



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
Benjamin Dyer, Political Committee and Lobbyist Registrar
Date: August 23, 2016
Re: Request for Waiver of Late-Filing Penalty by Fair Vote BQC

INTRODUCTION

The agenda item relates to a ballot question committee that failed to disclose two expenditures for campaign services and staff time totaling \$33,280 when it registered with the Commission and filed its initial campaign finance report. Some weeks later, acting in good faith, the committee's treasurer contacted the Commission staff to report the omissions and amended the initial campaign finance report to include these two expenditures. The Commission staff is viewing the originally filed report as late because it did not substantially conform to the disclosure requirements in the Election Law. The Commission staff recommends a reducing the \$10,000 preliminary penalty to \$500.

A ballot question committee (BQC) is an organization with a major purpose other than influencing a Maine election that raises or spends more than \$5,000 to influence a ballot question in Maine. A BQC must register with the Commission and file financial reports – similar to political action committees (PACs). Typically, a BQC is an organization with a purpose or mission that pre-existed the ballot question, such as a public policy advocacy organization, a trade association or a labor union.

All BQCs are required to file campaign finance reports by deadlines set in statute. Beyond simply filing the report by the deadline, a timely-filed campaign finance report must substantially conform to the disclosure requirements of Maine Election Law. This

includes accurately reporting contributions and expenditures received during the reporting period.

Fair Vote is a nonprofit corporation that registered as a ballot question committee on June 13, 2016 in support of the November 8, 2016 ballot question regarding ranked-choice voting. It listed as its treasurer Douglas Clopp, a member of the staff of Fair Vote.¹ It filed its Initial Campaign Finance Report contemporaneously with its registration on June 13th. The Commission staff considers the report late because the BQC initially only reported \$13,764.00 of contributions and expenditures, but later amended its report to \$47,044.00 in contributions and expenditures in support of the ballot question. Both the originally filed report (dated 6/13/2016) and the amended version (amended on 7/26/2016) are attached for your reference. Because of the large amount of money involved and the number of days between the original and amended reports, the preliminary penalty reaches the statutory maximum of \$10,000.00.

LEGAL REQUIREMENTS

Definition of BQC. The definition of and registration requirements for ballot question committees are set out within a single statute, 21-A M.R.S.A. § 1056-B (attached).

Reporting requirements. Under the BQC statute (§ 1056-B), BQCs are required to file campaign finance reports according to the same filing schedule as PACs. (21-A M.R.S.A. §1059(2)) According to this schedule, an Initial Campaign Finance Report is due at the time of registration covering the time period from the beginning of campaign through the date of registration.

Duty to report contributions and expenditures. BQCs are required to report the names and addresses of contributors giving more than \$50 to the BQC in any election, and the amounts and dates of each contribution. BQCs must also report the name and addresses of all payees as well as the amount, date and purpose of all expenditures. (21-A M.R.S.A. §1056-B(2)) For BQCs, like candidates and other committees, contracts and

¹ In the 2000s, Mr. Clopp regularly lobbied the Commission and the Maine Legislature on election policy issues on behalf of another employer.

agreements to pay for campaign goods and services are considered expenditures. (21-A M.R.S.A. §1052(4)) The Commission has interpreted this to mean that placing an order for a good or service or entering into a contract constitutes an expenditure. (Comm. Rules, Ch. 1, Section 7(3))

Late-filing procedures. A campaign finance report is not timely filed unless it substantially conforms to the disclosure requirements of Chapter 13, Subchapter IV. (21-A M.R.S.A. §1062-A(2)) If a BQC is late in filing a campaign finance report, the amount of the preliminary penalty is set by a formula which takes into consideration a percentage of the financial activity reported late, and the number of days the report was late. (21-A M.R.S.A. § 1062-A(3))

PRELIMINARY PENALTY

The BQC was created by Fair Vote, a 501(c)(3) nonprofit organization based in the Washington, DC area that promotes election reform nationally. The BQC registered and filed its Initial Report on June 13, 2016 showing \$13,764.00 in financial activity (\$13,764.00 in contributions, \$13,764.00 in expenditures). On July 26, 2016, the BQC, through its treasurer, contacted Commission staff to obtain assistance in amending its Initial Report to include another \$33,280.00 in expenditures:

- A payment of \$33,000.00 to Clarity Campaign Labs, LLC for data analytics and modeling, and
- A payment of \$280.00 for staff salary.

The BQC also included off-setting contributions from Fair Vote's general treasury to the BQC. The BQC's original amendment indicated the new expenditures occurred on June 3, 2016, but the BQC later amended the report to correct the \$33,000.00 polling expenditure date to June 7, 2016.²

² The originally-reported June 3, 2016 date for the \$33,000.00 polling expenditure would have required the BQC register by June 10, 2016. Since the BQC did not register until June 13, 2016, Commission staff noted the late registration in the preliminary penalty notice and advised the BQC that the Commission may impose an additional penalty for the late registration. After discussions with the BQC and its subsequent amendment of the Initial Report to correct the polling expenditure date to June 7, 2016, Commission staff is satisfied that the BQC timely registered.

Based on the statutory formula for calculating late-filed report penalties, the Commission staff has calculated the preliminary penalty as follows:

Report Name	Activity Reported Late	Due Date	Days Late	Per Diem	Preliminary Penalty
Initial Report	\$33,280.00	6/13/2016	46	2%	\$10,000.00*

* Statutory maximum penalty.

REQUEST BY BQC FOR WAIVER OF LATE-FILING PENALTY

The BQC requests a waiver of the penalty through a letter dated August 18, 2016 from Clifford Ginn, Esq., the BQC’s attorney (attached). The reasons for the omission of the payment to Clarity Campaign Labs (CCL) is set out on page 2 of his letter and a clarifying email received today.

- On June 3, 2016, CCL submitted a proposed description of services and summary of costs to Fair Vote.
- On June 7, 2016, Fair Vote initiated a wire transfer to CCL to pay for the proposed services.
- On June 9, 2016, Fair Vote’s Executive Director signed a written contract with CCL.
- It is unknown when the wire transfer was completed. It may have been June 13, 2016, the day on which Mr. Clopp filed the initial report.

Mr. Ginn states that BQC treasurer Doug Clopp was not informed by others within Fair Vote of the initiation of the wire transfer or the signature on the contract.

In its waiver request, the BQC advances a number of reasons the Commission should find no violation of law or waive, in whole or substantial part, the preliminary penalty assessed against it. The BQC begins its request by writing that it takes full responsibility for the filing error, but then quickly moves on to argue that the BQC did not file a late report. As fallback positions, the BQC further argues that:

- According to Commission Rules, it was inappropriate for Commission staff to find a violation under these factual circumstances and thus force the BQC to bear the costs of defending itself before the Commission³;
- The preliminary penalty should be waived due to mitigating circumstances, specifically a “valid emergency of the committee treasurer” and “a bona fide effort . . . to file”;
- The preliminary penalty is disproportionate to the experience of the treasurer;
- The preliminary penalty is disproportionate to the harm suffered by the public due to the late filing⁴;
- BQCs are not subject to the statutory preliminary penalty process or preliminary penalty calculation⁵; and
- The preliminary penalty is disproportionate to the penalties imposed in other cases the BQC believes are analogous to its case.

DISCUSSION

The Initial Report the BQC filed on June 13, 2016 should be considered late because subsequent amendments demonstrated the originally-filed report did not substantially conform to the disclosure requirements of Chapter 13, Subchapter IV of the Election Law. Specifically, the June 13, 2016 report did not accurately reflect substantially all the expenditures made to influence the election and contributions received by the BQC during the applicable filing period. The BQC’s arguments that its June 13, 2016 Initial Report ‘substantially conformed’ to disclosure requirements, as the offending expenditure was reported in the context of filing the next financial report,” does not make sense, in light of the large amount of unreported financial activity.⁶

³ The BQC argues for an approach to the Commission staff’s review of campaign finance reports that is not supported in the Commission’s rule and that is inconsistent the the Commission’s past practice.

⁴ The BQC argues that campaign finance disclosure is less important for BQCs than for candidates or other organizations. Commission staff strongly disagrees and urges the Commission not give this argument any weight in determining a final penalty.

⁵ The BQC’s argument that BQCs are not subject to the preliminary penalty process or preliminary penalty calculations would effectively eliminate any meaningful enforcement procedure against BQCs and is contrary to the legislative intent to create a system of campaign finance reporting that applies to PACs and BQCs. Commission staff will not address this argument further in this memo.

⁶ The BQC’s concern that the Commission staff is accusing it of committing a Class E crime is unfounded. No authority capable of issuing a charging instrument has done so in this matter, and Commission staff is

All available evidence suggests that the BQC's treasurer, Mr. Clopp, acted in good faith to remedy incomplete reporting. The Commission staff believes this is a factor that the Commission should consider in arriving at an appropriate late-filing penalty. However, the staff's view is that his good intentions are not relevant in determining whether the originally filed report substantially conformed to the disclosure requirements.

Our view of the staff's role is to make the objective determination of whether the report substantially conformed to the disclosure requirements. If the report was not substantially compliant, the Legislature has directed that the report is to be considered late. The staff's role is to notify the filer of the preliminary penalty amount and of the filer's opportunity to request a waiver of the late-filing penalty. The good faith of the committee and the other mitigating circumstances should be considered by the appointed members of the Commission at a public meeting, rather than by Commission staff.⁷

In order to hold candidates and committees to high standards for financial reporting, we recommend against accepting the view that good intentions justify a full waiver of the penalty. Many candidates and committees intend to file reports in good faith but fail to meet their full responsibilities due to disorganization, inattention, communication errors, etc. Penalties are often appropriate for unintentional violations, in order to promote full compliance.

Although the BQC's treasurer acted in good faith on the information he was given, some of the responsibility for the incomplete reporting rests with other parts of the Fair Vote organization. An organization needs to communicate not just completed financial transactions to the committee treasurer, but also non-monetary or preliminary actions such as the entry into a contract or the authorization to make a wire transfer. If an organization that has formed a BQC approves of a \$33,000.00 contract with a polling firm or authorizes a payment to the firm, those are reportable events that need to be

of the opinion that because the BQC filed the Initial Report (thought deficient) on June 13, 2016 within 30 days of its due date, no criminal violation occurred.

⁷ If the Commission would prefer the staff to alter its procedure for considering late-filed reports, the staff will gladly follow the Commission's directions.

promptly communicated to committee treasurer who was responsible for the financial reporting (in this case, Mr. Clopp)

STAFF RECOMMENDATION

The Commission staff agrees that the preliminary penalty of \$10,000.00 is disproportionately high. In this case, the harm to the public is significantly reduced because the expenditure was reported in July – more than three months before general election. In addition, the Commission should give significant weight to the consideration that many candidates and committees do not understand that they have a duty to disclose unpaid debts and obligations as well as actual payments for goods and services.

The Commission has recently addressed situations where organizations have requested waivers of late-filing penalties due to filing substantially nonconforming reports.

- *Alfond Business, Community, and Democracy PAC*. In that case, over two quarterly reporting periods, a PAC did not include over \$6,400.00 in contributions received or \$24,500.00 in expenditures made in the originally-filed reports. In that case, the Commission assessed penalties totaling \$1,500.00.
- *Maine Truck PAC*. In that case, over the 2014 Pre-Primary, Post-Primary, and October Quarterly Reports reporting periods a PAC did not include 34 contributions totaling \$15,520. In that case, the Commission assessed penalties totaling \$1,500.00.

The Commission staff believes the violation in this matter does not warrant the same penalty as the two cases above, because the omission was a single purchase of services that had been initiated but not completed (plus a small payment of \$280 in staff expenses). Moreover, the expenditures were disclosed in an amended report more than three months before the election. Accordingly, the Commission staff recommends reducing the penalty to \$500.

Thank you for your consideration of this memo.

GINN LAW, LLC

August 18, 2016

Jonathan Wayne
Executive Director
Maine Commission on Governmental Ethics and Election Practices
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Augusta, ME 04333-0135

RE: Fair Vote – BQC Response To Late Report Filing Finding and Waiver Request

Dear Mr. Wayne:

On behalf of my client, Fair Vote – BQC (“FVBQC”), and pursuant to 21-A M.R.S.A. §1062-A(5), I write to contest the finding of late filing of FVBQC’s initial campaign finance report and, in the alternative, to request a waiver of the preliminary penalties assessed by the Commission staff based on that finding. Fair Vote, a nonprofit corporation, organized FVBQC as a ballot question committee (“BQC”) pursuant to 21-A M.R.S.A. §1056-B, and timely filed FVBQC’s initial campaign finance report on June 13, 2016, but inadvertently omitted a \$33,000 expenditure for data analytics and modeling, believing that it would be incurred in the following reporting period. When FVBQC Treasurer Douglas Clopp discovered the error, he immediately contacted Commission staff to ensure that the expenditure and related activity were reported properly. While FVBQC takes full responsibility for the filing error, the mistake was inadvertent and due to the inexperience of an organization and a Treasurer who are first-time filers, with respect to their very first filing. There was no harm to the public, and the financial activity was self-reported promptly, months before the general election.

FACTUAL SUMMARY

Fair Vote is a nonprofit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and committed to conducting and promoting research and educating the public regarding electoral reform and voting rights issues and policies. It has engaged in education of the public in Maine with regard to ranked choice voting, but had not engaged in activity requiring registration as a BQC until June 2016.

When Fair Vote realized that it was likely soon to be making an expenditure for public opinion polling, to be conducted by Anzalone, Liszt & Grove,¹ it promptly moved to register FVBQC as a BQC supporting passage of the ballot question, “An Act To Establish Ranked-Choice Voting,” which appears as Question 5 on the November 2016 General Election ballot. On June 3, Fair Vote completed a draft of FVBQC’s registration and initial campaign finance report. It had prepared paper filings because the

¹ Although Fair Vote anticipated being involved in polling, it did not make the polling expenditure until June 13, 2016, the date it filed FVBQC’s registration and initial campaign finance report.

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Commission's Guidance on Reporting as a Ballot Question Committee (effective June 30, 2008) (the "Guidance") states as follows:

How do ballot question committees register with the Commission and file financial reports?

The committee must register and file the initial campaign finance report using paper forms (available on the Commission's website). All other campaign finance reports are filed electronically.

Guidance, at 1 (available at <http://www.maine.gov/ethics/pdf/BallotQuestionCommitteeGuidance2-Updated212.pdf>). The draft initial campaign finance report included items relating to the polling expenditure and to staff time, with amounts for both and the date for the former to be filled in later.

Later that day, Clarity Campaign Labs, LLC emailed Mr. Clopp a proposed scope of work and summary of costs for data modeling and analytics, as well as a contract for Fair Vote Executive Director Robert Richie to sign if Fair Vote elected to move forward. Mr. Richie signed the contract on June 9, 2016, after payment was made on June 7, 2016.

On June 13, 2016, FVBQC filed its registration and initial campaign finance report with the Commission. Mr. Clopp had difficulty with the process, both because he was a first-time filer and because he does not find the Commission's electronic systems intuitive. He transcribed the information from the draft paper filings into the electronic system, which included \$13,674 in financial activity relating to the poll and to staff time.

At that point, Mr. Clopp had mentally closed the book on activity that preceded the June 13, 2016 initial campaign finance report. He was unaware that the Clarity contract had been signed and payment made, and assumed that the Clarity expenditure would need to be reported when FVBQC's 42-Day Post-Primary Report was filed. During the months of June and July 2016, Mr. Clopp had to take significant amount of time away from work to assist his mother, who lives in New York, with severe and potentially life-threatening health issues that she was facing. The personal stress and limitations on work time meant that he did not focus closely on reporting until the deadline for the 42-Day Post-Primary Report approached.

On July 25 and 26, 2016, Mr. Clopp was in the process of filing FVBQC's 42-Day Post-Primary Report, and realized for the first time that the Clarity expenditure might have fallen in the previous reporting period.

Mr. Clopp immediately called Commission staff for assistance in ensuring that the expenditure and offsetting contribution were reported correctly, both because of his questions about correct treatment and his difficulties with the Commission's electronic system. Unlike many first-time filers, Mr. Clopp had taken the time to understand that "expenditures" can occur before money is actually paid to a vendor, so as he reviewed the details of Fair Vote's engagement with Catalyst, he erred heavily on the side of reporting the expenditure early. Commission staff members Paul Lavin and Benjamin Dyer helpfully walked Mr. Clopp through the process on the phone. At the end of a lengthy

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call, Mr. Clopp believed that he was in full compliance with all requirements, had properly filed FVBQC's 42-Day Post Primary Report, and had properly amended FVBQC's initial financial report to reflect the Catalyst expenditure, which he had in good faith initially believed belonged on the former report rather than the latter one.

FVBQC later received a letter dated August 10, 2016 from Mr. Dyer, assessing a \$2,500 penalty for late registration filing (based on the 10-day gap between the June 3, 2016 date that Mr. Clopp originally erroneously fixed for the Catalyst expenditure and the June 13, 2016 registration date), and a \$10,000 penalty for late filing of the initial campaign finance report, stating that "Commission staff considers the Initial Report late as a result of substantial non-conformity with disclosure requirements."

FVBQC amended its report to reflect that the Catalyst expenditure in fact occurred on June 7, 2016, the date that FairVote committed to moving forward with Catalyst. This eliminated the grounds for the citation for late registration.

1. *FVBQC Did Not File a Late Report.*

Under 21-A M.R.S.A. §1062-A(2), "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 PM on the date it is due."

There is no dispute that FVBQC filed an initial campaign finance report on June 13, 2016. It accurately reported the polling expenditure that prompted registration, and carefully reported staff time chargeable to FVBQC. Commission staff's contention is that FVBQC's unintentional placement of a single, ambiguously-timed expenditure at the beginning of the 42-Day Post Primary Period rather than the end of the Initial Finance Report period means that the initial campaign finance report did not "substantially conform[] to [applicable] disclosure requirements," and thus was not filed until July 26, 2016, the date when FVBQC voluntarily corrected its just-discovered mistake, 43 days after FVBQC's registration rendered the report due.

Under 21-A M.R.S.A. §1062-A(2), "A person who fails to file a report as required by this subchapter within 30 days of the filing deadline is guilty of a Class E crime." Staff's contention, then, is that FVBQC's actions constitute a Class E crime. The circumstances obviously render prosecution unlikely, and under 21-A M.R.S.A. §1062-A(8-A), assessment of a penalty by the Commission for the conduct precludes prosecution by the State, but the Commission should still hesitate to interpret 21-A M.R.S.A. §1062-A to criminalize good-faith errors by first-time filers, particularly those who are engaged solely in ballot measure advocacy.

The error here is with treatment of the date of a single expenditure. If the altering of the expenditure date by a few days had not straddled a reporting period, there would have been no violation at all, instead of a Class E Crime.

Here, FVBQC in good faith believed an expenditure fell within one reporting period, and when it discovered that strictly following the statutory definition of "expenditure"

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required fixing a date close to the end of the previous period rather than close to the beginning of the current one, it voluntarily disclosed and immediately remedied the error. The Commission can reasonably find that taken in context, FVBQC's initial financial report "substantially conformed" to disclosure requirements, as the offending expenditure was reported in the context of filing the next financial report (which likewise substantially conformed), and resulted in a "substantially conforming" amendment to the initial financial report.

None of this prevents the Commission from finding that omissions from campaign finance reports violate 21-A M.R.S.A. §1062-A(2) in other contexts. Intentional omissions would be actionable under both that section and 21-A M.R.S.A. §§1004 & 1004-A. Unintentional violations, committed in a context where a PAC or BQC treasurer was not meeting its obligations under Title 21-A, could likewise be actionable under any of those provisions.

2. The Proposed Fine Is Disproportionate and Should Be Waived Because the Commission's Regulations Do Not Call for Staff Referral to the Commission in These Circumstances.

Under 94-270 C.M.R. ch. 1, §2(A), while the Commission reviews all candidate campaign finance reports to verify compliance, it only reviews a selection of reports by non-candidate committees. Section 2(A) contemplates referral to the Commissioners for action only in instances involving "substantial violations," or (at staff discretion) minor violations that have not been remedied within a reasonable time period.

Here, FVBQC in good faith believed an expenditure fell within one reporting period, and when it discovered that strictly following the statutory definition of "expenditure" required fixing a date close to the end of the previous period rather than close to the beginning of the current one, it voluntarily disclosed and immediately remedied the error.

Under Commission regulations, if staff had discovered that a BQC had, in good faith, fixed a date that was a few days too late for an expenditure, they would have informed the BQC, and only taken further action if the "minor violation" were not remedied promptly. The difference here is that the BQC itself discovered the error, and immediately reported and corrected it.

One can envision circumstances where incorrectly fixing an expenditure date and pushing it into the next reporting period might constitute a substantial violation. It might, for example, if such an action were taken intentionally, particularly if it were done with intent to delay disclosure of financial activity in a manner injurious to the public.

The terms "substantial violation" and "minor violation" are not defined in the regulations, but it is appropriate for staff to look at context in determining whether a good-faith error in fixing an expenditure date constitutes a substantial violation. FVBQC has consistently filed timely reports, has sought to fix expenditures and contributions in precise compliance with the law, and voluntarily disclosed and immediately corrected its one error. It is apparently only because the time period between reporting periods is so large,

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and because the expenditure whose date was changed by a few days was so large, that staff appear to deem this a substantial violation.

This is not a case of a substantially noncompliant report – it is a case of a single item being fixed a few days in one direction or another, in a larger context of full compliance.

3. Mitigating Circumstances Merit Waiver of the Proposed Fine.

If the Commission deems a violation to have occurred, it has discretion to “waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances.” 21-A M.R.S.A. §1062-A(2). “Mitigating circumstances” can include a “valid emergency of the committee treasurer determined by the commission, in the interest of sound administration of justice, to warrant waiver of the penalty in whole or in part.” *Id.* §1062-A(2)(A). They can also include “[o]ther 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 requirement.” *Id.* §1062-A(2)(A).

In determining what “other circumstances” might qualify, 21-A M.R.S.A. §1004-A is instructive. Section 1104-A prescribes penalties for, inter alia, filing of “a campaign finance report that substantially misreports contributions, expenditures or other campaign activity,” and states that in determining a penalty the Commission “shall consider, among other things, the level of intent to mislead, the penalty necessary to deter similar misconduct in the future and the harm suffered by the public from the incorrect disclosure.” In this instance, FVBQC had no intent to mislead. A penalty would have no deterrent effect, as there was no misconduct. FVBQC made a good-faith error, which it promptly reported. This is not the sort of conduct the Commission should deter. The late disclosure also caused no harm to the public. The expenditure was disclosed within the reporting period following its incursion, and was disclosed months before the general election in which Question 5 appears on the ballot. The general nature of FVBQC’s activities was clear from its initial report.

In this instance, FVBQC made a “bona fide effort ... to file the report in accordance with the statutory requirement.” Mr. Clopp acquainted himself with the applicable laws and regulations, timely filed FVBQC’s registration and campaign finance reports, and promptly corrected the sole error he made in the process of filing the first two financial reports he had ever filed. Given that bona fide effort, the Commission should consider all of the “other circumstances” below.

4. The Proposed Fine Is Disproportionate and Should Be Waived in Light of FVBQC’s Level of Experience in Political Activity and Mr. Clopp’s Level of Experience as a Treasurer.

As stated above, neither Fair Vote nor Mr. Clopp has ever been involved in administering a PAC or a BQC, and each is a first-time filer in Maine’s campaign finance system. While Mr. Clopp and Fair Vote were diligent in learning rules and deadlines to ensure compliance with the letter and spirit of the law, they made a single good-faith error, which they promptly corrected. While Mr. Clopp took his role very seriously, he does

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not deal with financial matters in his day to day work. He undertook this work at a time of significant personal challenges with his mother's health.

In this case, FVBQC made a single error regarding a single expenditure, on what was essentially Mr. Clopp's first day as a Treasurer, in the midst of a time of personal crisis. These circumstances make this fine vastly disproportionate to the mistake made.

5. *The Proposed Fine Is Disproportionate and Should Be Waived in Light of Mr. Clopp's Personal Circumstances in June and July 2016.*

As stated above, Mr. Clopp filed FVBQC's first two financial reports during a time of family crisis. These personal challenges reasonably pushed him to put reporting questions aside after filing the initial financing report, until the next campaign finance report was due. There was no reporting deadline between the date of the initial finance report and the 42-Day Post-Primary Report that would have triggered earlier review. While Mr. Clopp's personal circumstances merited mitigation based on "other circumstances," they also constituted an ongoing "valid emergency of the committee treasurer determined by the commission, in the interest of sound administration of justice, to warrant waiver of the penalty in whole or in part." *Id.* §1062-A(2)(A). Mr. Clopp could not reasonably have been expected to be more engaged with the campaign finance system between reports in light of his family circumstances and the other responsibilities he had with Fair Vote.

6. *The Proposed Fine Is Disproportionate and Should Be Waived in Light of the Absence of Harm to the Public.*

While FVBQC takes full responsibility for its error, the proposed \$10,000 penalty is unfairly high given the absence of harm to the public. The Clarity expenditure related to a ballot question campaign, not a campaign for political office. It did not involve direct spending on voter contact. It was disclosed in the campaign finance report directly following the initial campaign finance report, months in advance of the November General Election. To FVBQC's knowledge, there is no PAC or BQC opposing Question 5, so there is no known organized opponent who received delayed notice that FVBQC intended to engage in list enhancement and data analytics.

7. *The Proposed Fine Is Disproportionate and Should Be Waived in Light of the Consideration Title 21-A Gives to BQCs.*

Although BQCs are subject to many of the same requirements as PACs, and potentially liable for similar penalties for violations of those requirements, Title 21-A recognizes that the two should be treated differently for enforcement purposes. PACs advocate election or defeat of political candidates and parties, and regulation of them implicates the State's compelling interest in preventing the reality or appearance of corruption in the political process. *See Buckley v. Valeo*, 424 U.S. 1 (1976). Even PACs that are engaged solely in ballot measure advocacy serve as the primary organized vehicle for money in ballot question campaigns, and can shift at a moment's notice, through amended registration, to advocacy regarding political candidates and parties. BQCs, on the other hand, are focused solely on advocacy relating to ballot questions, and thus do not implicate the

State's compelling interest in preventing the reality or appearance of corruption in the political process. *See First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). BQCs tend to be individuals and organizations that do not ordinarily participate in the campaign finance system, and face a heightened risk of good-faith violations of Title 21-A.

Title 21-A implicitly recognizes these key differences between PACs and BQCs. Under 21-A M.R.S.A. §1062-A(1)–(4), BQCs and PACs face the same maximum penalties for failure to timely file a registration or campaign finance report. However, 21-A M.R.S.A. §1062-A(5) requires Commission staff to mail notice to a PAC's treasurer when a report is not received, and requires Commission staff automatically to send a violation letter assessing the penalty calculated under sub-section 3 (which penalty can be appealed to the Commission), *but there are no parallel requirements with regard to BQCs*. Commission staff deem themselves compelled to follow these procedures with regard to BQCs, but this provision's deliberate exclusion of BQCs indicates that Commission staff have discretion when BQCs are involved. Under 21-A M.R.S.A. §1062-A(7), the Commission is required to keep a public list of late-filing PACs, but there is no parallel requirement for late-filing BQCs. Similarly, 21-A M.R.S.A. §1054-A imposes duties and potential personal liability on treasurers of PACs, but does not apply to BQCs.²

These differences in treatment make sense from a public policy standpoint. The Commission needs to have tools to sanction misconduct by BQCs, but enforcement needs to be more flexible in cases involving good-faith errors that do not harm the public interest. The danger of aggressive enforcement chilling political speech is higher when it involves people and organizations who wish to engage in ballot question policy debates by means other than contributing to a PAC than it is with people and organizations more regularly engaged with the campaign finance system, whereas the public interests driving that system and its approach to enforcement are less compelling (though still important) in ballot question campaigns than in candidate elections, given the absence of the specter of public corruption.

Thus, to the extent the circumstances in this case suggest either a finding of no violation or a waiver of penalty, the suggestion is stronger because it involves a BQC.

8. The Proposed Fine Is Disproportionate and Should Be Waived in Light of Commission Actions in Other Cases

On January 23, 2015, the Commission reduced a proposed penalty from \$5,000 to \$250 for Senator John Cleveland, a fifth-time candidate for State Senate, District 20. The penalty was assessed for failing to disclose two expenditures totaling \$8,787.01 in his 11-Day Pre-General Report, on the grounds that the error was unintentional and was self-reported. There a number of factors that make the current case a stronger one for waiver than Senator Cleveland's, where the fine was almost completely waived:

- Senator Cleveland was a political candidate who had run for office five times, and had access to a political party's infrastructure to assist him with compliance, whereas

² 21-A M.R.S.A. §1054-A applies to "committees," which term is defined in 21-A M.R.S.A. §1052(2) to include only PACs, and 21-A M.R.S.A. §1054-A(3) cross-references 21-A M.R.S.A. §1052-A, which governs registration of "political action committees."

Fair Vote and Mr. Clopp are first-time filers with no experience managing the kind of committee for which they were filing reports, and made the error with respect to the very first report they ever filed;

- Non-reporting of Senator Cleveland's omission of expenditures resulted in them being reported after the General Election, rather than before, thereby depriving voters of the information, whereas FairVote's later disclosure occurred months in advance of the election in question, giving voters ample time to view the information;
- Senator Cleveland's violations involved a candidate election, where there is a heightened public interest in disclosure, whereas FVBQC's actions involve a ballot question campaign, where the public interest is strong, but less compelling;
- There is no indication that there was any ambiguity regarding the date on which Senator Cleveland's expenditures occurred, whereas there was ambiguity with regard to the timing of FVBQC's expenditure.

On the same date, the Commission reduced a proposed penalty from \$5,119.70 to \$150 for Representative Dillon F. Bates, assessed because two reports substantially under-reported expenditures, omitting a total of 11 expenditures. There a number of factors that make the current case a stronger one for waiver than Representative Bates's, where the fine was almost completely waived:

- Representative Bates was a political candidate with access to political party infrastructure, compared to FVBQC's inexperience;
- Representative Bates misreported 11 times as many expenditures as FVBQC;
- Representative Bates explained the misreporting as resulting from him and his partner losing receipts and failing to provide other receipts to the Treasurer in a timely manner, whereas FVBQC keeps all receipts and, beginning with its second report, thoroughly audited expenditures to ensure timely reporting;
- As above, the case involved a candidate election, not a ballot question campaign; and
- As above, there is no indication that there was any ambiguity regarding the date on which Representative Bates' expenditures occurred.

On December 22, 2014, the Commission reduced a proposed penalty from \$5,435.68 to \$500 for Committee for a Healthier Maine BQC ("CHMBQC"). The penalty was assessed because the Committee registered and filed its initial financial report 21 days late. CHMBQC stated that as first-time filers, it had not investigated the rules defining "expenditure" before engaging with contractors to provide polling and analysis, website production and video work regarding Question 4 on the November 4, 2014 ballot. There are a number of factors that make the current case a stronger one for waiver than CHMBQC's, where the fine was almost completely waived:

- While CHMBQ did not make a timely effort to learn the rules before engaging in ballot question campaign activity, FVBQC investigated the rules early in the process, and filed all reports on schedule;
- CHMBQ was late in registering, was late in filing its initial report, and made late reports of numerous expenditures (including all of the expenditures contained in the initial report), whereas FVBQC timely registered, filed all reports, and only erred with respect to reporting of a single expenditure;
- Members of the public who wish to know which organizations are engaged in ballot question campaign activity did not know of CHMBQ's existence (much less the

August 16, 2016

Page 9

nature of its activities) until 21 days after disclosure was required, whereas the public learned of FVBQC's existence and learned about the general nature of its activities on precisely the schedule required by law.

In none of these cases was a treasurer alleged to have been operating under the personal stresses that affected Mr. Clopp during the period covering FVBQC's first two reports.

9. Conclusion

FVBQC's acknowledged error does not violate 21-A M.R.S.A. §1062-A, and any violation was appropriate for staff resolution without assessment of the maximum fine and causing FVBQC the expense of a Commission hearing. To the extent there is a violation properly before the Commission, (1) the inexperience of FVBQC and its Treasurer, (2) the Treasurer's family emergency during the time in question, the lack of any intent to evade disclosure requirements, (3) FVBQC's diligence in understanding its obligations and reporting its error, (4) the Legislature's expectation that BQCs should be regulated less aggressively than PACs and political candidates and committees for good-faith reporting errors, and (5) the Commission's past actions support FVBQC's request for a waiver of the fine. While FVBQC takes responsibility for its error, the assessed penalty is not remotely commensurate with the severity of the mistake or its impact on the public. The Commission has discretion to waive this penalty in part or in full, and this seems as strong a case as any for full waiver.

Accordingly, FVBQC requests that the Commission find that no violation has occurred, or waive the preliminary penalty in full or in part. FVBQC also recommends that Commission staff adopt a more flexible approach to regulation of BQCs, consistent with Title 21-A.

Sincerely,



Clifford M. Ginn

Dyer, Benjamin P

From: Clifford Ginn <cliffginn@gmail.com>
Sent: Tuesday, August 23, 2016 10:14 AM
To: Wayne, Jonathan; 'Doug Clopp'
Cc: Lavin, Paul; Dyer, Benjamin P
Subject: Re: Quick Factual Question
Attachments: Fair Vote - BQC Response and Waiver Request 08-18-2016.pdf

Good morning, Jonathan,

Doug just heard back from the accounting department. When Doug initially contacted the department to respond to the Commission's inquiries, they told him that the date was June 13, 2016. However, a review of wiring records this morning indicates that the wire to pay Clarity was initiated June 7, 2016. We apologize for the error, and Fair Vote is initiating new protocols to improve internal communication on expenditures.

The analysis does not change, however. Fair Vote first made its commitment to move forward with Clarity on June 7, 2016 (when it made payment), rather than on June 9, 2016, when it signed the contract. Both dates are within 7 days before FairVote BQC's June 13, 2016 registration. In commercial contracts, a party can manifest assent by signing an agreement or by engaging in part performance in accordance with a writing.

I have instructed Doug to amend the Clarity expenditure and concomitant contribution to June 7, 2016.

I have amended the waiver request to reflect this information. I remove mention of staff approving the concept of moving the expenditure date later. I believe our discussion reflected your acceptance of Doug's representation that FairVote had not yet committed when it received a price and scope of work proposal, and that the expenditure occurred as soon as FairVote manifested a commitment to move forward, but given that the facts have changed since the call, I want to leave it to you to decide what to say about it.

Please feel free to call me if you would like to discuss any of this.

Warmest regards,

Clifford Ginn

Ginn Law, LLC

62 Marion Jordan Road

Scarborough, ME 04074

(207) 274-0001



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

August 10, 2016

Mr. Douglas Clopp, Treasurer
Fair Vote BQC
19 Bridge St, Ste 120
Westbrook, ME 04092

Re: Late Registration and Filing of Initial Campaign Finance Report

Dear Mr. Clopp,

The Commission staff has made a preliminary determination that the Fair Vote BQC (the BQC) was late in registering with the Commission and in filing its Initial Campaign Finance Report. The BQC was required to register with the Commission by June 10, 2016 but did not do so until June 13, 2016. The Commission staff considers the Initial Report late as a result of substantial non-conformity with disclosure requirements. The BQC initially reported on June 13, 2016 \$13,764.00 in contributions and expenditures, but later amended its report on July 26, 2016 to show \$47,044.00 in contributions and expenditures. Under the Commission's statutes, the late filing of a report triggers an enforcement process. (21-A M.R.S.A. § 1062-A). The preliminary penalty amount for the late filing of your report is \$10,000.00. (Please refer to the enclosed penalty matrix for the calculation.) If you agree to pay the penalty, please use the enclosed billing statement. The Commission may also assess up to a \$2,500.00 penalty for the late filed registration.

The BQC may make a written request that the Commission waive the violation or penalty in whole or in part. Any request for a waiver must be made within 14 calendar days of your receipt of this notice. The request must be in writing and contain a full explanation of the reasons the BQC 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; or (3) relevant evidence that the PAC 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.

Please call me at (207) 287-6221 or send me an email at benjamin.p.dyer@maine.gov if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Benjamin P. Dyer".

Benjamin P. Dyer
Political Committee and Lobbyist Registrar

Payment Receipt

Mail payment to:

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

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

Mr. Douglas Clopp, Treasurer
Fair Vote BQC
19 Bridge St, Ste 120
Westbrook, ME 04092

Violation: Late Initial Report
Amount Due: **\$10,000.00**

Committee Name: Fair Vote BQC

Report Title: Initial Report

Due Date: June 13, 2016

Previous Violation(s): NA

Filed Date: July 26, 2016

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, 2%

For the second violation, 4%

For the third and each subsequent violation, 6%

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's 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:	<u>\$33,280.00</u>
		X	
		Percent Prescribed:	<u>2%</u>
X .02	Percent prescribed for first violation		<u>\$665.60</u>
			X
\$50.00	Two percent of total contributions	Number of days late:	<u>46</u>
X 2	Number of calendar days late	Total penalty accrued:	<u>\$10,000.00*</u>
\$100.00	Total Penalty		

*** Penalty at statutory maximum
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 1062-A(4)

\$10,000 for Initial Reports, Pre- and Post-Election Reports, Quarterly Reports and 24-Hour Reports, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late.



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

2016 CAMPAIGN FINANCE REPORT

FOR BALLOT QUESTION COMMITTEES

COMMITTEE		TREASURER	
Fair Vote - BQC 19 Bridge Street, Suite 120 Westbrook, ME 04092 PHONE: (207) 887-9261 EMAIL: Dclopp@fairvote.org		Mr. Douglas Clopp 19 Bridge St, Suite 120 Westbrook, ME 04092 PHONE: (207) 887-9261 EMAIL: dclopp@fairvote.org	
REPORT	DUE DATE	REPORTING PERIOD	
INITIAL FINANCIAL REPORT	06/13/2016	01/01/2000 - 06/13/2016	

FINANCIAL ACTIVITY SUMMARY

RECEIPTS	TOTAL FOR THIS PERIOD	TOTAL FOR YEAR
1. CASH CONTRIBUTIONS (SCHEDULE A)	\$13,764.00	\$13,764.00
2. OTHER CASH RECEIPTS (INTEREST, ETC)	\$0.00	\$0.00
3. LOANS (SCHEDULE C)	\$0.00	\$0.00
4. TOTAL RECEIPTS	\$13,764.00	\$13,764.00
EXPENDITURES		
5. EXPENDITURES (SCHEDULE B)	\$13,764.00	\$13,764.00
6. LOAN REPAYMENTS (SCHEDULE C)	\$0.00	\$0.00
7. TOTAL PAYMENTS	\$13,764.00	\$13,764.00
CASH SUMMARY		
8. CASH BALANCE AT BEGINNING OF PERIOD	\$0.00	
9. PLUS TOTAL RECEIPTS THIS PERIOD (LINE 4)	\$13,764.00	
10. MINUS TOTAL PAYMENTS THIS PERIOD (LINE 8)	\$13,764.00	
11. CASH BALANCE AT END OF PERIOD	\$0.00	
OTHER ACTIVITY		
12. IN-KIND CONTRIBUTIONS (SCHEDULE A-1)	\$0.00	\$0.00
13. TOTAL LOAN BALANCE AT END OF PERIOD (SCHEDULE C)	\$0.00	
14. TOTAL UNPAID DEBTS AT END OF PERIOD (SCHEDULE D)	\$0.00	

I, Mr. Douglas Clopp, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: Mr. Douglas Clopp
 REPORT FILED ON: 06/13/2016
 LAST MODIFIED: 06/13/2016
 PRINTED: 08/10/2016
 COMMITTEE ID: 9547

**SCHEDULE A
CASH CONTRIBUTIONS**

- For contributors who gave more than \$50, the names, address, occupation, and employer must be reported. If "information requested" is listed instead of occupation and employer, the candidate is waiting to receive that information.
- Cash contributions of \$50 or less can be added together and reported as a lump sum.
- Contributor Types

- | | |
|--|--|
| 1 = Individual | 9 = Candidate / Candidate Committee |
| 2 = Candidate/ Spouse/ Domestic Partner | 10 = General Treasury Transfer |
| 3 = Commercial Source | 11 = Transfer from Previous Campaign |
| 4 = Nonprofit Organization | 12 = Contributors giving \$50 or less |
| 5 = Political Action Committee | 13 = Contributors giving \$100 or less |
| 6 = Political Party Committee | 14 = Contributors giving \$200 or less |
| 7 = Ballot Question Committee | 15 = MCEA Payment |
| 8 = Other Candidate/ Candidate Committee | 16 = Financial Institution |

DATE RECEIVED	CONTRIBUTOR	OCCUPATION AND EMPLOYER	TYPE	AMOUNT
6/13/2016	FAIR VOTE 6930 CARROLL AVENUE, SUITE 240 TAKOMA PARK, MD 20912		4	\$12,900.00
6/13/2016	FAIR VOTE 6930 CARROLL AVENUE, SUITE 240 TAKOMA PARK, MD 20912		4	\$864.00
TOTAL CASH CONTRIBUTIONS				\$13,764.00

**SCHEDULE B
EXPENDITURES TO SUPPORT OR OPPOSE**

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, palmcards, 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	PAYEE	REMARK	TYPE	AMOUNT
6/13/2016	ANZALONE, LISZT, & GROVE 1140 19TH STREET NW, SUITE 610 WASHINGTON, DC 20036	POLLING ON RANKED CHOICE VOTING PAYMENT OF \$12,900.00 TO SUPPORT: AN ACT TO ESTABLISH RANKED-CHOICE VOTING	POL	\$12,900.00
6/13/2016	ROBERT RICHIE 6930 CARROLL AVENUE, SUITE 240 TAKOMA PARK, MD 20912	STAFF TIME - POLL PREPARATION, FUNDRAISING PAYMENT OF \$864.00 TO SUPPORT: AN ACT TO ESTABLISH RANKED-CHOICE VOTING	SAL	\$864.00
TOTAL EXPENDITURES TO SUPPORT OR OPPOSE:				\$13,764.00



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

2016 CAMPAIGN FINANCE REPORT

FOR BALLOT QUESTION COMMITTEES

COMMITTEE		TREASURER	
Fair Vote - BQC 19 Bridge Street, Suite 120 Westbrook, ME 04092 PHONE: (207) 887-9261 EMAIL: Dclopp@fairvote.org		Mr. Douglas Clopp 19 Bridge St, Suite 120 Westbrook, ME 04092 PHONE: (207) 887-9261 EMAIL: dclopp@fairvote.org	
REPORT	DUE DATE	REPORTING PERIOD	
INITIAL FINANCIAL REPORT	06/13/2016	01/01/2000 - 06/13/2016	

FINANCIAL ACTIVITY SUMMARY

RECEIPTS	TOTAL FOR THIS PERIOD	TOTAL FOR YEAR
1. CASH CONTRIBUTIONS (SCHEDULE A)	\$47,044.00	\$47,044.00
2. OTHER CASH RECEIPTS (INTEREST, ETC)	\$0.00	\$0.00
3. LOANS (SCHEDULE C)	\$0.00	\$0.00
4. TOTAL RECEIPTS	\$47,044.00	\$47,044.00
EXPENDITURES		
5. EXPENDITURES (SCHEDULE B)	\$47,044.00	\$47,044.00
6. LOAN REPAYMENTS (SCHEDULE C)	\$0.00	\$0.00
7. TOTAL PAYMENTS	\$47,044.00	\$47,044.00
CASH SUMMARY		
8. CASH BALANCE AT BEGINNING OF PERIOD	\$0.00	
9. PLUS TOTAL RECEIPTS THIS PERIOD (LINE 4)	\$47,044.00	
10. MINUS TOTAL PAYMENTS THIS PERIOD (LINE 8)	\$47,044.00	
11. CASH BALANCE AT END OF PERIOD	\$0.00	
OTHER ACTIVITY		
12. IN-KIND CONTRIBUTIONS (SCHEDULE A-1)	\$0.00	\$0.00
13. TOTAL LOAN BALANCE AT END OF PERIOD (SCHEDULE C)	\$0.00	
14. TOTAL UNPAID DEBTS AT END OF PERIOD (SCHEDULE D)	\$0.00	

I, Mr. Douglas Clopp, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: Mr. Douglas Clopp
 REPORT FILED ON: 06/13/2016
 LAST MODIFIED: 07/26/2016
 PRINTED: 08/10/2016
 COMMITTEE ID: 9547

**SCHEDULE A
CASH CONTRIBUTIONS**

- For contributors who gave more that \$50, the names, address, occupation, and employer must be reported. If "information requested" is listed instead of occupation and employer, the candidate is waiting to receive that information.
- Cash contributions of \$50 or less can be added together and reported as a lump sum.
- Contributor Types

1 = Individual

9 = Candidate / Candidate Committee

2 = Candidate/ Spouse/ Domestic Partner

10 = General Treasury Transfer

3 = Commercial Source

11 = Transfer from Previous Campaign

4 = Nonprofit Organization

12 = Contributors giving \$50 or less

5 = Political Action Committee

13 = Contributors giving \$100 or less

6 = Political Party Committee

14 = Contributors giving \$200 or less

7 = Ballot Question Committee

15 = MCEA Payment

8 = Other Candidate/ Candidate Committee

16 = Financial Institution

DATE RECEIVED	CONTRIBUTOR	OCCUPATION AND EMPLOYER	TYPE	AMOUNT
6/3/2016	GENERAL TREASURY TRANSFER		10	\$33,000.00
6/3/2016	FAIR VOTE 6930 CARROLL AVENUE, SUITE 240 TAKOMA PARK, MD 20912		4	\$33,000.00
6/3/2016	FAIR VOTE 6930 CARROLL AVENUE, SUITE 240 TAKOMA PARK, MD 20912		4	(\$33,000.00)
6/6/2016	GENERAL TREASURY TRANSFER		10	\$280.00
6/13/2016	FAIR VOTE 6930 CARROLL AVENUE, SUITE 240 TAKOMA PARK, MD 20912		4	\$12,900.00
6/13/2016	FAIR VOTE 6930 CARROLL AVENUE, SUITE 240 TAKOMA PARK, MD 20912		4	\$864.00
TOTAL CASH CONTRIBUTIONS				\$47,044.00

**SCHEDULE B
EXPENDITURES TO SUPPORT OR OPPOSE**

EXPENDITURE TYPES				
<p>CNS Campaign consultants</p> <p>CON Contribution to other candidate, party, committee</p> <p>EQP Equipment (office machines, furniture, cell phones, etc.)</p> <p>FND Fundraising events</p> <p>FOD Food for campaign events, volunteers</p> <p>LIT Print and graphics (flyers, signs, palmcards, t-shirts, etc.)</p> <p>MHS Mail house (all services purchased)</p> <p>OFF Office rent, utilities, phone and internet services, supplies</p> <p>OTH Other</p> <p>PHO Phone banks, automated telephone calls</p>	<p>POL Polling and survey research</p> <p>POS Postage for U.S. Mail and mail box fees</p> <p>PRO Other professional services</p> <p>PRT Print media ads only (newspapers, magazines, etc.)</p> <p>RAD Radio ads, production costs</p> <p>SAL Campaign workers' salaries and personnel costs</p> <p>TRV Travel (fuel, mileage, lodging, etc.)</p> <p>TVN TV or cable ads, production costs</p> <p>WEB Website design, registration, hosting, maintenance, etc.</p>			
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
6/3/2016	CLARITY CAMPAIGN LABS LLC 729 15TH ST NW SUITE 700 WASHINGTON, DC 20005-6037	DATA ANALYTICS AND MODELING PAYMENT OF \$33,000.00 TO SUPPORT: QUESTION 5 - AN ACT TO ESTABLISH RANKED CHOICE VOTING	POL	\$33,000.00
6/6/2016	DOUG CLOPP 146 BREAKWATER DRIVE UNIT 512 SOUTH PORTLAND, ME 04106	SALARY PAYMENT OF \$280.00 TO SUPPORT: AN ACT TO ESTABLISH RANKED-CHOICE VOTING	SAL	\$280.00
6/13/2016	ANZALONE, LISZT, & GROVE 1140 19TH STREET NW, SUITE 610 WASHINGTON, DC 20036	POLLING ON RANKED CHOICE VOTING PAYMENT OF \$12,900.00 TO SUPPORT: AN ACT TO ESTABLISH RANKED-CHOICE VOTING	POL	\$12,900.00
6/13/2016	ROBERT RICHIE 6930 CARROLL AVENUE, SUITE 240 TAKOMA PARK, MD 20912	STAFF TIME - POLL PREPARATION, FUNDRAISING PAYMENT OF \$864.00 TO SUPPORT: AN ACT TO ESTABLISH RANKED-CHOICE VOTING	SAL	\$864.00
TOTAL EXPENDITURES TO SUPPORT OR OPPOSE:				\$47,044.00



Commission on Governmental Ethics and Election Practices
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2016 CAMPAIGN FINANCE REPORT

FOR BALLOT QUESTION COMMITTEES

COMMITTEE		TREASURER	
Fair Vote - BQC 19 Bridge Street, Suite 120 Westbrook, ME 04092 PHONE: (207) 887-9261 EMAIL: Dclopp@fairvote.org		Mr. Douglas Clopp 19 Bridge St, Suite 120 Westbrook, ME 04092 PHONE: (207) 887-9261 EMAIL: dclopp@fairvote.org	
REPORT	DUE DATE	REPORTING PERIOD	
INITIAL FINANCIAL REPORT	06/13/2016	01/01/2000 - 06/13/2016	

FINANCIAL ACTIVITY SUMMARY

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1. CASH CONTRIBUTIONS (SCHEDULE A)	\$47,044.00	\$47,044.00
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3. LOANS (SCHEDULE C)	\$0.00	\$0.00
4. TOTAL RECEIPTS	\$47,044.00	\$47,044.00
EXPENDITURES		
5. EXPENDITURES (SCHEDULE B)	\$47,044.00	\$47,044.00
6. LOAN REPAYMENTS (SCHEDULE C)	\$0.00	\$0.00
7. TOTAL PAYMENTS	\$47,044.00	\$47,044.00
CASH SUMMARY		
8. CASH BALANCE AT BEGINNING OF PERIOD	\$0.00	
9. PLUS TOTAL RECEIPTS THIS PERIOD (LINE 4)	\$47,044.00	
10. MINUS TOTAL PAYMENTS THIS PERIOD (LINE 8)	\$47,044.00	
11. CASH BALANCE AT END OF PERIOD	\$0.00	
OTHER ACTIVITY		
12. IN-KIND CONTRIBUTIONS (SCHEDULE A-1)	\$0.00	\$0.00
13. TOTAL LOAN BALANCE AT END OF PERIOD (SCHEDULE C)	\$0.00	
14. TOTAL UNPAID DEBTS AT END OF PERIOD (SCHEDULE D)	\$0.00	

I, Mr. Douglas Clopp, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: Mr. Douglas Clopp
 REPORT FILED ON: 06/13/2016
 LAST MODIFIED: 08/16/2016
 PRINTED: 08/22/2016
 COMMITTEE ID: 9547

**SCHEDULE A
CASH CONTRIBUTIONS**

- For contributors who gave more than \$50, the names, address, occupation, and employer must be reported. If "information requested" is listed instead of occupation and employer, the candidate is waiting to receive that information.
- Cash contributions of \$50 or less can be added together and reported as a lump sum.
- Contributor Types

- | | |
|--|--|
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| 7 = Ballot Question Committee | 15 = MCEA Payment |
| 8 = Other Candidate/ Candidate Committee | 16 = Financial Institution |

DATE RECEIVED	CONTRIBUTOR	OCCUPATION AND EMPLOYER	TYPE	AMOUNT
6/3/2016	GENERAL TREASURY TRANSFER		10	\$33,000.00
6/3/2016	GENERAL TREASURY TRANSFER		10	(\$33,000.00)
6/3/2016	FAIR VOTE 6930 CARROLL AVENUE, SUITE 240 TAKOMA PARK, MD 20912		4	\$33,000.00
6/3/2016	FAIR VOTE 6930 CARROLL AVENUE, SUITE 240 TAKOMA PARK, MD 20912		4	(\$33,000.00)
6/6/2016	GENERAL TREASURY TRANSFER		10	\$280.00
6/9/2016	GENERAL TREASURY TRANSFER		10	\$33,000.00
6/13/2016	FAIR VOTE 6930 CARROLL AVENUE, SUITE 240 TAKOMA PARK, MD 20912		4	\$12,900.00
6/13/2016	FAIR VOTE 6930 CARROLL AVENUE, SUITE 240 TAKOMA PARK, MD 20912		4	\$864.00
TOTAL CASH CONTRIBUTIONS				\$47,044.00

**SCHEDULE B
EXPENDITURES TO SUPPORT OR OPPOSE**

EXPENDITURE TYPES				
<p>CNS Campaign consultants</p> <p>CON Contribution to other candidate, party, committee</p> <p>EQP Equipment (office machines, furniture, cell phones, etc.)</p> <p>FND Fundraising events</p> <p>FOD Food for campaign events, volunteers</p> <p>LIT Print and graphics (flyers, signs, palmcards, t-shirts, etc.)</p> <p>MHS Mail house (all services purchased)</p> <p>OFF Office rent, utilities, phone and internet services, supplies</p> <p>OTH Other</p> <p>PHO Phone banks, automated telephone calls</p>	<p>POL Polling and survey research</p> <p>POS Postage for U.S. Mail and mail box fees</p> <p>PRO Other professional services</p> <p>PRT Print media ads only (newspapers, magazines, etc.)</p> <p>RAD Radio ads, production costs</p> <p>SAL Campaign workers' salaries and personnel costs</p> <p>TRV Travel (fuel, mileage, lodging, etc.)</p> <p>TVN TV or cable ads, production costs</p> <p>WEB Website design, registration, hosting, maintenance, etc.</p>			
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
6/3/2016	CLARITY CAMPAIGN LABS LLC 729 15TH ST NW SUITE 700 WASHINGTON, DC 20005-6037	DATA ANALYTICS AND MODELING PAYMENT OF \$33,000.00 TO SUPPORT: QUESTION 5 - AN ACT TO ESTABLISH RANKED CHOICE VOTING	POL	\$33,000.00
6/3/2016	CLARITY CAMPAIGN LABS LLC 729 15TH ST NW SUITE 700 WASHINGTON, DC 20005-6037	Offset due to update of filed item PAYMENT OF (\$33,000.00) TO SUPPORT: QUESTION 5 - AN ACT TO ESTABLISH RANKED CHOICE VOTING	POL	(\$33,000.00)
6/6/2016	DOUG CLOPP 146 BREAKWATER DRIVE UNIT 512 SOUTH PORTLAND, ME 04106	SALARY PAYMENT OF \$280.00 TO SUPPORT: AN ACT TO ESTABLISH RANKED-CHOICE VOTING	SAL	\$280.00
6/9/2016	CLARITY CAMPAIGN LABS LLC 729 15TH ST NW SUITE 700 WASHINGTON, DC 20005-6037	DATA ANALYTICS AND MODELING PAYMENT OF \$33,000.00 TO SUPPORT: QUESTION 5 - AN ACT TO ESTABLISH RANKED CHOICE VOTING	POL	\$33,000.00
6/13/2016	ANZALONE, LISZT, & GROVE 1140 19TH STREET NW, SUITE 610 WASHINGTON, DC 20036	POLLING ON RANKED CHOICE VOTING PAYMENT OF \$12,900.00 TO SUPPORT: AN ACT TO ESTABLISH RANKED-CHOICE VOTING	POL	\$12,900.00
6/13/2016	ROBERT RICHIE 6930 CARROLL AVENUE, SUITE 240 TAKOMA PARK, MD 20912	STAFF TIME - POLL PREPARATION, FUNDRAISING PAYMENT OF \$864.00 TO SUPPORT: AN ACT TO ESTABLISH RANKED-CHOICE VOTING	SAL	\$864.00
TOTAL EXPENDITURES TO SUPPORT OR OPPOSE:				\$47,044.00

21-A MRS §1052. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Campaign. "Campaign" means any course of activities to influence the nomination or election of a candidate or to initiate or influence any of the following ballot measures:

- A. A people's veto referendum under the Constitution of Maine, Article IV, Part Third, Section 17;
- B. A direct initiative of legislation under the Constitution of Maine, Article IV, Part Third, Section 18;
- C. An amendment to the Constitution of Maine under Article X, Section 4;
- D. A referendum vote on a measure enacted by the Legislature and expressly conditioned upon ratification by a referendum vote under the Constitution of Maine, Article IV, Part Third, Section 19;
- E. The ratification of the issue of bonds by the State or any agency thereof; and
- F. Any county or municipal referendum.

2. Committee. "Committee" means any political action committee, as defined in this subchapter, and includes any agent of a political action committee.

3. Contribution. "Contribution" includes:

- A. A gift, subscription, loan, advance or deposit of money or anything of value made to a political action committee, except that a loan of money by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- B. A contract, promise or agreement, expressed or implied whether or not legally enforceable, to make a contribution to a political action committee;
- C. Any funds received by a political action committee that are to be transferred to any candidate, committee, campaign or organization for the purpose of initiating or influencing a campaign; or
- D. The payment, by any person or organization, of compensation for the personal services of other persons provided to a political action committee that is used by the political action committee to initiate or influence a campaign.

4. Expenditure. The term "expenditure:"

A. Includes:

- (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of initiating or influencing a campaign;

(2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in this paragraph; and

(3) The transfer of funds by a political action committee to another candidate or political committee; and

B. Does not include:

(1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, cable television system, newspaper, magazine or other periodical publication, unless these facilities are owned or controlled by any political party, political committee, candidate or the spouse or domestic partner of a candidate;

(2) Activity designed to encourage individuals to register to vote or to vote, if that activity or communication does not mention a clearly identified candidate;

(3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;

(4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by a political action committee in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the political action committee on behalf of any candidate does not exceed \$250 with respect to any election;

(5) Any unreimbursed travel expenses incurred and paid for by a political action committee that volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election; and

(6) Any communication by any political action committee member that is not made for the purpose of influencing the nomination or election of any person to state or county office.

4-A. Influence. "Influence" means to promote, support, oppose or defeat.

4-B. Initiate. "Initiate" includes the collection of signatures and related activities to qualify a state or local initiative or referendum for the ballot.

5. Political action committee. The term "political action committee:"

A. Includes:

(1) Any separate or segregated fund established by any corporation, membership organization, cooperative or labor or other organization whose purpose is to initiate or influence a campaign;

(4) Any organization, including any corporation or association, that has as its major purpose initiating or influencing a campaign and that receives

contributions or makes expenditures aggregating more than \$1,500 in a calendar year for that purpose; and

(5) Any organization that does not have as its major purpose influencing candidate elections but that receives contributions or makes expenditures aggregating more than \$5,000 in a calendar year for the purpose of influencing the nomination or election of any candidate to political office; and

B. Does not include:

(1) A candidate or a candidate's treasurer under section 1013-A, subsection 1;

(2) A candidate's authorized political committee under section 1013-A, subsection 1, paragraph B;

(3) A party committee under section 1013-A, subsection 3; or

(4) An organization whose only payments of money in the prior 2 years for the purpose of influencing a campaign in this State are contributions to candidates, party committees, political action committees or ballot question committees registered with the commission or a municipality and that has not raised and accepted any contributions during the calendar year for the purpose of influencing a campaign in this State.

21-A M.R.S.A. § 1056-B. BALLOT QUESTION COMMITTEES

A person not defined as a political action committee who receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign as defined by section 1052, subsection 1, shall file reports with the commission in accordance with this section. For the purposes of this section, "campaign" does not include activities to influence the nomination or election of a candidate. Within 7 days of receiving contributions or making expenditures that exceed \$5,000, the person shall register with the commission as a ballot question committee. For the purposes of this section, expenditures include paid staff time spent for the purpose of initiating or influencing a campaign. The commission must prescribe forms for the registration, and the forms must include specification of a treasurer for the committee, any other principal officers and all individuals who are the primary fund-raisers and decision makers for the committee.

1. Filing requirements. A report required by this section must be filed with the commission according to the reporting schedule in section 1059. After completing all financial activity, the committee shall terminate its campaign finance reporting in the same manner provided in section 1061. The committee shall file each report required by this section through an electronic filing system developed by the commission unless granted a waiver under section 1059, subsection 5.

2. Content. A report must contain an itemized account of each expenditure made to and contribution received from a single source aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; the name and address of each contributor, payee or creditor; and the occupation and principal place of business, if any, for any person who has made contributions exceeding \$100 in the aggregate. The filer is required to report only those contributions made to the filer for the purpose of initiating or influencing a campaign and only those expenditures made for those purposes. The definitions of "contribution" and "expenditure" in section 1052, subsections 3 and 4, respectively, apply to persons required to file ballot question reports.

2-A. Contributions. For the purposes of this section, "contribution" includes, but is not limited to:

- A. Funds that the contributor specified were given in connection with a campaign;
- B. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a campaign;

C. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a campaign when viewed in the context of the contribution and the recipient's activities regarding a campaign; and

D. Funds or transfers from the general treasury of an organization filing a ballot question report.

3. Forms. A report required by this section 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.

4. Records. A person filing a report required by this section shall keep records as required by this subsection for 4 years following the election to which the records pertain.

A. The filer shall keep a detailed account of all contributions made to the filer for the purpose of initiating or influencing a campaign and all expenditures made for those purposes.

B. The filer shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50.

21-A M.R.S.A. § 1059. REPORT; FILING REQUIREMENTS

Committees required to register under section 1052-A, 1053-B or 1056-B shall file an initial campaign finance report at the time of registration and thereafter shall file reports in compliance with this section. All reports must be filed by 11:59 p.m. on the day of the filing deadline, except that reports submitted to a municipal clerk must be filed by the close of business on the day of the filing deadline.

1. Contents; quarterly reports and election year reports.

[2007, c. 443, Pt. A, §35 (RP) .]

2. Reporting schedule. Committees shall file reports according to the following schedule.

A. All committees shall file quarterly reports:

- (1) On January 15th, and the report must be complete as of December 31st;
- (2) On April 10th, and the report must be complete as of March 31st;
- (3) On July 15th, and the report must be complete as of June 30th; and
- (4) On October 5th, and the report must be complete as of September 30th.

B. General and primary election reports must be filed:

- (1) On the 11th day before the date on which the election is held and must be complete as of the 14th day before that date; and
- (2) On the 42nd day after the date on which the election is held and must be complete as of the 35th day after that date.

C. Preelection and post-election reports for special elections or ballot measure campaigns must be filed:

- (1) On the 11th day before the date on which the election is held and must be complete as of the 14th day before that date; and
- (2) On the 42nd day after the date on which the election is held and must be complete as of the 35th day after that date.

D. A committee that files an election report under paragraph B or C is not required to file a quarterly report when the deadline for that quarterly report falls within 10 days of the filing deadline established in paragraph B or C.

E. A committee shall report any single contribution of \$5,000 or more received or single expenditure of \$1,000 or more made after the 14th day before the election and more than 24 hours before 5:00 p.m. on the day of the election within 24 hours of that contribution or expenditure. The treasurer is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses.

3. Report of expenditures made after the 11th day and more than 48 hours before any election.

[1989, c. 504, §§28, 31 (RP) .]

4. Special election reports.

[1989, c. 504, §§28, 31 (RP) .]

5. Electronic filing. Committees shall file each report required by this section through an electronic filing system developed by the commission. The commission may make an exception to this electronic filing requirement if a committee submits a written request that states that the committee lacks access to the technology or the technological ability to file reports electronically. The request for an exception must be submitted within 30 days of the registration of the committee. The commission shall grant all reasonable requests for exceptions.

21-A M.R.S.A. § 1062-A. FAILURE TO FILE ON TIME

1. Registration. A political action committee required to register under section 1052-A or 1053-B or a ballot question committee required to register under section 1056-B that fails to do so or that fails to provide the information required by the commission for registration may be assessed a fine of no more than \$2,500. In assessing a fine, the commission shall consider, among other things, whether the violation was intentional, the amount of campaign and financial activity that occurred before the committee registered, whether the committee intended to conceal its campaign or financial activity and the level of experience of the committee's volunteers and staff.

[2013, c. 334, §30 (AMD) .]

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 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if it is disproportionate to the level of experience of the person filing the report or to 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 of the committee treasurer 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, §9 (AMD).]

B. An error by the commission staff; or [1999, c. 729, §9 (AMD).]

C. 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. [2007, c. 443, Pt. A, §38 (AMD).]

[2009, c. 190, Pt. A, §29 (AMD) .]



3. 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%; [1995, c. 483, §21 (NEW).]

B. For the 2nd violation, 3%; and [1995, c. 483, §21 (NEW).]

C. For the 3rd and subsequent violations, 5%. [1995, c. 483, §21 (NEW).]

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

[2007, c. 443, Pt. A, §39 (AMD) .]

4. Maximum penalties. The maximum penalty under this subchapter is \$10,000 for reports required under section 1056-B or section 1059, 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, §49 (AMD) .]

5. Request for a commission determination. If the commission staff finds that a political action committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the treasurer of the political action committee within 3 business days following the filing deadline informing the treasurer that a report was not received. If a political action committee files a report required under this subchapter late, a notice of preliminary penalty must be forwarded to the treasurer of the political action committee whose report is not received by 11:59 p.m. on the deadline date, informing the treasurer of the commission staff finding of violation and preliminary penalty calculated under subsection 3 and providing the treasurer with an opportunity to request a determination by the commission. A request for determination must be made within 14 calendar days of receipt of the commission's notice. A principal officer or treasurer requesting a determination may either appear in person or designate a representative to appear on the principal officer's or treasurer'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, §31 (AMD) .]

6. Final notice of penalty. After a commission meeting, notice of the final determination of the commission and the penalty, if any, imposed pursuant to this subchapter must be sent to the principal officer and the treasurer of the political action 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 principal officer and to the treasurer of the political action committee. A detailed summary of all notices must be provided to the commission.

[2009, c. 302, §9 (AMD) .]

7. List of late-filing committees. The commission shall prepare a list of the names of political action committees that are late in filing a report required under section 1059, subsection 2, paragraph B, subparagraph (1) or section 1059, subsection 2, paragraph C or D within 30 days of the date of the election and shall make that list available for public inspection.

[2007, c. 443, Pt. A, §41 (AMD) .]

8. Failure to file. A person who fails to file a report as required by this subchapter within 30 days of the filing deadline is guilty of a Class E crime, except that, if a penalty pursuant to subsection 8-A is assessed and collected by the commission, the State may not prosecute a violation under this subsection.

[2003, c. 628, Pt. A, §8 (AMD) .]

8-A. Penalties for failure to file report. The commission may assess a civil penalty for failure to file a report required by this subchapter. The maximum penalty for failure to file a report required under section 1056-B or section 1059 is \$10,000.

[2009, c. 190, Pt. A, §31 (AMD) .]

9. 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, §10 (RPR) .]

must be disclosed in the first report filed by the candidate or the candidate's authorized campaign committee, regardless of the date when the funds or services were received, in accordance with the Commission's procedures for reporting contributions.

Funds or services used by an individual for activities indicating that he or she has decided to become a candidate for a particular office are contributions. Examples of such activities include, but are not limited to: using general public political advertising to publicize his or her intention to campaign for office; hiring staff or consultants for campaign activities; raising funds in excess of what could reasonably be expected to be used for exploratory activities; making or authorizing statements that refer to him or her as a candidate; or taking action to qualify for the ballot.

SECTION 7. EXPENDITURES

1. **Expenditures by Consultants, Employees, and Other Agents of a Political Campaign**
 - A. Each expenditure made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc., employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee must be reported separately by the candidate or committee as if made or incurred by the candidate or committee directly. The report must include the name of the third party vendor or payee to whom the expenditure was made, the date of the expenditure, and the purpose and amount of the expenditure. It is not sufficient to report only the total retainer or fee paid to the person, agency, firm, organization, etc., if that retainer or fee was used to pay third party vendors or payees for campaign-related goods and services.
 - B. If a candidate or committee has paid a media buyer, advertising consultant or similar contractor to purchase advertising time or for the production of television or radio advertising, the candidate or committee may disclose the advertising time and production costs in the aggregate, rather than itemizing each payment made by the contractor to a third party vendor or payee. *Maine Clean Election Act* candidates must obtain from their contractor(s) documentation of every payment of \$50 or more made on their behalf by a contractor or subcontractor related to television or radio advertising.
2. **Expenditures by Political Action Committees.** In addition to the requirements set forth in 21-A M.R.S.A. §1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.
3. **Timing of Reporting Expenditures**
 - A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.

- B. Expenditures must be reported at the earliest of the following events:
- (1) The placement of an order for a good or service;
 - (2) The signing of a contract for a good or service;
 - (3) The delivery of a good or the performance of a service by a vendor;
 - (4) A promise or an agreement (including an implied one) that a payment will be made; or
 - (5) The making of a payment for a good or service.
- C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.

4. **Advance Purchases of Goods and Services for the General Election** *[Repealed]*
5. All campaign-related payments made with the personal funds or credit card of the candidate or an individual authorized by the candidate must be reported as expenditures in the reporting period during which the payment to the vendor or payee is made. The candidate must report the name of the vendor or payee to whom the payment was made, the date of the expenditure, and the purpose and amount of the expenditure. When the expenditure is reported, the candidate should indicate the person who made the payment by entering "Paid by [name of candidate or supporter]" in the remarks section of the expenditure schedule. It is not sufficient to report only the name of the candidate or authorized individual to whom reimbursement was made and the total amount of the reimbursement.
6. Multiple expenditures for bank fees and for vehicle travel may be reported in an aggregate amount, provided that the candidate or committee identifies the time period of the expenditures in the remarks section of the report.
7. When a political action committee or party committee makes an expenditure for a communication to voters for the purpose of influencing the election of a clearly identified candidate, the amount spent to influence that candidate's election must be specified on the regularly filed campaign finance report of the committee, regardless whether the communication expressly advocates for the election or defeat of the candidate. If a single expenditure influences the election of more than one candidate, the political action committee or party committee shall itemize the amount spent per candidate.
8. Payments made or obligations incurred solely for the purpose of conducting activities to determine whether an individual should become a candidate are not expenditures if the individual does not become a candidate. Examples of such activities include, but are not limited to, conducting a poll, telephone calls, and travel. The individual shall keep records of all such payments and obligations. If the individual becomes a candidate, the payments made or obligations incurred are expenditures and are subject to the reporting

requirements of 21-A M.R.S.A. §1017. Such expenditures must be disclosed in the first report filed by the candidate or the candidate's authorized campaign committee, regardless of the date when the funds were expended, in accordance with the Commission's procedures for reporting expenditures.

Payments made for activities indicating that an individual has decided to become a candidate for a particular office are expenditures. Examples of such activities include, but are not limited to: using general public political advertising to publicize his or her intention to campaign for office; hiring staff or consultants for campaign activities; raising funds in excess of what could reasonably be expected to be used for exploratory activities; making or authorizing statements that refer to him or her as a candidate; or taking action to qualify for the ballot.

9. **Exception to Disclaimer Requirements for Certain Handbills, Campaign Signs, and Internet or E-Mail Communications**

For purposes of applying the exclusions listed in Title 21-A, section 1014, subsection 6, paragraphs A through C, the following terms have the following meanings:

- A. "Cost" includes all payments or obligations incurred, and the value of all goods and services received, for the purpose of creating, designing, preparing or distributing the communications.
- B. "Internet or e-mail communication" means any communication transmitted over the Internet, including but not limited to: sending or forwarding electronic messages; social networking; providing a hyperlink or other direct access to another person's website; creating, maintaining or hosting a website or blog; placing material on another person's website; and any other form of communication distributed over the Internet.
- C. "Acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent [thereof]" means acting without any suggestion, request, direct or indirect authorization or compensation or reimbursement from any such candidate, committee or agent.

10. **Press Exemption.** In order for the costs of preparing and disseminating a news story, commentary, or editorial to be exempt from the definitions of expenditure under the press exemption [§§ 1012(3)(B)(1) & 1052(4)(B)(1)], the following criteria must be met:

- A. the names of the persons or entities who own, control and operate the broadcasting station or publication are identified within the publication or otherwise made known to the public; and
- B. the broadcasting station or publication is not owned or controlled by any political party, political action committee or ballot question committee and is not owned or controlled by any candidate for state, county or municipal office whose candidacy, election campaign, or opponent is a subject of the news story, commentary or editorial, or by the authorized campaign committee of such a candidate, or by a member of such a candidate's immediate family.

In addition to the above criteria, to qualify as a periodical publication, including one in electronic form on the Internet, or a newspaper or magazine, a publication (i) must have been disseminating news stories, commentaries or editorials on a variety of topics to the general public on a periodic basis for at least the previous twelve months, or (ii) must have a record of disseminating news stories, commentaries or editorials on a variety of topics to the general public or other objective indicators that the publication will continue to be published on a periodic basis beyond the election cycle during which the press exemption is claimed.

For purposes of this section, broadcasting station includes a cable television system.

11. **Shared Expenditures by Candidates.** When two or more candidates have jointly purchased a communication to voters or another good or service, a candidate will not be considered to have received an in-kind contribution if the cost is allocated among the candidates in proportion to the benefit received by each candidate.
12. **Disclosure of top funders in paid communications.** If an entity makes an independent expenditure in excess of \$250 to influence a candidate's election, the communication is required to contain the entity's top three funders under Title 21-A, section 1014, subsection 2-B.
 - A. The disclosure included in a cable television or broadcast television communication must conform with those portions of federal regulations 47 CFR §73.1212(a)(2)(ii) and 47 CFR §76.1615(a) which regulate text size and duration of sponsorship information. Specifically
 - (1) the font size must be equal to or greater than four percent of the vertical picture height, and
 - (2) the text must appear for not less than four seconds.
 - B. For communications listed in Title 21-A, section 1014, subsection 2-B with a visual aspect other than television or video communications, the statement of funders must appear in a font size that is 12-point or larger.
 - C. If the communication is funded by a political action committee that is a separate or segregated fund as defined in Title 21-A, section 1052, subsection (5)(A)(1), but not a separate legal entity, the top three funders to be listed are the top three funders of the legal entity (corporation, membership organization, cooperative or labor or other organization) that established the fund.
 - D. If the communication is funded by a political action committee that is fully funded or controlled by another political action committee or legal entity, the top three funders to be listed are the top three funders of that entity that fully funds or controls the political action committee.
 - E. For any other political action committee that does not fall within the parameters of paragraphs C or D, the top three funders are the contributors who have given the top three aggregate contributions, as defined in Title 21-A, section 1052(3), during the time period specified in Title 21-A, section 1014, subsection 2-B, paragraph A.

Communications for which including the statement required by Title 21-A, section 1014, subsection 2-B would be impossible or impose an unusual hardship due to their format or medium are exempt from the requirements of that section.

SECTION 8. PROHIBITED COMMUNICATIONS

Commission members shall not discuss any specific case under investigation, or any case which may reasonably be expected to be the subject of investigation, as long as the matter is pending before the Commission. Members of the Commission may discuss its final determination regarding the matter with members of the press or other interested persons only after the appeal period has expired and no appeal is filed, or if an appeal is filed, only after the appellant has exhausted all administrative or judicial remedies.

SECTION 9. ACCELERATED REPORTING SCHEDULE *[Repealed]*

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General.** Any person, party committee, political committee or political action committee that makes any independent expenditure in excess of \$250 per candidate in an election must file a report with the Commission according to this section.
2. **Definitions.** For purposes of this section, the following phrases are defined as follows:
 - A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
 - B. "Expressly advocate" means any communication that
 - (1) uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"; or
 - (2) is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.
 - C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or