

City of Portland

Clean Elections Review Board-July 24, 2024



Wednesday, July 24, 2024 at 11:00 AM City Hall-
Room 209 (Second Floor)
389 Congress Street, Portland, ME

This meeting will be held in-person.

1. Call to Order/Roll Call
2. Appeal
 - a. Austin Sims - Appeal
Austin Sims is appealing the City Clerks Office's decision to allow Brandon Mazer to become a Clean Elections Candidate.

This is a continuation of the June 26, 2024 Meeting.

3. Next Meeting: DATE
4. Adjournment

**City of Portland, Maine
Clean Elections Review Board
NOTICE OF DECISION**

Appellant:	Cody Austin Sims
Candidate (Office Sought):	Brandon Mazer (City Council, At-Large)
Review Type(s):	City Clerk’s Finding of No Violation (Sec. 9-71)
Date of Vote:	July 24, 2024

Findings of Fact

The Clean Elections Review Board reviews appeals under the Clean Elections Ordinance on a *de novo* basis. *See* Clean Elections Ordinance Sec. 9-70(j)(2). The Board therefore makes the following findings and conclusions.

1. The appellant in this appeal is Cody Austin Sims, a Portland resident and registered voter, and a “qualified elector” as defined in Sec. 9-62 of the Clean Elections Ordinance (the “Appellant”).
2. On May 13, 2024, the Appellant submitted a formal complaint (the “Complaint”) to the City Clerk’s Office regarding the candidacy of Brandon Mazer, a candidate for an At-Large Seat on the Portland City Council (the “Candidate”). At the time of the Complaint, the Candidate had filed a declaration of intent with the City Clerk, signaling his intent to seek certification as a Certified Candidate in the future. *See* Clean Elections Ordinance Sec. 9-63(b).¹
3. The Complaint concerned a poll circulated on behalf of Enough is Enough, a registered municipal political action committee (PAC). *See* Portland, Me. Code Sec. 9-91(j); 21-A M.R.S. § 1052(5). The poll asked for respondents’ opinions on a number of current topics of relevance to Portland, as well as respondents’ opinions on a number of named individuals. The Candidate was one of those individuals. The Complaint alleged that the Candidate had accepted “an in-kind contribution of polling data from [Enough is Enough] before announcing his candidacy.” The Complaint further stated that the Appellant believed that “circumstantial evidence justifies an investigation by the Clerk’s office and the CE review board prior to Mr. Mazer’s certification as a CE candidate to determine if there is any truth to these rumors [that the Candidate received polling data directly from Enough is Enough or its contractors].”
4. Section 9-63(b) of the Clean Elections Ordinance prohibits a candidate from accepting any “contribution”² prior to stating their intent to qualify as a clean elections candidate and from

¹ Since the filing of the Complaint, the Candidate has been certified as a Certified Candidate, consistent with Sec. 9-64(c) of the Clean Elections Ordinance.

² The Clean Elections Ordinance draws its definition of “contribution” directly from state statute, 21-A M.R.S. § 1012(2).

thereafter accepting any contributions other than Seed Money Contributions or Qualifying Contributions. Seed Money Contributions are limited by the Clean Elections Ordinance to \$100.00 per donor and donors must be qualified electors, not entities. *See* Clean Elections Ordinance Sec. 9-63(c)(2).

5. The gift of polling data from a PAC to a candidate is considered a “contribution” under 21-A M.R.S. § 1012(A)(1), as it constitutes something of value.
6. Moreover, under rules implemented by the Maine Commission on Governmental Ethics and Election Practices, which the Clean Elections Board find to be informative, a PAC makes an “in-kind contribution” to a candidate if it makes a coordinated expenditure. An expenditure is considered coordinated if the PAC consulted with the candidate prior to the expenditure, or otherwise obtained materials from the candidate. *See* MCGEEP PAC Handbook at Page 16.
7. After receiving the Complaint, the City Clerk conducted an independent investigation into the Appellant’s allegations, as required by Sec. 9-71 of the Clean Elections Ordinance. Following this investigation, the City Clerk concluded that the Candidate had no knowledge of the poll prior to its release; the Candidate did not provide any information to Enough is Enough or its hired polling firm prior to the poll’s release; and the Candidate did not receive any unpublished data from the polling firm. Therefore, the City Clerk determined that the Candidate had not received an illegal contribution under the Clean Elections Ordinance, and was not prohibited from continuing to seek certification as a Clean Elections Candidate for the current election cycle.
8. On May 30, 2024, the City Clerk communicated its findings to the Appellant by email.
9. On June 7, 2024, the Appellant requested to appeal the City Clerk’s decision to the Clean Elections Review Board, pursuant to Sec. 9-70(m)(4) of the Clean Elections Ordinance (the “Appeal”). Appellant stated, as grounds for the appeal:

The [Portland Regional] Chamber [of Commerce] and Mr. Mazer were allies in his previous run in 2021, and they continue to work together today. I don’t believe the Chamber would spend thousands of dollars on a poll seeking to measure Mr. Mazer’s popularity out of idle curiosity, and thus I don’t believe Mr. Mazer’s denial [of coordination] passes the smell test.
10. On June 20, 2024, the Clean Elections Review Board received a memorandum from the City Clerk, outlining the City Clerk’s position on the Appeal. In relevant part, the memo states:

After consulting with all parties involved, it was determined that the questions were sent out via survey from a third party company and were not shared with any City Councilors, Mayor, or potential candidates.

Our office also spoke with Clean Elections Candidate, Brandon Mazer who was not involved with the survey. He received no survey results or any sort of data that would influence his campaign, therefore no in-kind contributions were received.

...

Again, after speaking to the PAC, Maine Ethics Commission, and Brandon Mazer, we have found that Brandon has not received any data or other in-kind contributions regarding this survey. Therefore, he is eligible to continue as a Clean Elections Candidate.

11. On June 26, 2024, the Clean Elections Review Board held a public hearing at which the Appellant, the City Clerk, and the Candidate were present and submitted documents and provided testimony. The Clean Elections Review Board also heard public comment from Joey Brunelle and Maria Testa. The Clean Elections Review Board was comprised of Peter Goldman, Chair, and Phil Steele, who participated remotely consistent with the Board's Remote Meeting Policy. Board Member Maria Maffucci was recused due to her previous employment at the same law firm as the Candidate. The Clean Elections Review Board was represented by Benjamin T. McCall, Esq.
12. The Clean Elections Review Board then recessed until July 24, 2024, at which time it reviewed and approved this Notice of Decision.

Conclusions of Law

Based on foregoing findings, the evidence that has been submitted, and the testimony that has been presented by the parties and participants at the public hearing and is in the record of the Clean Elections Review Board, the Board concludes that:

1. **Jurisdiction:** The Board has jurisdiction to hear this appeal pursuant to Sec. 9-70(m)(4) of the Clean Elections Ordinance, as this appeal is from a finding of no violation by the City Clerk's Office.
2. **Timeliness:** The Clean Elections Ordinance does not provide a deadline for appeals to the Clean Elections Review Board to be filed. When an ordinance is silent on the deadline to take an administrative appeal, the Maine Supreme Judicial Court has established a common law 60-day deadline "from the date of the action complained of in which to appeal." *Boisvert v. King*, 618 A.2d 211, 213 (Me. 1992). Applying that standard here, the Appeal is timely, as it was requested 8 days after the City Clerk's decision.
3. **Standing:** Section 9-70(m)(4) of the Clean Elections Ordinance provides standing to appeal to both certified candidates or other interested persons. The Clean Elections Ordinance does not define the term "interested person," and relevant case law also does not provide guidance on this topic. When the meaning of a term or expression in a municipal ordinance is unclear, courts are guided by the context in which the term appears while considering the ordinance as a whole. *Zappia v. Town of Old Orchard Beach*, 2022 ME 15, ¶ 10, 271 A.3d 753. The general intent of the Clean Elections Ordinance is to regulate candidate participation in Portland's Clean Elections Program, as a mechanism for ensuring greater equity among potential candidates. In this context, an interested person is best understood to be synonymous with the term "qualified elector," which the Clean Elections Ordinance defines as "a person who is registered to vote in the city of Portland and, in any district Race, is also a resident of such district." Such qualified electors are those who are directly impacted by

candidates' participation in an election cycle, which may or may not be enabled through those candidates' qualification for clean election funding. Thus, a prerequisite for being an interested party under Sec. 9-70(m)(4) is that an appellant be a registered voter who is eligible to vote for the candidate whose qualification for clean election funding the appeal concerns.

In addition, it is a general standard in administrative law that in order to have standing to appeal an adverse decision, one must have been a party to the original decision. *See Pride's Corner Concerned Citizens Ass'n v. Westbrook Bd. of Zoning Appeals*, 398 A.2d 415, 417 (Me. 1979). Although unstated in the Clean Elections Ordinance, the Clean Elections Review Board also articulates that an "interested person" under Sec. 9-70(m)(4) must have been the individual (or group) who originally filed a complaint with the City Clerk's Office.

Applying these standards here, the Clean Elections Review Board determines that the Appellant **does** have standing to pursue the Appeal. The Appellant is a registered voter in the city of Portland, and is challenging the certification of a candidate who is running for an At-Large seat on the City Council, for which the Appellant may vote. The Appellant was also the original complainant to the City Clerk, and is appealing the City Clerk's determination that the Candidate did not commit any violation of the Clean Elections Ordinance.

4. **Evidence:** The Clean Elections Review Board accepted all evidence, written and oral, submitted prior to and at its June 26, 2024 public hearing. In doing so, the Clean Elections Review Board applies the standard of evidence set forth in the Maine Administrative Procedures Act, 5 M.R.S. § 9057(2): "Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs."
5. **Violation of Clean Elections Ordinance:** Upon receipt of the Complaint, the City Clerk conducted an independent investigation. That investigation included interviews with the Candidate and with representatives of Enough is Enough. The City Clerk did not find any evidence that the Candidate provided information to Enough is Enough prior to the subject poll's release, that the Candidate authorized or otherwise coordinated with Enough is Enough in the release of the poll, or that the Candidate received any non-public information following the poll's conclusion. The City Clerk therefore determined that the poll was not a "contribution" to the Candidate, and its release did not disqualify the Candidate from participation in the Clean Elections program.

The Appellant bears the burden of proving that the City Clerk's decision was incorrect. *See* Clean Elections Ordinance Sec. 9-70(j)(2). However, neither the Appellant, nor any member of the public who spoke in favor of the Appeal, provided sufficient evidence rebutting the City Clerk's conclusion. Instead, the Appellant and others only provided conjectures. *Contra* 5 M.R.S. § 9057(2). The mere fact that the Candidate was ideologically aligned with the Greater Portland Regional Chamber of Commerce, which financially supports Enough is Enough, is not sufficient proof of coordination to justify a finding of an in-kind contribution. Neither is the fact that the Candidate decided to file for candidacy after the release of the poll. Both points are purely circumstantial evidence and cannot adequately support the Appeal on their own. Because no additional evidence supporting the Complaint or the Appeal was presented, Appellant has failed to meet his burden of proof, and the appeal must be denied.

Decision

As a result of the above, the Clean Elections Review Board hereby decides, by a vote of two (2) in favor to none (0) opposed (Malfucci recused) that:

1. The City Clerk: (a) correctly determined that Brandon Mazer had not received a unpermitted contribution from Enough is Enough, and (b) correctly determined that Brandon Mazer had not violated the provisions of the Clean Elections Ordinance.
2. The appeal of Cody Austin Sims is hereby DENIED.
3. This Notice of Decision is adopted and the Board authorizes its Chair to sign the same on behalf of the Board.

Date: July 24, 2024

By: _____

Peter Goldman, Chair
Portland Clean Elections Review Board

NOTICE

Any party aggrieved by this decision may file an appeal in the Superior Court within 30 days of the date of the vote on this appeal, consistent with Rule 80B of the Maine Rules of Civil Procedure.

City of Portland | City Clerk's Office
Ashley Rand, *City Clerk*

To: Clean Elections Review Board
From: Ashley Rand, City Clerk
Date: June 20, 2024
Re: Austin Sims Appeal



On May 13, 2024 Austin Sims submitted a formal letter of complaint via email with his concerns for Brandon Mazer being certified as a Clean Election Candidate. Austin Sims concerns came after a Political Action Committee (PAC) sent out a survey to Portland residents asking various polling questions, IE: how do you favor individuals along with other policy questions (minimum wage, hazard pay, camping within the City, etc). Among the list of various City Officials listed, Brandon Mazer and Joey Brunelle were also listed.

My office reviewed Mr. Sims complaint, consulted with the Maine Ethics Commission, the Enough is Enough Group, and Brandon Mazer as the candidate in question.

After consulting with all parties involved. It was determined that the questions were sent out via survey from a third party company and were not shared with any City Councilors, Mayor, or potential Candidates.

Our office also spoke with Clean Elections Candidate, Brandon Mazer who was not involved with the survey. He had received no survey results or any sort of data that would influence his campaign, therefore no in-kind contributions were received. As of right now, Brandon Mazer has filed the Intent to collect Qualifying Contributions for Clean Elections.

All Candidates do not become certified until all paperwork and required qualifying contributions have been submitted. The deadline to return initial QC's is July 15th. Our office has done an investigation on your complaint and have found that there is nothing that prohibits Brandon from continuing with the Clean Elections process, based on the fact that a PAC sent out the survey and no potential candidate was involved.

We also talked to the Maine Ethics Commission and nothing precludes a PAC from sending out a survey to the public with any sort of polling survey questions, which includes current and potential candidates. Per the Maine Ethics Commission: A PAC is considered to have made an in-kind contribution to a candidate if it makes a coordinated expenditure. An expenditure is

considered coordinated if the PAC consulted with the candidate on the expenditure or obtained materials from the candidate.

This survey is not considered a coordinated expenditure. There has been no exchange from the candidate to the PAC, or the PAC to the candidate.

Again, after speaking to the PAC, Maine Ethics Commission, and Brandon Mazer, we have found that Brandon has not received any data or other in-kind contributions regarding this survey. Therefore, he is eligible to continue as a Clean Elections Candidate.

On May 30, 2024 our office responded to Mr Sims request letting him know that we have determined that candidate Brandon Mazer can continue as a Clean Elections Candidate.

On, June 7, 2024 Mr Sims requested that the City Clerk's decision be appealed to the Clean Election review board that there was no violation of Clean Election Rules regarding the 'survey'.

Thank You,
Ashley Rand
City Clerk

5/13/2024

From: Cody Austin Sims
1591 Washington Ave
Portland, Maine 04103

To: Paige Marcello
Elections Administrator
City Clerk's Office
389 Congress Street
Portland, ME 04101

Subject: Formal Complaint and Request for Investigation of Potential Circumvention of
Portland's Clean Elections Ordinance

Dear Ms. Marcello,

I write today to lodge a formal complaint about a potential misuse of the Portland Clean Elections program due to activities undertaken by the "Enough is Enough" PAC and Brandon Mazer's subsequent filing for registration as a Clean Elections (CE) candidate. I have been active in Portland politics since moving to the city in 2020 and last year ran as a CE candidate for an At-Large seat on the School Board. I have a deep, abiding love for my adopted hometown and want to do my part to ensure it is always governed in an equitable and transparent way. I am also deeply committed to ensuring that working Portlanders have access to run for office, and so thus believe that we must investigate any potential improprieties or circumventions of the CE ordinance, intentional or accidental, to ensure the program can empower all to take part in all aspects of civic life.

I have reason to believe that Brandon Mazer should not be certified by the City Clerk as a participating candidate in the CE program because it seems very likely that he violated the rules of the program by accepting an in-kind contribution of polling data from a PAC ("Enough is Enough") before announcing his candidacy. If true, this would violate several rules:

- against receiving contributions before filing the Statement of Intent,
- the requirement that contributions come only from qualified electors (i.e. individual voters from the voting district),
- against receiving contributions larger than a certain size (\$100 in the case of seed money).

The ordinance is clear: a candidate who violates these rules cannot be certified as participating in the CE program.

On March 11th, the Chamber of Commerce donated \$10K to Enough is Enough, per the latter's April financial report. Ten days later on 3/21, the Moore Information Group distributed a digital survey (for which Enough is Enough paid nearly \$20K on 3/29) asking Portland voters for their opinions of various city policies (minimum wage, role of municipal government, camping in

public parks), groups (City Council, the Chamber of Commerce, and the Democratic Socialists of America), and individuals (such as the Mayor and City Manager, among others. Notably, of the individuals mentioned in the survey, only two do not currently serve in a city function. The first is Joey Brunelle, who I understand plans to mount a campaign for an At-Large seat on the City Council, and the second is Brandon Mazer, who filed paperwork on 5/3 to register for certification as a CE candidate for City Council.

Brandon Mazer is known to have tight personal connections to the Chamber of Commerce. Indeed, he worked with them on his 2021 campaign. Additionally, I have heard that the survey was undertaken at least in part for Mazer's benefit.

At the state level, it is clear that a poll could be considered a contribution to a person regardless of if they subsequently become a candidate (from Section 6(10)):

§1015-B. Donations to an individual considering whether to become a candidate

If an individual receives funds, goods or services for the purpose of deciding whether to become a candidate, the funds, goods or services may not exceed the limitations in section 1015, subsections 1 and 2-B. The individual shall keep an account of such funds, goods or services received and all payments and obligations incurred in deciding whether to become a candidate. If the individual becomes a candidate, the funds, goods and services received are contributions and the payments and obligations are expenditures. The candidate shall disclose the contributions and expenditures in the first report filed by the candidate or the candidate's authorized campaign committee, in accordance with the commission's procedures. [PL 2023, c. 244, §10 (AMD).]

I believe it stands to reason that such a poll could also be an issue at the municipal level. At the very least, I believe this circumstantial evidence justifies an investigation by the Clerk's office and the CE review board prior to Mr. Mazer's certification as a CE candidate to determine if there is any truth to these rumors. Any potential circumvention of the ordinance cannot go uninvestigated lest we undermine the integrity of our nascent CE program in Portland. Ideally, I think the city should endeavor to answer the following questions:

- Was the Moore Information Group poll an in-kind donation to Brandon Mazer's campaign from Enough is Enough?
- Is any staff from the Chamber of Commerce or the "Enough is Enough" PAC supporting Brandon Mazer's campaign, either in a paid or a volunteer capacity (including in his "kitchen cabinet")?
- If the answer to either of the above questions is YES, would this not disqualify him from participating in the CE program, as CE prohibits donations from non-people entities?

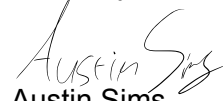
Given that Portland's CE program is quite new, and that I imagine such an investigation would be the first of its kind, I've drafted some potential questions to aid in fact-finding (please forgive the presumption):

- (of whatever representative of Enough is Enough/Chamber) Who designed the poll questions (all the names, not just the lead person)?

- Why was it decided to include a question about Brandon Mazer's favorability?
 - With whom were the results shared?
- (of Brandon Mazer) Did anyone from the Chamber of Commerce or Enough is Enough communicate with you about the poll before it was put into the field, while it was out in the field, or any time thereafter?
 - Did you receive the results of the poll in any form, including either verbal or written, whether implied, hinted-at, or explicitly?

Thank you in advance for looking into this matter. I think it behooves us to do due diligence to ensure the integrity of our CE program so that it can benefit Portland for many elections to come.

Sincerely,


Austin Sims



Paige Marcello <pmarcello@portlandmaine.gov>

Thu, May 30, 2024 at 11:25 AM

To: Austin Sims <caustinsims@gmail.com>

Cc: Ashley Rand <arand@portlandmaine.gov>, Michael Goldman <mig@portlandmaine.gov>

Good Morning Austin,

We have followed up with both the Candidate as well as the PAC that circulated the survey. The questions were sent out via survey from a third party company and were not shared with any City Councilors, Mayor, or potential Candidates.

We also spoke with Brandon who was not involved with the survey. He has received no survey results or any sort of data that would influence his campaign, therefore no in-kind contributions were received. As of right now, Brandon Mazer has filed the Intent to collect Qualifying Contributions for Clean Elections.

All Candidates do not become certified until all paperwork and required qualifying contributions have been submitted. The deadline to return initial QC's is July 15th. Our office has done an investigation on your complaint and have found that there is nothing that prohibits Brandon from continuing with the Clean Elections process, based on the fact that a PAC sent out the survey and no potential candidate was involved.

We also talked to the Maine Ethics Commission and nothing precludes a PAC from sending out a survey to the public with any sort of polling survey questions, which includes current and potential candidates.

Again, after speaking to the PAC, Maine Ethics Commission, and Brandon Mazer, we have found that Brandon has not received any data or other in-kind contributions regarding this survey. Therefore, he is eligible to continue as a Clean Elections Candidate.

Please let us know if you have additional questions.

Paige

On Thu, May 30, 2024 at 10:54 AM City Elections <elections@portlandmaine.gov> wrote:

----- Forwarded message -----

From: **Austin Sims** <caustinsims@gmail.com>

Date: Thu, May 30, 2024 at 10:04 AM

Subject: Re: Submitting a Formal Letter of Complaint Regarding Candidate CE Certification

To: <elections@portlandmaine.gov>

Hello again, Paige,

Is it possible to get an update on this issue? I expect it can take some time, but I'm quite interested to follow the process.

Regards,
Austin Sims

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

----- Forwarded message -----

From: **Austin Sims** <caustinsims@gmail.com>

Date: Mon, May 13, 2024, 08:51

Subject: Submitting a Formal Letter of Complaint Regarding Candidate CE Certification

To: <elections@portlandmaine.gov>

[Quoted text hidden]

Austin Sims <caustinsims@gmail.com>

Fri, May 31, 2024 at 7:17 PM

To: Paige Marcello <pmarcello@portlandmaine.gov>

Cc: Ashley Rand <arand@portlandmaine.gov>, Michael Goldman <mig@portlandmaine.gov>

Paige,

Thank you so much for kicking this off and for the detailed feedback.

Regards,
Austin

[Quoted text hidden]

[Quoted text hidden]

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

Austin Sims <caustinsims@gmail.com>

Fri, Jun 7, 2024 at 2:55 PM

To: Paige Marcello <pmarcello@portlandmaine.gov>

Cc: Ashley Rand <arand@portlandmaine.gov>, Michael Goldman <mig@portlandmaine.gov>

Hi Paige,

I would like to request that this decision be appealed to the Clean Elections Review Board, pursuant to City Code Sec. 9-70 (m)(4), which states that the Clean Elections Review Board has the purview *"To hear, review, and approve or deny any appeal by a Certified Candidate or other interested persons regarding the enforcement of violations pursuant to section 9-71."* Given Mr. Mazer intends to run for an At-Large seat, and the Clean Elections program likewise impacts all Portlanders, I qualify as an interested party in this matter.

The justification for my request is two-fold. First, I have reason to believe that this poll was undertaken at least in part for the purpose of convincing Mr. Mazer to run for Council. It is common knowledge amongst those who follow municipal matters closely that the poll in question was conducted by the Chamber's lead for municipal/council affairs Eamonn Dundon, under the guise of Enough is Enough. The Chamber and Mr. Mazer were allies in his previous run in 2021, and they continue to work together today. I don't believe the Chamber would spend thousands on a poll seeking to measure Mr. Mazer's popularity out of idle curiosity, and thus I don't believe Mr. Mazer's denial passes the smell test. PACs are absolutely allowed to conduct polls and encourage candidates on the results of said polls, but I see significant reason to believe that the poll was shared with the candidate and thus counts as an in-kind contribution from a non-elector in excess of the \$100 seed money limit on contributions of any kind.

The second reason for my appeal is more important to me and for the CE program. I deeply believe in making running for office accessible to all people. For the trust and longevity of our CE program, it must be seen as unimpeachable by Portlanders. If a candidate with access to influential political entities with deep pockets can circumvent the program in this way, it undermines the purpose of the program.

The Board has a duty to review this matter and attempt to determine what happened, if anything, and to prevent it from happening again in the future if any rules were broken. The Board could and should conduct an investigation, including interviews with key players, and issue findings. A simple denial from the candidate is not enough to close this case - the board should pursue the questions listed in my previously attached letter of complaint. Should the Board concur with the findings of your investigation, I will consider the matter closed. I can make screenshots of the poll available at the Board's request.

Please be aware that the PPH has been made aware of my complaint, the initial decision, and my request for appeal, so they may reach out for comment. I'd prefer that not be a surprise to anyone involved.



Ashley Rand <arand@portlandmaine.gov>

Fwd: Submitting a Formal Letter of Complaint Regarding Candidate CE Certification

12 messages

Paige Marcello <pmarcello@portlandmaine.gov>

Tue, May 14, 2024 at 8:51 AM

To: Ashley Rand <arand@portlandmaine.gov>

----- Forwarded message -----

From: **City Elections** <elections@portlandmaine.gov>

Date: Tue, May 14, 2024 at 8:34 AM

Subject: Fwd: Submitting a Formal Letter of Complaint Regarding Candidate CE Certification

To: Paige Marcello <pmarcello@portlandmaine.gov>

----- Forwarded message -----

From: **Austin Sims** <caustinsims@gmail.com>

Date: Mon, May 13, 2024 at 4:21 PM

Subject: Re: Submitting a Formal Letter of Complaint Regarding Candidate CE Certification

To: <elections@portlandmaine.gov>

Per our discussion over the phone, here is the transcript of the survey questions:

- To ensure we've contacted the correct person, please enter the 5-digits ZIP code where you live (short-text)
- Please select your gender (m/f)
- First, please indicate if you have a very favorable, somewhat favorable, or very unfavorable impression of each of the following people and organizations. If you have no opinion or have never heard of the person or organization, that's fine, too:
 - City Manager Danielle West
 - Portland City Council
 - Democratic Socialists of America (DSA)
 - Mayor Mark Dion
 - Portland Chamber of Commerce
 - Joey Brunelle
 - Brandon Mazer
- Next, some questions about the minimum wage in the city of Portland, which is currently \$15 an hour. Do you believe the current \$15 minimum wage is ... (Too high, Too low, Just about right, unsure)
- Would you support or oppose raising the minimum wage in Portland to \$16 an hour? (Strongly Support, Support, Oppose, Strongly Oppose, Unsure)
- And, would you support or oppose raising the minimum wage in Portland to \$20 an hour? (Strongly Support, Support, Oppose, Strongly Oppose, Unsure)
- Moving on, the Portland City Council will consider a proposal that allows "camping" on public land. Do you support or oppose this proposal? (Strongly Support, Support, Oppose, Strongly Oppose, Unsure)
- This year in Portland, three City Council seats will be up for election. Generally, when thinking about who you may vote for, here are what two candidates who are running for City Council, let's call them Ms. Green and Ms. Brown, are saying. Please indicate whose views come closest to your opinion on the primary job of municipal government. Ms. Green believes the primary job of municipal government is to advance progressive goals by focusing on the most vulnerable people in our city. She supports increased spending on social services, robust protections for tenants and workers, and bold action to address climate change. OR Ms. Brown believes the primary job of municipal government is to be responsive to constituent service needs and to advance policies focused on improving basic city services within the means of taxpayers. She supports fiscal restraint when it comes to spending taxpayer dollars, effective enforcement of the laws by police and prosecutors, and more moderate policy solutions on issues like climate change. Which candidate's views come closest to your view of the ideal candidate for City Council in Portland? (Ms. Green/advance progressive goals, Ms. Brown/be responsive to constituent service needs, Unsure)

- Now, a question about the emergency wage in the city of Portland. As you may know, currently when the Governor of Maine declares an emergency, Portland's minimum wage increases to \$22.50 an hour. Here is what three people, let's call them Mr. Smith, Mr. Jones and Mr. Johnson, are saying about the emergency wage in the city of Portland. Please indicate which comes closest to your opinion. Mr. Jones opposed the emergency wage. He says that Portland's minimum wage increases to \$22.50 an hour even at times when statewide emergencies don't impact Portland. This forces some businesses to close because they lose money during the emergency wage period. Mr. Smith supports the emergency wage because situations like COVID put workers in hazardous situations and they deserve to be paid more. Mr. Johnson supports the emergency wage, but he believes it should only be put into effect by the city of Portland instead of the Governor, so Portland has more control locally. Who's view of the Emergency Wage in the city of Portland comes closest to that of your own? (Mr. Smith/supports the emergency wage, Mr. Jones/opposes the emergency wage, Mr. Johnson/supports the emergency wage but wants Portland to declare the emergency, Unsure)
- Next are a few potential referendums related to the minimum wage and emergency wage that could be on a citywide ballot in Portland in the future. In the elections were held today, please indicate whether you would vote "yes" to support or "no" to oppose the referendum)
 - A referendum that increases the minimum wage to \$16 and requires the City of Portland decide when the emergency wage goes into place. Would you vote "yes" to support or "no" to oppose that referendum? (Definitely yes, probably yes, don't know, probably no, definitely no)
 - A referendum that increased the minimum wage to \$20 an hour and made no changes to the emergency wage. Would you vote "yes" to support or "no" to oppose that referendum? (Definitely yes, probably yes, don't know, probably no, definitely no)
 - A referendum that increased the minimum wage to \$16 an hour and eliminated the emergency wage. Would you vote "yes" to support or "no" to oppose that referendum? (Definitely yes, probably yes, don't know, probably no, definitely no)
- On political issues, do you consider yourself to be Conservative, Moderate, or Liberal? (Very Conservative, somewhat conservative, moderate, liberal, don't know)

Regards,
Austin

On Mon, May 13, 2024 at 8:51 AM Austin Sims <caustinsims@gmail.com> wrote:

Hi Paige,

I hope you and yours had a nice winter. Please find attached a formal letter of complaint regarding PAC expenditures and Brandon Mazer's CE registration. I've laid out my argument in detail and am happy to answer any follow up questions you, the City Clerk, or the CE Review Board have to aid in investigation.

Regards,
Austin Sims
325.864.6094

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Election Staff

389 Congress Street
Portland, ME 04103
(P) 207-874-8677
(F) 207-874-8612
<http://portlandmaine.gov/elections>



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Paige Marcello
Elections Administrator
City Clerk's Office
City Of Portland
389 Congress St
Portland, ME 04101
207.756.8102

Subject: Expenditure by PAC - poll

To: pmarcello@portlandmaine.gov <pmarcello@portlandmaine.gov>

Hello,

We spoke earlier today about whether an expenditure made by a PAC for a poll might constitute an improper contribution to a candidate. My advice is that it does not, but statutorily we arrive there by exclusion:

A PAC is considered to have made an in-kind contribution to a candidate if it makes a coordinated expenditure. An expenditure is considered coordinated if the PAC consulted with the candidate on the expenditure or obtained materials from the candidate. A more complete definition of a coordinated expenditure can be found starting page 16 of the 2023-24 PAC Guidebook (linked below). From your description it does not sound to me like there was any coordination between the PAC and the candidate in question for the poll.

An expenditure made by a PAC might be subject to additional reporting if it falls within the definition of an Independent Expenditure (IE). An IE is an expenditure made by a third-party to promote a candidate or influence an election, made entirely independently of any candidate involvement. Specifically excluded from the definition of an IE, however, is: "A telephone survey meeting generally accepted standards for polling research and is not conducted for the purpose of changing the voting position of the recipients or discouraging them from voting" (Guidebook, page 18).

https://www.maine.gov/ethics/sites/maine.gov.ethics/files/inline-files/2023-24%20PAC%20Guidebook_3.pdf

I hope this answers your questions! Please let me know if I can help further.

Best,

Erin Gordon

Candidate Registrar

Maine Ethics Commission

(207) 287-3651 | www.maine.gov/ethics

135 State House Station, Augusta, ME 04333-0135

45 Memorial Circle, Augusta, ME

June 26, 2024

Paige Marcello
Elections Administrator, City of Portland
389 Congress Street
Portland, ME 04101
Delivered by Email

Dear Ms. Marcello,

I am a Principal at Cornerstone Government Affairs Inc. (Cornerstone), a bipartisan consulting firm, and I serve as a Consultant and Spokesperson for the Enough is Enough Ballot Question Committee (EIE BQC). I am writing at the request of the Clean Elections Review Board to voluntarily share details of a poll commissioned and conducted by a third-party, Peak Insights, on behalf of our organization in March 2024.

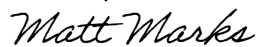
First, EIE BQC is organized under the laws of Maine and seeks to improve the lives of the citizens of Portland. As part of this effort, we capture Portland resident feedback on policy issues related to the city. In March 2024, EIE BQC identified a need for our team to measure resident knowledge, via registered Portland voters, and their favorability of local groups, elected leaders, candidates, and other well-known individuals as part of a standard benchmarking practice in polling. This would allow our team to better assess targeted questions of interest to EIE BQC. EIE BQC and Peak Insights did not consult any then-announced or current candidates for office in Portland or Maine, or any elected officials regarding the polling questions.

The poll was conducted by a mixed mode approach, including phone and text, during late March 2024 and responses were received and analyzed on or around March 27, 2024. On April 29, 2024, EIE BQC issued a press release (Attachment) publicly sharing a portion of the findings. The press release was posted to the EIE BQC website. The released findings included public opinion of the Portland City Council and public camping. The press release did not include favorability ratings for any known candidates for office in Portland or Maine and only summarized findings regarding voter opinion on the current Portland City Council and current Mayor.

No unpublished results of this poll have been shared with *any* candidate for office in Portland or Maine at this time. Moreover, the published results were not given directly to any known candidates by EIE BQC. We have operated independently regarding this poll.

Cornerstone and EIE BQC are committed to maintaining integrity in our practices and share these details willingly with the Committee. Should you have any further questions, please contact Campbell Kaufman, President of Cornerstone at ckaufman@cgagroup.com or me, Matt Marks, at mmarks@cgagroup.com or by phone at 207-530-3001.

Sincerely,



Matt Marks

Attach: Poll Portland City Council Support Plummets
CC: Ashley Rand (City of Portland)
Ned Payne (Enough is Enough BQC)
Nick Mavodones (Enough is Enough BQC)



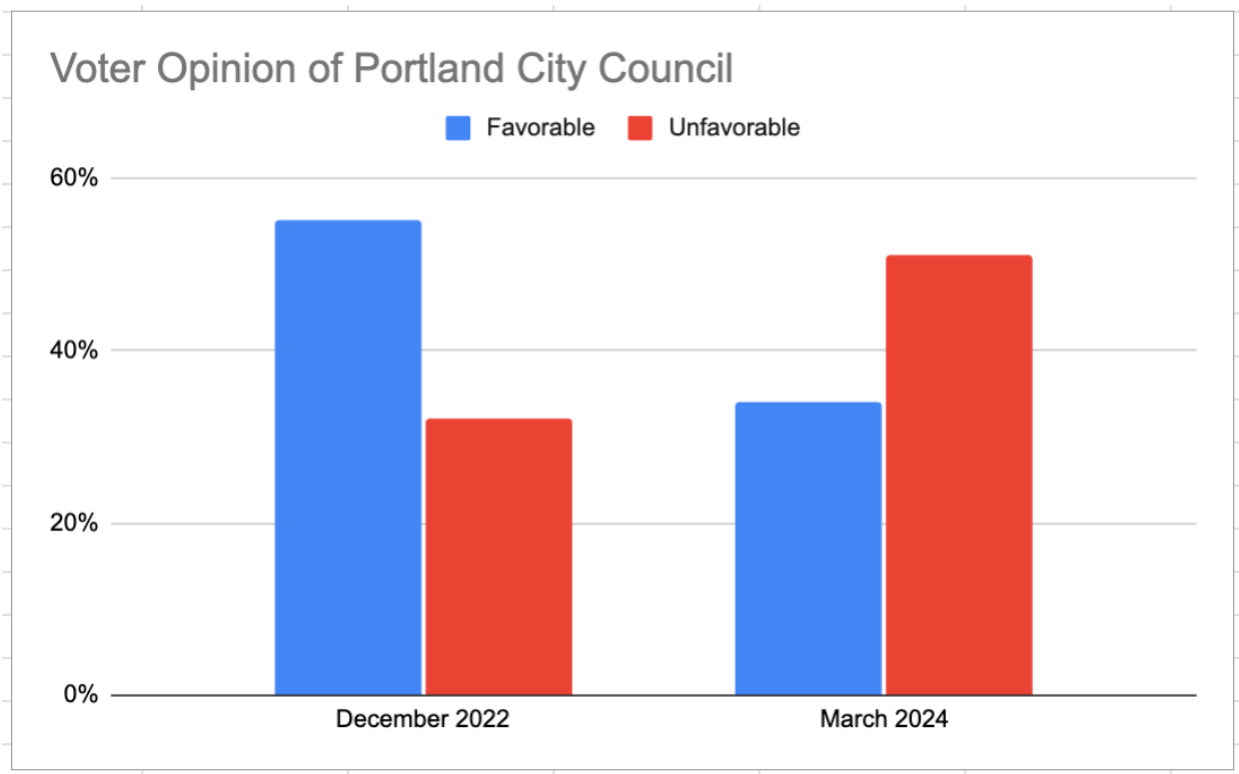
FOR IMMEDIATE RELEASE
CONTACT: MATT MARKS,
CORNERSTONE GOVERNMENT AFFAIRS
mmarks@cgagroup.com
207-530-3001

APRIL 29, 2024

POLL: PORTLAND CITY COUNCIL SUPPORT PLUMMETS *Community Strongly Opposes Permanent Encampments*

PORTLAND - A public opinion survey of registered Portland voters conducted in late March shows a **dramatic 40% decline** in net support for the Portland City Council over the last 15 months.

In a December 2022 poll conducted by Peak Insights, the City Council was viewed favorably by 55% of Portland voters, and unfavorably by 32% -- a net favorability of +23%. But a new poll, conducted by Peak Insights from March 21-26, showed only 34% of Portland voters now have a favorable opinion of the Council, while 51% view them unfavorably, a net favorability of -17%.



"The decline in the City Council's favorability is striking," said Hans Kaiser of Peak Insights, a public opinion research company that has been conducting polls in Maine and across the nation for more than 20 years. "The decline in support has happened across all demographics – gender, age, and party registration – showing a relative consensus that the City Council is headed in the wrong direction."

The sharp decline in support for Portland's City Council coincides with the conflagration caused by the rapid proliferation of homeless encampments in the city, and the controversial positions taken by some members of the council.

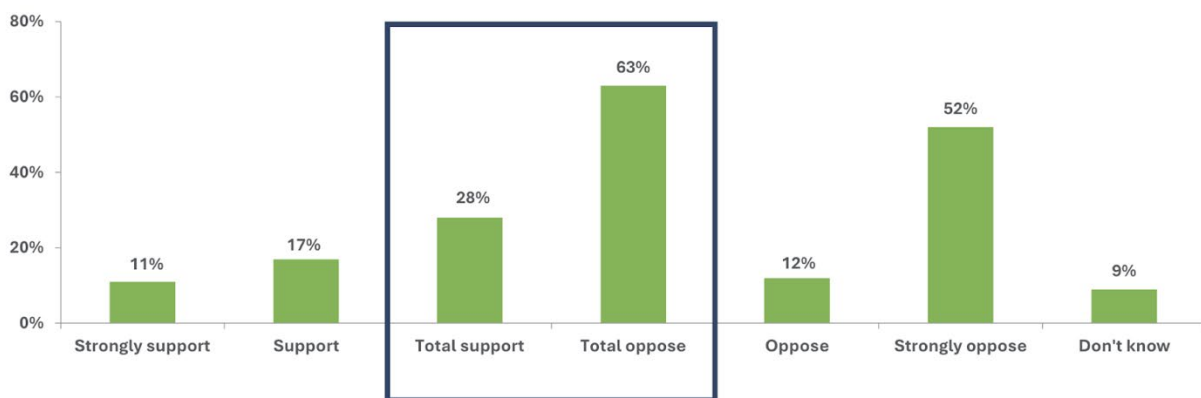
In November 2023 – despite overwhelming evidence of crime, physical violence, drug use, and threats to human health – Portland Councilors Victoria Pelletier, Roberto Rodriguez, and Anna Trevorrow voted to prohibit the city from clearing the homeless encampments by making "camping" in Portland's public spaces legal, effectively making the encampments permanent.

Just this week at a meeting of the City's Health and Human Services Committee, City Councilors reacted to a [disturbing video](#) showing various criminal activities including open drug use, public urination, stabbing, and the brandishing of firearms on the front steps of an apartment building in the city's Bayside neighborhood. Councilor Kate Sykes commented on the video noting "There are also some kind of beautiful moments between human beings in their actions. As difficult as their interactions are and the things that are happening, there's kindness there."

The March survey shows that Portland voters strongly disagree with this approach to encampments and their attendant criminal activities. Survey respondents oppose making parks a safe haven for the encampments by more than 2 to 1 – 63% opposing and 28% supporting, with a definitive **52% of registered voters strongly opposing the camping proposal**.

MORE THAN 2:1 OPPOSITION TO A CITY COUNCIL PROPOSAL TO ALLOW CAMPING ON PUBLIC LANDS

"The Portland City Council will consider a proposal that allows 'camping' on public land. Do you support or oppose this proposal?" (Q14)



While this poll shows a dramatic drop in support for the City Council, Portland's newly-elected Mayor Mark Dion is receiving strong support. Dion is viewed favorably by 49% of respondents, and unfavorably by only 26%, a net favorability of +23%.

Mayor Mark Dion			
Favorable	Unfavorable	<i>Net favorable</i>	No opinion/ not aware
49%	26%	+23%	25%

"This poll shows what most Portland citizens have felt for some time - that the current City Council does not represent the interests or priorities of the city overall," said Matt Marks, spokesman for Enough is Enough. "While Portland continues to struggle with homelessness, crime, and addiction, many on the Council fail to grasp the seriousness and real-world impacts of these issues. Governing is not an academic experiment. The Council must recognize the threats to human health and physical safety their policies are creating for Portland's citizens, businesses, and the unhoused population."

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