



November 11, 2016

Via electronic mail

Richard Thornton
Director of Campaign Finance
Rhode Island Board of Elections
Richard.Thornton@elections.ri.gov

RE: Gaspee Response to RI Board of Elections re. Complaint by Progressive Democrats

Dear Mr. Thornton:

I write in my capacity as legal counsel to the Gaspee Project, Inc. ("Gaspee") in response to your request of November 7, 2016 that Gaspee provide information it may feel is relevant to a complaint submitted by Samuel Bell on November 2, 2016 to the Rhode Island Board of Elections ("BOE".)

As you are aware, representatives of Gaspee, including myself, have met on numerous occasions, in person and by phone, over the last few months with officials at the BOE in order to understand the applicable election reporting laws and regulations in order to properly formulate its election season strategies. It has been and remains of primary interest to Gaspee to assure full compliance in its activities with the laws of Rhode Island and the regulations of the BOE.

To that end, and while making our best efforts to discern the legitimate complaints Mr. Bell attempts to raise versus the loaded political rhetoric he offers in his rambling letter, Gaspee makes the following point-by-point response:

1. The Gaspee Business Network.

There is no legal entity called the **Gaspee Business Network (GBN)**. GBN is a merely a brand initiative, organized under the corporate infrastructure of The Gaspee Project, Inc. The Gaspee Business Network is simply a *fictitious name*, registered with the RI Secretary of State's office on March 21, 2016 (see attached filing.) A simple online search of the Corporations Database of the Rhode Island Secretary of State would have revealed this, if Mr. Bell had been so inclined. The use of the GBN name on the Gaspee mailers in question was for branding purposes, and in our view aided in the transparency of the effort by indicating clearly that the initiative was supported and driven by small business owners. All moneys raised and spent for Gaspee independent expenditures - regardless of under which marketing brand name - were done so by Gaspee and paid for through a dedicated bank account of The Gaspee Project, Inc.

2. Filing of Disclosures.

The Gaspee Project has filed all required disclosures. All aggregate donations from individuals or businesses of \$1000 or more, raised under the Gaspee brand or under its registered GBN “d.b.a.” in the current election cycle have been reported as required by law by Gaspee. There are no disclosures from GBN, because there is no such distinct legal entity.

3. Explanation of Disclosure Requirements.

Gaspee openly advises its donors how to comply with the law, not how to “evade” it. Many donors, due to serious concerns over political retribution, do not wish to have their names publicly reported to the government. The seminal case on this front arose during the Civil Rights era, when the Alabama attorney general sought to compel the National Association for the Advancement of Colored People (“NAACP”) to turn over the names and addresses of all of its members to the state. This act of force and intimidation was fortunately rebuffed by the U.S. Supreme Court as a violation of the NAACP’s and its members’ First Amendment rights.¹ It is the very sort of harassment Mr. Bell effects with his complaint that makes the protection of their speech so important. Gaspee advises donors that aggregate contributions of under \$1000 for purposes of independent expenditures, by law, are not reported. Mr. Bell’s transparent attempt to end-run this law and undermine free speech through his spurious complaint should and must be rebuffed with vigor.

4. Readability Standards.

The Gaspee Project had no intent to not disclose or otherwise not clearly identify donors it is required to disclose. Gaspee was unaware of any issues relative to the ‘readability standards’ in the BOE Regulation 6126; however, if Gaspee’s mailers did not meet such standards, it was not done intentionally. The intent to comply is evident in that Gaspee did clearly list the required donor names on each of its mail pieces, on its website (http://www.gaspeeproject.com/gaspee_election_ri), and on its required campaign finance reports. In the future Gaspee will add additional standards of review when printing mailers.

5. Total Expenditures.

Gaspee made an unintentional clerical omission in neglecting to complete the “Total of All Expenditures ...” line on its 10-24-16 campaign finance report. There was no intent to hide such information as Gaspee did list total expenditures on all its other reports. Gaspee is more than willing to file an amended report if the BOE feels that would be appropriate.

6. Previously Reported Donors.

When Gaspee’s January 2016 campaign finance report was filed, Gaspee had not yet established its second, separate, and dedicated “campaign finance” bank account, as

¹ Nat’l Ass’n for Advancement of Colored People v. State of Ala. ex rel. Patterson, 357 U.S. 449 (1958); see also In re First Nat’l Bank, 701 F.2d 115, 118 (10th Cir. 1983) (“The chilling effect of a summons served by an IRS agent to obtain membership records of a tax protester group has been said to be ‘readily apparent’”) (quoting United States v. Grayson Cnty. State Bank, 656 F.2d 1070, 1074 (5th Cir. 1981)).

allowed by state law. Therefore, all donors to Gaspee of \$1000 or more, whether for educational or electioneering purposes, were required to be reported on the January 2016 report, even though such funds were not earmarked to be used for campaign finance purposes. As such, these donations (*the reported 2015 gifts from Mr. Vielle, Mr. Galkin, and Mr. Van Rensselaer*) were not included in our fall 2016 campaign finance reports; such donations were designated for general 'educational' purposes and remained in Gaspee's original "general funds" bank account. All funds used for Gaspee's fall 2016 mailers were raised after the second dedicated bank account was established in April of 2016 and were deposited directly into that dedicated campaign finance bank account.

7. Other Donor Disclosures

All persons who donated \$1000 or more for Gaspee's independent expenditures have been reported. The reason that the amount of reported donations does not equal the amount of reported expenditures is because Gaspee has been successful in raising tens of thousands of dollars from smaller donors, who are not required to be reported. As a true grassroots organization, the vast majority of donations to Gaspee, whether for educational or for electioneering purposes, are derived from high volumes of low-dollar donors. Further, Gaspee lawfully reported Mr. McLaughlin's donation of \$1500 on the next campaign finance report that it filed after receipt of the donation. His name was also listed on the print mailers paid for on October 24.

In conclusion, The Gaspee Project, Inc. / d.b.a The Gaspee Business Network (GBN) has made every attempt to comply with state law and regulation. With the exception of one clerical omission and potentially not meeting one other technical standard, The Gaspee Project has met all campaign finance reporting requirements to the Rhode Island Board of Elections, and had no intent to evade or violate any regulation. Its actions prior to and during the election cycle confirm this, and to suggest otherwise is pure political grandstanding for the purpose of repressing free speech and identifying those who oppose the political status quo.

We certainly understand that Gaspee should be subject to scrutiny and held to the same high standards as all other grassroots organizations, and while we oppose on principle even those disclosures required under current law (and question their legality and enforceability outright), we would most vigorously fight any effort to go beyond these standards to deny the privacy of our small donors.

As Jon Riches, Director of National Litigation for the Goldwater Institute's Scharf-Norton Center for Constitutional Litigation and General Counsel for the Institute pointed out in his August 15, 2015 Policy Report entitled "The Victims Of 'Dark Money' Disclosure," [e]fforts to compel disclosure in order to silence critics continue today. These include threats from government bureaucrats, like we saw when Dina Galassini tried to organize some friends and neighbors to oppose a local bond measure in Fountain Hills, Arizona. They include threats from other citizens, such as when Margie Christoffersen lost her job as a restaurant manager after her \$100 donation to the campaign to ban gay marriage in California became public.^[2] And perhaps most ominously, these include threats from those wielding law enforcement authority,

² Steve Lopez, "Prop. 8 Stance Upends Her Life," Los Angeles Times, Dec. 14, 2008.

like the controversial Arizona sheriff, Joe Arpaio, who has jailed journalists critical of his office as well as political opponents.^[3] As the U.S. Supreme Court has long recognized, public disclosure of donations undoubtedly discourages political participation and exposes contributors to harassment and retaliation.^[4] Anonymous speech protected by the First Amendment has been the one barrier to prevent these abuses.”

Mr. Riches also points out that “[t]he First Amendment does not permit laws that force speakers to retain a campaign finance attorney ... or seek declaratory rulings before discussing the most salient political issues of our day. Prolix laws chill speech for the same reason that vague laws chill speech: People of common intelligence must necessarily guess at [the law’s] meaning and differ as to its application.”^[5]

It is our hope that the BOE will see through the shameful, sloppy, and purely political efforts of Mr. Bell to quell free speech with his complaint. To require Gaspee to expend further effort and resources defending against such harassment would be an abuse of process and a miscarriage of justice. Given our good faith efforts and good working relationship with the BOE as Gaspee entered the arena of political speech this year, we have every expectation that you will agree.

Regards,



Giovanni D. Cicione, Esq.

Enc.

³ Michelle Ye Hee Lee and Michael Kiefer, “Maricopa County supervisors settle lawsuits filed by ‘New Times’ founders, Stapley” The Arizona Republic, Dec. 20, 2013.

⁴ Buckley v. Valeo, 424 U.S. 1, 68 (1976).

⁵ Citizens United, 558 U.S. at 324 (citing Connally v. General Constr. Co., 269 U.S. 385, 391 (1926) (internal quotations omitted)).