



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

Approved on:

Minutes of June 4, 2014, Special Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: Walter F. McKee, Esq., Chair; Margaret E. Matheson, Esq.; Michael T. Healy, Esq.

By phone: Hon. Jane Amero; André G. Duchette, Esq.

Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Counsel

Chair Walter McKee convened the meeting at 4:05 p.m.

The Commission considered the following items:

1. Request by Cumberland County Sheriff Kevin Joyce to Investigate Citizens for a Safe Cumberland County PAC

Ms. Amero disclosed that 14 years ago she ran for Congress and the Maine State Police Association endorsed her candidacy. Mike Edes was an officer at that time. She said she has not been in communication with Mr. Edes since that time and believed she could be objective during this matter.

Mr. Wayne explained that the Commission received a request by Cumberland County Sheriff Kevin Joyce to verify the sources of funding for the Citizens for a Safe Cumberland County PAC and whether his primary election opponent, Michael T. Edes, cooperated with the PAC concerning its expenditures. Specifically, he said, the issues to clarify are whether the source of money spent by the PAC really did come from Brentwood Financial LLC, a Florida company associated with a real estate developer, Michael Liberty, and whether Mr. Edes has been involved in any of the communications paid for by the PAC.

Mr. McKee said some of these questions had been answered by a late filing from the PAC's counsel. Mr. Wayne explained that some of the details of where the PAC got some of the images for the materials may be helpful for the Commission in making their decision. He said the source of the funds beyond what was reported appears to be unknown to the PAC.

Mr. McKee said for clarity, as far as the PAC is concerned, it was Brentwood Financial paying the funds and Mr. Wayne confirmed this.

Sheriff Kevin Joyce said his campaign manager made this request when it was noticed that an unprecedented amount of money was being donated to run some attack ads. He said \$100,000 is very unusual for a simple sheriff race in Maine. He said his campaign questions whether there may have been communication between his opponent and the funder of the PAC since they were childhood friends. Mr. Joyce said the owner of the LLC, Mr. Liberty, seems to have disappeared and no one has been able to confirm with him where the funds came from or his connection to Mr. Edes. He also questioned whether the photos in the flyers were paid for by the PAC and questioned whether the PAC obtained them from the candidate's campaign. He said the voter registration list purchase was reported on Mr. Edes' report but nothing reported on the PAC's report which raises the question of whether it could have been shared between the PAC and Mr. Edes. He said also that comments were made on Facebook that Mr. Edes and the PAC's treasurer, Christine Massengill, were working together to put signs out on Memorial Day. He questioned whether Mr. Edes and Mr. Liberty have not spoken at all since they claimed to be childhood friends. He said giving \$100,000 for a campaign and not speaking at all about that large sum of money, not even a thank you, creates reasonable suspicion. He questioned why there had been no response from Mr. Liberty. Also, how did the PAC obtain the personal photos of Mr. Edes without any communication between the PAC and the candidate. He said several photos of Mr. Edes are the same ones used for both the candidate's communications and the PAC's communications. In closing, he questioned why someone would spend \$100,000 of their own money to try and sway an election for a sheriff's race.

Mr. McKee said in reviewing the additional materials submitted by Mr. Walker, some of Mr. Joyce's questions were answered, for instance where photos may have come from.

Mr. Joyce said he believed this was a case of "follow the money" and there is no proof that what the PAC states is true. He said it seems very unlikely that these two friends did not speak of this large donation at some point in the months prior.

Mr. McKee said this type of case has arisen before, where friends or like-minded people decide to make a donation just before the election, but that alone is not reason enough to assume or suspect that there was any coordination. He said Mr. Liberty's donation is really his business and he is free to do so.

Mr. Joyce explained that suspicion arises when such a large sum of money appears out of nowhere and claims to be without any coordination.

Paul Brunetti, Esq., campaign manager for Michael Edes, explained that he knew there was a PAC registered with the Ethics Commission when he became involved with the Edes campaign in late April. He said he did not know who was funding it or what their plan was. He said he was committed to running a hard campaign and raising as much money as possible. He said the Edes campaign has raised nearly \$40,000 and has sent out some mailers and purchased the party voter list for door-to-door work. He explained that he is in charge of all campaign literature and the candidate, Mr. Edes, is overseeing the Facebook page. He said he is the only person that has access to the voter file so accusations of sharing the list are erroneous. He said the mailing the Edes campaign did were not the same addresses as the PAC mailing so the lists are different. All the images used by the PAC may be found on the campaign's Facebook page and no one contacted him about getting some pictures. He said the tone of some of the PAC mailings were not anything he would support as campaign manager and the campaign requested via the Facebook page and website that the negative advertising stop. Any allegations of coordination are completely false. He said considering the demographics of this race and the number of people who support Mike Edes, the amount of money involved is really not that outlandish.

Mr. McKee stated what he really would like to know from Mr. Brunetti was whether there was any coordination or communication with this PAC. Mr. Brunetti said absolutely not and Mike Edes would not condone the mailers going out from this PAC. They learned of the mailers when the public learned of them. He said they did not know who was funding, how much was being funded, what the message would be or who it was going to.

Mr. Healy asked Mr. Brunetti if he had any communications with Mr. Liberty and Mr. Brunetti said he did not know Mr. Liberty. Mr. Brunetti, in response to Mr. Healy, said he did not know of any communications between Mr. Liberty and anyone on the Edes campaign or with Mr. Edes directly. He said any campaign consultants that were hired by the PAC have not had any contact with anyone on the campaign, except possibly secondary conversations between last October and February by Mr. Edes and campaign workers, but no contact with him.

Mr. Healy asked if there were any communications between Mr. Brunetti and Ms. Massengill, the PAC treasurer. Mr. Brunetti stated he did not know Ms. Massengill.

Daniel Walker, Esq., representing the Citizens for a Safe Cumberland County PAC, said he was joined today by Christine Massengill, the treasurer for the PAC. He said the PAC was properly registered and has filed the required reports to-date. He said this is politics and money is spent in politics. The law is set up so that the public can follow the money by looking at campaign finance reports and this PAC has disclosed its funding in those reports. He said Michael Liberty is the sole member of the Brentwood Financial LLC and that the LLC is used for Mr. Liberty's various financial activities.

Mr. Healy asked Mr. Walker if there was any communication between Mr. Liberty and the PAC. Mr. Walker said the treasurer has never met or spoken to Mr. Liberty. He said to the best of their knowledge there was no communication between Mr. Liberty and anyone on the campaign or the PAC and as far as they know the money belonged to Mr. Liberty.

Mr. McKee stated where the money actually came from is important, if it was money put into Brentwood from other sources. Mr. Walker agreed and was familiar with that scenario.

Mr. McKee asked if Mr. Walker was aware of any communications between the PAC and Mr. Edes. Mr. Walker said there were no communications, and further, people were advised not to communicate with the Edes campaign or Mr. Edes.

Mr. Walker said the standard for review is the proponent must state in their request the reasons and show sufficient grounds for further investigation. He said in reviewing this request there are many questions and only allegations, but there are not sufficient grounds to initiate an investigation.

Ms. Matheson asked Mr. Walker if there were other contributions made to the PAC after May 27 reporting period and Mr. Walker said there were not. He explained that the reference to a 2010 activity must have been a typographical error since the PAC was not formed until February, 2014.

Sheriff Kevin Joyce, after listening to the testimony, referred to a Facebook post regarding a conversation between Mr. Edes and John and Christine Massengill during petition collecting in March at the caucus. He said this would appear to be coordination between the candidate and the people involved with the PAC that was set up in February. He said this involvement raises questions about coordination. He said also he questions whether this marketing company had their own mailer list because there is no proof of this.

Mr. McKee said there is really no evidence to suggest otherwise.

Mr. Joyce said ethically the lists are not supposed to be passed around. He said he got the disclaimer not to share the list and he has not. He said there still remain many unanswered questions.

Mr. McKee said the Commission has, over the years, had to deal with PACs coming in at the end of the election, spending large sums of money, and it makes everyone scramble. He said providing enough information in a very short window of time to support a request for an investigation is difficult, especially during the last few days and weeks before an election. But the statute requires that the Commission meet and respond quickly to complaints in this time period.

Mr. Wayne reviewed the Commission's options and said one option would be for the Commission to decide there was insufficient evidence produced that a violation may have occurred, and vote to take no further action. The middle option was the Commission could perform a limited inquiry into where the money came from and whether Brentwood Financial LLC obtained the money from any other source.

Mr. McKee questioned whether there was enough evidence to warrant that option based on information provided. He said that could happen with every PAC that has any money in its treasury. He said without solid evidence, the Commission has to accept the PAC's representation.

Mr. Wayne said he did not think that Sheriff Joyce has come forward with any strong evidence to question the donor identity. He said the lack of clarity on the formation of the PAC and where did the PAC expect the money came from is of concern.

Mr. McKee questioned whether the Commission should get involved in that area if there is no real evidence of a violation.

Ms. Gardiner said there were two separate questions to decide. One, where did the money come from that Brentwood transferred to the PAC but also was the money from Brentwood earmarked. She referred to § 1015(4) with regard to solicited contributions which are earmarked and required to be reported. She said if the Commission had concerns about earmarking contributions and what the source of money was going into Brentwood, that inquiry would be separate.

Mr. McKee said the evidence does not show that the donation was solicited.

Mr. Healy said he did not feel there were sufficient grounds for further investigation of the PAC or the Edes campaign. He said an issue could possibly be raised with regard to the money from Brentwood Financial and whether Brentwood Financial would qualify as a political action

committee and should register; however, there is no evidence that Mr. Liberty contributed the money to the LLC and then gave it to the PAC.

Mr. McKee said late contributions to a campaign by a PAC are perfectly legal and part of politics, right or wrong.

Mr. Healy moved that there are insufficient grounds for an investigation of the Citizens for a Safe Cumberland County PAC and Michael Edes' campaign based on the complaint filed by Sheriff Kevin Joyce. Ms. Matheson seconded.

Motion passed unanimously (5-0).

Meeting adjourned at 4:45 p.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director



Approved on:

Minutes of May 28, 2014, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: Walter F. McKee, Esq., Chair; Margaret E. Matheson, Esq.; Michael T. Healy, Esq.;
André G. Duchette, Esq.

Absent: Hon. Jane Amero

Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Counsel

Chair Walter McKee convened the meeting at 9:05 a.m.

The Commission considered the following items:

1. Ratification of Minutes of the April 30, 2014 Meeting

Ms. Matheson moved to accept the minutes of the April 30, 2014 Meeting. Mr. Healy seconded.
Motion passed (4-0).

**2. Findings of Violation and Penalties Recommended by Commission Staff/National
Organization for Marriage**

Mr. Wayne explained that in 2009 the Maine Legislature enacted and Governor Baldacci signed a new law allowing same sex couples to marry. The opponents of the law went through the process of a people's veto referendum to repeal the law. A political action committee was formed in Maine to promote the people's veto referendum called Stand for Marriage Maine (SMM) which spent over three million dollars on its efforts to pass the people's veto. The National Organization for Marriage (NOM) provided approximately two million dollars to Stand for Marriage Maine, about 2/3 of the total amount spent for the referendum. The Executive Director for NOM, Brian Brown, was also one of three people who were overseeing the Maine PAC, Stand for Marriage Maine. Mr. Wayne said NOM did not register as a ballot question committee even though it provided the campaign in Maine nearly two million dollars. Fred Karger of California submitted a complaint in August 2009 requesting the Commission investigate the source of the funds donated to Stand for Marriage Maine and NOM. He said the

process took five years to complete and the staff has developed the findings and recommendations for consideration today.

Mr. McKee raised the issue of the Commission agreeing not to identify the donors by name while the staff is in the investigation stage; however, he said the donors would be identified ultimately when the report is filed.

Ms. Gardiner agreed that upon filing the report that information would become public.

Mr. Healy asked what the process would be if upon learning who the donors were, a Commission member had a conflict of interest if they knew a donor.

Ms. Gardiner said if there is a concern about a conflict of interest, the Commission members should review the donor list. The donor list is not for the public's review she said.

The Commissioners recessed briefly to review the donor list.

Mr. Healy noted that after reviewing the list, he has known one couple over the years socially only and said the relationship does not arise to the level of conflict of interest.

Mr. McKee asked if the only sworn testimony or affidavit around the time of the decision to investigate was that of Brian Brown. Mr. Wayne confirmed this. Mr. McKee pointed out that there were very specific statements made back at the beginning of the investigation regarding receiving and soliciting funds specifically for Maine that were not completely accurate and if the Commission had stood on those statements the investigation probably would not have gone any further and none of this information would have been discovered. Mr. McKee said that after reviewing the staff's report and the attached materials, it seemed that some of those earlier statements were not accurate.

Mr. McKee noted an invoice from C. C. Advertising and asked for further information.

Mr. Wayne explained that NOM had apparently planned to conduct a large telephone survey in Maine using C.C. Advertising. The work was prepared but not executed and the invoice was issued in error according to the spokesperson from the firm. There was no record of the payment being returned to NOM. The vendor suggested that the error could have been reconciled later on.

Mr. Healy asked if there was any information from Mr. Brown's deposition that indicates he personally solicited Donors 2, 9, 10, 11 and 12.

Mr. Wayne said during the deposition, Mr. Brown was shown dates and amounts of contributions but he didn't know specifically who the donor was by looking at amounts so he could not answer any questions regarding the nature of the solicitations. Mr. Brown did testify that in August or September 2009 there was a telephone conversation related to NOM's national strategy involving Brian Brown, Donor #11 and NOM's Chair Robert George and President Maggie Gallagher. He testified that as a result of this conversation, NOM was expecting one million dollars be donated in October 2009 to the national organization.

John Eastman, Esq., Chairman of the Board of NOM and NOM's counsel, referred to the first meeting in 2009 when Commissioner Michael Friedman said national organizations contribute to efforts in Maine all the time and none of them register as a ballot question committee, and under the current statute there is no requirement to identify contributors. Mr. Eastman said that NOM protects the anonymity of its donors because of negative impact on donors throughout the country in the past. He said the purpose of providing protection to NOM's donors is not to avoid disclosure laws. He said all the activity during this campaign was reported through the Stand for Marriage Maine PAC as was required by law. He said these donations went to the NOM general treasury. He acknowledge that some emails did go out to specifically solicit contributions for the Maine campaign; however, not all the donations meet the definition of solicitation by law. Once those contributions are removed, the total of earmarked contributions is less than the \$5,000 that would require registration as a ballot question committee. Once NOM received legal advice from its counsel regarding communications, the emails were changed to point donors either to the Maine campaign or the national organization, and the PAC was set up here in Maine to run

the fundraising operation and those donations for Maine were reported. He explained that Brian Brown was serving as the Executive Director of NOM as well as one of the committee members of the Maine PAC. When Mr. Brown raised money for the purpose of the Maine effort, he advised donors to donate to the Stand for Marriage Maine PAC and people who wanted to support national efforts for matters in all states were advised to give to NOM which went into the general treasury. Mr. Eastman said, as proof that NOM was trying to comply with the Maine reporting requirements, there was one donation that came in to NOM that indicated it was for the Maine effort and NOM returned it to the donor.

In response to a question from Mr. Healy, Mr. Eastman said that NOM's only direct expenditures in Maine related to the ballot question were in the form of in-kind contributions to SMM. These in-kind contributions were properly reported by SMM and did not count towards the registration threshold.

In regard to the advertising invoice, Mr. Eastman explained that this particular service was a survey for Maine which was developed but not used because of advice from counsel due to Maine's reporting requirements. They were advised that it should not be run by NOM but by the PAC which they did. The billing was in error. He said all expenditures and donations for the purpose of the Maine campaign were handled through the PAC.

Mr. Healy asked why Mr. Brown, as the Executive Director, was put on the committee in Maine creating a situation where he was wearing two hats.

Mr. Eastman said he wears two hats also. He is the Chairman of the Board and is also the director of a litigation firm representing NOM today. He said it happens all the time in these issues. He said what looks like a coordination is designed to have NOM carrying out its national mission but in compliance with Maine law by setting up a political action committee for the focus of the efforts in Maine.

Brian Brown addressed Mr. Healy's question by saying that if NOM was making large contributions to a PAC or ballot question committee, obviously NOM would want to have a say

in how the PAC is run. He said he has served on several committees in different states so that NOM has a say in how the committee is run, not that NOM would run the committee but that it would have a say. In the case of SMM, there were three people on the executive committee of SMM.

Mr. Healy said NOM obviously would want to have some say, but asked whether NOM controlled the PAC.

Mr. Brown said he did not control the Maine PAC.

Mr. Healy said with the amount of money provided by NOM to the PAC, it was difficult to believe that NOM did not control the PAC.

Mr. Brown said of the three person committee, if two people disagreed with something then it did not get gone.

Mr. Eastman said it is lawful for NOM to donate to the PAC and used the scenario that if there were \$5 million in NOM's general fund and they donated \$2 million to the PAC, it would not be an issue. He said what raises the difficulty is whether NOM raised the money for the purpose of the Maine campaign and directed those funds to the Maine PAC. The fact that Brian Brown was in a leadership role of NOM as well as the Maine PAC and raising funds for both, cuts against the argument that Mr. Brown was raising money for NOM to be redirected to SMM.

Mr. Duchette asked Mr. Eastman if his opinion would change if Mr. Brown had control over how the Maine campaign was going to be run.

Mr. Eastman said it would not change his opinion. Whether Mr. Brown is on the committee does not alter that scenario.

Mr. McKee said looking at the circumstantial evidence, on September 4, 2009 NOM received a wire transfer of \$150,000 from a donor and on the same day Stand for Marriage Maine receives

\$140,000; on October 1, 2009, NOM received \$300,000 from a donor and on the same day NOM transfers \$300,000 to Stand for Marriage Maine; October 9, 2009, a wire transfer from another donor \$400,000 and same day \$300,000 to Stand for Marriage Maine received. He said to suggest that these were only a coincidence strains the credibility. Mr. McKee said that was a tough set of facts.

Mr. Eastman said the District Court found that these were recurring donors that had been happening over a period of time on a regular basis. He said those commitments were made before the Maine campaign began and were not earmarked for the purpose of the Maine effort. The recurring donations went directly into the general treasury. The funds were then given to the PAC and reported by the PAC. He said the question is whether, when the funds came in, they were given for Maine specifically. He said since they are recurring donations, that means they were not specifically given for the Maine campaign.

Mr. Healy asked if the District Court's factual finding stated that Donors 2, 9, 10, 11 and 12 were recurring donors.

Mr. Eastman said the Court was not that specific but the Court was referring to NOM's major donors of which there are about a dozen.

Mr. Healy asked if Donors 2, 9, 10, 11 and 12 were recurring donors in 2007 and 2008. Mr. Eastman said that he did not know.

Mr. Healy asked Mr. Brown if he had conversations with Donors 2, 9, 10, 11 and 12 from the time he became an executive committee member of the PAC in June 2009 through the election.

Mr. Brown reviewed the names of Donors 2, 9, 10, 11 and 12 and said he did speak directly Donor 11 from July on directly. He did not have direct conversations with three of the donors but it is possible that he had a direct conversation with one other major donor on the list. In response to Mr. Healy, he said all but one were recurring major donors. He said he did not

believe Donor 2 was a recurring donor. He stated that any donor he spoke to he told them, unequivocally, that NOM donations would not be accepted for the Maine campaign.

Mr. Healy said he accepted that as being true. He explained his issue was that Mr. Brown was the Executive Director of NOM and on the executive committee of the Maine PAC. NOM has a budget of two million dollars which is the level of support it intends to give to the Maine PAC. Mr. Brown is wearing two hats and soliciting for both at the same time. He said NOM's cash needs were high at the time and there were large contributions coming in. Even though the donors were told their donations were not designated for Maine, it does not mean that Mr. Brown could not have designated those funds. He said the funds came in one day and went out the next day to the Maine PAC, which is not the scenario Mr. Eastman raised where NOM had five million dollars in its general treasury which had accumulated over a period of time from different people and different sources.

Mr. Brown said there were large pledges from each of these donors ahead of time who had been pledging a long time. Mr. Healy asked if these pledges were in writing and Mr. Brown said no.

Mr. Healy asked Mr. Brown if these donors had pledged prior to the formation of the Maine PAC. Mr. Brown said he had pledges from two, possibly three donors before July but could not recall for sure since there was no written documentation, only oral communications.

Mr. Eastman referred to the U. S. Supreme Court's decision in the Wisconsin Right to Life matter with regard to chilling core political speech because of First Amendment rights. He said it has taken the Commission five years to find out who these donors were. He said the reason Brian Brown served on the Maine PAC was so he could raise funds in compliance with Maine law for the PAC. Mr. Brown's conversations with donors specifically said, if you want to give for the purpose of the Maine campaign, give to the Maine PAC. If you want to support the national efforts of NOM, then give to NOM. Moneys that are not designated by the donor go into the general treasury and this is no different in his view than if that money had existed prior to the Maine campaign or not. Any money given to the PAC is reported as required by Maine law.

Mr. Healy said he agreed with Mr. Eastman except in one fact. Mr. Brown was Executive Director of NOM, had full control over the cash and how and when it would be disbursed. And almost simultaneously with the receipt of these donations, Mr. Brown made a donation to the Maine PAC with which he was deeply involved. Mr. Healy said his concern was how could donors differentiate which hat Mr. Brown was wearing when making a solicitation?

Mr. Brown said he did not have complete control over the cash. He said meetings took place where all parties would decide where the funds would go.

Mr. Eastman stated that once it was NOM's money, it does not matter how long it was in the bank account.

Mr. Healy said there was one donor from Maine who was probably not a recurring pledge and had not made a pledge before Mr. Brown was on the PAC. This person made a substantial donation which was most likely intended for the Maine campaign.

Mr. Eastman said it is possible that this person was a previous donor but even if they were not, it could be that they could have become aware of NOM because of the Maine PAC and could have just appreciated NOM's support here and nation-wide and so decided to support the nation-wide efforts.

Mr. Healy said it could be that they gave to the national organization so they could remain anonymous.

Mr. McKee said the argument about what the donor's purpose for the funds was could go on all day long. However, a great deal of information has been uncovered since 2009 and for him these current facts have changed the accuracy of original statements made back in 2009.

Mr. Eastman said legal counsel advised NOM on how to proceed with the Maine campaign and everything was done with those requirements in mind. He said there is no evidence to show that

there was a specific designation or solicitation for the Maine campaign. He said the Commission is interpreting these donations as being earmarked for Maine but they were not. He said the Human Rights Campaign set up their campaign in the exact same way as NOM.

Mr. Healy asked if the executive director of the Human Rights Commission was also the director of the Maine PAC for Human Rights. Mr. Eastman did not know. Mr. Healy followed up asking if NOM's legal counsel advise Mr. Brown to be on both committees.

Mr. Brown could not recall specifically with regard to the Maine PAC but in the past have told him it was a good way for him to control the donations.

Mr. Eastman reviewed the similarities between the two organizations. The Human Rights Commission set up a PAC called HRC Maine Marriage PAC and NOM set up a PAC called Stand for Marriage Maine. He said he did not know if a Human Rights officer was on the political committee or not but would be very surprised if one was not. He said there were significant donations made to the PAC, just as NOM did. He said everyone sets up their structure the same way and back in 2009 Commissioner Friedman stated this structure did not violate Maine law.

Mr. McKee said the factual issue is having Mr. Brown on the national committee as a fundraiser and the state committee as a fundraiser. Being in both capacities raises questions about whether these donations were earmarked for Maine.

Mr. Duchette asked what percentage of NOM's general fund was spent in 2009 for the Maine campaign. Mr. Brown said approximately 23%.

Mr. Eastman reviewed the solicitations mailed out and said the total number of donations was less than \$5,000 which would not trigger reporting requirements.

In response to Mr. Healy, Mr. Eastman spoke to the anonymity laws and said the two decisions that NOM goes by are *NAACP v. Alabama* which in the 1950s held that members and donors can

be anonymous if there are significant risks of harm with disclosure. The second is *Socialist Workers v. Brown*. NOM filed a case in California claiming their donor list which had been reported by the PAC publicly resulted in people being harassed and properties vandalized. The 9th Circuit just recently decided that because the names were already published, the case was moot but did not rule on the merits of the challenge. He said the Supreme Court now in two cases has recognized this issue is generating hostility and threats that warrant confidentiality.

Mr. Healy suggested these two Supreme Court cases recognize that the NOM donors have a constitutional right to anonymity.

Mr. Eastman said the cases were not about NOM. However, NOM's case in California was referenced in the Supreme Court opinions and reference briefs.

Mr. Brown said he had given notice to the major donors of the hearing today, in response to Mr. Healy.

In summary, Mr. Eastman referenced Commissioner Friedman's comments back in 2009 that NOM's conduct followed Maine law. The donations NOM gave to Stand for Marriage Maine were fully reported as required by Maine law. NOM scrupulously tried to comply with all rules while providing protection for the national donors. He said all donors are specifically instructed that if they want to give to a particular effort, give to that effort directly so it will be reported correctly. Also, if they give to the national organization, it is entirely NOM's judgment as to where it will be directed. There are many cases where NOM can show donations returned because they have been earmarked for a specific effort in one of the statewide fights.

Mr. Brown said the central question is whether anyone at NOM solicited funds from donors for NOM and tell the donor that the funds would be designated for the Maine campaign. He said he did not do that and has sworn under oath that he did not. There is no evidence that he did. He said all staff were clearly advised of this as well. He said he consulted counsel on many of the issues to be sure they were doing everything correctly and in compliance. He said the law must be applied fairly and applied to everyone.

The Commission took a break at the conclusion of Mr. Brown's testimony.

Fred Karger reviewed his role in the complaint and NOM's activity in Maine. He said the investigative report made it clear that NOM blatantly and intentionally ignored Maine's reporting requirements. He thanked the Commission and the Attorney General's Office for all their hard work over the last five years with the investigation to seek the truth. He urged the Commission to accept the staff's recommendations.

Pursuant to Title 1 of the Maine Statutes, section 405(4), Mr. Healy moved to go into executive session pursuant to Title 1, section 405(6)(E) at 10:30 a.m. to consult with the Commission's counsel concerning legal rights and duties of the Commission. Mr. Duchette seconded.

Motion approved (4-0).

At 11:15 a.m. Mr. Healy moved to come out of executive session. Mr. Duchette seconded.

Motion approved (4-0).

Mr. McKee explained that he and Commissioner Duchette were present at the meeting in 2009 when the complaint was filed by Mr. Karger. He said the vote whether to pursue an investigation was very close, 3-2. He said it was a difficult decision but it was clear there was some activity going on that warranted further investigation. He said that at the point the Commission decided to initiate the investigation, the thought was that where there is smoke there may be fire. He said once the staff got through all the appeals and was able to complete the investigation, there is no question that there is fire here. He said if the Commission took NOM's view and rejected the staff recommendation; the Commission would be accepting a mockery of Maine's disclosure laws. He said the Commission's duty is to follow and apply the law, not beliefs. He said the final evidence shows by a preponderance that the alleged actions of NOM did in fact take place and he is pleased that the Commission followed through so these issues were not swept under the rug.

Mr. Healy said that he recognizes NOM's right to participate in the election process and their efforts to comply with Maine's campaign finance law. However, Mr. Healy stated that after May 29, 2009 when the Stand for Marriage Maine PAC was formed and Mr. Brown became one of three members of the PAC's executive committee – and based upon the record, he was an influential member of the PAC – as well as the Executive Director of NOM with the authority he had as set forth in his deposition, some, if not all, of the contributions of Donors 2, 9, 10, 11 and 12 were contributions as defined in section 1056-B (2-A)(C) applying an objective standard. Mr. Healy said that he did not think the statute has been complied with for that reason.

Mr. McKee moved to find NOM in violation of 21-A M.R.S.A. § 1056(B) by receiving contributions aggregating in excess of \$5,000 for purposes of initiating or promoting the 2009 people's veto referendum and failing to register and file campaign finance reports as a ballot question committee. Mr. Duchette seconded.

Motion passed (4-0).

Mr. McKee moved to determine that donations received by NOM in response to solicitations distributed by electronic mail from NOM to its subscribers from May through at least September, 2009 constituted contributions under 21-A M.R.S.A. § 1056(B)(2-A)(B) and/or (C). Ms. Matheson seconded.

Mr. Healy stated for clarity that he did not believe the electronic solicitations (e-mails) reached the \$5,000 threshold but the donations made by Donors 2, 9, 10, 11 and 12 were well over the threshold and were contributions. Ms. Matheson disagreed but supported the motion.

Motion passed (4-0).

Mr. McKee moved to determine that donations received by NOM from several major donors, such as Donors #2, 9, 10, 11, and 12, during the period from May through November, 2009 constituted contributions under 21-A M.R.S.A. § 1056(B)(2-A)(B) and/or (C). Mr. Duchette seconded. Mr. Healy said he agreed that the donations constituted a contribution under (C).

Motion passed (4-0).

Mr. McKee moved to direct NOM to register as a ballot question committee for its activities in support of the 2009 people's veto referendum and to file a consolidated report for 2009. Ms. Matheson seconded.

Motion passed (4-0).

Mr. McKee moved to assess a civil penalty of \$250 for failure to register as a ballot question committee. Ms. Matheson seconded.

Motion passed (4-0).

Mr. McKee moved to find NOM in violation for failure to file timely campaign reports due 11 days before and 42 days after the November 3, 2009 election and failure to file four reports of single expenditures due in the last 13 days before the election. Ms. Matheson seconded.

Motion passed (4-0).

Mr. McKee moved to accept the staff recommendation and find that NOM was not required to file any reports during 2010 and 2011. Mr. Healy seconded.

Mr. Wayne explained that NOM made two payments in 2010 and 2011 to Stand for Marriage Maine to help the PAC retire its debts and those were reported. He said there is no evidence that NOM raised or spent any funds during this time period.

Motion passed (4-0).

Mr. McKee moved to accept the staff recommendation of penalty amounts. Ms. Matheson seconded.

Filing Deadline:	Penalty
10/23/2009 (11-day pre-election report)	\$10,000
10/24/2009 (24-hour report)	\$10,000
10/27/2009 (24-hour report)	\$5,000
10/28/2009 (24-hour report)	\$10,000
10/30/2009 (24-hour report)	\$5,000
12/15/2009 (42-day post-election report)	\$10,000

Motion passed (4-0).

Mr. McKee explained the next procedural step will be for staff to draft proposed findings of fact on the complete record, distributed and voted on at the next meeting.

3. Findings of Violation and Penalties Recommended by Commission Staff/Candidates who have Failed to Register with the Commission

Mr. Wayne said the staff has been trying to get all candidates to register with the Commission as required by law. There are currently only three candidates left who have not registered, two House candidates, Benjamin Bryant and Ashley Ryan, and one Senate candidate, Danielle Unterreiner. He explained that they have had three notices to-date and have not responded. He said Mr. Bryant no longer lives at the address provided by the Secretary of State website. He explained that a \$10 penalty will be assessed.

Mr. Duchette asked whether candidates are eventually removed from the ballot if they do not respond.

Mr. Wayne explained they cannot be removed from the ballot unless they withdraw themselves.

Mr. McKee moved to accept the staff recommendation to find the three candidates in violation and assess the \$10 penalty as required by statute. Mr. Duchette seconded.

Motion passed (4-0).

4. Enforceability of \$25,000 Aggregate Contribution Limit

Mr. Wayne explained that Maine Election Law forbids any individual from contributing more than \$25,000 to candidates for state office in a calendar year (21-A M.R.S.A. § 1015(3)) and proposed a policy regarding the enforceability of the Maine aggregate limit, in light of the U.S. Supreme Court decision in *McCutcheon v. FEC*.

Mr. Healy moved to adopt the policy regarding the enforceability of the aggregate limit for campaign contributions in Maine law as recommended by the staff. Mr. McKee seconded.

Motion passed (4-0).

Meeting adjourned at 11:40 a.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director