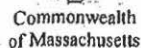
In addition, although compliance with the reporting requirements and limits stated in this bulletin is primarily the responsibility of the organization making contributions and not the responsibility of the committee receiving a contribution, committees should exercise their best efforts to verify that the contribution complies with the campaign finance law. Committees may not knowingly accept contributions that are made in a manner that disguises the true source of the contributions. See M.G.L. c. 55, § 10, and 970 CMR 1.04(8) (requiring candidates and committees to exercise best efforts to determine whether contributions are legal at the time of receipt).

To demonstrate compliance with these requirements, OCPF strongly suggests that a committee receiving a contribution from an organization making a contribution in accordance with this bulletin to obtain an affidavit from the organization. The affidavit should affirm that the source of the funds contributed is the general treasury of the organization, that the funds were not solicited or received by the organization for the purpose of making a contribution, and that no part of the funds contributed was derived from business corporations or other entities prohibited from contributing by Section 8 of the campaign finance law.

VII. Conclusion.

Numerous and sometimes complex questions are raised when organizations other than political committees become involved in campaign finance activity. If you have questions or need further information regarding this bulletin or any other campaign finance matter, please call OCPF at 1-800-462-OCPF or 617-979-8300.

 5/9/14
Michael J. Sullivan
Director



Office of Campaign and Political Finance

City/State/Zip:

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

EXHIBIT 2



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411

BOSTON, MASSACHUSETTS 02108

(617) 727-8352

(800) 462-OCPF

MARY F. MCTIGUE
DIRECTOR

October 4, 1990
AO-90-30

Hamilton Doherty, Jr., Esquire
Bulkley, Richardson and Gelinas
Suite 2700, Baybank Tower
1500 Main Street
Springfield, MA 01115-5507

Dear Mr. Doherty:

This letter is in response to your request for an advisory opinion.

You have stated that you represent the Greater Springfield Chamber of Commerce (the "Chamber"), a Massachusetts corporation organized in accordance with M.G.L. c.180. Members of the Chamber are individuals, corporations and institutions in the greater Springfield area committed to promoting the environment and interests of the business community in the area and in the Commonwealth. The Chamber is considering certain proposals together with the members and the contributions committee of the Springfield Area Political Action Committee (the "Committee"), a multicandidate political committee registered with this office.

You have posed several scenarios concerning activity the Chamber is contemplating undertaking, for which we provide advice as indicated below.

1. It has been proposed that the name of the Committee be changed to the "Greater Springfield Chamber of Commerce Political Action Committee" or a similar name incorporating the name or a reference to the Chamber. In exchange for granting permission for the use of its name, the Chamber would be paid an annual fee in the range of \$50.00. The use of the Chamber name would be intended to involve those individuals who are currently affiliated with the Chamber. The use of the Chamber name in conjunction with the Committee is not expected to provide any benefit to the Chamber in terms of added membership or activity. The Chamber does have affiliation agreements with the Chambers of Commerce in surrounding communities (East Longmeadow, Agawam, West Springfield and Ludlow). These agreements provide for not only the use of the Chamber name, but also for professional and support activities. The fee for such affiliate status is a percentage of the dues of members in

each of these affiliate organizations. The Chamber does not currently have any relationship or agreement providing only for the use of its name. You have inquired whether this annual payment from the political committee to the Chamber represents adequate compensation for the use of the Chamber name.

Section 8 of M.G.L. c.55 states, in pertinent part: "[n]o business corporation incorporated under the laws of or doing business in the commonwealth . . . shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party."

This office has viewed not-for-profit corporations, such as the Chamber, as subject to the prohibitions contained in section 8 of M.G.L. c.55 if such corporations receive monies from business corporations and such monies are deposited into their general treasuries. This analysis is supported by a recent Supreme Court decision, Austin v. Michigan Chamber of Commerce 110 S.Ct. 1391 (1990). It is therefore the opinion of this office that the Chamber would be subject to the prohibitions contained in section 8 and could not make contributions to candidates or to political committees which supported candidates.

Section 1 of M.G.L. c.55 defines "contribution", inter alia, as "any discount or rebate not available to other candidates for the same office and to the general public."

In analyzing sections 1 and 8 of M.G.L. c.55, the Attorney General, in an opinion dated November 6, 1980, stated:

The exclusive use of corporate names and trademarks is protected by Massachusetts statutes. There also exists at common law the right to protect the use of a business name. Trade names and trademarks have been held to constitute valuable property. I am therefore of the opinion that insofar as a corporation would enforce its right to the exclusive use of its name, trademark or logo against other entities, it grants a thing of value if it allows their use by a committee or other organization. A business corporation may allow a multicandidate committee to use its name, trademark, or logo without compensation, only to the extent that it would not prohibit such use by any other individual or entity. (citations omitted; emphasis added.)

It is therefore the opinion of this office that it would be impermissible under Massachusetts law for the Committee to use the Chamber's name for any fee less than the fee that would otherwise be charged to any other individual or entity unrelated to the Chamber. Presumably such fee would be the fair market value of the name, rather than a token amount.

This office does not have enough information to determine if \$50.00 is an adequate amount to pay for the use of the Chamber's name. We would suggest, however, that if members of the general public cannot make use of the Chamber's name under the terms and conditions of the use proposed for the Committee, then it is likely that the Committee is receiving "a discount or rebate not available to other candidates for the same office and to the general public."

2. The Committee may, on occasion, utilize the mailing list of Chamber members for its own mailing and solicitations. The Chamber does make its membership list available to other organizations, on terms that vary from free of charge to charges of \$200.00. You have inquired whether a fee of \$50 plus the cost of the separate mailings, for each use of the Chamber mailing list, represents adequate compensation to the Chamber.

As we discussed above, the standard against which adequate compensation is measured is whether or not the Committee is receiving "any discount or rebate not available to other candidates for the same office and to the general public." You have mentioned that the Chamber charges up to \$200.00 for the use of its mailing list. We would suggest that this figure represents a threshold amount which should be paid by the Committee for the use of the Chamber's mailing list, provided all other terms and conditions of such use are also met. In other instances we have counseled that the price of a mailing list should be determined by using a market standard, e.g., the price at which a similar mailing list could be obtained from a third party vendor such as a direct mail house or public relations firm.

3. The Chamber publishes on a regular basis a newsletter and other communications distributed to its members reporting on the activities of the Chamber and topics of particular interest to the members. May the Chamber include in such publications, news or reports of the positions or statements of candidates on issues which are of concern to the Chamber and its members? May the Chamber include in such publications inserts or separate documents, prepared by the Committee, specifically soliciting support for the Committee, if the Committee is responsible for the cost of the preparation of the separate insert?

In the opinion cited above, the Attorney General stated:

the prohibition against corporate expenditures does not apply to expenses incident to the publication of an internal newspaper which has editorialized in favor of a particular committee or candidate, urged that contributions be made to such a committee or candidate, or sold advertising space to a candidate or a multi-candidate

Hamilton Doherty, Jr., Esquire
October 4, 1990
Page 4

committee . . . Massachusetts law . . . does not . . . ban corporate expenditures in the normal course of business which are incidental to the internal dissemination of political views through house organs or newspapers.


Thus, corporate expenditures for the publication of a periodic corporate newspaper which incidentally references a candidate or political committee are not prohibited under the provisions of M.G.L. c.55. It is therefore the opinion of this office that the Chamber may include in its periodic publications news or reports of the positions or statements of candidates on issues which are of concern to the Chamber and its members, provided that the guidelines in the Attorney General's opinion, as set forth above, are met.

If, however, the Committee includes literature with any mailing made by the Chamber, it is the opinion of this office that the Committee should reimburse the Chamber. The amount to be reimbursed to the Chamber should be determined as a percentage of the actual, total cost of the mailing, such expense to include but not be limited to the actual cost of materials used, postage, personnel and other resource costs, and the like. If actual costs cannot be computed (for example, use of office resources such as copiers and word processors) the fair market value for such items may be used.

This opinion has been rendered solely in the context of M.G.L. c.55 and has been based solely on the representations made in your letter.

Should you have additional questions, please do not hesitate to contact this office.

Very truly yours,



Mary F. McTigue
Director

MFM/wp

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

EXHIBIT 3



Commonwealth
of Massachusetts

OCPF Online
www.state.ma.us/ocpf
Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

January 26, 1998
AO-98-01

Kipp Maloney
NFIB/SAFE Trust Administrator
National Federation of Independent Business
600 Maryland Avenue S.W., Suite 700
Washington, D.C. 20024

Re: Membership Communications and fundraising on behalf of PAC

Dear Mr. Maloney:

This letter is in response to your request for an advisory opinion which contains several questions regarding the relationship between the National Federation of Independent Business, a not-for-profit corporation (the "Corporation") and its associated state political action committees. The Corporation is funded, in part, by members which are business corporations.

Based on your conversations with the office's legal staff, the questions which are relevant to the operation of the political action committee organized in Massachusetts, NFIB/Massachusetts SAFE Trust Political Action Committee (the "PAC"), may be answered as follows:

Question: May the Corporation, using corporate treasury funds, make communications, which are limited to its membership, when the communications advocate the election or defeat of a candidate running for statewide or state legislative office?

Answer: Yes, if the communication takes place "in the normal course of corporate affairs and does not involve expenditures specifically designed to influence the electoral process." See Opinion of the Attorney General, November 6, 1980 (copy enclosed). For example, if the Corporation issues a quarterly newsletter to its members and the communication advocating the election or defeat of a candidate is included in one of the quarterly newsletters, such communication would not be prohibited by the campaign finance law. On the other hand, if the Corporation issues a special election-related publication urging members to support or oppose candidates, the expenditure would be prohibited by the campaign finance law. See M.G.L. c. 55, s. 8.

Section 8 states in relevant part as follows:

[N]o business corporation incorporated under the laws of or doing business in the commonwealth and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding,

promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party.

A non-profit corporation which is funded by member business corporations may not make "contributions" or "expenditures" See AO-91-31, in which the office stated that "M.G.L. c. 55, s. 8 generally prohibits a non-profit corporation which receives funds from a business corporation from making political contributions . . . " See also Op. Atty. Gen., November 6, 1980 which noted that "If a corporation cannot directly provide facilities to a candidate or committee by virtue of the statute, it may not do so indirectly through the associations to which it belongs."

In 1994 the campaign finance law was amended to state that "communications from a membership organization, not including a corporation subject to section eight, to its members and their families on any subject shall not be deemed to be a contribution or expenditure." M.G.L. c. 55, s. 1 (emphasis added). The office's regulations define a "membership organization" as an organization "which identifies individuals within the organization as members." See 970 CMR 2.02. As noted in an advisory opinion recently issued by this office, if an entity has business corporations rather than individuals as members, it is not a membership organization. See AO-97-15. As a result, expenses by NFIB to distribute a communication which advocates the election or defeat of a candidate would not be a "communication from a membership organization." Such costs would therefore involve the making of "expenditures" or "contributions" subject to section 8 unless the communication is made "in the normal course of corporate affairs."

Question: If the answer to the previous question is "yes," does the Corporation incur a reporting liability for the costs associated with those communications?

Answer: No. If the Corporation makes a communication in the ordinary course of corporate affairs, no "expenditure" or "contribution," which would otherwise have to be reported, has taken place. See M.G.L. c. 55, s. 22.

Question: May the Corporation solicit contributions for the PAC from individuals or entities who are not members of the Corporation?

Answer: Yes, as an agent of the PAC. Contribution checks could be made payable to the PAC and then transferred upon receipt by the Corporation to the PAC. A person or entity which acts as an agent by soliciting or receiving contributions on behalf of a PAC is not a political committee. Such an agent needs to provide to the political committee receiving the contributions a detailed account of all contributions received and expenditures made within three business days. See M.G.L. c. 55, s. 23. **The Corporation must be repaid by the PAC for all expenses incurred in making the solicitation, whether the solicitation is to members or others.**

Kipp Maloney
January 26, 1998
Page 3

The campaign finance law defines a "political committee" as any association, organization, or other group of persons "which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates . . ." See M.G.L. c. 55, s. 1. Therefore, if the Corporation were to solicit contributions made payable to the Corporation and then deposit the checks prior to using the funds to support or oppose candidates, the Corporation would itself be operating as a political committee, which due to its for-profit corporate membership it cannot do. In addition, any expenditures made by the Corporation to benefit the PAC would need to be reimbursed by the PAC within thirty days to avoid an advance or contribution. The Corporation would be prohibited from making such an advance or contribution due to its for-profit membership. See M-97-04.

I have enclosed a *Campaign Finance Guide for Political Action Committees and People's Committees* and other information summarizing the reporting obligations and other responsibilities of PACs registered with this office.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided on the basis of representations in your letter and conversations with OCPF staff. Please contact us if you have further questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael J. Sullivan", followed by a horizontal line.

Michael J. Sullivan
Director

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

EXHIBIT 4



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE ROOM 411
BOSTON MASSACHUSETTS 02108

MICHAEL J. SULLIVAN
DIRECTOR

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(800) 462-OCPP
FAX: (617) 727-6549

October 30, 1997
AO-97-21

Alan J. McDonald, Esq.
McDonald & Associates
One Gateway Center - Suite 401 West
Newton, MA 02158-2806

Re: Massachusetts Nurses Association

Dear Mr. McDonald:

This letter is in response to your October 7, 1997 request for an advisory opinion.

You have stated that the Massachusetts Nurses Association (MNA) is a non-profit corporation which serves as a labor organization for registered nurses (RNs) and other health care professionals. MNA's membership includes RNs who are not employed within a collective bargaining unit represented by MNA, as well as RNs and other health care professionals who are members in whole or in part because they are employed within a collective bargaining unit represented by MNA.

MNA also maintains a political action committee, ("NursePLAN"). NursePLAN is a separate and distinct entity which is independently operated and retains its funds in a separate segregated account.

MNA (as distinguished from NursePLAN) would like to contribute, from its general treasury, up to \$15,000 (which is less than 10% of MNA's gross annual revenues) to NursePLAN and other political committees and candidates. Funds in the general treasury include dues collected as a condition of employment for some of MNA's membership and as a condition of the privileges of membership in MNA.

NursePLAN will record the receipt of contributions from MNA as such. Contributions received by NursePLAN from individual MNA members will be recorded as contributions from those members, and not as MNA contributions.

Question

You have asked if the MNA may make the contributions as described above.

Answer

Yes.

Discussion

A non-profit corporation may make political contributions to candidates, candidate committees, PACs and party committees **only if** the general treasury of the organization contains no funds derived from business and professional corporations. See M.G.L. c. 55, s. 8, c. 156A, s. 4(a), AO-95-24, and AO-91-31. We assume, therefore, that MNA's general treasury contains no such funds.

This office has issued guidelines regarding campaign finance activity by non-profit corporations such as MNA. See OCPF interpretive bulletin IB-88-01 (a copy of which is enclosed). Although MNA may make contributions to the NursePLAN PAC, it may not solicit or receive funds for that purpose or any other political purpose without being considered a political committee. As noted in IB-88-01, however, a non-profit corporation **which does not solicit or receive funds for political purposes** is not subject to the limitations and reporting requirements of the campaign finance law unless its political contributions¹ are "**more than incidental**" when compared to its gross revenues.

Political contributions to candidates, political action committees, and political parties² by a non-profit corporation are "more than incidental" if such contributions, combined with any other political expenditures, (1) are for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political action committee or political party and (2) exceed, in the aggregate, in a calendar year, **either \$15,000 or 10 percent of such organization's gross revenues for the previous calendar year, whichever is less.**³

Again, it is critical to emphasize that any funds **solicited or received** by MNA from MNA members or others specifically for election related purposes would make MNA a political action committee. MNA may not, therefore, **solicit or receive** funds through its general fund to be used for election related purposes unless it first organizes as a political action committee.

Given the facts stated in your letter, MNA may make the contributions described because they would not exceed the incidental threshold described above. The recipient candidates and committees

¹ In light of your question, this opinion primarily concerns the application of chapter 55 to political "contributions," i.e. the giving of money or other things of value to a candidate or political action committee. As discussed in IB-88-01, however, the incidental threshold analysis also applies to political "expenditures." An example of an expenditure would be the purchase of a radio, TV or newspaper advertisement promoting certain candidates made without consultation or communication with those candidates.

² You have not asked for guidance regarding the making of contributions to support or oppose a ballot question. Please note, however, that if an organization wishes to raise funds to influence a ballot question, it must first organize a ballot question committee to undertake that activity. In contrast, if an organization makes contributions (but does not raise funds) for that purpose, it would not have to organize a ballot question committee, but would have to disclose such activity. See IB-88-01.

³ Contributions made to influence a ballot question, although they would have to be reported, are not included in determining whether the "incidental threshold" has been reached. See M.G.L. c. 55, s. 1 and IB-88-01.

Alan J. McDonald, Esq.

October 30, 1997

Page 3

must disclose contributions received from MNA. Finally, in addition to dues or other payments made to MNA by its members, MNA members may also make personal contributions to the NursePLAN PAC. Such personal contributions would not be considered in calculating whether MNA has reached the incidental threshold outlined in IB-88-01.⁴

This opinion is solely within the context of the campaign finance law and is provided on the basis of representations in your letter. Because making political contributions may raise questions affecting your status as a non-profit corporation, we suggest that you consult with private counsel or the Internal Revenue Service if you have not already done so.

Please contact us if you have further questions regarding the campaign finance law.

Sincerely,



Michael J. Sullivan
Director

MJS/cp

Enclosure (IB-88-01)

⁴ Please note that MNA members may not be required to contribute (directly or indirectly through MNA) to the PAC as a condition of employment. See M.G.L. c. 55, s. 16B, which states that "[n]o person employed for compensation shall be under any obligation to contribute to any candidate or political committee, or to render any political service on account of, or as a consequence of, his employment, and such person shall not be removed or otherwise prejudiced for refusing to do so . . ."