

JAMES BOPP, JR.¹
Senior Associates
RICHARD E. COLESON¹
BARRY A. BOSTROM¹

Associates
RANDY ELF²
JEFFREY P. GALLANT³
ANITA Y. WOUDEBERG¹
JOSIAH S. NEELEY⁴
JOSEPH E. LA RUE⁵
SARAH E. TROUPIS⁶
KAYLAN L. PHILLIPS⁷
JOSEPH A. VANDERHULST¹
SCOTT F. BIENIEK⁸
ZACHARY S. KESTER¹

¹admitted in Ind.
²admitted in NY and Penn.
³admitted in Va.
⁴admitted in Tex.
⁵admitted in Oh.
⁶admitted in Wis.
⁷admitted in Okla.
⁸admitted in Ill.

BOPP, COLESON & BOSTROM
ATTORNEYS AT LAW
(not a partnership)

THE NATIONAL BUILDING
1 South Sixth Street
TERRE HAUTE, INDIANA 47807-3510

Telephone 812/232-2434 Facsimile 812/235-3685

THOMAS J. MARZEN
(1946-2007)

E-MAIL ADDRESSES
jboppjr@aol.com
rcoleson@bopplaw.com
bbostrom@bopplaw.com
relf@bopplaw.com
jgallant@bopplaw.com
awoudeberg@bopplaw.com
jneeley@bopplaw.com
jlarue@bopplaw.com
stroupis@bopplaw.com
kphillips@bopplaw.com
jvanderhulst@bopplaw.com
sbieniek@bopplaw.com
zkester@bopplaw.com

April 15, 2010

Station Managers
Broadcast and Cable Television Stations

Re: National Organization for Marriage

Dear Station Managers:

The undersigned serves as counsel for the National Organization for Marriage, a Virginia non-stock corporation. I previously provided a substantiation letter for NOM's television advertisement entitled "Lynch Lied," 30-sec ad. The advertisement is an issue advertisement that puts on the airwaves information about Governor Lynch's actions that are already in the public domain. It is not a partisan ad nor does it advocate the election or defeat of any candidate.

We understand that you may have received a communication from the New Hampshire Democratic Party demanding that this advertisement be pulled from the airwaves. NOM fully stands behind its ad. It should be noted that the demand comes to us not in the form of a well-reasoned letter, but in an emailed press release from a partisan organization. In response to the Democratic Party press release, we provide the following response.

First, the press release claims that the statement that Governor Lynch lied when he said the 2009 budget was balanced is false. The Democratic Party takes exception with NOM pointing out that Governor Lynch did not actually balance the budget as he claimed in his 2010 State of the State speech. How could his so-called "balanced budget" actually have been balanced when it relied on taking \$110 million from the medical malpractice JUA, a move the New Hampshire Supreme Court ruled to be illegal? At a minimum, his budget was out of balance by this \$110 million.

Further, the *Concord Monitor* article states that the state used the Rainy Day Fund to “balance the 2008-2009 budget.” Using an emergency fund to make up for a lack of revenues does not “balance” the budget. A “balanced budget,” by definition, means expected tax receipts are equal to budgeted expenditures. Obviously, that was not the case. Use of the word “balanced” in this way is misleading.

Second, the press release claims that the statement that there has been a 27 percent increase in state spending is false. That the statement is true is demonstrated by the following. The New Hampshire Budget is a biennial one meaning it's passed every two years... the 2008-2009 budget began July 1, 2007. The 2010-2011 budget began July 1, 2009. In the editorials below dated 6/7/09 and 2/7/10, they are referring to the 17.5% increase in spending from the last budget as noted - that includes budget years 2008 AND 2009. In the first editorial 5/31/09, the 10% spending increase they note is for fiscal years 2010 and 2011 (this is the budget we are currently in). The House and Senate budgets increased total spending by 10%, which is the budget Lynch eventually signed. That equals 27 percent.

EDITORIAL: Budget unreality; Spending without looking

New Hampshire Sunday News (Manchester, NH) - Sunday, May 31, 2009

On April 8, the state House of Representatives passed a budget that could be balanced only with the addition of new revenues. The next day, members passed a host of tax and fee increases and voted to create three new taxes to make revenues match expenditures.

Last Thursday, the Senate Finance Committee passed a budget that could be balanced only with the addition of new revenues. Its members also increased taxes and fees, but replaced the revenue generated by the House's not-yet-existent new taxes with revenue generated by not-yet-existent slot-machine casinos.

Each of these budgets is based upon the Dan Eaton Principle. During the House budget debate, Republicans objected to the leadership's plan to pass a spending bill first, then go for the tax hikes needed to pay for it. They said, reasonably, that the state should budget like families do, by first determining how much money is available, then deciding how to allocate it. House Majority Leader Eaton rebuffed the criticism with an aphorism: "It makes sense to know how much you're spending before you decide how much money to raise."

Adopting this principle, the Senate Finance Committee proposes to spend close to \$11.5 billion, which is roughly \$1 billion more than the state spent just two years ago. **That's a roughly 10 percent increase in the total state budget (which**

includes federal funds) in two years. It's also more than double the regional inflation rate.

From April of 2007 to April of 2008, the Northeast regional Consumer Price Index rose by 4.2 percent . From last April to this April, it fell by 0.1 percent , its first drop since the federal government began compiling the regional CPI data in 1966.

The economy is shrinking, prices are falling, and yet New Hampshire legislators are preparing to take still more money out of the already-sputtering economy to pay for the budget they want but cannot afford to fund with existing revenue sources.

It must be nice to be able to budget without having to factor in reality or accountability.

EDITORIAL: Who's irresponsible? A laughable attack in Concord

New Hampshire Sunday News (Manchester, NH) - Sunday, February 7, 2010

Democratic Party leaders in the Legislature are none too happy that the Republican minority managed to get enough Democrats on board to pass a bill last week restoring \$5 million in rooms and meals tax money to municipalities.

House Finance Committee Chairman Marjorie Smith, D-Durham, scolded Republicans, saying, "you have cut \$5 million without thinking about where the money is going to come from."

Senate Finance Committee Chairman Lou D'Allesandro complained that the GOP had reduced cash available to the state without providing equal spending cuts. "Is that good public policy?" he wondered.

That's rich coming from some of the very people who put New Hampshire into our current budget mess a few years ago by dramatically raising spending without having any clue how to pay for it.

Yes, the recession has had a negative effect on the state budget. But before the economy tanked, Democrats put the state into a dangerous position when, in the previous budget, **they increased state general fund spending by 17.5 percent**, didn't have enough revenue to pay for it, and simply wrote new revenue estimates

at the last minute to cover the difference.

They raised spending by \$475 million with no clue where the state would obtain the difference between what we could fund and what they wanted to spend. That led to piecemeal budget slashing by Gov. John Lynch. And now they're lecturing Republicans on making financial decisions "without thinking about where the money is going to come from." That's hilarious!

EDITORIAL: A state adrift; Lynch's loose grip

New Hampshire Sunday News (Manchester, NH) - Sunday, June 7, 2009

Each of the proposed state budgets to be reconciled in conference committee in the coming weeks is a patchwork quilt of fee increases, tax increases, new taxes and other "revenue enhancements." Some spending reductions are thrown in here and there to make ends meet on the margins, but each budget is balanced primarily with new revenue.

The excuse our elected officials give is that the economy suddenly sucked away vast amounts of revenue and they had little time to fill the gaps left in the budget. That is not entirely true.

Revenues for this fiscal year are down by about 5 percent . That presented lawmakers and the governor with genuine difficulties. But as columnist Charles Arlinghaus pointed out in these pages last week, legislators propose raising state general fund spending by about 6.7 percent next year.

That comes after they raised general fund spending by 17.5 percent to give us the current budget, which ends on June 30.

Even two years ago, when this budget was passed, Republicans warned that the revenue estimates were far too high and that there would not be enough money to cover the spending. They were right. The governor has cut hundreds of millions of dollars in spending from the current budget just to get us to the end of the fiscal year.

Republicans point to the reckless spending of the past several years, but that is only part of the story. The bigger picture is that legislators and the governor have allowed us to drift into this dangerous fiscal position.

Gov. Lynch, remember, was elected on the promise that he would apply his exceptional business-management skills to state government. He would make the state run as smoothly and efficiently as the best of big businesses. That never happened.

Instead, the governor left the state to run as it always had. He sat idly by and allowed the Democratic majority to spend more and raise taxes more.

He never got around to implementing the efficiencies and structural reforms that were supposed to transform state operations. Only after the state found itself headed to a half-billion-dollar deficit did he start, last fall, to implement and propose the reforms that were long overdue. But by then it was too late.

As captain of the ship of state, Lynch kept a loose grip on the wheel.

As a result, we drifted deeper into troubled waters than we otherwise would have gone.

The absence of real leadership in the last four years has put us seriously off course. And frustratingly, none of the plans under consideration in Concord right now turns us back in the right direction.

Third, the press release claims that NOM is facing ethics investigations in three states - Maine, Iowa, and California. There are an investigation and a lawsuit pending in Maine. Its laws and regulations are unconstitutional and NOM expects a favorable outcome there. Complaints were also filed in Iowa and California by same-sex marriage advocates, but no investigations have been initiated there. NOM is active in all fifty states and is making a good faith effort to comply with all state and federal laws.

Apparently the Democratic Party concedes the truth of the other two examples NOM cites in its ad – that Governor Lynch lied when he said he wouldn't raise business taxes, and that he would oppose same-sex marriage. Silence in the face of an accusation is an admission!

In sum, this partisan press release is without merit. NOM has accurately put onto the airwaves information already in the public domain for the people of New Hampshire to consider. As you can see, the facts and sources cited in the ad, in the original substantiation letter, and cited above, substantiate the claims made in the advertisement. It is the N.H. Democratic Party that doesn't have its facts straight.

Station Managers
April 15, 2010
Page 6

If you have further questions or concerns, please contact me. Thank you.

Sincerely,

BOPP, COLESON & BOSTROM

/s/

Barry A. Bostrom