

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. _____

MAINERS FOR FAIR BEAR)
HUNTING and KATIE HANSBERRY,)
)
Plaintiffs,)
v.)
)
MAINE DEPARTMENT OF INLAND)
FISHERIES & WILDLIFE,)
)
Defendant.)

COMPLAINT

Plaintiffs Mainers for Fair Bear Hunting and Katie Hansberry complain against Defendant Maine Department of Inland Fisheries & Wildlife as follows:

NATURE OF THE CASE

1. This is an action to enjoin the Maine Department of Inland Fisheries and Wildlife's ("IF&W" or the "Department") ongoing expenditure of taxpayer money and agency staff time to conduct a coordinated political campaign in opposition to Question 1, a citizen initiative to prohibit the use of bait, hounds, or traps while hunting bears brought under the Maine Constitution that will appear on the November 4, 2014 ballot. This action also challenges the agency's illegal withholding of government records concerning IF&W's campaign activities. The proponents of the measure requested disclosure more than four months ago, and yet as of today, approximately one month before the election, the agency still has not released all of the records describing the full scope of its political campaign against Question 1.

2. While claiming it cannot find time to process Plaintiffs' document request, the agency has been spending an inordinate amount of time running a far-reaching partisan political campaign against Question 1. IF&W has carried out this campaign in

close coordination with the political ballot committees opposing Question 1, in a brazen effort to influence the outcome of the November election. This political campaign has culminated in a recent television advertisement created by IF&W, and featuring IF&W employees, attacking not only Question 1's merits, but also hurling personal attacks at the supporters of Question 1 and accusing them of nefarious motives.

3. The joint IF&W/opposition committee attack advertisement is consistent with IF&W Commissioner Chandler Woodcock's remarks at an opposition kick-off rally held on the steps of IF&W headquarters, during business hours, where he stood flanked by uniformed IF&W employees and the Question 1 opposition groups. Commissioner Woodcock extolled the crowd and assembled media to reject the measure. Woodcock did not confine his statements to bear science and facts, but rather argued that Question 1 was being advanced by "a group of well-funded, out-of-state activists who are more concerned about advancing their agenda than they are the welfare of our own residents, our traditions, and the natural resources economy," and bragged that "ten years ago, this same referendum question, funded by the same national animal rights group was defeated at the ballot box."

4. As discussed herein, the agency's actions — individually and in the aggregate — cannot reasonably be construed as necessary for the "administration and enforcement of the inland fisheries and wildlife laws" or the "the management of all inland fish and wildlife" — IF&W's sole legislative mandate. Nor can the agency's actions be construed as merely providing "fair comment" and factual information to voters, which would be permissible under Maine law. Instead, IF&W and its employees are engaged in the unauthorized and *ultra vires* use of public funds for campaign activity,

the full nature and extent of which is still not known to the proponents, the media, or the voters because of IF&W's failure to respond to Plaintiff's Freedom of Access Act ("FOAA") requests. Plaintiffs therefore seek an order (1) enjoining the agency from further use of taxpayer resources and agency staff time to run a coordinated political campaign, and (2) directing the agency's staff to immediately and completely respond to Plaintiffs' FOAA requests for records concerning its campaign activities.

THE PARTIES

5. Plaintiff Mainers for Fair Bear Hunting is a Maine Ballot Question Committee ("BQC"), registered pursuant to 21-A M.R.S.A. § 1056-B, with headquarters in Portland, Maine. It is the proponent committee for Question 1, "An Act to Prohibit the Use of Dogs, Bait or Traps When Hunting Bears Except under Certain Circumstances."

6. Plaintiff Katie Hansberry is a Maine resident. She submitted the Freedom of Access Act requests at issue on March 26, 2013 and May 13, 2014. Ms. Hansberry serves as Campaign Director for Plaintiff Mainers for Fair Bear Hunting.

7. Defendant Maine Department of Inland Fisheries & Wildlife ("IF&W") is a Maine state agency headquartered in Augusta, Maine. IF&W is charged with the administration and enforcement of the inland fisheries and wildlife laws of the State of Maine.

JURISDICTION AND VENUE

8. The Superior Court has original jurisdiction over this action pursuant to 4 M.R.S.A. § 105.

9. Venue is proper in this Court under 14 M.R.S.A. § 501 because plaintiff Mainers for Fair Bear Hunting has its principal place of business in Portland, Maine and plaintiff Katie Hansberry is a resident of Portland, Maine.

LEGAL BACKGROUND

10. Like all State executive agencies, IF&W's authority is derived solely from and limited by statutes enacted by the Legislature. IF&W is charged by statute with "the administration and enforcement of the inland fisheries and wildlife laws and...the responsibility for the management of all inland fish and wildlife in the State." 12 M.R.S.A. § 10103(2). This includes the authority to administer hunting and trapping programs consistent with wildlife management goals set by subdivisions of the Department, conduct studies of wildlife populations, and promote and educate the public about Maine's natural resources. IF&W's enabling statutes do not authorize the agency to expend resources for other purposes or otherwise participate in political activities.

11. Courts in Maine and across the country have considered the authority of executive agencies to participate in political campaigns, including ballot initiatives such as Question 1. These courts have held that such agencies can address political questions by providing a "fair presentation of facts." However, agencies may not "[make] use of public funds to advocate one side only of the controversial question" in order to "persuade the voters that only one side has merit." While agencies like IF&W may possess the authority to disseminate factual information about a referendum, "the expenditure of public funds *in support of one side only in a manner which gives the dissenters no opportunity to present their side . . . is outside the pale.*" *Citizens for Sensible Transp. v. Me. Tpk. Auth.*, 1991 Me. Super. LEXIS 228 at 10 (Me. Super. Oct. 8, 1991) (emphasis added) (*quoting Citizens to Protect Pub. Funds v. Bd. of Educ. of Parsippany-Troy Hills*, 98 A.2d 678, 677-78 (N.J. 1953) (Brennan, J.)).

12. The Maine Superior Court has addressed the limits of agency authority to engage in direct campaign activities. In *Campaign for Sensible Transportation v. Maine*

Turnpike Authority, , the Court held that, “absent specific legislative authorization, public agencies may not spend public funds to take sides in elections and attempt to influence results.” The Court held that while an agency engaged in the “dissemination of information and fair comment” regarding a ballot measure does not violate this general prohibition, expenditures that fall outside this narrow exception may be enjoined as *ultra vires*. *Id.*

FACTUAL BACKGROUND

I. IF&W’S CAMPAIGN AGAINST THE 2004 BEAR PROTECTION INITIATIVE

13. IF&W has a long history of engaging in political campaign activities against citizen ballot measures designed to limit methods of bear hunting. In 2003 and 2004, IF&W carried out a coordinated print and television media campaign opposing Question 2, a citizen initiative appearing on the November 2, 2004 general election ballot that would have prohibited hunting bears using bait, traps, or dogs with certain exceptions.

14. On May 13, 2003, then-IF&W Director of Information and Education Don Kleiner emailed other high-level IF&W officers outlining a proposed strategy for opposing Question 2. These strategy included “get[ting] our staff on the same page,” “commission[ing] a survey” for the purpose of “developing effective messages for us to send,” “work[ing] closely with the hunting public and whatever group they pull together,” and “getting messages out to constituents” through columns in hunting publications. This email was sent through the official IF&W email system.

15. Don Kleiner has since left IF&W and is now Executive Director of the Maine Professional Guides Association, which has publicly opposed Question 1 (the

2014 initiative). Mr. Kleiner also serves as Treasurer for the Maine Wildlife Conservation Council, the largest BQC opposing Question 1, which has raised more than one million dollars in cash and in-kind donations to date, and Treasurer for the Maine Guides opposition BQC, which has raised more than one hundred thousand dollars in cash and in-kind donations to date.

16. IF&W vigorously opposed Question 2 throughout the 2004 election season. Agency employees acting in their official capacity drafted letters to the editor, created and distributed publications, and maintained websites opposing the campaign. On information and belief, IF&W expended agency resources, including staff time, for these activities.

17. During the weeks immediately preceding the November 2, 2004 general election, IF&W biologist Jennifer Vashon appeared in television advertisements opposing Question 2.

18. On the morning of November 3, 2004 — the day after Question 2 was defeated — IF&W Commissioner Danny Martin sent an email titled “Bear Referendum” to all IF&W staff and employees. Mr. Martin stated “I want to personally thank each and everone [sic] of you, especially the folks assigned to our Wildlife Division for your help, support and effort, re: the Bear Referendum. It appears we have won this battle by a comfortable margin...Keep Up the Good Work!”

19. When bear protection proponents moved towards placing another bear protection measure on the ballot in 2014, IF&W quickly mobilized again to fight the measure politically. As discussed in more detail below, IF&W has mounted a

coordinated campaign against the measure that has extended well beyond fair comment and dwarfs the agency's 2004 campaign activities.

II. PLAINTIFF'S FOAA REQUEST

20. In light of IF&W's political activities during the 2004 ballot initiative process, Plaintiff Katie Hansberry submitted a Freedom of Access Act ("FOAA") request to IF&W in March 2013 and submitted two further FOAA requests in May 2014. Ms. Hansberry's March 26, 2013 request sought records relating to, among other things:

- The annual bear hunting and trapping harvest and revenue to IF&W associated therewith;
- Bear management plans, hunting and bear management policies and correspondence relating thereto;
- Bear population monitoring and data; and
- Bear nuisance complaint data.

21. IF&W has failed to fully respond to Ms. Hansberry's lawful requests. To date, Ms. Hansberry has not received IF&W correspondence relating to bear management plans and hunting and bear management policies, some 18 months after the request was made.

22. Ms. Hansberry's May 13, 2014 requests sought documents relating to, among other things:

- Communications with groups and organizations opposing Question 1;
- Inquiries from citizens and the media regarding Question 1, and IF&W's response thereto; and
- Internal correspondence regarding Question 1.

23. On June 12, 2014 IF&W notified Ms. Hansberry that its complete response to all of her FOAA requests would be provided by September 2014. Although Ms. Hansberry believed that IF&W was obligated to provide a response far sooner, she was hopeful that a September response would leave enough time to analyze and respond to the information before the November election. Moreover, she was assured that responses would be provided on a “rolling basis,” i.e. as they were collected by IF&W, such that much of the requested information would be received before September 2014.

24. As of the date of this Complaint, IF&W has produced only a handful of documents in response to Ms. Hansberry’s May 2014 request. These documents were not produced until September 19, and constituted a partial response to the request for correspondence and other documents specifically referencing Question 1 proponent organizations and their staff. IF&W failed to produce any documents in response to the other categories of requested information, including the most germane requests — those seeking documents relating to IF&W’s campaign against Question 1.

25. IF&W’s failure to respond to Ms. Hansberry’s lawful FOAA requests has deprived Ms. Hansberry of information regarding the basis for the positions taken by IF&W in opposing Question 1 and has served to shield the Department from criticism over its unlawful use of taxpayer funds to support its political activities.

26. While the vast majority of requested documents have not been produced, IF&W’s limited production demonstrates that its employees are operating a partisan political campaign, in their official capacity and often during normal business hours, using the agency’s taxpayer-funded email system.

- On August 7, 2013, IF&W Communications Director Mark Latti emailed IF&W wildlife director Judy Camuso, through the IF&W email system, regarding a recently published article in the Portland Press Herald about Plaintiffs' petition signature gathering efforts. The email, sent at 1:59 PM on a Wednesday, advises Camuso to provide news outlets with talking points and contact information for the department in order to respond to pro-Question 1 media attention. Latti states in the email that "I would much rather see *our messages...* at the end of this article for balance instead of Daryl DeJoy's..." Daryl DeJoy is the Executive Director of the Wildlife Alliance of Maine, a wildlife protection organization that is a supporter of Question 1.
- On Thursday, November 21, 2013, IF&W employee Ralph Brissette sent a 9:18 AM email to IF&W Commissioner Chandler Woodcock, Deputy Commissioner Andrea Erskine, and biologists Jennifer Vashon and Randy Cross with the subject line "Mainers for fair bear hunting site." The email alerted these IF&W employees to Plaintiff Mainers for Fair Bear Hunting's website, which had recently gone live. It read "FYI Noticed this link this morning: <http://fairbearhunt.com/>". The next morning, IF&W Commissioner Chandler Woodcock forwarded this email from his official IF&W email account to David Trahan's official Sportsman's Alliance of Maine email account. Trahan is the Executive Director of Sportsman's Alliance of Maine and an executive officer of the Question 1 opposition BQC Friends of Maine Sportsmen.

- On July 23, 2014, IF&W biologist Randy Cross initiated an email exchange with IF&W employee Nathan Webb. In his initial email, Cross proposes an anti-Question 1 argument that he states “[s]eems like the kind of thing that would play well in an opinion type article.” This email was sent at 3:45 PM on a Wednesday. In a subsequent 4:40 PM email response from the same day, Cross characterizes the argument as “good to have in our arsenal to use as a counterattack.” At 10:25 AM the following Thursday morning, Webb emailed that “Judy [Camuso]...thinks it would be good to have a press release on this topic, using whatever data is available to support our position.”

27. On information and belief, additional emails showing IF&W campaign activity and IF&W coordination with opposition groups during business hours and using government property exist, and would have been included in a complete and timely response to Plaintiff’s March 2013 and May 2014 FOAA requests.

III. IF&W’S CAMPAIGN AGAINST THE 2014 BEAR PROTECTION INITIATIVE¹

A. IF&W Hosts Opposition Rally at IF&W Headquarters and Attacks Question 1 Proponents

28. On September 23, 2013, IF&W conducted a rally and press conference during business hours on the lawn outside IF&W headquarters in Augusta, Maine, and stood side-by-side with a coalition of political groups opposed to Question 1 named “Save Maine’s Bear Hunt and Management Programs.”

¹ Plaintiffs do not object to IF&W opposing Question 1, and indeed respect the agency’s authority to disseminate, within limits, factual information regarding Question 1. However, as Maine courts have noted, “the expenditure of public funds *in support of one side only in a manner which gives the dissenters no opportunity to present their side . . . is outside the pale.*” *Citizens for Sensible Transp. v. Me. Tpk. Auth.*, 1991 Me. Super. LEXIS 228 at 10 (Me. Super. 1991) (*quoting Citizens to Protect Pub. Funds v. Bd. of Educ. of Parsippany-Troy Hills*, 98 A.2d 678, 677-78 (N.J. 1953) (Brennan, J.)).

29. Individuals appearing at the event included Don Kleiner (the former IF&W officer who coordinated the 2004 agency campaign against the bear protection initiative, now representing the Maine Professional Guides Association and the opposition BQC Maine Wildlife Conservation Council), David Trahan (representing the Sportsmans Alliance of Maine and opposition BQC Friends of Maine Sportsmen), and James Cote (representing the opposition BQC Maine Wildlife Conservation Council). These individuals and the groups they represent constitute the bulk of the opposition to Question 1.

30. IF&W did not invite any BQC supporting Question 1 to speak at the event.

31. IF&W invited many members of the media to attend the event.

32. IF&W Commissioner Chandler Woodcock delivered a prepared statement at the event. IF&W biologists Judy Camuso and Jennifer Vashon also attended the event, wearing their official IF&W uniforms.

33. Commissioner Woodcock's remarks were political in nature, and were not limited to the science of bear management, or the biological impacts of Question 1.

34. Commissioner Woodcock attacked Question 1's proponents, asserting that the measure should be defeated because it is allegedly being advanced by "a group of well-funded, out-of-state activists who are more concerned about advancing their agenda than they are the welfare of our own residents, our traditions, and the natural resources economy." Woodcock also bragged that "ten years ago, this same referendum question, funded by the same national animal rights group was defeated at the ballot box."

35. Commissioner Woodcock concluded by stating “It is for those reasons that Governor LePage and the Department of Inland Fisheries and Wildlife is [sic] opposed to this referendum.”

36. In addition to being read aloud at the rally, the statement was printed and distributed on IF&W letterhead, and made publicly available through IF&W’s taxpayer-funded website.

37. Photographs of Woodcock and Vashon standing next to opposition leadership at the IF&W sponsored rally have since been prominently featured on the websites of groups opposed to Question 1, including the Facebook page of Save Maine’s Bear Hunt.

38. On information and belief, IF&W staff time was used to prepare for and attend the event.

39. On information and belief, IF&W made its facilities available for the event free of charge.

B. IF&W Attends and Assists an Opposition BQC Fundraiser

40. In April 2014, Maine Bowhunters Association held its 2014 Annual Banquet in Brewer, ME. The banquet was a fundraiser for opposition ballot question committee Maine Wildlife Conservation Council. Individual tickets to the event cost thirty dollars and twenty-five percent of all banquet proceeds were donated to Maine Wildlife Conservation Council.

41. Advertisements for the fundraiser prominently listed “Maine Bear Crew with Randy Cross & Lisa Bates” as “Special Guest Speakers” and included a photograph of Cross and Bates in IF&W uniforms holding a tranquilized bear. These advertisements were posted on the Maine Bowhunters Association website and included in the Maine

Bowhunters Association's quarterly magazine. As the advertisements make clear, the IF&W "Maine Bear Crew" talk was used as a main selling point to attract paying attendees to the event, and caused the event to generate money for opposition BQC Maine Wildlife Conservation Council.

42. Numerous IF&W employees attended the event, including Commissioner Woodcock and biologists Jennifer Vashon, Randy Cross, and Lisa Bates. All IF&W employees wore IF&W uniforms or clothing with the official IF&W insignia prominently displayed and were seated at a table with David Trahan, Executive Director of Sportsman's Alliance of Maine and officer of opposition BQC Friends of Maine Sportsmen.

43. IF&W biologist Jennifer Vashon was also a guest speaker at the event.

44. Photos of the uniformed IF&W members at the fundraiser were and remain featured on Maine Bowhunters Association's Facebook page.

45. No representative of IF&W has ever attended a fundraising event for the proponents of Question 1.

C. IF&W Produces and Distributes Biased Anti-Question 1 Flyers

46. In July 2014, IF&W used agency resources to print and distribute a two-page flyer titled "Bear Fact Sheet." The arguments in the flyer match, with near identity, the primary talking points of the Question 1 opposition campaign.

47. IF&W used agency resources to hire a freelance designer to design the flyer, which prominently states that "IFW Biologists and Game Wardens are opposed to the 2014 Bear Referendum" in large print at the top of its first page and states that "Baiting does not increase the bear population," "Baiting does not increase bear/human

conflicts,” and “Baiting does not habituate bears to people.” The flyer does not cite sources supporting these claims.

48. In contrast, IF&W’s own website advises visitors “Do not feed bears” in order to prevent conflicts, and states that “Human food-conditioned bears...can become aggressive in pursuit of a meal.”

49. The flyer further states that “In states where [baiting, hounding, and trapping] have been banned, bear populations, nuisance calls, and the number of bears killed while causing damage to property are on the rise.” IF&W’s flyer does not cite sources supporting this claim.

50. This claim has been contested by experts inside and outside the state of Maine. Wildlife professionals continue to actively debate its validity.

51. According to state agencies, bear populations, nuisance calls, and/or the number of bears killed while causing damage to property have in fact decreased or remained stable in some states where one or more of bear baiting, hounding, and trapping has been banned. The flyer does not acknowledge the existence of scientific debate as to these claims and instead presents them as established fact.

52. In the flyer IF&W presents the viewpoints of opponents of Question 1, and does not present any other viewpoints, including those of proponents of Question 1 and scientists who have a different interpretation of the data related to the issues presented.

53. IF&W used its staff and volunteer networks throughout the state to distribute the flyer to Maine voters in an attempt to influence their vote. On July 9, 2014, IF&W sent the flyer via its internal, government-funded email system to a list of

“Regional Safety Coordinators” with instructions to use the flyer in their course materials and to forward the flyer to other volunteer safety instructors in their region for use in their own class materials. These instructors are responsible for administering safety courses that are required in order to obtain hunting and trapping licenses.

54. On information and belief, this flyer was consequently distributed through hunter safety courses to thousands of Maine voters enrolled in mandatory safety courses prior to the fall hunting season. The effect of Question 1 on Maine’s bear population is not related to the required content of Maine hunter safety courses, which are meant to familiarize hunters with hunting equipment, terrain, and safety.

55. The flyer was reproduced in a one-and-a-half page color advertising spread in both the digital and print editions of IF&W’s official 2014-15 hunting regulations guide.

56. The flyer has also been distributed widely through opposition ballot question committee websites, including opposition ballot question committee Facebook pages, and is available for download on IF&W’s website.

D. IF&W Employees Fill Four \$400 Tables at Opposition Fundraiser

57. On August 9, 2014, the opposition ballot question committee Maine Wildlife Conservation Council held a fundraiser titled the “Vote No on Question 1 Super Banquet” in Augusta, Maine. Tickets for the fundraiser cost fifty dollars for individuals, or four hundred dollars for a table.

58. Prior to the event, on June 26, 2014, Commissioner Woodcock received an email newsletter to his official IF&W email address from the Maine Professional Guides Association advertising the fundraiser. Later that Thursday, Commissioner Woodcock forwarded the newsletter to Deputy Commissioner Erskine at her official IF&W email

address at 5:01 PM. On Friday morning, Woodcock forwarded the newsletter to IF&W wildlife director Judy Camuso at her official IF&W email address at 10:06 AM.

59. Multiple IF&W employees attended the fundraiser in uniform, at least some of whom traveled to the event in an official IF&W vehicle.

60. Four tables were reserved for IF&W. The price of reserving these tables was sixteen hundred dollars.

61. IF&W may have used agency funds to reserve its tables at the fundraiser, and/or to attend the event. Records showing whether IF&W used agency funds to attend the fundraiser have not been produced in response to Plaintiff's May 2014 FOAA requests.

E. IF&W Publishes Political Anti-Question 1 Website

62. In August 2014, IF&W published a comprehensive official website opposing Question 1 which is a part of IF&W's main taxpayer-funded website. IF&W's main site prominently links to the Question 1 site with a large banner advertisement at the top of the page featuring the text "IFW Biologists and Game Wardens are opposed to the 2014 Bear Referendum" and the image of a black bear.

63. The Question 1 website arguments match, with near identity, the primary talking points of the Question 1 opposition campaign.

64. The website consists primarily of published arguments and materials opposing Question 1 authored by opponents of the referendum outside the agency and does not present the points of view of Question 1 proponents or acknowledge any positive effects of Question 1.

65. IF&W developed and published its Question 1 website using agency resources, including staff time and contractor fees and continues to host and maintain its

Question 1 website using agency resources including its Maine government domain name (www.maine.gov/ifw).

66. The website has published "Testimonials" regarding Question 1 written by several individuals not affiliated with the agency. The testimonials are not limited to the impartial discussion of scientific facts regarding bear management. Rather, each of the testimonials presented attacks Question 1's proponents as over-emotional and/or irrational. The site publishes no testimonials in support of Question 1.

67. Numerous wildlife experts inside and outside the state of Maine have written in support of Question 1 or otherwise disputed on scientific grounds the claims presented by the testimonials and the website does not acknowledge the existence of scientific debate as to these claims.

68. On information and belief, IF&W has not offered an opportunity to any individual to write and publish a testimonial in support of Question 1 on its website.

69. IF&W's Question 1 website includes a "Media" section which contains links to select outside op-eds and news articles opposing Question 1. Many of these links direct the reader to opinion pieces opposing Question 1 on non-scientific grounds, such as pieces attacking Plaintiff Mainers for Fair Bear Hunting as anti-hunting and over-emotional, and pieces attacking Plaintiff's supporter Humane Society of the United States for its budget allocation decisions.

70. The "Media" section of IF&W's website does not link to any opinion pieces or other materials that are supportive of Question 1, or that criticize or disprove the assertions of IF&W employees concerning Question 1. Many such materials have been

published throughout the campaign season, including articles and op-eds in the Bangor Daily News and Portland Press Herald.

F. IF&W Publishes Anti-Question 1 Video Series

71. Beginning in August 2014, IF&W used agency resources, including both agency funds and staff time, to develop, produce and publish a series of videos discussing the agency's opposition to Question 1. The content of the videos match, with near identity, the primary talking points of the Question 1 opposition campaign.

72. The videos have been published on IF&W's official YouTube page. Links to the videos are also available on IF&W's official website. The content of these videos strays far beyond the discussion of bear management science, and include emotionally charged and hyperbolic rhetoric.

73. On September 2, 2014, IF&W Game Warden Kris MacCabe appeared in a video opposing Question 1 in which he says he "recently...had a bear in a schoolyard, it was running between buses." However, MacCabe does not explain how this is related to Question 1.

74. On September 7, 2014, IF&W biologist Lisa Bates appeared in a video opposing Question 1 in which she describes the strenuous nature of bear research, including cold weather and long snowmobile rides. Bates does not explain how these conditions are related to Question 1. However she concludes that "if this referendum passes, for me I think it's really scary."

75. On September 14, 2014, IF&W biologist Randy Cross appeared in a video opposing Question 1 in which he states that "people in Southern Maine now have bears close by, but nowhere near as many as there will be if we lose control of the bear population."

76. Links to these videos are available on IF&W's official website and Facebook page.

G. IF&W Stars in Opposition Television Advertisement Attacking Question 1 Proponents

77. Beginning on September 17, 2014, IF&W biologists Jennifer Vashon, Judy Camuso, and Randy Cross appeared in an opposition TV advertisement that was paid for by opposition ballot question committee Maine Wildlife Conservation Council.

78. On information and belief, IF&W coordinated with opposition ballot question committee Maine Wildlife Conservation Council to produce and film the advertisement. Vashon, Camuso, and Cross appeared in their official capacity in the advertisement, speaking on behalf of "Maine's Biologists and Game Wardens." They appeared in their IF&W uniforms in the advertisement.

79. On information and belief, IF&W expended agency resources, including staff time, preparing for, traveling to, and filming the advertisement.

80. Vashon, Camuso, and Cross' statements in the advertisement are not limited to the discussion of scientific facts related to wildlife management. Rather, in the advertisement IF&W personnel attempt to influence Maine voters by attacking Question 1's proponents on non-scientific grounds. Specifically, Vashon states that a "Washington D.C. special interest group wants to change the way we manage bears."

81. In the advertisement, IF&W personnel also mischaracterize the legal effect of Question 1. Specifically, Camuso states that "[Question 1] is a serious threat to public safety."

82. In fact, the law that Question 1 would enact would not affect IF&W's ability to respond to nuisance complaints or otherwise use baiting, hounding, and

trapping to respond to human-bear conflicts because it contains exceptions for the protection of property, public safety, and research. IF&W is well aware of this fact, evidencing an intent by the agency (as represented by Camuso in the television advertisement) to influence the votes of Mainers rather than to provide facts concerning bear management.

83. The advertisement depicts a photograph of Vashon, Camuso, and Cross with a group of other agency employees in IF&W uniform, with text overlaid reading “MAINE’S BEAR BIOLOGISTS & GAME WARDENS OPPOSE QUESTION 1.”

84. No individuals other than IF&W employees appear in the advertisement.

85. The arguments made by IF&W employees in the advertisement match, with near identity, the primary talking points of the Question 1 opposition campaign.

COUNT I

(VIOLATION OF MAINE FREEDOM OF ACCESS ACT)

86. The Plaintiffs incorporate by reference the allegations set forth in the preceding paragraphs, as if fully set forth herein.

87. The Maine Freedom of Access Act requires agencies to produce public documents within a reasonable time.

88. IF&W has unduly delayed the production of these time-sensitive documents — eighteen months for the first request, and more than four months for the second and third requests.

89. IF&W has not made a good faith effort to timely produce these documents.

90. IF&W’s excessive delay in producing these documents constitutes a constructive denial of Plaintiff’s requests.

91. IF&W is consequently in violation of the Maine Freedom of Access Act.

92. Plaintiff Katie Hansberry's statutory right to obtain and inspect public records has been impaired by IF&W's failure to timely and completely produce documents requested pursuant to her Maine Freedom of Access Act requests. Ms. Hansberry is interested, both as a Maine citizen concerned with transparent government and an individual concerned with wildlife protection and management, in understanding the nature and scope of IF&W's involvement in the Question 1 campaign. This interest has been frustrated by IF&W's extreme delay.

93. Plaintiff Mainers for Fair Bear Hunting's statutory right to obtain and inspect public records has also been impaired by IF&W's failure to timely and completely produce documents related to their involvement in the Question 1 campaign.

WHEREFORE, the Plaintiffs respectfully request this Court to (a) order the immediate production of records requested by Plaintiff Katie Hansberry's March 2013 and May 2014 Freedom of Access Act requests; and (b) grant such other and further relief as this Court may deem just and appropriate.

COUNT II

(UNAUTHORIZED, UNLAWFUL, AND *ULTRA VIRES* EXPENDITURE OF PUBLIC FUNDS)

94. The Plaintiffs incorporate by reference the allegations set forth in the preceding paragraphs, as if fully set forth herein.

95. Maine law forbids public agencies from using public resources to take sides in elections or attempt to influence results of elections, absent specific legislative authorization.

96. IF&W's authorizing statutes do not expressly or implicitly authorize it to expend agency resources on or otherwise involve itself with political activities.

97. IF&W has expended significant amounts of public resources opposing Question 1. IF&W's expenditures have included, e.g., direct cash outlays, staff time, use of email and web hosting systems, use of agency facilities and vehicles, and contractor fees.

98. The purpose of these expenditures has been to influence the outcome of the November 4, 2014 election by persuading Maine voters to vote "No" on Question 1.

99. The purpose of these expenditures has also been to assist opposition ballot question committees influence the outcome of the November 4, 2014 general election by providing fundraising, outreach, and messaging support.

100. Individually and in the aggregate, these activities constitute the mounting of a political campaign against Question 1.

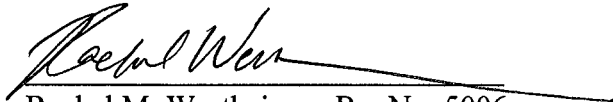
101. These campaign expenditures are not authorized by statute and are therefore unlawful and *ultra vires*.

102. Plaintiff Mainers for Fair Bear Hunting's constitutional right to advance Question 1 has been impaired by IF&W's illegal campaign activities. IF&W's extensive campaigning in opposition to Question 1 — including published attacks directly against Mainers for Fair Bear Hunting and its supporters, and use of taxpayer funds to support opposition groups — has harmed Plaintiff's campaign, and assisted its political opponents.

103. These activities have occurred throughout the Question 1 campaign, are still occurring, and will continue to occur up to the date of the November 4, 2014 general election.

WHEREFORE, the Plaintiffs respectfully request this Court to (a) permanently enjoin IF&W from further use of agency resources, including staff time, to oppose Question 1; (b) order IF&W to immediately remove political content from its website, YouTube channel, and other outlets; (c) order that the current television advertisement produced using IF&W resources be immediately removed from the air; (d) order repayment of funds illegally expended to the Treasurer of the State of Maine; (e) award Plaintiffs their attorneys' fees and other costs for the maintenance of this action; and (f) grant such other and further relief as this Court may deem just and appropriate.

Dated at Portland, Maine this 30th day of September, 2014.



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