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A Case Of National Interest: Damariscotta Firm Defends Clean Elections

By J.W. Oliver

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Peter Drum (left) and Patrick Parson of Parson & Drum Attorneys. The partners and brothers-in-law represented Maine Citizens for Clean Elections in an ongoing case with state and nation-wide implications. (Photo courtesy of Peter Drum)

Last summer, Parson & Drum Attorneys, a Damariscotta law firm, represented a client in a case that continues to make headlines across the state and the nation.

The case, the National Organization for Marriage v. McKee, concerns a challenge to the Maine Clean Election Act from a powerful opponent of same-sex marriage.

The law in question provides the framework for public financing of candidates for state office and requires organizations that spend money to influence campaigns or referendum issues to disclose certain information about their donors.

According to court documents, The National Organization for Marriage (NOM) contributed approximately \$1.9 million to Stand for Marriage Maine in a successful effort to repeal the 2009 law authorizing same-sex marriage.

The organization, according to its website, is a nonprofit "with a mission to protect marriage" and to fill "the growing need for an organized opposition to same-sex marriage..."

The Maine Commission on Governmental Ethics and Election Practices, in response to a complaint, began investigating NOM for violations of the Maine Clean Election Act.

NOM, in turn, sued the Commission, arguing that the law unconstitutionally restricts its right to free speech.

Parson & Drum's involvement in the case began in the summer of 2010, when Maine Citizens for Clean Elections, a non-profit organization that supports the law, approached the firm.

About a month after the initial conversation, Maine Citizens for Clean Elections Co-President Alison Smith called the office late on a Thursday afternoon, July 29. Smith asked the firm to represent the organization, file an amicus curiae (literally "friend of the court") brief and "vigorously defend Maine's Clean Election Law."

The firm's partners, Patrick Parson and Peter Drum, agreed to start work the following week, but Smith had a deadline - the next Tuesday, Aug. 3.

According to Drum, a firm will typically prepare for a minimum of three to four weeks and "be in the case" five to six months before filing a similar brief.

Drum, in an October interview, reflected on the firm's decision. "Do we basically work an insane marathon to get this thing done in time... or do we enjoy a summer weekend with our families?"

Ultimately, the partners decided to accept the case, delaying the idyllic weekend in favor of "the long term interest of our families" and the partners' shared ideals.

"We were really grateful," Smith said. "There they were, in our hour of need, to step in."

"They weren't compensated for a lot of the work they did for us," Smith said. "They did it in the spirit of public service."

For five days, "we worked our tails off," Drum said. The men put in 16-18 hour shifts, poring over thousands of pages of documents in order to research and write the brief.

The intense effort brought back memories of a high-profile criminal case for Parson and, for Drum, of law school. "This was worse than college," he said, laughing.

Finally, the firm filed its brief. The 16-page document, heavy on footnotes and references to case law, still manages to make a clear, powerful defense of the Maine Clean Election Act.

According to the brief, the law, originally enacted as the result of a 1996 citizen's initiative, continues to enjoy the "overwhelming support of the people of Maine" who view it and related legislation as "critical safeguards of Maine's electoral process."

Disclosure rules ensure the subjection of any and all political speech "to the full and fair criticism of public debate," the partners wrote.

"To allow individuals to hide their speech behind faceless organizations supplants the historic tradition of credible debate in the public squares and in town meetings [up]on which this country is founded," Drum and Parson wrote. "What remains is no more accountable than expensive, anonymous, televised graffiti on a bathroom wall."

In their conclusion, the attorneys compared the "curtain of secrecy" surrounding private campaign financing to the curtain that hid The Wizard of Oz, allowing him to deceive the inhabitants of Emerald City.

The transparency Maine law requires "is critical to a free and open political discourse necessary for healthy, functioning government," the partners argued.

U.S. District Court Judge D. Brock Hornby, in large part, agreed, upholding the law in two decisions dated Aug. 19, 2010 and Feb. 18, 2011.

According to Parson, Hornby's decisions are "the law of the land" in Maine unless an appeals court or the U.S. Supreme Court overrules them.

The National Organization for Marriage (NOM) appealed Hornby's decision to the First U.S. Circuit Court of Appeals in Boston, March 2.

It's unclear what role, if any, Drum and Parson will play in the appeals process. Regardless of their future involvement, the partners relished the opportunity to contribute to a debate of state and national importance.

"We really believe in campaign disclosure laws," Drum said. "We think it's an important part of Maine's legal framework for how we conduct elections."

If the state allows NOM or any organization to spend without releasing donor information, the entity's "credibility, their personal biases and even their ulterior motives cannot be seen," Drum said.

The importance of disclosure requirements, in Drum's eyes, have only increased since the U.S. Supreme Court, in the landmark 2010 case Citizens United v. Federal Election Commission, granted corporations the same rights to spend in elections as individuals.

Without clean election laws, any corporation - a bank, an oil giant, a telecommunications conglomerate - "could secretly fund" an effort to attack and undermine a candidate who stands in the way of their business interests, Drum said.

Corporations can also fund candidates directly, which can lead to other problems.

"There's always a perception that, rightly or wrongly, legislators [and] elected officials are beholden to the people that are funding their campaigns," Parson said. "Big companies don't want to give \$1 million to a political campaign

if they don't think they're going to get something back for it."

"The total value of a gubernatorial candidacy in the state of Maine is usually in the low seven figures," Parson estimated. Any large donor buys "a lot of access" to the candidate and the public deserves to know the identity of those donors, he said.

The goal is not to indict the donors, Parson explained, but to allow "the public" to determine the motivation behind the donation.

The National Organization for Marriage spent almost \$2 million for the "Yes on 1" cause in 2009. "That's an incredible amount of money," Parson said.

The issue - in this case, same-sex marriage - "doesn't matter," Parson said.

Maine Citizens for Clean Elections "is neither conservative nor liberal and is not partisan towards one political party or the other," Parson said. "They don't take stands on individual issues... they just care whether or not the organization is complying with the disclosure rules."

The Maine Clean Election Act also governs the public financing option for candidates for state office.

In Maine, public candidates receive an initial injection of "seed money" at the outset of a campaign. If an opponent opts for private financing, the state matches the private funds up to a pre-determined "ceiling" in order to "level the playing field," according to Parson.

The National Organization for Marriage wants the right to spend heavily late in elections - prime time for attack ads - without notifying the Maine Clean Election Commission, which would trigger payments to the clean election candidate and, possibly, pay for a rebuttal.

If the courts find in favor of NOM and plaintiffs with similar arguments nationwide, public candidates might abandon the system and return to private financing, with all its attendant corruption and distractions, not to mention its much higher cost.

Drum has firsthand knowledge of public financing. He ran unsuccessfully for the Maine House of Representatives in 2008. He paid for his campaign with public funds, receiving about \$4000, as did his opponent, Rep. Jon McKane (R-Newcastle).

In 2010, McKane won again, defeating Newcastle Democrat Mick Devin. Again, both men ran as public finance candidates, as did Sen. David Trahan (R-Waldoboro) and his opponent, Chris Johnson (D-Somerville).

According to the Maine Commission on Governmental Ethics and Election Practices, 81 percent of state candidates in the 2008 general election participated in public financing under the Maine Clean Election Act.

Proponents say the public financing system frees candidates from the constant demands of fundraising and from obligations to donors and special interests.

By his estimate, Drum knocked on 3000 doors in District 51, meeting voters and discussing the issues facing the state, in time he may have otherwise spent fundraising.

"I wouldn't give that up for the world," Drum said. "I think that was way more important than whether or not I had \$15,000 to buy lots of advertising."