MFA'S STATEMENT ON THE OCPF PUBLIC RESOLUTION LETTER

MFA appreciates the confirmation by OCPF that MFA is not now and never has been a political committee or "PAC." MFA appreciates the corollary confirmation by OCPF that MFA therefore had and has no obligation to comply with statutory and regulatory provisions applicable only to PACs.

MFA strongly disagrees with the assertion by OCPF that Massachusetts law requires disclosure of the name of the donor who gave in $500 in response to the February 23 email. OCPF's conclusion is not supported by either the facts or the law.

As a general matter, OCPF — not MFA —bears the burden, under M.G.L. c. 55, § 18F, of demonstrating that MFA has contravened the rules governing ECs. Yet OCPF reverses this burden of proof, requiring MFA to prove a negative: "MFA cannot conclusively demonstrate that the donations received were *not* used to make electioneering communications" (emphasis supplied).

The central flaw in OCPF's factual reasoning is the presumption that MFA could only "execute [its] mission" via an "all-out blitz" by expending February 23 email donations on electioneering communications. M.G.L. c. 55, § 1 defines an "electioneering communication" ("EC") to *exclude* any print communication — even one referencing a candidate and distributed within 90 days of an election — if distributed by hand. And OCPF acknowledges both that MFA's stated mission is "advocating for fiscal responsibility, transparency, and accountability," and that MFA's "mission" includes voter education.

With the Fitchburg election approaching, MFA decided to conduct an "all-out blitz" to educate voters as to the candidate's positions on fiscal responsibility, transparency, and accountability. In other words, MFA sought "to execute [its] mission" against the backdrop of the Fitchburg special election, and the February 23 email solicited funds that would enable MFA do so. In deciding how it would execute its mission, MFA was well aware that the statutory definition of an EC *excludes* hand-distributed literature. Critically — as OCPF concedes — shortly after sending the February 23 email, MFA expended $15,000[1] on *exactly these types of*

[1] MFA expended approximately $2,100 on door hangers and $11,400 on canvassers. Furthermore, while MFA reported approximately $2,800 in EC expenses, MFA was overinclusive in its reporting out of an abundance of caution. As OCPF agrees, while MFA expended approximately $2,400 on the design and printing of 12,000 handbills, only 3,900 of those handbills were ever mailed. Thus, only 33% of the handbills — and thus 33% of the design and printing expenses, or approximately $800 — were electioneering communications, while the balance of

non-ECs (10,000 door hangers, 6,100 handbills for hand distribution, and 55 paid canvassers) — *twenty times* the $700 received. As MFA's affidavit confirms, the $700 was used exclusively to pay part of the substantial costs of those non-EC expenditures.

Inexplicably, OCPF also ignores that MFA's general treasury balance *significantly exceeded* MFA's total EC expenditure, thus enabling MFA to pay for all EC expenses out of existing funds.[2] Instead, OCPF presumes that because MFA *also* made EC expenditures shortly after the February 23 email, MFA would have had no option *but* to utilize the $700 for those purposes. Such a presumption would be warranted only if MFA had *both* an insufficient treasury balance to cover the EC expenditures *and* had not simultaneously made significant *non*-EC expenditures consistent with the February 23 email. Neither is true here.

In sum, MFA's actual conduct was consistent with the February 23 email, consistent with its assertion that the $700 received from that email was expended solely on *non*-ECs that were used to conduct an "all-out blitz", and consistent with MFA's longstanding policy — well-known to OCPF — of not soliciting funds for the stated purpose of making ECs, precisely *because* MFA knew that this requires the disclosure of certain donors. MFA had no obligation to disclose its donors under G.L. c. 55.

The first flaw in OCPF's legal reasoning is the assertion that under 970 C.M.R. § 1.22(7), OCPF can conclude that the donor "'knew' . . . that his or her donation would be used to make electioneering communications." OCPF concedes that it has no evidence the donor's *actual* knowledge of how the donation *would* be used, since OCPF rejected MFA's offer to provide an affidavit from the donor in question. This affidavit would have clearly stated that there was no such knowledge or intent that the donation be used for EC expenditures. Under 970 C.M.R. § 1.22(7), this is precisely what OCPF is *required* to demonstrate — but has not done here.

OCPF contends that 970 C.M.R. § 1.22(7) permits this conclusion "if other circumstances, including the timing and context of the donations, indicate that *a donor **knew** that the payment **would** be used* for such purpose" (emphasis supplied). Yet OCPF reads into §

---

the design and printing expenses reported (approximately $1,600) were ultimately expended on *non*-electioneering communications.

[2] OCPF contends that "[t]he funds used to make the electioneering communication expenditure were not separated by MFA from the funds used to pay for the [non-electioneering communications]" is evidence in support of its allegation. Neither M.G.L. c. 55 nor 970 C.M.R. imposes any such obligation.

1.22(7) language that is not actually there.[3] The critical words in § 1.22(7) are "knew" and "would." Section 1.22(7) does not say that the donor "*should have* known" how the payment would be used. It unambiguously requires that the donor "**knew**" how the payment would be used — a word requiring evidence of *actual* knowledge. Similarly, § 1.22(7) does not say that the donor must know that the payment "may be used" or "could be used" for an EC. The regulation unambiguously requires that the donor knew how the payment ***would*** be used. Having rejected MFA's offer of a donor affidavit, OCPF cannot meet the legal thresholds imposed by the plain language of § 1.22(7).[4]

The second flaw in OCPF's legal reasoning that OCPF simply ignores 970 C.M.R. § 1.22(9), notwithstanding that — on OCPF's own interpretation of the facts — § 1.22(9) conclusively demonstrates that MFA was *not* required to disclose the donor. Under § 1.22(9), "[a]n organization ***need not report a donor as a contributor if the organization has evidence clearly establishing that the donor did not intend that a payment would be used to fund a[n] electioneering communication***" (emphasis supplied). MFA offered OCPF such evidence: an affidavit from the donor, clearly stating that the there was no such intent that his or her donation be used for EC expenditures. OCPF rejected MFA's offer. Having declined such evidence, OCPF lacks a legal basis — under its own regulations — to conclude that MFA was required to disclose the donor in question.

For all of the above reasons, both factual and legal, MFA believes Massachusetts law does not require disclosure of the name of the donor who gave in $500 in response to the February 23 email.

---

[3] An agency is prohibited from reading into a regulation words not actually present. See Canton v. Comm'r of the Mass. Hwy. Dep't, 455 Mass. 783, 794 (2010).Where the words of a statute or regulation are unambiguous, they are to be given their plain meaning, and the agency has no discretion in interpreting those words. Pyle v. Sch. Comm. of S. Hadley, 423 Mass. 283, 285 (1996). Indeed, even if there were ambiguity, for statutes or regulations like these ambiguity must be resolved in favor of MFA. Comm. v. Kerr, 409 Mass. 284, 286 (1991).

[4] OCPF also declares that it "knows" that MFA has what OCPF subjectively characterizes as a "longstanding practice of making frequent, last-minute expenditures for electioneering communications." Astonishingly, OCPF then simply imputes this "knowledge" to the donor and declares this substitution is permissible under § 1.22(7). Yet the plain language of § 1.22(7) requires that "other circumstances" indicate that the *donor* knew how the donation would be used, not that *OCPF* "knew." OCPF may not substitute *OCPF's own perceptions of MFA's past practices and activities* for the knowledge — or lack thereof — that the individual donor has of MFA's past practices, particularly where OCPF has made no effort to ascertain the individual donor's actual knowledge or intent.

What is a Public Resolution Letter?

A public resolution letter may be issued in instances where the office found "no reason to believe" a violation occurred; where "no further action" or investigation is warranted; or where a subject "did not comply" with the law but, in OCPF's view, the case is able to be settled in an informal fashion with an educational letter or a requirement that some corrective action be taken. A public resolution letter does not necessarily imply wrongdoing on the part of a subject and does not require agreement by a subject.