



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

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: August 29, 2016
Re: Additional Information - FairVote BQC

This memo is intended to provide some brief, additional information to the Commission concerning the appropriate late-filing penalty against the FairVote ballot question committee (BQC) for filing an incomplete initial campaign finance report. In a reply memo received over the weekend, the BQC's attorney, Clifford M. Ginn, Esq., argues that the \$500 penalty recommended by staff is high, compared to 10 previous enforcement items considered by the Commission.

FairVote. Some of the candidates and committees cited by Mr. Ginn are periodic or occasional participants in the political or election process, such as the Maine Trappers or Guides Associations or a resident of Caribou (Frank Weatherhead) who purchased a local ad opposing a State Senate candidate and didn't realize that a financial report was due.

In contrast, FairVote is an advocacy organization based in Takoma Park, Maryland, with a small but professional full-time staff. (http://www.fairvote.org/staff_and_leadership) In its most recent tax return from 2014, FairVote stated that it paid \$501,552 for salaries, other compensation and employee benefits (Part I, line 15).¹ An office manager, Joshua Toth, manages FairVote's administration, finance and human resources. The treasurer of FairVote BQC is Doug Clopp, an employee of FairVote. Mr. Clopp is a well-intentioned, capable advocate, who lobbied the Maine Legislature and the Maine Ethics Commission for a number of years on election reform issues.

¹ The tax return is available at <https://fairvote.app.box.com/v/2014-form990>. The 2014 return states that FairVote had 19 employees (Part 1, Line 5), but based on the "Staff and Leadership" page of the organization's website and its total personnel expenses (\$501,552), it seems unlikely that these 19 employees were full-time, paid employees.

In the first two weeks of June 2016, Mr. Clopp

- was presumably aware that FairVote was negotiating with Clarity Campaign Labs, LLC to purchase campaign services to influence the Maine vote;
- could have conferred with FairVote's office manager to determine whether FairVote had paid Clarity Campaign Labs (FairVote initiated a wire transfer on June 7 and signed a written contract on June 9)
- could have disclosed the expenditure or unpaid debt to Clarify Campaign Labs in the BQC's initial campaign finance report filed on June 13, 2016.

Effect of 2015 Citizen Initiative. The penalties relied upon by Mr. Ginn were before the November 3, 2015 citizen initiative, which *doubled* the rate of penalty when a PAC or BQC files a campaign finance report late for the first time during an election year.² Accordingly, this year the Commission staff is increasing its penalty recommendations to the Commission.

Maine Trappers and Guides (2014 examples cited by Mr. Ginn). These are two non-political associations of Maine guides and trappers that raised small donations in August-September 2013 from members, based on rumors that animal welfare activists were *planning* a 2014 citizen initiative to restrict bear-hunting. Because the fundraising occurred several months before it was clear that a citizen initiative would qualify for the 2014 ballot, a majority of Commissioners found it ambiguous whether the associations were statutorily required to register as a ballot question committee. In a divided vote, the Commission voted 3-2 to find that the organizations were late in reporting. All five Commissioners supported a full waiver of the penalties. The Commissioners were also influenced by the lack of campaign experience of the two associations. They shared a part-time executive director and two part-time administrative aides. The associations said that they had not been involved in influencing Maine elections since the previous bear-hunting referendum in 2004 (ten years earlier). Thank you.

² The initiative increased the daily rate of penalty from 1% to 2% of the financial activity reported late. (21-A M.R.S.A. § 1062-A(3)) The initiative had the effect of increasing seven penalty provisions within Maine campaign finance law. (21-A M.R.S.A. §§ 1004-C, 1014(4), 1020-A(4-A), 1062-A(3), 1062-A(4), 1062-A(8-A) and 1062-B)

GINN LAW, LLC

August 26, 2016

Jonathan Wayne
Executive Director
Maine Commission on Governmental Ethics and Election Practices
135 State House Station
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”), I am submitting this reply to your August 23, 2016 Commission Recommendation.

While FVBQC appreciates that staff have recommended a reduction in penalty to \$500, the amount is still high in comparison to past Commission action.

1. On April 30, 2014, the Commission adopted staff’s recommendation to reduce from **\$5,520 to \$0** the Maine Guides Association’s penalty for failure to file a BQC registration and an initial campaign finance report.
 - FVBQC made the effort to learn and follow the rules, MGA did not.
 - FVBQC filed timely reports. MGA did not.
 - FVBQC’s disclosure was 46 days late. MGA’s was 61.
2. On April 30, 2014, the Commission adopted staff’s recommendation to reduce from **\$5,000 to \$0** the Maine Trappers Association’s penalty for failure to file a BQC registration and an initial campaign finance report.
 - FVBQC made the effort to learn and follow the rules, MTA did not.
 - FVBQC filed timely reports. MTA did not.
 - FVBQC’s disclosure was 46 days late. MTA’s was 84.
3. On April 26, 2011, the Commission adopted staff’s recommendation to reduce from **\$5,000.00 to \$300** Senate candidate Joseph Palmieri’s penalty for filing a nonconforming report.
 - FVBQC’s disclosure was 46 days late. Palmieri’s was 56, involving 5 times the originally disclosed level of expenditures.
 - FVBQC’s correction came long before the election. Palmieri’s prevented disclosure until after the election.
 - FVBQC’s error was on its first ever report. Palmieri’s was on his third.
4. On June 23, 2011, the Commission reduced from **\$10,000 to \$500** Maine Taxpayers Taking Charge PAC’s penalty for filing a report 14 days late (staff recommended \$200).

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- MTTTC made its error after an entire campaign season of reporting, in a campaign that raised over \$4,000,000. FVBQC was filing its first report, and has reported a fraction of that activity level.
 - MTTTC's missed expenditure was almost three times as large as FVBQC's.
5. On August 27, 2014, the Commission adopted staff's recommendation to reduce from **\$5,000 to \$500** Paul Lepage's penalty for late filing 24-hour reports.
 - Lepage was a well-funded second-time candidate for governor. FVBQC was filing its first ever report.
 - This incident was Lepage's third violation in a 13-day period. FVBQC has never had a penalty before.
 6. On August 27, 2014, the Commission adopted staff's recommendation to reduce from **\$14,347.40 to \$500** the Senate Democratic Campaign Committee's penalty for filing a nonconforming report.
 - The Senate Democratic Campaign Committee is an experienced political actor with access to political party infrastructure. FVBQC was filing its first report.
 - FVBQC's disclosure was 46 days late. The SDCC's was 110 days late.
 7. On September 24, 2014, the Commission adopted staff's recommendation to reduce from **\$3,413.89 to \$100** Senate candidate Amy Volk's penalty for filing a nonconforming report.
 - Volk was a third-time candidate. FVBQC was filing its first report.
 8. On September 24, 2014, the Commission adopted staff's recommendation to reduce from **\$16,165.11 to \$400** ActBlue Maine PAC's penalty for filing a nonconforming report.
 - ABM is an experience political actor. FVBQC was filing its first report.
 9. On January 23, 2015, the Commission adopted staff's recommendation to reduce from **\$4,662.03 to \$200** the Eliot Cutler Campaign's penalty for filing a 24-hour report 54 days late.
 - Cutler was a well-funded second-time candidate for governor. FVBQC was filing its first ever report.
 10. On January 29, 2009, the Commission adopted staff's recommendation to reduce from **\$5,000 to \$250** Frank Weatherhead's fine for refusal to file an independent expenditure report.
 - Weatherby's violation was intentional. FVBQC's was not.
 - Weatherby deprived voters of information close to an election. FVBQC's did not.
 - FVBQC self-reported its error. Weatherby did not.

Including the incidents cited in its previous letter, FVBQC has identified 13 cases where the Commission adopted staff recommendations to reduce large penalties to amounts less than or equal to that recommended for FVBQC, even though each case involved some combination of more egregious violations and fewer mitigating circumstances than the present one. Many of these cases involved experienced filers.

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Most significantly, on two prior occasions, the Commission has waived penalties in full for organizations that not only disclosed an expenditure late, but failed to register as a BQC or to file an initial campaign finance report altogether, with disclosure delayed longer than in FVBQC's case. These failures arose because the organizations were less careful than FVBQC in ensuring compliance with Title 21-A.

Sincerely,

A handwritten signature in cursive script that reads "Clifford M. Ginn".

Clifford M. Ginn