

Additional
Materials
for
Agenda
Item #2



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: February 15, 2011

Re: Revised Staff Recommendation on RSLC Penalties

The Commission received this afternoon the response from the Republican State Leadership Committee ("RSLC") to the staff's February 4, 2011 notice of proposed penalties. Overall, the RSLC contends that the initial recommended penalty of \$41,000 is excessive, and that the organization sought to comply with Maine law as it understood it. Specifically, the RSLC argues that:

- The RSLC was required to file only one independent expenditure report on Thursday, October 21st. That report would have included all expenditures and obligations incurred for television, radio, and mailings. Instead, the RSLC filed the report on Saturday, October 23rd (two days late), because it did not know of Maine's "unique" reporting requirements for independent expenditures.
- The RSLC concedes that its October 19, 2010 expenditure of \$75,678 for production of mailings should have been included in the October 22, 2010 political action committee (PAC) report. It notes, however, that the expenditure was included in Independent Expenditure #142 ("IE #142"), which was filed on October 23, 2010. As a result, the public was informed of the expenditure only one day after the PAC deadline. The RSLC contends that the PAC report should be considered one day late, and that the fine should be \$756.78.
- The RSLC observes that IE #142 was two days late. It argues that the harm to the five Democratic candidates was not as severe as the Commission staff described it in the February 4, 2011 notice. The Democratic candidates were able to effectively utilize matching funds in time to promote their campaigns before the November 2, 2011 election, so the Commission should not assess the maximum \$10,000 penalty for the delayed payment of matching funds. One candidate (James Schatz) apparently chose not to spend the matching funds.

Final Staff Recommendation

I have conferred with Assistant Director Paul Lavin and PAC/Party/Lobbyist Registrar Cindy Sullivan. The staff makes the following recommendations.

Penalty for Late IE Reports

The RSLC argues that – had it fully understood the stringent reporting requirements in Maine – it would have disclosed all of its expenditures and obligations for television, radio, and mail communications in a single report on Thursday, October 21. The Commission staff was initially skeptical of that contention.

After receiving the RSLC response, Cindy Sullivan and I reviewed how PACs and state parties disclosed television and radio purchases in 2010 independent expenditure reports.¹ The overwhelming practice was to report together in a single report both the costs of production and the advertising time through a payment to an advertising consultant. The independent spenders who reported this way include the Maine Democratic State Committee, the RGA Maine PAC, the Jobs, Justice and Environment PAC, the Campaign for Maine PAC, and the Maine Republican Party, and the Maine Senate Republican Majority PAC. Examples of these payments are attached, along with a chart summarizing our research.

Therefore, we find it reasonable to believe that if on Tuesday, October 19 the RSLC authorized Crossroads Media, LLC to produce television and radio advertisements, the RSLC would have included both the production costs and the television and radio advertising time in a report filed on Thursday, October 21. Following the general practice of independent spenders in Maine, the October 21 report would have included a single payment to its vendor, Crossroads Media, LLC, that would have included both production costs and advertising time.

The staff is therefore recommending the view that the RSLC was required to file a single independent expenditure report on Thursday, October 21, rather than two reports as discussed in our February 4, 2011 notice of proposed penalties.

Penalty for Delay in Payment of Matching Funds

The staff continues to believe that the maximum penalty of \$10,000 should be assessed for the delay in matching funds. The RSLC is correct that the candidates were able to use their matching funds to purchase campaign communications on October 25, 26, and 27 – six to eight days before the November 2, 2010 election. Nevertheless, more than \$160,000 in matching funds was delayed, and even a delay of two days during this critical time period is significant.

¹ In the time available, we personally reviewed IE reports #99 - #240, which constituted roughly 60% of all IE reports filed for the 2010 general election.

Late PAC Report

The Commission staff believes the RSLC has made a legitimate argument that the public was informed of the \$75,678 expenditure for production of mailings on Saturday, October 23, 2010, which was one day late. You may legitimately conclude that a waiver of the \$10,000 penalty is merited. Nevertheless, the public was entitled to see the information in the correct type of report (the regular PAC report) on October 22, 2010. The staff continues to recommend the \$10,000 penalty because the October 22 report did not substantially conform to the disclosure requirements.

Substantial Misreporting

The RSLC has not addressed why IE#142 contained an inaccurate date of October 22, 2010. Thus, the staff continues to recommend a \$1,000 penalty for filing a campaign finance report that substantially misreports the RSLC's expenditures.

The staff's final penalty recommendation is:

	Type of Violation	Recommended Penalty	Notes
A.	Late Filing of Independent Expenditure Report	\$5,000	<ul style="list-style-type: none">• presumes one IE report was late• staff recommends no waiver of the preliminary penalty
B.	Delay of Matching Funds for Late IE Report	\$10,000.00	<ul style="list-style-type: none">• presumes that one IE report was required• staff recommends maximum penalty
C.	Late Filing of 10/22/2010 PAC Report	\$10,000.00	
D.	Substantial Misreporting (date in IE report)	\$1,000.00	<ul style="list-style-type: none">• Maximum penalty is \$5,000 for this violation
	Total	\$26,000	

We recognize that advocates for the Democratic candidates will likely contend for a penalty that is higher than the staff recommendation. You may hear the argument that a penalty of \$26,000 is "just the cost of doing business" for an organization with the financial resources of the RSLC. While that argument is worth considering, the recommended penalty of \$26,000 is more than twice the highest penalty ever assessed by the Commission (\$11,231), and is significant for any organization. Also, it is highly relevant that IE #142 was two days late.

Thank you for your consideration of this memo.

TV, Radio Purchases in IE Reports Reviewed by Commission Staff

IE Number	Media	Filer
99	Radio	Maine Democratic State Committee
101	TV	RGA
103	TV	Campaign For Maine
108	TV	Maine Democratic State Committee
112	Radio	Maine Democratic State Committee
113	TV	Jobs, Justice and the Environment
115	TV	Maine Senate Republican Majority
120	TV	RGA
132	Radio	Maine Democratic State Committee
136	Radio	Maine Republican Party
139	TV	Jobs, Justice and the Environment
140	Radio	Maine Senate Republican Majority
151	Radio	The Right Direction
161	Radio & TV	Maine Senate Republican Majority
162	TV	Campaign For Maine
167	Radio	Maine Senate PAC
172	TV	Maine Women Vote
173	TV	Maine Senate Republican Majority
175	Radio	Campaign For Maine
176	Radio & TV	Maine Republican Party
178	Radio	Maine Republican Party
179	Radio	Maine Republican Party
183	Radio	Women's Voices Women Vote Action Fund
184	Radio	Maine Democratic State Committee
186	TV	RGA
188	Radio	Maine Democratic State Committee
190	Radio	Responsible Action Yields Excellence
192	Radio & TV	Campaign For Maine
202	TV	Maine Senate Republican Majority
205	Radio & TV	Campaign For Maine
206	Radio	The Committee to Elect Paul LePage
207	TV	Maine Women Vote
215	Radio	Respect Maine
219	Radio	Campaign For Maine
221	Radio	Maine Senate Republican Majority
234	Radio & TV	Campaign For Maine



RECEIVED
OCT 22 2010
Maine Ethics Commission

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station, Augusta, Maine 04333
Office: 40 Memorial Circle, Augusta, Maine

Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

INDEPENDENT EXPENDITURE REPORT - 2010 GENERAL ELECTION

Name of Person/Committee Making Expenditure(s) Maine Democratic State Committee
Mailing Address 16 Winthrop PO Box 5256
City, Zip Code Augusta, 04332 Telephone 622-6233

The requirement to file an independent expenditure report is based on the total or aggregate amount spent per candidate for the election. When the total expenditures per candidate exceeds the threshold amount, a report must be filed by the appropriate deadline.

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

Is this an amendment to a previously filed report? Yes No Date report was filed: _____

TOTAL INDEPENDENT EXPENDITURES OVER \$250 PER CANDIDATE

MADE BEFORE SEPTEMBER 7, 2010:
 September Summary Report Expenditures through September 6 Due by 5:00 p.m. on September 7

MADE ON OR AFTER SEPTEMBER 7 THROUGH OCTOBER 19, 2010:
 48-Hour Report Within 48 hours of exceeding \$250

TOTAL INDEPENDENT EXPENDITURES OVER \$100 PER CANDIDATE BUT NOT MORE THAN \$250

MADE BEFORE OCTOBER 20, 2010:
 October Summary Report Expenditures through September 30 Due by 5:00 p.m. on October 12
 14-Day Pre-Election Report Expenditures through October 19 Due by 5:00 p.m. on October 19

TOTAL INDEPENDENT EXPENDITURES OVER \$100 PER CANDIDATE WITHIN 13 DAYS BEFORE THE ELECTION

MADE ON OR AFTER OCTOBER 20 THROUGH NOVEMBER 2, 2010:
 24-Hour Report Within 24 hours of exceeding \$100

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

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

10/22/10
Date



INDEPENDENT EXPENDITURE REPORT – 2010 GENERAL ELECTION

AFFIDAVIT

STATE OF Maine

COUNTY OF Kennebec

I, Alex Pringle, being duly sworn, attest that I made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, the candidates named in the report or the authorized committees or agents of the candidates.


Signature of Affiant

Sworn to before me, this 22 day of October 2010


(Notary Public/Attorney at Law)

My commission expires: 10-19-15

Schedule B-IE-1

CANDIDATE(S) SUPPORTED/OPOSED

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

Office sought by candidate (including district # or county)	Candidate's name	Indicate whether expenditure was made in support of or in opposition to the candidate	Amount expended this reporting period for each candidate
SD 1	Dawn Hill	Support	\$9,281
SD 15	Deb Simpson	Support	\$10,790
SD 23	John Piotti	Support	\$11,570
SD 25	Pam Triaward	Support	\$4,357
SD 32	Joe Perry	Support	\$5,495.25
Total expenditures for all candidates this reporting period. This amount should equal the total independent expenditures listed on Schedule B-IE-2, Line C. =>			\$41,493.25

Schedule B-IE-2

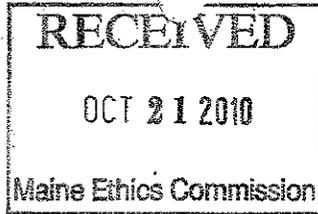
PAYMENTS AND OBLIGATIONS

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

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

Date of expenditure	Payee, address, zip code	Expenditure type	✓	Amount
10/22	Fletcher Hawley Riddle 223 Rosa Parks Blvd. Suite 300 Nashville, TN 37203	RAD		\$41,493.25
A. Expenditures for this page =>				\$41,493.25
B. Total for all other Schedule B-IE-2 pages (if any) =>				" "
C. Total independent expenditures for this reporting period (A+B). <i>This amount should equal the total amount for all candidates listed on Schedule B-IE-1.</i> =>				" "

IE 120



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

INDEPENDENT EXPENDITURE REPORT – 2010 GENERAL ELECTION

Name of Person/Committee Making Expenditure(s) REG Maine 2010 PAC
Mailing Address 1747 Penn Ave NW, Suite 250
City, Zip Code Washington, DC 20006 Telephone 202.662-4162

The requirement to file an independent expenditure report is based on the total or aggregate amount spent per candidate for the election. When the total expenditures per candidate exceeds the threshold amount, a report must be filed by the appropriate deadline.

Please check the appropriate box for the report you are filing and complete the notarized affidavit and attached schedules.

Reports must be filed on weekends and holidays if that is when they are due by faxing the report to the Commission (287-6775). The Commission must receive the signed original report within 5 days after the fax was received.

Is this an amendment to a previously filed report? Yes No Date report was filed: _____

TOTAL INDEPENDENT EXPENDITURES OVER \$250 PER CANDIDATE

MADE BEFORE SEPTEMBER 7, 2010:

<input type="checkbox"/> September Summary Report	Expenditures through September 6	Due by 5:00 p.m. on September 7
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MADE ON OR AFTER SEPTEMBER 7 THROUGH OCTOBER 19, 2010:

<input type="checkbox"/> 48-Hour Report	Within 48 hours of exceeding \$250	
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TOTAL INDEPENDENT EXPENDITURES OVER \$100 PER CANDIDATE BUT NOT MORE THAN \$250

MADE BEFORE OCTOBER 20, 2010:

<input type="checkbox"/> October Summary Report	Expenditures through September 30	Due by 5:00 p.m. on October 12
<input type="checkbox"/> 14-Day Pre-Election Report	Expenditures through October 19	Due by 5:00 p.m. on October 19

TOTAL INDEPENDENT EXPENDITURES OVER \$100 PER CANDIDATE WITHIN 13 DAYS BEFORE THE ELECTION

MADE ON OR AFTER OCTOBER 20 THROUGH NOVEMBER 2, 2010:

<input checked="" type="checkbox"/> 24-Hour Report	Within 24 hours of exceeding \$100	
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I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

Michael G Adams
Signature of PAC or Party Treasurer, or
Other Authorized Person Making Expenditure(s)

October 21, 2010
Date



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

Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

INDEPENDENT EXPENDITURE REPORT – 2010 GENERAL ELECTION

AFFIDAVIT

STATE OF District of Columbia

COUNTY OF _____

I, Michael G. Adams, being duly sworn, attest that I made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, the candidates named in the report or the authorized committees or agents of the candidates.

Michael G. Adams

Signature of Affiant

Sworn to before me, this 21st day of October 2010

Chang Ho Choi
(Notary Public/Attorney at Law)

My commission expires: Chang Ho Choi
Notary Public District of Columbia
My Commission Expires 8/14/14

Schedule B-IE-1

CANDIDATE(S) SUPPORTED/OPOSED

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

Office sought by candidate (including district # or county)	Candidate's name	Indicate whether expenditure was made in support of or in opposition to the candidate	Amount expended this reporting period for each candidate
Governor	Elizabeth Mitchell	OPPOSITION	42,034.39
Governor	Paul LePage	SUPPORT	168,137.55
Governor	Eliot Cutler	OPPOSITION	126,103.16
Total expenditures for all candidates this reporting period. This amount should equal the total independent expenditures listed on Schedule B-IE-2, Line C. =>			336,275.10

Schedule B-IE-2

PAYMENTS AND OBLIGATIONS

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

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

Date of expenditure	Payee, address, zip code	Expenditure type	✓	Amount
10/21/2010	Cross Roads Media, LLC 66 Canal Center Plaza, Suite 555 Alexandria, VA 22314	TVN		317,688.15
10/21/2010	Cross Roads Media, LLC 66 Canal Center Plaza, Suite 555 Alexandria, VA 22314	OTH Commission		18,586.95
A. Expenditures for this page =>				336,275.10
B. Total for all other Schedule B-IE-2 pages (if any) =>				336,275.10
C. Total independent expenditures for this reporting period (A+B). This amount should equal the total amount for all candidates listed on Schedule B-IE-1. =>				336,275.10

1E113



RECEIVED
OCT 21 2010

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

INDEPENDENT EXPENDITURE REPORT 2010 GENERAL ELECTION

Name of Person/Committee Making Expenditure(s) Jobs, Justice & the Environment PAC
Mailing Address P.O. Box 2452
City, Zip Code Augusta, ME 04338 Telephone 207-939-3344

The requirement to file an independent expenditure report is based on the total or aggregate amount spent per candidate for the election. When the total expenditures per candidate exceeds the threshold amount, a report must be filed by the appropriate deadline.

Please check the appropriate box for the report you are filing and complete the notarized affidavit and attached schedules.

Reports must be filed on weekends and holidays if that is when they are due by faxing the report to the Commission (287-6775). The Commission must receive the signed original report within 5 days after the fax was received.

Is this an amendment to a previously filed report? Yes No Date report was filed: _____

TOTAL INDEPENDENT EXPENDITURES OVER \$250 PER CANDIDATE

MADE BEFORE SEPTEMBER 7, 2010:

September Summary Report Expenditures through September 6 Due by 5:00 p.m. on September 7

MADE ON OR AFTER SEPTEMBER 7 THROUGH OCTOBER 19, 2010:

48-Hour Report Within 48 hours of exceeding \$250

TOTAL INDEPENDENT EXPENDITURES OVER \$100 PER CANDIDATE BUT NOT MORE THAN \$250

MADE BEFORE OCTOBER 20, 2010:

October Summary Report Expenditures through September 30 Due by 5:00 p.m. on October 12

14-Day Pre-Election Report Expenditures through October 19 Due by 5:00 p.m. on October 19

TOTAL INDEPENDENT EXPENDITURES OVER \$100 PER CANDIDATE WITHIN 14 DAYS BEFORE THE ELECTION

MADE ON OR AFTER OCTOBER 20 THROUGH NOVEMBER 2, 2010:

24-Hour Report Within 24 hours of exceeding \$100

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

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

Date 10/21/10



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

INDEPENDENT EXPENDITURE REPORT - 2010 GENERAL ELECTION

AFFIDAVIT

STATE OF MAINE

COUNTY OF KENNEBEC

I, MARK GRAY, being duly sworn, attest that I made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, the candidates named in the report or the authorized committees or agents of the candidates.

Signature of Affiant

Sworn to before me, this 21st day of October 2010

David O. Stevens
(Notary Public/Attorney at Law)

My commission expires: March 26, 2011

L. G. STEVENS
NOTARY PUBLIC
MAINE
My Commission Expires March 26, 2011



Independent Expenditure Report – 2010 General Election

Page 5 of 5
(Schedule B-IE-2 only)

Schedule B-IE-2
PAYMENTS AND OBLIGATIONS

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

Expenditure Types	
M, C P, G P, O P, S P, T	P, R P, A P, V P, W P, X
Political advertising (flyers, signs, banners, etc.) Mail (house bills, voter information) Phone calls, automated phone calls, etc. Printing and research services Electronic Signatures and mailboxes	Political education (news, press, magazines) Fundraising and election costs Political events and fundraisers State design registration / Political name/face/etc. Other (include description)

Date of expenditure	Payee, address, zip code	Expenditure type	✓	Amount
10/21/10	THE NEW MEDIA GROUP FIRM 1730 Rhode Island Ave NW Suite 410 Washington, DC 20036	TVN		99,953.81
A. Expenditures for this page =>				99,953.81
B. Total for all other Schedule B-IE-2 pages (if any) =>				---
C. Total independent expenditures for this reporting period (A+B). This amount should equal the total amount for all candidates listed on Schedule B-IE-1.				99,953.81

207 623-1596 main
207 626-0200 facsimile
bernsteinshur.com

BERNSTEIN SHUR

COUNSELORS AT LAW

146 Capitol Street
PO Box 5057
Augusta, ME 04332-5057

Daniel P. Riley Jr., Esq.
driley@bernsteinshur.com

February 14, 2011

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

**Re: RSLC Response to “Notice of Proposed Penalties and
Opportunity to Respond”**

Dear Mr. Wayne:

Thank you for the opportunity to respond to the “Notice of Proposed Penalties and Opportunity to Respond” dated February 4, 2011. As will be explained in more detail below, the RSLC believes that the initial recommended penalty of \$41,000 is excessive. We hope the information below helps to clarify what we believe is some confusion about when expenses were incurred, when reports should have been filed and what is a reasonable penalty for an organization who substantially complied with the statute.

The RSLC has at all times sought to comply with the law as it understood it and has attempted to be cooperative and forthcoming to the Commission in its investigation. The RSLC’s apparent late filing of Independent Expenditure Report #142 was not intentional but rather results from its experience in other jurisdictions and a failure to understand the appropriate legal trigger under Maine’s unique independent expenditure reporting law.¹

¹ Maine’s 24-hour I.E. report scheme is unique in campaign finance jurisprudence. For instance, the Federal Election Commission has a similar expansive definition of expenditure at 2 U.S.C. § 431(9) which includes upon contract or agreement to make an expenditure. However, the federal standard recognizes that in the context of 24-hour I.E. reports the appropriate trigger is dissemination of the expenditure. See 11 CFR 104.4 (“the independent expenditure must be reported to, and received by, the FEC within 24 hours of the time the communication is publicly distributed or otherwise publicly disseminated.”)

In California, for purposes of their 24 or 48-hour reports “the date an independent expenditure is made is the date the communication is mailed, broadcast, or otherwise disseminated to the public. A payment for a communication that is never disseminated to the public is not an independent expenditure...” See California Campaign Disclosure Manual 6.

Had the RSLC understood that it had triggered an independent expenditure under Maine law on Oct. 19th or 20th it would have filed the appropriate documents as such.

1) The RSLC Failed to Timely File Only One Independent Expenditure Report.

In its “Response to Request for Information Regarding Independent Expenditure Report #142 Filed by the Republican State Leadership Committee” (the “RSLC Response”), the RSLC detailed expenditures which occurred on October 19th, 2010 (mail) and October 20, 2010 (TV and radio). Based on those two dates, the Commission staff recommends that the RSLC be fined for two late independent expenditure reports.

A re-examination of the reporting deadlines posted on the Ethics Commission website shows that in fact, expenditures incurred on October 19 and October 20 were *both* due on October 21. That is because expenditures over \$250 incurred on October 19 were subject to a 48 hour reporting requirement (not a 24 hour requirement). On October 20, new expenditures were subject to the newly accelerated 24 hour reporting requirement.

Additionally, if the RSLC had understood the trigger to require an independent expenditure report to be filed on October 21, 2010, all expenditures related to the activities in question would have been reported on the October 21 report (importantly, as they were on the October 23rd report). In its Notice of Proposed Penalties, the Commission staff asks the RSLC to explain why no report would have been filed on October 22nd. The explanation is simple – invoices received from vendors on October 19th and October 20th accounted for all expenditures – even those which were not scheduled to be made until later in October. Vendors for political campaigns typically require pre-payment of anticipated expenses and as such, receiving invoices for media which has not yet been publicly distributed is commonplace. That is exactly what occurred here – and is exactly why the RSLC included these “yet to be public” media activities in their October 23, 2010 report.

Taking all these facts into consideration, it becomes clear that the RSLC should have filed one independent expenditure report which contained expenditure information from both October 19 and October 20. The fines recommended by Commission staff are based on the assumption that two reports were required. Accordingly, the RSLC should only be subject to penalties for the late filing of one report – reducing the maximum allowable fine from \$30,000 to \$15,000.²

In Arizona, a state with a matching funds system similar to Maine, “an expenditure occurs on the date on which literature or advertisements are deposited at the post office for mailing, submitted to a communications system for broadcast or submitted to a newspaper or similar print medium for printing and, with respect to an expenditure for signs, the date on which a sign is first posted.” See A.R.S. § 16-914.02.

In Washington an I.E. report must be filed “within 24 hours of, or on the first working day after, the date the advertisement was first published, mailed, or otherwise presented to the public.” See Washington Independent Expenditure Report C6.

² The maximum penalty for the late filing of an Independent Expenditure is \$5000 and the maximum penalty for late filing of an Independent Expenditure report which resulted in a delay of matching funds

2) The RSLC's October 22, 2010 PAC Report Substantially Conformed To The Disclosure Requirements.

Understanding the reporting trigger was October 23, 2010, the RSLC did not include the \$78,678 expenditure which occurred on October 19, 2010 on its 11-Day Pre-General PAC report (the "Pre General Report") filed on October 22, 2010.³ One day later, on October 23, 2010, the RSLC reported the expenditures via an independent expenditure report. That independent expenditure report was publicly posted on the website and there is no question that the information was available to all interested parties.

Given its current understanding of the reporting triggers, the RSLC agrees that this \$78,678 expenditure should have been included in the Pre-General report. The statute itself, however, acknowledges that reporting mistakes are not uncommon. Reports are not required to be perfect (although that is certainly the goal) but rather "substantial conformity to the disclosure requirement" is the benchmark to be met by PACs. This standard balances the public's need to have timely information with the recognition that despite best efforts – reporting mistakes can, and are, made.

Using the "substantial conformity" standard referenced in the statute, the RSLC believes that when considering a late filing penalty, it is imperative that the Commission consider all of the PAC filings made by the regulated organization – and for how long the information was not available to the public. Although the RSLC's Pre General Report indicated there had been "no activity", it is important to note that there was only *one* day after that filing, the RSLC also filed an independent expenditure report detailing all of the expenses in question. In this case, that time period was *one* day – not the 53 days used by the Commission to calculate the maximum penalty. The Independent Expenditure Report #142 contained *ALL* of the same information requested in the Pre-General Report (amount spent, candidates supported or opposed and a breakdown of each affected candidate and name of vendor used).

In its penalty assessment, the Commission staff recommends using a 53-day multiplier. The RSLC argues that the use of the 53-day time period results in an excessive fine given that Independent Expenditure Report #142 accurately disclosed all of the expenditures at issue, one day after the Pre General report was due. Instead, the RSLC contends that the fine should be calculated using a one-day multiplier. Using that calculation, the total fine for late filing would come to \$756.78 – substantially less than the initially recommended \$10,000 fine.

3) The Two-Day Filing Delay Did Not Substantially Harm The Candidates At Issue

is \$10,000. The Commission staff's recommendation of \$30,000 total penalty is based on the assumption that two Independent Expenditure reports are required.

³ The 11-Day Pre-General PAC report was to include all activity which occurred between October 1, 2010 and October 19, 2010.

February 14, 2011

Page 4 of 4

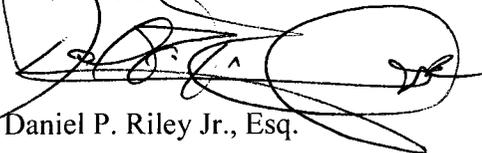
The Commission staff recommendation of a \$10,000 fine due to the delay in the provision of matching funds to the publicly financed senate candidates involved is excessive and fails to recognize three important mitigating factors.

The first of these factors is that two of the publicly financed candidates involved, Senators Joe Perry and Deb Simpson, had already received the maximum amount of funding allowed under the law, but were not authorized to use some of that funding until after the filing of the Independent Expenditure Report #142 on October 23, 2010. The staff's recommendation admits the fact that these candidates had already received all the funding allowed them under the law, but points out that some of those funds were restricted from being used until authorized. That authorization could have been made by phone or e-mail to the campaigns as early as October 23 or October 24 allowing these two candidates more than a week prior to the election to utilize the authorized funds to respond to the expenditures contained in Independent Expenditure Report #142 and it is common practice for this authorization to be made immediately upon receipt of an independent expenditure report. The pre-distribution mechanism involved in these two campaigns is only utilized where the Commission staff anticipates the maximum amount of matching funds will be triggered in the immediate future and signals to the campaigns that they should prepare to utilize these funds.

The second mitigating factor requiring consideration by the Commission is the fact that the remaining three candidates had at least a week between the time of the filing of Independent Expenditure Report #142 on October 23 and the election on November 2. The staff's recommendation lays out scenarios which compress this time frame in order to argue that there was more harm to the public's interest in allowing these candidates to utilize their matching funds to respond to the expenditures. Given the realities of how quickly candidates can secure television, radio and mailings, and the fact that in this case those candidates who chose to respond were able to do so during the last week before the election, a maximum fine is not warranted. The maximum penalties provided for under the statute should be reserved for those situations in which publicly financed candidates are unable to effectively utilize matching funds to respond to expenditures made against their candidacy.

Finally, given that Representative Schatz publicly stated that he would not have and did not use the matching fund triggered by the expenditures reported in Independent Expenditure Report #142, there can be no finding of disadvantage to his campaign. Copies of two newspaper articles quoting Representative Schatz which support this position are attached.

Very truly yours,

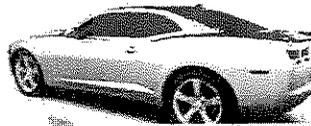


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Candidates Denounce Attack Ads from Away

WRITTEN BY JAMES STRAUB

WEDNESDAY, OCTOBER 27, 2010 AT 2:24 PM

ELLSWORTH — If there is anything more disliked in Maine politics than attack advertising, it's attack advertising from away.

The practice of outside money being spent in Maine to influence referendums and gubernatorial elections is familiar, but for the first time, outside money is being spent on races for the state legislature.

The action is as unwelcome as it is unusual.

Television ads and fliers paid for by the Republican State Leadership Committee (RSLC) of Alexandria, Va., have outraged voters and candidates alike this week.

Jim Schatz of Blue Hill, a candidate in a three-way race for the State Senate District 28 seat, first learned the ads were headed this way last Friday when the Maine Ethics Commission informed him that he was entitled to spend another \$38,156 in matching funds as a publicly funded Clean Election candidate.

The allocation results from the RSLC spending \$65,387 to oppose Schatz and \$6,908 to support Brian Langley of Ellsworth, the Republican candidate in the District 28 race, which is also joined by Lynne Williams, a Green Independent Party candidate from Bar Harbor.

"This is precedent setting," Schatz said. "No PAC like this has come into a state race before."

Schatz said his immediate reaction was to decline the additional Clean Election funds because it is tax money that he did not want to spend, but he worried that not responding to negative ads against him could cost him the election, essentially allowing outside money to "buy the Senate seat.

On Monday, he made a firm decision not to spend the money and allow it to go back to the state's general fund.

By Tuesday, the attack ads against him had aired on TV and made their way into households. The content enraged not only Schatz, but also Duane Gray and John Bannister, who, along with Schatz, make up the Board of Selectmen in Blue Hill.

The attack ads show children anguished because "Jim Schatz canceled Fourth of July fireworks," and an outraged, screaming man who "just found out Jim Schatz used taxpayer money to make a political contribution."

"I'm very upset," said Bannister. "It's very unfair, very not above board, it's so wrong, so untruthful that it takes away from an election between two guys with records to stand on.

"It's wrong. There is no fact to it at all. This is out-of-state stuff, the way they do things in Washington, not Blue Hill, Maine."

For more political news, pick up a copy of The Ellsworth American.

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WRITTEN BY MDRESIDENT, OCTOBER 26, 2010

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BANGOR DAILY NEWS

Major parties fighting over out-of-state funds

By Eric Russell, BDN Staff
Posted Oct. 26, 2010, at 10:50 p.m.

BANGOR, Maine — State Democrat and Republican leaders are blasting each other this week for the large amount of out-of-state money that is being spent on negative advertising in local legislative races as the campaign season winds down.

The Maine Democratic Party has filed a complaint with the state alleging that an out-of-state political action committee that recently spent \$400,000 to target five state Senate races violated Maine Clean Elections Law.

“For a national Republican group to exploit the state clean elections statutes creates an unequal playing field for Maine candidates,” said Dan Walker, legal counsel for the Maine Democrats.

The Maine Ethics Commission scheduled a special meeting on Tuesday to hear the complaint, which a top Democrat said has the potential to be the largest ethics violation in state history. The commission voted to investigate the matter but is not expected to settle the matter before Election Day, according to assistant director Paul Lavin.

“There is a relatively low threshold for investigations,” he said. “The commission determined that there was enough probable cause to suggest that a violation may have occurred.”

The races that have been targeted for opposition by the Republican State Leadership Committee of Alexandria, Va., are Senate Districts 15 (Androscoggin County), 24 (Kennebec County), 25 (Kennebec County), 28 (Hancock County) and 32 (Penobscot County). Four of the five races are open seats, meaning no incumbent is running for re-election. The fifth involves the District 32 race between Sen. Joe Perry, a Democrat, and Republican Nichi Farnham, both of Bangor.

The RSLC is backed by Karl Rove, former adviser to President George W. Bush, and has given money to numerous state Republican parties this year, according to news reports.

Arden Manning of the Maine Democratic Party said it’s not the amount of money that’s being spent by the RSLC but the timing of filing reports to the state that prompted the ethics complaint.

The reporting delay, Manning said, did not allow Maine Clean Elections Act candidates to receive matching funds in time to use them.

“This is a huge amount of money that’s being spent to oppose these candidates,” Manning said.

While the Ethics Commission was meeting Tuesday, Maine Republican Senate leaders leveled their own criticism of outside spending.

A joint statement released by Senate Minority Leader Kevin Raye of Perry and Assistant Minority Leader Jonathan Courtney of Springvale criticized Democrats for accepting more than \$1 million from billionaire investor Donald Sussman.

Sussman, the fiance of 1st District U.S. Rep. Chellie Pingree, who is running for re-election against Republican challenger Dean Scontras, has given \$380,000 alone to the Equality Maine PAC, which supports mostly Democratic candidates who favor same-sex marriage.

"Sadly, some donors and groups on both sides seem more interested in creating a sideshow of negative attacks on other issues," Raye said. "Frankly, I don't care what side they are on; that is not how we do things in Maine and they should just butt out."

State Republicans have been hopeful they can seize control of the Senate on Nov. 2. Democrats now hold a 20-15 edge, meaning the GOP needs to flip only three seats to gain a majority, something they have done for only one two-year period since 1982.

Some Maine Senate candidates have received a boost from high-profile surrogates. U.S. Sen. Susan Collins has appeared at events with no fewer than eight Republican candidates, including Mike Thibodeau in District 23, Brian Langley in District 28 and Farnham in District 32.

Several Senate races have benefited from independent expenditures by registered political action committees, but candidates also are spending a lot of their own money. Both parties agreed the amount of money being spent this year is uncommonly high and the spending has been used overwhelmingly to fund negative ads.

"I've never seen this kind of money spent in local races," Lavin said.

Lance Dutson with the Maine Republican Party said this year has seen a changing landscape but he said it speaks to the enthusiasm of state Republicans.

"We're putting up such a fight this time because we've gotten our butt kicked for so many years," he said.

Jim Schatz, a Democrat running for the open seat in District 28 (Hancock County) said he has seen mailings and ads paid for by the Republican State Leadership Committee.

"Even though I'm eligible for almost \$40,000 in matching funds, I don't want to spend it because it's really taxpayer money," Schatz said. "I don't think I will spend it, but it puts me in a tough position. [Republicans] are trying to buy these elections."

Republican candidates say they are being hurt by negative ads funded by Democratic groups.

"I am not running to tear down my opponents," said Langley, Schatz's opponent for the District 28 seat. "My campaign is about the need to fix Maine's business climate, get debt under control and get Mainers working again."

According to Lavin, the mechanics of matching funds are complicated.

Essentially, if expenditures are made by an independent group to support or oppose a candidate, that could result in matching funds for the other side based on the Maine Clean Elections Act. Matching funds are capped at two times the original amount given to a Clean Elections candidate, or about \$38,000 for Senate hopefuls.

Manning said if out-of-state groups are going to send money to Maine, the state Democratic Party would accept it, but the rules need to be the same for both sides.

Dutson said, for him, there is a distinction between taking funds from national party committees and allowing one wealthy individual, such as Sussman, to fund one side.

<http://new.bangordailynews.com/2010/10/26/politics/major-parties-fighting-over-out-of-state-funds/>
printed on February 15, 2011