

# Agenda

## Item #5



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: January 15, 2015  
Re: Mailing by Gordon Colby Opposing Re-Election of Rep. Jeffrey Evangelos

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For the January 23, 2015 meeting, two matters are before you concerning a mailing sent by Waldoboro resident Gordon Colby opposing the re-election of State Representative Jeffrey Evangelos of Warren (District 91).

**ISSUE #1: INDEPENDENT EXPENDITURE REPORT –  
REQUEST FOR WAIVER OF LATE-FILING PENALTY OF \$85.12**

On October 28, 2014, Mr. Colby paid \$1,216.47 to Spectrum Marketing Company of Manchester, New Hampshire for a mailing opposing Rep. Evangelos in the general election. The literature (attached) claims that Rep. Evangelos does not say the pledge of allegiance and has been silent on defending the country and its values. The mailing urged voters to “SAY NO to Jeffrey Evangelos on November 4!”

**Legal Requirements for Independent Expenditure Reporting**

An independent expenditure (IE) is any expenditure for a communication expressly advocating the election or defeat of a candidate. (21-A M.R.S.A. § 1019-A(1)(A)) A short financial report is required to be submitted to the Commission for any IE in excess of \$100 per candidate, according to a filing schedule set out in the Commission Rules. (21-A M.R.S.A. § 1019-A(4)(B)) IEs made in the last 13 days before an election must be reported within one calendar day. (Chapter 1, Section 10(3)(B) of the Commission Rules.) If a person is late in filing the IE report, the amount of the penalty is set by a formula which takes into consideration the amount of the transaction, the number of prior violations within a two-year period, and the number of days the report is late. (21-A M.R.S.A. § 1020-A(4-A))

### **Discussion of Request for Waiver of Late Filing Penalty of \$85.12**

Because Mr. Colby made the IE on October 28, 2014, he was required to file an IE report on October 29. He filed it seven days late on November 5, 2014. (*See* attached IE Report #429) That day, Political Committee and Lobbyist Registrar Ben Dyer sent Mr. Colby routine penalty correspondence, providing him with an opportunity to request a waiver of a preliminary penalty of \$85.12.

Mr. Colby requested a waiver of the penalty prior to engaging an attorney for the second issue discussed in this memo. In a letter dated November 12, 2014, he requested a waiver because he received no notice of the filing deadline for independent expenditure reports and the requirement to file a financial report curtails First Amendment rights. His attorney on issue #2, William Logan, Esq., may wish to raise some additional points at your meeting.

The Commission is authorized to waive a preliminary penalty if it is disproportionate to the harm to the public from the late disclosure, the level of campaign experience, or the size of the campaign. In this matter, the amount of the penalty (\$85.12) is not disproportionately high, relative to the amount of the expenditure.

In the opinion of the Commission staff, you may wish to consider granting a waiver of the penalty on the grounds of Mr. Colby's lack of experience in sending campaign-type mailers. As is discussed below, he was involved in a 2012 PAC that sent a mailing against Rep. Evangelos. Mr. Colby says that he was not personally involved in that earlier mailing. Since he spent a relatively significant amount of personal funds in October on a professional mailing (\$1,216.47), one might have expected him to realize that some financial reporting could be required and checked with other sources of information. The Commission staff declines to offer any recommendation on the waiver request, because the amount of the penalty is not large and because other points may be made at the meeting.

## ISSUE #2: DISCLOSURE STATEMENT ON MAILING

### Required Disclosures for Paid Express Advocacy Communications

Under 21-A M.R.S.A. § 1014(2), paid communications to voters expressly advocating the election or defeat of a candidate, which have not been authorized by any candidate in the race, must contain:

- (1) the name and address of the person who paid for the communication<sup>1</sup>
- (2) a statement that the communication was not paid for or authorized by any candidate.

The first requirement provides crucial information to members of the public receiving the contribution as to who is speaking to them to influence their votes. The second requirement informs voters whether any candidate endorsed the message of the communication and assists in verifying whether the candidate has received an in-kind contribution through cooperating with another's expenditure. Section 1014(2) states:

**2. Not authorized by candidate.** If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. If the communication is in written form, the communication must contain at the bottom of the communication in print that is no smaller in size than 12-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

This subsection makes reference to § 1014(1), which covers various types of express advocacy communications that *are* authorized by a candidate, including direct mail.<sup>2</sup>

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<sup>1</sup> The mailer by Mr. Colby included a statement that he paid for the mailing and an address for him.

### **Request for Investigation by Jeffrey Evangelos**

In his counsel's letter requesting an investigation, Rep. Evangelos contends that the mailer violates § 1014(2), because it lacks the required statement that the flyer was "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE." He asks the Commission to take into consideration several exacerbating factors, including the malicious message of the communication that questions the candidate's loyalty to his country. Rep. Evangelos contends that the timing of the mailing suggests that it may have been planned or coordinated with the House Republican Majority Fund (a political action committee). He views this as an exacerbating factor, because Mr. Colby may have had access to people with more campaign experience who could have advised him concerning the disclosure requirements for independent mailings. Rep. Evangelos also cites Mr. Colby's 2012 experience serving as a "managing director" of a PAC, which "proves" his understanding of the disclosure requirements.

### **Response by Gordon Colby**

Through his attorney Bill Logan, Gordon Colby responds by stating that he did not organize the mailing in consultation with Republican candidate Ellen Winchenbach or her campaign committee. According to Mr. Colby, the violation was unintentional. He was unaware that individual citizens were required to include language in mailings that no candidate authorized or paid for the mailing. He argues that there was little harm resulting from the inadvertent omission. He cites examples in which the Commission assessed no penalty or a small penalty for other violations of the disclaimer requirements.

Mr. Colby urges the Commission not to consider the content of the mailer in determining the amount of any penalty. He explains that although Mr. Colby was a member of a 2012

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<sup>2</sup> Section 1014(1) states "Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, cable television systems, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. ...."

PAC, he was not involved in the PAC's independent expenditures. It would be unjust to impute other people's "knowledge" of disclaimer requirements to Mr. Colby for the purpose of increasing a financial penalty.

### **Staff Recommendation**

The Commission staff recommends finding that Gordon Colby violated 21-A M.R.S.A. § 1014(2), because the mailing did not contain the statement that the mailing was "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE." You may wish to consider whether to assess a civil penalty. The staff recommends no penalty or a penalty of \$50, for the following reasons.

Mr. Colby's mailer *does* contain a statement that he paid for the mailer, and an address for him. In the staff's view, this is the more important of the two disclosure requirements, because it informs the voters who is communicating with them to influence them at the ballot box. So, Mr. Colby did comply with § 1014(2) to a substantial degree.

The Commission staff has met with Rep. Evangelos to discuss his objections to the content of the mailer. While we understand his view that the mailers are hurtful, we believe that the Commission – as an arm of the state government – cannot take action against political speech because it is injurious. We recommend that you *disregard* the content of the mailer, when weighing whether to assess a civil penalty.

The Commission is authorized to assess a penalty of up to \$5,000, under § 1015(4). The subsection sets out a number of factors that the Commission shall consider:

A violation of this section may result in a civil penalty of no more than \$5,000, except that an expenditure for yard signs lacking the required information may result in a maximum civil penalty of \$200. In assessing a civil penalty, the commission shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or

misrepresents the identity of the person who financed it. If the person who financed the communication or who committed the violation corrects the violation within 10 days after receiving notification of the violation from the commission by adding the missing information to the communication, the commission may decide to assess no civil penalty.

In this matter, the staff views the issue of intentionality to be the most important factor of those listed in the statute. Mr. Colby contends that the violation was unintentional and that he was not aware of the requirement to include the disclosure statement in the communication. The Commission staff finds this plausible. Even if Mr. Colby is involved in a political movement (as alleged by Rep. Evangelos), that does not mean he is frequently involved in political mailings.

Attorney William Logan is correct that the Commission has shown leniency for some violations of the disclaimer requirements – particularly by candidates. It is routine for the Commission staff to hear of cases in which candidates did not include the complete, required disclaimer on campaign signs or other communications. When these are brought our attention, we call or email candidates, and urge them to remedy the violations (if possible). In all cases that come to mind, the candidates generally claim plausibly that the omission or incorrect disclaimer was unintentional. If a complaint is filed, we bring it to your attention. Usually, no penalty is assessed for campaign communications that are clearly made by the candidate. The examples cited by Mr. Logan (Sen. Gratwick's mailing or Rep. Curtis' lawn signs) are typical.

We receive fewer complaints about disclaimer requirements by groups or individuals acting independently of candidates. In 2008, the Commission did assess a penalty against the Bangor Republican Committee, but that mailing contained no identification of who paid for the mailer. Following the 2010 gubernatorial elections, the Commission assessed the maximum penalty against two political consultants working for other gubernatorial candidates who concealed their identities in paid communications to the

public to influence their vote.<sup>3</sup> The maximum penalty for any disclosure statement violation was \$200 until 2013, when the Legislature increased it to \$5,000.

In conclusion, the Commission staff recommends finding that Gordon Colby violated 21-A M.R.S.A. § 1014(2), because the mailing did not contain the statement that the mailing was "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE." If you believe a penalty is appropriate, we recommend a penalty not to exceed \$50.

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<sup>3</sup> The Commission assessed \$200 against political consultant Dennis Bailey for failure to identify himself in the Cutler Files website, and \$200 penalty against Michael Dennehy, a consultant for Les Otten, who organized phone calls against Paul LePage in the Republican primary. The Otten campaign staff was very cooperative with the Commission's investigation, and the Commission staff found no evidence that Mr. Otten authorized the calls.

November 12, 2014



Dear Benjamin,

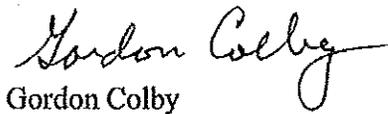
I am making a written request for not only waiver of this penalty but dismissal of it.

My request for dismissal is based on the fact that I am not a PAC and as a private citizen I would have no reason to believe that I would need to notify anyone when I speak freely.

Given that there may be a law, which in my opinion, curtails my right of "freedom of speech" and if so, you are only acting to be in compliance with such a law. I also request a waiver because as you defined in sub paragraph 3) of paragraph two of your letter dated November 5, 2014, there was a failure to receive notice of the filing deadline.

Thank you for your consideration of these issues.

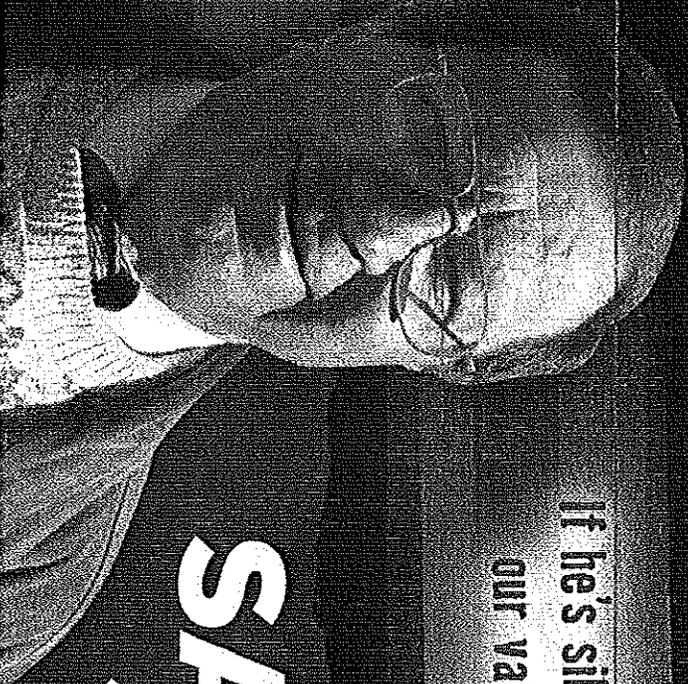
Yours,

  
Gordon Colby

# REP. JEFFREY EVANGELOS REFUSES TO SAY THE PLEDGE OF ALLEGIANCE.

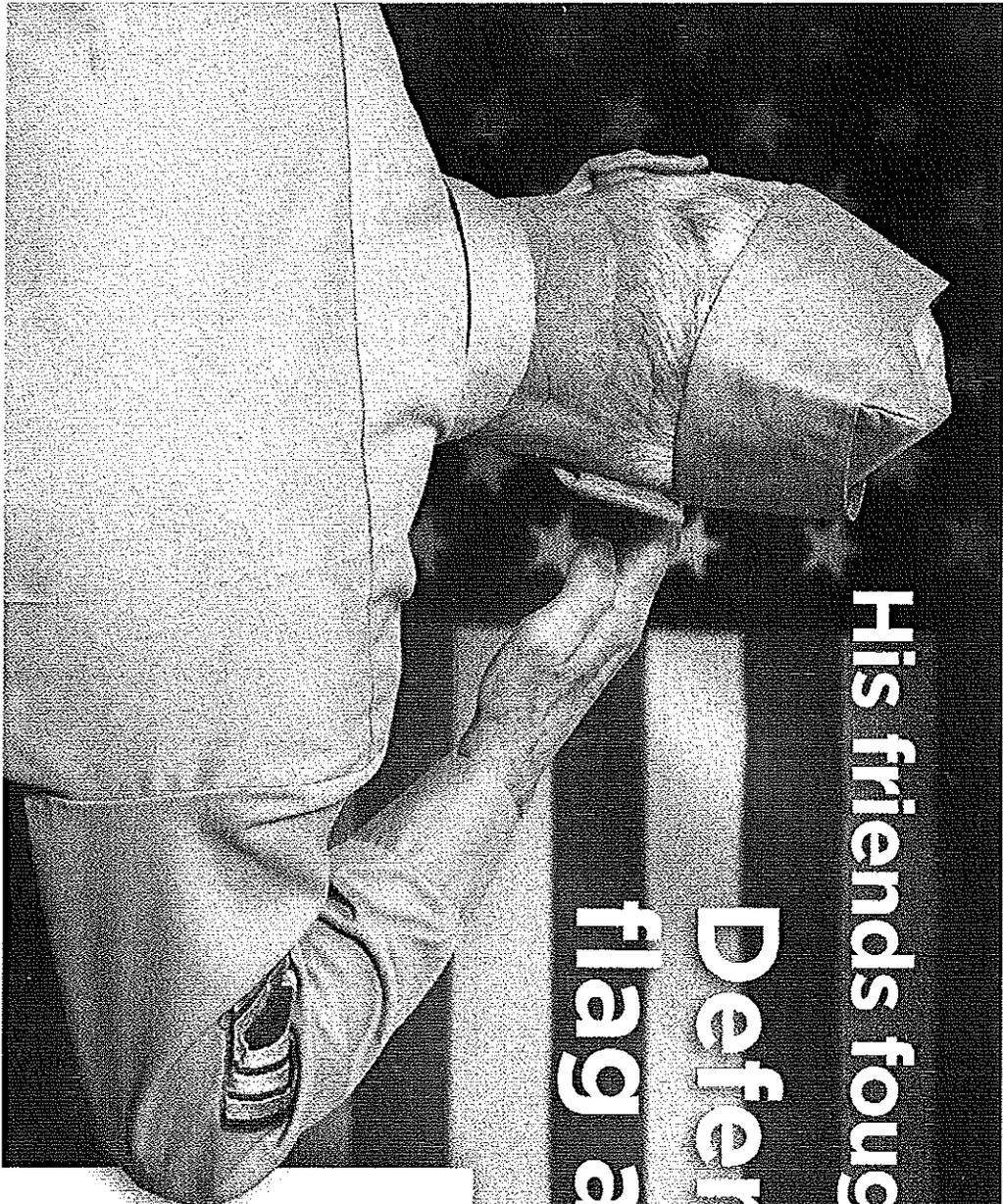
If he's silent on defending our country and  
our values, does he really speak for us?

Call Rep. Evangelos  
at 832-7378 and  
ask him why he  
won't say the pledge.



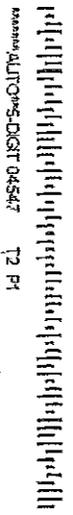
**SAY NO** to  
Jeffrey Evangelos  
on November 4th!

# His friends fought and died for it. Defending our flag and country.



Paid for by Gordon Colby  
PO Box 356  
Union, ME 04862

PSRST STD  
U.S. POSTAGE  
PAID  
Spectrum Marketing  
Companies



\*\*\*\*\*AUTOMATIC DIST 04547 T2 P1

FRIENDSHIP ME 04547-0039

389939



**RECEIVED**  
 NOV 5 2014  
 Maine Ethics Commission

IE 429

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
 Mail: 135 State House Station, Augusta, Maine 04333  
 Office: 45 Memorial Circle, Augusta, Maine  
 Website: www.maine.gov/ethics  
 Phone: 207-287-4179  
 Fax: 207-287-8776

**INDEPENDENT EXPENDITURE REPORT – 2014 GENERAL ELECTION**

Name of Person/Committee Making Expenditure(s) Gordon Colby  
 Mailing Address 510 Goshen Rd  
 City, Zip Code Waldoboro, ME 04572 Telephone 207-542-0045

Please check the appropriate box for the report you are filing and complete the notarized affidavit and attached schedules. Reports must be filed on Saturday or Sunday if that is when they are due by faxing the report to the Commission (287-6775). The Commission must receive the signed original report within 5 days after the fax was received.

Check here if this report is an amendment to a previously filed report? Date of original report: \_\_\_\_\_

**INDEPENDENT EXPENDITURES OVER \$250 MADE FROM SEPTEMBER 5 THROUGH OCTOBER 21, 2014**

Independent expenditures made from September 5 through October 21, 2014 that total more than \$250 per candidate must be reported within 2 calendar days of making the expenditure.

Report of Independent Expenditure over \$250 per Candidate

**INDEPENDENT EXPENDITURES OVER \$100 MADE AFTER OCTOBER 21, 2014**

Independent expenditures made after October 21, 2014 that total more than \$100 per candidate must be reported within one calendar day of making the expenditure.

Report of Independent Expenditure over \$100 per Candidate

**OTHER INDEPENDENT EXPENDITURES**

|                     |   |  |
|---------------------|---|--|
| Report (select one) | <input type="checkbox"/> 60-Day Pre-Election Report                             | <input type="checkbox"/> 11-Day Pre-Election Report  |
| Due Date            | September 5, 2014 by 5:00 p.m.  | October 24, 2014 by 5:00 p.m.  |
| What Gets Reported  | Expenditures aggregating over \$100 per candidate made on or before September 4 | Expenditures aggregating over \$100 per candidate but not over \$250 from September 5 through October 21 |

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

Gordon Colby  
 Signature of PAC or Party Treasurer, or  
 Other Authorized Person Making Expenditure(s)

11/5/14  
 Date



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
Mail: 135 State House Station, Augusta, Maine 04333  
Office: 45 Memorial Circle, Augusta, Maine

Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)  
Phone: 207-287-4179  
Fax: 207-287-6775

**INDEPENDENT EXPENDITURE REPORT – GENERAL ELECTION**

**AFFIDAVIT**

STATE OF Maine

COUNTY OF Kennebec

I, Gordon Colby, being duly sworn, attest that I made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate, authorized committee or agent of a candidate in a race affected by any expenditure listed in this report.

Gordon Colby  
Signature of Affiant

Sworn to before me, this 5 day of November 2014

Cynthia B. Phillips  
(Notary Public/Attorney at Law)

My commission expires: \_\_\_\_\_



Schedule B-IE-1

CANDIDATE(S) SUPPORTED/OPPOSED

- Please list all candidates that were the subjects of independent expenditures.
- If more than one candidate was the subject of the expenditure, allocate the expenditure among the candidates.

| Office sought by candidate (including district # or county)   | Candidate's name | Indicate whether expenditure was made in support of or in opposition to the candidate | Amount expended this reporting period for each candidate |
|---|------------------|---|--|
| 91  | JEFF Evangelos   | opposition  | 1216.47  |
|   |                  |   |  |
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| Total expenditures for all candidates this reporting period.<br>This amount should equal the total independent expenditures listed on Schedule B-IE-2, Line C. => |                  |   | 1216.47  |

Schedule B-IE-2  
PAYMENTS AND OBLIGATIONS

- Please indicate the date, payee, expenditure type, and amount of each expenditure.
- If you are reporting an agreement or obligation to make a future payment, please check (✓) the box next to the expenditure type.

| Expenditure Types |  |     |  |
|-------------------|--|-----|--|
| LIT               | Printing and graphics (flyers, signs, palmcards, etc.) | PRT | Print media ads only (newspapers, magazines)             |
| MHS               | Mail house (all services purchased)                    | RAD | Radio ads, production costs                              |
| PHO               | Phone banks, automated telephone calls                 | TVN | TV or cable ads, production costs                        |
| POL               | Polling and research survey                            | WEB | Website design, registration, hosting, maintenance, etc. |
| POS               | Postage for U.S. Mail and mail box fees                | OTH | Other (include description)                              |

| Date of expenditure   | Payee, address, zip code  | Expenditure type | ✓ | Amount  |
|---|---|------------------|---|---------|
| 10/28/14  | Spectrum Marketing Companies<br>95 Eddy Rd, Suite 101<br>Manchester, NH 03102 | MHS              |   | 1216.47 |
|   |   |                  |   |         |
|   |   |                  |   |         |
|   |   |                  |   |         |
|   |   |                  |   |         |
|   |   |                  |   |         |
|   |   |                  |   |         |
|   |   |                  |   |         |
| A. Expenditures for this page ⇒   |   |                  |   |         |
| B. Total for all other Schedule B-IE-2 pages (If any) ⇒   |   |                  |   |         |
| C. Total independent expenditures for this reporting period (A+B).<br>This amount should equal the total amount for all candidates listed on Schedule B-IE-1. ⇒ |   |                  |   | 1216.47 |



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

November 5, 2014

Gordon Colby  
510 Goshen Road  
Waldoboro, ME 04572

Re: Penalty for late filing of IE report

Dear Mr. Colby,

The Commission staff has made a preliminary determination that you were late in filing an Independent Expenditure (IE) report. IE reports for expenditures made after October 21 for amounts over \$100 per candidate are due within one calendar day of the expenditure. (Commission Rules, Chapter 1, Section 10(3)) You made such an expenditure on October 28, requiring an IE report by October 23, but did not report it until November 5, 2014. Under the Commission's statutes, the late filing of an IE report triggers an enforcement process. (21-A M.R.S.A. § 1020-A(4-A) Based on the amount of financial activity in the report, the number of calendar days the report was late, and your history of violations, the commission staff has determined that a penalty of \$85.12 is owed. (Please see attached penalty matrix for the calculation).

You may make a written request for waiver to the Commission any time within 14 calendar days of the receipt of this notice. The request must contain a full explanation of the reasons you filed late. Upon receiving your request, the Commission staff will schedule your appeal for an upcoming Commission meeting. The Commission may waive the penalty if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; (3) failure to receive notice of the filing deadline; or (4) relevant evidence that you made a bona fide effort to file the report on time. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure. (21-A M.R.S.A. § 1020-A(2))

The staff requests that you pay the preliminary penalty within 14 days of the date of this letter if you do not intend to request a waiver. Please use the payment receipt below when mailing payments. Payments may also be made online at [www.maine.gov/ethics](http://www.maine.gov/ethics) by clicking on the "penalty payment" link. Please call me at (207) 287-6221 or send me an email at [benjamin.p.dyer@maine.gov](mailto:benjamin.p.dyer@maine.gov) if you have any questions.

Sincerely,

Benjamin P. Dyer  
Political Committee and Lobbyist Registrar

Enclosure: payment receipt & penalty matrix

Payment Receipt

Mail payment to:

The Maine Ethics Commission  
135 State House Station  
Augusta, ME 04333

Make checks payable to: "Treasurer, State of Maine."

Gordon Colby  
510 Goshen Road  
Waldoboro, ME 04572

**Violation:** Late IE Report  
**Amount Due:** \$85.12

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Name: Gordon Colby Report Title: Independent Expenditure  
 Due Date: October 29, 2014  
 Previous Violation(s): N/A Filed Date: November 5, 2014

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%  
 For the second violation, 3%  
 For the third and each subsequent violation, 5%

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

| Penalty Example:  |  | Your Penalty is calculated as follows: |            |
|---|--|--|------------|
| The treasurer files the PAC report two (2) days late. The PAC has not had any previous late violations this biennium. The PAC reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is |  |  |            |
| \$2,500   | Greater amount of the total contributions received or expenditures made during the filing period | Contributions / Expenditures:          | \$1,216.47 |
| X .01   | Percent prescribed for first violation   | Percent Prescribed:                    | 1%         |
| \$25.00   | One percent of total contributions   | Number of days late:                   | 7          |
| X 2   | Number of calendar days late   | Total penalty accrued:                 | \$85.12    |
| \$50.00   | Total Penalty  |  |            |

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

**MAXIMUM PENALTIES**  
 21-A M.R.S.A. Section 1020-A  
 \$5,000 for reports required under section 1019-B, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is one-fifth of the amount reported late.



Russell B. Pierce, Jr.

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Portland, ME 04112-4600

T 207.774.7000  
F 207.775.0806  
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rpierce@nhdlaw.com

December 19, 2014

**VIA EMAIL AND REGULAR MAIL**

Jonathan Wayne, Executive Director  
Maine Commission on Governmental Ethics & Election Practices  
135 State House Station  
Augusta ME 04333

Dear Jonathan:

I am writing on behalf of Rep. Jeffrey Evangelos (House District 91), to present your office with this formal complaint against Gordon Colby of Waldoboro, Maine, and to request an investigation pursuant to 21-A M.R.S. § 1003. We believe this matter presents a clear violation of the publication and distribution of political communications law, 21-A M.R.S. § 1014. Given the history of Mr. Colby's prior campaign conduct and participation, and other present circumstances, we believe the Commission should consider the maximum penalty based upon a knowing and intentional violation.

The political communication in issue is attached.<sup>1</sup> It blatantly violates the requirement under subsection 2 of 21-A M.R.S. § 1014. If, after investigation, it is determined that the communication was not authorized by a candidate, the communication clearly fails to comply with the "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE" disclosure provision of that subsection.

Yet the violation is exacerbated by a number of issues and circumstances, which your investigation might consider in the context of penalty assessment or any other compliance matter. First, as backdrop, the political communication in issue takes the form of negative and false "attack" communication, widely distributed in print within the community. It contains provably false fact, which upon information and belief, Mr. Colby intentionally or recklessly made up out of whole cloth under what would be akin to the "actual malice" standards commonly applied in libel and slander cases. Rep. Evangelos has always said the Pledge of Allegiance. Those who sit next to him in the House have witnessed this upon commencement of every day, session, or proceeding when the pledge is made. Without exception, at every event, presentation, or other meeting where the Pledge is made, Mr. Evangelos stands in attention and openly joins in the Pledge of Allegiance. His political career has been highlighted by his support

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<sup>1</sup> On the flier, Mr. Colby lists a post office box in Union, Maine as his address, rather than his personal mailing address in Waldoboro. Upon information and belief, the Union post office box is the post office box of Mr. Colby's employer, the Union branch of R.T. Allen Blueberry Corporation of Ellsworth, Maine.

Jonathan Wayne, Executive Director  
Maine Commission on Governmental Ethics & Election Practices  
December 19, 2014  
Page 2

for Veterans Affairs, and like so many people in Maine he has in his family history relatives who served in the armed services. To question his loyalty or patriotism in the way that Mr. Colby's false flier does, constitutes politically malicious speech.

Next, Mr. Colby's late-filed Independent Expenditure Report of November 5, 2014, indicates that the communication was printed by Spectrum Marketing Companies of Manchester, New Hampshire. Mr. Colby failed to comply with the timeliness provisions of the state reporting requirements, by filing a late Independent Expenditure Report. Furthermore, his report indicates that the campaign expenditure was incurred on the same date – October 28, 2014 – as a House Republican Majority Fund expenditure also opposing Rep. Evangelos (as reported on its Independent Expenditure Report of 10/28/2014). It is unknown at this time if the two coinciding expenditures reflect a planned or coordinated opposition between Mr. Colby and the House Republican Majority Fund. There are, however, circumstantial indications that could trigger further investigation. Mr. Colby is a known "Tea Party" participant, a group commonly associated with the Republican Party, and Mr. Colby has in the past apparently received awards for his grass roots activism by organizations with "conservative" lobbying or political interests. On the day that Mr. Colby's political communication occurred – timed for just a few days before the election – the House Republican Majority Fund's political communication was also circulated within the District 91 community. That distribution was made, based on six eyewitness accounts, by individuals driving motor vehicles with out-of-state license plates (New York). The two communications coincided on the same day – critically timed for just a few days before the election in order to strategically frustrate Rep. Evangelos's ability as an independent candidate to timely respond to such a false and malicious political attack.<sup>2</sup> The potential for confusion among voters of whether Mr. Colby's professionally printed communication was or was not an officially authorized campaign communication (which would thus lend an aura of inherent truth to the maliciously false claims contained therein) was heightened by these circumstances. These aggravating circumstances impact both the significance of the late Independent Expenditure Report, but also aggravate the violation of the disclosure requirements of section 1014.

If indeed the campaign expenditures of Mr. Colby and the House Republican Majority Fund, or their content or date of dissemination, were a coordinated effort, that premeditation also exacerbates the section 1014 violation in issue.

Finally, relevant to Mr. Colby's background as a person with relatively heightened experience in the publication and distribution of political communications, Mr. Colby's flier from the 2012 election should also be remembered. That flier (attached) had been referred to the

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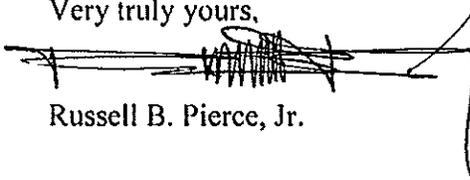
<sup>2</sup> The critical timing is another factor to consider: Both the flier in issue and the House Republican Majority Fund communication were distributed on the same day, Friday October 31<sup>st</sup>, the last Friday before the election. The three local print publications covering the election – the Village Soup-Courier Gazette, the Lincoln County News, and The Free Press – are all published on a weekly cycle on Thursday, such that there would be no local print publication cycle by which Mr. Evangelos could respond between Friday when these attack communications were distributed and the election. Hence, the timing of the distribution and its strategic placement to eliminate or seriously frustrate any response is an additional aggravating factor to Mr. Colby's blatant violation of 21-A M.R.S. § 1014.

Jonathan Wayne, Executive Director  
Maine Commission on Governmental Ethics & Election Practices  
December 19, 2014  
Page 3

Office of the Attorney General for investigation for violation of laws against threatening, when Mr. Colby published this political communication opposing Jeffrey Evangelos, depicting a bomb or other incendiary device exploding below the face of the candidate's photograph. It is quite significant to note that, despite its malicious content, this 2012 political communication nonetheless did contain the requisite "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE" disclosure. These fliers were distributed by the Maine Conservative Political Action political committee in 2012, of which Mr. Colby was the Managing Director (and also listed as one of the primary fundraisers and decision-makers). *See* 2012 Registration for Maine Conservative Political Action, dated 8/24/2012. This proves that Mr. Colby actually knows how to comply with the notice requirement of section 1014, and reflects a deliberate decision on his part, and perhaps on the part of collaborators, to violate section 1014 in this instance just two years later in the 2014 election.

For all of the above reasons, we urge the Commission to investigate this matter, consider whether the matter should include investigation of other persons for cooperation or collaboration in relation to the violation in issue, and impose the maximum penalty upon Mr. Colby and any others found to have been acting in concert with him.

Very truly yours,

A handwritten signature in black ink, appearing to read "Russell B. Pierce, Jr.", written over a horizontal line.

Russell B. Pierce, Jr.

cc: Jeffrey Evangelos

IE 354

Commission on Governmental Ethics and Election Practices  
Mail: 135 State House Station, Augusta, Maine 04333  
Office: 45 Memorial Circle, Augusta, Maine  
Website: www.maine.gov/ethics  
Phone: 207-287-4179  
Fax: 207-287-6775



### 2014 INDEPENDENT EXPENDITURE REPORT

| COMMITTEE   |            | TREASURER  |
|---|------------|--|
| HOUSE REPUBLICAN MAJORITY FUND<br>PO BOX 5629<br>AUGUSTA, ME 04332<br>PHONE: (207) 341-0555<br>EMAIL: SHAWNRODERICK@HOTMAIL.COM |            | HON. KEN FREDETTE<br>PO BOX 70<br>NEWPORT, ME 04953<br>PHONE: (207) 341-0555<br>EMAIL: FREDLAW@MYFAIRPOINT.NET |
| REPORT  | DUE DATE   | REPORTING PERIOD   |
| Independent Expenditure Report  | 10/29/2014 | 10/28/2014 - 10/28/2014  |

#### FINANCIAL ACTIVITY SUMMARY

| EXPENDITURES                     |            |
|----------------------------------|------------|
| 1. CANDIDATE(S) SUPPORTED/OPOSED | \$3,050.00 |
| 2. DEBTS AND OBLIGATIONS         | \$0.00     |
| 3. TOTAL PAYMENTS (LINE 1 + 2)   | \$3,050.00 |

#### AFFIDAVIT

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

SHAWN RODERICK, being duly sworn, attests that he/she made each of the expenditures listed in the attached report independently of, and not in cooperation, consultation, or concert with, or at the request or suggestion of, the candidate(s) named in the report, the political committee of the candidate(s), or their agents.

\_\_\_\_\_  
(Signature of Affiant)

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2014

\_\_\_\_\_  
(Notary Public/Attorney at Law)

Perjury is a Class C Crime. (17-A MRSA § 451)

REPORT FILED BY: SHAWN RODERICK  
REPORT FILED ON: 10/28/2014  
LAST MODIFIED: 10/28/2014  
PRINTED: 10/29/2014  
COMMITTEE ID: 5355

**SCHEDULE B-IE-1  
CANDIDATE(S) SUPPORTED/OPPOSED**

| Support / Oppose   | Candidate Name              | Office         | District / County | Expenditure Date | Expenditure Amount | Payee                  |
|--|-----------------------------|----------------|-------------------|------------------|--------------------|------------------------|
| SUPPORT  | ANDREW RUSSELL BUCKLAND     | REPRESENTATIVE | Dist 113          | 10/28/2014       | \$1,500.00         | WKTJ                   |
| OPPOSE   | HONORABLE JEFFREY EVANGELOS | REPRESENTATIVE | Dist 91           | 10/28/2014       | \$50.00            | Maine Republican Party |
| SUPPORT  | WILLIAM R TUELL             | REPRESENTATIVE | Dist 139          | 10/28/2014       | \$500.00           | HARVEST CONSULTING LLC |
| SUPPORT  | HON. BRADLEY S MOULTON      | REPRESENTATIVE | Dist 4            | 10/28/2014       | \$500.00           | HARVEST CONSULTING LLC |
| OPPOSE   | HONORABLE JEFFREY EVANGELOS | REPRESENTATIVE | Dist 91           | 10/28/2014       | \$500.00           | HARVEST CONSULTING LLC |
| <b>Total expenditures for all candidates this reporting period</b> |                             |                |                   |                  | <b>\$3,050.00</b>  |                        |

**SCHEDULE B-IE-2  
PAYMENTS AND OBLIGATIONS**

| EXPENDITURE TYPES  |   |            |  |                   |
|--|---|------------|--|-------------------|
| CNS  | Campaign consultants  | POL        | Polling and survey research                              |                   |
| CON  | Contribution to other candidate, party, committee               | POS        | Postage for U.S. Mail and mail box fees                  |                   |
| EQP  | Equipment (office machines, furniture, cell phones, etc.)       | PRO        | Other professional services                              |                   |
| FND  | Fundraising events  | PRT        | Print media ads only (newspapers, magazines, etc.)       |                   |
| FOD  | Food for campaign events, volunteers                            | RAD        | Radio ads, production costs                              |                   |
| LIT  | Print and graphics (flyers, signs, postcards, t-shirts, etc.)   | SAL        | Campaign workers' salaries and personnel costs           |                   |
| MHS  | Mail house (all services purchased)                             | TRV        | Travel (fuel, mileage, lodging, etc.)                    |                   |
| OFF  | Office rent, utilities, phone and internet services, supplies   | TVN        | TV or cable ads, production costs                        |                   |
| OTH  | Other   | WEB        | Website design, registration, hosting, maintenance, etc. |                   |
| PHO  | Phone banks, automated telephone calls                          |            |  |                   |
| Date of expenditure  | Payer, address, zip code  | Remark     | Expenditure type   | Net Amount        |
| 10/28/2014   | WKTJ<br>P.O BOX 590<br>FARMINGTON, ME 04938                     | RADIO      | RAD  | \$1,500.00        |
| 10/28/2014   | Maine Republican Party<br>9 Higgins Street<br>Augusta, ME 04330 | PRINTING   | LIT  | \$50.00           |
| 10/28/2014   | HARVEST CONSULTING LLC<br>5 HOWE STREET<br>AUGUSTA, ME 04330    | CANVASSING | PRO  | \$1,600.00        |
| <b>A. Total Expenditure Payments</b>                                     |   |            |  | <b>\$3,050.00</b> |
| <b>B. Total Obligations</b>  |   |            |  | <b>\$0.00</b>     |
| <b>C. Total Independent expenditures for this reporting period (A+B)</b> |   |            |  | <b>\$3,050.00</b> |

# Jeff Evangelos is **TOO EXTREME**, even for the Democratic Party.

Evangelos ran as a liberal Democrat for the State House in 2004, but the party wasn't *extreme enough*. He became an "Independent" because President George Bush wasn't impeached by the Democrats.



*"Recently I did  
resign from the  
Democratic party.  
I am disappointed  
that they haven't  
taken Bush and  
impeached him..."*

-JEFF EVANGELOS

**That's not "Independent" -  
that's **EXTREME!****

Knox County doesn't need an

**EXTREME LIBERAL** as representative.

**On November 6, VOTE NO on Jeff Evangelos.**

Paid for by the Maine Conservative PAC, PO Box 37, Nobleboro, ME 04555  
**NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE**

<http://www.mscap.org/newsroom/Frontstep/FrontstepEvangelos.htm>

MAINE  
CONSERVATIVE  
**PAC**

PO Box 37, Nobleboro, ME 04555

Presort Std  
US Postage  
**PAID**  
Permit #390  
Portland ME

mblmlll



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

December 24, 2014

Mr. Gordon Colby  
510 Goshen Road  
Waldoboro, ME 04572

Dear Mr. Colby,

This letter is to describe the procedures that our office will use in considering the attached complaint by Representative Jeffrey Evangelos concerning deficiencies in the disclosure statement and possible coordination with others in your mailing advocating against Rep. Evangelos and your request for a waiver of the finding of violation for the late filing of the Independent Expenditure report for that same mailing. I am scheduling the complaint and waiver request for the next meeting of the Commission on Friday, January 23 at 9:00 a.m. at the Commission's office at 45 Memorial Circle in Augusta. *The Commission staff recommends that you be present at the meeting to respond to Rep. Evangelos' complaint and to speak in support of your request for the waiver of the late-filing penalty.*

**Required Disclosures on Mailings**

Under Maine Election Law (21-A M.R.S.A. § 1014(1) & (2)), mailings and other paid communications expressly advocating for or against candidates must include the name and address of the person who financed the communication and a statement whether a candidate authorized (*i.e.*, approved of) the expenditure for the communication.

If the communication . . . is not authorized by a candidate, a candidate's political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication . . . If the communication is in written form, the communication must contain at the bottom of the communication in 12-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

(21-A M.R.S.A. § 1014(2)) The mailing contains the following disclosure statement: "Paid for by Gordon Colby/PO Box 356/Union, ME 04862" The mailing does not contain any statement whether a candidate authorized the communication.

Mr. Gordon Colby  
Page 2  
December 24, 2014

At the Commission's meeting, regarding the complaint, and in addition to your waiver request, I expect the Commissioners to discuss:

- Whether you organized the mailing in consultation with, or at the request or suggestion of, Ellen Winchenbach, her campaign committee or their agents.
- Why the mailing does not contain the required statement "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

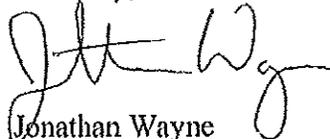
The Commission may assess a maximum civil penalty of \$5,000 for communications lacking the required information. (21-A M.R.S.A. § 1014(4))

#### **Your Opportunity to Respond to the Complaint**

If you would like to respond to the complaint and the potential penalty, please submit a written response by Wednesday, January 7, 2015. *We suggest that your written response address whether you consulted with Ms. Winchenbach on the mailing or she authorized the mailing to be sent.* I will include any written response that you submit with the materials the Commissioners review before the January 23, 2015 meeting.

Please call me at 287-4179 if you have any questions about this matter.

Sincerely,



Jonathan Wayne  
Executive Director

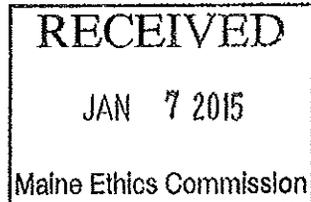
cc: Russell B. Pierce, Jr., Esq. (w/o attached complaint)

**IRWIN  
&  
TARDY  
MORRIS**

William P. Logan  
wlogan@jtmllaw.com

159 Main Street  
P.O. Box 476  
Newport, Maine 04953

207.368.2828 T  
207.368.2822 F



January 7, 2015

Jonathan Wayne, Executive Director  
Maine Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, ME 04333

Re: *Response to Request for Investigation – Gordon Colby*

Dear Jonathan:

I represent Gordon Colby. Please accept this letter as the response to the request for investigation from Rep. Jeffrey Evangelos and your letter dated December 24, 2014.

I will begin by responding to the two questions posed in your letter.

1. "Whether you organized the mailing in consultation with, or at the request or suggestion of, Ellen Winchenbach, her campaign committee or their agents."

**RESPONSE:** Mr. Colby did not organize the mailing in consultation with, or at the request or suggestion of, Ellen Winchenbach, her campaign committee or their agents.

2. "Why the mailing does not contain the required statement "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

**RESPONSE:** Mr. Colby was unaware that individual citizens (as opposed to PACs or party committees) were subject to the requirement that the paid for language include the "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE" disclaimer. It is that simple. This is the first expenditure that Mr. Colby has personally made in an election and his lack of experience is a significant mitigating factor that the Commission should consider in determining whether to impose any penalty. There is also very little (if any) harm resulting from the inadvertent omission of part of the disclaimers. The mailer's disclaimer states that Mr. Colby personally financed the expenditure and provided a mailing address for him. Mr. Colby was not involved with nor did he hold any position with Ms. Winchenbach's campaign. The address on the expenditure was not related to her campaign. Any person looking at the disclaimer would have no logical basis to jump to the conclusion that the mailer was somehow connected to or authorized by her or her campaign.

Jonathan Wayne  
January 7, 2015  
Page 2 of 3

Furthermore, the Commission has addressed incomplete disclaimers in several prior instances. In 2012, Sen. Geoffrey Gratwick sent out a mailing which did not include the required "paid for and authorized by" disclaimer. Despite finding a violation, the Commission assessed no financial penalty. In 2010, Michael Dennehy received a \$200.00 penalty for "robocalls" that did not contain *any* disclaimer whatsoever. In 2008, the Bangor City Republican Committee sent out a mailer that lacked both the disclaimers indicating who had paid for the mailing and the disclaimer that it was not paid for or authorized by any candidate. The Commission found a violation and assessed a financial penalty of \$100.00. Also in 2008, Rep. Phil Curtis was found in violation for lawn signs that had an incomplete disclaimer, specifically the lack of an address or name of who paid for the signs. The Commission found a violation, but assessed no financial penalty. The Commission's past practice is of imposing no financial penalty in circumstances involving incomplete disclaimers or modest financial penalties in the absence of any disclaimer whatsoever.

In addition to the foregoing, I am compelled to respond to the "circumstances" detailed in the request for investigation that Rep. Evangelos believes warrant "the maximum penalty." The request first invites the Commission to look at the *content* of the mailer in determining the appropriate penalty. The Commission should decline this invitation. First and foremost, there is no statutory or regulatory basis to penalize a person for a disclaimer violation based upon the *content* of their political speech. Secondly, and more importantly, I respectfully submit that any such consideration by the Commission would blatantly violate fundamental constitutional rights protected by both the United States and State of Maine Constitutions.

Secondly, the request argues that because a PAC made an independent expenditure in the same House race at approximately the same time as Mr. Colby's expenditure, that this somehow should be an "aggravating factor" in determining whether to impose a penalty against Mr. Colby. This is, at best, a baseless "conspiracy" theory. Again, there is no statute or rule that permits the Commission to consider expenditures made by other persons or entities when determining whether to impose a penalty. Also, without belaboring the obvious, this approach suggested in the request would violate fundamental notions of fairness.

Finally, the only "circumstance" described in the request for investigation that could be of some relevance is the fact that Mr. Colby was previously affiliated with a PAC. However, a former association with a PAC should not be a basis for enhancing a penalty. While Mr. Colby was a member of a PAC, he was not involved in that PAC's independent expenditures. Since others handled that PAC's expenditures, it would be unjust to impute other people's "knowledge" of disclaimer requirements to Mr. Colby for the sole purpose of increasing a financial penalty.

In conclusion, there was no coordination between Mr. Colby and Ms. Winchenbach or her campaign. Mr. Colby made the expenditure on his own. We acknowledge that the disclaimer on Mr. Colby is incomplete. However, it was not an intentional violation. Mr. Colby did include the

Jonathan Wayne  
January 7, 2015  
Page 3 of 3

required disclaimer language concerning who paid for the mailer (himself) and also supplied the required address. He simply failed to include the "not paid for or authorized by" disclaimer language. As such, the Commission should follow its precedent and find a violation, but impose no financial penalty, especially in light of the fact that Mr. Colby did include some required disclaimer language, the fact he is not an individual with substantial prior knowledge of Maine's election finance laws and rules.

If you, or the Commission, require any additional information, please feel free to contact me. I will be present at the next Commission meeting to provide further response, if necessary, and answer any additional questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "William P. Logan", with a long horizontal flourish extending to the right.

William P. Logan, Esq.

cc: Gordon Colby  
Russell B. Pierce, Jr., Esq.

## 21-A MRSA §1019-B. REPORTS OF INDEPENDENT EXPENDITURES

**1. Independent expenditures; definition.** For the purposes of this section, an "independent expenditure":

✓ A. Is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and [2003, c. 448, §3 (NEW).]

B. Is presumed to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 21 days, including election day, before a primary election; or the 35 days, including election day, before a general or special election. [2013, c. 334, §15 (AMD).]

[ 2013, c. 334, §15 (AMD) .]

**2. Rebutting presumption.** A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of making the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and must determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

[ 2003, c. 448, §3 (NEW) .]

**3. Report required; content; rules.**

[ 2009, c. 524, §6 (RPR); T. 21-A, §1019-B, sub-§3 (RP) .]

✓ **4. Report required; content; rules.** A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election, the report must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 558, §2 (AMD).]

B. A report required by this subsection must contain an itemized account of each expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each expenditure and the name of each payee or creditor. The report must state whether the expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate. [2009, c. 524, §7 (NEW).]

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. The commission may adopt procedures requiring the electronic filing of an independent expenditure report, as long as the commission receives the statement made under oath or affirmation set out in paragraph B by the filing deadline and the commission adopts an exception for persons who lack access to the required technology or the technological ability to file reports electronically. The commission may adopt procedures allowing for the signed statement to be provisionally filed by facsimile or electronic mail, as long as the report is not considered complete without the filing of the original signed statement. [2013, c. 334, §16 (AMD).]

This subsection takes effect August 1, 2011.

[ 2013, c. 334, §16 (AMD) .]

**5. Exclusions.** An independent expenditure does not include:

A. An expenditure made by a person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents; [2011, c. 389, §21 (NEW).]

B. A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting; [2011, c. 389, §21 (NEW).]

C. A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and [2011, c. 389, §21 (NEW).]

D. A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate. [2011, c. 389, §21 (NEW).]

[ 2011, c. 389, §21 (NEW) .]

## 21-A MRS § 1020-A. FAILURE TO FILE ON TIME

**1. Registration.** A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

**2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (AMD).]
- B. An error by the commission staff; [1999, c. 729, §5 (AMD).]
- C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (AMD).]
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. [2009, c. 190, Pt. A, §13 (AMD).]

**3. Municipal campaign finance reports.** Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

### **4. Basis for penalties.**

[ 2001, c. 470, §7 (AMD); T. 21-A, §1020-A, sub-§4 (RP) .]

**4-A. Basis for penalties.** The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing

period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 1%; [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]
- B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]
- C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as the facsimile copy is filed by the applicable deadline and an original of the same report is received by the commission within 5 calendar days thereafter.

## **5. Maximum penalties.**

[ 2001, c. 470, §8 (AMD); T. 21-A, §1020-A, sub-§5 (RP) .]

**5-A. Maximum penalties.** Penalties assessed under this subchapter may not exceed:

- A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; and section 1017, subsection 4; [2011, c. 389, §23 (AMD).]
- A-1. Five thousand dollars for reports required under section 1019-B, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late; [2011, c. 389, §24 (NEW).]
- B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late; [2011, c. 389, §25 (AMD).]
- C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; or [2011, c. 558, §4 (AMD).]
- D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B. [2011, c. 558, §4 (AMD).]
- E. [2011, c. 558, §5 (RP).]

[ 2011, c. 558, §§4, 5 (AMD) .]

**6. Request for a commission determination.** If the commission staff finds that a candidate or political committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the candidate or political committee within 3 business days following the filing deadline informing the candidate or political committee that a report was not received. If a candidate or a political committee files a report required under this subchapter late, a notice of preliminary penalty must be sent to the candidate or political committee whose registration or campaign finance report was not received by 11:59 p.m. on the deadline date, informing the candidate or political committee of the staff finding of violation and preliminary penalty calculated under subsection 4-A and providing the candidate or political committee with an opportunity to request a determination by the commission. Any request for a determination must be made within 14 calendar days of receipt of the commission's notice. A candidate or political committee requesting a determination may either appear in person or designate a representative to appear on the candidate's or political committee's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

[ 2013, c. 334, §17 (AMD) .]

**7. Final notice of penalty.** If a determination has been requested by the candidate or political committee and made by the commission, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the political committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

[ 2009, c. 302, §6 (AMD) .]

**8. Failure to file report.** The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. The notice must be sent by certified mail. If a candidate fails to file a report after 2 notices have been sent by the commission, the commission shall send a final notice by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the notices required by this subsection is guilty of a Class E crime.

[ 2007, c. 443, Pt. A, §25 (AMD) .]

**8-A. Penalties for failure to file report.** The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

[ 2003, c. 628, Pt. A, §6 (NEW) .]

**9. List of late-filing candidates.** The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

[ 1995, c. 483, §15 (NEW) .]

**10. Enforcement.** A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

[ 2009, c. 302, §7 (RPR) .]

## 21-A MRSA §1014. PUBLICATION OR DISTRIBUTION OF POLITICAL COMMUNICATIONS

**1. Authorized by candidate.** Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, cable television systems, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. A communication financed by a candidate or the candidate's committee is not required to state the address of the candidate or committee that financed the communication. If a communication that is financed by someone other than the candidate or the candidate's authorized committee is broadcast by radio, only the city and state of the address of the person who financed the communication must be stated.

[ 2013, c. 494, §1 (AMD) .]

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[ **2. Not authorized by candidate.** If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. If the communication is in written form, the communication must contain at the bottom of the communication in print that is no smaller in size than 12-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

[ 2013, c. 362, §2 (AMD) .]

**2-A. Other communications.** Whenever a person makes an expenditure to finance a communication that names or depicts a clearly identified candidate and that is disseminated during the 21 days before a primary election or 35 days before a general election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. The disclosure is not required if the communication

was not made for the purpose of influencing the candidate's nomination for election or election.

[ 2013, c. 362, §3 (AMD) .]

**3. Broadcasting prohibited without disclosure.** No person operating a broadcasting station or cable television system within this State may broadcast any communication, as described in subsections 1 to 2-A, without an oral or written visual announcement of the disclosure required by this section.

[ 2011, c. 389, §11 (AMD) .]

**3-A. In-kind contributions of printed materials.** A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a ballot question. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include the name or title of that candidate, political committee or political action committee as the authorizing agent for the printing and distribution of the in-kind contribution.

[ 2009, c. 190, Pt. A, §3 (AMD) .]

**3-B. Newspapers.** A newspaper may not publish a communication described in subsections 1 to 2-A without including the disclosure required by this section. For purposes of this subsection, "newspaper" includes any printed material intended for general circulation or to be read by the general public, including a version of the newspaper displayed on a website owned or operated by the newspaper. When necessary, a newspaper may seek the advice of the commission regarding whether or not the communication requires the disclosure.

[ 2007, c. 443, Pt. A, §9 (AMD) .]

**4. Enforcement.** A violation of this section may result in a civil penalty of no more than \$5,000, except that an expenditure for yard signs lacking the required information may result in a maximum civil penalty of \$200. In assessing a civil penalty, the commission shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it. If the person who financed the communication or who committed the violation corrects the violation within 10 days after receiving notification of the violation from the commission by adding the missing information to the communication, the commission may decide to assess no civil penalty.

[ 2011, c. 389, §12 (AMD) .]