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COMMENTARY

# Op-ed: Maine Report Lifts Veil on NOM's Illegal Fundraising Scheme

The National Organization for Marriage has been losing at the ballot box, in courthouses, and in public opinion, but now the group's shady practices provide another hurdle.

BY DARRIN HURWITZ MAY 22 2014 5:00 AM ET

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Brian Brown

Brian Brown can be excused for not wanting to go to work these days.

For the 40-year-old head of the virulently anti-LGBT National Organization for Marriage, bad days at the office — in fact, *really* bad days — have become routine.

Monday was one of those bad days. From the Ninth Circuit Court of Appeals denying NOM's emergency stay request to halt the Oregon marriage ruling to the ruling itself striking down Oregon's marriage ban to

another federal judge ordering Utah to recognize same-sex marriages entered into before a court-ordered stay, NOM is losing its fight quicker than Brown can blaviate about the perils of "redefining traditional marriage."

Not surprisingly, the marriage defeats at the ballot box, in legislatures, and in courts have roiled NOM like never before.

But Monday was not like other bad days for NOM. In fact, it was the worst day in NOM's seven-year history: The Maine Commission on Governmental Ethics and Election Practices exposed the inner workings of NOM and the anti-LGBT movement like never before with a stunning and comprehensive [37-page investigative report](#).

Providing a detailed look at how NOM committed a "significant violation of the law" by failing to disclose its activities in connection with the 2009 Maine marriage referendum, the commission's staff recommended the imposition of more than \$50,000 in civil penalties and the disclosure of the names of donors to NOM's Maine political efforts.

For four years, operating largely outside the national media lens, the Maine authorities dug into NOM's operations and documented the primary objective of the secretive organization: to funnel

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undisclosed money from a few large anonymous donors into anti-LGBT political campaigns.

I have previously [described](#) the history of NOM, why it exists, and how it functions at the center of the anti-LGBT movement. In short, Brown and NOM exploded onto the national scene in 2009 in the wake of California's Proposition 8 in response to a few large anti-LGBT funders deciding that the best way to avoid growing public scrutiny was to establish a vehicle to pass through anonymous large donations to anti-marriage equality campaigns.

The way NOM made this work was to promise these donors that if they gave to NOM, their contributions would remain secret. The donors would be told that NOM would pass through their funds to Maine's and other states' campaigns, and the donor disclosed to campaign finance authorities would be NOM rather than the person or organization that actually made the contribution

The problem with this scheme is that it's plainly illegal. And in Maine, where NOM spent \$2 million on a voter referendum without registering a political action committee or disclosing a single donor, it ran up against a state that doesn't look kindly upon a large national organization flagrantly flouting the law and the public's interest in sunlight.

In 2009 the commission launched its investigation of NOM. Using its power of subpoena, including depositions of Brown, the commission obtained access to information and documents and finally peeled away the layers of an organization whose central purpose is to evade disclosure laws to protect its few donors' identities.

Not surprisingly, NOM fought bitterly hard to keep its scheme — and financial livelihood — secret. Filing two federal lawsuits, the organization was able to stonewall the Maine commission's investigation for several years. Despite losing every step of the way, NOM took its case all the way to the U.S. Supreme Court, which declined to intervene.

The commission's staff report is thorough and striking in its breadth. And the story it tells is one of power and secrecy as a small cabal of anti-LGBT funders conspired to influence state campaigns across the country. The commission describes a "highly sophisticated political advocacy organization" that saw the Maine marriage referendum as critical to NOM's national strategy to roll back marriage equality.

By obtaining internal strategic documents and board memoranda (the same documents that in 2012 revealed NOM's strategy to "drive a wedge between gays and blacks"), the commission uncovered for the first time smoking gun evidence that "NOM intentionally set up its fundraising strategy to avoid donor disclosure laws." In fact, NOM explicitly told its donors that by giving to NOM instead of state campaigns the donors' identities would not be disclosed.

The commission describes how during 2009 four NOM officials developed relationships with 14 major donors through phone calls, personal visits, or events at the donor's home or hotel. These 14 donors were responsible for 75 percent of NOM's revenue.

For years, NOM has boldly proclaimed that it did not solicit contributions for Maine. The evidence set forth by the commission tells another story. It provides in painstaking detail how NOM discussed its Maine strategy with large donors, received significant contributions from them, and immediately transferred these contributions to the Maine campaign.

The report concludes, "In spite of spending more than \$2,000,000 to influence the Maine referendum and co-managing the political campaign, NOM never registered with the Commission or filed a single report of its financial activities in 2009. ... NOM made a deliberate decision in 2009 not to make ... financial disclosures in Maine."

An even more striking revelation is that Maine wasn't the only state where NOM violated the law by refusing to disclose donors. In Iowa, the Ethics and Campaign Disclosure Board warned NOM in August 2009 that "if people are going to donate to your organization for express advocacy activities in Iowa ... your organization will be required to form a PAC and disclose those contributors. The independent expenditure process in Iowa is not a vehicle to shield political contributors." NOM's lawyers responded that the complaints that precipitated the warning were "unfounded and scurrilous" and that "no funds have been solicited by NOM for Iowa independent expenditures."

According to documents obtained as part of the Maine investigation, this assertion was a lie. Just one month before, Brown allegedly sent to a NOM board member an email containing a draft of a proposed budget to be provided to NOM's largest donor asking for a \$2 million gift, including \$300,000 for influencing legislative elections in Iowa. Likewise, NOM asked the donor to



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contribute \$300,000 to an effort to defeat Gov. John Lynch in New Hampshire. NOM failed to disclose its activities in New Hampshire as well.

The Maine staff report, to be presented to the full commission Wednesday, is a scathing indictment of an organization that was founded on the idea that it could beat the campaign finance system and illegally funnel secret money into elections. Brown's deceit, as described by the commission, knew no bounds. The report reveals how on numerous occasions during the course of the investigation Brown and NOM's lawyers provided the commission with false or misleading information.

Day by day, NOM is losing the fight over marriage equality in courts of law and public opinion. The bad news continued Tuesday when a federal judge threw out Pennsylvania's marriage ban.

But for Brown's and NOM's future, the bad news out of Oregon and Pennsylvania may pale next to the uncovering of its multiyear illegal fundraising scheme, which beyond raising concerns among other state regulators could give pause to the few secret donors who, in the absence of even modest grassroots support, have kept NOM open for business.

It's fair to think that Brown's already difficult days at the office are about to get a whole lot worse.

*DARRIN HURWITZ is the Human Rights Campaign's deputy general counsel.*

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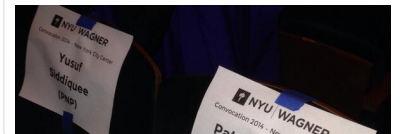
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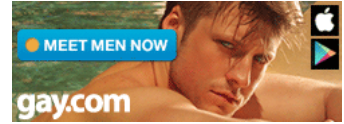
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