

Agenda

Item #4



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: May 22, 2012  
Re: Chapter 1 Rule Amendments

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Thank you for your consideration of changes to the Commission Rules proposed by the Commission staff in January 2012. One of the proposed rules interprets the current exception in campaign finance statute for press organizations. After considering comments from the public, at your March 28 meeting you authorized the Commission to receive a second round of public comments on a revised rule interpreting the press exception.

The staff now recommends requesting additional comment on a third version of the proposed rule (attached). We suggest taking this step in order to address an issue that has taken on greater importance during the course of the rulemaking: publications that are owned or controlled by a candidate, or by a member of the candidate's immediate family. The Commission staff suggests completing the rulemaking at your July 25 meeting. The staff does not believe extending the rulemaking would disadvantage any candidate or party.

#### **Current Exception in Maine Campaign Finance Statute for the Press**

Maine campaign finance law defines "expenditure" to mean a payment of money made for the purpose of influencing an election:

The term "expenditure:" ... [i]ncludes: ... [a] purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any person to political office ....

(21-A M.R.S.A. § 1012(3)(A)(1)) “Influence” is defined to mean promote, support, oppose, or defeat. (21-A M.R.S.A. § 1012(4-A))

The definition of expenditure includes a number of exceptions. These are costs and activities that the Maine Legislature has decided should *not* count as expenditures that are regulated by campaign finance law. The first exception is:

Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by any political party, political committee, candidate, or candidate’s immediate family ....

(21-A M.R.S.A. § 1012(3)(B)(1)) Federal campaign finance law contains a similar exception.<sup>1</sup>

The press exception is important, because it allows publishers of news and commentary to present to the public news reports and viewpoints concerning candidates, without the fear that they will be entangled in campaign finance regulations. Without the press exception, some could argue that publishers and broadcasters would be subject to requirements such as

- *Independent expenditure reporting.* Organizations that spend more than \$100 to expressly advocate for or against a candidate independently of the candidates in a race are required to file “independent expenditure” reports with the Commission, stating the amounts spent to advocate for or against the candidates.
- *Disclaimer requirements.* Organizations that make an expenditure on certain communications to voters that expressly advocate for or against a candidate are required to include a “paid for” disclaimer in the communication, and to state whether or not the expenditure was authorized by any candidate.

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<sup>1</sup> “The term ‘expenditure’ does not include ... any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate ....” (2 U.S.C. § 431(9)(B)(i))

- *PAC reporting.* Organizations that spend more than a certain threshold amount (\$1,500 or \$5,000, depending on the organization's major purpose) for the purpose of influencing an election are required to register as a PAC and to file financial reports.

This is not a hypothetical concern. In 2010, a private citizen, Walter Eno, filed a complaint with the Commission against the Portland Press Herald, because of the writing of columnist Bill Nemitz that was critical of candidate Paul LePage. Mr. Eno claimed that the attacks against Mr. LePage "constitute an unethical, and possibly unlawful, intrusion by The Press Herald into a political campaign and thereby subvert the election process." He alleged that Mr. Nemitz's writing "easily meets the criteria for Express Advocacy ...." The Commission took no action on the complaint, because the Portland Press Herald was exempt from campaign finance regulation under the press exception.

#### **Previous Proposals by the Commission Staff**

In the press exception rule proposed by the Commission staff in January, the staff sought to clarify that

- internet publishers that possess the required elements of the statutory exception are exempt, even though they publish electronically, and
- to be exempt, internet publishers must have some of the attributes of the traditional press, such as transparency as to who owns or controls the publication, and financial independence from candidates or political parties covered in the publication.

The Commission received comments from Joseph and Michele Greenier, the Maine Press Association, the American Civil Liberties Union (ACLU) of Maine, and the Maine Citizens for Clean Elections. After considering the comments (particularly the ACLU of Maine), the Commission staff decided against the initially proposed rule that would impose a different set of criteria for internet publishers. At your March 28, 2012 meeting, you authorized the staff to seek public comment on a revised version of the proposed press exemption rule. The Commission staff received comments on the revised version from the Maine Press Association, the Maine Association of Broadcasters, and

the Maine Citizens for Clean Elections, which were mostly positive. (The ACLU of Maine and the Greeniers did not comment on the second version of the Rule.) The first two versions and comments are attached for your reference in case you care to look at them, although it may not be necessary for you to refer to them at this point in the rulemaking.

### **Publications Owned by Candidates or Family Members**

The first and second versions of the proposed press exception rule did not address the question of whether the press exception applies to any degree in circumstances in which the broadcasting stations or publications are owned by a candidate or an immediate family member.

Following the March 28 meeting, the Commission staff was able to review the emerging news coverage of the restructuring of MaineToday Media, LLC. The company owns daily newspapers in three of the state's largest communities (Portland, Augusta, and Waterville), the weekly Coastal Journal in Bath, and two digital publications. In news stories published on March 28 (the morning of your last meeting), it was disclosed that 75% of the equity of MaineToday Media would be held by Maine Values, LLC, which is reportedly owned by Donald Sussman. Mr. Sussman is married to U.S. Representative Chellie Pingree, who is a candidate for re-election in the 2012 elections. He has been quoted in newspaper reports as saying that he is not going to interfere with the newspapers' reporting in any way.

This development highlighted to the Commission staff the ambiguity of the current statutory exception, as it relates to candidate-owned or family-owned media. As part of the current rulemaking, we suggest considering whether the press exception applies, to any extent, to news reporting by publications owned by a candidate or family member. If a satisfactory policy can be adopted, it would make the Commission's application of the press exception more predictable for the press and candidates in the current and future elections.

The issue is not confined to MaineToday Media. In 2008, the general manager of the publishing company that publishes several weekly papers in central Maine was a candidate in a primary election. In the past decade, a number of political blogs have developed in Maine which publish commentary and news concerning political matters, including elections and candidates. Some of these bloggers have previously run for office, although the staff does not know of any instance in which the owner of a political blog was, concurrently, a candidate for state office. It is foreseeable that some publishers of political blogs that would otherwise qualify for the press exception will seek public office.

### **Rule Proposed by the Commission Staff**

In the attached proposed rule, the Commission staff suggests an approach that is intended to provide flexibility to broadcast stations and publications to fulfill the traditional press function of presenting news, editorials, and endorsements concerning political candidates. We see this as an important function of the media that the Maine Legislature sought to protect through the statutory press exception. In the proposed rule,

- if a candidate or family member owns a station or publication which periodically publishes news, editorials, or commentaries, the costs of publishing news, or editorials or commentaries concerning *election races involving other candidates* would be exempt. For example, if the owner of a weekly community newspaper in Maine decided to run for the Maine House of Representatives, the costs incurred in covering other races (e.g., municipal or county offices, other House districts, State Senate races, the office of the Governor) would continue to be exempt, even though the paper's owner was a candidate for office.
- in addition, borrowing from the attached Federal Election Commission rule, we propose to exempt bona fide *news stories* that are part of a pattern of campaign-related news accounts that provides reasonably equal coverage to all opposing candidates – even if the news stories concern a race involving a candidate who is the owner of the publication or a candidate who is in the immediate family of the publication's owner.

Our proposed rule would not exempt commentaries or editorials by a candidate-owned publication concerning the candidate's own race. The costs of such commentaries and editorials could potentially be subject to campaign finance regulation if the costs meet the definition of "expenditure" in 21-A M.R.S.A. 1012(3)(A)(1). Commentaries and editorials involving candidates in other races would be exempt under the press exception.

Thank you for your consideration of this proposed rule.

94-270                    COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 1:    PROCEDURES

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**SUMMARY:** This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

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SECTION 7.   EXPENDITURES

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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;
- b.    the broadcasting station or publication and the individuals or entities described in paragraph a of this subsection are not compensated for or reimbursed for expenditures by a candidate, candidate's authorized campaign committee, political party, political action committee, or ballot question committee, or their agents, except in exchange for providing advertising time or space to the candidates or committees; and
- c.    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, or authorized campaign committee of the candidate, who is a subject of the news story, commentary, or editorial, or by a member of the immediate family of such a candidate; except that
  - i.    the cost of a bona fide news story appearing in a publication of general circulation or on a broadcasting station that is part of a pattern of campaign-related news coverage that provides reasonably equal coverage to all opposing candidates, is not an expenditure; and
  - ii.   the cost of commentary and editorials about other candidates who are not in the same race as the candidate is not an expenditure.

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 that objectively indicates that the publication will continue to be published on a periodic basis beyond the election cycle during which the press exemption is claimed.

## Federal Election Commission

## § 100.132

and usual and normal charge for services, other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

**§ 100.112 Contracts, promises, and agreements to make expenditures.**

A written contract, including a media contract, promise, or agreement to make an expenditure is an expenditure as of the date such contract, promise or obligation is made.

**§ 100.113 Independent expenditures.**

An independent expenditure that meets the requirements of 11 CFR 104.4 or part 109 is an expenditure, and such independent expenditure is to be reported by the person making the expenditure in accordance with 11 CFR 104.4 and part 109.

**§ 100.114 Office building or facility for national party committees.**

A payment, distribution, loan, advance, or deposit of money or anything of value made by, or on behalf of, a national party committee for the purchase or construction of an office building or facility is an expenditure.

**Subpart E—Exceptions to Expenditures**

SOURCE: 67 FR 50585, Aug. 5, 2002, unless otherwise noted.

**§ 100.130 Scope.**

(a) The term *expenditure* does not include payments, gifts, or other things of value described in this subpart.

(b) For the purpose of this subpart, a payment made by an individual shall not be attributed to any other individual, unless otherwise specified by that other individual. To the extent that a payment made by an individual qualifies as a contribution, the provisions of 11 CFR 110.1(k) shall apply.

**§ 100.131 Testing the waters.**

(a) *General exemption.* Payments made solely for the purpose of determining whether an individual should become a candidate are not expenditures. Exam-

ples of activities permissible under this exemption if they are conducted to determine whether an individual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such payments. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the payments made are subject to the reporting requirements of the Act. Such expenditures must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the payments were made.

(b) *Exemption not applicable to individuals who have decided to become candidates.* This exemption does not apply to payments made for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign. Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

(1) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.

(2) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

(3) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(4) The individual conducts activities in close proximity to the election or over a protracted period of time.

(5) The individual has taken action to qualify for the ballot under State law.

**§ 100.132 News story, commentary, or editorial by the media.**

Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site,



§ 100.133

11 CFR Ch. I (1-1-12 Edition)

newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not an expenditure unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the cost for a news story:

(a) That represents a *bona fide* news account communicated in a publication of general circulation or on a licensed broadcasting facility; and

(b) That is part of a general pattern of campaign-related news account that give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not an expenditure.

[67 FR 50585, Aug. 5, 2002, as amended at 71 FR 18613, Apr. 12, 2006]

§ 100.133 Voter registration and get-out-the-vote activities.

Any cost incurred for activity designed to encourage individuals to register to vote or to vote is not an expenditure if no effort is or has been made to determine the party or candidate preference of individuals before encouraging them to register to vote or to vote, except that corporations and labor organizations shall engage in such activity in accordance with 11 CFR 114.4 (c) and (d). *See also* 11 CFR 114.3(c)(4).

§ 100.134 Internal communications by corporations, labor organizations, and membership organizations.

(a) *General provision.* Any cost incurred for any communication by a membership organization, including a labor organization, to its members, or any cost incurred for any communication by a corporation to its stockholders or executive or administrative personnel, is not an expenditure, except that the costs directly attributable to such a communication that expressly advocates the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed \$2,000 per election, be reported to the Commission on FEC Form 7 in accordance with 11 CFR 104.6.

(b) *Definition of labor organization.* For purposes of this section, *labor organization* means an organization of any kind (any local, national, or international union, or any local or State central body of a federation of unions is each considered a separate labor organization for purposes of this section) or any agency or employee representative committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(c) *Definition of stockholder.* For purposes of this section, *stockholder* means a person who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted, if it is voting stock, and has the right to receive dividends.

(d) *Definition of executive or administrative personnel.* For purposes of this section, executive or administrative personnel means individuals employed by a corporation who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities.

(1) This definition includes—

(i) Individuals who run the corporation's business, such as officers, other executives, and plant, division, and section managers; and

(ii) Individuals following the recognized professions, such as lawyers and engineers.

(2) This definition does not include—

(i) Professionals who are represented by a labor organization;

(ii) Salaried foremen and other salaried lower level supervisors having direct supervision over hourly employees;

(iii) Former or retired personnel who are not stockholders; or

(iv) Individuals who may be paid by the corporation, such as consultants, but who are not employees, within the meaning of 26 CFR 31.3401(c)-(1), of the corporation for the purpose of the collection of, and liability for, employee tax under 26 CFR 1.3402(a)-(1).

(3) Individuals on commission may be considered executive or administrative personnel if they have policymaking,

Previous  
Proposals  
And  
Comments

Originally  
Proposed Rule  
(see next  
page)

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 1: PROCEDURES

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**SUMMARY:** This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

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**SECTION 1. DEFINITIONS**

In addition to the definitions provided in Title 21-A, chapters 1, 13, and 14, the following definitions shall apply to the rules of the Commission, unless the context otherwise requires:

...

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

**SECTION 4. INITIATION OF PROCEEDINGS**

...

**2. Election Campaign Reporting and Maine Clean Election Act Violations**

- A. **Report Review.** The Commission staff will review all reports filed pursuant to 21-A M.R.S.A., chapters 13 and 14 to verify compliance with the reporting requirements set by statute or rule. Notice of any omission, error, or violation will be given by mail to the filer and a copy of the notice and any other communication made to or from the filer relating to the problem(s) will be placed in the filer's record. The Commission staff will establish a reasonable time period for the filer to remedy any omission or error. If the filer fails to respond within that time frame, the Commission staff may extend the time period within which the filer must comply or place the matter on the agenda of the next Commission meeting, along with all documents relating to the case. Additionally, any apparent violations or occurrences of substantial nonconformance with the requirements of the law will be placed on the agenda of the next meeting.
- B. **Late Reports and Registrations.** Where required by statute, notice of failure to file a required report will be timely sent by Commission staff. When a report or registration is filed late, the Director's recommendations will be based on the following considerations:
- (1) Lateness of report or registration,
  - (2) Reason for lateness,
  - (3) Kind of report (more stringent application for pre-election reports),
  - (4) Amount of campaign funds not properly reported,

(2) “cost of the communication” means all disbursements of money made or obligations incurred to create, design, prepare, or distribute the communication, and the value of all goods or services which have been provided for the purpose of creating, designing, preparing, or distributing the communication.

B. Exemption for Certain Handbills, Campaign Signs, and Internet and E-Mail Communications.

(1) Under Title 21-A, chapter 13, subchapter II [§ 1014(6)], a handbill, campaign sign or Internet or e-mail communication is exempt from the disclosure requirements of § 1014 if the total cost of the communication is less than \$100 and the communication was produced and distributed independently of and without the authorization by a candidate or the candidate’s authorized campaign committee, a political party committee, a political action committee, a ballot question committee, or their agents.

(2) In determining whether a handbill, campaign sign, or Internet or e-mail communication was produced and distributed independently of and without authorization by a candidate, committee or their agents, the Commission will consider whether:

(a) the handbill, campaign sign, or Internet or e-mail communication was created, designed, prepared, or distributed at the suggestion or request of, or with the direct or indirect authorization of, a candidate or the candidate’s authorized campaign committee, a political party committee, a political action committee, a ballot question committee, or their agents;

(b) the individuals who created, designed, prepared, or distributed the handbill, campaign sign, or Internet or e-mail communication have been compensated or reimbursed for expenditures by a candidate or the candidate’s authorized campaign committee, a political party committee, a political action committee, a ballot question committee, or their agents for the purpose of influencing the candidate or ballot question election that is the subject of the communication; and

(c) at the time of the creation of the handbill, campaign sign or Internet or e-mail communication, the individuals who created, designed, prepared, or distributed the communication were required to file campaign finance reports with the Commission or to register with the Commission under Title 21-A, chapter 13.

10. Press exemption. The costs incurred in preparing or publishing a news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication are exempt from the definitions of expenditure, under Title 21-A, chapter 13, subchapters II and IV [§§ 1012(3)(B)(1) & 1052(4)(B)(1)].



This exemption applies to the costs for a "periodical publication" in electronic form distributed on the Internet that meets the following criteria:

- a. the publication either (i) has been gathering and disseminating news stories, commentaries or editorials on a variety of topics to the general public on a periodic basis for a period of at least the previous twelve months, or (ii) if it has been publishing on the Internet for a period of less than twelve months, has a record of gathering and disseminating news stories, commentaries or editorials on a variety of topics to the general public that indicates that the persons or entities who own, control and operate the publication have the intention to continue publishing on a periodic basis beyond the election cycle during which the media exemption is claimed;
- b. the names of the persons or entities who own, control and operate the publication are identified within the publication;
- c. the names of the authors, editors and other individuals responsible for the content of the publication are identified within the publication;
- d. none of the individuals or entities described in paragraphs b and c of this subsection are being compensated for or reimbursed for expenditures relating to the publication by a candidate, candidate's authorized campaign committee, political party committee, political action committee, or ballot question committee, or their agents for the purpose of influencing the candidate or ballot question election that is the subject of the news story, commentary, or editorial; and
- e. the facilities are not owned or controlled by any political party, political committee, candidate or candidate's immediate family.

## **~~SECTION 9. ACCELERATED REPORTING SCHEDULE~~**

- ~~1. **General.** In addition to other reports required by law, any candidate for Governor, State Senator or State Representative who is not certified as a Maine Clean Election Act candidate under Title 21-A §1121 *et seq.*, and who has a certified candidate as an opponent in an election must comply with the following reporting requirements on forms prescribed, prepared, and provided by the Commission.~~

~~INFORMATIONAL NOTE: Title 21-A §1017 prescribes reporting requirements for candidates.~~

- ~~2. **Trigger Report.** Any candidate subject to this section, who receives, spends or obligates more than the primary or general election distribution amounts for a Maine Clean Election Act candidate opponent in the same race, must file with the Commission, within 48 hours of such receipt, expenditure, or obligation, a report detailing the candidate's total campaign contributions, receipts, expenditures and obligations to date. The Commission will notify all candidates who have an opposing certified candidate of the applicable distribution amounts and of the trigger report requirement.~~



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March 9, 2012

Walter F. McKee, Chair  
Maine Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, Maine 04333

Re: Comments on Proposed Rulemaking

To the Commission:

On behalf of the ACLU of Maine, I wish to first extend our thanks for the invitation to comment on your proposed rules governing internet publishers and low-cost expenditures. As you are probably aware, I represent Dennis Bailey in litigation, along with ACLU of Maine President John M.R. Paterson, Esq., against the Commission relating to these very issues. A more detailed elaboration of our views on the need to protect internet news publishers and the right to anonymous speech can be found in the court filings in that case. I will confine my comments here, to the extent possible to a response to the Commission's actual proposal.

First, we should note our approval that the Commission is interested in updating its rules and practices to take account of the important role that internet communications plays in the creation and distribution of ideas, including political ideas. As your staff has no doubt shared, the Federal Election Commission engaged in a similar process in 2006, which led the development of its own set of rules and guidance regarding internet speech.

Second, while the internet is a new medium with new challenges and opportunities for both users and regulators, the U.S. Supreme Court has made it clear that "there is no basis for qualifying the level of First Amendment scrutiny that should be applied to this

Because Freedom Can't Protect Itself

medium.” *Reno v. ACLU*, 521 U.S. 844, 870 (1997). In other words, the government may not impose burdens on internet writers and publishers that are not imposed on those who communicate through traditional media.

Third, the Commission’s proposal does not go far enough in satisfying this mandate. Maine currently exempts the publication of news stories, editorials, and commentary when they are published through radio, television, newspapers, magazines and other periodicals. 21-A M.R.S.A. §§1012(3)(B)(1) and 1052(4)(B)(1). The Commission proposes to extend that exemption to “periodical publication” in electronic form, but only subject to a narrow set of requirements that are not applied, for example, to news publications made over radio. Nothing in Maine law requires a newspaper or television station to publish for a year before receiving an exemption, nor should that requirement be applied to internet publishers. Also, there is no requirement that the author or publisher of a magazine identify themselves or avoid pseudonyms, and Maine should not make that requirement of internet publishers.

Fourth, when it comes to the regulation of internet publication, the Commission would do well to begin with the proposition acknowledged by the FEC: “the vast majority of Internet communications are, and will remain, free from campaign finance regulation.” Internet Communications, 71 Fed. Reg. 18589 (2006). Regulation of speech on the internet is fraught with peril, for both the speakers themselves, who are often caught up in regulations that they do not understand, and for regulators, who should anticipate finding their efforts challenged in court.

Fifth, the reason why caution and restraint in the regulation of internet speech makes the most sense goes to the heart of the Commission’s mission: insuring that political debates and elections are conducted fairly. The internet is, perhaps, the greatest tool for making our elections more fair. Candidates and commentators alike can widely publish their views at extremely low cost, which mitigates the need for high-dollar fundraising. And, those publications are passively available to the general public—the public can access only the websites that it wants and can avoid being subjected to unwanted or unrequested

publication. The Commission should do more to encourage internet publication, and more confusing regulation is not the answer. In light of this, the ACLU of Maine recommends that proposed Chapter 1, Section 7(10): Press Exemption be rewritten to make it clear that news stories, editorials and commentary published on the internet is exempt from the definition of "expenditure" and "contribution".

Six, while a number of courts have upheld the constitutionality of "paid for" disclosure requirements in facial attacks, the courts have made it clear that those requirements are still potentially subject to as-applied First Amendment challenges. Disclosure requirements directly interfere with a person's right to publish anonymously or under a pseudonym. Anonymous and pseudonymous speech have been a part of American political discourse since before the founding period, and the Supreme Court has repeatedly observed that a person generally has the right to decide for themselves whether or not to disclose their name. For example, in *McIntyre v. Ohio*, the Supreme Court stated:

[A]n author is generally free to decide whether or not to disclose his or her true identity. The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible. Whatever the motivation may be . . . the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry. Accordingly, an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.

514 U.S. 334, 341-42 (1995).

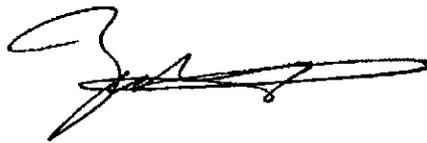
Anonymous speech makes some people uncomfortable (especially the subject of such speech). But that discomfort is the price we pay to live in a country where people decide

for themselves what to say and what to believe, as free as possible from government involvement in the matter. The Supreme Court in *McIntyre* went on to note that, "Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent." *Id.* at 356.

Seventh, the government's interest in requiring disclosure diminishes as the dollar amount of the expenditure diminishes, and at some point the government's interest is outweighed by the individual's interest in anonymity. Among the government's interests that support disclosure requirements are the prevention of corruption and the appearance of corruption. The ACLU of Maine believes that it is exceedingly unlikely that any political candidate would be corrupted by an independent expenditure of less than \$1000. That amount, rather than \$100 proposed and included in current law, seems like a much more reasonable threshold for subjecting an individual's speech to government regulation. In the recent litigation between the Commission and the National Organization for Marriage, the amount in question was more than \$1 million. The ACLU of Maine believes that the lower-cost speech can, and should, be left to the marketplace of ideas to regulate.

If there is anything further that the ACLU of Maine can provide to assist in your deliberations, please do not hesitate to ask.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Zachary L. Heiden', with a stylized flourish at the end.

Zachary L. Heiden, Esq.  
Legal Director



# MPA Maine Press Association

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March 12, 2012

VIA E-MAIL & HAND DELIVERY

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

**Re: Maine Press Association Comments on Proposed Rule Amendments to Chapters 1 and 3 of the Commission's Rules**

Dear Jonathan:

The Maine Press Association provides these comments on the proposed rule amendments to Chapters 1 and 3 of the Rules of the Commission on Governmental Ethics and Election Practices ("Ethics Commission"). The MPA, representing the state's newspaper industry, consists of more than 40 weekly and daily papers across the state.

In Maine campaign finance law, "news media which periodically publish news stories, editorials, or commentaries are exempt from campaign finance reporting requirements." Specifically, sub-section 10 of Section 7 of Chapter 1 proposes a rule interpreting this "press exception" to the definition of "expenditure" in Ethics Commission rules, particularly with respect to Internet publishers.

The MPA supports this clarification of the statute. However, we also propose that some language regarding the creation of original content be inserted into the definition of "periodical publication." Gathering and disseminating news articles is not the same as creating your own, and the creation of content -- in whatever form -- is the core definition of the "press." The MPA suggests that language to the effect that original news content must be created by and attributed to the press organization in order to qualify for the "press exception" (i.e. no re-writing press releases). Specifically, the rule should have a minimum percentage of original content requirement—e.g. 25%.

Therefore, the MPA suggests the following new criterion in Chapter 1, Section 7, sub-section 10:

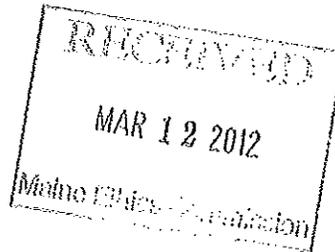
"the publication must be composed of at least 25% original content;"

Thank you for the opportunity to provide comments on these proposed Ethics Commission rule amendments.

Sincerely,

/s/

Michael J. Dowd,  
Editor-in-Chief, Bangor Daily News  
President, Maine Press Association



March 10, 2012

Jonathan Wayne  
Executive Director  
Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, ME 04333-0135

Re: Proposed Rule 2012-P10 and 2012-P11

Dear Director Wayne:

On behalf of Maine Citizens for Clean Elections ("MCCE") we appreciate the opportunity to submit these comments on proposed rules number 2012-P10 and 2012-P11.

MCCE is a nonpartisan organization that has been advocating for the full and effective implementation of the Maine Clean Election Act since it was passed in 1996. As part of its mission MCCE works for reform that is inclusive, fair, just, consistent with constitutional values, fiscally responsible, and workable.

**General Comments:**

We believe that the following principles should guide the Commission whenever it considers possible changes to the rules governing the MCEA system and other campaign finance and reporting regulations:

- Keep true to the spirit of the laws, whether passed by the legislature or by initiative;
- Regarding the amount and timing of disclosure, be guided by the strong public interest in access to all information at the time and in the format when it is of the most use to the public;
- Keep the rules clear to help ensure high compliance;
- Make every effort to ensure that changing technologies and the evolving use of new media don't create gaps in the disclosure system;
- Beware of the unprecedented national trend to thwart the principles of disclosure and cloak more and more campaign activity in secrecy.

**Member Organizations**

AARP Maine, Common Cause Maine, EqualityMaine, League of Women Voters of Maine, League of Young Voters, Maine AFL-CIO, Maine Council of Churches, Maine People's Alliance/Maine People's Resource Center, Maine State Employees Association/SEIU Local 1989, Maine Women's Lobby, NAACP-Portland, Sierra Club Maine Chapter

P.O. Box 18187, Portland, ME 04112 ♦ [info@mainecleanelections.org](mailto:info@mainecleanelections.org)

Jonathan Wayne  
March 9, 2012  
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**Specific Comments:**

1. Reporting Schedule for Independent Expenditures.

We have no objection to replacing the quarterly reports with a 60-day pre-election report, since there are few if any independent expenditures during the rest of the campaign cycle. We also do not object to moving the reporting deadline from 14 days to 11 days for clarity and simplicity.

Our single greatest concern with the current reporting system for independent expenditures is that the public often does not receive information about the true source of the funds for the expenditure – information which we believe is vitally important to an informed public.

We are not suggesting that there is a need for additional reporting when a single person makes an expenditure from his or her own funds, or when a committee makes an expenditure from a single pool containing funding commingled from a variety of sources. When, however, a person or committee is acting as a conduit for a contributor who has earmarked their contribution to be spent in a particular way, the public has an interest in knowing the true source of the funds and the nature of the earmarking. Without this, the disclosure of the expenditures alone is hollow and even misleading. We would ask that the rules regarding accelerated reporting of independent expenditures address these scenarios so that the public has information not only about the money that is spent but the source of the funds – at least where the funds can be traced to one source.

We believe accelerated contribution reporting by PACs and those making independent expenditures is feasible. Under current rules, candidates must engage in accelerated reporting of large contributions toward the end of a campaign. There is no reason this rule could not be applied to others engaged in electoral advocacy.

2. Expanding the “press exemption” to internet publishers of news and commentary.

We support a clear but limited bona fide press exception that is appropriate for the variety of new media now common in campaigns.

The draft rule sets forth a five-part test for determining whether an internet-based publication should be entitled to the press exemption. We believe the five-part test is generally appropriate, except under part “d.” we do not believe that the “purpose” test should be required. If the person or entity publishing the item is being compensated or reimbursed by a candidate or committee, etc., that should be enough. There is no need to also prove that the purpose was to influence an election.

Jonathan Wayne  
March 9, 2012  
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As a matter of drafting, the first sentence of paragraph 10 seems redundant and potentially confusing. Those items are already exempt by function of the definition of expenditure elsewhere in the rule (and statute). For clarity this section of the rules should be limited to laying out the test for what kind of "internet periodical publications" are entitled to the expenditure exception.

3. "Testing the waters" provisions for "contributions" and "expenditures".

Where a contributor gives a gift for the purpose of influencing the election, it is a "contribution" under the current statutory definition. 21-A M.R.S.A. 1012 (2)(A)(1). Once that occurs, the Commission has authority to treat the recipient as a "candidate" and apply all the limitations and reporting requirements in the law.

We are concerned that candidates are tempted to "game the system" – side-stepping contribution limits and reporting requirements on the grounds that the donor supposedly is not intending to influence the election, or the recipient supposedly is still only exploring a possible candidacy. While there is some subjectivity in the test, there is nothing about the exploratory phase that makes it more difficult to discern the donor's intent than it would be later in the campaign. Thus, complaints that the test is unclear should be taken with a grain of salt.

As the Commission considers a new rule for exploratory activities, we would suggest that reporting requirements and contribution limits may be analyzed separately. While we think there is some rationale for waiving campaign finance reporting requirements during the "exploratory" or "testing the waters" phase (especially when a person ultimately chooses not to run for office), we do not see any rationale for waiving contribution limits. Simply put, we think contribution limits should apply during all phases of the campaign – even the earliest. And we think there is adequate authority for considering any gift to a person that relates to that person's possible candidacy to be a "contribution" subject to the limits – regardless of when that gift is received.

For reporting requirements, we would favor a "bright line" test. For purposes of clarity, we would suggest that the Commission establish a dollar amount of campaign finance activity beyond which reporting is necessarily required. This is preferable to the factor set forth in the draft rule – "what could reasonably be expected to be used for exploratory activities". There should be different dollar amounts for House, Senate and Gubernatorial campaigns. The seed money amounts in the MCEA might provide a good guide to what these exploratory amounts should be.

Jonathan Wayne  
March 9, 2012  
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4. Disclaimer exemption for certain expenditures less than \$100 made independent of any candidate or campaign.

We support this rule and offer only a few comments.

First, rather than a new definition of "independent," perhaps the definition set forth in Rules Ch. 1 at Section 10 (2)(C) could be used. Although the context is somewhat different, there may be some value in having only one definition to which all stakeholders could become accustomed.

Second, perhaps the rule could be redrafted with greater clarity and simplicity. For example:

*No disclaimer is required of any handbill, campaign sign or internet or email communication costing less than \$100 if it is produced and distributed without any suggestion, request, direct or indirect authorization or compensation from any candidate or committee or agent thereof.*

*This exemption does not apply to any handbill, campaign sign or internet or email communication made by any person who is required to register or file campaign finance reports with the Commission.*

5. Repeat of accelerated reporting schedule for non-MCEA candidates.

We acknowledge the rationale for changing this reporting requirement in light of the elimination of matching funds, but we note that the information previously reported for purposes of calculating matching funds also had value to the general public. We do not propose any changes to the draft rule, but ask that the existing reporting requirements be closely monitored in the 2012 election cycle to determine whether the public would benefit from any additional reporting by privately funded candidates in the future.

6. Membership Communications reporting schedule.

We support the adoption of a schedule, but ask whether it should be parallel with the other reporting requirements which are triggered 11 days before the election rather than three days before as proposed.

Jonathan Wayne  
March 9, 2012  
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7. Circulation Form for Qualifying Contributions.

We have no objection to giving Commission staff more flexibility in devising a clear and straightforward qualifying contribution form. We believe, however, that there is an important public purpose served by verifying whether the circulator was paid or a volunteer, and that the forms were signed in the circulator's physical presence. Eliminating those requirements would be a concern for us. At the very least, if this revision is approved we would appreciate the opportunity to work with the staff on a revised form.

8. Using MCEA Funds for Vehicle Travel Reimbursement.

We support and welcome this change as it will enhance transparency regarding the use of MCEA funds for travel – one area where record keeping and reporting are somewhat more complicated compared to the more straightforward purchase of goods and services.

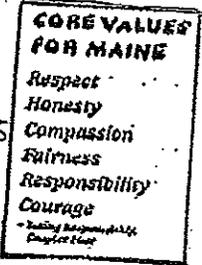
Thank you again for considering these comments. We look forward to continuing to work with you and the Commission.

Sincerely yours,



John Brautigam

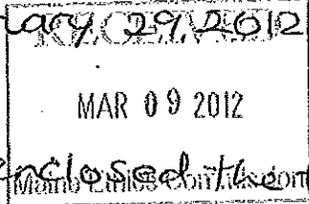
see next page  
for comment on  
press exception



To: Commission on Governmental Ethics and Election Practices

Re: Invitation to Comment on Proposed Rule Amendments

Public Hearing held on Wednesday, February 29, 2012  
at 9:00am. under Agenda Item #4



As Concerned Citizens, we have enclosed the following comments:

Chapter 1: SECTION 4. INITIATION OF PROCEEDINGS

2 C. "Any person may make an official complaint

① Add: and/or request for an Audit for a Commission investigation...

A copy of the signed request may be filed by facsimile or by

② Cross off: electronic mail, because e-mails are not included in the files and Agendas, and e-mails don't include signatures, unlike a fax is signed and telephone number is disclosed. There have been secret, undisclosed emails, between Executive Director and Lawfirm which we contend is unethical. All previous e-mails must be in candidate files and disclosed under FOA and the public's right to know.

③ Add: The Ethics Commission must never destroy faxes, as this violates the Freedom of Access laws. It was explained, this happened in the Katz investigation, that the fax was destroyed.

④ Add: The candidate(s) shouldn't be entitled to the complaint, until after all the interviews are conducted by the Executive Director and the staff. The interviews must be documented in writing, including questions asked, to avoid past errors. The interviews must include: Candidate, Campaign Staff, Treasurer, Vendors and Complainant (not excluded, as in our complaint.) All interviews must be included in the investigation and Agenda, as public information (not hidden from the public).

⑤ Add: The staff must disclose their names and signatures, regarding Findings of Fact. The

To: Commission on Governmental Ethics and Election Practices (cont)

8. Cross off: The entire two paragraphs

Add: All money expended for political office is construed as an expenditure, whether a candidate ultimately runs or not for public office, within 5 days.

Additional Information: Within 5 days of collecting signatures and donations, candidates must report this activity to the Ethics Commission. This is no different than what is already in the rules.

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

Cross off: The entire Section 9 A & B

10. Press Exemption

Cross off: The entire Section 10

## Section 10 REPORTS OF INDEPENDENT EXPENDITURES

3. Reporting Schedules

(1) Quarterly Reports

We object to crossing off Quarterly Reports and request that this section be reinstated.

Cross off: (1-A) and (1-B) and paragraph below it regarding independent expenditures

Additional Information: Quarterly reports assure that receipts won't be lost and the public's right to know regarding expenditures throughout the campaign.

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 1: PROCEDURES

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**SUMMARY:** This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

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SECTION 7. EXPENDITURES

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:

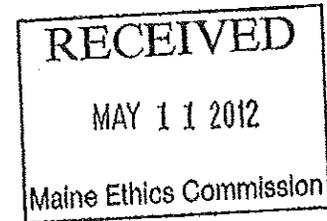
- a. the names of the persons or entities who own, control and operate the broadcasting station or publication are identified within the publication or otherwise made known to the public;
- b. none of the individuals or entities described in paragraph a of this subsection is being compensated for or reimbursed for expenditures by a candidate, candidate's authorized campaign committee, political party, political action committee, or ballot question committee, or their agents, except in exchange for providing advertising time or space to the candidates or committees; and
- c. the broadcasting station or publication is not owned or controlled by any political party, political committee (including a candidate's authorized campaign committee, political action committee or ballot question committee), candidate or 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 that objectively indicates that the publication will continue to be published on a periodic basis beyond the election cycle during which the press exemption is claimed.



# MPA Maine Press Association

May 11, 2012



VIA HAND DELIVERY

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

**Re: Maine Press Association Comments on Revised Rule Interpreting Press Exception**

Dear Jonathan:

The Maine Press Association provides these comments on the revised rule interpreting the "press exception" in Chapter 1, Section 7, sub-section 10 of the Rules of the Commission on Governmental Ethics and Election Practices ("Ethics Commission"). The MPA, representing the state's newspaper industry, consists of the majority of the weekly and daily papers across the state.

In Maine campaign finance law, the distribution of "any news story, commentary, or editorial" by "the facilities of any broadcasting station, newspaper, magazine or other periodical publication" is exempt from campaign finance reporting requirements. 21-A M.R.S. § 1012(3)(B)(1). The statute also requires that the communication be made by an entity with a proper press function – that is, the facilities are not "owned or controlled by any political party, political committee, a candidate, or a candidate's immediate family." In this case, the Ethics Commission proposes a rule interpreting this "press exception" to the definition of "expenditure," particularly with respect to Internet publishers.

Maine statute closely follows the federal law press exception, which is codified at 2 U.S.C. 431(9)(B)(i)<sup>1</sup> and also in rule at 11 CFR §100.73 and §100.132.<sup>2</sup> The "media exception," as it is described in federal regulations, recognizes the "unfettered right of the newspapers, television

<sup>1</sup> Congress exempted from the definition of "expenditure" and "contribution" costs associated with "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee or candidate." 2 U.S.C. 431(9)(B)(i).

<sup>2</sup> "Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), newspaper, magazine, or other periodical publication is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the costs for a news story: (a) That represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility; and (b) That is part of a general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not a contribution." 11 CFR §100.73 (for expenditures) and 11 CFR §100.132 (for contributions).

networks, *and other media* to cover and comment on political campaigns.” H.R. Rep. No. 93-1239, 93d Congress, 2d Session at 4 (1974). Similarly, as the Supreme Court has noted, “It is not the intent of Congress in [FECA]...to limit or burden in any way the First Amendment freedoms of the press and association. Thus, the exclusion assures the unfettered right of newspapers, TV networks, and other media to cover and comment on political campaigns.” *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 250 (1986)(citing H.R. Rep. No. 93-129 at P.4 (1974)).

To determine whether the media exception applies, the Federal Election Commission (“FEC”) has traditionally applied a two-step analysis. First, the FEC determines whether the entity engaging in the activity is a “press entity” as described by the Act and FEC regulations. Second, in determining the scope of the exemption, the FEC considers: 1) whether the press entity is owned or controlled by a political party, political committee, or candidate; and 2) whether the press entity is acting as a press entity in conducting the activity at issue, i.e. whether it is acting in its “legitimate press function.” *See* Federal Register, Vol. 71, No. 70, p. 18607, April 12, 2006.

In its 2006 amendments, the FEC clarified that the media exception “applies to media entities that cover or carry news stories, commentary, and editorials on the Internet, just as it applies to media entities that cover or carry news stories, commentary, and editorials in traditional media.” The FEC also clarified that the media exception “protects news stories, commentaries, and editorials no matter in what medium they are published.” *See id.* at 18608.

The FEC has extended this protection to bloggers that cover and carry news stories, commentaries, or editorials. *See* Advisory Opinion 2005-16. However, the FEC has extended this protection to bloggers and others who communicate on the Internet only if it determines that they are providing a “periodical publication.” “Periodical publication” was originally defined by the FEC to mean “a publication in bound pamphlet form appearing at regular intervals...and containing articles of news, information, or entertainment.” However, the FEC now recognizes a more dynamic, modern definition of “periodical,” and explains that the media exception “ought not be construed rigidly to deny the media exemption to entities who update their content on a frequent, but perhaps not fixed, schedule.” *See* Federal Register, Vol. 71, No. 70, p. 18610, April 12, 2006.

The MPA again supports the clarification of the statute, including the requirement that the owner or operator of the publication be identified within the publication or otherwise be made known to the public. The public must be able to evaluate the credibility of the authors and published materials and understand potential conflicts of interest. Another factor, among others, that could be considered by the Ethics Commission when determining whether the publishing entity is an eligible press entity is whether it is registered as a corporation, business, or non-profit corporation.

Additionally, the MPA supports the requirement that the publication must disseminate information to the public periodically, which is in its essence journalistic in nature. Importantly, the underlying statute and the federal law require this periodic publication. The published information must not be a stagnant post that is not regularly updated. It must have a regular following of readers. The periodic nature of the communication is important, so various political entities do not arise around the time of elections for the sole purpose of affecting elections without any accountability and without the traditional protections of press publications.

Importantly, the MPA believes that the language of the proposed rule does not go too far and prohibit certain online and offline publishing activities that are protected under the federal law and the First Amendment. These activities include express advocacy and programming that may be biased or

balanced. Even coordination between a press entity and a candidate or political party has been determined by the FEC to be irrelevant in determining whether the press exception applies. *Id.* at 18609.

Therefore, the MPA supports the Ethics Commission new rule in Chapter 1, Section 7, sub-section 10. Thank you for the opportunity to provide comments on these proposed Ethics Commission rule amendments.

Sincerely,

/s/

Michael J. Dowd,  
Editor-in-Chief, Bangor Daily News  
President, Maine Press Association



May 11, 2012

Jonathan Wayne  
Executive Director  
Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, ME 04333-0135

Re: Proposed Rule 2012-P10 and 2012-P11

Dear Director Wayne:

On behalf of Maine Citizens for Clean Elections ("MCCE"), thank you for the opportunity to submit these additional comments on the "press exemption" language circulated last month.

MCCE is a nonpartisan organization that has been advocating for the full and effective implementation of the Maine Clean Election Act since it was passed in 1996. MCCE also supports effective disclosure and transparency in campaign funding as vital to our democratic process.

Subparagraph a. of the draft dated April 3, 2012 provides that the person who owns, controls or operates a broadcasting station or publication must be identified to the public in order for the press exemption to be available. We support this requirement as necessary to ensure effective disclosure. While there is a place for some anonymous speech, allowing an anonymously owned entity to avail itself of the press exemption is contrary to the long history of this exemption in state and federal law. Any other approach would leave a large loophole in the disclosure system.

Subparagraph b. of the draft provides that the entities who own, control or operate the broadcasting station or publication may not be reimbursed for the publication at issue. As a technical matter, we doubt that the situation would often arise where reimbursement is paid *directly to the owners*, as opposed to reimbursement the broadcasting station or publication itself. More fundamentally, where there is reimbursement paid to the broadcasting station or publication, *it is the reimbursement itself that is the expenditure*, not the act of publication, which is nothing more than the fulfillment of a contract. Perhaps this point could be clarified.

Subparagraph c. provides that a broadcasting station or publication owned by an interested party may not utilize the press exemption. We support this provision, and note that it is already a feature of Title 21-A. See 21-A M.R.S.A. §1012(3)(B)(1).

#### Member Organizations

AARP Maine, Common Cause Maine, EqualityMaine, League of Women Voters of Maine, League of Young Voters, Maine AFL-CIO, Maine Council of Churches, Maine People's Alliance/Maine People's Resource Center, Maine State Employees Association/SEIU Local 1989, Maine Women's Lobby, NAACP-Portland, Sierra Club Maine Chapter

P.O. Box 18187, Portland, ME 04112 • [info@mainecleanelections.org](mailto:info@mainecleanelections.org)

Finally, MCCE also supports the last paragraph of the revised “press exemption.” This is a reasonable attempt to make clear what kind of new media are encompassed by the exemption. Certainly a one-time post on a web site should not be considered a “periodical” within the meaning of Title 21-A. The standard set forth in the draft considers whether there have been periodic publication on a variety of topics – both factors which we believe are relevant and reasonably intended to distinguish the general media from publications which are exclusively directed at a campaign. We do not believe the latter type of publication should receive a blanket exemption from reporting.

Thank you again for considering these comments. We recognize that this is a complex and evolving area of law, and we commend the Commission for a very reasonable attempt to secure the public’s interest in full disclosure of all relevant communications.

We look forward to continuing to work with you and the Commission.

Sincerely yours,

A handwritten signature in cursive script that reads "John Brautigam". The signature is written in black ink and is positioned below the text "Sincerely yours,".

John Brautigam

**From:** suzanne@mab.org  
**Sent:** Monday, May 07, 2012 2:02 PM  
**To:** Wayne, Jonathan  
**Subject:** Press exception

Hi Jonathan,

I've spent most of the morning wrestling with the proposed rule interpreting the press exception (your memo of April 3, 2012). I don't have any objections to the proposal, except that the rule and the underlying statute need to be amended (as I know you've proposed before) to include cable TV - as well as other electronic programming services such as AT&T's U-Verse, which, while not now available in Maine, may be at some point, and which are not, strictly speaking, "cable TV" services. Perhaps "electronic media outlet" is a more appropriate and encompassing term.

Otherwise, I see no problem with the proposed rule, from our perspective.

Thanks for the opportunity to comment.

Best regards,

-

Suzanne D. Goucher  
President & CEO  
Maine Association of Broadcasters  
69 Sewall St., Augusta, ME 04330  
207-623-3870