



GALLIK, BREMER & MOLLOY, P.C.



February 10, 2021

Jeffrey A. Mangan, Commissioner  
1209 Eighth Avenue  
P.O. Box 202401  
Helena, Montana 59620-2401

Re: First Amended Order of Noncompliance, No. COPP-2021-ONC-001

Dear Commissioner Mangan:

This letter provides the additional information requested in your January 21, 2021 Order of Noncompliance, First Amended (hereinafter the “First Amended Order”), in which you agreed to reconsider your January 11, 2021 Order of Noncompliance (the “Order of Noncompliance”) on the basis of additional details regarding North Fund’s non-ballot measure activities in 2020.

Section I provides important context for the information set forth in this letter and the attached Exhibit A. As a threshold matter, it discusses a slight adjustment in the relevant numbers: as explained further below, in preparing this more detailed accounting, North Fund realized both that (1) its total expenditures in 2020 were slightly higher than it previously advised—instead of a total of \$47,633,914, North Fund’s total 2020 expenditures were \$48,187,629; and (2) of that number, the total amount of ballot measure *related* spending was \$17,996,801, and the total amount of spending *not* related to ballot measures was \$30,190,829.<sup>1</sup>

As a result, while your First Amended Order asked that North Fund provide more specific information regarding \$30,222,707 in non-ballot measure related spending, this letter details \$30,190,829 in non-ballot measure related spending, which North Fund has determined to be the accurate number after adjusting for some discrepancies discovered as it prepared these materials. That spending all falls into the following three categories, each discussed further below:

- **\$16,966,650 in non-ballot measure related grants and contributions:** In Section II and the attached Exhibit A, we provide a detailed accounting of all non-ballot measure related grants and contributions made by North Fund in 2020, including the date of each expenditure, its amount, the name of the recipient, and the

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<sup>1</sup> All amounts in this letter are rounded to the closest dollar amount, which is why the total spending adds up to \$48,187,629, and not \$48,187,630.

expenditure's purpose. In total, this category includes 83 separate non-ballot measure related grants and contributions made by North Fund in 2020, to 70 different organizations.

- **\$10,347,009 in direct spending for non-ballot measure related activities:** In Section III, we discuss North Fund's direct spending to contractors in 2020 for non-ballot measure related activities. This includes over 600 different direct expenditures (i.e., not grants or direct contributions) to support matters unrelated to ballot measures, as described in more detail in Section III.
- **\$2,877,170 in administration and management-related spending:** Finally, in Section IV, we provide further information about North Fund's internal spending in 2020, which accounts for the balance of North Fund's total non-ballot measure related spending.

#### **I. Relevant Background**

The First Amended Order followed North Fund's January 14, 2021 letter to you, in which North Fund requested reconsideration of (1) your December 28 Decision concluding that there were sufficient facts to find that North Fund's proper designation under Montana law was as an independent, rather than incidental, committee, and (2) your subsequent Order of Noncompliance, which together required the disclosure of "a list of [North Fund's] contributors and the amounts contributed."

As explained in North Fund's January 14 letter, North Fund maintains that the Decision and the Order of Noncompliance were incorrect and contrary to law for several reasons, including the threshold fact that North Fund is "not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues." § 13-1-101(23), MCA. Thus, while North Fund's direct and in-kind contributions to New Montana Approach made it subject to your jurisdiction as a political committee properly classified as an incidental committee (and subject to disclosure and reporting requirements applicable to the same), *see id.*, North Fund is not properly deemed an independent committee that is required to disclose all of its contributors.

In your First Amended Order, you specifically requested that North Fund submit an accounting of its 2020 spending that was not related to ballot measure activities, including the date of expenditures, the amount(s) of expenditures, the name of the recipient, and the purpose of the expenditure. This letter and the attached materials provide that requested information to the best of North Fund's current abilities. Importantly, North Fund has not yet conducted its annual internal Financial Review, a lengthy process conducted by a third party each year in preparation for North Fund to submit the nationwide reporting that it must submit to the IRS as a 501(c)(4) organization. It is possible that, in that process, some of the information contained in here will change; however, North Fund does not anticipate that any changes would be material to your determination of North Fund's proper classification. As noted above, in the process of preparing this more detailed accounting in response to the First Amended Order, North Fund realized that there had been some minor errors in its internal accounting and that its total spending in 2020 was

\$48,187,629 (slightly more than the \$47,633,914 it previously reported), and of that, its total amount of ballot measure *related* spending was \$17,996,801, which constitutes approximately 37.8% of its 2020 spending overall.<sup>2</sup> As a result, the spending accounted for in this letter totals \$30,190,829 (and not \$30,222,707, the number specified in your First Amended Order, which was in turn based on the slightly different numbers previously reported to you in our earlier correspondence).

North Fund has expended extensive effort in putting together this material for you, and in ensuring it is as accurate as it can be, short of conducting a full internal audit. As discussed further below, for some categories of spending, it is not possible for North Fund to provide the detail requested by the First Amended Order without imposing severe and unjustifiable burdens on North Fund and its staff, as well as unjustifiably threatening its relationships with vendors whose work for North Fund had absolutely nothing to do with ballot measures or the election of candidates anywhere, much less in Montana. Nevertheless, in those cases, we have strived to provide as much information as we reasonably can, taking into account constraints on time and staffing and confidentiality concerns, while also providing more than sufficient detail to permit you to make a fully informed decision about North Fund's proper classification under Montana law.

## **II. 2020 Non-Ballot Measure Related Grants and Contributions**

North Fund issued a total of \$16,966,650 in non-ballot measure related grants and contributions in 2020. Each of those grants is specifically detailed in Exhibit A (attached). That chart details the recipient, recipient's federal tax category, date, and purpose of each grant or contribution.

In total, as detailed in Exhibit A, in 2020, North Fund made 83 different grants or contributions to 70 different organizations for non-ballot-measure activity. Each grant or contribution ranged from \$500 to over \$1 million, though it is worth emphasizing that larger grants did not necessarily require a larger allocation of North Fund's own time and staff resources.

Importantly, each of these contributions was made as an unrestricted general support grant, meaning that North Fund had no agreement or expectation that any of the contributed funds would be directed to electoral activity. Indeed, none of these grants or contributions were earmarked for election-related activity. In fact, to North Fund's knowledge, many of the recipients do not participate in any political activity at all. For example, grant recipient A Little Piece of Light organizes pen pal programs for incarcerated women and coordinates food drives,

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<sup>2</sup> This number is likely somewhat over-inclusive. It includes, for example, some in-kind expenditures to support ballot measures that were actually incurred by North Fund in 2019, but for various reasons (*e.g.*, where North Fund was able to determine that the ballot measure benefitted from that expenditure in 2020) North Fund has included it in this total 2020 number.

and grant recipient FSIC American Innovation and Opportunity Fund offers mentoring and financial literacy programming to underserved communities.

Of particular note, and as detailed in Exhibit A, North Fund made non-ballot-measure grants to only two 527 organizations: Planned Parenthood Votes (\$50,000) and the Working Families Party (\$15,000). These two groups received a mere 0.38% of North Fund's non-ballot related grant expenditures in 2020. As noted, each of these grants was an unrestricted general support grant and was not earmarked for any specific activity. Finally, to the best of North Fund's knowledge, none of the 501(c)(4) organizations listed in Exhibit A are primarily organized for ballot measure activity.

### **III. 2020 Direct Spending for Non-Ballot Measure Related Activities**

An additional \$10,347,009 of North Fund's 2020 non-ballot measure related expenditures in 2020 comprised direct spending (as distinguished from grants or contributions) by North Fund to support entirely non-ballot measure related activities.

This direct-spending category constitutes a total of over 600 different expenditures, which are recorded in North Fund's internal accounting procedures in the following categories: (1) Advertising and Promotion (\$6,098,266), and (2) Other Fees for Services (\$4,248,742). These categories help facilitate 990 reporting, but they include a host of different types of activities as discussed further below.

Crucially, entries in these categories do *not* include direct (i.e., "in-kind") expenditures to support ballot measure activities, which are separately accounted for and included in the aggregate total of \$17,996,801 that accounts for all of North Fund's ballot-measure *related* spending in 2020.

Thus, in accordance with North Fund's own internal procedures, none of the over 600 expenditures that fall into these categories were related in any way to ballot measures. In the process of putting together and carefully reviewing this material for you to respond to your First Amended Order, we have confirmed that none of the spending assigned to this category related in any way to ballot measures. Instead, all were for non-ballot measure services centered on social welfare issues and educating the general public. They were appropriated for services such as graphic design and media production; media/advertisement fees; project management; research and evaluation; and communications and training.

The following is a general breakdown of North Fund's public education focus areas, as well as the expenditure totals for each:

- Approximately \$6 million in advertising/media and public outreach educational services regarding Wisconsin economic policies, voter education, and nonpartisan GOTV efforts, none of which was related to any ballot measure;

- Approximately \$2 million in advertising/media and public outreach educational services regarding Black Lives Matter and other racial equality issues as well as 51 for 51 – a program to eliminate the filibuster and for DC statehood – none of which was related to any ballot measure;
- Approximately \$1.2 million in advertising/media and public outreach educational services related to nonpartisan polling access, gender and reproductive equity, the COVID-19 pandemic, and other social welfare issues, none of which was related to any ballot measure;
- Approximately \$1.1 million in advertising/media and public outreach educational services related to holding social media companies accountable regarding dissemination of media on their platforms, none of which was related to any ballot measure.

Included in the above categories of spending are the various non-ballot measure related lobbying expenses that North Fund previously described to you in earlier correspondence as examples of its myriad activities that have nothing to do with ballot measures.

While we wish to provide you with as much information as we can, categorizing every single one of these expenditures for each of these non-ballot related issues to include the date the expenditure was made, the amount of the expenditure, the recipient of the expenditure, and its purpose would impose an enormous burden on North Fund and take exponentially more time than has been allotted to supplement this information. North Fund does not believe that it should have to undertake this extensive burden to provide this information at such a detailed level of minutia in order for you to properly reclassify North Fund as an incidental committee. Fundamentally, what matters is the fact that none of these expenditures related to ballot measures.

North Fund is willing to provide a statement from an employee swearing under penalty of perjury to the details provided herein about these expenditures, and confirm, once again, that these expenditures were not related to any ballot measure. But requiring North Fund to expend the unreasonable amount of time and resources to detail each of the categories you request in your First Amended Order as to each of these over 600 expenditures would reach far beyond what the law entitles you to do under the circumstances.

It would also threaten North Fund's abilities to engage in protected First Amendment activities with these vendors, none of whom would have to be disclosed on North Fund's 990 or otherwise in any other filing to which North Fund is properly subject. These vendors—none of whose work had anything to do with Montana at all, much less with the Montana ballot measures in question, or even with any ballot measure related activity in any other state—did not envision that their work with North Fund would later be disclosed to a state authority and subject to public disclosure as a result of completely independent and unrelated activity engaged in by North Fund.

At this point, North Fund has voluntarily provided far more information than is mandated by Montana law to enable your office to properly conclude that North Fund qualifies as an

incidental committee under Montana law. Indeed, North Fund has now provided your office with exponentially more information and evidence than your office has required of many other similarly situated committees whose classification as an incidental committee you have not disturbed. North Fund respectfully submits that you have the information you need to allow you to conclude that North Fund was properly classified as an incidental committee under Montana law, and to withdraw the December 28 Decision and subsequent Order of Noncompliance.

#### **IV. 2020 Administrative and Management-Related Spending**

Finally, below is a breakdown of North Fund's 2020 internal spending, which amounted to approximately \$2,877,170, for the following various administrative and management-related costs.

Accounting Fees	\$10,098
Conferences, conventions, and meetings	\$15,900
Fundraising	\$54,000
Information technology	\$50,372
Insurance	\$26,293
Legal fees	\$557,495
Management fees	\$1,089,000
Occupancy	\$46,207
Office expenses	\$2,188
Other employee benefits	\$97,507
Other expenses	\$11,140
Other salaries and wages	\$768,966
Payroll taxes	\$61,382
Pension plan accruals and contributions	\$15,807
Travel	\$70,816

As with the category of spending detailed in Section III above, providing a detailed accounting of every single one of the expenditures made in each of the above categories to include the amount of every single expenditure, the date the expenditure was made, the recipient

of the expenditure, and its purpose, would impose an unreasonable burden on North Fund. It would take an enormous amount of staff time and energy, and in the end, is plainly not required by any of the reporting requirements to which North Fund is properly subject. Instead, North Fund has provided you with the aggregate amounts expended in each of the above categories, which provides you with further detail and information regarding the balance of its 2020 spending.

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Thank you for your consideration. With these additional facts, we are confident that COPP now has more than sufficient information to properly classify North Fund as an incidental committee and withdraw its December 28 Decision and subsequent Order of Noncompliance. Please do not hesitate to reach out if you have any questions.

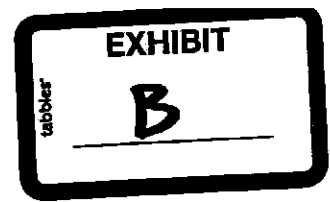
Sincerely,



Amber Maltbie  
Nossaman LLP



James P. Molloy  
Gallik, Bremer & Molloy, P.C.



**EXHIBIT A**

<b>Grant Recipient</b>	<b>Federal Tax Status</b>	<b>Date</b>	<b>Total</b>	<b>Purpose (IRS 990 Code)</b>
A Better Wisconsin Together Inc	501(c)(4)	7/1/2020	220,000	Civil Rights, Social Action, Advocacy
A Little Piece of Light	501(c)(3)	11/17/2020	5,000	Capacity Building
A Philip Randolph Educational Fund Inc	501(c)(3)	10/1/2020	65,000	Civil Rights, Social Action, Advocacy
Alliance For A Better Minnesota	501(c)(4)	7/8/2020	220,000	Civil Rights, Social Action, Advocacy
Alliance of Families for Justice Inc	501(c)(3)	10/1/2020	10,000	Capacity Building
ARC Outreach Center	501(c)(3)	11/19/2020	5,000	Capacity Building
Arizona Ecumenical Council dba Arizona Faith Network	501(c)(3)	7/20/2020	500	Capacity Building
Black Women for Wellness Action Project	501(c)(4)	10/1/2020	10,000	Capacity Building
Brady Center to Prevent Gun Violence	501(c)(3)	10/12/2020	5,000	Capacity Building
Care in Action	501(c)(4)	9/24/2020	300,000	Civil Rights, Social Action, Advocacy
Care in Action	501(c)(4)	7/31/2020	400,000	Civil Rights, Social Action, Advocacy
CASA In Action Inc	501(c)(4)	10/1/2020	50,000	Civil Rights, Social Action, Advocacy
CeaseFire Pennsylvania	501(c)(4)	8/20/2020	67,500	Civil Rights, Social Action, Advocacy
CeaseFire Pennsylvania	501(c)(4)	8/20/2020	7,500	Civil Rights, Social Action, Advocacy
Charleston Branch NAACP	501(c)(4)	6/25/2020	5,000	Capacity Building
Citizen Action of Wisconsin Inc.	501(c)(4)	6/26/2020	50,000	Civil Rights, Social Action, Advocacy
COLOR	501(c)(3)	10/1/2020	5,000	Capacity Building
Colorado Black Women Endowment Fund Inc	501(c)(3)	11/11/2020	5,000	Capacity Building
Conservation Voters of Pennsylvania	501(c)(4)	9/24/2020	75,000	Civil Rights, Social Action, Advocacy
Delaware Coalition Against Gun Violence Inc.	501(c)(4)	9/11/2020	24,000	Civil Rights, Social Action, Advocacy
Delaware Coalition Against Gun Violence Inc	501(c)(4)	9/11/2020	6,000	Civil Rights, Social Action, Advocacy
Emerging American Majorities	501(c)(4)	6/29/2020	375,000	Civil Rights, Social Action, Advocacy
Faith Works CDC	501(c)(3)	10/1/2020	5,000	Capacity Building



For Our Future Action Fund	501(c)(4)	7/14/2020	75,000	Civil Rights, Social Action, Advocacy
Forward Together	501(c)(3)	9/21/2020	70,000	Civil Rights, Social Action, Advocacy
Forward Together	501(c)(3)	5/7/2020	80,000	Civil Rights, Social Action, Advocacy
FSIC American Innovation and Opportunity Fund	501(c)(3)	9/22/2020	10,000	Capacity Building
Future Forward USA Action	501(c)(4)	10/15/2020	6,736,650	Civil Rights, Social Action, Advocacy
Georgia Investor Action Fund	501(c)(4)	9/21/2020	250,000	Civil Rights, Social Action, Advocacy
Groundswell Action Fund	501(c)(4)	6/16/2020	400,000	Civil Rights, Social Action, Advocacy
Gun Violence Prevention Action Committee	501(c)(4)	10/20/2020	50,000	Civil Rights, Social Action, Advocacy
Human Rights Campaign Inc	501(c)(4)	6/25/2020	20,000	Civil Rights, Social Action, Advocacy
I DeQuincey Newman United Methodist Church	501(c)(3)	4/16/2020	5,000	Capacity Building
League of Conservation Voters Inc	501(c)(4)	5/7/2020	150,000	Civil Rights, Social Action, Advocacy
League of Conservation Voters Inc	501(c)(4)	7/13/2020	200,000	Civil Rights, Social Action, Advocacy
Living United for Change in Arizona	501(c)(4)	7/7/2020	100,000	Civil Rights, Social Action, Advocacy
Make NC First	501(c)(4)	6/30/2020	250,000	Civil Rights, Social Action, Advocacy
Make NC First	501(c)(4)	9/22/2020	100,000	Civil Rights, Social Action, Advocacy
Michigan League of Conservation Voters	501(c)(4)	7/1/2020	75,000	Civil Rights, Social Action, Advocacy
Mothering Justice Action Fund	501(c)(4)	10/12/2020	75,000	Civil Rights, Social Action, Advocacy
NARAL Pro-Choice America	501(c)(4)	6/10/2020	400,000	Civil Rights, Social Action, Advocacy
National Asian Pacific American Women's Forum	501(c)(3)	11/19/2020	500	Capacity Building
National Black Justice Coalition	501(c)(3)	9/22/2020	10,000	Capacity Building
National Womens Law Center Action Fund	501(c)(4)	7/15/2020	400,000	Civil Rights, Social Action, Advocacy
New Venture Fund	501(c)(3)	6/17/2020	500,000	Civil Rights, Social Action, Advocacy
North Carolina Black Alliance	501(c)(3)	10/1/2020	10,000	Capacity Building
North Carolinians Against Gun Violence Action Fund	501(c)(4)	8/3/2020	30,000	Civil Rights, Social Action, Advocacy

North Carolinians Against Gun Violence Action Fund	501(c)(4)	8/3/2020	32,500	Civil Rights, Social Action, Advocacy
Opportunity Arizona	501(c)(4)	7/10/2020	250,000	Civil Rights, Social Action, Advocacy
Organizers in the Land of Enchantment	501(c)(4)	11/20/2020	90,000	Civil Rights, Social Action, Advocacy
PA Alliance Action	501(c)(4)	9/22/2020	30,000	Civil Rights, Social Action, Advocacy
PA Alliance Action	501(c)(4)	6/26/2020	250,000	Civil Rights, Social Action, Advocacy
Peoples Action	501(c)(4)	6/26/2020	150,000	Civil Rights, Social Action, Advocacy
Planned Parenthood Action Fund Inc	501(c)(4)	6/15/2020	1,000,000	Civil Rights, Social Action, Advocacy
Planned Parenthood Advocates of MI	501(c)(4)	9/16/2020	100,000	Civil Rights, Social Action, Advocacy
Planned Parenthood Advocates of MI	501(c)(4)	7/8/2020	125,000	Civil Rights, Social Action, Advocacy
Planned Parenthood ND/SD/MN	501(c)(3)	6/29/2020	75,000	Civil Rights, Social Action, Advocacy
Planned Parenthood PA Advocates	501(c)(4)	6/29/2020	100,000	Civil Rights, Social Action, Advocacy
Planned Parenthood Votes	527	10/14/2020	50,000	Civil Rights, Social Action, Advocacy
PPRM Action Fund	501(c)(4)	5/7/2020	200,000	Civil Rights, Social Action, Advocacy
Prosperity Michigan	501(c)(4)	7/1/2020	200,000	Civil Rights, Social Action, Advocacy
Secure Democracy	501(c)(4)	8/11/2020	1,000,000	Civil Rights, Social Action, Advocacy
SisterLove Inc	501(c)(3)	10/1/2020	5,000	Capacity Building
Sixteen Thirty Fund	501(c)(4)	7/15/2020	300,000	Civil Rights, Social Action, Advocacy
Sixteen Thirty Fund	501(c)(4)	6/18/2020	500,000	Civil Rights, Social Action, Advocacy
South Carolina Progressive Network Education Fund	501(c)(3)	2/18/2020	10,000	Capacity Building
SPARK Reproductive Justice Now Inc	501(c)(3)	11/13/2020	10,000	Capacity Building
State Policy Institute	501(c)(4)	8/27/2020	100,000	Civil Rights, Social Action, Advocacy
State Policy Institute	501(c)(4)	8/27/2020	100,000	Civil Rights, Social Action, Advocacy
States Newsroom	501(c)(3)	2/13/2020	85,000	Capacity Building
TakeAction Minnesota	501(c)(4)	7/8/2020	50,000	Civil Rights, Social Action, Advocacy

The TransLatin@ Coalition	501(c)(3)	10/1/2020	5,000	Capacity Building
The TraRon Center	501(c)(3)	3/17/2020	1,500	Capacity Building
Tides Foundation	501(c)(3)	2/14/2020	1,000	Capacity Building
Training Institution for Leadership Enrichment	501(c)(3)	10/27/2020	5,000	Capacity Building
Untapped Potential	501(c)(3)	4/9/2020	3,500	Capacity Building
Voters Not Politicians	501(c)(4)	10/8/2020	75,000	Civil Rights, Social Action, Advocacy
Voters Not Politicians	501(c)(4)	7/8/2020	35,000	Civil Rights, Social Action, Advocacy
Voters Not Politicians	501(c)(4)	9/30/2020	20,000	Civil Rights, Social Action, Advocacy
Women Invested in Leadership Development	501(c)(3)	10/1/2020	5,000	Capacity Building
Working America	501(c)(5)	10/13/2020	75,000	Civil Rights, Social Action, Advocacy
Working Families Party	527	11/13/2020	15,000	Capacity Building
Young Invincibles	501(c)(3)	11/19/2020	500	Capacity Building
<b>Total Non-Ballot-Related Grants/ Contributions</b>			<b>\$16,966,650</b>	