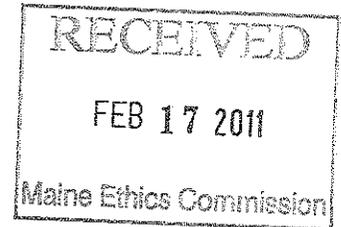


February 16, 2011

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



RE: Response to "Revised Staff Recommendation on RSLC Penalties"

Dear Jonathan:

On behalf of the Maine Democratic Party, I am responding to your February 15, 2011 memorandum to Commissioners, "Revised Staff Recommendation on RSLC Penalties" which recommends total penalties of \$26,000. For the reasons set forth below, the Party believes the penalties you previously recommended, in your memorandum of February 8, 2011, totaling \$41,000, are appropriate.

First, with respect to the late filing of IE #142, the Party concedes that an IE report was due on October 21<sup>st</sup> for production of mailings that began on October 19<sup>th</sup> and for the production of radio and television ads that began October 20<sup>th</sup>. The issue becomes whether the expenses for the purchase of airtime and postage, which began on October 21<sup>st</sup> should have been reported on October 21<sup>st</sup> or October 22<sup>nd</sup> even though they were not reported until October 23<sup>rd</sup>. The RSLC concedes that it should have filed a report on October 21<sup>st</sup> rather than the 23<sup>rd</sup> but argues that no second report would have needed to be filed on October 22<sup>nd</sup> because its October 21<sup>st</sup> report would have included expenses for both production *and* the purchase of airtime and postage. Commission staff accepts this position based on the common practice of filing production and airtime expenses in the same filing. However, the Party disagrees that this explanation applies to the RSLC in this case. First, the Commission staff, in the materials provided to the Commission for this hearing, provides only examples of common filing practices for radio or television ads and not mailings. While it may be true that common practice for radio and television reporting is to include both production and airtime purchases, no information has been provided to suggest that the same applies to mailings like the ones at issue here. Second, the RSLC has failed to provide any documentation to support the contention that postage and airtime expenses had been determined as of October 21<sup>st</sup>. Although the RSLC refers to invoices for future expenses, no documentation was provided to establish that the invoices included a complete expenditure of airtime and mailing expenses. Moreover, the documentation provided to the Commission staff as of February 4, 2011, was insufficient for the purpose of establishing that a report would have been due on October 22<sup>nd</sup>: "we do not believe the information presented to date is sufficient to accept at this time." ("Notice of Proposed Penalties and Opportunity to Respond," February 4, 2011) A report for airtime and postage expenses should have been filed on the 22<sup>nd</sup> unless they had been paid for in time for the October 21<sup>st</sup> report. Thus there were late filings of two independent expenditure reports which command the Commission staff's initial recommended preliminary penalty of \$5,000 per violation or \$10,000.

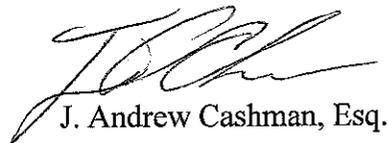
Second, because there were two late-filed independent expenditure reports that resulted in late payment of significant matching funds, it is appropriate for, as was the Commission's staff initial recommendation, an assessment of the maximum penalty: \$10K per violation. In total, five candidates were disadvantaged by receiving over \$160,000 of matching funds late during a critical stage of their campaigns. As Commission staff pointed out, this is a significant amount of money: some 2010 MCEA candidates for State Senate funded their entire general election campaigns on \$19K (the amounts of the June 2010 initial payment).

Finally, the Party fully agrees with the Commission staff's recommendations concerning the late PAC report and penalty for substantial misreporting. The October 22<sup>nd</sup> PAC report failed to substantially conform to the disclosure requirements requiring disclosure in that report of the \$75,678 expenditure for the production of mailings. Further, IE #142 contained an inaccurate date of October 22, 2010, thus a \$1,000 penalty is appropriate for filing a campaign finance report that substantially misrepresents the RSLC's expenditures.

For these reasons, the Party respectfully requests that the Commission consider assessing \$41,000 in penalties for this, the most egregious violation of Maine election law in recent memory.

Thank you for your attention to this matter.

Sincerely,



J. Andrew Cashman, Esq.

Enclosure

## RSLC Chronology October - November 2010

S	M	T	W	Th	F	Sa
17	18	19	20	21	22	23
		RSLC ordered production of mailings	RSLC ordered production of TV, radio ads	Crossroads Media began ordering advertising time (TV, radio)  Arena Communications advised RSLC of postage costs	Orders for advertising time continued	RSLC filed IE #142  Commission made authorizations of matching funds to five Democratic nominees
24	25	26	27	28	29	30
	Commission directed State to issue matching funds payments to three of the Democratic nominees	State issued electronic payments to three of the Democratic nominees				
31	1	2				
		General Election				