

Agenda

Item #4



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

To: Commissioners

From: Paul Lavin, Assistant Director  
Matthew Marrett, PAC/Party/Lobbyist Registrar

Date: March 25, 2013

Re: Request for Waiver of Late-Filing Penalty/League of Young Voters Maine PAC

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### **Introduction**

The League of Young Voters Maine PAC (the PAC) requests a waiver of the preliminary penalty for the late filing of an Independent Expenditure (IE) report. The IE report was due on October 26, 2012, but was not filed until February 1, 2013. The preliminary penalty is \$5,000 – the statutory maximum for late-filed IE reports.

As explained below, the PAC was supposed to file two reports on the 11<sup>th</sup> day before the 2012 general election: an IE report and a regular report that was due for all PACs. Due to inadequate advice by the Commission staff, the PAC only filed the regular PAC report and not the IE report. The Commission staff believes the violation was unintentional, and the relevant information was available to the public on time in the regular PAC report. We recommend a full waiver of the penalty.

Unique circumstances led to the discovery of this late-filed IE report. At the end of the January Quarterly reporting period, the Commission staff encouraged all political action committees to identify and disclose any discrepancies between the actual cash balances in their bank accounts and the cash balances showing in their final regular PAC report for 2012. The staff initiated this as voluntary effort on the part of PACs to improve public information and remedy past reporting errors. After the PAC volunteered this information, the staff discovered that the PAC had failed to file an IE report.

The PAC, through its attorney, submitted a written request for waiver of the penalty. The request is based on three grounds: 1) the penalty is disproportionate to the harm suffered by the public from late disclosure, 2) the penalty is disproportionate to the size of the campaign, and 3) the late filing resulted from an error by the Commission staff.

### **Standard for Granting a Waiver**

Pursuant to statute, the Commission “may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate’s campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure.” (21-A M.R.S.A. § 1020-A(2)) In addition, the Commission may waive a penalty if it “determines the failure to file a timely report was due to mitigating circumstances,” which include “an error by the commission staff.” (21-A M.R.S.A. § 1020-A(2)(B))

### **The PAC’s Waiver Request**

#### *Disproportionate to the Harm Suffered by the Public*

The relevant information was reported in the PAC’s 11-Day Pre-General Election Report on October 26, 2012, the same day the IE report was due. Because the public had access to the information on the same day that it would have appeared in the IE report, the PAC argues that the public was not harmed and therefore the penalty is disproportionate to the harm suffered by the public.

#### *Disproportionate to the Size of the Campaign*

The PAC’s activity in the 2012 campaign was limited to \$6,126.30 for a voter guide covering a number of state, municipal and federal races and state referenda. Because of the number of candidates endorsed in the guide, the cost per candidate exceeded the threshold for reporting independent expenditures by only \$36.14. Given the PAC’s minimal involvement in the election, the PAC believes the preliminary penalty of \$5,000 is disproportionate to the size of its campaign.

### *Late Filing Resulted from an Error by the Commission Staff*

In early October, the PAC's former treasurer sought guidance from the Commission staff regarding whether the expenditure for the voter guide had to be reported in both an IE report and a regular campaign finance report. The treasurer and the staff discussed the requirement by e-mail and over the telephone. The PAC states that its former treasurer was told by the staff over the phone that no IE report was required and that she relied on the staff's guidance. The PAC contends that the late filing was the result of erroneous information received from the Commission staff and that this error is a mitigating circumstance justifying a waiver.

### **Staff Recommendation**

The staff agrees with the PAC's statement that the staff's guidance did not correctly explain the PAC's reporting responsibilities. The staff should have explained that the PAC was required to file two separate reports on the same day containing the same information; the 11-Day Pre-Election Independent Expenditure Report which is filed on paper and contains a sworn affidavit and a regularly scheduled PAC report due on the 11th day before the general election which all PACs had to file online.<sup>1</sup> However, in responding to the PAC's question about the filing requirement, the staff directed the PAC to report the expenditure for the voter guide in the 11-Day Pre-General Election Report without drawing a distinction between the regular campaign finance report and the IE report, both of which were due on October 26, 2012. Relying on the staff's guidance, the PAC only filed the 11-Day Pre-General Election Report online and did not file an IE report on paper. Therefore, the staff supports the PAC's request for a waiver due to mitigating circumstances, *i.e.*, "an error by the commission staff."

In addition, by every indication the PAC did not intend to keep information from the Commission or the public, and in fact made several efforts to ensure that information was accurately disclosed. The PAC's former treasurer frequently contacted the Commission staff to ensure transactions were reported correctly. Also, the un-filed IE report would likely not have

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<sup>1</sup> The filing schedule for independent expenditure reports is contained in the Commission's rules. The deadline for filing IE reports depends on the timing and amount of the expenditure. In this case, the amount spent per candidate was under \$250 and occurred after September 7, 2012. Thus, the 11-Day Pre-Election Independent Expenditure Report should have been filed on October 26, 2012. Another factor that may have contributed to the confusion in this matter is that the entire reporting schedule for independent expenditure reports had been changed in an amendment to the Commission's rules that became effective on July 25, 2012. The 2012 general election was the first election in which the new schedule was effective.

been discovered were it not for the voluntary efforts by the PAC to improve the information on file with the Commission.

While the staff believes that there are sufficient grounds for a waiver based on the staff's guidance, this memo will also address the other reasons the PAC gave for granting a waiver. The PAC claims the public did not suffer any appreciable harm from the late filing. The PAC filed the same information on the same day that the IE report should have been filed. In past situations where the wrong report was filed in place of an IE report, the Commission has decided that there is harm to the public because the information is not available to interested parties and the public in the appropriate place and manner. The public and the media often look exclusively to IE reports to keep track of campaign spending, particularly as the election draws near. If this were the only ground for the waiver request, the Commission may decide that it is not sufficient for a full waiver of the penalty.

The PAC also contends that the penalty (\$5,000) is disproportionate to the size of the PAC's total expenditures in the 2012 election (\$6,126.30). While the staff agrees that the penalty is disproportionate, the statutory provision on which the PAC relies refers to the size of a candidate's campaign, not to a PAC's spending. It may be arguable whether that part of the statute is intended apply to PACs and others who file late IE reports; however, the staff believes that there are sufficient grounds for granting the waiver without deciding questions of statutory interpretation.

In conclusion, the Commission staff recommends that the Commission grant the PAC's request for a complete waiver of the penalty because the PAC relied on erroneous guidance from the staff which led to the IE report being filed late. The staff also encourages the Commission to consider the PAC's former treasurer's diligence in seeking advice on compliance and the lack of intent to violate the reporting requirements.

Thank you for your consideration of this memo.

FEDERLE | MAHONEY  
LAW & GOVERNMENT AFFAIRS

February 19, 2013

VIA ELECTRONIC MAIL

Matthew Maret  
PAC, Party & Lobbyist Registrar  
Maine Commission on Governmental Ethics & Election Practices  
135 State House Station  
Augusta, Maine 04333-0135

**RE: League of Young Voters Maine PAC: Request for Waiver & Commission Determination**

Dear Mr. Maret:

On behalf of my client, League of Young Voters Maine PAC (the "PAC"), I am writing in response to your letter to the PAC dated February 4, 2013. In that letter, you indicated that Commission staff has made a preliminary determination that the PAC was late in filing an Independent Expenditure report. The purpose of this letter is to request that the Commission, pursuant to 21-A M.R.S.A. §1020-A, waive the proposed penalty recommended in your letter, as described in greater detail below.

Maine law clearly sets for the criteria that the Commission may use to waive a penalty, in whole or in part. Specifically:

The Commission may waive a penalty in whole or in part if the commission determines that *the penalty is disproportionate to the size of the candidate's campaign*, the level of experience of the candidate, treasurer or campaign staff *or the harm suffered by the public from the late disclosure*. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;

B. *An error by the commission staff;*

- C. Failure to receive notice of the filing deadline; or
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service.

21-A M.R.S.A. §1020-A (2) (emphasis added).

In the present matter, the PAC believes that the relevant facts warrant waiving the staff's proposed penalty on three separate grounds:

- (1) **The \$5,000 penalty is "disproportionate to the size of the . . . campaign."** The PAC was not a major player in the 2012 elections, by any means. Its expenditure of \$6,126.30 was its only expenditure during the election season. Moreover, the total expenditure was for a voter guide that covered 45 state and municipal races, as well as federal races and state referenda. The state/local per candidate expenditure was approximately \$136.14 -- exceeding by only \$36.14 the minimum threshold for even filing an independent expenditure report with the Commission. Given the PAC's limited involvement in the 2012 elections, and the very modest nature of this expenditure on a per candidate basis, imposing the statutory maximum penalty of \$5,000 seems to be severe.
- (2) **The \$5,000 penalty is "disproportionate to . . . the harm suffered by the public from the late disclosure."** All of the information that would have been contained in an October 26, 2012 Independent Expenditure report (had it been timely filed) was contained in the PAC's 11-Day Pre-Election Report, which was timely filed on October 26, 2012. Thus, the Commission and the public were armed with the very same information, at the very same time, that they would have had if the Independent Expenditure report had been filed in accordance with the law. Thus, it cannot be said that the public suffered any appreciable harm from the late filing of the Independent Expenditure Report.
- (3) **The late filing resulted from "an error by the commission staff."** Finally, the PAC's failure to file an Independent Expenditure Report on October 26<sup>th</sup>, as required under the law, is the result of communications that its former Treasurer, Nicola Wells, had with staff in the days preceding the filing deadline. Upon learning that the threshold for filing a 24-hour Independent Expenditure Report is \$250 per candidate, and that the expenditure data would be contained in the 11-Day Pre-Election Report, Ms. Wells contacted staff via telephone with the question whether an Independent Expenditure Report would be necessary. She was told that no such report would be required. In retrospect, it may be that the

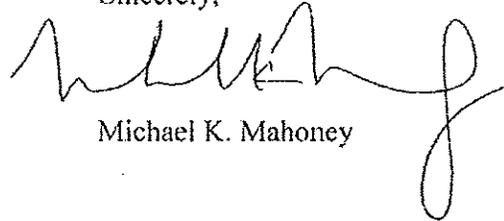
advice given at the time addressed only whether a 24-hour Independent Expenditure Report would be required. Ms. Wells' recollection, however, is that no distinction was made between the requirements governing a 24-Hour Report and those governing the 11-Day Independent Expenditure Report during the conversation.

Finally, although it is not part of the definition of "mitigating circumstances," it is worth noting that the PAC's missing Independent Expenditure Report was discovered as part of a *voluntary* disclosure of information by the PAC to the Commission. Specifically, the PAC came forward on its own initiative after receiving an e-mail from Commission staff to all political action committees about an opportunity to report any discrepancies between committees' PAC reports and their actual bank account balances. Although it was the Commission staff who discovered the missing Independent Expenditure Report specifically, the fact that the PAC voluntarily drew attention to its past PAC reports demonstrates that in no way was it attempting to hide its non-compliance from the Commission.

For all of the foregoing reasons, the PAC respectfully requests that the Commission waive or reduce the staff's recommended penalty of \$5,000 in this matter.

Thank you for the opportunity to provide these comments. The PAC and I look forward to continuing this discussion with the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael K. Mahoney". The signature is fluid and cursive, with a large loop at the end.

Michael K. Mahoney

cc: Mary Alice Scott, Treasurer



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

February 4, 2013

Mary Alice Scott, Treasurer  
League of Young Voters Maine PAC  
142 High Street, Suite 302  
Portland, ME 04101

Re: Penalty for late filing of IE report

Dear Ms. Scott,

The Commission staff has made a preliminary determination that the League of Young Voters Maine PAC (the PAC) was late in filing an Independent Expenditure (IE) report. IE reports for expenditures made between September 7 and October 23 for amounts between \$100 and \$250 were due on October 26, 2012. (Commission Rules, Chapter 1, Section 10(3)) The PAC made such an expenditure on October 5 and reported it in its 11-Day Pre-General Election report on October 26. Pursuant to the above rules, however, the PAC should also have filed an IE for the expenditure by October 26. The PAC did not file an IE report until February 1, 2013.

Under the Commission's statutes, the late filing of an IE report triggers an enforcement process. (21-A M.R.S.A. § 1020-A(4-A)) Based on the amount of financial activity in the report, the number of calendar days the report was late, and the PAC's history of violations, the commission staff has determined that a penalty of \$5,000 is owed. This is the statutory limit for an expenditure of this type. (Please see attached penalty matrix for the calculation).

The PAC may make a written request for waiver to the Commission any time within 14 calendar days of receipt of this notice (or attempted delivery by the U.S. Post Office). The request must contain a full explanation of the reasons the PAC filed late. Upon receiving your request, the Commission staff will schedule your appeal for an upcoming Commission meeting.

The Commission may waive the penalty if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; (3) failure to receive notice of the filing deadline; or (4) relevant evidence that the PAC made a bona fide effort to file the report on time. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure. (21-A M.R.S.A. § 1020-A(2))

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

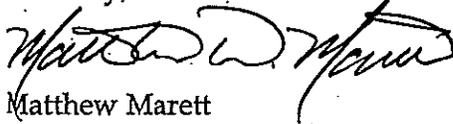
PHONE: (207) 287-4179

FAX: (207) 287-6775

Ms. Mary Alice Scott  
February 4, 2013  
Page 2

The staff requests that the PAC pay the preliminary penalty within 14 days of the date of this letter if it does not intend to request a waiver. Please use the payment receipt below when mailing payments. Payments may also be made online at [www.maine.gov/ethics](http://www.maine.gov/ethics) by clicking on the "penalty payment" link. Please call me at (207) 287-6221 or send me an email at [Matthew.Marett@Maine.gov](mailto:Matthew.Marett@Maine.gov) if you have any questions.

Sincerely,



Matthew Marett  
PAC, Party & Lobbyist Registrar

cc: Michael K. Mahoney, Esq.

Enclosure: payment receipt & PAC penalty matrix

Payment Receipt

Mail payment to:

The Maine Ethics Commission  
135 State House Station  
Augusta, ME 04333.

Make checks payable to: "Treasurer, State of Maine."

Ms. Mary Alice Scott  
League of Young Voters Maine PAC  
142 High Street, Suite 302  
Portland, ME 04101

Violation: Late IE report

Amount Due: \$5,000

Payment ID: 1991

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Committee Name: League of Young Voters Maine PAC Report Title: Independent Expenditure  
 Due Date: October 26, 2012  
 Previous Violation(s): late 42-Day Post-Primary Filed Date: February 1, 2013

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%  
 For the second violation, 3%  
 For the third and each subsequent violation, 5%

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

| Penalty Example:  |  | Your Penalty is calculated as follows: |             |
|---|--|--|-------------|
| The treasurer files the PAC's report two (2) days late. The PAC has not had any previous late violations this biennium. The PAC reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is |  |  |             |
| \$2,500   | Greater amount of the total contributions received or expenditures made during the filing period | Contributions / Expenditures:          | \$6,126.30  |
|   |  | x                                      |             |
| X .01   | Percent prescribed for first violation   | Percent Prescribed:                    | 3%          |
|   |  |  | \$183.79    |
| \$25.00   | One percent of total contributions   | Number of days late:                   | 98          |
| X 2   | Number of calendar days late   |  |             |
| \$50.00   | Total Penalty  | Total penalty accrued:                 | \$18,011.42 |

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

**MAXIMUM PENALTIES**  
 21-A M.R.S.A. Section 1020-A  
 \$5,000 for reports required under section 1019-B, subsection 4,  
 except that if the financial activity reported late exceeds \$50,000,  
 the maximum penalty is one-fifth of the amount reported late.

## Marett, Matthew

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**From:** nicola.wells@gmail.com on behalf of Nicola M. Wells <nicola@theleague.com>  
**Sent:** Thursday, January 31, 2013 5:12 PM  
**To:** Marett, Matthew; Wells Lyons  
**Cc:** Mike Mahoney; Mary Alice Scott  
**Subject:** Re: IE report question

Dear Matthew,

Thank you for our conversation. We have begun work immediately on the IE report and hope to have that in by COB tomorrow. Mary Alice may be reaching out to you to make sure we fill it out properly.

As I shared on the phone, I believe that we had a phone conversation regarding not needing to file an IE report, but unfortunately I do not have a record of that conversation. Please let me know if you find something in your records. Our primary goal is to be transparent and follow all reporting requirements, and we look forward to rectifying this matter with the commission.

Kind Regards,  
Nicola

On Thu, Jan 31, 2013 at 4:12 PM, Marett, Matthew <[Matthew.Marett@maine.gov](mailto:Matthew.Marett@maine.gov)> wrote:

Nicola,

I have reviewed the information in your request for balance adjustment and our prior email correspondence and, after conversations with the Assistant Director Paul Lavin, have determined that an IE report should have been filed to document the \$6,807 spent on October 5 and reported in the 11-Day Pre-General report. While the non-filing is not directly related to the request for balance adjustment, an IE report must be filed before we can proceed any further with the balance adjustment. A form is attached for your convenience.

In addition, because the IE report is late, a preliminary penalty will be assessed against the PAC once the form is filed. The preliminary penalty, which is determined by a statutory formula which considers the amount of the expenditure, the number of days the report is filed late and any prior violations, will be large. The penalty is, however, reviewable by the Commission and may be reduced, even significantly.

The request for PAC balance information was not intended to drum up penalties. However, the Commission cannot ignore unfiled reports, especially IE reports which are so heavily relied on by the public to judge the course of an election.

Please file the IE report as soon as possible. Please also let me know what questions you may have.

Sincerely,

Matt Marett

Maine Ethics Commission

PAC, Party & Lobbyist Registrar

(207) 287-6221

**From:** [nicola.wells@gmail.com](mailto:nicola.wells@gmail.com) [mailto:[nicola.wells@gmail.com](mailto:nicola.wells@gmail.com)] **On Behalf Of** Nicola M. Wells  
**Sent:** Wednesday, January 30, 2013 10:07 AM  
**To:** Marett, Matthew  
**Cc:** Wells Lyons; Mike Mahoney; Mary Alice Scott  
**Subject:** Re: IE report question

Thanks, Matthew!

I was about to email you about another matter - so let me hit two birds with one stone on this.

First to your question about why we didn't file an IE report. I do remember we had a specific conversation about it and that you confirmed that I did not need to file a separate IE report. I believe that the date upon which we made the expenditures fell before the mandatory IE reporting window opened and so we didn't need to file anything. If there is a problem, we'd be happy to file the report retroactively.

Second, as you know I will be leaving the League this week as planned. I would like to transfer the Treasurer position of our League of Young Voters- MAINE PAC to Mary Alice, cc'd here. Can you please remind me how we can do that?

Thank you,

Nicola

On Wed, Jan 30, 2013 at 9:19 AM, Marett, Matthew <[Matthew.Marett@maine.gov](mailto:Matthew.Marett@maine.gov)> wrote:

Hi Nicola,

When I was going over the LYV and LYV ME PACs' balance adjustment materials, I was not able to find an independent expenditure report for the general election voter guide. I know we swapped emails about the need to file an IE report. I'm wondering if I misplaced the report, or if there was confusion about the need to file. Do you have record of submitting a report? Do you recall if we discussed any reason why a report would not need to be filed?

Thanks, and I apologize for my shoddy memory.

Sincerely,

Matt Marett

PAC, Party & Lobbyist Registrar

Maine Ethics Commission

Mailing: 135 State House Station

Augusta, Maine 04333

T: (207) 287-6221

FEDERLE | MAHONEY  
LAW & GOVERNMENT AFFAIRS

January 14, 2013

VIA ELECTRONIC MAIL ONLY

Matthew Marret  
PAC Registrar  
Maine Commission on Governmental Ethics & Election Practices  
135 State House Station  
Augusta, Maine 04330

RE: PAC Balance Adjustments

Dear Mr. Marret,

I am writing on behalf of two clients, the League of Young Voters Maine PAC ("LYV Maine PAC") and the League of Young Voters PAC ("LYV PAC"), in response to your invitation dated December 31, 2012 for PAC's to report their current bank balances.

Both the LYV Maine PAC and the LYV PAC would like to request an adjustment to their respective PAC balances, as outlined below.

**LYV Maine PAC.** According to the latest filed PAC report, LYV Maine PAC's cash balance is -\$6,536.61. The actual bank balance is \$615.99. The PAC's initial review of this discrepancy has revealed that it can be traced to the following errors:

1. On its 11-Day Pre-General Report, dated October 26, 2012, the PAC reported an expenditure dated October 5, 2012 in the amount of \$5,037.18 for a public communication mentioning several candidates. The printing cost associated with this communication was actually paid for by LYV PAC directly and thus, should have been reported by LYV Maine PAC as an in-kind contribution from LYV PAC in the amount of \$4107. None of the printing costs should have been reported as a direct expenditure of LYV Maine PAC. The design and mailing costs of this communication, totaling \$930.18, were paid for directly by LYV Maine PAC, and were correctly reported in the PAC Report.
2. Also on its 11-Day Pre-General Report, dated October 26, 2012, the PAC reported unpaid debts dated October 5, 2012 in the amount of \$1,769.82 for a public communication mentioning several candidates for municipal offices. As the descriptions on Schedule D associated with these line-items note, these were not unpaid debts. They were included on Schedule D, at the suggestion

**Marett, Matthew**

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**From:** Marett, Matthew  
**Sent:** Thursday, October 04, 2012 11:25 AM  
**To:** 'Nicola M. Wells'  
**Subject:** RE: October Quarterly PAC report

Hi Nicola,

That's correct. The expenditure for the voter guide will go on the 11-day pre-general report.

Matt

Matt Marett  
Maine Ethics Commission  
PAC, Party & Lobbyist Registrar  
(207) 287-6221

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**From:** [nicola.wells@gmail.com](mailto:nicola.wells@gmail.com) [<mailto:nicola.wells@gmail.com>] **On Behalf Of** Nicola M. Wells  
**Sent:** Thursday, October 04, 2012 11:24 AM  
**To:** Marett, Matthew  
**Subject:** Re: October Quarterly PAC report

Hi Matt,

So I was just double checking this and saw that the Oct. 5 report runs through Sept. 30th. I was planning on putting our voter guide expenditure in BOTH a 48 hour report and the Oct. 5 report. But it looks to me like I only need to put the voter guide report into a 48 hour report. Right?

Thanks  
Nicola

On Thu, Sep 20, 2012 at 8:21 AM, Marett, Matthew <[Matthew.Marett@maine.gov](mailto:Matthew.Marett@maine.gov)> wrote:

This is a friendly reminder that the October Quarterly PAC report is due on Friday, October 5, 2012 by 11:59 p.m. The reporting period began on July 18<sup>th</sup> and runs through September 30<sup>th</sup>. All PACs must file this report, regardless of activity. The online filing site can be accessed at [www.mainecampaignfinance.com](http://www.mainecampaignfinance.com). If you have any questions, please give me a call or send an email.

Sincerely,

Matt Marett

PAC, Party & Lobbyist Registrar

Maine Ethics Commission

Mailing: 135 State House Station

Augusta, Maine 04333

T: (207) 287-6221

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**Nicola Wells**

*State Director*

Maine League of Young Voters

<http://maine.theleague.com>

c. 207.402.0904

s. ocin.nico

t. @maineleague

f. <http://www.facebook.com/maineleague>

**Marett, Matthew**

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**From:** Marett, Matthew  
**Sent:** Thursday, October 04, 2012 10:38 AM  
**To:** 'Nicola M. Wells'  
**Subject:** RE: voter guide

Nicola,

Yes, the IE report is different from the October 5<sup>th</sup> report – although the same information on the IE report will need to be on the 11-day pre-general report. You can find the IE report here:  
<http://www.maine.gov/ethics/pacs/forms.htm>. It can't be filed online and should be faxed or emailed to me and followed with a hard copy in the mail. Our fax number is (207)287-6775.

Thanks for the questions,

Matt

Matt Marett  
Maine Ethics Commission  
PAC, Party & Lobbyist Registrar  
(207) 287-6221

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**From:** [nicola.wells@gmail.com](mailto:nicola.wells@gmail.com) [<mailto:nicola.wells@gmail.com>] **On Behalf Of** Nicola M. Wells  
**Sent:** Thursday, October 04, 2012 10:33 AM  
**To:** Marett, Matthew  
**Subject:** Re: voter guide

Thank you!

I would like to make this report on FRIDAY. Will this report have to be different than the Oct. 5th report form I am going to be using?

Nicola

On Thu, Oct 4, 2012 at 10:13 AM, Marett, Matthew <[Matthew.Marett@maine.gov](mailto:Matthew.Marett@maine.gov)> wrote:

Nicola,

By my count, the League either endorses or does not endorse 57 candidates. Independent expenditure reports are required where more than \$100 is spent per candidate. Using your estimated cost of \$8,000 for the mailing, the League is spending approximately \$140 per candidate. This means that an IE report should be filed. Under the current reporting schedule, the report is due within 2 days of making the expenditure.

Please let me know if you have more questions.

Best,

Matt Marett

Maine Ethics Commission

PAC, Party & Lobbyist Registrar

(207) 287-6221

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**From:** [nicola.wells@gmail.com](mailto:nicola.wells@gmail.com) [mailto:[nicola.wells@gmail.com](mailto:nicola.wells@gmail.com)] **On Behalf Of** Nicola M. Wells  
**Sent:** Thursday, October 04, 2012 7:48 AM  
**To:** Marett, Matthew  
**Subject:** Fwd: voter guide

Dear Matthew,

This is the final copy of our Voter Guide that we are hoping to finalize today.

I wanted to check-in with you. As you can see we've moved this to a PAC expenditure. We will be spending approximately 8000 to print 18,000, and mail it to 8000 homes in Portland.

Given the large number of candidates we cover, does this NOT qualify for an expenditure report?

Thank you,

Nicola

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**Nicola Wells**  
*State Director*  
Maine League of Young Voters  
<http://maine.theleague.com>

c. [207.402.0904](tel:207.402.0904)  
s. [ocin.nico](mailto:ocin.nico)  
t. [@maineleague](mailto:@maineleague)  
f. <http://www.facebook.com/maineleague>

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**Nicola Wells**  
*State Director*  
Maine League of Young Voters  
<http://maine.theleague.com>

c. [207.402.0904](tel:207.402.0904)  
s. [ocin.nico](mailto:ocin.nico)  
t. [@maineleague](mailto:@maineleague)  
f. <http://www.facebook.com/maineleague>

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**Nicola Wells**  
*State Director*  
Maine League of Young Voters  
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## 21-A M.R.S.A. § 1062-A. FAILURE TO FILE ON TIME

**1. Registration.** A political action committee required to register under section 1053 or 1053-B or a ballot question committee required to register under section 1056-B that fails to do so or that fails to provide the information required by the commission for registration may be assessed a fine of \$250.

[ 2009, c. 190, Pt. A, §28 (AMD) .]

**2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if it is disproportionate to the level of experience of the person filing the report or to the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency of the committee treasurer determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §9 (AMD) .]

B. An error by the commission staff; or [1999, c. 729, §9 (AMD) .]

C. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. [2007, c. 443, Pt. A, §38 (AMD) .]

[ 2009, c. 190, Pt. A, §29 (AMD) .]

**3. Basis for penalties.** The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

A. For the first violation, 1%; [1995, c. 483, §21 (NEW) .]

B. For the 2nd violation, 3%; and [1995, c. 483, §21 (NEW) .]

C. For the 3rd and subsequent violations, 5%. [1995, c. 483, §21 (NEW) .]

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered calendar year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A required report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as an original of the same report is received by the commission within 5 calendar days thereafter.

[ 2007, c. 443, Pt. A, §39 (AMD) .]

**4. Maximum penalties.** The maximum penalty under this subchapter is \$10,000 for reports required under section 1056-B or section 1059, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late.

[ 2011, c. 389, §49 (AMD) .]

**5. Request for a commission determination.** If the commission staff finds that a political action committee has failed to file a report required under this subchapter, the commission staff shall mail a notice by certified mail to the treasurer of the political action committee within 3 business days following the filing deadline informing the treasurer that a report was not received. If a political action committee files a report required under this subchapter late, a notice of preliminary penalty must be forwarded to the treasurer of the political action committee whose report is not received by 11:59 p.m. on the deadline date, informing the treasurer of the commission staff finding of violation and preliminary penalty calculated under subsection 3 and providing the treasurer with an opportunity to request a determination by the commission. The notice must be sent by certified mail. A request for determination must be made within 14 calendar days of receipt of the commission's notice. The 14-day period during which a determination may be requested begins on the day a recipient signs for the certified mail notice of the proposed penalty. If the certified letter is refused or left unclaimed at the post office, the 14-day period begins on the day the post office indicates it has given first notice of a certified letter. A principal officer or treasurer requesting a determination may either appear in person or designate a representative to appear on the principal officer's or treasurer's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

[ 2009, c. 302, §8 (RPR) .]

**6. Final notice of penalty.** After a commission meeting, notice of the final determination of the commission and the penalty, if any, imposed pursuant to this subchapter must be sent to the principal officer and the treasurer of the political action committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the principal officer and to the treasurer of the political action committee. A detailed summary of all notices must be provided to the commission.

[ 2009, c. 302, §9 (AMD) .]

**7. List of late-filing committees.** The commission shall prepare a list of the names of political action committees that are late in filing a report required under section 1059, subsection 2, paragraph B, subparagraph (1) or section 1059, subsection 2, paragraph C or D within 30 days of the date of the election and shall make that list available for public inspection.

[ 2007, c. 443, Pt. A, §41 (AMD) .]

**8. Failure to file.** A person who fails to file a report as required by this subchapter within 30 days of the filing deadline is guilty of a Class E crime, except that, if a penalty pursuant to subsection 8-A is assessed and collected by the commission, the State may not prosecute a violation under this subsection.

[ 2003, c. 628, Pt. A, §8 (AMD) .]

**8-A. Penalties for failure to file report.** The commission may assess a civil penalty for failure to file a report required by this subchapter. The maximum penalty for failure to file a report required under section 1056-B or section 1059 is \$10,000.

[ 2009, c. 190, Pt. A, §31 (AMD) .]

**9. Enforcement.** A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

[ 2009, c. 302, §10 (RPR) .]

#### SECTION HISTORY

1995, c. 483, §21 (NEW). 1999, c. 426, §34 (AMD). 1999, c. 729, §9 (AMD). 2003, c. 628, §§A7-9 (AMD). 2007, c. 443, Pt. A, §§38-41 (AMD). 2009, c.

190, Pt. A, §§28-31 (AMD). 2009, c. 302, §§8-10 (AMD). 2011, c. 389, §49 (AMD).

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