

We the people of Maine...

THE MAINE HERITAGE POLICY CENTER
Center for Constitutional Government

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June 2, 2010

VIA HAND DELIVERY

Michele Lumbert, Clerk
Kennebec County Superior Court
95 State Street
Augusta, ME 04330

Re: Mary Adams, et al v. Maine Municipal Association
Civil Action Docket No. _____

Dear Ms. Lumbert:

Enclosed for filing please find:

1. Complaint for Injunctive and Declaratory Relief for Violation of Civil Rights
2. Summary Sheet, and
3. Filing fee in the amount of \$150.00

Thank you for your attention to this matter.

Yours sincerely,



David P. Crocker

DPC/mb
enclosures

cc: Mary Adams (with enclosures)
John H. Wibby, Jr. (with enclosures)
Pembroke Schaeffer (with enclosures)
Cyr Plantation (with enclosures)
Maine Municipal Association (via service of process)

SUMMARY SHEET

This summary sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by the Maine Rules of Court or by law. This form is required for the use of the Clerk of Court for the purpose of initiating or updating the civil docket. (SEE INSTRUCTIONS ON REVERSE)

I. County of Filing or District Court Jurisdiction: Kennebec		
II. CAUSE OF ACTION (Cite the primary civil statutes under which you are filing, if any.) <i>Pro se</i> plaintiffs: If unsure, leave blank.		
III.	NATURE OF FILING <input checked="" type="checkbox"/> Initial Complaint <input type="checkbox"/> Third-Party Complaint <input type="checkbox"/> Cross-Claim or Counterclaim <input type="checkbox"/> If Reinstated or Reopened case, give original Docket Number _____ (If filing a second or subsequent Money Judgment Disclosure, give docket number of first disclosure)	
IV. <input type="checkbox"/> TITLE TO REAL ESTATE IS INVOLVED		
V. MOST DEFINITIVE NATURE OF ACTION. (Place an X in one box only) <i>Pro se</i> plaintiffs: If unsure, leave blank.		
GENERAL CIVIL (CY)		
<input type="checkbox"/> Personal Injury Tort <input type="checkbox"/> Property Negligence <input type="checkbox"/> Auto Negligence <input type="checkbox"/> Medical Malpractice <input type="checkbox"/> Product Liability <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Domestic Torts <input type="checkbox"/> Other Negligence <input type="checkbox"/> Other Personal Injury Tort <input type="checkbox"/> Non-Personal Injury Tort <input type="checkbox"/> Libel/Defamation <input type="checkbox"/> Auto Negligence <input type="checkbox"/> Other Negligence <input type="checkbox"/> Other Non-Personal Injury Tort	<input type="checkbox"/> Contract <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Declaratory/Equitable Relief <input type="checkbox"/> General Injunctive Relief <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Other Equitable Relief <input type="checkbox"/> Constitutional/Civil Rights <input type="checkbox"/> Constitutional/Civil Rights <input type="checkbox"/> Statutory Actions <input type="checkbox"/> Unfair Trade Practices <input type="checkbox"/> Freedom of Access <input type="checkbox"/> Other Statutory Actions <input type="checkbox"/> Miscellaneous Civil <input type="checkbox"/> Drug Forfeitures	<input type="checkbox"/> Other Forfeitures/Property Libels <input type="checkbox"/> Land Use Enforcement (80K) <input type="checkbox"/> Administrative Warrant <input type="checkbox"/> HIV Testing <input type="checkbox"/> Arbitration Awards <input type="checkbox"/> Appointment of Receiver <input type="checkbox"/> Shareholders' Derivative Actions <input type="checkbox"/> Foreign Deposition <input type="checkbox"/> Pre-action Discovery <input type="checkbox"/> Common Law Habeas Corpus <input type="checkbox"/> Prisoner Transfers <input type="checkbox"/> Foreign Judgments <input type="checkbox"/> Minor Settlements <input type="checkbox"/> Other Civil
CHILD PROTECTIVE CUSTODY (PC) <input type="checkbox"/> Non-DHS Protective Custody		SPECIAL ACTIONS (SA) Money Judgment <input type="checkbox"/> Money Judgment Request Disclosure
REAL ESTATE (RE)		
<input type="checkbox"/> Title Actions <input type="checkbox"/> Quiet Title <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Easements <input type="checkbox"/> Boundaries	<input type="checkbox"/> Foreclosure <input type="checkbox"/> Foreclosure (ADR exempt) <input type="checkbox"/> Foreclosure (Diversion eligible) <input type="checkbox"/> Foreclosure - Other	<input type="checkbox"/> Misc. Real Estate <input type="checkbox"/> Equitable Remedies <input type="checkbox"/> Mechanics Lien <input type="checkbox"/> Partition <input type="checkbox"/> Adverse Possession <input type="checkbox"/> Nuisance <input type="checkbox"/> Abandoned Roads <input type="checkbox"/> Trespass <input type="checkbox"/> Other Real Estate
APPEALS (AP) (To be filed in Superior Court) (ADR exempt)		
<input type="checkbox"/> Governmental Body (80B)	<input type="checkbox"/> Administrative Agency (80C)	<input type="checkbox"/> Other Appeals
VI. M.R.Civ.P. 16B Alternative Dispute Resolution (ADR): <input type="checkbox"/> I certify that pursuant to M.R.Civ.P. 16B(b), this case is exempt from a required ADR process because: <input type="checkbox"/> It falls within an exemption listed above (i.e., an appeal or an action for non-payment of a note in a secured transaction). <input type="checkbox"/> The plaintiff or defendant is incarcerated in a local, state or federal facility. <input type="checkbox"/> The parties have participated in a statutory prelitigation screening process with _____ <input type="checkbox"/> The parties have participated in a formal ADR process with _____ (name of neutral) on _____ (date). <input type="checkbox"/> This is a Personal Injury action in which the plaintiff's likely damages will not exceed \$30,000, and the plaintiff requests an exemption from ADR.		

VII. (a) **PLAINTIFFS (Name & Address including county)**
or **Third-Party**, **Counterclaim or Cross-Claim Plaintiffs**
 The plaintiff is a prisoner in a local, state or federal facility.

Mary Adams
P.O. Box 10
Garland, ME 04939
Penobscot County

John H. Wibby, Jr.
P.O. Box 1044
Gary, ME 04039
Cumberland County

Pembroke Schaeffer
90 Crestview Lane
Brunswick, ME 04011
Cumberland County

Cyr Plantation
c/o Daniel Deveau
370 Caribou Road (US Rt. 1)
Cyr Plantation, ME 04785
Aroostook County

(b) Attorneys (Name, Bar number, Firm name, Address, Telephone Number) **If all counsel listed do NOT represent all plaintiffs, specify who the listed attorney(s) represent.**
(If *pro se* plaintiff, leave blank)

David P. Crocker, Bar No. 6920
Center for Constitutional Government
Maine Heritage Policy Center
4 Milk Street,
P.O. Box 7829
Portland, ME 04101

VIII. (a) **DEFENDANTS (Name & Address including county)**
and/or **Third-Party**, **Counterclaim or** **Cross-Claim Defendants**
 The defendant is a prisoner in a local, state or federal facility.

Maine Municipal Association
60 Community Drive
Augusta, ME 04330

(b) Attorneys (Name, Bar number, Firm name, Address, Telephone Number)
(If known)

If all counsel listed do NOT represent all defendants, specify who the listed attorney(s)

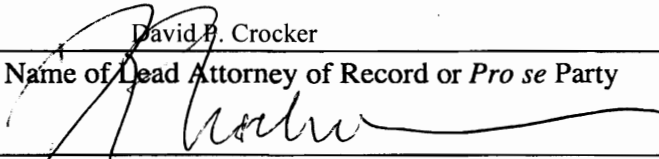
IX. **RELATED CASE(S) IF ANY** _____

Assigned Judge/Justice _____

Docket Number _____

Date: June 2, 2010

David P. Crocker
Name of Lead Attorney of Record or *Pro se* Party


Signature of Attorney or *Pro se* Party

STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

MARY ADAMS, an individual)
residing in Garland, Penobscot County,)
Maine)

and)

JOHN H. WIBBY, JR., an individual)
residing in Gray, Cumberland County,)
Maine)

and)

PEMBROKE SCHAEFFER, an)
individual residing in Brunswick,)
Cumberland County, Maine,)

and)

CYR PLANTATION, a Maine Plantation)
organized pursuant to 30-A M.R.S.A.)
Chapter 301,)

Plaintiffs)

v.)

MAINE MUNICIPAL ASSOCIATION,)
a Maine Corporation Without Stock with)
a principal place of business in Augusta,)
Kennebec County, Maine)

Defendant)

COMPLAINT FOR INJUNCTIVE
RELIEF FOR VIOLATION
OF CIVIL RIGHTS, IMPROPER
GOVERNMENT EXPENDITURES AND
DECLARATORY RELIEF

INTRODUCTION

This is a Complaint for injunctive relief against the Maine Municipal Association (MMA) on account of its monetary contributions to and staff participation in political action committees dedicated either to opposing or supporting Direct Citizen Initiatives arising under Article IV, Part Third, Section 18 of the Maine Constitution. Because of MMA’s status as an instrumentality of

Maine municipalities and because MMA's income is public in character, the Plaintiffs assert that such contributions and participation are illegal governmental expenditures that violate the individual Plaintiffs' civil rights under the U.S. and Maine Constitutions. In its capacity as a MMA member, Plaintiff Cyr Plantation also asserts that such contributions and participation and, indeed, all MMA's partisan and political activities are *ultra vires* and exceed the corporate purposes stated in MMA's articles of incorporation.

THE PARTIES

Plaintiffs

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

2. Plaintiff John H. Wibby, Jr. was an original signatory pursuant to 21-A M.R.S.A. § 901 of an application to place the "Maine Taxpayer Bill of Rights Initiative" on a statewide ballot in 2006. He is also a registered voter, property taxpayer and resident of Gray, Maine, which town is a MMA municipal member.

3. Plaintiff Pembroke Schaeffer was an original signatory pursuant to 21-A M.R.S.A. § 901 of an application to place the "Maine Taxpayer Bill of Rights Initiative" on a statewide ballot in 2006. He is also a registered voter, property taxpayer and resident of Brunswick, Maine, which town is a MMA municipal member.

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

Defendant MMA

5. Defendant MMA is a municipal league based in Augusta, Maine. It was originally incorporated in 1953 as a “corporation without stock” pursuant to 13 M.R.S.A., Chapter 81. According to MMA’s articles of incorporation (which have not been amended), the MMA’s purpose is:

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

6. According to MMA’s 2010 Strategic Report, all but four of Maine’s 489 municipalities are MMA members. In addition, MMA membership also includes numerous quasi-municipal organizations such as water and sewer districts, housing authorities, public libraries and public power districts.

7. Although MMA is organized as a private corporation without stock, it has organically evolved into a governmental entity or “state actor” for purposes of this action. Specifically:

- A. According to MMA bylaws, MMA is controlled by its Executive Committee, which is composed entirely of “municipal officers” as defined in 1 M.R.S.A. § 72(12) or municipal chief administrative officers such as town or city managers.
- B. According to MMA bylaws, with the exception of the Executive Director, all officers must also be municipal officers or municipal chief administrative officers.

- C. According to MMA bylaws, only Maine municipalities may be voting members of MMA and thereby elect members to the Executive Committee.
- D. Pursuant to 30-A M.R.S.A. § 5722(9), the Maine Legislature has granted MMA special recognition both as an “advisory organization” and an “instrumentality of its member municipal and quasi-municipal corporations” and has further required that upon its dissolution, all MMA’s assets shall be held by the Treasurer of State “in custody for the municipalities of the State.”
- E. MMA claims exemption from federal income tax as a government entity pursuant to 26 U.S.C. § 115 and similarly receives an exemption as a government entity from Maine sales tax pursuant to 36 M.R.S.A. § 1760(2).
- F. According to MMA’s audited financial statements, MMA structures its accounts as a government entity pursuant to standards set by the Government Accounting Standards Board.
- G. MMA’s income is overwhelmingly derived from (1) dues collected from its municipal members with such dues deriving from municipal tax receipts, and (2) insurance services sold to its municipal and quasi-municipal members.
- H. MMA is subject to the Maine Freedom of Access Act, 1 M.R.S.A. §§ 401–521.

FACTUAL BACKGROUND

8. MMA is politically active, maintaining both an internal Legislative Policy Committee comprised of people drawn from MMA municipal membership as well as a full-time lobbyist. After internal consultation by the Legislative Policy Committee and the MMA Executive Committee, MMA takes positions on a variety of political issues and actively lobbies the Maine Legislature on issues of concern.

9. All MMA's income – whether from dues, administrative fees charged to MMA's various insurance trusts or event income – is channeled into MMA's General Fund from which monies are then transferred at the Executive Committee's direction to various "designated" funds, one of which is MMA's Legislative Initiatives Fund (LIF).

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

The PACs are:

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

The initiatives were:

- A. 2004 - Maine Education Funding Carryover Initiative (otherwise known as "LD1")
- B. 2004 - An Act to Impose Limits on Real and Personal Property Taxes (otherwise known as the "Palesky" Initiative)

- C. 2006 - Maine Taxpayer Bill of Rights Initiative (otherwise known as “TABOR I”)
- D. 2009 – An Act to Provide Tax Relief (otherwise known as “TABOR II”)
- E. 2009 – An Act to Decrease the Automobile Excise Tax and Promote Energy Efficiency (otherwise known as “Car Tax”)

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

12. The MMA Executive Committee explicitly authorized all transfers from MMA’s General Fund to the LIF and all participation in and monetary and in-kind contributions to each PAC and campaign.

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

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

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

15. MMA contributions to and participation in PACs supporting or opposing Direct Initiatives violate the individual Plaintiffs' First and Fourteenth Amendment rights because it is government "taking sides" and conferring an unlawful advantage to one side in the particular initiative question in direct contravention of the nation's democratic process and contrary to "the root philosophy of a republican form of government", *Mountain States Legal Foundation v. Denver School District*, 459 F.Supp. 357, 360-61 (D.Colo. 1978), *aff'd on other grounds*, 704 F.2d 501 (10th Cir. 1983), and are "direct governmental interference with an initiative", *Colorado Taxpayers Union, Inc. v. Romer*, 750 F.Supp. 1041, 1045 (D. Colo. 1990), *appeal dismissed for lack of standing*, 963 F.2d 1394 (10th Cir. 1992); *Opinion of the Maine Attorney General No. 04-5*.

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

17. MMA's actions are of a type "capable of repetition, yet evading review". *Meyer v. Grant*, 486 U.S. 414, 417 fn.2 (1988); *Fredette v. Secretary of State*, 693 A.2d 1146, 1147 (Me. 1997).

WHEREFORE, the individual Plaintiffs – acting both for themselves and on behalf of the taxpayers and registered voters of Maine - request this court to (a) permanently enjoin the MMA from such further illegal contributions to and participation in PACs or other direct interference with initiatives, (b) award them their attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and (c) grant them such other and further relief as justice may require.

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

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

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

WHEREFORE, the individual Plaintiffs – acting both for themselves and on behalf of the taxpayers and registered voters of Maine - request this court to (a) permanently enjoin the MMA from such further illegal contributions to and participation in PACs or other direct interference with initiatives, (b) order repayment of all money illegally expended and the value of services provided to the Treasurer of State in custody for distribution to the municipalities of Maine, (c) award them their attorneys' fees both equitably and pursuant to private attorney general doctrine, and their costs, and (d) grant them such other and further relief as justice may require.

COUNT III

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

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

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

22. By its actions, MMA has violated the individual Plaintiffs right to exercise the Direct Initiative Process contained in Article IV, Part Third, Section 18 of Maine's Constitution, which the Maine Supreme Judicial Court has held to be in the nature of an "absolute right". *Farris ex rel. Dorsky v. Goss*, 60 A.2d 908, 911 (Me. 1948).

WHEREFORE, the individual Plaintiffs – acting both for themselves and on behalf of the taxpayers and registered voters of Maine - request this court to (a) permanently enjoin the MMA from such further illegal contributions to and participation in PACs or other direct interference with initiatives, (b) order repayment of all money illegally expended and the value of services

provided to the Treasurer of State in custody for distribution to the municipalities of Maine, (c) award them their attorneys' fees both equitably and pursuant to private attorney general doctrine, and their costs, and (d) grant them such other and further relief as justice may require.

COUNT IV
(Illegal Expenditures of Public Funds)

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

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

WHEREFORE, the individual Plaintiffs – acting both for themselves and on behalf of the taxpayers and registered voters of Maine - request this court to (a) permanently enjoin the MMA from such further illegal contributions to and participation in PACs or other direct interference with initiatives, (b) order repayment of all money illegally expended and the value of services provided to the Treasurer of State in custody for distribution to the municipalities of Maine, (c) award them their attorneys' fees both equitably and pursuant to private attorney general doctrine, and their costs, and (d) grant them such other and further relief as justice may require.

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

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

26. 14 M.R.S.A. §§ 5953 and 5954 grant this court authority to determine an entity's rights and legal status, the construction of statutes and "other legal relations".

27. Plaintiff Cyr Plantation is a MMA Municipal Member.

28. MMA Articles of Incorporation provide that the organization will be both "non-partisan" and "non-political".

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

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

DATED: June 2, 2010



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Attorney for Plaintiffs