

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: October 24, 2012

Re: Request to Investigate Sen. Nichi Farnham – Television Spending by PAC

Summary

The Maine Democratic Party has requested an investigation into whether Senator Nichi Farnham of Bangor (State Senate District 32) received an impermissible contribution by participating in a large expenditure for television advertising against her opponent that was made by the political action committee organized by her Senate Republican caucus, the Maine Senate Republican Majority PAC (the PAC). The concern by the Maine Democratic Party (the Party) is understandable, since Sen. Farnham has been listed as a primary decision-maker and fundraiser for the PAC since March 2012 when the PAC's registration form was amended. If Sen. Farnham had *actually* consulted on the expenditure, she would have received a very large in-kind contribution, which is inconsistent with her status as a Maine Clean Election Act candidate.

As permitted by Chapter 1, § 5(1) of the Commission's Rules, the staff of the Ethics Commission has undertaken a preliminary fact-finding prior to your initial consideration

of the Party's complaint. To date, the Commission staff has received factual information from five¹ individuals:

- Senator Nichi Farnham (through a sworn affidavit),
- Senators Roger Katz and Michael Thibodeau, two principal officers and primary decision-makers for the PAC (through a telephone interview),
- Senator Thomas Saviello, another of the PAC's principal officers and primary decision-makers (through a sworn affidavit), and
- Trevor Bragdon, a political consultant hired by the PAC to make independent expenditures for the PAC (through a sworn affidavit).

At this time, we expect that Sen. Farnham, Sen. Saviello, and Trevor Bragdon will be present at the October 31 meeting, so that you can hear from them directly as you make your decision whether to take any further action on the request by the Maine Democratic Party. PAC treasurer Sara Vanderwood's office is located in the Commission's building, and the Commission staff has suggested that she be available to speak to you on October 31 if you have any questions for her.

The PAC is managed by Legislators and staff with campaign experience. They understand the legal requirement that if a PAC is paying for communications to voters to promote certain candidates, the PAC may not consult with the candidates on the expenditures made to influence the candidates' election. As explained in the affidavits, the PAC has purposefully set up procedures for making sure that its expenditures are independent of the candidates. Specifically, it has hired a political consultant, Trevor

¹ The Commission staff has requested a statement from the PAC treasurer explaining the basis for her sworn statement included in Independent Expenditure Report #25 that the expenditure was made independently of the candidates involved. That statement was not available by the completion of this memo.

Bragdon, to make independent expenditures for the PAC. Mr. Bragdon discusses the expenditures with the three State Senators who oversee the PAC, but not with the candidates who are benefited by the expenditures. Thus, only a limited number of people within the organization have knowledge of the independent expenditures. According to Mr. Bragdon, there is a “firewall” between him and the candidates who benefit from the independent expenditures. This is a common technique for political organizations such as political parties and PACs to control the flow of information concerning independent expenditures in order to avoid coordination with candidates.

Provided that you find the affidavits and the anticipated October 31 testimony of the PAC officers and Sen. Farnham to be credible, the Commission staff recommends undertaking no further investigation in response to the request by the Maine Democratic Party. While the staff understands the Maine Democratic Party’s concern, the Party’s complaint rests on information listed on a PAC registration form filed on March 16, 2012 that became quickly inaccurate in a few weeks due to changes in the PAC’s leadership. In the view of the Commission staff, any inference that Sen. Farnham *actually* consulted on the PAC’s television purchase has been effectively rebutted by the evidence gathered so far.

However, if you believe any further investigation should be conducted, the staff is happy to pursue any specific direction you give us. We suggest completing any necessary investigation before the November 6, 2012 general election if possible.

The PAC's Compliance with Registration Requirements

The responsibility for inadequate compliance at the core of this matter rests with the Maine Senate Republican Majority PAC. The PAC listed Sen. Farnham as a principal officer and primary decision-maker and fundraiser on its PAC registration on March 16, 2012 and allowed her to stay on the registration even though she did not take on the role of someone who was principally involved in the PAC. The PAC did encounter some unusual circumstances in early 2012, such as a new treasurer for the PAC in February 2012 and the caucus floor leader and assistant leader quickly extricating themselves as decision-makers for the PAC in March in order to run for federal office. Nevertheless, it is the PAC's responsibility (not Sen. Farnham's) to accurately disclose its own primary decision-makers and fundraisers, and to amend the PAC registration if necessary. The individuals listed on a PAC registration form should reflect the PAC's *actual* decision-makers and fundraisers, not individuals who are temporary "placeholders." The listing of Sen. Farnham's name on the registration became quickly outdated because she never functioned, in fact, as a primary decision-maker or fundraiser for the PAC.

Therefore, in a separate agenda item (#3), the Commission staff recommends that you consider finding that the PAC violated 21-A M.R.S.A. § 1053, by failing to amend the PAC registration to include an up-to-date statement of the PAC's actual decision-makers and fundraisers. It appears that Sen. Farnham's name should have been removed in March or early April, and Senators Michael Thibodeau and Roger Katz should have been added. The basis for the recommendation – and some mitigating factors – are discussed in that agenda item.

Background Factual Information

Senator Nichi Farnham is serving her first term in the Maine State Senate representing District #32, which includes Bangor and Hermon. She is seeking re-election as a Maine Clean Election Act candidate. She is running against Geoffrey Gratwick, M.D., the Democratic nominee. The race for this Senate district has been described in newspaper accounts as one of the more competitive legislative races in the 2012 general election. As of yesterday, more independent expenditures have been made to influence this race than any other district. This is Sen. Farnham's second legislative election. She does not have a leadership PAC nor is she named as a principal officer or primary decision-maker in any other PAC.

The Maine Senate Republican Majority PAC was organized by the Senate Republican caucus in 2008 to elect Republican candidates to the State Senate. It filed its initial registration with the Commission in November 2008. The timeline for changes to the PAC's registration and personnel in 2012 is:

- On January 9, 2012, the PAC filed an updated registration form listing its officers and primary decision-makers as Senator Jonathan Courtney, Senate Majority Leader, and Senator Debra Plowman, Senate Majority Whip, and listing Kathleen Summers-Grice as its treasurer.
- On February 2, 2012, the PAC filed an amended registration form to name Sara Vanderwood as treasurer.
- On March 5, 2012, the PAC amended its registration form to remove the names of Senators Courtney and Plowman, who were by then running for federal office,

from the PAC's registration. (see attached e-mails) This left the PAC registration without any listing of officers or primary decision-makers or fundraisers.

- On March 14, 2012, PAC/Party/Lobbyist Registrar Matthew Marett e-mailed the PAC's new treasurer, Sara Vanderwood, to ask for names and contact information for the PAC's officers and principal fundraisers and decision-makers. On March 16, 2012, the PAC treasurer e-mailed the names and addresses of Senators Nichi Farnham and Thomas Saviello. (see attached e-mail correspondence)
- On October 5, 2012, after this complaint was filed, the PAC amended the registration form to remove Sen. Farnham's name.
- On October 18, 2012, the PAC's registration was amended to add Senators Roger Katz and Michael Thibodeau as officers and primary decision-makers and fundraisers.

Contentions by the Maine Democratic Party

On October 3, 2012, the Maine Senate Republican Majority PAC filed Independent Expenditure Report #25. It disclosed making a total payment of \$102,353 for television advertising to Jamestown Associates in Princeton, New Jersey. Of that total, the PAC disclosed that \$72,919 would be spent to oppose Dr. Gratwick, Sen. Farnham's Democratic opponent. That same day, the Maine Democratic Party issued a press release accusing Sen. Farnham of an "egregious violation of Maine law," which was covered that evening by the Bangor Daily News. On the following day (October 4, 2012), the Maine Democratic Party requested an investigation through its counsel, Kate R. Knox.

In its request, the Party contends that Sen. Nichi Farnham accepted a contribution by cooperating with the PAC to purchase television advertising disclosed in Independent Expenditure Report #25:

In this instance, the Party contends that Candidate Farnham's status as principal officer, primary fundraiser and primary decision maker for the PAC combined with her status as a MCEA certified candidate in Senate District 32 means that any expenditure undertaken by the PAC in Senate District 32 is *per se coordination* under the statute. That *per se* coordination results in a prohibited campaign contribution from the PAC to Candidate Farnham's campaign in the amount of \$72,919.

(page 2 of Kate Knox letter) The Party argues that "Candidate Farnham is in violation of 21-A § 1125(6) by her acceptance and approval of a large prohibited expenditure against her opponent and in support of her own candidacy." The Party requests that the Commission investigate whether a violation occurred, and determine whether to assess civil penalties, revoke her status as a Maine Clean Election Act candidate, and seek possible criminal sanctions.

The Party does not specify any other basis for the complaint or evidence that a violation may have occurred other than the amended registration form filed by the Maine Senate Republican Majority PAC seven months ago on March 16, 2012. It does not rely on any other evidence of cooperation such as is sometimes relied on in federal cases to support allegations that a candidate has coordinated with an outside organization (*e.g.*, evidence of discussions between the candidate and the spender; common messages, content, graphics used by the candidate and the spender; and use of a common advertising vendor).

Legal Requirements

Definition of contribution

Maine Election Law defines “contribution” to mean “money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office.” (21-A M.R.S.A. § 1012(2)(A)(1)) Candidates must report all cash and in-kind contributions received. (21-A M.R.S.A. § 1017(5))

Limitations on Accepting Contributions

After qualifying to receive public campaign funds, Maine Clean Election Act candidates such as Sen. Farnham may not accept cash or in-kind campaign contributions. (21-A M.R.S.A. § 1125(6)) Traditionally financed candidates for the Legislature may accept up to \$350 per donor for an election. (21-A M.R.S.A. §§ 1015(1) & (2))

Coordinated Expenditures

If a candidate has suggested or requested that someone make an expenditure to help their election or has consulted on such an expenditure, the expenditure constitutes a contribution to the candidate’s campaign:

Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of a candidate ... is considered to be a contribution to that candidate.

(21-A M.R.S.A. § 1015(5)) These are sometimes referred to as “coordinated expenditures” because the candidate has coordinated with the person making the expenditure on the candidate’s behalf. The coordinated expenditure statute prevents individuals and organizations with deep pockets from easily circumventing contribution

limits and contribution reporting by spending money apart from the candidate's campaigns but with the blessing of the candidate.

The Commission adopted a rule last year setting out some activities or circumstances that are – and are not – characteristics of coordinated expenditures. (Chapter 1, Section 6(9), attached) For example, if a candidate discusses or participates in any decision regarding a paid communication to promote that candidate, such involvement constitutes cooperation by the candidate in the expenditure. Counsel for the Maine Democratic Party and Sen. Farnham refer to this rule in their filings with the Commission.

The Commission may assess civil penalties of up to \$10,000 for any violation of the Maine Clean Election Act. (21-A M.R.S.A. § 1127(1))

Standard for Conducting Investigations

Under the Commission's statute, "a person may apply in writing to the commission requesting an investigation" concerning "contributions by or to and expenditures by ... a candidate [or] political action committee" (21-A M.R.S.A. § 1003(1)) Under the Commission's rules, all decisions to conduct an investigation are made by the members of the Commission at a public meeting. (Chapter 1, Section 5) The Commission is required by the statute to conduct an investigation "if the reasons stated for the request show sufficient ground for believing that a violation may have occurred." (21-A M.R.S.A. § 1003(2))

Role of the PACs Organized by the Legislative Caucuses

In recent election years, PACs organized by the four legislative caucuses have been very involved in recruiting candidates and providing them with advice on campaigning.²

Generally, the caucus PACs are managed by the floor leaders of the caucus or more senior Legislators in the caucus, in combination with campaign staff.

The caucus PACs have also been involved in making independent expenditures. Most often, these independent expenditures consist of direct mail or advertisements.

The coordinated expenditure statute discussed above can pose a challenge to caucus PACs and to the political parties. On one hand, they must work closely with candidates to provide them advice. On the other hand, when they spend money on communications to voters, they cannot cooperate with the very candidates they are seeking to promote.³

This has become a familiar challenge for the caucus PACs and political parties in Maine. Each PAC and party committee making independent expenditures must establish procedures to avoid coordinating with candidates. In general, the procedures employed by the PACs and parties for maintaining independence are not disclosed publicly and are not known to the Commission. Nevertheless, in my experience, the state parties and caucus PACs – as the largest players in Maine’s legislative elections – have, generally, come to understand this legal responsibility.

² In 2012, these PACs have included the Senate Democratic Campaign Committee, House Democratic Campaign Committee, Maine Senate Republican Majority PAC, and House Republican Majority Fund.

³ There is one exception that applies only to party committees. The costs of certain communications such as slate cards are exempted from the definition of expenditure, and such communications may be coordinated with candidates.

Role of the PAC Registration Form

The Maine Democratic Party's allegation of coordination is based on the content of an amended registration submitted by the Maine Senate Republican Majority PAC on March 16, 2012. In the registration form, a PAC is required to identify certain individuals associated with the PAC, such as a treasurer, any principal officers, the primary decision-makers and fundraisers, and any candidates and Legislators who have a significant role in fund raising or decision-making for the PAC. (21-A M.R.S.A. § 1053(1)) The registration is generally filed when the PAC is established or qualifies as a PAC under Maine law. (21-A M.R.S.A. § 1053) The Commission staff reviews the registration forms for completeness and then enters the information into the Commission's electronic filing system at which point the information becomes immediately available to the public.

If a PAC's primary decision-makers, fundraisers, or officers change (or if the PAC's address or mission changes), the PAC is required by statute to amend the registration form within 10 days. (21-A M.R.S.A. § 1053, last ¶) The Maine Legislature enacted this requirement in 2005 at the request of the Commission, along with a provision requiring PACs to file an updated registration statements every two years.

Every change in information required by this section must be included in an amended registration form submitted to the commission within 10 days of the date of the change. The committee must file an updated registration form every 2 years between January 1st and March 1st of an election year.

(P.L. 2005, Chapter 301, § 24) This legislative proposal was made because the Commission staff found in the 2004 elections that information in PAC registration forms was significantly out of date – sometimes by years. The Commission staff sends an e-

mail reminder to PAC treasurers at the beginning of a general election year to alert them about their re-registration obligation. The Commission's *2012 Guidebook for Political Action Committees & Ballot Question Committees* also explains these requirements to re-register and keep PAC registrations up-to-date.

While it is reasonable to hold all PACs to high standards in all their reporting obligations, the reality of how numerous PACs -- especially caucus PACs -- operate may complicate their ability to comply with those requirements in as timely a fashion as they should. The personnel that run a PAC's daily operations and set policy may turn over frequently, as was the case with the Maine Senate Republican Majority PAC, and this may lead to some missteps by the new staff. Nevertheless, it is the PAC's responsibility to be aware of the information on the registration form and to update it, if necessary, to respond to changes in the PAC's officers, address, mission, etc.⁴

Response by Sen. Farnham and the PAC

In response to a request from the Commission staff, Senator Nichi Farnham submitted a three-page letter dated October 17, 2012 through William P. Logan, Esq., who has represented Republican candidates and committees before the Commission. His letter is supported by three affidavits from Sen. Farnham, Sen. Thomas Saviello, and Trevor Bragdon who is a political consultant hired to oversee the PAC's independent expenditures. The specific details of Mr. Logan's factual presentation are discussed in more detail in the Staff Recommendation portion of this memo. In summary, he explains

⁴ PACs cannot make changes to their registration in the Commission's electronic filing system. The amendment must be done by Commission staff. The PAC simply has to contact the staff by phone or e-mail for the amendment to be made. The PAC can also mail or fax an amended registration form.

that the actual decision-makers of the PAC are Senators Thomas Saviello, Michael Thibodeau, and Roger Katz. He states that:

- Sen. Farnham “disassociated” from the PAC well before the PAC began to make decisions related to independent expenditures.
- The expenditure against Democratic nominee Geoffrey Gratwick in Independent Expenditure Report #25 “was done independently with no input from Senator Farnham and without her knowledge.”

He argues that, as a matter of law, there is no “per se coordination” in the Commission’s statute or rules. The pertinent question, according to Mr. Logan, is whether the expenditure in Independent Expenditure Report #25 was made in cooperation consultation or in concert with Sen. Farnham. He states that there is no evidence to support the claims by the Maine Democratic Party.

Recommendation by Commission Staff

The Commission staff understands why the Maine Democratic Party would be alarmed by the appearances of the situation, given the continued listing of Sen. Farnham on the PAC’s registration form while the PAC made independent expenditures affecting her election. If she had *actually* been functioning as a primary decision-maker of the PAC this summer and fall, there would be grounds for serious concern and further investigation. The Commission staff believes, however, that the Maine Senate Republican Majority PAC and Sen. Farnham have produced credible evidence that she was not, in fact, a decision-maker for the PAC, and more importantly, *did not cooperate* in the PAC’s expenditure for advertising against Geoffrey Gratwick:

- In his affidavit, Sen. Thomas Saviello has stated categorically under oath that Sen. Farnham “has had no involvement whatsoever in the operation of the PAC.” (Saviello Aff., ¶4)
- Sen. Saviello explains that the “former principals of the PAC” terminated their relationship to the PAC in March 2012, and that he and Sen. Farnham agreed to have their names entered on the PAC’s registration form as “placeholders.” (Saviello Aff., ¶3)
- Sen. Saviello briefly describes in his affidavit the PAC’s procedures for keeping its expenditures for paid communications independent of the Republican nominees: “In order to ensure that its expenditures are made independently of the candidates, the PAC employs a consultant whose sole duties are to create and manage independent expenditures.” (Saviello Aff., ¶6) He goes on to explain that the consultant, Trevor Bragdon, “does not interact with candidates but instead consults with the decision makers for the PAC,” whom he identifies as Senator Roger Katz, Senator Michael Thibodeau, and him. (Saviello Aff., ¶6)
- Trevor Bragdon describes his role in a separate affidavit. He states that he is a consultant hired by the Maine Senate Republican Majority PAC to oversee all of the PAC’s independent expenditures. He was hired in July 2012. (Bragdon Aff., ¶¶1-3)
- He states under oath that Sen. Farnham has not been present during or involved in any meetings or discussions when independent expenditures have been discussed. (Bragdon Aff., ¶4)¶
- In his affidavit, Mr. Bragdon affirms that “the persons with whom I have discussed the PAC’s independent expenditures are the PAC’s principals: Sen. Thomas Saviello, Sen. Michael Thibodeau, and Sen. Roger Katz.” In addition, he says that he has had limited discussions with the PAC treasurer Sara Vanderwood and William Logan the PAC’s legal counsel. (Bragdon Aff., ¶5)
- He specifically denies any consultation with Senator Farnham or agents of her campaign concerning any independent expenditures, including Independent Expenditure #25. (Bragdon Aff., ¶6)
- Mr. Bragdon concludes that “There is a firewall between myself and the candidates or their authorized committees. I do not have contact with candidates or their committees.” (Bragdon Aff., ¶7)
- Sen. Farnham describes in her affidavit that she agreed to have her name used as a “placeholder” for the PAC in March 2012. She says that in that same month, she “let it be known” that she would no longer be involved in the PAC, although she does not explain precisely how she conveyed this message. During her short tenure with the PAC, she was not involved in any discussions concerning

expenditures in support of or in opposition to any candidates. (Farnham Aff., ¶¶2-4)

- Sen. Farnham says that since “disassociating” with the PAC, she has had “no discussions with the PAC or its principals” related to expenditures. She says that she never suggested or requested that the PAC make any expenditure or do anything at all to support her or oppose her opponent. (Farnham Aff., ¶7)
- Sen. Farnham states that the television advertising disclosed in Independent Expenditure Report #25 “was created without my knowledge and I was unaware the PAC was making an expenditure until after the communication had already been disseminated to the public.” (Farnham Aff., ¶9)

In addition to the information in the affidavits provided by Mr. Logan, I interviewed State Senators Roger Katz and Michael Thibodeau by telephone on October 22 to discuss first-hand the procedures used by the PAC. Mr. Logan was on the call as the attorney for the PAC. The information that Sen. Katz and Sen. Thibodeau provided added further support to Sen. Farnham’s response that she was briefly involved in the PAC and has not cooperated with the PAC on any expenditures:

- Roger Katz responded that the Maine Senate Republican Majority PAC understands that it “cannot cooperate” with candidates on spending decisions. He stated that the process is that “we make decisions, and we are very careful not to communicate those decisions to the candidates involved.” He clarified that the three individuals who make decisions for the PAC on expenditures are State Senators Thomas Saviello, Michael Thibodeau, and Roger Katz.
- Senator Katz and Thibodeau responded that Trevor Bragdon is the PAC’s independent expenditure consultant. Making independent expenditures for the PAC is the only service that he has been hired to conduct. Trevor Bragdon understands that he is not to discuss the expenditures with the candidates promoted by the PAC. Sen. Katz clarified that Trevor Bragdon may occasionally give advice to the three Senators about expenditures, but the decisions are made by Senators Thibodeau, Katz, and Saviello.

- Sen. Thibodeau said that Sen. Farnham never came to the PAC's meetings. Senator Katz and Thibodeau responded that the PAC did not make general or specific decisions concerning expenditures to promote candidates until September 2012.
- Sen. Katz stated that the PAC has intended to create a "firewall" between the PAC and the candidates who are being promoted through the expenditures. He said that the PAC has specifically used the term "firewall" in internal discussions.

The weight of the evidence received to date strongly suggests that the Maine Senate Republican Majority PAC purchased the television advertising against Geoffrey Gratwick *without any involvement* by Sen. Nichi Farnham. The Commission staff believes the PAC has credibly described its procedures for keeping expenditures independent of the candidates it is promoting. Knowledge of the expenditures is shared between consultant Trevor Bragdon and the three Senators who currently manage the PAC, along with limited consultation with the PAC treasurer and its counsel. The PAC has intentionally created a firewall between Mr. Bragdon and the Republican nominees. This is consistent with procedures instituted by other PACs and party committees to ensure that expenditures for communications are kept separate from the candidates who are promoted.

The strongest evidence that will be available to you at the October 31 meeting will be face-to-face testimony of Senators Nichi Farnham and Thomas Saviello and Trevor Bragdon. We believe, at a minimum, it would be appropriate to have Sen. Farnham describe her role in the PAC. If you would like, the staff could ask questions of the witnesses to elicit relevant factual information. Provided that you find their testimony

credible, the staff recommends that the Commission decide not to engage in any further investigation into this matter.

The Commission staff agrees with the legal argument of Sen. Farnham's counsel that "there is no per se coordination" in the Commission's statutes or rules (*i.e.*, the conclusion that – if certain facts were present – coordination occurred even in the absence of proof of *actual* coordination). The staff believes that to establish that Sen. Farnham received a contribution, the Commission would need to find evidence that there was actual cooperation or consultation between Sen. Farnham and the PAC concerning the content, timing, distribution, or payment for the television ads that advocated against her opponent.

Allegations that candidates are coordinating with outside groups to make campaign expenditures to benefit those candidates need to be taken seriously. But for the Commission to conduct an investigation, the request should be based on a sufficient quantum of evidence. The standard for the Commission to initiate an investigation requested by any person is stated in Section 1003(1) as the Commission "shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred." Some Commissioners have referred to this informally as a "probable cause" standard. In this case, the Maine Democratic Party's request is based solely on the content of an amended PAC registration form. The Party has not provided any evidence pointing to Sen. Farnham's actual involvement or participation in the planning or making of the expenditure. In the opinion of the

Commission staff, the statements of Sen. Farnham and the individuals involved with the PAC provide sufficient and credible evidence to rebut the allegation of coordination.

If you believe that further investigation is necessary, the Commission staff is willing to take any specific directions you give us at your October 31 meeting. We do believe, however, that the Commission should complete any necessary investigation before the November 6, 2012 general election if possible.

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October 4, 2012

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

Re: REQUEST FOR INVESTIGATION

Dear Mr. Wayne:

Pursuant to Maine Commission on Governmental Ethics and Election Practices Rule 94-270 C.M.R. ch. 1, § 4(2)(C), the Maine Democratic Party (the "Party") hereby requests an investigation into the propriety of Independent Expenditures made by the Maine Senate Republican Majority PAC (the "PAC") in Senate District 32. A review of publicly filed campaign finance reports and PAC registration documents provide sufficient grounds for believing that the PAC has made, and Candidate Nichi Farnham has accepted, a prohibited campaign contribution. 21-A §1003(2).

FACTS

The Maine Senate Republican Majority PAC is a duly registered PAC under Maine election law. (See Attachment #1). As required by the 21-A M.R.S.A. §1053(1) and the Commission's own registration form, the PAC lists both its "principal officer[s]" and "primary fundraisers and decision makers" as Nichi Farnham and Thomas Saviello.

Nichi Farnham, in addition to being a principal officer, primary fundraiser and decision maker for the PAC, is running for re-election in State Senate District 32 and is a certified Maine Clean Election Candidate ("Candidate Farnham"). (see Attachment #2).

On October 3, 2012, the PAC filed Independent Expenditure Report #25 ("IE report") disclosing expenditures totaling \$102,353 in three Senate Districts – including a \$72,919 expenditure to oppose Candidate Farnham's challenger, Geoffrey Gralwick. (See Attachment #3).

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It is that expenditure that the Party now contends was coordinated with Candidate Farnham by virtue of her leadership role in the PAC and has resulted in an illegal expenditure to a Maine Clean Elections Act candidate.

Political Action Committees ("Committees") may do unlimited fundraising but have some important restrictions around candidate expenditures. These Committees may make expenditures and coordinate with traditionally financed candidates, but those expenditures must not exceed the \$350 contribution limit set forth in statute. 21-A M.R.S.A. §1015(2).

Candidates who choose to be certified as Maine Clean Election Act candidates agree not to accept any contributions from Committees (or any other entity). 21-A M.R.S.A. §1125(6). As a result, these Committees are limited in their ability to make direct expenditures on behalf of MCEA candidates. They can, however, make "independent expenditures" ("IE") to support or oppose candidates, as long as those expenditures are made independently without any direct involvement with the candidate.

In order for expenditure to qualify as "independent" – a Committee must make a communication which expressly advocates for an identified candidate without coordinating that expenditure with candidates who may benefit from the communication. "Coordination" is defined as a Committee making an expenditure in cooperation, consultation or in concert with a candidate. Maine Commission on Governmental Ethics and Election Practices Rule 94-270 C.M.R.ch 1 §6(9). The Commission Rule on Coordination lays out several examples of when prohibited coordination has occurred but notes that these examples are not exclusive – but meant to illustrate the kinds of prohibited activity. As one example, Section 6(9)(A)(2) outlines that cooperation occurs when there is "participation by the candidate in making *any* decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication." (emphasis added).

In this instance, the Party contends that Candidate Farnham's status as principal officer, primary fundraiser and primary decision maker for the PAC combined with her status as a MCEA certified candidate in Senate District 32 means that any expenditure undertaken by the PAC in Senate District 32 is *per se coordination* under the statute. That *per se* coordination results in a prohibited campaign contribution from the PAC to Candidate Farnham's campaign in the amount of \$72,919.

The PAC's illegal \$72,919 campaign contribution means that both the PAC and Candidate Farnham are in violation of the law. First, the PAC is in violation of making an illegal expenditure under the express provisions of the statute. Second, Candidate Farnham is in violation of 21-A §1125(6) by her acceptance and approval of a large prohibited expenditure against her opponent and in support of her own candidacy.

The actions taken by Candidate Farnham and the PAC cut to the essence of the coordination prohibition and are potentially one of the most serious campaign finance violations seen by this Commission in some time. As the Commission is well aware, MCEA candidates take public financing in exchange for the promise not to accept *any* additional contributions from outside sources. That premise lies at the heart of what makes the MCEA work. The public

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agrees to contribute its hard earned funds in return for the assurance that candidates will not utilize outside resources to bring what is thought of as “special interest” money into the campaign. Candidate Farnham agreed to these conditions when she asked to be certified as a MCEA candidate and she broke that pledge when she allowed a PAC in which she had primary decision making authority to spend an enormous amount of outside money in her election. Allowing PAC’s whose controlling officers are candidates to funnel money into their own races, while holding out to the public that they are eschewing outside money, allows candidates to have the best of both worlds – the façade of public funding and large amounts of private money they can then quietly direct to their own campaigns.

In this case, the PAC at issue is equally at fault. It is a sophisticated PAC, run by sophisticated campaign workers spending large amounts of money in state elections. Quite simply, the PAC knows the rules and it violated the provisions governing its operation when it allowed itself to become involved in an election where its principal officer, fundraiser and decision maker was also a candidate.

It would be easy to contend the impossibility of proving that Candidate Farnham knew that the PAC was going to make an expenditure in her race – and that she wasn’t intimately involved in the decision making – despite her listing on the PAC registration. The Party argues not only that the facts as outlined above constitute per se coordination, but that it simply defies logic that a seasoned Legislator and a sophisticated PAC do not understand the rules on candidate/PAC coordination. Candidate Farnham is the current Chairperson of the Joint Standing Committee of Veterans and Legal Affairs, it is her job to understand campaign finance law. The argument that no one knew better simply doesn’t hold up.

Candidate Farnham is clearly prohibited from accepting campaign contributions. The PAC is clearly prohibited from coordinating its expenditures with MCEA candidates. Despite these prohibitions, the PAC (whose primary decision maker is Candidate Farnham) made a \$72,919 expenditure in Candidate Farnham’s race. As a result, the Party requests an investigation into the facts of this matter to determine whether, as it appears on review of the evidence, that Candidate Farnham and the PAC have violated Maine campaign finance law and should be assessed any of the penalties provided for in statute including but not limited to; revocation of Candidate Farnham’s certification (21-A M.R.S.A. §1125(5-A)), civil penalties including fines (21-A M.R.S.A. §1127) and (21-A M.R.S.A. §1020(A)), and possible criminal sanctions (21-A M.R.S.A. §1127(2)).

The Party believes that the actions taken by the PAC and Candidate Farnham are serious, and that they constitute a severe and knowing violation of the law. There are times when all candidate and PACs misinterpret the law or make a filing mistake – the PAC contribution to

October 4, 2012
Page 4 of 4

Candidate Farnham's campaign goes way beyond a mere error or omission. It was the actions of two sophisticated parties undertaking an activity which the Party believes is clearly illegal under the statute.

A handwritten signature in black ink, appearing to read 'Kate R. Knox', with a large, stylized flourish extending to the left.

Kate R. Knox

KRK

Attachment 1



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

2012 REGISTRATION: POLITICAL COMMITTEES

COMMITTEE INFORMATION	
MAINE SENATE REPUBLICAN MAJORITY P.O. BOX 1 AUGUSTA, ME 04332	TEL: (207)205-6632 FAX: (207)547-2123 EMAIL:
TREASURER INFORMATION	
SARA VANDERWOOD PO BOX 1 AUGUSTA, ME 04332	TEL: (207)539-9685 FAX: EMAIL: sara.vanderwood@gmail.com
PRINCIPAL OFFICER INFORMATION	
FARNHAM, NICHI PRINCIPLE 11 FAIRMONT PARK WEST BANGOR, ME 04401 (207)990-2011	SAVIELLO, THOMAS PRINCIPLE 60 APPELEGATE LANE WILTON, ME 04294 (207)645-3420
PRIMARY FUNDRAISERS AND DECISION MAKERS	
FARNHAM, NICHI	SAVIELLO, THOMAS
FORM OF ORGANIZATION	
Form of organization VOLUNTEER	Date of origin/incorporation 11/1/2008
STATEMENT OF SUPPORT OR OPPOSITION	
THIS COMMITTEE IS FORMED TO SUPPORT OR OPPOSE CANDIDATES.	
supports Senate Republican Candidates - opposes Senate Democratic Candidates	
CERTIFICATION	
I, SARA VANDERWOOD, CERTIFY THAT THE INFORMATION IN THIS REGISTRATION IS TRUE, ACCURATE AND COMPLETE.	
SIGNATURE ON FILE	DATE: 3/16/2012

ALTERNATE E-MAIL ADDRESSES	
To receive filing reminders and important information from the Commission.	
1.	2.
PRIMARY FUNDRAISERS AND DECISION MAKERS	
Identify any candidates, Legislators or other individuals who are the primary fundraisers and decision makers for the committee.	
1.	2.
3.	4.
5.	6.
COMMITTEE MAILING ADDRESS	
Correspondence will be mailed to this address.	
Street address or PO Box	
City, zip code	
FORM OF ORGANIZATION	
Name the form or structure of organization, i.e., cooperative, corporation, voluntary association, partnership, etc.	
Form of organization	Date of origin/incorporation
STATEMENT OF SUPPORT OR OPPOSITION	
Indicate whether the committee supports or opposes a candidate, political committee, referendum, initiated petition or campaign. If unknown at the time of registration, the committee must inform the Commission as soon as this information is known.	
SUPPORT	
OPPOSE	
SIGNATURE OF PRINCIPAL PAC OFFICER OR TREASURER	
Signature	Title
Print name	Date

IMPORTANT NOTICE:

An initial campaign finance report must be filed with the Commission at the time of registration.



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
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Office: 45 Memorial Circle, Augusta, Maine
 Website: www.maine.gov/ethics
 Phone: 207-287-4179
 Fax: 207-287-6775

2012 CANDIDATE REGISTRATION

CANDIDATE	
NICHI S. FARNHAM 11 FAIRMOUNT PARK WEST BANGOR, ME 04401 Party affiliation: REPUBLICAN Office sought: SENATE District or county: 32 Financing status: MCEA	Home: (207)990-2011 Work: FAX: nichia@aol.com
TREASURER	
CHARLES F. BUDD JR. 384 FRENCH ST BANGOR, ME 04401	Home: (207)941-0223 Work: (207)992-2595 FAX: (207)947-9715 cbudd@rudmanwinchell.com
DEPUTY TREASURER	
MARY A. BUDD 384 FRENCH ST BANGOR, ME 04401	Home: (207)941-0223 Work: (207)944-1816 marybudd@roadrunner.com
POLITICAL COMMITTEE	
COMMITTEE TO ELECT NICHI FARNHAM 11 FAIRMOUNT PARK WEST BANGOR, ME 04401	Telephone:
COMMITTEE OFFICERS	

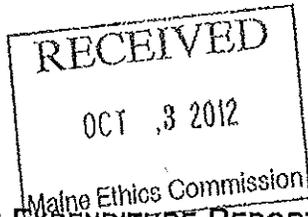
CERTIFICATION

I, NICHIE S. FARNHAM, certify that the information in this registration is true, accurate and complete.

Signature of Candidate: SIGNATURE ON FILE

Date: 2/21/2012

UNSWORN FALSIFICATION IS A CLASS D CRIME (17-A M.R.S.A. § 453).



COMM

IE #25 2012 GENERAL ELECTION

INDEPENDENT EXPENDITURE REPORT – 2012 GENERAL ELECTION

Name of Person/Committee Making Expenditure(s) Maine Senate Republican Majority PACMailing Address PO Box 1City, Zip Code Augusta, ME 04332Telephone 207-205-6632

Please check the appropriate box for the report you are filing and complete the notarized affidavit and attached schedules. Reports must be filed on a weekend or holiday 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.

 Check here if this report is an amendment to a previously filed report? Date of original report: _____

INDEPENDENT EXPENDITURES OVER \$250 MADE FROM SEPTEMBER 7 THROUGH OCTOBER 23, 2012

- Independent expenditures made from September 7 through October 23, 2012 that total more than \$250 per candidate must be reported within 2 calendar days of making the expenditure.

 Report of Independent Expenditure over \$250 per Candidate

INDEPENDENT EXPENDITURES OVER \$100 MADE AFTER OCTOBER 23, 2012

- Independent expenditures made after October 23, 2012 that total more than \$100 per candidate must be reported within one calendar day of making the expenditure.

 Report of Independent Expenditure over \$100 per Candidate

OTHER INDEPENDENT EXPENDITURES (SELECT ONE REPORT BELOW)

Report (select one)	Due Date	What Gets Reported
<input type="checkbox"/> 60-Day Pre-Election Report	September 7, 2012 by 5:00 p.m.	Expenditures totaling more than \$100 per candidate made on or before September 6, 2012
<input type="checkbox"/> 11-Day Pre-Election Report	October 26, 2012 by 5:00 p.m.	Expenditures totaling more than \$100 but not more than \$250 made from September 7 through October 23, 2012

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

10/03/12



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/elhics
Phone: 207-287-4179
Fax: 207-287-6775

INDEPENDENT EXPENDITURE REPORT – 2012 GENERAL ELECTION

AFFIDAVIT

STATE OF Maine

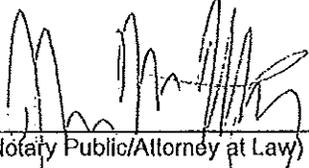
COUNTY OF Kennebec

I, Sara Vanderwood, 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, any candidate, authorized committee or agent of a candidate in a race affected by any expenditure listed in this report.



Signature of Affiant

Sworn to before me, this 3 day of October 2012



(Notary Public/Attorney at Law) John M. Nothing

My commission expires: October 24, 2018

Schedule B-IE-1

CANDIDATE(S) SUPPORTED/OPPOSED

- 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 06	James Boyle	Opposition	20998
SD 17	Colleen Quint	Opposition	8436
SD 32	Geoffrey Gratwick	Opposition	72919
Total expenditures for all candidates this reporting period. <i>This amount should equal the total independent expenditures listed on Schedule B-IE-2, Line C.</i> ⇒			102353

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
10/2/2012	Jamestown Associates 5 Mapleton Rd Suite 300 Princeton, NJ 08540	TVN	✓	102353
A. Expenditures for this page ⇒				102353
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> ⇒				102353

**IRWIN
&
TARDY
MORRIS**

William P. Logan
wlogan@itmlaw.com

159 Main Street
P.O. Box 476
Newport, Maine 04953

207.368.2828 T
207.368.2822 F

October 17, 2012

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

Re: Response of Senator Nichi Farnham
October 4, 2012 Request for Investigation by Maine Democratic Party

Dear Jonathan:

Please accept this letter and affidavits as the response of Sen. Nichi Farnham to the request for investigation from the Maine Democratic Party (MDP) dated October 4, 2012.

To begin, it is important to point out that the MDP does not allege that Sen. Farnham actually coordinated with or had any knowledge of the independent expenditure at issue ("IE 25"). Instead, the MDP's request for investigation rests solely on its contention that Sen. Farnham's name appearing on the PAC's registration form constitutes "per se coordination". For the reasons that follow, the Commission should conclude that MDP's request lacks merit.

As a preliminary matter there is no "per se coordination" under the Clean Election Act or the Commission's regulations. Expenditures are not "independent" if they are made in "cooperation, consultation or in concert with" a candidate. 21-A M.R.S.A. §1125(6). Expenditures made in cooperation, consultation or in concert with a candidate are instead considered to be contributions to a candidate. *Id.* Accordingly, the question is simply whether IE 25 was made in cooperation, consultation or in concert with Senator Farnham.

The Commission's regulations define: "cooperation, consultation or in concert" to include:

"1. Discussion between the candidate and the creator, producer or distributor of a communication, or the person paying for that communication, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, and

2. Participation by the candidate in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication.”

As the attached affidavits demonstrate, there were no discussions whatsoever between Sen. Farnham and the PAC regarding any of the PAC’s independent expenditures, let alone IE 25. The attached affidavits also demonstrate that Sen. Farnham did not participate in any decisions related to IE 25.¹ In short, Sen. Farnham had no knowledge of any expenditures made by the PAC, and played no role in making any decisions related to expenditures. This is quite simply because Sen. Farnham had disassociated from the PAC well before the PAC began to make decisions related to independent expenditures. Therefore, the Commission must conclude that IE 25 was not made in cooperation, consultation or concert with Senator Farnham.

While the foregoing clearly demonstrates that IE 25 was not done in cooperation, consultation or concert with Sen. Farnham, the Commission has issued guidance on three circumstances where cooperation, consultation or concert may be presumed. (Chapter 1, Section 6(9)(B)). As shown below, none of these circumstances apply.

The first circumstance is when:

“the expenditure is made in cooperation, consultation or in concert with any person who, during the twelve months preceding the expenditure, has been the candidate’s treasurer or an officer of the candidate’s authorized committee, has had a paid or unpaid position managing the candidate’s campaign, or has received any campaign-related compensation or reimbursement from the candidate” (Chapter 1, Section 6(9)(B)(1)).

The second circumstance is when:

“when the candidate has directly shared the candidate’s campaign plans, activities, or needs with the spender for the purpose of facilitating a payment by the spender on a communication to voters to promote or support the candidate; or” (Chapter 1, Section 6(9)(B)(2)).

The third circumstance is when:

“the communication replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate.” (Chapter 1, Section 6(9)(B)(3)).

¹ The affidavits submitted confirm the affidavit in IE 25, which swears the expenditure was made independently, and not in cooperation, consultation or concert with, or at the suggestion of the candidate or candidate’s committee.

Farnham Response
October 17, 2012
Page 3 of 3

Put simply, none of these circumstances applies to this matter. Nor does the MDP contend or provide any evidence that any of these circumstances applies. The affidavits submitted herewith clearly demonstrate that IE 25 was done independently with no input from Senator Farnham and without her knowledge. Accordingly, there is no evidence to support the claims by the MDP. Therefore, we respectfully submit that the Commission find no violation of the Maine Clean Election Act and close its file on this matter.

In summary, the complaint in this matter is groundless. More than that, it is a sad attempt to attack the character of a woman who has spent her life in service to her country, family and community. Anyone who knows Nichi knows she is a person who plays by the rules and is honest to a fault. However, the repeated, blatant and desperate efforts to smear her in public rather than permitting the Commission to do its work is just the kind of cynical, political tactic that makes it hard these days to get good people to run for office and erodes public confidence in the Commission.

Senator Nichi Farnham and Senator Thomas Saviello will be present and available to respond to any questions at the Commission's October 31, 2012 meeting. Furthermore, should the Commission staff have any follow-up questions it would like answered prior to the Commission meeting, please let me know and I will provide supplemental information. Please let me know if you have any questions or concerns regarding this response.

Sincerely,

A handwritten signature in black ink, appearing to read "Will P. Logan", with a long horizontal flourish extending to the right.

William P. Logan, Esq.

Enclosures

cc: Sen. Nichi Farnham

AFFIDAVIT OF NICHIE FARNHAM

I, Senator Nichie Farnham, being duly sworn, depose and state as follows:

1. In March of 2012, the former principals of the Maine Senate Republican Majority PAC (the "PAC") disassociated themselves from the PAC in order to pursue campaigns for federal office.
2. At that time, Sen. Tom Saviello and I agreed to have our names placed on the PAC as placeholders.
3. Shortly thereafter I came to realize that I would not have the time to be involved with the management and operation of the PAC. I therefore let it become known that I would not have the time to devote to the operation of the PAC and that I would no longer be involved in the PAC.
4. During my short tenure as a placeholder of the PAC, I was not involved in any discussions concerning or related to expenditures in support of or opposition to any candidates.
5. Since March of 2012, I have had no involvement whatsoever in the operation of the PAC, including any decision making as to fundraising or expenditures.
6. Since I disassociated from the PAC in March of 2012, I have not attended or participated in any meetings or conference calls of the PAC.
7. Since I disassociated from the PAC, I have had no discussions with the PAC or its principals or employees concerning or related to expenditures. I have never requested that the PAC make any expenditures related to my

campaign. I have not requested that the PAC do anything in support of my campaign or in opposition to my opponent.

8. At no time was I involved in any discussions with any principals or employees of the PAC regarding, the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of any expenditures, let alone the expenditure the PAC disclosed as independent expenditure report #25.
9. The communication described in independent expenditure #25 was created without my knowledge and I was unaware the PAC was making an expenditure until after the communication had already been disseminated to the public.

DATED: October 17, 2012

Nichi Farnham
Nichi Farnham

STATE OF MAINE
PENOBSCOT, ss

October 17, 2012

Personally appeared before me the above named Nichi Farnham and made oath that the foregoing statements are true and based on personal knowledge.

Cynthia C. Lavertu
Notary Public ~~/Attorney at Law~~

CYNTHIA C. LAVERTU
Notary public • Maine
My Commission expires Oct. 5, 2017

AFFIDAVIT OF THOMAS SAVIELLO

I, Senator Thomas Saviello, being duly sworn, depose and state as follows:

1. I am one of the current principals of the Maine Senate Republican Majority PAC (the "PAC"). The other principal decision makers are Sen. Roger Katz and Sen. Michael Thibodeau.
2. In March of 2012, the former principals of the PAC disassociated themselves from the PAC in order to pursue campaigns for federal office.
3. At that time, Sen. Nichi Farnham and I agreed to have our names placed on the PAC as placeholders.
4. Since late March of 2012, Sen. Farnham has had no involvement whatsoever in the operation of the PAC, including any decision making as to fundraising or expenditures. In fact, there have been several decisions made concerning staffing and other issues that Sen. Farnham has not played any role in whatsoever.
5. Since she disassociated from the PAC, Sen. Farnham has not attended or participated in any of the meetings or conference calls that the PAC has held on a regular basis.
6. In order to ensure that its expenditures are made independently of candidates, the PAC employs a consultant whose sole duties are to create and manage independent expenditures. That consultant, Trevor Bragdon, does not interact with candidates but instead consults with the decision makers for the PAC, specifically myself, Sen. Katz and Sen. Thibodeau as to the decisions on independent expenditures.

- 7. The PAC has not acted in cooperation, consultation, or concert with Senator Farnham, or at the request or suggestion of Sen. Farnham, her committee or her agent, concerning any of the PAC's independent expenditures, including the expenditure disclosed in independent expenditure #25.
- 8. There was never any discussion with Sen. Farnham regarding, nor did Sen. Farnham play any role in, the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication disclosed in independent expenditure report #25.
- 9. The fact that Sen. Farnham's name still appeared on the PAC registration form was an administrative oversight, which has since been corrected.
- 10. The PAC did not begin to discuss independent expenditures until months after Sen. Farnham had disassociated herself from the PAC.

DATED: 10-17-12

Thomas Saviello
Thomas Saviello

STATE OF MAINE
Franklin, ss

October 17, 2012

Personally appeared before me the above named Thomas Saviello and made oath that the foregoing statements are true and based on personal knowledge.

Wanda Nichols
Notary Public / Attorney at Law

WANDA NICHOLS
Notary Public, Maine
My Commission Expires May 18, 2013

AFFIDAVIT OF TREVOR BRAGDON

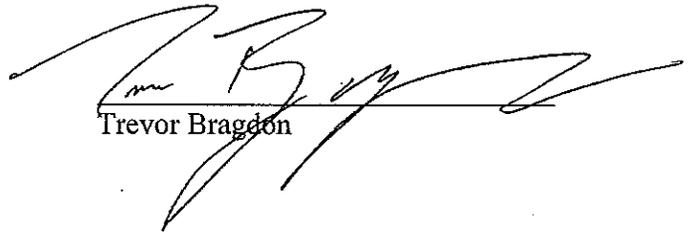
I, Trevor Bragdon, being duly sworn, depose and state as follows:

1. I am a consultant to the Maine Senate Republican Majority PAC (the "PAC"). Specifically, I consult with PAC leadership on and manage all planned and actual independent expenditures for the PAC.
2. My consulting for the PAC is limited to the strategy, planning, creating, distribution and budgeting of independent expenditures as well as liaising with vendors on independent expenditures.
3. I have been the independent expenditure consultant for the PAC since July of 2012. Since that time I have had the responsibility of overseeing all of the PAC's independent expenditures.
4. Senator Farnham has not been present during or involved in any of the meetings or discussions I have had with the PAC regarding the planning, financing, creation or distribution of independent expenditures.
5. The persons with whom I have discussed the PAC's independent expenditures are the PAC's principals: Sen. Thomas Saviello, Sen. Michael Thibodeau, and Sen. Roger Katz. I have also had limited discussions regarding independent expenditures with the PAC Treasurer, Sara Vanderwood, the PAC's legal counsel, William Logan, and of course with the vendors.
6. I have not coordinated, consulted or acted in concert with or at the request or suggestion of Senator Farnham, or any agent of Sen. Farnham's campaign, concerning any of the PAC's independent expenditures,

including, but not limited to, the expenditure disclosed in Independent Expenditure No. 25. Nor do I have any information or belief that any other person in the PAC has done so.

7. There is a firewall between myself and the candidates or their authorized committees. I do not have contact with candidates or their committees.

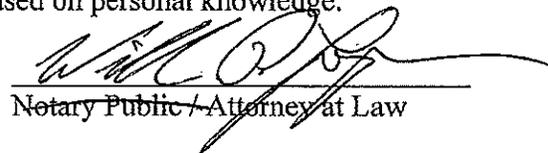
DATED: 10/16/2012


Trevor Bragdon

STATE OF MAINE
KENNEBEC, ss

October 16, 2012

Personally appeared before me the above named Trevor Bragdon and made oath that the foregoing statements are true and based on personal knowledge.


Notary Public / Attorney at Law

see next page
for coordination
statute

agent must be an individual resident of this State, a domestic corporation or a foreign corporation authorized to do business in this State. This paragraph does not apply to any entity already lawfully registered to conduct business in this State.

B. The commission shall create and maintain forms for the designation of agents required pursuant to paragraph A and require, at a minimum, the following information:

The name, address and telephone number of the designated agent; and

(2) The name, address and telephone number of the person conducting business in this State.

C. The person conducting push polling shall notify the commission of any changes in the designated agent and the information required by paragraph B.

D. A person who violates this subsection may be assessed a forfeiture of \$500 by the commission.

4. Permitted practices. This section does not prohibit legitimate election practices, including but not limited to:

A. Voter identification;

B. Voter facilitation activities; or

C. Generally accepted scientific polling research.

21A § 1015. Limitations on contributions and expenditures

1. Individuals. An individual may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$1,500 in any election for a gubernatorial candidate, more than \$350 for a legislative candidate, more than \$350 for a candidate for municipal office and beginning January 1, 2012 more than \$750 for a candidate for municipal office or more than \$750 in any election for any other candidate. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse or domestic partner. Beginning December 1, 2010, contribution limits in accordance with this subsection are adjusted every two years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by \$25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

2. Committees; corporations; associations. A political committee, political action committee, other committee, firm, partnership, corporation, association or organization may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$1,500 in any election for a gubernatorial candidate, more than \$350 for a legislative candidate, more than \$350 for a candidate for municipal office and beginning January 1, 2012 more than \$750 for a candidate for municipal office or more than \$750 in any election for any other candidate. Beginning December 1, 2010,

contribution limits in accordance with this subsection are adjusted every two years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by \$25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

3. Aggregate contributions. No individual may make contributions to candidates aggregating more than \$25,000 in any calendar year. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse or domestic partner.

4. Political committees; intermediaries. For the purpose of the limitations imposed by this section, contributions made to any political committee authorized by a candidate to accept contributions on the candidate's behalf are considered to be contributions made to that candidate. If the campaign activities of a political action committee within a calendar year primarily promote or support the nomination or election of a single candidate, contributions to the committee that were solicited by the candidate are considered to be contributions made to the candidate for purposes of the limitations in this section. For purposes of this subsection, solicitation of contributions includes but is not limited to the candidate's appearing at a fundraising event organized by or on behalf of the political action committee or suggesting that a donor make a contribution to that committee.

For the purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate that are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate are considered to be contributions from that person to the candidate. The intermediary or conduit shall report the original source and the intended recipient of the contribution to the commission and to the intended recipient.

 **5. Other contributions and expenditures.** Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate.

The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees or their authorized agents is considered to be a contribution to that candidate.

6. Prohibited expenditures. A candidate, a treasurer, a political committee, a party or party committee, a person required to file a report under this subchapter or their authorized agents may not make any expenditures for liquor to be distributed to or consumed by voters while the polls are open on election day.

7. Voluntary limitations on political expenditures. A candidate may voluntarily agree to limit the total expenditures made on behalf of that candidate's campaign as specified in section 1013-A, subsection 1, paragraph C and subsections 8 and 9.

SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS

1. The date of a contribution is the date it is received by a candidate, an agent of the candidate, a candidate's committee, a party committee and its agents, or a political action committee and its agents.
2. A loan is a contribution at the time it is made unless the loan was made by a financial institution in the State of Maine in the ordinary course of business. Loans continue to be contributions until they are repaid. Loans are subject to the candidate contribution limitations, except for loans made by the candidate, the candidate's spouse, or a financial institution in the State of Maine in the ordinary course of business. The Commission may consider any reported loan to be a cash contribution if it remains unpaid four years after the election in which it was incurred.
3. Candidates and political action committees must report the name, address, occupation and employer of each individual contributor who gives, in the aggregate, more than \$50 for the reporting period. The reporting is required for private contributions raised by privately financed candidates and for seed money contributions to candidates participating in the Maine Clean Election Act. Candidates, political action committees, and party committees must make a reasonable effort to obtain the employment information of the contributor. If a candidate or committee is unable to obtain the information from the contributor in response to a request, the candidate or committee shall indicate "information requested" in the occupation and employer sections of the campaign finance report.
4. Unless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee. A commercial vendor that has provided a discount to a candidate or political committee because of a defect in performance or other business reason has not made a contribution if the vendor grants substantially similar discounts to other customers in the ordinary course of the vendor's business.
5. An employer that has authorized an employee to provide services without charge to a candidate or political committee during the employee's paid work-time has made an in-kind contribution to the candidate or political committee. No contribution has been made if the employee is providing services as a volunteer outside of the employee's paid work-time.
6. A commercial vendor that has extended credit to a candidate or political committee has not made a contribution if the credit is extended in the ordinary course of the vendor's business and the terms are substantially similar to extensions of credit made to nonpolitical customers that are of similar risk and size of obligation. The Commission shall presume any debt that remains unpaid more than six months after the election in which the debt was incurred to be a contribution to the candidate or political committee unless the candidate or committee provides clear and convincing evidence to the Commission that they intend to raise funds or take other measures to satisfy the debt. The Commission shall determine whether any debt that remains unpaid for more than four years after the election should be deemed a contribution to the candidate or

committee. The Commission may take into consideration any evidence it believes is relevant, including evidence that the creditor did not intend to make a contribution to the candidate or committee or that the candidate or committee is unable to pay the debt.

7. For the purposes of the limitations imposed by 21-A M.R.S.A. §1015(1), 21-A M.R.S.A. §1015(2), 21-A M.R.S.A. §1015(3), and 21-A M.R.S.A. §1056, the following guidelines shall apply:
 - A. For all contributions received through the day of the primary election by candidates enrolled in a political party, the candidate shall designate on the applicable campaign finance report whether the candidate received the contribution for the primary or the general election. If a candidate receives a contribution before the primary election and designates it for the general election, the candidate must deposit the contribution in an account that is separate from all funds received for the primary election and may not use the contribution in any way to promote the candidate's nomination in the primary election.
 - B. Notwithstanding division (c) below, if a candidate loses in the primary, all contributions made to that candidate for the purpose of liquidating debts and liabilities associated with the candidate's candidacy are deemed to be made in the primary election.
 - C. All contributions made to a general election candidate from the day after the primary election through the date of the general election are deemed to be made for the general election.
 - D. Notwithstanding division (e) below, all contributions made after the general election to a general election candidate for the purpose of reducing debts and liabilities associated with the candidate's candidacy are deemed to be made in the general election.
 - E. All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election.
 - F. Subparagraphs A through E above shall apply to any write-in candidate who has qualified under 21-A M.R.S.A. §723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.
8. If a political committee that is required to file reports with the Commission sells an item to raise funds, the entire amount received is a contribution to the committee. If the political committee provides meals or entertainment at a fundraising event, the entire amount paid by the donor is a contribution to the committee. [FOR EXAMPLE: IF A SUPPORTER PAYS A CANDIDATE COMMITTEE \$20 FOR A T-SHIRT THAT COST THE CAMPAIGN \$5, THE SUPPORTER HAS MADE A \$20 CONTRIBUTION. IF A SUPPORTER PAYS \$100 FOR A TICKET TO A FUNDRAISING DINNER, THE SUPPORTER HAS MADE A \$100 CONTRIBUTION EVEN IF THE COMMITTEE PROVIDES A MEAL WORTH \$30.]
9. If an expenditure is made to promote or support the nomination or election of a candidate, or to oppose or defeat the candidate's opponent(s), and the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate, the expenditure is considered to be a contribution from the spender to the

candidate. As used within this subsection, the term “candidate” includes a committee authorized by the candidate to promote or support his or her election, and all agents of the candidate or the authorized committee.

- A. In cooperation, consultation or in concert with includes, but is not limited to:
1. Discussion between the candidate and the creator, producer or distributor of a communication, or the person paying for that communication, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, and
 2. Participation by the candidate in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication.
- B. An expenditure is presumed to be made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, when
1. the expenditure is made in cooperation, consultation or in concert with any person who, during the twelve months preceding the expenditure, has been the candidate’s treasurer or an officer of the candidate’s authorized committee, has had a paid or unpaid position managing the candidate’s campaign, or has received any campaign-related compensation or reimbursement from the candidate;
 2. when the candidate has directly shared the candidate’s campaign plans, activities, or needs with the spender for the purpose of facilitating a payment by the spender on a communication to voters to promote or support the candidate; or
 3. the communication replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate.

The candidate or spender may rebut the presumption by submitting sufficient contrary evidence.

- C. If a candidate requests that a party committee, political action committee, or other potential spender not make any expenditure to promote or support the candidate, or oppose or defeat the candidate’s opponent(s), the request does not constitute cooperation or coordination.
- D. An expenditure will not be presumed to have been made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, solely because:
1. the spender has obtained a photograph, biography, position paper, press release, logo, or similar material about the candidate from a publicly available source;
 2. the person making the expenditure has previously provided advice to the candidate on suggested communication strategies, budgets, issues of public policy, or other campaign plans or activities;

Marett, Matthew

From: Marett, Matthew
Sent: Monday, March 05, 2012 9:09 AM
To:
Subject: Senator Plowman

Sara,

Senator Plowman contacted our office this morning and asked to be removed as a principle officer and decision maker for the Maine Senate Republican Majority PAC. As you know, she has chosen to run for the open U.S. Senate seat, and is required to vacate PAC positions by the FEC. Jonathan Wayne and I have removed Senator Plowman from the PACs most recent registration. As a consequence, the PACs home page shows that the registration was recently modified. Please let me know if you have any questions about this. I can be reached at 287-6288.

Thanks,

Matt Marett

Matthew Marett
Candidate Registrar
Maine Ethics Commission
Office: 45 Memorial Circle
Mailing address: 135 State House Station
Augusta, Maine 04333-0135
207-287-6288
Matthew.Marett@Maine.gov

Marett, Matthew

From: Marett, Matthew
Sent: Monday, March 05, 2012 4:32 PM
To:
Subject: PAC officer positions

Senator Courtney,

You have been removed as officer and principle decision maker from the Maine Senate Republican Majority PAC, the Pine Tree Fund, and the Common Sense Solutions PAC. Please let me know if there is anything else I can do for you.

Sincerely,

Matt Marett

Matthew Marett
Candidate Registrar
Maine Ethics Commission
Office: 45 Memorial Circle
Mailing address: 135 State House Station
Augusta, Maine 04333-0135
207-287-6288
Matthew.Marett@Maine.gov

Marett, Matthew

From:
Sent: Friday, March 16, 2012 3:02 PM
To: Marett, Matthew
Subject: Re: Maine Senate Republican Majority

Senator Nichi Farnham
11 Fairmont Park West
Bangor, ME 04401
207-990-2011

Senator Thomas Saviello
60 Applegate Lane
Wilton, ME 04294
207-645-3420

On Wed, Mar 14, 2012 at 12:49 PM, Marett, Matthew <Matthew.Marett@maine.gov> wrote:

Sara,

At your earliest convenience, will you please provide me with the names and contact information for the new officers and principle fundraisers/decisions makers for the Maine Senate Republican Majority PAC?

Thanks, and please let me know if you have any questions.

Matt Marett

Matthew Marett

Candidate Registrar
Maine Ethics Commission
Office: 45 Memorial Circle
Mailing address: 135 State House Station
Augusta, Maine 04333-0135
207-287-6288
Matthew.Marett@Maine.gov



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

2012 REGISTRATION: POLITICAL COMMITTEES

Amended/Filed 3-16-12

COMMITTEE INFORMATION	
MAINE SENATE REPUBLICAN MAJORITY P.O. BOX 1 AUGUSTA, ME 04332	TEL: (207)205-6632 FAX: (207)547-2123 EMAIL:
TREASURER INFORMATION	
SARA VANDERWOOD PO BOX 1 AUGUSTA, ME 04332	TEL: (207)539-9685 FAX: EMAIL: sara.vanderwood@gmail.com
PRINCIPAL OFFICER INFORMATION	
FARNHAM, NICHI PRINCIPLE 11 FAIRMONT PARK WEST BANGOR, ME 04401 (207)990-2011	SAVIELLO, THOMAS PRINCIPLE 60 APPLGATE LANE WILTON, ME 04294 (207)645-3420
PRIMARY FUNDRAISERS AND DECISION MAKERS	
FARNHAM, NICHI	SAVIELLO, THOMAS
FORM OF ORGANIZATION	
Form of organization VOLUNTEER	Date of origin/incorporation 11/1/2008
STATEMENT OF SUPPORT OR OPPOSITION	
THIS COMMITTEE IS FORMED TO SUPPORT OR OPPOSE CANDIDATES.	
supports Senate Republican Candidates - opposes Senate Democratic Candidates	
CERTIFICATION	
I, SARA VANDERWOOD, CERTIFY THAT THE INFORMATION IN THIS REGISTRATION IS TRUE, ACCURATE AND COMPLETE.	
SIGNATURE ON FILE	DATE: 3/16/2012