



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0135

To: Commission
From: Michael Dunn, Esq., Political Committee and Lobbyist Registrar
Date: June 15, 2020
Re: Request for Investigation of Vaccinate Your Family: Every Child by Two

On February 19, 2020, the Maine Commission on Governmental Ethics and Election Practices (the “Commission”) received a request for an investigation (the “Complaint”) from Yes on 1 Maine to Reject Big Pharma (“Yes on 1”), a registered political action committee, alleging that Vaccinate Your Family: Every Child by Two (“Vaccinate Your Family”) ran digital ads to influence the March 3, 2020 election, and failed to include a disclaimer as required by 21-A M.R.S. § 1055-A. ETH – 1-8. The Complaint goes on to allege violations of the I.R.S. tax code and other undefined illegal electioneering activities. Id.

Vaccinate Your Family is a non-profit organization based in Washington D.C. The organization was founded in 1991 by Former First Lady Rosalynn Carter and its stated primary mission is to protect people of all ages from vaccine preventable diseases. Vaccinate Your Family spent \$20,000 on the digital ads complained of by Yes on 1, which linked to a page on the organization’s website that discussed the history of vaccines in Maine. ETH – 14-21.

On February 25, 2020, Commission staff responded to Yes on 1 that under 94-270 C.M.R. Ch. 1 § 4(2)(C), the Complaint must set forth facts with sufficient details as are necessary to specify an allegation of Maine’s campaign finance law. ETH – 9-10. The staff’s letter explains that the Commission does not have jurisdiction over I.R.S. violations and that most of the Complaint does not set forth sufficient facts for the Commission to investigate. Id. The one allegation with sufficient facts is whether or not Vaccinate Your Family was required to include a paid-for disclaimer on the advertisements under 21-A M.R.S. § 1055-A. Id.

On April 30, 2020, Vaccinate Your Family provided its initial response to the Commission staff’s April 13, 2020 letter. ETH – 14-21. Vaccinate Your Family provided two (2) invoices paid to MiQ Digital USA, Inc. to run the digital advertisements,¹ totaling \$20,000. Id. These advertisements read “Keep Maine’s Children Safe from Measles” and “Maine’s children are at risk of diseases. Keep them safe.” These advertisements link to the Vaccinate Your Family’s webpage in Maine. Id. All webpages on Vaccinate Your Family contains the following information:

Vaccinate Your Family
1012 14th Street NW, Suite 415
Washington, DC 20005

Disclaimer: The Vaccinate Your Family website contains links to external sites and resources. We are not responsible for the accuracy or content of those external sites or resources.

202-783-7034

202-783-7042

info@vaccinateyourfamily.org

ETH – 71-72.

After considering the initial response by Vaccinate Your Family, the Commission staff sent additional correspondence inquiring into whether Vaccinate Your Family could qualify as a ballot question committee (“BQC”). ETH – 22-62. On June 10, 2020, Vaccinate Your Family provided its follow-up response to the Commission staff’s May 29, 2020 letter. ETH – 63-66. Vaccinate Your Family agrees that they qualify as a person under Maine law and spent more than \$5,000, but disputes that the purpose of the expenditure was to influence an election. Id. The advertisements and Maine specific webpage do not include a position on LD 798 or the people’s veto and “simply provid[es] information consistent with the core mission of the organization.” Id.

¹ The invoices are itemized by “Influencers,” “Contextual,” and “CAST.” These terms represent different computer algorithms that target a specific type of audience and display the advertisements for that audience. For example: the algorithm could target Maine residents between the ages of 25 and 35 and display the advertisements to individuals who fit that description. Commission staff does not know the criteria used by Vaccinate Your Family.

LEGAL REQUIREMENTS

The Standard for Opening a Requested Investigation

The Election Law authorizes the Commission to receive requests for investigation and to conduct an investigation “if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.”

A person may apply in writing to the commission requesting an investigation as described in subsection 1. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

21-A M.R.S. § 1003(2).

Definition of a BQC

A person, not defined as a political action committee, that receives contributions or makes expenditures aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign shall register as a ballot question committee and file reports with the commission. 21-A M.R.S. § 1056-B. The Commission interprets this to include communications and activities which expressly advocate for or against a ballot question or which clearly identify a ballot question by apparent and unambiguous reference and are susceptible of no reasonable interpretation other than to promote or oppose the ballot question. Guidance on Reporting as a Ballot Question Committee (June 30, 2008).

Definition of Expenditure

The term “expenditure” includes: (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of initiating or influencing a campaign; (2) a contract, promise, or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set for this in this paragraph; and (3) the transfer of funds by a political action committee or another candidate or political committee; but, does not fall within one of the outlined exceptions. 21-A M.R.S. § 1052(4).

Definition of Influence

To promote, support or oppose or defeat.

Express Advocacy

In the context of a ballot question election, the Commission staff recommends interpreting “expressly advocate” to refer to phrases such as “vote for,” “vote yes,” “vote against,” “vote no,” “support,” “reject”, or other communications that are “susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.” *See* 94-270 C.M.R. Ch. 1 § 10(2)(B) (defining “expressly advocate” in the context of a candidate election).

Political Communications to Influence a Ballot Question

When a person makes an expenditure exceeding \$500 to expressly advocate through a publicly accessible site on the internet, the communication must clearly and conspicuously state the name and address of the person who financed the communications, unless the name or address would be so small as to be illegible or infeasible. 21-A M.R.S. § 1055-A.

DISCUSSION AND STAFF RECOMMENDATION

Alleged Disclaimer Violation

Commission staff recommends that the Commission find that Vaccinate Your Family did not violate 21-A M.R.S. § 1055-A. In viewing the two advertisements by themselves, neither reference L.D. 798 or the people’s veto effort. ETH – 3, 8. The language also does not contain any key express advocacy terms, such as “vote no” or “oppose.” The messages themselves (“Keep Maine’s Children Safe from Measles” and “Maine’s children are at risk of diseases. Keep them safe”) are reasonably susceptible to non-election communications consistent with Vaccinate Your Family’s general purpose, to protect all ages from preventable diseases. Id.

Additionally, even if the Commission found that the advertisements themselves contained express advocacy, the Commission should consider whether the inclusion of the name and address would be impractical due to size or character limitations. Vaccinate Your

Family's advertisements are not large banner ads that are displayed at the top of a website, nor are they large sidebar advertisements; comparatively, the advertisements are relatively small blocks. It is important to understand that digital advertisements are designed to be displayed across multiple types of devices. For instance, an ad on a phone will be displayed more prominently than one on a computer, but it is the same advertisement. *Compare* ETH – 3, 8. The Commission should consider the practicality of requiring these inclusions when the ad is viewed from a computer, rather than a phone or tablet because that is generally the most accurate representation of the size of the advertisement relative to the space. The Commission staff believes that the Commission could reasonably decide either way on whether the advertisements meet the exception under 21-A M.R.S. § 1055-A(2).

Alternatively, if the Commission chooses to view the advertisements, not in a vacuum and to also consider the Vaccinate Your Family's website, then the Commission should also find no violation of 21-A M.R.S. § 1055-A. At the bottom of the webpage that the advertisements link to is the organization's name and address. ETH – 5. In viewing the webpage and the advertisements together, Vaccinate Your Family complied with the disclaimer requirement.

Finally, if the Commission were to find that Vaccinate Your Family violated 21-A M.R.S. § 1055-A, the Commission could impose a penalty of not more than \$5,000. *Id.* at (3). The advertisements were widespread, having over 3 million impressions². Commission staff does not believe that the violation was intentional; Vaccinate Your Family is a national organization and has had limited interactions with Maine campaign finance laws. It does not appear that the violation occurred as the result of an error by a printer or other paid vendor. The communications in no way concealed the identity of the organization.

In conclusion, it is the recommendation of Commission staff that the Commission find that Vaccinate Your Family did not violate 21-A M.R.S. § 1055-A for the reasons stated

² An impression is when the ad is displayed on a website to a person. It is likely that one person would receive multiple impressions.

above. If the Commission were to find a violation, staff would recommend a financial penalty of \$2,000, or 10% of the total cost of the advertisements. In making this recommendation, staff considered the high number of impressions, limited experience of the organization with Maine campaign finance law, and that the communications did not conceal the identity of the organization.

BQC Registration Requirement

Whether Vaccinate Your Family qualifies as a BQC is an issue raised by staff after receiving their initial response to the Complaint filed by Yes on 1. There is no dispute that Vaccinate Your Family qualifies as a person and spent more than \$5,000.

Accordingly, the only issue for the Commission to address is whether the expenditures were to influence an election. After reviewing Vaccinate Your Family's response, it is the recommendation of Commission staff that Vaccinate Your Family is not required to register as a BQC.³

For Vaccinate Your Family to qualify as a BQC, the \$20,000 expenditure must have been made to influence an election. 21-A M.R.S. § 1056-B. The term influence includes “communications and activities which expressly advocate for or against a ballot question or which clearly identify a ballot question by apparent and unambiguous reference and are susceptible of no reasonable interpretation other than to promote or oppose the ballot question.” Guidance on Reporting as a Ballot Question Committee (June 30, 2008). The term “express advocacy” is not defined in the context of ballot questions but this language is modeled after 94-270 C.M.R. Ch. 1 § 10(2)(B) (defining “expressly advocate” in the context of a candidate election).

The advertisements by themselves very clearly do not contain express advocacy. They do not clearly identify a ballot question and do not contain phrases or slogans that would usually be interpreted to be express advocacy. ETH – 3, 8. Accordingly, if the Commission views the advertisements in a vacuum then the

³ Vaccinate Your Family, as a national organization, does not qualify as a PAC because its major purpose is not to influence Maine elections. 21-A M.R.S. § 1052(5)(A)(4).

advertisements do not contain express advocacy and Vaccinate Your Family presumably did not spend any funds to put up the webpage; therefore, Vaccinate Your Family does not qualify as a BQC.

Likewise, if the Commission views the webpage and the advertisements collectively then the Commission should still find that Vaccinate Your Family does not qualify as a BQC. The webpage and the advertisements still do not contain phrases or slogans that would usually be interpreted to be express advocacy. ETH – 3, 8, 71-72. The webpage clearly identifies a ballot question. The issue before the Commission is whether the language is susceptible of no reasonable interpretation other than to promote or oppose the ballot question.

In reviewing Vaccinate Your Family’s activities, Commission staff believes that the advertisements and webpage are reasonably susceptible to interpretations other than to promote or oppose the ballot question. Vaccinate Your Family publishes the “State of the Immunion” annually, which discusses current national outbreaks, and solutions to those outbreaks. ETH – 73-96. The organization also routinely publishes updates for outbreaks nationally and solutions to resolve those outbreaks. While Commission staff cannot locate another instance of these updates referencing a referendum, the advertisements and webpage appear wholly consistent with the organization’s approach to raise awareness of outbreaks and discuss targeted solutions to resolve those outbreaks.

Additionally, Vaccinate Your Family had limited interactions in this election. The organization ran \$20,000 worth of digital advertisements, published a webpage at no additional cost, and made an in-kind contribution of \$45,000 to a registered committee. For reference, the two committees registered to oppose the referendum spent approximately \$667,000 on the election. Seventy-three percent (73%) of voters voted against the referendum.

Commission staff does not suggest that \$20,000 is minimal financial activity. However, if the true purpose of Vaccinate Your Family was to influence an election, staff would expect to see additional activity and more coordination with the registered committees.

The absence of additional election-related activity and the consistent approach to disseminate information to regions with outbreaks of diseases strongly indicates to Commission staff that there is a reasonable non-campaign related purpose to these expenditures.

Conversely, if the Commission finds that the communications contained express advocacy and that Vaccinate Your Family is required to register as a BQC, the Commission could impose a penalty of up to \$2,500. 21-A M.R.S. § 1062-A(1). In assessing a fine, the Commission shall consider whether the violation was intentional, the amount of campaign and financial activity that occurred before registration, whether the committee intended to conceal its activity and the level of experience of the committee's staff. Id. Commission staff does not believe that the violation was intentional. The unreported amount of activity is \$20,000. Vaccinate Your Family did not conceal its activity and its officers had limited experience with Maine campaign finance laws.

Commission staff recommends that the Commission find that Vaccinate Your Family is not required to register as a BQC for the reasons stated above. If the Commission finds that Vaccinate Your Family is required to register as a BQC, Commission staff recommends a \$2,000 (10% of the unreported financial activity) penalty for the late registration.

Thank you for your attention to this matter.

MAINE ETHICS COMPLAINT

Party making the complaint: Yes on 1 Maine to Reject Big Pharma

Contact person: Cara Sacks, Campaign Manager

Contact's mailing address: P.O. Box 5688, Augusta, ME 04332

Contact's e-mail address: cara@yeson1maine.com

Contact's telephone number: 267-474-1971

Summary of Violation:

On February 18, 2020, a digital ad was discovered by our campaign that we believe is in violation of Maine campaign finance laws. The ad was found on www.wmtw.com, a local TV news website (see Appendix A.) When clicked, the digital ad redirects to <https://www.vaccinateyourfamily.org/meimmunizations/> (see Appendix B).

Unreported and Undisclosed Dark Non-Profit Money Funneling to the No on 1 Campaign

The above website was created by Vaccinate Your Family: The Next Generation of Every Child By Two (VYF), a nonprofit, 501 (c)(3) organization (see Appendix C).

Every Child By Two has already engaged in political activity regarding Question 1, donating a \$45,000 poll to the No on 1 campaign's "Maine Street Solutions-Protect Schools" PAC on December 20, 2019. This contribution is not part of this ethics complaint but is mentioned for context.

Vaccinate Your Family: The Next Generation of Every Child By Two shares the same Washington DC address as Every Child by Two, the No on 1 contributor: 1012 14th Street NW, Suite 415 Washington, D.C. 20005.

On www.vaccinateyourfamily.org/about-us/our-mission-impact/ it states the organization's expanded mission of Every Child By Two, is reflected in their new name – "Vaccinate Your Family: The Next Generation of Every Child By Two."

The website displayed is tailored specifically to Mainers and references the upcoming election on March 3, 2020. It explains the history behind the People's Veto and the passage of LD 798. The website presents reasons to vote "no" and remove non-medical exemptions to vaccination.

In addition to specifically listing the date of the election, it urges voters to: "**Learn more about this by visiting our partner's website – Maine Families for Vaccines.**"

Maine Families for Vaccines is one of two groups that have filed Ballot Question Committees in opposition to Question 1.

501 (c)(3) organizations are tax-exempt, and Every Child By Two highlights this on their "Donate" page. Donations to Every Children By Two are listed as tax-deductible on their "Donate" page (See Appendix D.)

According to the IRS: "Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

"Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, certain voter education activities (including presenting public forums and publishing voter education guides) conducted in a non-partisan manner do not constitute prohibited political campaign activity. In addition, other activities intended to encourage people to

participate in the electoral process, such as voter registration and get-out-the-vote drives, would not be prohibited political campaign activity if conducted in a non-partisan manner.

‘On the other hand, voter education or registration activities with evidence of bias that (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.’

It’s clear that the purpose of the digital ad buys and the website is electioneering, urging Maine voters to remove non-medical exemptions.

In addition to potentially illegal campaign expenditures by Every Child By Two, the digital ad in question does not disclose who paid for the ad.

Questions We Have

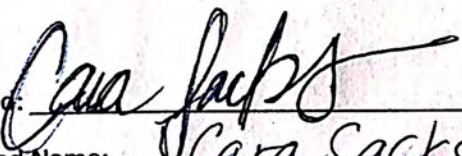
How can the public be sure that the polling information didn’t influence the messages on www.vaccinateyourfamily.org?

How long has this digital campaign been running? It says on the bottom of the website that it was last updated on February 6, 2020, so it’s safe to assume this electioneering has gone on for weeks, at least (see Appendix C).

How much has been spent on this digital campaign?

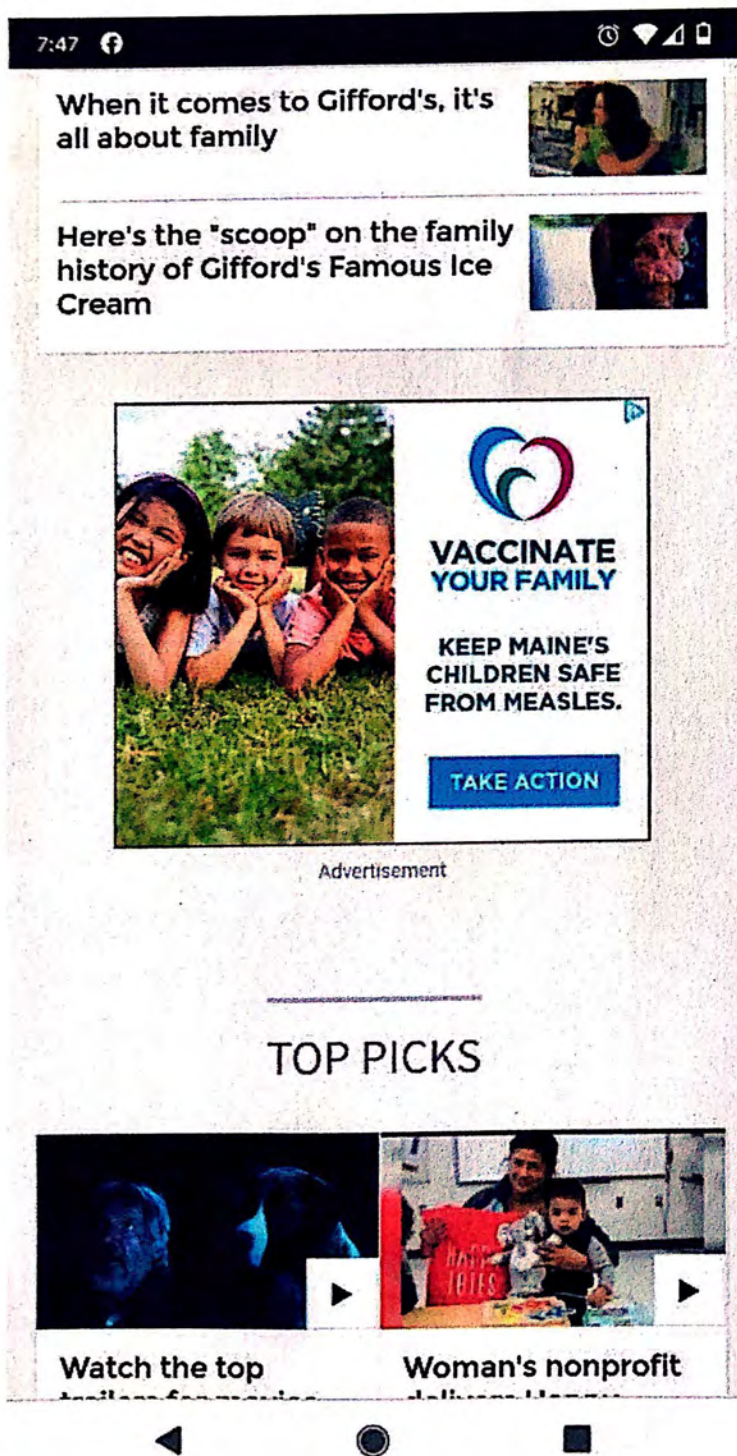
Are there additional expenditures the public and Maine Ethics is not aware of?

Who is funding the No on 1 campaign? On the Funding page, Every Child By Two mentions Merck, a vaccine manufacturer, as one of its funders. Merck donated to legislative candidates during the last session and paid lobbyists to advocate for the passage of LD798. (See Appendix E).

Signed: 
Printed Name: Cara Sacks
Title: Campaign Manager
Date: 2/19/2020

Appendix


Appendix A: Screenshot of Digital Ad on www.WMTW.com



Appendix B: Website Digital Ad Directs To

The screenshot shows a web browser displaying the 'Vaccinate Maine' website. The browser's address bar shows 'vaccinatemaine.org'. The website has a navigation menu with links: 'About Us', 'Why Vaccinate?', 'Which Vaccines Does My Family Need?', 'Questions About Vaccines?', 'Vaccine Resources', and 'Support Vaccines'. There are also buttons for 'Shot of Prevention Blog' and 'DONATE'.


Keep Maine's Children Safe from Diseases

 To help protect the health of all of Maine's citizens, the state has required certain immunizations for school entry since 1868. However, too many of Maine's parents have been opting their children out of school vaccination requirements for non-medical reasons. As a result, Maine has one of the worst "opt-out" rates in the nation.

This has led to dangerous outbreaks of whooping cough and chickenpox in Maine's daycare centers and schools. It also makes the state vulnerable to potentially serious outbreaks of other dangerous diseases like measles.

When even a few parents refuse to vaccinate their children they put us everyone in their community at risk of dangerous diseases, including people with weakened immune systems due to chemotherapy, transplants or other health problems.

Maine legislators recently passed LD 798, a law which keeps medical exemptions to school vaccination requirements, but removed "philosophical reasons" and "religious belief" exemptions. Removing these non-medical exemptions:




- Ensures a safe learning environment for all children, including those who cannot receive immunizations and those who are at risk for vaccine-preventable diseases and serious health complications due to their weakened immune systems.
- Results in fewer missed school days from preventable outbreaks.
- Allows school administrators, school boards, and nurses to adequately protect students from preventable diseases.

On March 3, Maine will put this new law to a popular vote. Learn more about this by visiting our partner's website - [Maine Families for Vaccines](#).

Learn how vaccines protect communities.

Why Vaccinate?


Vaccines save millions of lives and protect you and your family from serious infectious diseases that can cause disability and even death.



[Learn More](#)

Which Vaccines Does My Family Need?

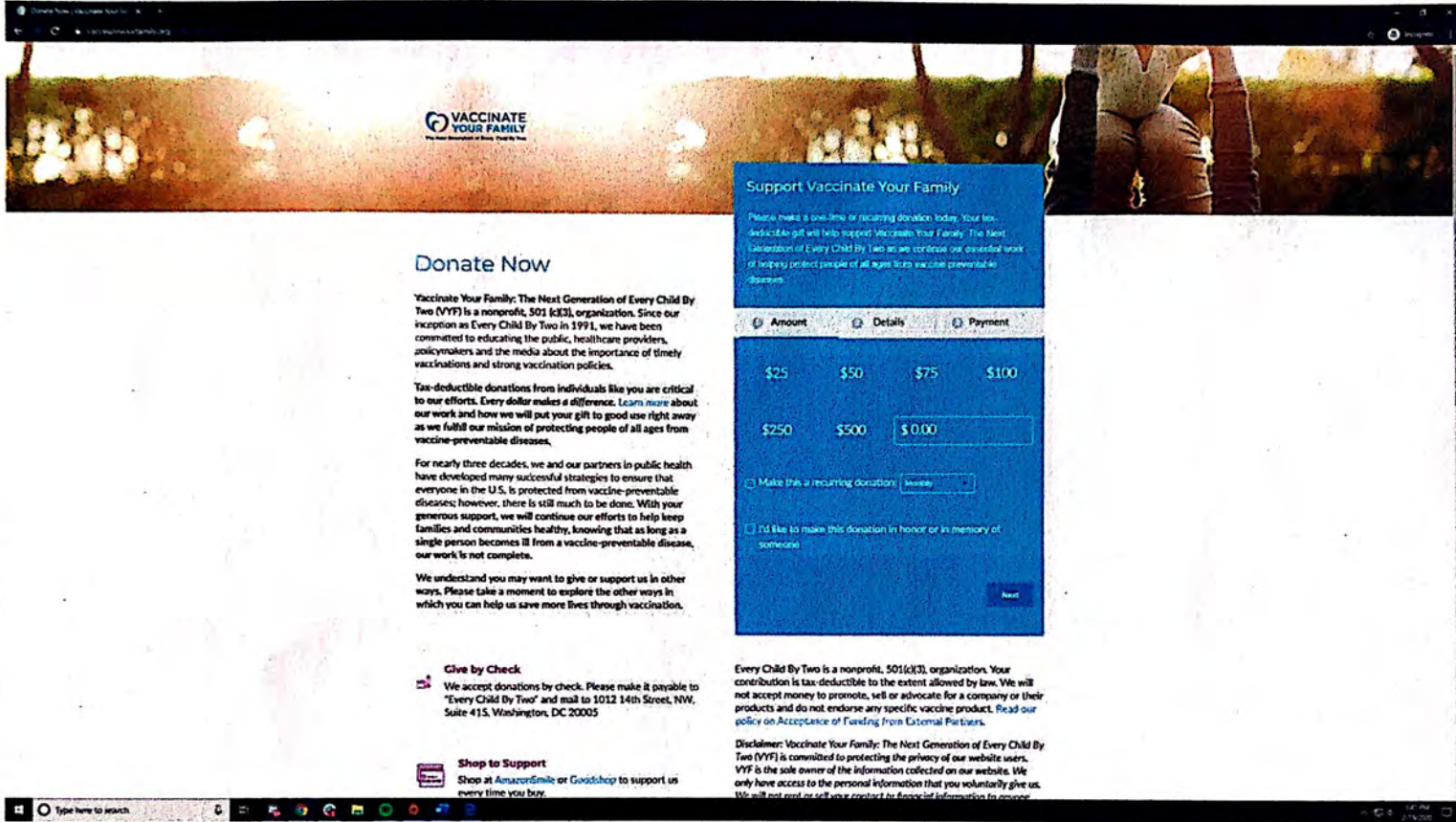
Vaccines can protect you and your loved ones at every age and every stage of life.



Appendix C: Owner of Site and Last Update

The screenshot displays the website for Vaccinate Your Family. At the top, there is a navigation menu with links for "About Us", "Why Vaccinate?", "Which Vaccines Does My Family Need?", "Questions About Vaccines?", "Vaccine Resources", and "Support Vaccines". A search bar and a "DONATE" button are also present. A central banner features a COVID-19 update titled "FOR EFFICACY AND SAFETY" with a date of "18 Feb". Below this, the website's contact information is listed: "Vaccinate Your Family, 3012 14th Street NW, Suite 415, Washington, DC 20005". A "Member Login" button is visible. A disclaimer states: "Disclaimer: The Vaccinate Your Family website contains links to external sites and resources. We are not responsible for the accuracy or content of those external sites or resources." Contact details include phone numbers (202-783-7054 and 202-783-7042) and an email address (info@vaccinateyourfamily.org). A "Share Your Story" link is also present. At the bottom, there is a "Sign Up for Immunization Alerts" form with an email input field and a "Subscribe" button. The footer contains the text "© 2020 Vaccinate Your Family. All rights reserved." and social media icons.

Appendix D: Donate Page



VACCINATE YOUR FAMILY
The Next Generation of Every Child By Two

Donate Now

Support Vaccinate Your Family

Please make a one-time or recurring donation today. Your tax-deductible gift will help support Vaccinate Your Family. The Next Generation of Every Child By Two as we continue our essential work of helping protect people of all ages from vaccine-preventable diseases.

Amount **Details** **Payment**

\$25	\$50	\$75	\$100
\$250	\$500	\$1000	

Make this a recurring donation: Monthly

I'd like to make this donation in honor or in memory of someone

Next

Give by Check

We accept donations by check. Please make it payable to "Every Child By Two" and mail to 1012 14th Street, NW, Suite 415, Washington, DC 20005

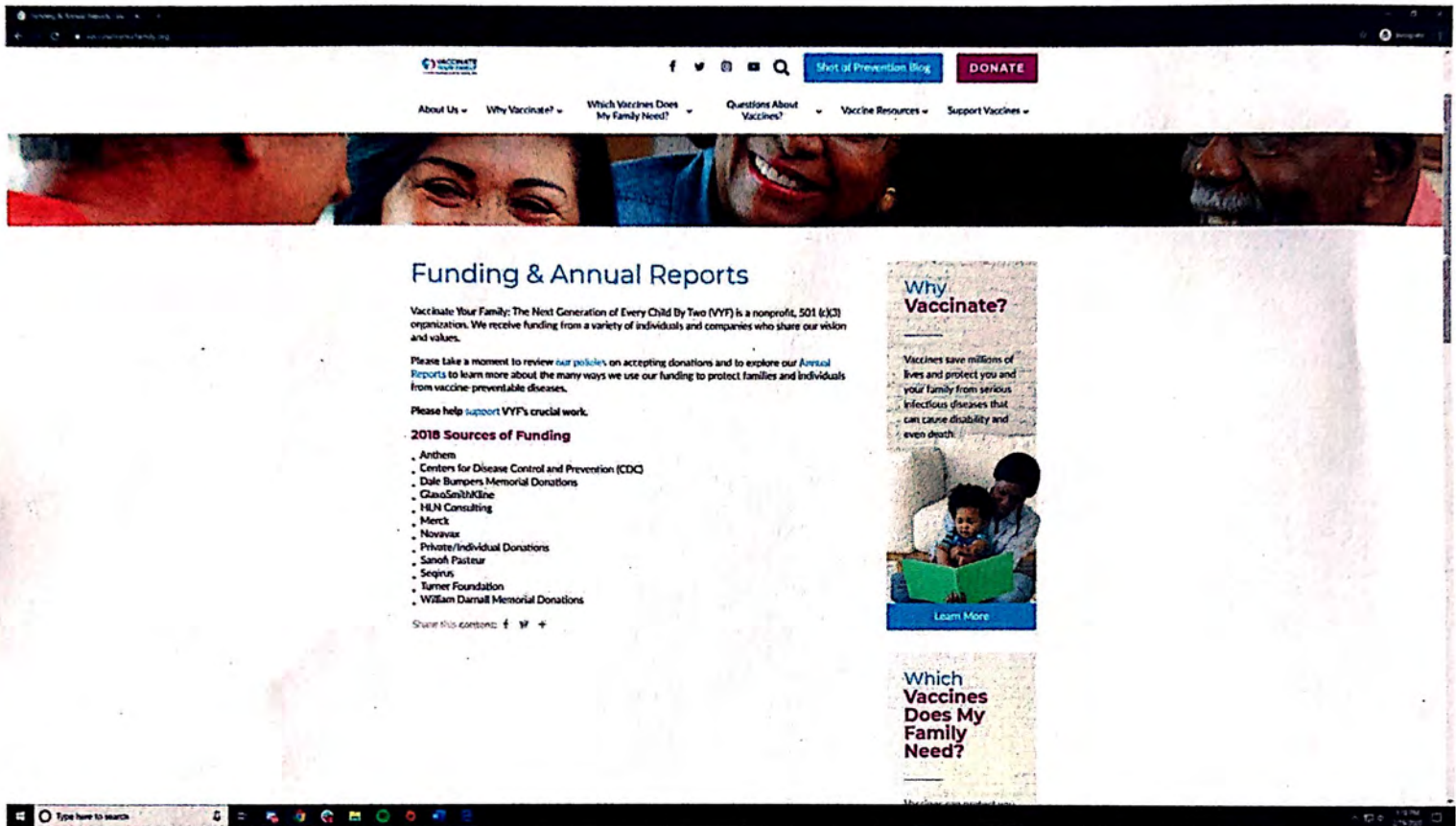
Shop to Support

Shop at [AmazonSmile](#) or [Goodshop](#) to support us every time you buy.

Every Child By Two is a nonprofit, 501(c)(3), organization. Your contribution is tax-deductible to the extent allowed by law. We will not accept money to promote, sell or advocate for a company or their products and do not endorse any specific vaccine product. Read our policy on [Acceptance of Funding from External Partners](#).

Disclaimer: Vaccinate Your Family: The Next Generation of Every Child By Two (VYF) is committed to protecting the privacy of our website users. VYF is the sole owner of the information collected on our website. We only have access to the personal information that you voluntarily give us. We will not send or sell your contact or financial information to anyone.

Appendix E: Funders



The screenshot shows the website for Vaccines for Children (VFC). The top navigation bar includes the VFC logo, social media icons for Facebook, Twitter, Instagram, YouTube, and LinkedIn, a search icon, a 'Start of Prevention Blog' button, and a 'DONATE' button. Below the navigation bar is a horizontal menu with links: 'About Us', 'Why Vaccinate?', 'Which Vaccines Does My Family Need?', 'Questions About Vaccines?', 'Vaccine Resources', and 'Support Vaccines'. A banner image shows a diverse group of people smiling. The main content area features the heading 'Funding & Annual Reports' and the following text:

Vaccinate Your Family: The Next Generation of Every Child By Two (VYF) is a nonprofit, 501 (c)(3) organization. We receive funding from a variety of individuals and companies who share our vision and values.

Please take a moment to review [our policies](#) on accepting donations and to explore our [Annual Reports](#) to learn more about the many ways we use our funding to protect families and individuals from vaccine-preventable diseases.

Please help [support](#) VYF's crucial work.

2018 Sources of Funding

- Anthem
- Centers for Disease Control and Prevention (CDC)
- Dale Bumpers Memorial Donations
- GlaxoSmithKline
- HJN Consulting
- Merck
- Novavax
- Private/Individual Donations
- Sanofi Pasteur
- Seqirus
- Turner Foundation
- William Darrall Memorial Donations

Share this content: [f](#) [t](#) [+](#)

Two callout boxes are visible on the right side of the page:

- Why Vaccinate?**
Vaccines save millions of lives and protect you and your family from serious infectious diseases that can cause disability and even death.
- Which Vaccines Does My Family Need?**


At the bottom of the page, a Windows taskbar is visible with the search bar and several application icons.

Why corporate PACs have an... Inbox (208) - david@dailynews... Inbox (4831) - david@dailynews... Facebook Thursday, Feb. 20, 2020 Time to... bangordailynews.com/2020/02/19/opinion/letters/thursday-02-20-2020-19a-for-connor-judice-reform-career-vaccine-reaction-medicare-advantage-work-for-me/?fbclid=IAA54p3DWRUj4CO0NHEdEgChP_gNWMF5sCfCfW0qA9HWTZgY0R7g

BON BANGOR DAILY NEWS Tools My Account

LETTERS Latest News | CMP Corridor | Bangor Metro | Wicked Munchies | Today's Paper | Sharing


The new law creates a "one size fits all" medical model, while completely ignoring that people respond differently to medical interventions. If our child's reaction had been to penicillin, logically, we would not administer more penicillin. Why is this medical procedure treated differently? We are not anti-vaccine, nor are we suggesting parents not vaccinate their children. We want the right to make the best choice for our children and allow you to do the same for yours — even if that choice is different than ours.



A yes vote requires vaccination and keeps Maine law the same as it has been for years, while allowing parents to make informed medical decisions for our children.

A yes vote helps ensure that students aren't denied access to education. A yes vote allows children like ours to remain in school, and our family to remain living and working in the state we love. A yes vote maintains our and your right to choose.

Please join us in voting yes on Question 1.



Joe and Sarah Quirk
Bangor

How Medicare Advantage has worked for me

9:30 AM 2/20/2020

Vaccinate Your Family (Logo)

Maine's Children are at risk of diseases. Keep them safe. (Text)

Take Action (button)



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0135

February 25, 2020

Cara Sacks, Campaign Manager
Yes on 1 Maine to Reject Big Pharma
P.O. Box 5688
Augusta, ME 04332

Sent via USPS and Email

Re: Complaint against Vaccinate Your Family

Dear Ms. Sacks:

The staff of the Maine Ethics Commission has conferred with the Commission's Chair and Counsel concerning your letter emailed on February 19, 2020 requesting an investigation of Vaccinate Your Family. Under 94-270 C.M.R. ch.1 § 4(2)(C), a complaint must set forth facts with sufficient details as are necessary to specify an allegation of Maine's campaign finance law. All allegations must be based on personal knowledge or must identify the source of the information which is the basis for the request so that respondents and the Commission staff may adequately respond to the request. Id.

In reviewing your complaint, the only alleged violation that appears to meet this standard is whether Vaccinate Your Family has failed to include the name and address of the person who financed the communication pursuant to 21-A M.R.S. § 1055-A. For a violation to occur, the ad expenditure must exceed \$500 and the ad must expressly advocate for or against a referendum. Id.; see also, *e.g.*, 94-270 C.M.R. ch. 1 § 12(10). In the opinion of the Commission staff, neither banner ad in the screenshots attached to your complaint appears to expressly advocate for or against a referendum.

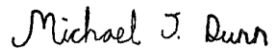
As you have indicated in your complaint, clicking on the ads takes the user to a webpage that clearly references the referendum. In viewing that page, however, the name and address of Vaccinate Your Family are displayed at the bottom of the page. Therefore, even if the cost of that single webpage on Vaccinate Your Family's website was over \$500 and contained express advocacy, it would appear to be compliant with the requirement in the staff's view.

It is not clear if you are asking the Commission to investigate whether Vaccinate Your Family is violating I.R.S. regulations as a 501(c)(3) organization. However, the Commission does not have jurisdiction to consider matters involving federal tax law. The complaint does not set forth any facts supporting an allegation of "illegal campaign expenditures" with sufficient details to allow respondents or Commission staff to respond. Other than the questions relating to the digital ads, the questions listed under "Questions We Have" also do not provide any facts with sufficient details alleging a specific violation that would allow respondents or the Commission staff to respond.

Under 21-A M.R.S. § 1002(1), the Commission shall meet within two business days of the filing of a complaint, unless the Commission Chair determines that the complaint involves allegations of minor violations, such as omitted disclaimer statements on campaign communications. The Commission Chair has been informed about your complaint and determined that it involves a minor violation and has deferred your complaint until after the election. The Commission will schedule your complaint regarding whether a violation of 21-A M.R.S. § 1055-A occurred at its April 29, 2020 meeting.

If at some time in the future, you obtain additional facts for the Commission's consideration you may refile the matter for review. Please let me know if you have any questions or concerns regarding this letter. You may reach me by email at Michael.Dunn@Maine.gov or by phone at (207) 287-4709.

Sincerely,



Michael J. Dunn, Esq.
Political Committee and Lobbyist Registrar

Cc: Sarah Kenney (via email)
David Boyer (via email)
Amy Pisani (via USPS and email)



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0135

April 10, 2020

Amy Pisani, Executive Director
Vaccinate Your Family
1012 14th Street NW, Suite 415
Washington, DC 20005

Sent via USPS and E-mail

Re: Initial Scheduling Letter – Ethics Complaint: Vaccinate Your Family

Dear Ms. Pisani:

As you are aware, the Maine Commission on Governmental Ethics and Election Practices (the “Commission”) received the enclosed complaint from Yes on 1 Maine to Reject Big Pharma. The Commission staff considers this complaint to be a request to conduct an investigation pursuant to 21-A M.R.S. § 1003. This letter is to provide Vaccinate Your Family with an opportunity to respond to the request for investigation and to provide any factual information or legal argument that it believes is relevant. At its public meeting on May 27, 2020, the Commission will consider: (1) whether to conduct a formal investigation, and (2) whether, after receiving preliminary information from the parties, a final decision can be made.

Potential Scope of Investigation

The scope of any investigation will be determined by the Commission. An investigation could include the following issues:

- Whether Vaccinate Your Family spent more than \$500 on advertisements that expressly advocated for or against the people’s veto of LD 798.
- Whether those advertisements failed to include the name and address of the person who financed the advertisement; and if so, whether there were mitigating factors for that failure.
- Whether Vaccinate Your Family made any other expenditures or received any contributions for the purpose of campaigning for or against the people’s veto of LD 798.

Relevant Law

Standard for Initiating an Investigation

The Commission is required to review every request to investigate an alleged violation of campaign finance law and to conduct an “investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.” (21-A M.R.S.A. § 1003(2)).

Definition of Expenditure. The term “expenditure” includes: (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of initiating or influencing a campaign; (2) a contract, promise, or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set for this in this paragraph; and (3) the transfer of funds by a political action committee or another candidate or political committee; but, does not fall within one of the outlined exceptions. 21-A M.R.S. § 1052(4).

Political communications to influence a ballot question. When a person, including an organization, makes an expenditure over \$500 to expressly advocate for or against an initiative or referendum that is on the ballot, the communication must clearly and conspicuously state the name and address of the person who financed the communication. If the name or address would be so small as to be illegible or infeasible because of size or character limitations, then the name and address of the financier do not need to be included on the communication. A violation of this section may result in a penalty of no more than \$5,000. In assessing the penalty, the Commission shall consider, among other things: (1) how widely the communication was disseminated, (2) whether the violation was intentional, (3) whether the violation occurred as the result of an error by a third party vendor, (4) whether the communication conceals or misrepresents the identity of the person who financed it. 21-A M.R.S. § 1055-A.

Express Advocacy. In the context of a ballot question election, the Commission staff recommends interpreting “expressly advocate” to refer to phrases such as “vote for,” “vote yes,” “vote against,” “vote no,” “support,” “reject”, or other communications that are “susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.” See 94-270 C.M.R. ch. 1 § 10(2)(B) (defining “expressly advocate” in the context of a candidate election).

Request for Response

Please submit a written response to the request for investigation by Thursday, April 30, 2020. You are welcome to submit any factual information or legal argument you believe would be relevant to the Commission's decision whether to investigate. In addition, please address the following points:

- How much did Vaccinate Your Family pay for the advertisements referenced in the complaint? When did the payments occur?
- Has Vaccinate Your Family paid for any additional public communications that reference vaccination of Maine residents? If yes, please provide those communications and documentation showing how much Vaccinate Your Family paid and when those payments occurred?
- Were there any additional expenditures made by Vaccinate Your Family that supported or opposed the people's veto of LD 798? If so, what was the nature of those expenditures, how much was spent, and what date was the expenditure made on?
- Has Vaccinate Your Family received any contributions for purposes of influencing the people's veto referendum?

Thank you for your cooperation with this request. I look forward to receiving your response on or before April 30, 2020. Please let me know if you have any questions.

Sincerely,

Michael J. Dunn, Esq.
Political Committee and Lobbyist Registrar

Enclosures

cc: Cara Sacks, Yes on 1 to Reject Big Pharma

Verrill Dana^{LLP}

Attorneys at Law

MICHAEL V. SAXL
Of Counsel
msaxl@verrilldana.com
Direct: 207-629-0322

ONE PORTLAND SQUARE
PORTLAND, MAINE 04112-0586
207-774-4000 • FAX 207-774-7499
www.verrilldana.com

April 30, 2020

Michael J. Dunn, Esq.
State of Maine
Commission on Governmental Ethics
and Election Practices
135 State House Station
Augusta, ME 04333 – 0135

Dear Mr. Dunn,

Thank you for the opportunity to your respond to your April 13, 2020 letter regarding an ethics complaint filed against Vaccinate Your Family. We agree with Commission staff and recommended no further investigation.

In our response our goal is to be fully transparent and to fully answer the questions you ask in page three of your letter.

1. Vaccinate your family spent a total of \$19,940.00 in two separate payments (attached as Exhibit A):
 - a) \$14,993.08 on 04-13-2020, and
 - b) 5,006.92 on 04-24-2020
2. Vaccinate your family has not paid for any additional public communications that reference vaccination of Maine residents.
3. Vaccinate your family made no express advocacy regarding LD 798. We did not state at any time a preference of whether an entity should vote for or against the people's veto referendum.
4. Vaccinate your family received no contributions for the purpose of influencing the people's veto referendum.

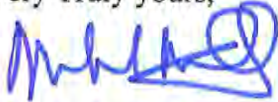
In addition to the above questions, the complaint states that vaccinate your family made an in-kind contribution to *Maine Street Solutions-Protect Schools*. That is accurate. In addition, that in-kind contribution was fully documented in *Maine Street Solutions-Protect Schools* ethics filing (attached as Exhibit B).

(April 30, 2020)

Page 2

We stand ready to provide additional information to help the Commissioners come to a resolution on the filed complaint. Thank you in advance for your attention to this matter.

Very Truly yours,

A handwritten signature in blue ink, appearing to read "Michael V. Saxl", with a large, stylized flourish at the end.

Michael V. Saxl

EXHIBIT A



261 Fifth Avenue, 26th Floor
 New York, NY 10016
 646-609-8906
 invoicesna@miqdigital.com

BILL TO

Every Child by Two
 1012 14th Street NW Suite 415
 DC 20005

INVOICE

Invoice number 119044
 Invoice date 02/29/2020
 Payment terms 30
 IO number 27539
 Run period Feb-20

Description	Impression Count	Amount (USD)
Vaccinate - ME - Influencers	922,518	\$5,535.11
Vaccinate - ME - Contextual	2,019,636	\$9,088.36
Vaccinate - ME - CAST	43,483	\$369.61
AMOUNT DUE		\$14,993.08

Notes: Based on Sales Orders 27539.
 27539. 27539.

Remittance instructions:

To ensure that we correctly apply any incoming transactions, please reference invoice numbers when making payments. In addition, please send all payments only to the bank account listed below on this invoice. For any additional billing inquiries, please contact InvoicesNA@miqdigital.com for assistance.

To pay by bank transfer, send to:
 Account holder name: MiQ Digital USA Inc.
 Bank: HSBC Bank USA, N.A.
 EIN: 46-1255166
 ACH #: 022000020
 ABA #: 021001088
 Account #: 889000298

To pay by check, mail to:
 MiQ Digital USA Inc.
 Attn: Accounts Receivables
 261 Fifth Avenue, 26th Floor
 New York, NY 10016



261 Fifth Avenue, 26th Floor
 New York, NY 10016
 646-609-8906
 invoicesna@miqdigital.com

BILL TO

Every Child by Two
 1012 14th Street NW Suite 415
 DC 20005

INVOICE

Invoice number 119635
 Invoice date 03/31/2020
 Payment terms 30
 IO number 27539
 Run period Mar-20

Description	Impression Count	Amount (USD)
Vaccinate - ME - Influencers	237,786	\$1,414.89
Vaccinate - ME - Contextual	719,913	\$3,236.64
Vaccinate - ME - CAST	41,951	\$355.39
AMOUNT DUE		\$5,006.92

Notes: Based on Sales Orders 27539.
 27539. 27539.

Remittance instructions:

To ensure that we correctly apply any incoming transactions, please reference invoice numbers when making payments. In addition, please send all payments only to the bank account listed below on this invoice. For any additional billing inquiries, please contact InvoicesNA@miqdigital.com for assistance.

To pay by bank transfer, send to:

Account holder name: MiQ Digital USA Inc.
 Bank: HSBC Bank USA, N.A.
 EIN: 46-1255166
 ACH #: 022000020
 ABA #: 021001088
 Account #: 889000298

To pay by check, mail to:

MiQ Digital USA Inc.
 Attn: Accounts Receivables
 261 Fifth Avenue, 26th Floor
 New York, NY 10016

EXHIBIT B



Commission on Governmental Ethics and Election Practices
 Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine
 Website: www.maine.gov/ethics
 Phone: 207-287-4179
 Fax: 207-287-6775

2020 CAMPAIGN FINANCE REPORT
FOR BALLOT QUESTION COMMITTEES

COMMITTEE		TREASURER	
Maine Street Solutions - Protect Schools 45 Memorial Circle Augusta, ME, 04989 PHONE:(207) 622-7432 EMAIL: rreynolds@mainestreetolutions.com		Mr. Jay Nutting 45 Memorial Circle Augusta, ME, 04989 PHONE:(207) 622-7432 EMAIL: nosend.Jnutting@mainestreetolutions.com	
REPORT	DUE DATE	REPORTING PERIOD	
January Quarterly Report	01/15/2020	12/20/2019 - 12/31/2019	

FINANCIAL ACTIVITY SUMMARY

RECEIPTS	TOTAL FOR THIS PERIOD	TOTAL FOR YEAR
1. CASH CONTRIBUTIONS (SCHEDULE A)	\$0.00	\$0.00
2. OTHER CASH RECEIPTS (INTEREST, ETC)	\$0.00	\$0.00
3. LOANS (SCHEDULE C)	\$0.00	\$0.00
4. TOTAL RECEIPTS	\$0.00	\$0.00
EXPENDITURES		
5. EXPENDITURES (SCHEDULE B)	\$0.00	\$0.00
6. LOAN REPAYMENTS (SCHEDULE C)	\$0.00	\$0.00
7. TOTAL PAYMENTS	\$0.00	\$0.00
CASH SUMMARY		
8. CASH BALANCE AT BEGINNING OF PERIOD	\$0.00	
9. PLUS TOTAL RECEIPTS THIS PERIOD (LINE 4)	\$0.00	
10. MINUS TOTAL PAYMENTS THIS PERIOD (LINE 7)	\$0.00	
11. CASH BALANCE AT END OF PERIOD	\$0.00	
OTHER ACTIVITY		
12. IN-KIND CONTRIBUTIONS (SCHEDULE A-1)	\$45,000.00	\$45,000.00
13. TOTAL LOAN BALANCE AT END OF PERIOD (SCHEDULE C)	\$0.00	
14. TOTAL UNPAID DEBTS AT END OF PERIOD (SCHEDULE D)	\$0.00	

I, Jay Nutting, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: Jay Nutting
 REPORT FILED ON: 1/15/2020 12:01:11 PM
 LAST MODIFIED:
 COMMITTEE ID: 356338

**SCHEDULE A - 1
IN-KIND CONTRIBUTIONS**

- In-kind contributions are goods and services (including facilities) that a candidate received at no cost or at a cost less than the fair market value. they include all goods and services purchased for the campaign by the candidate or supporters if the campaign does not expect to reimburse the candidate or supporter. These contributions may come from the candidate, candidate's family, supporters, PACs, party committees, or other entities.
- For contributors who gave more than \$50, the names, address, occupation, and employer must be reported. If "information requested" is listed instead of occupation and employer, the candidate is waiting to receive that information.
- In-kind contributions of \$50 or less can be added together and reported as a lump sum.
- If the candidate received a discount on goods and services, the amount of the discount must be reported as an in-kind contribution.
- Total contributions (cash and in-kind) from the same source (except the candidate and candidate's spouse or domestic partner) may NOT exceed \$350 in any election for the legislative candidates, \$750 for county candidates, or \$1500 for gubernatorial candidates. For party candidates, the primary and general elections are considered separate election. For non-party candidates, there is only one election, the general election.

1 = Individual

2 = Candidate/ Spouse/ Domestic Partner

3 = Commercial Source

4 = Nonprofit Organization

5 = Political Action Committee

6 = Political Party Committee

7 = Ballot Question Committee

8 = Other Candidate/ Candidate Committee

9 = Candidate / Candidate Committee

10 = General Treasury Transfer

11 = Transfer from Previous Campaign

12 = Contributors giving \$50 or less

13 = Contributors giving \$100 or less

14 = Contributors giving \$200 or less

15 = MCEA Payment

16 = Financial Institution

DATE RECEIVED	CONTRIBUTOR'S NAME, ADDRESS, ZIP	EMPLOYER AND OCCUPATION	DESCRIPTION (of goods, services, facilities, or discounts received)	TYPE	AMOUNT
12/20/2019	Every Child By Two 1012 14th ST NW WASHington, DC, 20005		Research Data	3	\$45,000.00
TOTAL IN-KIND CONTRIBUTIONS					\$45,000.00



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0135

May 29, 2020

Michael Saxl, Esq. Sent via USPS and E-mail
Maine Street Solutions
45 Memorial Circle
Augusta, ME 04332

Re: Additional Information Requested – Ethics Complaint: Every Child by Two

Dear Mr. Saxl:

Thank you for your letter dated April 30, 2020. The purpose of this letter is to request additional information from Vaccinate Your Family: Every Child by Two. The Commission staff would like further clarification about the itemized invoices that were provided in the April 30th letter. Additionally, based on information contained in your initial response, the Commission may inquire into whether Every Child by Two qualifies as a Ballot Question Committee (“BQC”).

At the June 24, 2020 Commission meeting, the Commission will consider whether to order an investigation or to find that the evidence has been sufficiently developed to make a decision. It is possible that the Commission may, in addition to reviewing the pending complaint, make a finding on Every Child by Two’s status as a BQC. The Commission staff would like to give you an opportunity to respond to that possibility.

Relevant Law

Definition of a BQC. A person not defined as a political action committee that receives contributions or makes expenditures aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign shall register as a ballot question committee and file reports with the commission. 21-A M.R.S. § 1056-B. The Commission interprets this to include communications and activities which expressly advocate for or against a ballot question or which clearly identify a ballot question by apparent and unambiguous reference and are susceptible of no reasonable interpretation other than to promote or oppose the ballot question. Guidance on Reporting as a Ballot Question Committee (June 30, 2008).

Definition of Expenditure. The term “expenditure” includes: (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the

purpose of initiating or influencing a campaign; (2) a contract, promise, or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set for this in this paragraph; and (3) the transfer of funds by a political action committee or another candidate or political committee; but, does not fall within one of the outlined exceptions. 21-A M.R.S. § 1052(4).

Definition of Influence. To promote, support or oppose or defeat.

Request for Response

Please submit a written response to this request by Thursday, June 11, 2020. You are welcome to submit any factual information or legal argument you believe would be relevant to the Commission's decision. In addition, please address the following points:

- In your April 30th response, you included two itemized invoices, which breaks down the expenditures by "Influencers," "Contextual," and "CAST." Please provide a detailed explanation for what each term means.
- Please state your position on whether Every Child by Two qualifies as a BQC. You are welcome to address the Request to Investigate the City of South Portland (enclosed with this letter), a similar matter addressed by the Commission. You are also welcome to include any other legal or policy arguments as you see fit.

Thank you for your cooperation with this request. I look forward to receiving your response on or before June 11, 2020. Please let me know if you have any questions.

Sincerely,



Michael J. Dunn, Esq.

Political Committee and Lobbyist Registrar

Enclosure

cc: Cara Sacks, Yes on 1 to Reject Big Pharma (vis USPS and Email)
Amy Pisani, Vaccinate Your Families (via Email)



Guidance on Reporting as a Ballot Question Committee (effective June 30, 2008)

What is a ballot question committee?

Most organizations that raise or spend money to influence a ballot question in Maine form a political action committee (PAC) for that purpose, and file regular PAC reports with the Commission. Some advocacy, charitable, or other organizations do not qualify as PACs under the Election Law, but they are interested in raising and spending money to influence a ballot question. In 2000, the Maine Legislature enacted 21-A M.R.S.A. § 1056-B to create a reporting requirement for these non-PAC organizations. The Election Law designates these organizations as “ballot question committees” (BQCs) and they are required to register with the Commission. Under these requirements,

[a]ny person not defined as a political action committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee or ballot question committee, aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign ... shall register as a ballot question committee and file reports with the commission in accordance with this section.

The complete language of 21-A M.R.S.A. § 1056-B and the definition of “campaign” attached to this memo.

Does the requirement apply only to individuals?

No. Under Maine Election law, the term “person” includes individuals, committees, firms, partnerships, corporations, associations, or organizations.

When does a ballot question committee have to register with the Commission?

Within seven days of receiving contributions or making expenditures to initiate or influence a campaign that exceed \$5,000, a ballot question committee must register with the Commission.

How does a ballot question committee register with the Commission and file financial reports?

The committee must register and file the initial campaign finance report using the Commission's e-filing website. The committee may also use the Commission's paper forms available for download on the Commission's website. After registering, the committee must file all other campaign finance reports electronically.

What contributions must be reported by a ballot question committee?

Section 1056-B covers "contributions [received] for the purpose of initiating or influencing a [ballot question]" This includes:

- funds that the contributor specified were given in connection with a ballot question;
- funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a ballot question;
- funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a ballot question when viewed in the context of the contribution and the recipient's activities regarding a ballot question; and
- funds or transfers from the general treasury of an organization filing a ballot question report.

Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used to support an organization's general activities, rather than activities relating to a ballot question, do not need to be reported.

A ballot question committee must report but is not required to itemize contributions from a single source that aggregate \$50 or less.

What expenditures must be reported by a ballot question committee?

Section 1056-B covers expenditures for communications and activities made "for the purpose of initiating or influencing a [ballot question]." The Commission interprets this to include communications and activities which expressly advocate for or against a ballot question or which clearly identify a ballot question by apparent and unambiguous reference and are susceptible of no reasonable interpretation other than to promote or oppose the ballot question. Expenditures to be reported include:

- expenditures for communications to voters for the purpose of promoting or opposing a ballot question, including advertising on television, radio, and print media; literature that is mailed or distributed by hand to voters; automated

telephone calls and scripted calls from live callers; signs, bumper stickers, and other forms of outdoor advertising;

- staff time promoting or opposing the ballot question at public or press events;
- staff time canvassing (conducting door-to-door visits to) voters;
- travel expenses paid to employees or volunteers who are conducting activities to promote or oppose a ballot question;
- staff time preparing presentations, testimony, letters to the editor, opinion pieces, articles for publication, or press releases to promote or oppose a ballot question;
- research or analysis, including written reports and legal opinions, where the organization knows or reasonably should know that the results will be used to promote or oppose a ballot question and where the results are used for that purpose; and
- expenditures to distribute research or technical analysis regarding a ballot question for the purpose of encouraging voters to vote yes, or no, on the question.

This list is not intended to be exhaustive and is similar to the types of expenditures reported by political action committees to promote or defeat a ballot question.

What expenditures are not covered by § 1056-B?

The Commission interprets § 1056-B as excluding expenditures for communications or activities that do not clearly identify a ballot question by apparent and unambiguous reference. In addition, expenditures made merely to educate voters or others about a ballot question in a neutral way are not covered by § 1056-B, even if a ballot question is clearly identified. These would include expenditures for:

- hosting a meeting at which advocates or members of the public are invited to present their views on the ballot question, provided that the sponsors of the event make reasonable efforts to ensure that the forum is balanced;
- distributing news stories, commentary, or editorials concerning a ballot question through the facilities of a broadcasting station, newspaper, magazine, or other periodical publication, unless the facilities are owned or controlled by persons otherwise engaged in other advocacy activities to promote or oppose the ballot question; and
- research or analysis concerning a ballot question paid by an entity which is not otherwise participating in the ballot question campaign, provided that the

research or analysis does not clearly express support for or opposition to the ballot question or urge others to vote for or against the ballot question.

Do “expenditures [made] ... for the purpose of initiating ... a [ballot question]” include payments to staff or other expenses incurred in drafting legislation intended as a direct initiative?

Yes. If an organization pays its employees (or incurs other expenses) to draft legislation that the organization intends will be submitted to the Secretary of State as a direct initiative (even if submitted by a different organization or individuals), those expenses should be counted as expenditures made to initiate a ballot question.

What about expenditures to circulate ballot question petitions to collect signatures, and other expenses of advocates for and against a ballot question during the signature-gathering phase?

In 2006, the Legislature amended the term “expenditure” to clarify that payments of money to collect signatures for a ballot question must be reported. The Commission interprets the “expenditures [made] ... for the purpose of ... influencing” includes payments made by opponents of the ballot question during the time period in which proponents may gather petition signatures.

Are donors required to register and file reports as a BQC?

If an individual or organization makes contributions to a PAC or BQC, those contributions do not count toward the threshold of making expenditures that total more than \$5,000 to initiate or influence a campaign. Consequently, if an individual’s or organization’s only financial activity to initiate or influence a ballot question is to make a contribution to a PAC or BQC, that individual or organization would not need to register and file campaign finance reports as a BQC. That is to say, if an individual or organization uses their own funds to make the contribution, the contribution is not counted towards the \$5,000 threshold.

What if an individual or organization raises money to give to a PAC or BQC?

If an individual or organization receives funds for the purpose of influencing a ballot question, and gives those funds to a PAC or BQC, the funds received by the individual or organization count towards the \$5,000 threshold. For example, if a trade association solicits funds from its members in order to make a contribution to a PAC or BQC involved in a ballot question, the trade association may have to register as a ballot question committee if it raised more than \$5,000. It is not the contribution to the PAC or BQC that triggers the registration requirement; it is the fund-raising activity by the trade association that triggers it.

What if an organization contributes or transfers funds to another organization which is not a PAC or BQC?

A contribution or transfer of funds from one organization to another organization for the purpose of influencing a ballot question counts towards the \$5,000 threshold as an expenditure made by the first organization. The other organization may also have to register as a BQC.

What if an organization donates the time of its paid employees to a PAC or BQC to influence a ballot question or makes payments to vendors for goods or services to influence a ballot question in coordination with a PAC or BQC?

Donating paid staff to a PAC or BQC, and coordinating expenditures with a PAC or BQC are in-kind contributions to the PAC or BQC. They do not count toward the \$5,000 expenditure threshold that would trigger filing of a § 1056-B report by the donor; however, the PAC or BQC must report them as in-kind contributions.

An organization's expenditures to influence a ballot question may be considered an in-kind contribution to a PAC or BQC only if they are coordinated with the PAC or BQC or are accepted by a PAC or BQC. Expenditures to influence a ballot question made independently of the PAC or BQC should not be considered contributions to the PAC or BQC and would count toward the \$5,000 threshold.

Guidance to PACs and Contributors on the Reporting of In-Kind Contributions

Some PACs and BQCs involved in ballot question campaigns have reported receiving significant in-kind contributions from other organizations, but provided little detail regarding the goods and services they received. PACs or BQCs must provide more detail about large in-kind contributions they have received. For example, if a PAC or BQC reports that it received significant paid staff time from another organization, it should include a description of those staff activities and the number of hours of staff time that were contributed. A PAC's or BQC's reporting of coordinated spending made by a contributor should include a brief description of the goods and services that were purchased and their value. Contributed staff and coordinated expenditures should not be lumped together as a single contribution for the reporting period, but should be itemized as separate contributions.

Other Guidance

If you have any questions, please contact the Commission's Political Committee and Lobbyist Registrar at 287-4179 or ethics@maine.gov.

Adopted by the Commission on July 27, 2008; updated the Commission staff on May 22, 2017 to reflect statutory changes in 2011 and 2016.

21A § 1056-B. Ballot Question Committees

21-A § 1056-B. Ballot question committees

A person not defined as a political action committee that receives contributions or makes expenditures, other than by contribution to a political action committee or a ballot question committee, aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign as defined by section 1052, subsection 1 shall register as a ballot question committee and file reports with the commission in accordance with this section. For the purposes of this section, "campaign" does not include activities to influence the nomination or election of a candidate. For the purposes of this section, expenditures include paid staff time spent for the purpose of initiating or influencing a campaign.

1. Filing requirements. A report required by this section must be filed with the commission according to the reporting schedule in section 1059. After completing all financial activity, the committee shall terminate its campaign finance reporting in the same manner provided in section 1061. The committee shall file each report required by this section through an electronic filing system developed by the commission unless granted a waiver under section 1059, subsection 5.

1-A. Ballot question committee registration. A person subject to this section who receives contributions or makes expenditures that exceed \$5,000 shall register with the commission as a ballot question committee within 7 days of receiving those contributions or making those expenditures. A ballot question committee shall have a treasurer and a principal officer. The same individual may not serve in both positions unless the person establishing the ballot question committee is an individual. The ballot question committee when registering shall identify all other individuals who are the primary decision makers and fund-raisers, the person establishing the ballot question committee and the campaign the ballot question committee intends to initiate or influence. The ballot question committee shall amend the registration within 10 days of a change in the information required in this subsection. The commission shall prescribe forms for the registration, which must include the information required by this subsection and any additional information reasonably required for the commission to monitor the activities of the ballot question committee.

2. Content. A report required by this section must contain an itemized account with the date, amount and purpose of each expenditure made for the purpose of initiating or influencing a campaign; an itemized account of contributions received from a single source aggregating in excess of \$50 in any election; the date of each contribution; the date and purpose of each expenditure; the name and address of each contributor, payee or creditor; and the occupation and principal place of business, if any, for any person who has made contributions exceeding \$50 in the aggregate. The filer is required to report only those contributions made to the filer for the purpose of initiating or influencing a campaign and only those expenditures made for those purposes. The definitions of "contribution" and "expenditure" in section 1052, subsections 3 and 4, respectively, apply to persons required to file ballot question reports.

2.A. Contributions. For the purposes of this section, “contribution” includes, but is not limited to:

- A. Funds that the contributor specified were given in connection with a campaign;
- B. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a campaign;
- C. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a campaign when viewed in the context of the contribution and the recipient’s activities regarding a campaign; and
- D. Funds or transfers from the general treasury of an organization filing a ballot question report.

3. Forms. A report required by this section must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

4. Records. A person filing a report required by this section shall keep records as required by this subsection for 4 years following the election to which the records pertain.

- A. The filer shall keep a detailed account of all contributions made to the filer for the purpose of initiating or influencing a campaign and all expenditures made for those purposes.
- B. The filer shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50.

5. Liability for penalties. The commission may hold the treasurer and principal officer of a ballot question committee and any for-profit, nonprofit or other organization that established the ballot question committee jointly and severally liable with the ballot question committee for any fines assessed against the ballot question committee for a violation of this chapter.

Definition of Campaign

21-A § 1052. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Campaign. “Campaign” means any course of activities to influence the nomination or election of a candidate or to initiate or influence any of the following ballot measures:

- A. A people’s veto referendum under the Constitution of Maine, Article IV, Part Third, Section 17;
- B. A direct initiative of legislation under the Constitution of Maine, Article IV, Part Third, Section 18;

- C. An amendment to the Constitution of Maine under Article X, Section 4;
- D. A referendum vote on a measure enacted by the Legislature and expressly conditioned upon ratification by a referendum vote under the Constitution of Maine, Article IV, Part Third, Section 19;
- E. The ratification of the issue of bonds by the State or any agency thereof; and
- F. Any county or municipal referendum.

...

gubernatorial candidates in the general election are sound and realistic. He said that it was very unlikely that more than three MCEA gubernatorial candidates would be in the general election.

Mr. McKee closed the Public hearing and said the issue will be addressed further at the January meeting.

Agenda Item #4. Request by TABOR NOW to Investigate the City of South Portland

Mr. Wayne explained that David Crocker of the TABOR NOW campaign requested a Commission investigation into whether the City of South Portland was required to register and file reports as a ballot question committee. He said the City included, in a mailing of property tax bills, a flier which stated that the South Portland City Council had voted to oppose the two initiatives. Mr. Crocker believes that the purpose of the flier was to influence the election and that the cost of the flier may have exceeded the \$5,000 expenditure threshold for qualifying as a ballot question committee. Mr. Wayne also said that there was a threshold question regarding whether the ballot question statute (21-A M.R.S.A. § 1056-B) applied to the City of South Portland.

Mr. David Crocker, Esq., formerly the Chair of the TABOR campaign, said he believes there is no threshold question. He said the City of South Portland falls within the purview of § 1056-B. He referred to Article IV, Section 14 of the Maine Constitution, which deals with the formation of corporations and the applicability of the general laws of the State of Maine to corporations, and which includes municipal corporations and puts them on a par with all other corporations. He said that the definition of “person” applicable to § 1056-B includes the term “corporation” and it is clear that the City of South Portland is a municipal corporation. He said, also, that § 1056-B states very clearly that a person must register with the Commission if it spends more than \$5000 to influence, in any way, a ballot question. He said that he did not understand the Commission staff’s caution in interpreting § 1056-B in this case. He said that mailing this flier in a tax bill was not an act of neutral education. It was sent to taxpayers along with the tax bill and stated that the City was in opposition to both referenda. He said taking a broad view, according to § 1056-B and the Maine Constitution, the City of South Portland is a corporation and subject to § 1056-B. He said the only investigation necessary would be the costs associated with the flier.

Daniel I. Billings, Esq., said he has spent a great deal of time contemplating § 1056-B and the staff’s interpretation due to his involvement with the 2006 complaint against the Maine Heritage Policy Center.

He said the Commission staff's approach to this request has not been consistent with past procedure. He said although he does not agree with this law, the Commission staff's past practice has been to promote the goal of the law which is to have transparency and public disclosure in campaign expenditures. He said the South Portland expenditures for this flier should be put in context of the statewide campaign. He said many municipalities spent a considerable amount of money to influence the vote on Questions 2 and 4; however, most municipalities did not exceed the \$5000 threshold. He said South Portland pushed the envelope, in his opinion, and mailed campaign fliers out to all tax paying property owners. He said if one were to account for all the expenditures for this flier, a question would be raised as to whether the \$5,000 threshold has been met. He said even if they did meet the threshold, they would only need to file the report. There has been no suggestion of limiting what the City can spend. Mr. Billings said he agreed with Mr. Crocker that there is no threshold question with regard to whether the City of South Portland is a corporation.

Mr. McKee, addressing the threshold question, noted that the definition of "person" is quite specific and that the Legislature did not include the term "municipal corporation" even though it could have. He referred to the definition of "person" in the Lobbyist Disclosure Law which includes "municipality and quasi-municipality" as an example of how the Legislature specifically includes "municipality" when it means to. He said that it appeared to him that the § 1056-B definition would not apply to municipalities.

Mr. Billings said that he did not believe that the definition of a term in one title should be used to interpret a statute in an entirely different title. He said that the best way to interpret the term "corporation" is to use the plain language of the definition of the word. The term "corporation" is not limited in any way in the definition of "person." It includes for-profit corporations, non-profit corporations and municipal corporations. He also said that if the City of South Portland would not be considered a corporation for the purposes of § 1056-B, it would certainly qualify as an organization which is a broader term. Mr. Billings also said that the staff time used for the research and analysis that ultimately went into the campaign flier should count when figuring the expenditure amounts for this flier. He said that under the Commission's guidelines for ballot question committees that staff time should count towards the threshold. In addition, under the same guidelines, it is clear that the communication was made to influence the election because it clearly and unambiguously refers to the ballot questions and is not susceptible of any other reasonable interpretation other than to influence the election.

Mr. Duchette asked Mr. Billings whether it was the fact that South Portland mailed the flier along with the tax bills that distinguished this case from the activities regarding these ballot questions engaged in by other municipalities.

Mr. Billings said the issue comes down to money: how much did South Portland actually spend on this communication? In this case, the cost should include the staff time that went into the communication and the staff time for the work that eventually led the Council to come to its decision to oppose the ballot questions, as well as the nuts and bolts costs of printing, stuffing and mailing the flier. Looking at these factors raises the question of whether the threshold was met.

Finally, Mr. Billings expressed his concern about the staff's suggestion regarding how the Commission should approach the issue of time spent by municipal employees on research and analysis regarding ballot questions. He said that the Commission already deals with this same type of review of staff time in the context of the Lobbyist Disclosure Law (Title 3, Chapter 15). If a municipality hires a lobbyist to communicate with Legislators, the cost of the staff time spent to analyze legislation and to prepare documents and testimony to be used in lobbying must be reported in the lobbyist's monthly report. He said his major concern is that the staff's memo seems to suggest that there is one set of rules for governmental entities and another set for everyone else. He said that the Maine Heritage Policy Center is in the business of analyzing and publishing its analysis on various public policy issues. It routinely reviews its activity to determine whether § 1056-B would be applicable. Mr. Billings said that he did not see any reason why governmental entities should be treated any differently in this regard.

Mr. Joseph Greenier, from Stockton Springs, said his town sent information to influence a referendum as well. He expressed concern over any town spending tax money to influence a ballot question and then not having to report it.

Sally Daggett, Esq., City Attorney for the City of South Portland, said that the City does think that there is a threshold question regarding the applicability of § 1056-B to municipalities. She said the Legislature knows how to include municipalities in the campaign finance law when it wants to and has chosen not to include governmental agencies in the campaign finance reporting requirements. She said this is a policy issue left to the Legislature to change if deemed necessary. She said that municipalities are aware of the

case law regarding the appropriate use of public funds to comment on issues that affect municipalities and recognize that there is a line between fair comment on public issues and electioneering. Ms. Daggett also cited the Attorney General opinion from 2004 regarding the use of public funds in commenting on a citizen's initiative. In that opinion the Attorney General recognized that it is not only appropriate for a municipality to comment on and disseminate informational materials about an issue affecting the municipality, the municipal officers may have a duty to inform their constituents about the impact of a referendum. She said there is a provision in Title 30-A that requires municipal officers to comment on their position on appropriations that are sent out to the voters and inform constituents of the impact of referenda on municipal budgets. She also said that the general rule among municipal practitioners is that it is very appropriate for municipalities to spend money on issues in order to inform constituents in a neutral educational manner as long as there is no partisan advocacy.

Mr. McKee asked Ms. Daggett whether someone who took a common sense approach to interpreting this particular flier could be led to believe it was intended to send a negative message about the initiatives.

Ms. Daggett said their position is that this flier is a neutral, educational piece. It provides facts and directs the reader to the City's website where there are links to both sides of the issue.

Mr. McKee asked Ms. Daggett whether there was anything in the flier that could be seen as a positive statement about the initiatives or that would balance out the other negative comments.

Ms. Daggett said the City did not believe there were any positive comments to be made regarding the initiatives. The flier informs constituents about the impacts of the initiatives which is appropriate under the Attorney General's opinion and the Superior Court opinion because it is a neutral, educational flier.

In response to a question from Mr. McKee, Mr. Jim Gailey, City Manager for South Portland, stated that the tax bill mailings are done by a private company who receives a bulk rate (33 ½ cents) for the mailings. He also said that when compared to the July tax bill mailing cost, the October mailing which included the flier was the same dollar amount, indicating that there was no incremental increase due to the inclusion of the flier.

Ms. Daggett said the total cost of the October tax bill mailing was \$3,233.34. She said even if one were to take the position that half of that amount should be attributed to the cost of the flier, it would only amount to approximately \$1,600. She stated, finally, that this is a policy issue that affects not only municipalities but school administrative units, counties and other subdivisions of the State and questioned whether campaign finance reporting requirements apply to all these various subdivisions. She said that policy issues should be left to the Legislature to decide.

Mr. Youngblood stated that looking at the issue as a regular man on the street, the definition of a person includes a corporation. In his opinion, municipalities are corporations and would be required to report under § 1056-B. He said municipalities should not be allowed to spend what they wish on advocating for or against a referendum question without disclosing those expenditures to the public in campaign finance reports. He said in this case, the cost of the flier does not come close to the limit.

Mr. Youngblood moved that the Commission accept the staff recommendation to do no investigation due to the fact that the cost of the flier does not go over the threshold amount. Mr. Duchette seconded.

Mr. Duchette said that he agreed with Mr. Youngblood regarding municipalities being corporations. He said that there could be an argument made that § 1056-B does not apply to municipalities but that it would be a difficult argument to win. However, he said that there seems to be an agreement that this policy issue is best left to the Legislature. Even taking a liberal approach to calculating the cost of the flier, it did not exceed the threshold amount.

Mr. Marsano said the threshold question is important and the Commission should address it in deciding this matter in order to allow the Legislature or the courts to ultimately determine this issue. He said the motion should be that a municipality is not a person for the purpose of § 1056-B. Though he would vote in favor of the current motion, he would do so reluctantly because he believes the motion does not address the important question as to whether municipalities are persons for § 1056-B purposes. He suggested amending the motion.

Mr. Marsano reiterated that the legal issue presented by the threshold question is an important one and should be addressed by the Legislature or by the courts so that municipalities will know where they stand. If this motion passes, the question will remain unresolved.

Mr. McKee restated the motion as he understood it; that the Commission find that a municipality was included in the definition of person; that the Commission find that the purpose of the mailing was to advocate a position in opposition to the ballot questions; and that the Commission find that there was not enough money spent to reach the \$5,000 threshold and no further investigation was necessary. He explained that this motion would provide clarity to the public as to how the Commission viewed the issue.

Mr. Youngblood said he agreed with the clarification. Mr. Duchette said that he would still second the motion as clarified by Mr. McKee.

Mr. Marsano said he would support dividing the motion into three separate motions.

Mr. Youngblood agreed to have his motion amended by having it divided into three parts. Mr. Duchette seconded the amendment.

Mr. McKee stated the first motion that the Commission find that a municipality is a person under 21-A M.R.S.A. § 1001(3). The motion passed (3-1) with Mr. Marsano opposed.

Mr. McKee stated the second motion that the Commission find that the purpose of the mailing was to advocate opposition to the ballot questions. The motion passed (3-1) with Mr. Marsano opposed.

Mr. McKee stated the third motion that the Commission find that the \$5,000 threshold was not met and that no further investigation is necessary. The motion passed unanimously (4-0).

Mr. Wayne stated that as a result of the Commission's vote, many municipalities may be surprised to learn that they might be subject to the campaign finance reporting requirements. Mr. Wayne asked for clarity regarding the basis for including municipalities under the definition of "person" and asked whether it was

because they were corporations or organizations. He said this information would be useful in order for the staff to address questions from municipalities and others about reporting requirements.

Mr. McKee said in his opinion the term “organization” in statute is sufficiently broad enough to cover municipalities and other subdivisions of the state and other types of entities.

Agenda Item #5. Request by Maine Leads for Waiver of Late-Filing Penalties

Mr. Wayne explained that at the October 1, 2009 meeting, the Commission directed Maine Leads to file campaign finance reports as a ballot question committee to disclose its financial activities in 2007 and 2008 in support of three citizen initiatives. Mr. Wayne explained that applying the routine penalty formula in this case would result in very large penalties for four late reports. Mr. Wayne explained that during some reporting periods Maine Leads did not have any financial activity and the maximum monetary penalty that could be imposed for those reports is \$100. Maine Leads requests a waiver of the late-filing penalties.

Daniel I. Billings, Esq., on behalf of Maine Leads, said that he agreed with the staff’s interpretation of the statute in effect prior to September 12, 2009, which did not set a maximum penalty for late filed reports by ballot question committees. However, he does not think that it reflects a policy decision by the Legislature that ballot question committees should be more heavily penalized than PACs, but that it is a drafting oversight. He also said the harm to the public due to lack of filing is insubstantial in this case. He said Maine Leads did not intend to hide any activity and their involvement in these citizen initiatives was well known. He said it was more a case of misunderstanding or disagreement about the reporting requirements during that time period. He said the financial reports were made available quickly after the Commission determined that Maine Leads should be filing as a BQC and were available to the public before the election on the ballot questions. Mr. Billings also pointed out that in the cases regarding ballot question committees that have come before the Commission in the past, none has involved a situation in which expenditures were made during the signature gathering phase of the initiative process. Those cases involved expenditures made after the initiative was certified for the ballot. Thus, it was not clear how expenditures made during the signature gathering phase should be reported. He said since this is the first case of imposing penalties on a BQC, the penalty amount should not be the maximum. Mr. Billings reviewed past cases in which significant penalties were imposed on PACs and how those cases were distinguishable from this case. He said that some of the penalty amounts recommended by the staff are disproportionate to the

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: November 9, 2009

Re: TABOR NOW's Request to Investigate the City of South Portland

On October 14, 2009, the Commission received the attached e-mail request from David Crocker of the TABOR NOW campaign requesting that the Commission investigate whether the City of South Portland has complied with Maine's campaign finance laws. TABOR NOW asks the Commission to consider whether South Portland was required to register with the Commission as a ballot question committee and to file campaign finance reports because of costs associated with a one-page flier that the City of South Portland included in an October 2009 mailing of property tax bills. Mr. Crocker asserts that it is likely that the expenditures for the flier exceeded \$5,000 and were incurred for the purpose of opposing the TABOR II and excise tax initiatives that were on the state-wide ballot on November 3, 2009.

On October 20, 2009, I informed the South Portland City Manager, James H. Gailey, of the request by TABOR NOW and requested some preliminary information. The Corporation Counsel for the City of South Portland is Sally J. Daggett, an attorney at the law firm of Jensen, Baird, Gardner & Henry. On October 29, 2009, she submitted a letter on behalf of the City. Daniel I. Billings and David Crocker submitted letters dated

November 5 and 6, 2009, respectively, urging the Commission to undertake an investigation. Although Mr. Billings is an attorney, he has clarified to me by e-mail that his letter was submitted on behalf of himself, not TABOR NOW.

Factual Background

In October, the City of South Portland included in a property tax mailing a one-page flier concerning the TABOR II and excise tax initiatives. The flier

- informed property-owners that the City Council had voted to oppose both initiatives,
- provided some limited information about the effects of the initiatives if they were enacted, including the loss of \$1.9 million in revenue to the City during the current fiscal year, and
- encouraged property-owners to learn more about both initiatives at the City's website.

The flier did not explicitly urge a “no” vote on the initiatives. The statements in the letter were factual, rather than opinion. The only explicit direction to recipients in the flier was to learn more about the initiatives at the City's website.

Nevertheless, the flier contained language that could indicate a purpose to influence South Portland residents to vote against the TABOR II and excise tax initiatives. In the context of stating the City Council's vote on both initiatives, the word “oppose” was typed in capital letters and was further emphasized with boldface type, italics, and underlining. Also, the letter stated the amount of tax revenue the City would lose if the automobile excise tax initiative were enacted.

The flier refers to votes taken by the South Portland City Council to oppose both initiatives. According to the City's website, the City Council held a workshop on September 14 to discuss both initiatives, and held a second workshop on September 28 to discuss the TABOR II initiative. The members of the City Council passed resolves opposing the excise tax and TABOR II initiatives at their regular meetings on September 21 and October 5, respectively. Among the materials posted on the City's website were short position papers (one to three pages) and resolutions prepared by the City Manager, James H. Gailey. Apparently, more lengthy analyses of the initiatives were also made available at the workshops and meetings, including materials prepared by nonprofit organizations such as the Maine Heritage Policy Center, which wrote both initiatives, and the Maine Municipal Association.

Standards for Considering Requests for Investigation

Any person may request that the Commission investigate compliance with Maine's campaign finance reporting requirements:

2. Investigations requested. A person may apply in writing to the commission requesting an investigation concerning the registration of a candidate, treasurer, political committee or political action committee and contributions by or to and expenditures by a person, candidate, treasurer, political committee or political action committee. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred. (21-A M.R.S.A. § 1003(2))

The Commission is required to consider the request, and must make an investigation if sufficient grounds have been shown for believing that a violation "may have occurred."

(Id.)

Ballot Question Committee Reporting Statute

Under 21-A M.R.S.A. § 1056-B, an organization qualifies as a ballot question committee as follows:

Ballot question committees. Any person not defined as a political action committee who receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$5,000 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file reports with the commission in accordance with this section. Within 7 days of receiving contributions or making expenditures that exceed \$5,000, the person shall register with the commission as a ballot question committee. For the purposes of this section, expenditures include paid staff time spent for the purpose of influencing in any way a ballot question. ...

Ballot question committees are required to register with the Commission and to file campaign finance reports according to a prescribed schedule. (*Id.*) The statute makes clear that reporting includes “paid staff time spent for the purpose of influencing in any way a ballot question.” (*Id.*)

Threshold Legal Question

The Commission’s counsel and I believe that TABOR NOW’s request presents a threshold legal question of whether the ballot question committee reporting statute (21-A M.R.S.A. § 1056-B) could apply to a municipality. The statute applies to “[a]ny person not defined as a political action committee who receives contributions or makes expenditures ...” The term “person” is defined at the beginning of the state’s campaign finance disclosure law as:

"Person" means an individual, committee, firm, partnership, corporation, association or organization. (21-A M.R.S.A. § 1001(3))

The definition does not contain the classification of “municipality” or other type of governmental entity.

In contrast, in the lobbyist disclosure law (also administered by the Commission) the Legislature explicitly defined the term “person” to include municipalities:

12. Person. "Person" means an individual, corporation, proprietorship, joint stock company, business trust, syndicate, association, professional association, labor union, firm, partnership, club or other organization, whether profit or nonprofit, or any municipality or quasi-municipality or group of persons acting in concert, but does not include this State or any other agency of this State. (3 M.R.S.A. § 312-A(12))

Thus, if a municipality pays an employee or outside consultant or lawyer for more than eight hours of lobbying in a calendar month, the municipality is required to register with the Commission as having hired a lobbyist and must jointly file monthly disclosure reports.

In the view of the Commission staff, the applicability of 21-A M.R.S.A. § 1056-B to the City of South Portland turns on whether the City would be considered a “corporation” or an “organization.” In their letters dated November 5 and 6, Dan Billings and David Crocker express the view that the City of South Portland is a corporation for purposes of the reporting statute. They note that historically, towns and cities have been referred to as municipal corporations or as a “body corporate,” and that Article 1, Section 1 of the Charter of South Portland contains this concept.

In the view of the staff, this is not dispositive. The more common usage of the term “corporation” is to refer to private business or nonprofit entities incorporated under Titles

13-B and 13-C of the Maine Revised Statutes. The position of the term “corporation” in the definition of person after “firm” and “partnership” may indicate that the Legislature intended “corporation” to refer to business entities, and not towns and cities.

The City of South Portland has offered a legislative history of the term “person” in the campaign finance reporting law. (Daggett Letter, at 1-2) I have looked quickly at the development of the law as well, and the history is confusing because of the frequent revisions to the law in the 1970s and 1980s. In case you wish to review the history in detail, I have attached to this memorandum the relevant public laws referred to by Ms. Daggett and a few additional laws that I have included to provide greater context. I have also provided a brief description of the history in an appendix to this memorandum. Please be aware that, due to time constraints, my review of the legislative history has been confined to reading the statutory changes alone, and I have not reviewed other materials such as floor debates in the Legislature or testimony or analysis presented at committee.

In summary, from 1973 to 1985 the Election Law (Title 21) contained successive statutes that explicitly required a “governmental agency” to file reports with the state government if it spent money to support or oppose a direct initiative. By the end of this period (1985), Maine’s campaign finance law consisted of three different chapters of the Election Law (Chapters 35, 35-A, and 38). Each of these chapters contained their own definition of “person.” (21 M.R.S.A. §§ 1392(5), 1412(5), 1552(6)) The definition of

person in Chapter 35-A contained the phrase “governmental agency,” whereas the definition of person in the other two chapters did not.

In 1985, the Legislature re-codified the Election Law as Title 21-A, and brought the three chapters into a single Campaign Reports and Finances Law (Chapter 13). As part of that recodification, it consolidated the three definitions of “person” into a single definition in 21-A M.R.S.A. § 1001(3) that did not include the phrase “governmental agency.”

The City of South Portland concludes that “the Legislature knows how to include governmental agencies within the scope of the campaign finance reporting requirements of Maine law when it wants to, but it has chosen not to do so at present.” (Daggett Letter, at 2) Based on the 1985 elimination of the term “governmental agency,” the Commission staff agrees that this is a reasonable interpretation of the overall legislative history.

Dan Billings points out the difficulties in interpreting legislative history. He argues that the Commission should not consider the legislative history because of the plain meaning of the term “corporation” within the definition of “person.” (Billings Letter, at 1) David Crocker also believes it is unnecessary to consider the legislative history. (Crocker 11/6/09 Letter, at 2) The staff does not agree that the plain meaning of “corporation” includes a municipality and believes that it is appropriate to look to the legislative history as a guide in interpreting the current language.

Factual Argument by South Portland: the Mailing Cost Less than \$5,000

In Sally Daggett's October 29, 2009 letter, the City of South Portland states that the total cost of including the one-page flier in the tax bill mailing was \$622.11.

Cost of preparing the flier. The City states that it cost \$59.67 in staff time to prepare the flier. Ms. Daggett elaborated to me that this constitutes one hour of time spent by City Manager James H. Gailey.

Cost of producing the fliers. The City states that the production cost of the one-page insert was \$562.44, which represents 9,374 inserts at a cost of 6¢ each. Ms. Daggett told me that the per-unit cost of six cents included the cost of photocopying and of folding the insert. When I asked her about the cost of inserting the flyer in envelopes, she replied that she would check with her client, and that Mr. Gailey could address the issue at the November 19 meeting.

Dan Billings argues that since the City charges 25¢ per page for photocopying records provided in response to requests under the Freedom of Access Act (FOAA), that same photocopying cost should be applied toward the \$5,000 threshold for campaign finance reporting. Public entities are entitled to charge a "reasonable fee for the cost of photocopying" performed to respond to a FOAA request. (1 M.R.S.A. § 408(3)(A)) My general understanding is that it is not unusual for public agencies to charge a photocopying fee for FOAA responses that exceeds the agency's actual cost. For

purposes of the \$5,000 threshold in 21-A M.R.S.A. § 1056-B, the Commission staff believes that the City's *actual* cost in photocopying the flier is the appropriate measure.

Mailing costs. The City states that it sends tax bills quarterly, and that the inclusion of the one-page flier did not increase the cost of the postage. Accordingly, it states that there was no incremental postage cost for including the fliers in the mailing.

In response, Mr. Billings raises the point that “[i]f only incremental costs were to be considered [for purposes of campaign finance reporting], organizations and businesses could include campaign materials of various kinds in mailings that were already planned and avoid campaign finance reporting as a result.” (Billings letter, at 2) The Commission staff believes that Mr. Billings’ point is valid as a general policy. One of the Commission’s responsibilities in candidate elections is to pay matching funds to candidates participating in the Maine Clean Election Act based on communications to voters distributed by organizations independently of the candidates in the race. If the Commission were to adopt the general policy that there was zero postage when literature relating to a candidate was inserted in a planned mailing (*e.g.*, an employer’s distribution of paychecks), that policy could decrease the reporting of campaign expenditures and could impact the payment of matching funds.

Dan Billings argues that one-half of the cost of the October property tax mailing should be allocated to opposing TABOR II and the excise tax initiatives. He calculates that if

the mailing cost is 44¢ per piece, and the cost of 22¢ is allocated to each of the 9,374 pieces mailed, then the expenditure on postage to oppose the initiatives was \$2,062.28.

The Commission staff believes that the Commission has the discretion whether or not to allocate one-half of the postage cost of the mailing in determining whether the City met the \$5,000 threshold. While consistency is important, the valuation of postage in this case would not necessarily create a precedent for all circumstances.

The actual cost of the mailing may be lower than 44¢ per piece if the City was able to obtain bulk mailing rates. For example, when an agency of the state government sends a mailing of more than 200 pieces, the U.S. Post Office charges the State of Maine a bulk rate of \$0.256 per piece (25 cents plus six-tenths of a cent). Ms. Daggett informed me that she would inquire with the City Manager whether the October property tax mailing was sent by bulk rate. If, for example, the City of South Portland were charged the rate of \$0.256 per piece and one-half of that charge were attributed to the flier, I calculate that the cost of postage for the flier would be \$1,199.87.

Drafting of Resolutions by City Manager. David Crocker and Dan Billings suggest that the cost of the City Manager in preparing the resolution and to prepare information for consideration by the City Council should count toward the \$5,000 threshold. Mr. Billings also suggests that the “Commission should consider whether City staff attended any meetings or events concerning the referendum while on City time.” (Billings letter, at 3)

The Commission staff does not view the time spent by the City Manager in preparing his position papers and resolutions as part of the mailing. A number of municipalities adopted resolutions in 2009 opposing TABOR II or the excise tax initiatives, and did not send mailings. Since enactment of these initiatives would have had a significant effect on the City's available revenue and spending limits, one would expect it to be within the scope of the City Manager's job responsibilities to develop and present his analysis to the Council and to the public. The time spent by the City Manager or other employees at the September-October workshops and meetings could be viewed as activity to educate and inform public officials and their constituents regarding the potential fiscal impacts of the initiative, rather than as an expenditure to defeat the initiatives.

Purpose of Mailing – Advocating a “No” Vote or Disseminating Information?

An expenditure only counts toward the \$5,000 spending threshold in 21-A M.R.S.A. § 1056-B if the expenditure was made “for the purpose of initiating, promoting, defeating or influencing in any way a ballot question.” TABOR NOW presumes that the purpose of the insert was to defeat the initiatives.

The City of South Portland did not address in Ms. Daggett's letter whether the City's purpose in distributing the flier was to defeat the initiatives. Nevertheless, the City may take the view that the purpose was to disseminate information to voters about the impact of the initiatives and to encourage them to find out more information at the City's website. Based on reporting in the press, it appears that a number of municipalities in

Maine decided that they had an appropriate role – if not a duty – to examine the impact of the TABOR II and excise tax initiatives and to provide that information to voters.

This educational role was recognized in the attached September 10, 2004 advisory opinion by the Maine Attorney General, which relied upon a 1991 decision of the Maine Superior Court, *Campaign for Sensible Transportation v. Maine Turnpike Authority*, Docket No. CV-91-952 (Me. Super. Ct., Cum. Cty., October 8, 1991) (Alexander, J.), 1991 Me. Super. LEXIS 228, *app. dismiss'd as moot*, 658 A.2d 213 (Me. 1995). In the decision, the Attorney General concluded that while governmental officials could not spend public funds for partisan advocacy without express authorization, it is an appropriate governmental function to analyze the effects of legislation and to disseminate information concerning an initiative and its impact. Op. Me. Att'y Gen. (September 10, 2004), at 4.

Recommendation by Commission Staff

The Commission staff recommends not conducting any further investigation of this matter, because TABOR NOW has not submitted sufficient evidence to show that a violation may have occurred.

Even if the Commission is inclined to conclude that 21-A M.R.S.A. § 1056-B could apply to a municipality, it does not appear that the City of South Portland exceeded the \$5,000 spending threshold. If the Commission decides to attribute one-half of the postage cost of the mailing to defeating the initiatives, that half-share would be in the

range of \$1,199 (at \$0.256 per piece) to \$2,062.28 (at 44¢ per piece). In the view of the Commission staff, the other possible expenses associated with the flier were:

- drafting the content of the flier (estimated by the City as \$59.67),
- producing the 9,374 fliers (stated by the City to be \$562.44), and
- any staff time spent stuffing envelopes or on other activities to get the flier ready for the U.S. mail (unknown at this time).

It seems unlikely that these costs are going to be in the range of \$3,000 to \$4,000, which would be necessary for the City's costs to exceed the \$5,000 threshold.

Second, it is not at all clear that the Legislature intended the term "person" to refer to municipalities. The absence of any reference to municipalities or "governmental agencies" in the current definition of person (21-A M.R.S.A. § 1001(3)) suggests otherwise. While the legislative history does not offer any definite guidance, it supports the view that the Legislature eliminated the explicit requirement for governmental entities to report in 1985.

The policy question of whether municipalities must file campaign finance reports with the Commission is a *major* policy decision that should be made by the Legislature, not the Commission. It is closely related to the difficult policy issue of what is the proper role of municipalities in spending staff time to educate and inform their voters regarding the effects of a statewide initiative or referendum – a topic which is outside the purview of the Commission.

One practical concern I would have about extending campaign finance reporting to municipalities is that it could involve the Commission in very thorny factual determinations concerning the purpose of municipal officials in performing activities concerning initiatives and referenda. The Commission could be called upon to parse statements made by governmental officials at public meetings, or to divine the purpose of a town employee in preparing a legislative analysis or in convening an internal staff meeting to discuss an initiative. As noted by the Maine Attorney General on page 4 of the September 10, 2004 opinion, it can be very difficult to draw the line between legitimate municipal functions (analysis, planning, and education) and electioneering. The Commission staff has doubts whether the Legislature contemplated that the Commission would have this kind of oversight role over municipalities, which are subdivisions of the state.

Some advocates may believe this is an appropriate role for the Commission as the campaign finance agency of the state, because the disclosure would provide the public with a greater understanding of how public agencies are influencing elections and the amount of tax dollars that are spent by those agencies. I understand the logic of these public policy arguments, and the staff would willingly accept those responsibilities if they are assigned by the Legislature. Given the practical challenges of those types of determinations and the potential for interference in legitimate municipal functions, however, I would suggest not volunteering for that role without clearer direction from the Legislature.

Thank you for considering the recommendation of the Commission staff. We are ready to take on any fact-gathering or other project you would like in connection with this matter.

Appendix

Legislative History of Ballot Question Reporting in Maine Campaign Finance Law

In 1973, the Legislature first adopted a statute within the Election Law (Title 21) that required entities that were spending money to influence initiatives or referenda to file campaign finance reports. (P.L. 1973, Ch. 591) The new statute was inserted within Chapter 35, which primarily pertained to campaign finance reporting concerning *candidate* elections. The new statute (21 M.R.S.A. § 1391-A) required “any person, corporation, public or private utility, association, *governmental agency* or political committee accepting or expending money, to initiate, promote or defeat [initiatives and referenda]” to file campaign finance reports with the Secretary of State (emphasis added). Thus, when ballot question reporting was initiated in Maine, the Legislature did intend governmental entities to file reports.

In 1975, the Legislature enacted legislation creating the Commission and assigned to the Commission the task of receiving campaign finance reports. (P.L. 1975, Ch. 621) As part of that legislation, the entire Chapter 35 of the Election Law (Title 21) was repealed and replaced. In the process, former § 1391-A was renumbered as § 1392 and was amended slightly.

In 1976, the Legislature again repealed and replaced Chapter 35 of the Election Law, in response to the U.S. Supreme Court’s ruling in *Buckley v. Valeo*, 424 U.S. 1 (1976). (P.L. 1975, Ch. 759) It created a new § 1392, which was a definitions section for Chapter 35. The definition of “person” was introduced in § 1392(5) to mean “an individual,

committee, firm, partnership, corporation, association or any other group or organization of persons.” As noted by Ms. Daggett, this definition of “person” in Chapter 35 did not contain an express reference to governmental agencies. As part of the new Chapter 35, the Legislature moved the ballot question reporting requirement from § 1392 to § 1397(3). This subsection required “*any person, public utility or governmental agency*” to file reports if they spent more than \$50 to initiate, promote, or defeat an initiative or referendum. (Emphasis added) The addition of the term “governmental agency” here suggests that the Legislature did not consider such agencies to be covered within the definition of “person” in the new § 1392(5).

In 1977, the Legislature introduced a new Chapter 35-A in the Election Law which pertained to campaign finance reporting of financial activity to influence *ballot questions*. (P.L. 1977, Ch. 575) The new Chapter 35-A was entitled “Reports on Referendum Campaigns.” (Chapter 35 was entitled “Campaign Reports and Finances,” but at this point its provisions related only to candidate elections.) Chapter 35-A contained new definitions that were different from the definitions in Chapter 35. The definition of “person” in Chapter 35-A added the words “public utility” and “governmental agency” to the list included in the Chapter 35 definition of “person.” (21 M.R.S.A. § 1412(5)) Because of this definition, governmental agencies continued to be required to file reports with the Commission if they spent more than \$50 with respect to a ballot question. (§ 1413(1))

In 1983, the Legislature enacted the first PAC statute as a new Chapter 38, entitled Reports by Political Action Committees. (P.L. 1983, Ch. 365) The definition of “person” in Chapter 38 was identical to that contained in Chapter 35 pertaining to candidate elections and thus did not include any specific reference to governmental agencies (21 M.R.S.A. § 1552(6)).

In 1985, the Legislature recodified the entire Election Law as Title 21-A. (P.L. 1985, Ch. 161). The Legislature retained Chapters 35, 35-A and Chapter 38 and recodified them as subchapters 2, 3, and 4, of Chapter 13 of Title 21-A. This recodification consolidated the definitions of “person” that existed in Chapters 35, 35-A, and 38 into a single definition of person in 21-A M.R.S.A. § 1001(3), with nearly the same wording previously used in Chapters 35 and 38.¹ This new definition did not contain the term “governmental agency.”

The definition of “person” in 21-A M.R.S.A. § 1001(3) remained the same from 1985 until 2007, when the Legislature deleted the word “group” in legislation that was proposed by the Commission. (P.L. 2007, Ch. 443) No changes have been made to the definition since 2007.

¹ The only difference was in the last phrase. The new 21-A M.R.S.A. § 1001(3) defined “person” to mean “an individual, committee, firm, partnership, corporation, association, *group or organization*,” whereas Chapters 35 and 38 defined “person” to mean “an individual, committee, firm, partnership, corporation, association *or any other group or organization of persons*.” (Emphasis added)



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

October 20, 2009

James H. Gailey, City Manager
City of South Portland
P.O. Box 9422
South Portland, Maine 04106

Dear Mr. Gailey:

The Maine Commission on Governmental Ethics and Election Practices has received the attached request from David Crocker of the TABOR NOW campaign that the Commission investigate whether the City of South Portland has complied with Maine's campaign finance laws. Specifically, TABOR NOW requests that the Commission consider whether South Portland was required to register with the Commission as a ballot question committee and to file campaign finance reports because of expenditures made to oppose two direct initiatives on the November 3, 2009 ballot. The members of the Commission are required by statute to consider TABOR NOW's request – at least preliminarily – at a public meeting. (21-A M.R.S.A. § 1003(2))

This letter is intended to

- notify you that this matter has been scheduled for preliminary consideration by the Commission;
- provide you with legal background on TABOR NOW's request; and
- invite the City of South Portland to provide a written response no later than Friday, October 30, 2009.

Commission's Consideration of this Matter

The Commission will consider the request at its meeting on November 19, 2009 at 9:00 a.m. in Room 208 of the Cross Office Building, 111 Sewall Street in Augusta. At that time, I anticipate that the Commission will give this matter preliminary consideration (*i.e.*, consider whether the campaign finance reporting statute potentially could apply to a municipality, and consider any information the City provides in response to this letter). The Commissioners may decide on November 19 to gather more factual information concerning the mailing.

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

State Campaign Finance Reporting Statutes

Under 21-A M.R.S.A. § 1056-B, an organization qualifies as a ballot question committee as follows:

Ballot Question Committees. Any person not defined as a political action committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$5,000 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the Commission

Organizations which spend \$5,000 or less to oppose a ballot question do not qualify as ballot question committees. Ballot question committees are required to register with the Commission and to file campaign finance reports according to a prescribed schedule. (*Id.*) The statute makes clear that reporting include "paid staff time spent for the purpose of influencing in any way a ballot question." (*Id.*)

The term 'person' is defined at the beginning of the state's campaign finance disclosure law as:

"Person" means an individual, committee, firm, partnership, corporation, association or organization. (21-A M.R.S.A. § 1001(3))

After consulting with the Commission's Counsel, the staff of the Commission believes the Commission should consider the threshold question of whether the reporting requirement in 21-A M.R.S.A. § 1056-B could apply to a municipality such as the City of South Portland.

Opportunity to Respond

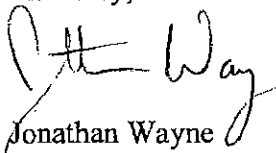
The Commission staff would be interested in receiving any information that the City of South Portland would like to provide regarding this matter, including any view about whether 21-A M.R.S.A. § 1056-B could apply to a municipality. *Please provide any response you would like to make no later than Friday, October 30, 2009.* In particular, the Commission staff would be interested in the following information:

- Did the City intend to send the property tax mailing to property owners regardless whether it included the flyer concerning the direct initiatives?
- Did the insertion of the flyer on the direct initiatives increase the incremental cost of the property tax mailing? If so, by how much?

James H. Gailey, City Manager
Page 3
October 20, 2009

I also believe it would be helpful if a representative of South Portland could attend the Commission's November 19 meeting to answer any questions that arise. Please call me at 287-4179 if you have any questions. Thank you.

Sincerely,


Jonathan Wayne
Executive Director

cc: Mayor Tom Blake, City of South Portland
Corporation Counsel Sally J. Daggett, Jensen Baird Gardner & Henry
Assistant Attorney General Phyllis Gardiner
David P. Crocker, Esq.

21-A MRSA § 1056-B. BALLOT QUESTION COMMITTEES

Any person not defined as a political action committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$5,000 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the clerk of that municipality. Within 7 days of receiving contributions or making expenditures that exceed \$5,000, the person shall register with the commission as a ballot question committee. For the purposes of this section, expenditures include paid staff time spent for the purpose of influencing in any way a ballot question. The commission must prescribe forms for the registration, and the forms must include specification of a treasurer for the committee, any other principal officers and all individuals who are the primary fund-raisers and decision makers for the committee.

1. Filing requirements. A report required by this section must be filed with the commission according to a reporting schedule that the commission shall establish that takes into consideration existing campaign finance reporting schedule requirements in section 1059.

2. Content. A report must contain an itemized account of each expenditure made to and contribution received from a single source aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name and address of each contributor, payee or creditor. The filer is required to report only those contributions made to the filer for the purpose of initiating, promoting, defeating or influencing in any way a ballot question and only those expenditures made for those purposes. The definitions of "contribution" and "expenditure" in section 1052, subsections 3 and 4, respectively, apply to persons required to file ballot question reports.

2-A. Contributions. For the purposes of this section, "contribution" includes, but is not limited to:

- A. Funds that the contributor specified were given in connection with a ballot question;
- B. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating, promoting, defeating or influencing in any way a ballot question;
- C. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating, promoting, defeating or influencing in any way a ballot question when viewed in the context of the contribution and the recipient's activities regarding a ballot question; and
- D. Funds or transfers from the general treasury of an organization filing a ballot question report.

3. Forms. A report required by this section must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

4. Records. A person filing a report required by this section shall keep records as required by this subsection for one year following the election to which the records pertain.

- A. The filer shall keep a detailed account of all contributions made to the filer for the purpose of initiating, promoting, defeating or influencing in any way a ballot question and all expenditures made for those purposes.
- B. The filer shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50.

Wayne, Jonathan

From: David P. Crocker [dpc@davidcrocker.com]
Sent: Wednesday, October 14, 2009 3:58 PM
To: Wayne, Jonathan
Subject: South Portland Mailer

Attachments: South Portland property tax insert.pdf



South Portland
property tax in...

Jonathan:

The attached mailer has come to our attention: South Portland has sent it out to every property taxpayer with their property tax bills. We'd like the Ethics Commission to investigate.

It's hard to believe that the production cost and postage to send a letter to all property taxpayers in South Portland, along with the staff time spent drafting the council's resolution, would not exceed the \$5,000 threshold for a Ballot Question Committee.

Thanks for your help with this matter.

Regards,

David P. Crocker
Attorney and Counselor at Law
Solicitor of England and Wales
Russell House
158 Pleasant Avenue
Portland, ME 04103-3204 U.S.A.
(207) 879-0708 V.
(207) 221.6417 F.
dpc@davidcrocker.com
www.davidcrocker.com

Note: The information transmitted in this message and any attachment is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged information. Any review, retransmission, dissemination or other use of or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you receive this message in error, please contact the sender immediately and delete the message and any related information from any computer or storage medium in which it may be contained.

November Election

On November 3rd, voters will be asked to vote on a number of Referendum Questions. In particular Question #2 Motor Vehicle Excise Tax and Question #4 TABOR II and how they will affect the City of South Portland.

The South Portland City Council has voted to "**OPPOSE**" both referendums.

Question #2

"Do you want to cut the rate of the municipal excise tax by an average of 55% on motor vehicles less than six years old and exempt hybrid and other alternative-energy and highly fuel-efficient motor vehicles from sales tax and three years of excise tax?"

- ❖ South Portland stands to lose 1.9 million in revenue per year if this initiative passes.
- ❖ If the auto excise tax initiative passes, the reductions go into effect in the middle of the current budget year (January/February 2010).

Question #4

"Do you want to change the existing formulas that limit state and local government spending and require voter approval by referendum for spending over those limits and for increases in state taxes?"

- ❖ TABOR II is a revised version of TABOR I, which Maine voters defeated in 2006.
- ❖ TABOR II mandates a community-wide referendum for approving the municipal annual budget in certain circumstances.

Please take the time to learn more about both initiatives at:



Verrill Dana^{LLP}

Attorneys at Law

MICHAEL V. SAXL
Of Counsel
msaxl@verrilldana.com
Direct: 207-629-0322

ONE PORTLAND SQUARE
PORTLAND, MAINE 04112-0586
207-774-4000 • FAX 207-774-7499
www.verrilldana.com

June 10, 2020

Michael J. Dunn, Esq.
State of Maine
Commission on Governmental Ethics
and Election Practices
135 State House Station
Augusta, ME 04333 – 0135

Dear Mr. Dunn,

Thank you for the opportunity to your respond to your May 29, 2020 letter requesting additional information regarding an outstanding ethics complaint against Every Child By Two (doing business as Vaccinate Your Family). Thank you also for your enclosures of the applicable law and supporting Commission materials.

We continue to agree with the February 25 Commission letter to Cara Sacks, “In the opinion of the Commission staff, neither banner ad in the screenshots attached to your complaint appears to expressly advocate for or against a referendum.”

As you know, we support the mission of the Commission to promote transparency and accountability in political campaigns and lobbying of political officials. We hope this discussion can help to promote further clarity on when an organization needs to file as a BQC.

The Law

The operable law, as defined in the Commissions communications is

§1056-B. Ballot question committees

A person not defined as a political action committee that receives contributions or makes expenditures aggregating in excess of \$5,000 for the *purpose of initiating or influencing a campaign* shall register as a ballot question committee and file reports with the commission in accordance with this section. For the purposes of this section, "campaign" does not include activities to influence the nomination or election of a candidate. A person whose only payments of money for the purpose of influencing a campaign in this State are contributions to political action committees or ballot question committees registered with the commission or a municipality and who has not raised and accepted any contributions for the purpose of influencing a campaign in this State is not required to register and file campaign finance reports under this section. For the purposes of this section, expenditures include paid staff time spent for the purpose of initiating or influencing a campaign. [PL 2019, c. 323, §23 (AMD).] (emphasis added)

The key definitions here include initiating or influencing a campaign. According to Maine Statute:

“Influence” means to promote, support or oppose or defeat.

“Initiate” includes the collection of signatures and related activities to qualify a state or local initiative or referendum for the ballot.

21-A M.R.S.A. Section 1052(4-A) and 4(B).

See also, <https://www.maine.gov/ethics/committees/political-action-committees/definitions#influence>

As you know, Maine law requires three facts to require filing as a Ballot Question Committee (“BQC”):

1. Spend more than \$5000,
2. Meet the definition of “person,” and
3. The expenditure must be for “the *purpose of initiating or influencing a campaign*”

Advertisements Do Not Meet the Definition of Influencing a Campaign

We stipulate that we have spent more than \$5,000 on advertising, and also that Vaccinate Your Family qualifies as a “person” under Maine campaign law.

What we contest, in accord with the Commission staff, is that the advertisements' purpose was to influence the campaign. The plain language of the advertisements in no way "promote, support or oppose or defeat" the campaign. The advertisements are public information consistent with the core mission of Vaccinate Your Family to "Protect people of all ages from vaccine-preventable diseases." See <https://www.vaccinateyourfamily.org/about-us/our-mission-impact/>.

Appropriately the advertisements were appearing at a time when there was a great deal of misinformation undermining the scientifically-supported public health importance of vaccines and further impacting Maine's ranking as having one of the lowest-in-the-nation vaccination rates. See, <https://www.vaccinateyourfamily.org/meimmunizations/>. The advertisement leads to a webpage which provides background on vaccinations in Maine, the impact of exemptions on vaccination rates and information about the removal of those exemptions.

Most important is that nowhere in their advertisement do there appear key electoral words: "vote for," "oppose," "support," or anything else which might connote electioneering. The advertisement is simply providing information consistent with the core mission of the organization, to promote life-saving vaccinations.

The complaint involving Every Child By Two can plainly be distinguished from the finding in the November 19, 2009 TABOR NOW case. In that case "the word 'oppose' was typed in capital letters and was further emphasized with boldface type, italics and underlining." See, Memo from Jonathan Wayne to Commissioners from November 9, 2009.

The only emphasis on the webpage is about the impact of Maine's high opt-out rate on the proliferation of disease, "**This has led to dangerous outbreaks of whooping cough and chickenpox in Maine's daycare centers and schools. It also makes the state vulnerable to potentially serious outbreaks of other dangerous diseases like measles.**" (emphasis in original). See, <https://www.vaccinateyourfamily.org/meimmunizations/>.

The facts are straightforward: Every Child By Two made no express advocacy regarding LD 798 or the People's Veto referendum. They did not state at any time a preference of whether the public should vote for or against the people's veto referendum. Further, Every Child By Two received no contributions for the

(June 10, 2020)

Page 4

purpose of influencing the People's Veto Referendum. As a result, Every Child By Two was not required to register as a BQC.

Definitions Requested

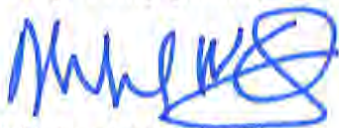
In the May 29 letter from Mr. Dunn the Commission requested further definition of Influencers, Contextual and CAST. These are types of advertising techniques, defined as follows:

- **Influencers:** Reaching audiences through demographic data as well as 3rd party data segments from companies like Bluekai & Lotame.
- **Contextual:** Keyword strategies based on the content on the page as well as within the URL string. The information comes from an advertising agency's platform integrations as well as a partnership with Grapeshot.
- **CAST:** Advertising using a log level integration with Vizio where 1:1 Smart TV viewership data passed back to the advertiser.

Conclusion

Thank you for the opportunity to respond to your questions. We reiterate that the advertisements paid for by Every Child By Two contained no language urging a vote for or against the People's Veto. As such, there was no requirement for them to file as a BQC. We stand ready to provide additional information to help the Commissioners come to a resolution on the filed complaint. Thank you in advance for your attention to this matter.

Very Truly yours,



Michael V. Saxl

21-A Maine Revised Statutes

Current with the First Regular Session, the First Special Session, Chapters 533-678 of the Second Regular Session of the 129th Maine Legislature.

§ 1052. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

...

4. Expenditure. The term “expenditure:”

A. Includes:

- (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of initiating or influencing a campaign;
- (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in this paragraph; and
- (3) The transfer of funds by a political action committee to another candidate or political committee; and

B. Does not include:

...

§ 1055-A. Political communications to influence a ballot question

1. Communications to influence ballot question elections. Whenever a person makes an expenditure exceeding \$500 expressly advocating through broadcasting stations, cable television systems, prerecorded automated telephone calls or scripted live telephone calls, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, for or against an initiative or referendum that is on the ballot, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, except that telephone calls must clearly state only the name of the person who made or financed the expenditure for the communication. Telephone surveys that meet generally accepted standards for polling research and that are not conducted for the purpose of influencing the voting position of call recipients are not required to include the disclosure.

2. Exceptions. The following forms of political communication do not require the name and address of the person who made or financed the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: clothing, envelopes and stationery, small promotional items, tickets to fundraisers and electronic media advertisements where compliance with this section would be impracticable due to size or character limitations and

similar items determined by the commission to be too small and unnecessary for the disclosures required by this section. “Small promotional items” includes but is not limited to ashtrays, badges and badge holders, balloons, campaign buttons, coasters, combs, emery boards, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers and swizzle sticks.

3. Enforcement. A violation of this section may result in a penalty of no more than \$5,000. In assessing a penalty, the commission shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it.

§ 1056-B. Ballot question committees

A person not defined as a political action committee that receives contributions or makes expenditures aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign shall register as a ballot question committee and file reports with the commission in accordance with this section. For the purposes of this section, “campaign” does not include activities to influence the nomination or election of a candidate. A person whose only payments of money for the purpose of influencing a campaign in this State are contributions to political action committees or ballot question committees registered with the commission or a municipality and who has not raised and accepted any contributions for the purpose of influencing a campaign in this State is not required to register and file campaign finance reports under this section. For the purposes of this section, expenditures include paid staff time spent for the purpose of initiating or influencing a campaign.

1. Filing requirements. A report required by this section must be filed with the commission according to the reporting schedule in section 1059. After completing all financial activity, the committee shall terminate its campaign finance reporting in the same manner provided in section 1061. The committee shall file each report required by this section through an electronic filing system developed by the commission unless granted a waiver under section 1059, subsection 5.

1-A. Ballot question committee registration. A person subject to this section who receives contributions or makes expenditures that exceed \$5,000 shall register with the commission as a ballot question committee within 7 days of receiving those contributions or making those expenditures. A ballot question committee shall have a treasurer and a principal officer. The same individual may not serve in both positions unless the person establishing the ballot question committee is an individual. The ballot question committee when registering shall identify all other individuals who are the primary decision makers and fund-raisers, the person establishing the ballot question committee and the campaign the ballot question committee intends to initiate or influence. The ballot question committee shall amend the registration within 10 days of a change in the information required in this subsection. The commission shall prescribe forms for the registration, which must include the information required by this subsection and any additional information reasonably required for the commission to monitor the activities of the ballot question committee.

...

§ 1062-A. Failure to file on time

1. Registration. A political action committee required to register under section 1052-A or 1053-B or a ballot question committee required to register under section 1056-B that fails to do so or that fails to provide the information required by the commission for registration may be assessed a fine of no more than \$ 2,500. In assessing a fine, the commission shall consider, among other things, whether the violation was intentional, the amount of campaign and financial activity that occurred before the committee registered, whether the committee intended to conceal its campaign or financial activity and the level of experience of the committee's volunteers and staff.

...

CMR 94-270-001

ME - Code of Maine Rules > AGENCY 94. INDEPENDENT AGENCIES - OTHER > SUB-AGENCY 270. COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES > CHAPTER 001. PROCEDURES

94 270 001. PROCEDURES

SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

...

SECTION 4. INITIATION OF PROCEEDINGS

...

2. Election Campaign Reporting and Maine Clean Election Act Violations

...

C. Any person (as defined in 21-A M.R.S.A. §1001) may make an official complaint or request for a Commission investigation by filing a signed written request at the Commission's office, setting forth such facts with sufficient details as are necessary to specify the alleged violation. A copy of the signed request may be filed by facsimile or by electronic mail, provided that the original signed request is submitted to the Commission. Statements should be made upon personal knowledge. Statements which are not based upon personal knowledge must identify the source of the information which is the basis for the request, so that respondents and Commission staff may adequately respond to the request. A copy of any such written request will be promptly mailed to the candidate or organization alleged to have violated the statutory requirements. The Director may conduct

preliminary fact finding to prepare a matter for presentation to the Commission. The Director, in consultation with Counsel, will prepare a summary of staff findings and recommendations for inclusion on the agenda.

...

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

...

B. "Expressly advocate" means any communication that

- (1) uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"; or
- (2) is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.

...

[Taken by Commission Staff on 06/12/2020 from
<https://www.vaccinateyourfamily.org/meimmunizations/>]

Keep Maine's Children Safe from Diseases



To help protect the health of all of Maine's citizens, the state has required certain immunizations for school entry since 1868. However, too many of Maine's parents have been opting their children out school vaccination requirements for *non-medical* reasons. **As a result, Maine has one of the worst "opt-out" rates in the nation.**

This has led to dangerous outbreaks of whooping cough and chickenpox in Maine's daycare centers and schools. It also makes the state vulnerable to potentially serious outbreaks of other dangerous diseases like measles.

When even a few parents refuse to vaccinate their children they put us *everyone* in their community at risk of dangerous diseases, including people with weakened immune systems due to chemotherapy, transplants or other health problems.

Maine legislators recently passed LD 798, a law which keeps medical exemptions to school vaccination requirements, but removed "philosophical reasons" and "religious belief" exemptions. **Removing these non-medical exemptions:**



- **Ensures a safe learning environment for all children**, including those who cannot receive immunizations and those who are at risk for vaccine-preventable diseases and serious health complications due to their weakened immune systems.
- **Results in fewer missed school days** from preventable outbreaks.
- Allows school administrators, school boards, and nurses to adequately **protect students from preventable diseases**.

On March 3, Maine will put this new law to a popular vote. Learn more about this by visiting our partner's website – [Maine Families for Vaccines](#).

Learn how vaccines protect communities.

[Taken from the page footer by Commission staff 06/12/2020]

Vaccinate Your Family
1012 14th Street NW, Suite 415
Washington, DC 20005

[Privacy Statement](#)

Disclaimer: The Vaccinate Your Family website contains links to external sites and resources. We are not responsible for the accuracy or content of those external sites or resources.

[202-783-7034](tel:202-783-7034)

[202-783-7042](tel:202-783-7042)

info@vaccinateyourfamily.org



The Next Generation of Every Child By Two

2020

STATE OF THE IMMUNION

A REPORT ON VACCINE-PREVENTABLE DISEASES IN THE U.S.

ETH - 73



2019 PROVED VACCINE-PREVENTABLE

DISEASES ARE STILL A THREAT TO THE U.S.

In 2000, the United States marked the new millennium with a historic milestone: measles elimination. Nearly 20 years later, in 2019, the United States almost lost its measles elimination status. Across 31 states, the Centers for Disease Control and Prevention (CDC) confirmed 1,282 cases of measles—the highest number of cases in any year since 1992.¹ Of these individuals with measles, 128 people were hospitalized and 61 had serious complications, including pneumonia and encephalitis.² **The fact that the majority of people in the U.S. are vaccinated against measles is the only thing that prevents these clusters of measles cases from becoming even more serious epidemics.**

Beyond measles, outbreaks of hepatitis A continue to occur throughout the country, with 29,804 cases, 18,143 hospitalizations and 302 deaths reported by states between 2016 and January 2020.³ Cases of mumps, whooping cough (also known as pertussis) and hepatitis B continue to occur as well.

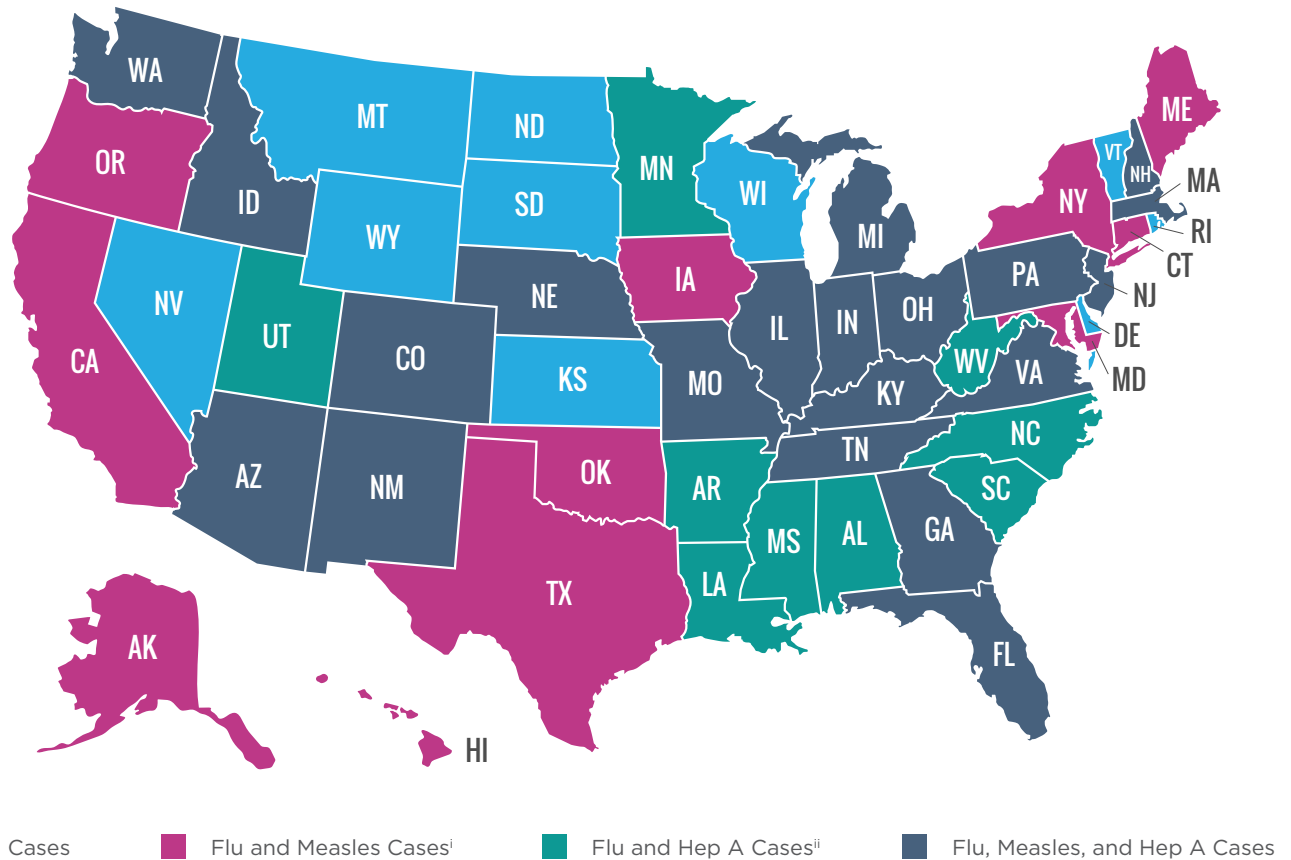
We also continue to fall behind other countries such as Australia on human papillomavirus (HPV) vaccination rates and as a result have higher rates of cervical and five other HPV-associated cancers. Each year, HPV causes approximately 35,000 cancers in the U.S. including about 10,900 cases of cervical cancer. HPV vaccination could prevent 90% of these cancers from ever developing.⁴ Meanwhile Australia, a country with much higher vaccination rates than the U.S., is on track to eliminate cervical cancer by the year 2028.⁵

Unfortunately, as the decade came to a close, flu once again had a significant impact on our nation's health. By the end of 2019, the CDC estimated we had already lost between 2,900 and 7,200 people to flu,⁶ including 27 children.⁷ That's more children than we've lost in any other year that early in the flu season.

Are Vaccine-Preventable Diseases Affecting Your State?

Why are some vaccine-preventable diseases on the rise in the U.S.? And what can we do to reverse this dangerous trend? In this report, **Vaccinate Your Family** will examine three key areas in which Congress can help enhance our country's protection from vaccine-preventable diseases, namely:

- Improving access to vaccinations.** CDC's most recent National Immunization Survey shows that **children living below the poverty level and those residing in rural areas, as well as those who are on Medicaid, are less likely to be fully vaccinated by as much as 20% for some vaccines.** Uninsured children are also less likely to be protected than those who are privately insured.⁸ The difference is startling - over 7% of uninsured children receive no vaccines compared to less than 1% of privately insured children.⁹ This is particularly concerning since the Vaccines for Children (VFC) program was authorized by Congress specifically to address disparities based on income and insurance status and provides vaccines at no cost to qualifying children whose families otherwise may not be able to afford them.



There is no similar federal program for adults 19-64 years of age, nor are all CDC-recommended vaccines available at no cost to seniors on Medicare. While the Affordable Care Act (ACA) does require health insurance plans to cover the cost of recommended immunizations without cost sharing, some older and more limited plans do not have to follow this law.

- **Ensuring the availability of scientifically accurate information about vaccines.** While the majority of parents in the U.S. ultimately choose to vaccinate their children, many have questions about immunizations. When looking up the word “vaccine” online, search results provide a mix of dubious websites alongside credible, science-based websites such as the CDC. Intentionally misleading information online about the safety, ingredients and effectiveness of vaccines, along with false stories about vaccine-related injuries, may lead parents and parents-to-be to decide to delay or refuse vaccinations for their family and themselves.

- **Reminding people of the dangers of vaccine-preventable diseases and their role in protecting the health of their community.**

Vaccines have done such a good job of reducing and eliminating infectious diseases that many people no longer remember how dangerous these diseases can be. As a result, they may not prioritize getting themselves and their family members vaccinated. When an outbreak of a disease happens in the U.S., such as measles, we often see a temporary increase in immunization rates. But, in order to avoid future outbreaks, we must help people understand the immense importance of following the recommended vaccination schedules.

This report will offer solutions to help ensure the 2020s are a decade of healthy families and communities, not a roaring return of vaccine-preventable diseases.





VACCINES CAN KEEP PEOPLE

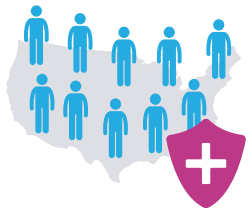
OF ALL AGES HEALTHY

Vaccines are one of the greatest public health interventions in modern times, second only to clean water. We have the ability to protect babies, children, adolescents and adults, including pregnant women, from 27 diseases.

Over the years, vaccines have prevented countless cases of disease and disability, and have saved millions of lives. The CDC estimates that vaccination of children born between 1994 and 2018 in the U.S. will prevent 419 million illnesses, help avoid 936,000 deaths, and save nearly \$1.9 trillion in total societal costs (that includes \$406 billion in direct costs).¹⁰

CHILDHOOD VACCINES SAVE LIVES AND MONEYⁱⁱⁱ

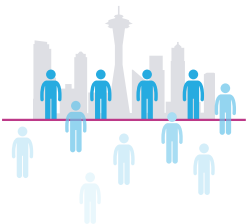
The vaccination of children born between 1994 and 2018 will prevent:



419

MILLION ILLNESSES:

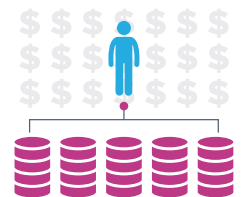
More than the population of the U.S.



936,000

DEATHS:

Greater than the population of Seattle, WA



\$1.9

TRILLION IN TOTAL SOCIETAL COSTS:

\$5,000 for each person in the U.S.

Vaccines help prevent infectious diseases that once killed or seriously harmed many children. Without them, children are at risk for serious illnesses such as measles, hepatitis B, whooping cough, polio and flu, which can result in disability or even death. **Through timely vaccinations, we have the power to protect children from 14 dangerous diseases by the time they turn two.** Without the protection offered by vaccines, people would once again have to fear these diseases.

In fact, before a child is even born, we have the ability to protect them from dangerous diseases thanks to vaccination. All vaccines for infants, except for hepatitis B, start at two months of age or later, so the only protection for newborns from vaccine-preventable diseases is through vaccination of their mothers, who transfer antibodies to their babies across the placenta. These antibodies protect the infants until they can develop their own immunity through vaccination. While currently only influenza, pertussis, diphtheria, and tetanus are preventable through maternal vaccination, researchers are working on the development of immunizations for many other devastating infant conditions. **Maternal vaccines may soon be used to protect infants from respiratory syncytial virus (RSV), cytomegalovirus (CMV) and group B streptococcus (GBS).**



DID YOU KNOW?



We could eliminate nearly all cervical cancers, and 5 other HPV-associated cancers, **with the HPV vaccine.**

4 in 5 

people in the U.S. will be infected with HPV at some point.^{iv}



32,000 OF 35,000 CASES OF HPV-ASSOCIATED CANCERS could be prevented each year

Later, as children grow into adolescents, their disease risks change. Preteens and teens are at risk of contracting certain vaccine-preventable diseases as they engage in common activities such as sharing drinks and utensils, kissing, and attending summer camps. There are now five vaccines recommended for adolescents: Tdap (tetanus-diphtheria-pertussis), HPV, meningococcal ACYW, meningococcal B, and annual flu vaccines. Unfortunately, parental concerns about safety and lack of knowledge about vaccines, combined with weak provider vaccine recommendations, and fewer well visits with healthcare providers can cause this population to remain undervaccinated

The Costs of Vaccine-Preventable Disease^v

Flu, pneumococcal disease, shingles and whooping cough cost \$27 billion to treat each year in adults over the age of 50.

**\$27
BILLION**
in treatment



and thus at risk of deadly diseases both now and in the future. For example, **meningococcal disease can kill 15% of people who get it, sometimes within a matter of hours,¹¹ while HPV can cause cervical and other HPV-associated cancers years after becoming infected with the virus.¹²**

Vaccine-preventable diseases also pose threats to adults. Influenza and pneumonia are together among the top ten leading causes of adult deaths in this country.¹³ Low vaccination rates contribute to substantial, yet preventable, national healthcare expenses and productivity losses. **The nearly \$27 billion that is spent each year treating four vaccine-preventable diseases (flu, pneumococcal disease, shingles and whooping cough) in adults includes the cost of medical visits, hospitalizations and prescription coverage.¹⁴ This does not cover the astronomical costs of absenteeism and short-term disability from work.**

One of every four workers is now over the age of 55.¹⁵ The costs of addressing the health challenges within this segment of the workforce are significant, as treatments for conditions like diabetes and heart disease number in the hundreds of billions of dollars annually.¹⁶ Many current vaccines, as well as those in development pipelines, prevent diseases that can cause dangerous

DID YOU KNOW?

Vaccines Given in Pregnancy Protect Babies^{vi}

Pertussis

When women get Tdap vaccine in pregnancy, they **reduce infants' risk of hospitalization due to whooping cough by:**

91%

Flu

When women get flu vaccine in pregnancy, they **reduce infants' risk of hospitalization due to flu by:**

70%

illnesses, and lead to severe and sometimes deadly complications in individuals with chronic conditions. Vaccines are a proven means of preventing and reducing the inevitably huge cost of maintaining the health of our aging workforce.

Immunizations have the ability to keep each person in the U.S. healthier. It is therefore vitally important that we ensure confidence in, and access to, vaccines.

A close-up photograph of a woman with dark hair and large hoop earrings kissing a young child on the cheek. The child is wearing a blue cap. The background is a plain, light-colored wall.

VACCINES ARE CLOSELY MONITORED

FOR EFFICACY AND SAFETY

Questions about the safety of vaccines are common. Vaccinate Your Family is dedicated to breaking down the complex science so everyone can understand why vaccines are the best option for protecting you, your family and your constituents from serious infectious diseases.

Vaccines are one of the most thoroughly tested medical products available in the U.S. Before a vaccine can be considered for approval by the FDA, a vaccine manufacturer must show it is safe and effective through clinical trials. Developing a new vaccine begins with an exploratory stage and a pre-clinical stage before advancing to three stages of clinical trials. Additionally, concomitant studies must be conducted to ensure new vaccines can be safely given with those already on the schedule. Together, this scientific process can take over a decade and cost millions of dollars.¹⁷ The FDA then examines these studies and determines whether a vaccine is safe, effective, and ready to be licensed for use. The FDA only licenses vaccines that have data that shows that the vaccines' benefits outweigh the potential risks. If there is any question or concern about the data, the FDA will request further studies before deciding whether to approve the vaccine.¹⁸

After a vaccine is licensed for use in the U.S., there are four systems in place that work together to help scientists monitor the safety of vaccines and identify any rare side effects that may emerge after clinical trials. These systems are critical because even large clinical trials may not be big enough to find very rare side effects. For example, some side effects may only happen in 1 in 100,000 or 1 in 500,000 people. Second, vaccine trials may not include certain populations like pregnant women or people with specific medical conditions who might have different types of side effects or who might have a higher risk of side effects than the volunteers who got the vaccine during clinical trials. These four systems are:

- **Vaccine Adverse Events Reporting System (VAERS):**¹⁹ VAERS is a passive reporting system. That means it relies on individuals to report vaccine reactions. Anyone can report a reaction or injury, including healthcare providers, patients and patients' representatives, such as caregivers or attorneys. The system is co-managed by the FDA and the CDC. However, it is important to note that VAERS data alone can't be used to answer the

question, "Does a certain vaccine cause a certain side effect?" This is because adverse events (health problems) reported to VAERS may or may not be caused by vaccines. There are reports in VAERS of common conditions that occur just by chance after vaccination. Further investigation may find no medical link between vaccination and these conditions. Instead, the purpose of VAERS is to see if unexpected or unusual patterns emerge, which may indicate an issue that needs to be researched further.

- **Vaccine Safety Datalink (VSD):**²⁰ Established in 1990, VSD is a collaboration between the CDC's Immunization Safety Office and eight healthcare organizations across the country. It conducts studies based on questions or concerns raised from the medical literature and reports to VAERS. In addition, **when new vaccines are recommended or if changes are made in how a vaccine is recommended, VSD will monitor the safety of these vaccines.**



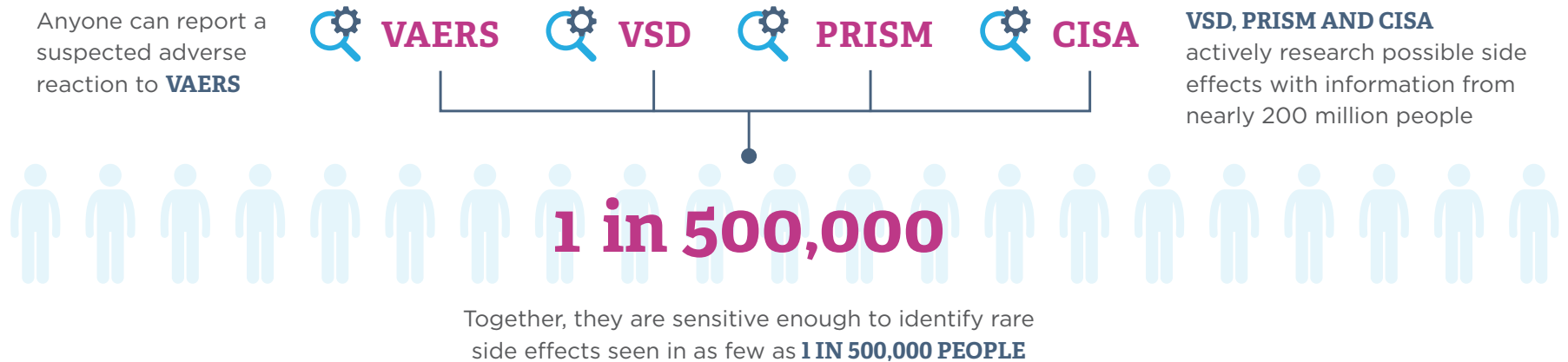
- **Clinical Immunization Safety Assessment Project (CISA):**²¹ CISA, which was created in 2001, is a national network of vaccine safety experts from the CDC’s Immunization Safety Office, seven medical research centers and other partners. CISA addresses vaccine safety issues, conducts high-quality clinical research and assesses complex clinical adverse events following vaccination. CISA also helps to connect clinicians with experts who can help consult on vaccine safety questions related to individual patients.
- **Post-Licensure Rapid Immunization Safety Monitoring System (PRISM):**²² PRISM is a partnership between the FDA’s Center for Biologics Evaluation and Research and leading health insurance plans. It actively monitors and analyzes data from a representative subset of the general population. PRISM links data from health plans with data from state and city immunization

information systems (IIS). PRISM has access to information for over 190 million people, allowing it to identify and analyze rare health outcomes that would otherwise be difficult to assess.

In summary, **because vaccines are given to the entire population, they are one of the most scrutinized and well-tested products on the U.S. market.** The systems that have been put in place to ensure their ongoing safety are expansive and have time and again proven to be effective at determining any safety signals that require further investigation. For more information on how the U.S. healthcare system collaborates with the federal government on these endeavors or for answers to a particular vaccine-related concern from your constituents, please visit the **Questions About Vaccines** section of Vaccinate Your Family’s website at [Vaccinateyourfamily.org/questions-about-vaccines](https://vaccinateyourfamily.org/questions-about-vaccines).

After Approval, Vaccines are Closely Monitored for Efficacy and Safety^{vii, viii, ix, x}

4 MONITORING SYSTEMS:





EVERYONE IN THE U.S. SHOULD

HAVE ACCESS TO VACCINES

Despite progress made since the establishment of the Vaccines For Children program in 1994, children still lack access to vaccines depending on where they live, their families' socioeconomic status, and their insurance status. Adults face similar challenges with additional racial and ethnic disparities.



Last year, the U.S. celebrated the 25th anniversary of the Vaccines For Children (VFC) program. VFC was first implemented in 1994 as a way to ensure all children had access to vaccines, regardless of their families' ability to pay. The program has been an enormous success. The CDC estimates that by 2018, nearly 1 million lives have been saved in the U.S. as a result of VFC. While there is no denying the success of this program, eligible families may still face obstacles in utilizing VFC. For example, some may be unaware of VFC and its benefits, while others may not realize that additional fees they may be charged for vaccine administration and office visits are not mandatory. While these fees help providers offset their costs of doing business, CDC is clear that anyone who cannot pay should not be required to do so.

Unfortunately, while VFC was an important step forward, gaps in vaccine access remain. The results of CDC's most recent National Immunization Survey showed that among children two years of age and younger, there were sociodemographic disparities in coverage, especially by location and health insurance status.

Children who live in rural areas as well as those who are on Medicaid are less likely to be fully vaccinated by as much as 20% for some vaccines. Uninsured children are also less likely to be protected than those who are privately insured.²³ The difference is startling: over 7% of uninsured children receive no vaccines, compared to less than 1% of privately insured children.²⁴

In their discussion of these findings, CDC recommends that vaccination rates for young children can be improved with increased access to healthcare providers and health insurance, and suggests providers administer all recommended vaccines during office visits to avoid missed opportunities. CDC also suggests prioritizing local-level data to assist states and communities in creating targeted interventions to prevent outbreaks of vaccine-preventable diseases.

Challenges in accessing vaccines is not limited to children. There is no program such as VFC for adults, leaving many without a means to pay for recommended vaccines. First dollar coverage of vaccines can greatly improve the likelihood that an adult will be immunized.²⁵

Expanding first dollar coverage of vaccines to Medicare Part D and encouraging Medicare Advantage and stand-alone Medicare Prescription Drug Plans to include immunizations in the zero-cost sharing tier is critical to reducing the barriers to access for seniors. Influenza and pneumococcal vaccines, which are both covered by Part B, have been received by 70.4% and 66.9% of seniors over the age of 65, respectively. This same population must spend between \$14 and \$102, on average to receive either the shingles or the Tdap vaccine. These two vaccines, which protect against four diseases, have only been received by 37.4% and 20.4% of seniors, respectively.²⁶ The cost savings for our economy, coupled with increased workplace productivity, are well worth the investment.

We must also help state Medicaid programs understand the value of first dollar coverage, particularly for pregnant women. **Nearly half of all births are covered by Medicaid.²⁷ Depending on the state, however, women may not have access to vaccines recommended during their pregnancy.** To help remove financial barriers, many, but not all state Medicaid programs remove vaccination copays for maternal vaccinations.²⁸

Racial and ethnic disparities also continue in vaccine coverage among adult populations,

as Whites are consistently better vaccinated than minority groups.²⁹ People of color have traditionally been at disproportionate risk for being underinsured, lacking access to quality treatment, and preventive care through health insurance coverage. Unfortunately, this trend extends to pregnant women. **Pregnant women of color, particularly Black women, and women who live below the poverty line have up to 20% lower vaccination rates than White women or those with higher socioeconomic statuses.³⁰** Lower maternal vaccination rates among pregnant women living below the poverty level and/or participating in Medicaid could be a result of many factors including financial barriers, poor access to care, and lack of vaccination recommendations from providers.³¹



DID YOU KNOW?



Disparities in Adult Vaccination Rates

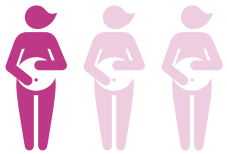
Adult vaccination rates for shingles, as seen in the following statistics from 2016, varied greatly among racial/ethnic groups:^{xi}

Whites	Blacks	Hispanics & Asians
38%	16%	22%

Insurance Coverage Should Not Dictate Access to Childhood Vaccines^{xii}

VACCINATION RATES FOR	PRIVATE INSURANCE	MEDICAID	UNINSURED
DTaP (≥ 4 doses):	87%	76%	60%
MMR (≥ 1 Dose):	94%	89%	73%
Flu (≥ 2 doses):	69%	48%	35%
Combined 7-Vaccine Series*:	75%	64%	47%
No vaccines:	0.8%	1.2%	7.4%

PREGNANT WOMEN ARE DRAMATICALLY UNDERVACCINATED^{xiii}



ONLY 1 IN 3
pregnant women receive both flu and Tdap vaccines



ONLY HALF
receive either flu or Tdap



Black, non-Hispanic women and those who live below the poverty line had up to **20% LOWER VACCINATION RATES**

WHAT CAN CONGRESS DO?



Increase the federal appropriations to the CDC, states and territories so that they are prepared to respond to existing and potential emerging vaccine-preventable disease outbreaks; conduct community outreach; educate providers and the public; maintain and increase onboarding of providers to immunization information systems (IIS); and offer vaccine services to the community.



Also increase funding to the Indian Health Service that includes a specific line item for immunizations to support immunization activities, clinical service delivery and electronic health record systems.



Ensure all children enrolled in state CHIP programs are eligible for VFC vaccines. Such a step will reduce confusion for providers and families and ensure children more timely access to vaccines.



Support the *Protecting Seniors Through Immunization Act (S. 1872/H.R. 5076)*

to eliminate out-of-pocket costs for vaccines covered under Medicare Part D and improve vaccine awareness and education for beneficiaries.

A woman with curly hair, wearing a red shirt, is looking at her smartphone. The background is a bright, out-of-focus window.

SCIENCE-BASED INFORMATION ABOUT

VACCINES MUST BE READILY AVAILABLE

ONLINE AND THROUGHOUT COMMUNITIES

Rumors spread quickly both online and among communities. It is critical to ensure everyone who has questions about immunizations has access to science-based vaccine information.

While the majority of parents in the U.S. ultimately choose to vaccinate their children, many have questions about immunizations. The issue for many people is finding the right sources to answer their questions. While healthcare providers are usually the best people to ask, we live in an age where many people turn to the internet for answers. **Unfortunately, it can often be difficult to tell whether the website or social media page you have found is science-based.**

When looking up the word “vaccine” online, search results provide a mix of dubious websites alongside credible, science-based websites such as the CDC. Intentionally misleading information and false stories about vaccine-related injuries online may lead parents and parents-to-be to decide to delay or refuse vaccines for their children and themselves.



WHY SHOULD WE CARE ABOUT MEASLES?^{XIV, XV}

IN 2019:



1,282
cases



128
hospitalizations



61
complications, including pneumonia and encephalitis

HOW DID THIS HAPPEN?



Measles is **HIGHLY CONTAGIOUS**



It's still common around the world and **BROUGHT TO THE U.S.** by travelers every year



Measles outbreaks are often the first sign **VACCINATION RATES ARE FALLING**

WHY DOES IT MATTER?

MEASLES IS SERIOUS^{VIII}



1 TO 3 OUT OF 1,000
people with measles will die



About **1 IN 5**
will be hospitalized



1 OUT OF EVERY 1,000
will develop brain swelling,
which could lead to brain damage



MEASLES CAUSE IMMUNE SYSTEM AMNESIA—the body loses its ability to fight diseases you've already been exposed to or vaccinated against.



7-10 years after a child recovers from measles, they can develop subacute sclerosing panencephalitis (SSPE)—**A BRAIN DISORDER, WHICH IS ALWAYS FATAL**

In the past year, social media platforms have made great strides in elevating science-based information on vaccines and discontinuing the practice of recommending pages and profiles that contain disinformation about vaccines. Companies such as Facebook, which also owns Instagram, and Pinterest have placed a box at the top of all vaccine-related searches encouraging users to visit the CDC for reliable information about immunizations. Others, such as YouTube, have removed ads from videos promoting false information about vaccines in order to discourage users from posting it. Vaccinate Your Family continues to work closely with these and other companies, along with national and international partners, to offer expertise and support for ongoing efforts to ensure the scientific accuracy of vaccine information available online.

In addition to information found online through websites and social media, it is often in-person interactions that can motivate a person to vaccinate. Healthcare providers are key in these types of discussions, but not everyone relies on their doctors' advice as much as they do on their friends' and family members' advice. **Many of the measles outbreaks in 2019 happened in tight-knit communities that relied on each other for medical information rather than government agencies, healthcare systems or other "outside" organizations.** Therefore, it is critical that states and local officials have the resources they need to identify communities with serious concerns about vaccines and create culturally and racially sensitive materials and programs to address their hesitations.

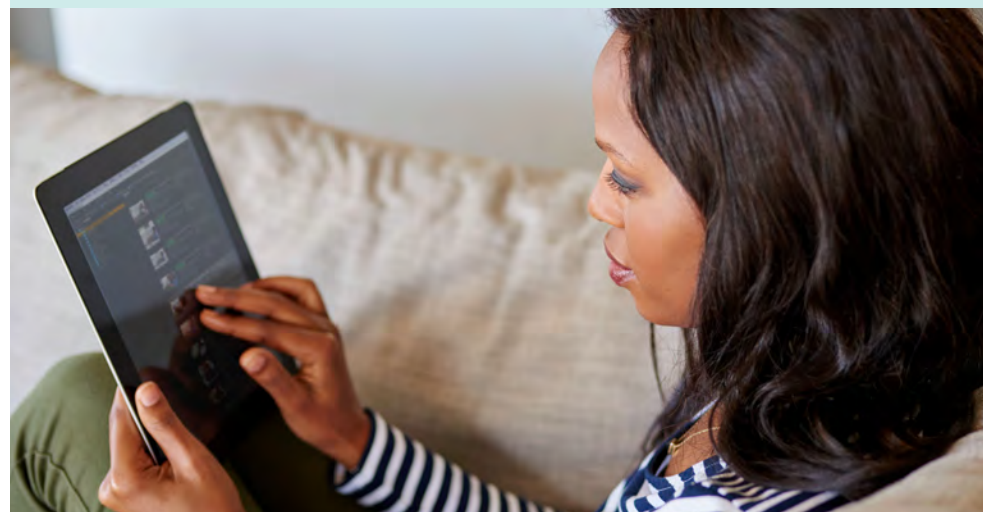
WHAT CAN CONGRESS DO?



Support the *VACCINES Act of 2019 (H.R. 2862)* which has been included in the *Lower Health Care Costs Act of 2019 (S. 1895)*, which authorize CDC to begin funding local responses to communities who are hesitant about vaccinating.



Become a vaccine champion in your own community. As a leader in your community, many constituents look to you for advice on immunizations. Use our list of resources at the end of this report to understand good sources of vaccine information and share those with your community.





PEOPLE MUST BE REMINDED

OF THE DANGERS OF

VACCINE-PREVENTABLE DISEASES

Work-life balance is hard enough without taking time to also get vaccinated. People have forgotten why it's important to take the time for immunizations, both for themselves and their loved ones.

At the beginning of the 2019-2020 flu season, the National Foundation for Infectious Diseases conducted a poll and asked: How many adults were planning to receive their flu vaccine during the upcoming season? Only 52% said they planned on receiving it, and one in four who were at higher risk of complications from the disease were planning to skip the vaccine.³² In the same survey, **nearly half of adults at high risk of complications from pneumococcal disease reported they had never even heard of the disease.**³³



Community Protection Thresholds

A community protection threshold is the percentage of vaccinated individuals needed in a population to prevent a disease from spreading.^{xvi}



MEASLES: 93-95%



MUMPS: 75-86%



PERTUSSIS: 92-94%



POLIO: 80-86%

The fact is that vaccines have done such a good job of reducing and eliminating infectious diseases in the U.S. that many people no longer remember how dangerous these diseases can be. Additionally, many people are not aware that people with chronic health conditions such as heart disease, asthma and diabetes are at increased risk for complications from certain vaccine-preventable diseases. Many of these individuals don't think of themselves as "sick" and therefore don't consider themselves to be particularly vulnerable to these serious, and sometimes deadly, diseases. As a result, they may not prioritize getting themselves and their family members vaccinated. Even doctors and other healthcare professionals have not seen these diseases and often call in an older colleague to consult when they suspect a patient has measles or another vaccine-preventable disease.

When an outbreak of a disease happens, such as measles, we usually see temporary boosts in immunization coverage in that community. **But, in order to avoid future outbreaks, we must help people understand the immense importance of vaccinating on time, every time.**

People also need to understand the role they play in keeping their communities healthy through "community immunity." Diseases can spread quickly through a community, making a lot of people sick. However, when enough people are vaccinated against a certain disease, the germs can't travel as easily from person to person, and the entire community is less likely to get the disease. This is known as "community" or "herd" immunity.

The levels of vaccination rates needed to protect communities from diseases vary based on several factors, including how infectious the disease is and how well the vaccine works. As a society, it is important that we work together to protect one another from deadly diseases. By maintaining high vaccination rates we not only protect ourselves, but we also protect vulnerable infants who are not fully vaccinated yet and people of all ages with weakened or failing immune systems.

If we stopped vaccinating, the limited number of vaccine-preventable disease cases we have in the United States could very quickly become tens or hundreds of thousands of cases.



WHAT CAN CONGRESS DO?



Share your own story. If you remember these diseases, or remember your parents or grandparents talking about vaccine-preventable diseases, share those stories with your constituents. Research shows that personal stories can help people better understand the dangers these diseases pose and possibly influence their behavior.



Learn how your constituents have been affected by vaccine-preventable diseases. Unfortunately, these diseases do still affect people in the U.S. Ask your constituents about their experiences and use your platform to share those with your broader community. Reach out to major hospital networks in your state to discuss the burden of vaccine-preventable diseases. Additionally, Vaccinate Your Family is available to assist if you wish to connect with immune-compromised individuals that rely on community immunity to keep them safe from vaccine-preventable diseases.



Let your local media know you support vaccines. Reporters want to know where legislators stand on vaccination policy. Let them know that you believe in the value of vaccinations and that you support strong immunization legislation.

THE STATE OF OUR

IMMUNION DEPENDS ON YOU

Congress has a critical role to play in preventing and eliminating vaccine-preventable diseases. Your work on national policy sets the stage for many people on the state and local levels to raise immunization rates. Please:

- **Increase the federal appropriations to the CDC, states, large cities and territories** so that they are prepared to respond to existing and potential emerging vaccine-preventable disease outbreaks; conduct community outreach; educate providers and the public; maintain their immunization information system (IIS); and offer vaccine services to the community. Historically, federal vaccine appropriations have remained fairly stagnant and are far below the levels requested in CDC's Congressional budget justifications, and state budgets for vaccine infrastructure are nearly non-existent. This has resulted in a loss of essential immunization program personnel and the disbanding of several highly effective statewide immunization coalitions, which supported vaccination programs for decades.
- **Also increase funding to the Indian Health Service that includes a specific line item for immunizations** to support immunization activities, clinical service delivery and electronic health records.
- **Support the *VACCINES Act of 2019 (H.R. 2862)* which is included in the *Lower Health Care Costs Act of 2019 (S. 1895)***, which authorizes CDC to begin funding local responses to communities who are hesitant about vaccinating. These bills will then require appropriations to ensure CDC has enough funds to enhance, not detract from, current vaccination education activities.
- **Support the *Protecting Seniors through Immunization Act (S. 1872/H.R. 5076)***, which eliminates out-of-pocket costs for vaccines covered under Medicare Part D and improves vaccine awareness and education for beneficiaries.
- **Ensure all children enrolled in state CHIP programs are eligible for VFC vaccines.** Such a step will reduce confusion for providers and families and ensure children more timely access to vaccines.
- **Learn how your state's Medicaid program funds vaccines.** This is critical information in ensuring low income children and adults, particularly pregnant women, have access to lifesaving vaccines.



- **Become an immunization champion.** The public must be reassured that the timing of vaccines is carefully considered prior to CDC's recommendations and that prior to and following licensure, vaccine safety is heavily monitored by various departments within HHS, CDC, and FDA, and through long-term health plan collaboratives. There are many disproven myths about the safety of vaccines that continue to circulate, negatively impacting your constituents' understanding of the

safety and value of vaccines, and threatening the health of your communities. You can be an immunization champion by knowing how to respond to your constituents' concerns and offering evidence-based responses. You can also share stories of your own constituents' devastating experiences with vaccine-preventable diseases to remind people of the importance of timely immunization.





RESOURCES AND USEFUL LINKS

Commonly Requested Information for Constituents

- Vaccinate Your Family: The Next Generation of Every Child By Two is a leading source of evidence-based vaccine information. You can find information on common questions about vaccines, vaccine safety oversight, disease outbreaks and other topics on our website and social media pages. Learn more at:
- [Vaccinate Your Family \(Vaccinateyourfamily.org\)](https://www.vaccinateyourfamily.org)
- [Shot of Prevention Blog \(Shotofprevention.com\)](https://www.shotofprevention.com)
- [Facebook \(@VaccinateYourFamily\)](https://www.facebook.com/VaccinateYourFamily)
- [Twitter \(@Vaxyourfam\)](https://twitter.com/Vaxyourfam)
- [Instagram \(@VaccinateYourFamily\)](https://www.instagram.com/VaccinateYourFamily)

Policy Resources

- [Trust for American's Health: Ready or Not?](#) examines the nation's ability to respond to public health emergencies, tracks progress and vulnerabilities, and includes a review of state and federal public health preparedness policies and a state-by-state map rating of preparedness.
- [317 Coalition](#) is solely focused on advocating for increased federal funding for the National Center for Immunization and Respiratory Diseases at

the Centers for Disease Control and Prevention, and as such will focus on implementing the policies of the Advisory Committee on Immunization Practices and other relevant policy-making bodies.

- [Adult Vaccine Access Coalition](#) is fostering an inclusive partnership of organizations to inform and engage federal policymakers in working towards common legislative and regulatory solutions that will strengthen and enhance access to and utilization of adult immunization services across the health care system.
- [Association of Immunization Managers](#) enables immunization program managers to work together to effectively prevent and control vaccine-preventable diseases and improve immunization coverage in the United States and its territories.
- [Association of State and Territorial Health Officials](#) is the national nonprofit organization representing public health agencies in the United States, the U.S. Territories, and the District of Columbia, and over 100,000 public health professionals these agencies employ.
- [Immunization Coalitions Network of the Immunization Action Coalition](#) offers a searchable database to locate state and local immunization coalitions and a host of state policy resources.

- [National Association of County & City Health Officials](#) is comprised of over 2,800 Local Health Departments across the United States.
- [American Academy of Pediatrics](#) offers an overview of recent disease outbreaks and vaccination rates.
- [The Centers for Disease Control and Prevention](#) has created an infographic outlining the country's process for vaccine approval and ongoing oversight.

Annual Vaccination Rate Data

- Child Rates: <https://www.cdc.gov/vaccines/imz-managers/coverage/childvaxview/interactive-reports/index.html>
- School Rates: <https://www.cdc.gov/vaccines/imz-managers/coverage/schoolvaxview/data-reports/index.html>
- Teen Rates: <https://www.cdc.gov/vaccines/imz-managers/coverage/teenvaxview/index.html>
- Adult Rates: <https://www.cdc.gov/vaccines/imz-managers/coverage/adultvaxview/index.html>
- Flu Rates: <https://www.cdc.gov/flu/fluview/index.html>

Endnotes

- Centers for Disease Control and Prevention. "Measles Cases and Outbreaks." Accessed 7 January 2020. <https://www.cdc.gov/measles/cases-outbreaks.html>.
- Centers for Disease Control and Prevention. "Measles Cases and Outbreaks." Accessed 7 January 2020. <https://www.cdc.gov/measles/cases-outbreaks.html>.
- Centers for Disease Control and Prevention. "Widespread outbreaks of hepatitis A across the United States." Accessed 7 January 2020. <https://www.cdc.gov/hepatitis/outbreaks/2017March-HepatitisA.htm>
- Centers for Disease Control and Prevention. "How Many Cancers Are Linked with HPV Each Year?" 2 August 2019. Accessed 9 January 2020. <https://www.cdc.gov/cancer/hpv/statistics/cases.htm>.
- Avramova, Nina. "Australia set to 'eliminate' cervical cancer by 2028" CNN. 3 October 2018. Accessed 9 January 2020. <https://www.cnn.com/2018/10/03/health/australia-eliminating-cervical-cancer-intl/index.html>.
- Centers for Disease Control and Prevention. "Preliminary In-Season 2019-2020 Burden Estimates." Accessed 7 January 2020. <https://www.cdc.gov/flu/about/burden/preliminary-in-season-estimates.htm>.
- Centers for Disease Control and Prevention. "Key Updates for Week 52, ending December 28, 2019." FluView. Accessed 7 January 2020. <https://www.cdc.gov/flu/weekly/#S3>.
- Hill HA, Singleton JA, Yankey D, Elam-Evans LD, Pingali SC, Kang Y. Vaccination Coverage by Age 24 Months Among Children Born in 2015 and 2016 — National Immunization Survey–Child, United States, 2016–2018. *MMWR Morb Mortal Wkly Rep* 2019;68:913–918. DOI: <http://dx.doi.org/10.15585/mmwr.mm6841e2>.
- Hill HA, Singleton JA, Yankey D, Elam-Evans LD, Pingali SC, Kang Y. Vaccination Coverage by Age 24 Months Among Children Born in 2015 and 2016 — National Immunization Survey–Child, United States, 2016–2018. *MMWR Morb Mortal Wkly Rep* 2019;68:913–918. DOI: <http://dx.doi.org/10.15585/mmwr.mm6841e2>.
- Centers for Disease Control and Prevention. "VFC Infographic: Protecting America's Children Every Day." Accessed 7 January 2020. <https://www.cdc.gov/vaccines/programs/vfc/protecting-children.html>.
- Centers for Disease Control and Prevention. "Diagnosis, Treatment, and Complications." Meningococcal Disease. 31 May 2019. <https://www.cdc.gov/meningococcal/about/diagnosis-treatment.html>. Accessed 8 January 2020.
- Centers for Disease Control and Prevention. "6 Reasons to Get HPV Vaccine for Your Child." HPV Vaccines. 2 August 2019. <https://www.cdc.gov/cancer/hpv/statistics/index.htm>. Accessed 8 January 2020.
- National Center for Health Statistics. "Leading Causes of Death." Centers for Disease Control and Prevention. 17 March 2017. <https://www.cdc.gov/nchs/fastats/leading-causes-of-death.htm>. Accessed 8 January 2020.
- McLaughlin JM, McGinnis JJ, et al. "Estimated Human and Economic Burden of Four Major Adult Vaccine-Preventable Diseases in the United States, 2013." *J Prim Prev*. 2015; 36(4): 259–273. Accessed 8 January 2020. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4486398/#__ffn_sec2title.
- Pew Research Center. "10 facts about American workers." FACTANK. 29 August 2019. Accessed 8 January 2020. <https://www.pewresearch.org/fact-tank/2019/08/29/facts-about-american-workers/>.
- Centers for Disease Control and Prevention. (n.d.). "Health and Economic Costs of Chronic Diseases." National Center for Chronic Disease Prevention and Health Promotion. 23 October 2019. Accessed 9 January 2020. <https://www.cdc.gov/chronicdisease/about/costs/index.htm>.
- Centers for Disease Control and Prevention. "Ensuring the Safety of Vaccines in the United States." Accessed 27 July 2018. <https://www.cdc.gov/vaccines/hcp/conversations/downloads/vacsafe-ensuring-color-office.pdf>.
- Centers for Disease Control and Prevention. "Ensuring the Safety of Vaccines in the United States." Accessed 27 July 2018. <https://www.cdc.gov/vaccines/hcp/conversations/downloads/vacsafe-ensuring-color-office.pdf>.
- U.S. Department of Health and Human Services. "About VAERS: Background and Public Health Importance." Accessed 6 April 2018. <https://vaers.hhs.gov/about.html>.
- Centers for Disease Control and Prevention. "Vaccine Safety Datalink (VSD)." Accessed 5 July 2018. <https://www.cdc.gov/vaccinesafety/ensuringsafety/monitoring/vsd/index.html>.
- Centers for Disease Control and Prevention. "Clinical Immunization Safety Assessment (CISA) Project." Accessed 5 July 2018. <https://www.cdc.gov/vaccinesafety/ensuringsafety/monitoring/cisa/index.html>
- Shoabi, Azadeh. "PRISM Identifies Vaccine Safety Issues." *FDA Voice*. 7 April 2017. Accessed 5 July 2018. <https://blogs.fda.gov/fdavoices/index.php/2017/04/prism-identifies-vaccine-safety-issues/>
- Hill HA, Singleton JA, Yankey D, Elam-Evans LD, Pingali SC, Kang Y. Vaccination Coverage by Age 24 Months Among Children Born in 2015 and 2016 — National Immunization Survey–Child, United States, 2016–2018. *MMWR Morb Mortal Wkly Rep* 2019;68:913–918. DOI: <http://dx.doi.org/10.15585/mmwr.mm6841e2>.
- Hill HA, Singleton JA, Yankey D, Elam-Evans LD, Pingali SC, Kang Y. Vaccination Coverage by Age 24 Months Among Children Born in 2015 and 2016 — National Immunization Survey–Child, United States, 2016–2018. *MMWR Morb Mortal Wkly Rep* 2019;68:913–918. DOI: <http://dx.doi.org/10.15585/mmwr.mm6841e2>.
- National Vaccine Advisory Committee. (2014). "Recommendations from the National Vaccine Advisory Committee: Standards for Adult Immunization Practice." *Public Health Reports*, 129(2), 115–123. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3904889>. Accessed 9 January 2020.
- Adult Vaccine Access Coalition. "Out-of-Pocket Costs Influence Medicare Vaccination Rates." <https://www.adultvaccinesnow.org/resources/out-of-pocket-costs-influence-medicare-vaccination-rates>. Accessed 9 January 2020.
- Morse, Susan. "Half of states report 50 percent or more of births financed by Medicaid" *Healthcare Finance*. 30 March 2017. Accessed 9 January 2020. <https://www.healthcarefinancenews.com/news/half-states-report-50-or-more-births-financed-medicaid>.
- Lent M, Kartika T, and Rosenthal J. "State Officials Work to Harness Medicaid as a Change Agent to Increase Immunization Rates." *National Academy for State Health Policy*. 17 July 2018. Accessed 13 January 2020. <https://nashp.org/state-officials-work-to-harness-medicaid-as-a-change-agent-to-increase-immunization-rates/>
- Lu, P., O'Halloran, A., Williams, W., Lindley, M., Farrall, S., Bridges, C. (2015). "Racial and Ethnic Disparities in Vaccination Coverage Among Adult Populations in the U.S." *American Journal of Preventive Medicine*. Volume 49, Issue 6, Supplement 4, Pages S412–S425.
- Lindley MC, Kahn KE, Bardenheier BH, et al. Vital Signs: Burden and Prevention of Influenza and Pertussis Among Pregnant Women and Infants — United States. *MMWR Morb Mortal Wkly Rep* 2019;68:885–892. DOI: <http://dx.doi.org/10.15585/mmwr.mm6840e1>
- Lent M, Kartika T, and Rosenthal J. "State Officials Work to Harness Medicaid as a Change Agent to Increase Immunization Rates." *National Academy for State Health Policy*. 17 July 2018. Accessed 13 January 2020. <https://nashp.org/state-officials-work-to-harness-medicaid-as-a-change-agent-to-increase-immunization-rates/>
- National Foundation for Infectious Diseases. "NFID Survey: Attitudes about Influenza and Pneumococcal Disease Prevention." 26 September 2019. Accessed 9 January 2020. <https://www.nfid.org/about-nfid/newsroom/news-conferences/2019-nfid-influenza-pneumococcal-disease-news-conference/national-poll-attitudes-about-flu-and-pneumococcal-disease-prevention/>.
- National Foundation for Infectious Diseases. "NFID Survey: Attitudes about Influenza and Pneumococcal Disease Prevention." 26 September 2019. Accessed 9 January 2020. <https://www.nfid.org/about-nfid/newsroom/news-conferences/2019-nfid-influenza-pneumococcal-disease-news-conference/national-poll-attitudes-about-flu-and-pneumococcal-disease-prevention/>.
- <https://www.cdc.gov/measles/cases-outbreaks.html>
- <https://www.cdc.gov/hepatitis/outbreaks/2017March-HepatitisA.htm>
- <https://www.cdc.gov/vaccines/programs/vfc/protecting-children.html>
- <https://www.cdc.gov/hpv/parents/vaccine/six-reasons.html>
- <https://www.cdc.gov/hpv/parents/vaccine/six-reasons.html>
- <https://www.cdc.gov/vitalsigns/maternal-vaccines/index.html>
- <https://vaers.hhs.gov/about.html>
- <https://www.cdc.gov/vaccinesafety/ensuringsafety/monitoring/vsd/index.html>
- <https://www.cdc.gov/vaccinesafety/ensuringsafety/monitoring/cisa/index.html>
- <https://blogs.fda.gov/fdavoices/index.php/2017/04/prism-identifies-vaccine-safety-issues/>
- https://www.hhs.gov/sites/default/files/For%20Posting_Koppaka_Racial%20and%20Ethnic%20Disparities%20in%20Adult%20Immunization_16x9_remediated.pdf
- dx.doi.org/10.15585/mmwr.mm6841e2
- <http://dx.doi.org/10.15585/mmwr.mm6840e1>
- <http://www.cdc.gov/measles/cases-outbreaks.html>
- <https://www.cdc.gov/measles/symptoms/complications.html>
- http://sitn.hms.harvard.edu/wp-content/uploads/2010/09/Lecture_1.2.pdf



The fourth annual *State of the ImmUnion* report is dedicated to Rich Greenaway. Rich spent over two decades advocating for vaccines on behalf of Vaccinate Your Family and families across the U.S. Although we lost Rich in 2019, we will honor his legacy by continuing to support the importance of immunization for people of all ages.





The Next Generation of Every Child By Two

Vaccinate Your Family: The Next Generation of Every Child By Two

Our mission is to protect people of all ages from vaccine-preventable diseases by raising awareness of the critical need for timely immunizations, increasing the public's understanding of the benefits of vaccines, increasing confidence in the safety of vaccines, ensuring that all families have access to life-saving vaccines, and advocating for policies that support timely vaccination.