UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ASSOCIATION TO PRESERVE AND PROTECT LOCAL LIVELIHOODS, *et al.*, *Plaintiffs*, PENOBSCOT BAY AND RIVER PILOTS ASSOCIATION, a Maine corporation, *Plaintiff-Intervenor*, v. TOWN OF BAR HARBOR, a municipal corporation of the State of Maine, *Defendant*.	)	**Civil Action No. 1:22-cv-416**

DEFENDANT TOWN OF BAR HARBOR'S VERIFIED OBJECTION TO PROPOSED DEFENDANT-INTERVENOR CHARLES SIDMAN'S VERIFIED MOTION TO INTERVENE

Defendant Town of Bar Harbor (the "Town"), through its attorneys, Rudman Winchell, hereby opposes Proposed Defendant-Intervenor Charles Sidman's Verified Motion to Intervene (ECF No. 45) (the "Motion").

BACKGROUND

Plaintiffs, the Association to Preserve and Protect Local Livelihoods, et al. (collectively, "Plaintiffs'), filed their Verified Complaint in this matter on December 29, 2022 (ECF No. 1), challenging the constitutionality of a citizen-initiated amendment to the Town's Land Use Ordinance adopted by voters on November 8, 2022 (the "Ordinance"). Plaintiffs filed a Motion for Preliminary Injunction the following day. (ECF No. 12.) On January 14, 2023, Penobscot Bay and River Pilots Association (the "Pilots") moved to intervene as a plaintiff. (ECF No. 32.)

Plaintiffs consented to, and the Town did not oppose, the Pilots' intervention, which was granted.[1] (ECF Nos. 37, 40, 41.) The Town is filing its Answer and Defenses to the Verified Complaint simultaneously with this Opposition.

On January 26, 2023, the parties attended a judicial settlement conference to discuss a potential stipulated preliminary injunction. Parties' Counsel have arrived at a framework for such a stipulated preliminary injunction, to be reduced to writing and subject to approval by the parties. It reflects the parties' common interest in avoiding potential costs and seeking an expeditious and efficient adjudication on the merits.[2] By this framework, the Town has not in any way indicated it will do anything less than vigorously defend the constitutionality of the Ordinance and preserve

[1] The Town did not oppose the intervention of the Pilots because there was nothing to prevent the existing Plaintiffs from amending their Verified Complaint as a matter of course to add the Pilots as an additional plaintiff, *see* F.R. Civ. P. 15(a)(1), or to prevent the Pilots from simply filing their own separate action against the Town. As a practical matter, opposition to the Pilots' motion would have been fruitless.

[2] The terms of that framework may be summarized as follows:

1. *Maintenance of the status quo*: The Town will not enforce the Initiated Ordinance but will be free to engage in the Town's process for developing rules and regulations or written plans for the Initiated Ordinance. Further, the Town will not be enjoined from proceeding in the ordinary course regarding the application of the Town's voluntary, bilateral agreements with cruise line entities for the 2023 and 2024 seasons.
2. *Expedited case schedule*: The parties will propose a scheduling order for consideration by the Court that expedites discovery (to be completed by May 30, 2023), forgoes the filing of dispositive motions, and positions the case for trial between July 1, 2023 and August 31, 2023, provided such timing is agreeable with the Court and consistent with the Court's availability and schedule.
3. *Limitation of risk*: Plaintiffs and the Pilots Association agree not to amend their complaints to request an award of money damages. The Pilots Association will not file a motion for preliminary injunctive relief. All parties will bear their own attorneys' fees incurred directly in connection with Plaintiffs' Motion for Preliminary Injunction and the negotiation and entry of a stipulated preliminary injunction. Each of these agreements is conditioned upon the entry of the consent injunction and continued compliance with the injunction terms by the Town.
4. *No determinations, no prejudice*: By entering the consent injunction, the Court would not be making any findings of fact or any legal determinations with respect to any claim or defense at issue in the case. The consent injunction would not prejudice the parties' factual or legal claims or defenses, and the parties agree not to argue that the consent injunction in any way precludes, interferes with, or otherwise limits or casts doubt on any party's substantive arguments in the case.

If an agreement is reached, the parties anticipate filing a consent motion seeking entry of the stipulated preliminary injunction.

the Town's home rule authority. A continued judicial settlement conference regarding the proposed stipulated preliminary injunction is tentatively scheduled for March 6, 2023.

On January 19, 2023, Charles Sidman, one of seven members of a Petitioning Committee that initiated the Ordinance, filed the present Motion seeking to intervene. (ECF No. 45.) Sidman has been critical of what he understands to be the Town Council's litigation strategy. *See* Exhibit A (a true and accurate copy of a memorandum from Sidman to the Council dated January 17, 2023). In particular, he has called this Court's settlement conference "a theatrical farce, of no substance at all," and announced that any agreement reached by the parties "will be opposed as illegal and invalid." *See* Exhibit B (a true and accurate copy of a draft op-ed by Sidman dated January 30, 2023, which he sent to the Council, and which was later published in substantially the same form in the Mount Desert Islander on or about January 30, 2023).

ARGUMENT

Mr. Sidman, like any other Town citizen, is welcome to express his views on how the Council should litigate this matter in existing Town forums. Because he lacks standing or any interest not adequately represented by the Town, and because his intervention would needlessly delay this litigation and prejudice the Town's defense, the Town opposes his intervention.[3]

I. Sidman Lacks Standing to Intervene as a Party in this Case.

"Article III of the Constitution confines the judicial power of federal courts to deciding actual 'Cases' or 'Controversies.' One essential aspect of this requirement is that any person invoking the power of a federal court must demonstrate standing to do so." *Hollingsworth v. Perry*, 570 U.S. 693, 704 (2013) (citation omitted). "To qualify as a party with standing to litigate, a

[3] The Town takes no position on Sidman's proposed participation in this case as *amicus curiae*. It leaves the question of whether the participation of one proponent of the Ordinance will aid the resolution of the constitutional questions at issue and will not unduly delay the proceedings to the sound discretion of the Court.

person must show, first and foremost, 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent.' *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). He or she must have a "direct stake" in the outcome of the case, that affects him or her in a "personal or individual way." *Hollingsworth*, 570 U.S. at 705 (quotation marks omitted). "An interest shared generally with the public at large in the proper application of the Constitution and laws will not do." *Arizonans for Official English*, 520 U.S. at 64. Sidman has failed to show any such direct stake.

A. Sidman's Status as a Member of the Petitioning Committee Does Not Give Him Standing to Defend the Ordinance.

The Supreme Court has made clear that citizen groups that initiate legislation do not have standing to defend an initiated law. *Hollingsworth*, 570 U.S. at 715 ("We have never before upheld the standing of a private party to defend the constitutionality of a state statute when state officials have chosen not to. We decline to do so for the first time here."); *see also Arizonans for Official English*, 520 U.S. at 65 (observing that the Supreme Court has "[n]ever identified initiative proponents as Article-III-qualified defenders of the measures they advocated").

Hollingsworth concerned a state initiative known as Proposition 8, which amended the state constitution to provide that only marriage between a man and a woman was recognized. 570 U.S. at 701. Same-sex couples challenged the law. *Id.* at 702. After the State declined to defend the law, the District Court allowed the initiative proponents to intervene and defend it. *Id.* The District Court held Proposition 8 unconstitutional. *Id.* When the State declined to appeal, the intervenors did. *Id.* The Ninth Circuit concluded that the intervenors had standing to defend Proposition 8, and that the law was unconstitutional. *Id.* at 703.

On appeal, the Supreme Court roundly rejected the notion that the intervenors had standing to defend the law in lieu of the State, regardless of their status as official proponents of the initiated

law. *Id.* at 706-09. The Court noted that a litigant "raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy." *Id.* at 706 (quoting *Lujan*, 504 U.S. at 573-74). Intervenors argued that they had special status as the "official proponents" of Proposition 8 under California law because they submitted the proposed law to the Attorney General and were solely responsible for collecting and filing signatures, and writing the arguments in favor of the initiative that would appear on the ballot. *Id.* at 706-07. The Court disagreed, noting that "once Proposition 8 was approved by voters," intervenors had "no role—special or otherwise—in the enforcement of Proposition 8," and "no 'personal stake' in defending its enforcement that is distinguishable from the general interest of every citizen." *Id.* at 707 (quoting *Lujan*, 504 U.S. at 560-61).

The same principles apply here. Sidman claims he "has an interest in seeing the Ordinance enforced, much like a legislator's interest in defending the enforceability of a statute." Motion at 5. This is precisely the argument the Supreme Court rejected in *Hollingsworth*.[4] This type of generalized interest in the application of laws does not confer standing. *See Hollingsworth*, 570 U.S. at 706-09. Indeed, Sidman has an even weaker argument than the intervenors in *Hollingsworth* because Sidman was but one member of a seven-member Petitioning Committee that initiated the Ordinance. *See* Exhibit B to Verified Complaint (ECF No. 1-3). The other six members have not joined his Motion. Sidman cannot claim to speak on behalf of that Committee,

[4] Sidman cites *Yniguez v. Arizona*, 939 F.2d 727, 733 (9th Cir. 1991) for the proposition that citizen sponsors of legislation are analogous to state legislatures. Although Sidman acknowledges that *Yniguez* was reversed by the Supreme Court in *Arizonans for Official English*, 520 U.S. at 48-49, he states it was reversed "on other grounds." This is not an accurate statement of the law. Although the Court decided the case on other grounds, it was not silent on this subject, noting that the Court had "[n]ever identified initiative proponents as Article-III-qualified defenders of the measures they advocated" and expressing "grave doubts whether [initiative proponents] have standing under Article III." *Id.* at 65-66. The Court later went on to give these "grave doubts" the force of law in *Hollingsworth*.

let alone everyone who signed that petition or voted in favor of the Ordinance. He has no interest distinguishable from the general interest of every other citizen.[5] *Id.* at 707.

B. Sidman's Lack of Standing is Fatal to His Motion.

The Supreme Court has held that intervenors must show they have Article III standing, independent of the original parties (1) in order to appeal, when the original party declines to appeal, *Diamond v. Charles*, 476 U.S. 54, 68-69 & n.21 (1986), or (2) when the intervenors seek relief beyond that sought by other parties, *Town of Chester v. Laroe Estates, Inc.*, ___US___, 137 S. Ct. 1645, 1651 (2017). Beyond these guideposts, there is a circuit split as to whether intervenors must show independent Article III standing in all circumstances. Some circuits have held that as long as there remains a "case or controversy" among the original parties, intervenors need not show independent standing. *See City of Chicago. v. FEMA*, 660 F.3d 980, 985 (7th Cir. 2011) (collecting cases from other circuits). Others have held that intervenors must always show independent standing. *See, e.g., id.; United States v. Metro. St. Louis Sewer Dist.*, 569 F.3d 829, 833 (8th Cir. 2009); *Bldg. & Constr. Trades Dep't v. Reich*, 40 F.3d 1275, 1282 (D.C. Cir. 1994).

The First Circuit has acknowledged this circuit split, but has not taken a position. *See, e.g.*, *Mangual v. Rotger-Sabat*, 317 F.3d 45, 61 & n.5 (1st Cir. 2003); *Cotter v. Mass. Ass'n of Minority Law Enf't Officers*, 219 F.3d 31, 33 (1st Cir. 2000); *Daggett v. Comm'n on Gov't Ethics & Election Practices*, 172 F.3d 104, 109 (1st Cir. 1999). The better view, and the one this Court should apply in this case, is that intervenors, like all other parties, must demonstrate standing, even if the original parties to the case satisfy the case or controversy requirement. There is no sound reason that parties without a sufficient interest to demonstrate standing should be granted the same

[5] To the extent Sidman claims he has an interest in this litigation as a property and business owner, his argument is conclusory, speculative, and generalized. Indeed, he admits that his supposed interest is "common among a large portion of businesses in Town." Motion at 6.

power to control the direction of litigation as parties actually impacted by the outcome of the case. "[B]ecause an intervenor participates on equal footing with the original parties to a suit, a movant for leave to intervene under Rule 24(a)(2) must satisfy the same Article III standing requirements as original parties." *Bldg. & Constr. Trades Dep't v. Reich*, 40 F.3d 1275, 1282 (D.C. Cir. 1994). This is especially true where the presence of parties without standing could call into question the validity of any judgment reached in this case. *See Mausolf v. Babbitt*, 85 F.3d 1295, 1300 (8th Cir. 1996) ("[A]n Article III case or controversy, once joined by intervenors who lack standing, is—put bluntly—no longer an Article III case or controversy.") For these reasons, it must oppose his intervention where his lack of standing could threaten the Court's jurisdiction over this matter. *See id.* at 1301 (stating that standing is "a constitutionally mandated prerequisite for federal jurisdiction" (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992))).

II. Sidman Is Not Entitled to Intervention as of Right.

Rule 24(a)(2) of the Federal Rules of Civil Procedure provides that a court must grant a timely motion to intervene by a party who "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."[6] To prevail, a proposed intervenor must demonstrate "(1) the timeliness of her motion; (2) a concrete interest in the pending action; (3) a realistic threat that resolution of the pending action will hinder her ability to effectuate that interest; and (4) the absence of adequate representation by any existing party." *T-Mobile Ne. LLC v. Town of Barnstable*, 969 F.3d 33, 39 (1st Cir. 2020) (quotation marks omitted). The Town does not contend that Sidman's motion is untimely, and therefore focuses on the remaining factors.

[6] Sidman does not claim a right to intervene by statute under F.R. Civ. P. 24(a)(1) or F.R. Civ. P. 24(b)(1)(A).

Addressing the first two remaining factors together, Sidman has no interest in this litigation apart from the general interest all citizens share in proper application of the laws. As discussed above, the fact that Sidman was one of seven members of the Petitioning Committee that initiated the Ordinance grants him no special status. *See Nat'l Right to Life PAC State Fund v. Devine*, No. 96-359-P-H, 1997 U.S. Dist. LEXIS 23286, at *3 (D. Me. Mar. 19, 1997) (holding organization that drafted, sponsored, gathered signatures for, and campaigned for adoption of legislation had "only the interest that all citizens possess" and was not entitled to intervene as of right). As to the last factor, Sidman's interest in defending the Ordinance is thoroughly represented by the Town. "When a would-be intervenor seeks to appear alongside a governmental body in defense of the validity of some official action, a rebuttable presumption arises that the government adequately represents the interests of the would-be intervenor." *T-Mobile*, 969 F.3d at 39. To rebut this presumption, the proposed intervenor must make a "strong affirmative showing," which must be more "more than speculation as to the purported inadequacy of representation." *Id.* at 39-40 (quotation marks omitted). A proposed intervenor's "worry that the Town ultimately may settle" or that the Town "appears to be adopting a litigation strategy that seems inadequate" is not sufficient. *Id.* at 40.

Sidman falls well short of this showing. His conclusory contention that the Town "will refuse to defend the Ordinance," Motion at 8, is wholly speculative and inconsistent with the facts. The Town has repeatedly made clear that it will vigorously defend this case, including in the press release Sidman attached to his Motion. Exhibit B to Motion (ECF No. 45-3). The Town's actions back up its statements. Since litigation began scarcely a month ago, the Town has not only filed its Answer and Defenses, it has also participated in a judicial settlement conference at which counsel have arrived at a framework for a stipulated preliminary injunction, which furthers the

Town's defense in that it would (1) expedite a final decision on the merits while allowing the Town to develop the strongest possible case, (2) reduce the Town's exposure to claims of damages and attorney fees, and (3) allow the Town to engage in rulemaking that would be necessary before it Could enforce the Ordinance in any event. Any uncertainty as to whether the Town will defend this action exists only in Sidman's mind.[7] *See T-Mobile*, 969 F.3d at 40 (intervention properly denied where movants failed to articulate any arguments "any arguments that the Town was unlikely to advance"); *Devine*, 1997 U.S. Dist. LEXIS 23286, at *6 (denying intervention to initiative proponents where no indication Attorney General would not defend law).

III. This Court Should Deny Sidman's Request for Permissive Intervention.

Rule 24(b) provides that a court, on timely motion, may permit intervention when the proposed intervenor "has a claim or defense that shares with the main action a common question of law or fact." F.R. Civ. P. 24(b)(1)(B). In exercising its discretion, "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." F.R. Civ. P. 24(b)(3). In ruling on a motion for permissive intervention, courts "should ordinarily give weight to whether the original parties to the action adequately represent the interests of the putative intervenors," and may consider whether "the applicants may be helpful in fully developing the case." *T-Mobile*, 969 F.3d at 41 (quotation marks omitted). The First Circuit has also noted that "[m]ultiplying the number of parties in a case will often lead to delay." *Id.*

Here, as already discussed, Sidman has no concrete interest in this litigation. Sidman does not "articulate what, if anything, [he] would contribute to the vitality of the Town's defense. *Id.*

[7] Sidman attempts to portray comments of the former Town Manager (who has since resigned) as somehow indicating that the Town intends to "ignore the Ordinance." Motion at 8. Assuming for the sake of argument that Sidman's "partial transcript" of these comments is accurate, nothing in these comments in any way suggests that the Town does not intend to defend this case on the merits. Rather, a fair reading of these comments is that the Town was exploring whether a stipulated preliminary injunction could be reached that allows the Town to place itself in the strongest possible position to defend the case on the merits—exactly as discussed in this memorandum.

Moreover, it is apparent from the face of Sidman's filings and other public statements that his intervention, far from being "helpful," would actively prejudice the Town's case. As discussed above, the parties have made significant progress towards reaching a consent preliminary injunction that would expedite a final decision on the merits while allowing the Town to develop the strongest possible case, protect the Town from damages and attorney fees, and still allow the Town to engage in necessary rulemaking. Sidman has publicly called the judicial settlement conference in this Court "a theatrical farce" and announced that he will oppose any stipulated preliminary injunction as "illegal and invalid." Exhibit B. In this very Motion, Sidman refers to the judicial settlement conference in this Court as a "wholly partisan mediation."[8] Motion at 8. Sidman has made clear that he will oppose any action, no matter how beneficial to the Town's defense or the speedy resolution of this matter on the merits, for the sake of political appearances. Where Sidman has not shown any interest not adequately represented by the Town, nor what benefits, if any, he would bring to this litigation that would outweigh the delay and prejudice to the Town, his Motion should be denied.

CONCLUSION

For all of the foregoing reasons, the Town respectfully requests that this Court deny Sidman's Motion to Intervene.

Dated at Bangor, Maine, this 6th day of February, 2023.

/s/ Allison A. Economy, Esq.
Allison A. Economy, Bar No. 5336
aeconomy@rudmanwinchell.com

[8] This is a curious complaint coming from Sidman. Sidman has deemed himself the "true representative[] of the people of Bar Harbor." Exhibit A. He has accused the former Town Manager of being "utterly disloyal to the voters and community who hired him," and called for him to be fired. *Id.* He has deemed the Town Council "simply not to be trusted," accused it of "allegiance to a few local businesses," decried the Town's public statements regarding this litigation as "warped and untruthful," and promised to "retake" the Council. Exhibits A, B. While Sidman is certainly entitled to his opinions, his participation as a party can hardly be expected to make these proceedings less "partisan."

/s/ Jonathan P. Hunter, Esq.
Jonathan P. Hunter, Bar No. 4912
jhunter@rudmanwinchell.com

/s/ Stephen W. Wagner, Esq.
Stephen W. Wagner, Bar No. 5621
swagner@rudmanwinchell.com

Attorneys for Defendant Town of Bar Harbor
RUDMAN WINCHELL
84 Harlow Street
P.O. Box 1401
Bangor, ME 04402
207.947.4501

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2023, I electronically filed the foregoing *Defendant Town of Bar Harbor's Verified Objection to Proposed Defendant-Intervenor Charles Sidman's Verified Motion to Intervene* using the CM/ECF system, which will provide notice to all counsel of record in this case.

Dated: February 6, 2023

/s/ Jonathan P. Hunter
Jonathan P. Hunter, Bar No. 4912
Attorney for Defendant
RUDMAN WINCHELL
84 Harlow Street
P.O. Box 1401
Bangor, ME 04402
207.992.2413
jhunter@rudmanwinchell.com

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ASSOCIATION TO PRESERVE AND PROTECT LOCAL LIVELIHOODS, B.H. *et al.*, *Plaintiffs*, PENOBSCOT BAY AND RIVER PILOTS ASSOCIATION, a Maine corporation, *Plaintiff-Intervenor*, v. TOWN OF BAR HARBOR, a municipal corporation of the State of Maine, *Defendant.*	)	**Civil Action No. 1:22-cv-416**

VERIFICATION

VALERIE PEACOCK, being duly sworn under oath, deposes and states that I am the Town of Bar Harbor Town Council Chair and have authorized the filing of the Verified Objection to Proposed Defendant-Intervenor Charles Sidman's Verified Motion to Intervene (the "Verified Objection"). I have reviewed the factual statements made in the Verified Objection, and as to those statements which I have personal knowledge, I believe them to be true. As to those statements of which I do not have personal knowledge, I rely on information from the records of regularly conducted activities of the Town of Bar Harbor, kept in the regular course of such activities, and of which is the regular practice of the Town to kept in the regular course of such activities, and of which is the regular practice of the Town to keep such records.

/*s/* Valerie Peacock
Valerie Peacock

STATE OF MAINE
COUNTY OF HANCOCK, ss.

Personally appeared before me on this sixth day of February 2023, the above-named Valerie Peacock and made oath that the foregoing statements made by her are true based on her own personal knowledge, information and belief, and where based on information and belief, to the best of her knowledge she believes them to be true.

EXHIBIT A

To: Bar Harbor Town Council
From: Charles Sidman
Date: 1/17/23
Subject: Cruise Ship Suit and Town Manager

Dear Councilors:

In tonight's Council meeting you have two agenda items that will be handled in Executive Session, i.e. without public scrutiny or input. Thus I write to convey the following:

Concerning the current lawsuit against the Town on behalf of Ocean Properties and several small businesses seeking to overturn the clearly expressed will of the people for their own narrow financial advantage:

- A true fork in the road is upon you and us, with this Friday's current due date for first responses by the Town to the request for a preliminary injunction. Either you direct the Town Attorney and Manager to accept us onto the team to vigorously defend against this injunction request and lawsuit, or we (the petitioners and citizens generally) will proceed independently to make the case that we (rather than the ostensible administration) are the true representatives of the people of Bar Harbor.
- Our GoFundMe campaign, launched this past weekend, has already garnered over $14K in donations for legal and PR expenses from over 79 supporters whose domiciles range from local to global. As one supporter so eloquently put it -
    - "The "inconvenient" truth of democracy is that the majority gets to decide their future. Let's remind those contesting the recent vote to limit cruise ship visits of that. By funding legal opposition to Ocean Propertie's [sic] efforts to overturn perfectly reasonable cruise ship visitation limits we shall be sending that message loud and clear!"
- The one-sided Boston Globe article this past weekend has already triggered the following words from a retired federal judge:
    - "The Commerce Clause in the Constitution wouldn't let you restrict interstate commerce, but this is between sea & land. On Commerce Clause, it was used to good effect during Jim Crow to make motels accept black travelers b/c to do otherwise impeded Interstate Commerce. Heart of Atlanta Hotel v. U.S.*. Looks like a good theory that you've chosen."
- The longer this goes on, the more damage will be done to our overall brand. This will be on you for not supporting the clearly and democratically expressed will of the people.

Deeply interrelated with the above is your current consideration of Town Manager Sutherland's continued employment. As is recorded from the Cruise Ship Committee meeting of 1/5/23 (recording available, on thumb drive, by request), Manager Sutherland amazingly (!) discussed and prevaricated in public regarding the Town's strategic plans for defending (or not) this lawsuit and injunction with and in front of the prime plaintiff in this suit, Eben Salvatore of Ocean Properties. (Eben himself, in both appearance and reality, is massively conflicted by virtue of his employment position, but is still improperly serving on both the Warrant and Cruise Ship Committees. He should be suspended from both immediately, until the current lawsuit is resolved.) Manager Sutherland's behavior is some combination of naive and incompetent (ask any attorney about plaintiffs and defendants directly communicating with each other rather than through their attorneys, possibly negating attorney client privileges, etc.), personally arrogant and/or utterly disloyal to the voters and community who hired him. On this score, therefore, we beseech you to either:

1. Terminate him for cause at this time,
2. Suspend him from any further involvement in our town's cruise ship litigation and administration (there must be legal options for this, such as if he became incapacitated and physically unable to

serve), as "the problem" he is so eager for the injunction to "solve" is of his own making, namely, the booking of additional ships after the initiative's filing, or

3. At least do not remove him from the initial probationary period of his employment.

We the voters will be carefully scrutinizing your decisions and rationale on all of the above, and if necessary, are fully prepared to campaign to replace any or all Councilors who continue to employ and support a Manager thumbing his nose at the citizens and town that employ him, and then to take under a new Council the actions necessary and requested above.

In summary, I see no reason to attend tonight's meeting in person as it is set up to not allow any input from citizens, but I/we WILL be watching, and stand ready to appear and discuss in person at any time requested.

Sincerely,

Charles Sidman
Citizen of Bar Harbor
csidman@acadia.net

EXHIBIT B

Op-Ed for MDIslander, 1/30/23, "Status Report to Citizens Regarding Cruise Ships in Bar Harbor" by Charles Sidman (long-term resident of Bar Harbor)

(The following is an opinion piece of general interest to the community, but is also submitted directly to Bar Harbor's Town Council, which continues on the wrong tack regarding the cruise ship situation.)

I start this piece with an expression of sympathy for recently resigned town manager Kevin Sutherland, who in our one-on-one interactions was always polite and personable. It is unlikely that he had any idea of the decades of accumulated tension and resentment concerning cruise ships that he inherited when he took the job. Once it became clear in the past election that his ideas and approach, on several issues, were simply not acceptable to a majority of Bar Harbor voters, it was necessary that he move on to other endeavors. Actions have consequences, no matter how sincerely intentioned. Further, his realization that continuing and even escalating local contention could consume an ever-increasing amount of his professional and personal time is likely accurate. I wish him well.

Now for a report to fellow citizens on how matters stand currently, from my perspective. First, the MOA plan that Kevin convinced Council to proceed with, only a short time before voters rendered their verdict, created further legal jeopardy for the town by prematurely "accepting" approximately 40 additional ship visits after the 3/17/22 cut-off date contained in the Initiative. Council's action can only have been based on their presumption of how citizens would vote on the Initiative, and they were simply wrong. The Initiative's clearly announced applicability date preceded the MOAs' initial unveiling by five months, and individual cruise lines only signed their documents in October, seven months after the well publicized applicability date and mere weeks before the November election. The cruise lines should have been told to wait until after the upcoming election, as Council, Manager and community all knew, and recognized publicly, that the Initiative would take precedence over any MOAs in the event of passage. It is our unalterable position, therefore, that the MOA plan has ZERO validity, and is not to be accepted for even an instant given the Initiative's lengthy prior publication, lack of ambiguity and the voters' clear decision.

Further, due to the placement of the Initiative within the town's Land Use Ordinance (LUO) (so as to be changeable ONLY by the town's voters, and specifically NOT by Council), the Council has no authority to "mediate" or agree to any changes whatsoever in this voter-enacted LUO. We regard the current "mediation" as a theatrical farce, of no substance at all. Any proposed agreement or consequence stemming from this pretense will be opposed as illegal and invalid.

Next, the legal situation is complicated, involves multiple parties and has loops within loops. Being deeply involved and working closely with our lawyers, I am not at liberty to say more publicly at this time. However, having been fully consistent, loyal and transparent during this whole debate, I ask for your ongoing trust and support. Our GoFundMe crowdfunding campaign for legal expenses has been answered by more than 120 donors to date, and will hopefully continue. Thank you one and all. We are committed to fight for the home rule rights of our citizens, without pause or diminution, until we win (of which I remain deeply optimistic, given widespread community support and excellent legal assistance.)

Finally we come to politics. Some members of the current Town Council continue to speak one way and act another, and so are simply not to be trusted. Others, while entitled to their own opinions, consistently give their allegiance to a few local businesses or to their own institutional prerogatives. Last Friday's press release from the town's (superfluous?) Communications Coordinator was so warped and untruthful that the position should be renamed Disinformation and Propaganda Coordinator. Lastly, even apart from the recent Initiative, Town Council could do much on its own authority, right now, to resolve our cruise ship crisis. This June, at least three seats on the Council are up for election, and the process starts now to recruit a slate of candidates to retake our governing body. Anyone willing?