



March 11, 2024

By E-mail

Maine Commission on Governmental Ethics and Election Practices
c/o Julie Aube
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Augusta, ME 04333-0135

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Re: Comments on Proposed Amendments to Chapter 1, § 15: Rules Regarding Foreign Government-Influenced Entities

Dear Commission:

I write to provide comments on behalf of Versant Power (“Versant”) regarding the Commission’s proposed amendments to the Rules regarding Foreign Government-Influenced Entities, 94-270 C.M.R. ch. 1, § 15 (the “Proposed Rule”). The Proposed Rule purports to implement “An Act to Prohibit Campaign Spending by Foreign Governments,” to be codified at 21-A M.R.S. § 1064 (the “Act”). Versant appreciates the Commission’s consideration of these comments.

Versant’s comments are twofold. First, Versant believes that the Proposed Rule shares and exacerbates the constitutional flaws contained in the Act, including the first amendment, pre-emption clause, and dormant commerce clause concerns set forth in its briefing in *Central Maine Power Co., et al. v. Maine Comm’n on Gov’t Ethics and Election Practices, et al.*, Docket No. 1:23-cv-00450 (D. Me.).

Primarily, however, as the Commission is aware, in the consolidated lawsuit involving the constitutionality of the Act (the “Lawsuit”), the United States District Court for the District of Maine just issued a Preliminary Injunction Order enjoining enforcement of the Act.¹ The Order – relying in part on language in the Proposed Rule – concluded that the Act is likely unconstitutional under both the Supremacy Clause and the First Amendment.² In light of the Order, it would be a waste of administrative resources for the Commission to adopt the Proposed Rule. The Court suspended the enforcement of the Act “until final judgment is entered” in the Lawsuit.³ Because any rules promulgated before a resolution of the Lawsuit would be unenforceable, the Commission should suspend this rulemaking proceeding.

¹ See *Central Maine Power Co., et al. v. Maine Comm’n on Gov’t Ethics and Election Practices, et al.*, Docket No. 1:23-cv-00450, Order on Plaintiffs’ Motion for Preliminary Injunction at 37-38 (D. Me. Feb. 29, 2024) (the “Order”).

² See Order at 37-38 (citing to 94-270 C.M.R., ch. 1 § 15(1)(C) of the Proposed Rule); see also Order at 40 (“The Act is enjoined while this litigation proceeds.”).

³ Order at 40.

There is no reason for the Commission to act now: the Act’s requirement that the Commission adopt rules does not set a specific timeline in which the Commission must promulgate those rules.⁴ And more fundamentally, because the is Act enjoined and presently unenforceable, the Commission is arguably not subject to the Act’s mandate that the Commission “adopt rules to administer the provisions of” the Act.⁵ No administration of the Act is currently allowed. It logically follows that the Commission’s rulemaking proceeding should be suspended as well.

Finally, the Administrative Procedures Act (“APA”) itself presents another roadblock for the adoption of the Proposed Rule for as long as the lawsuit remains pending. The APA provides that, to be enforceable, a rule cannot take effect unless it “is approved by the Attorney General as to form and legality.”⁶ Here, the Order concluded that the Proposed Rule and the Act are likely unconstitutional.⁷ Moreover, the Governor – a former Attorney General herself – vetoed the Act because she thought it was likely unconstitutional.⁸ For these reasons, even if the Commission proceeds through this rulemaking, the Attorney General should be hard pressed to approve the Proposed Rule “as to form and legality.”⁹ Any rulemaking before resolution of the Lawsuit would likely be futile and a waste of time and resources.

Rather than expend additional administrative resources in the face of this level of uncertainty, the Commission should suspend this rulemaking until the completion of the Lawsuit.

Versant thanks the Commission for considering these comments.

Sincerely,

Arielle Silver Karsh

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Vice President, Legal and Regulatory Affairs

⁴ See 21-A M.R.S. § 1064(10).

⁵ See 21-A M.R.S. § 1064(10).

⁶ 5 M.R.S. § 8052(7)(B).

⁷ See Order at 37-38.

⁸ See Order at 4-5.

⁹ 5 M.R.S. § 8052(7)(B).