

Exhibit #6

From: Kim Davis [mailto:kimdavisdesign@yahoo.com]
Sent: Monday, February 05, 2007 10:07 AM
To: Thompson, Sandy
Subject: recommended penalty

Dear Sandy -

I have reviewed the analysis of my 2006 campaign receipts and expenditures dated 1/22/07 as well as the penalty suggested by the Commission staff and am in agreement with the findings.

There was no malice or an intentional attempt on my part to file a late 101% Report. It was simply a misunderstanding as how to report my *in kind* contributions which resulted in a total sum of cash receipts below \$4406 prior to 10/12/06, and therefore did not trigger, so I thought, a 101% report.

It wasn't until reviewing additional reports with you that I realized I was in error.

I appreciate all of your help through this process and will attend the hearing on February 14Th, 2007.

Sincerely,

Kim Davis



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

January 26, 2007

Hon. Kimberly J. Davis
28 Eastern Avenue
Augusta, ME 04330

Dear Rep. Davis:

This is to follow up on Sandy Thompson's November 27, 2006 letter regarding the penalty for the late filing of your 101% Report. Thank you for meeting with us and clarifying the timing of your general election receipts and expenditures. The Commission will consider this matter at its meeting on February 14th. Based on the information available to it now, the Commission staff is recommending a penalty of \$67.00. **You are invited to respond to the recommended penalty by submitting a written response no later than Monday, February 5 and by appearing at the February 14th meeting.** In addition, if you believe that our understanding of the facts of the situation is mistaken, we urge you to contact us as soon as possible and we will consider whether to change our recommendation.

As was noted in the November 27 letter, because you were a privately financed candidate with a Maine Clean election Act opponent you were required under 21-A M.R.S.A. §1017(3-B)(A) to file a 101% Report within 48 hours of when your cash receipts for the general election exceeded \$4,406 (101% of the general election distribution amount for House candidates). Based on the transactions included in your campaign finance reports, the Commission staff has concluded that your receipts exceeded the \$4,406 amount on Thursday, October 12, 2006 and that the report was due on Monday, October 16, 2006. Instead, the report was filed one day late on October 17th.

The penalty for filing an accelerated report late is set forth in 21-A M.R.S.A. §1020-A(4-A) (last paragraph). The staff has determined that the maximum penalty for the violation is \$201.00. Please refer to the enclosed penalty matrix for more details on how the maximum penalty is computed.

After considering the factual circumstances of this matter, the staff of the Commission will recommend that the Commission assess a penalty of \$67.00, the amount by which your reporting exceeded the distribution amount received by your opponent. That recommendation takes into consideration:

Hon. Kimberly J. Davis

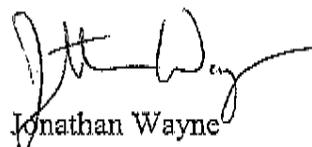
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January 26, 2007

- that your opponent, Kimberly Silsby would not have received matching funds had you filed the 101% report on time on Monday, October 16th because of a \$379.00 independent expenditure report filed on September 22 in support of Ms. Silsby; and
- you filed the 101% Report promptly on October 17, 2006 upon realizing that the report was overdue.

Please feel free to telephone me at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne
Executive Director

cc: Hon. Kimberly Silsby

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
PENALTY MATRIX FOR LATE 101% AMOUNT & ACCELERATED REPORT
FILINGS

BASIS FOR PENALTIES 21-A M.R.S.A. SECTION 1020-A(4)

The penalty for late filing of an accelerated report is equivalent to but not more than 3 times the amount by which the contributions received or expenditures obligated or made, whichever is greater, exceed the applicable Maine Clean Election Fund payment per day of violation, multiplied by the number of calendar days the report is filed late.

MCEA PAYMENT	PRIMARY	GENERAL
House	\$1,504	\$4,362
Senate	\$7,746	\$20,082

A penalty begins to accrue at 5:00 p.m. on the day the report is due.

Example: The treasurer files the accelerated report two days late. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures (made and obligated). The MCEA amount is \$1,504. The difference between \$2,500 contributions (greater than \$1,500 in expenditures) and the MCEA payment amount is: \$996

<u>\$2,500</u>	Greater amount of the total contributions received or expenditures made during the filing period
- <u>\$1,504</u>	Applicable MCEA Payment Amount
\$996	Difference
<u>X 3</u>	No more than 3 times the per day
<u>\$2,988</u>	Maximum amount per day
<u>X 2</u>	Number of calendar days late
\$5,976	Total maximum penalty

Your penalty is calculated as follows:

Contributions/Expenditures: (Greater amount)	\$ <u>4,429.00</u>
Minus MCEA Amount:	\$ <u>4,362.00</u>
Difference:	\$ <u>67.00</u>
Multiplied by 3 =:	\$ <u>201.00</u>
Multiplied by number of days late:	\$ <u>1</u>
Total maximum penalty:	\$ <u>201.00</u>

Any penalty of less than \$5 is waived.

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.

Title 21-A, §1017, Reports by candidates

H. Reports with respect to a candidate who seeks nomination by petition for the office of Governor must be filed on the same dates that reports must be filed with respect to a candidate who seeks that nomination by primary election. [1991, c. 839, §14 (amd); §34 (aff).]

[2005, c. 301, §13 (amd).]

3. Other candidates.

[1989, c. 504, §§13, 31 (rp).]

3-A. Other candidates. A treasurer of a candidate for state or county office other than the office of Governor shall file reports with the commission and municipal candidates shall file reports with the municipal clerk as follows. Once the first required report has been filed, each subsequent report must cover the period from the completion date of the prior report filed.

A. In any calendar year in which an election for the candidate's particular office is not scheduled, when any candidate or candidate's political committee has received contributions in excess of \$500 or made or authorized expenditures in excess of \$500, reports must be filed no later than 5 p.m. on July 15th of that year and January 15th of the following calendar year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report. [1991, c. 839, §15 (amd); §34 (aff).]

B. Reports must be filed no later than 5 p.m. on the 6th day before the date on which an election is held and must be complete as of the 12th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the completion date. [1991, c. 839, §15 (amd); §34 (aff).]

C. Contributions aggregating \$1,000 or more from any one contributor or single expenditures of \$1,000 or more, made after the 12th day before any election and more than 24 hours before 5 p.m. on the day of any election must be reported within 24 hours of those contributions or expenditures. [2005, c. 301, §14 (amd).]

D. Reports must be filed no later than 5 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date. [1991, c. 839, §15 (amd); §34 (aff).]

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$50 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of \$50 shall file reports semiannually with the commission within 15 days following the end of the 2nd and 4th quarters of the State's fiscal year, complete as of the last day of the quarter, until the surplus is disposed of or the deficit is liquidated. The first report under this paragraph is not required until the 15th day of the period beginning at least 90 days from the date of the election. The reports may either be filed in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section. [1991, c. 839, §15 (amd); §34 (aff).]

F. Reports with respect to a candidate who seeks nomination by petition must be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election. [1991, c. 839, §15 (amd); §34 (aff).]

[2005, c. 301, §14 (amd).]

3-B. Accelerated reporting schedule. Additional reports are required from nonparticipating Maine Clean Election Act candidates pursuant to this subsection.

A. In addition to other reports required by law, any candidate for Governor, State Senate or State House of Representatives who is not certified as a Maine Clean Election Act candidate under chapter 14 and who receives, spends or obligates more than 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate in the same race shall file by any means acceptable to the commission, within 48 hours of that event, a report with the commission detailing the candidate's total campaign contributions, obligations and expenditures to date. [2001, c. 470, §6 (new).]

B. A nonparticipating candidate with a Maine Clean Election Act opponent shall file the following additional reports detailing the candidate's total campaign contributions, obligations and expenditures to date, unless that candidate signs an affidavit by the date the report is due, attesting that the candidate has not received, spent or obligated an amount sufficient to require a report under paragraph A:

Title 21-A, §1017, Reports by candidates

- (1) A report filed not later than 5 p.m. on the 42nd day before the date on which an election is held and complete as of the 44th day before that date;
- (2) A report filed no later than 5 p.m. on the 21st day before the date on which an election is held and complete as of the 23rd day before that date; and
- (3) A report filed no later than 5 p.m. on the 12th day before the date on which an election is held and complete as of the 14th day before that date.

[2001, c. 589, §1 (amd).]

C. A candidate who is required to file a report under paragraph A must file with the commission an updated report that reports single expenditures in the following amounts that are made after the 14th day before an election and more than 24 hours before 5:00 p.m. on the date of that election:

- (1) For a candidate for Governor, a single expenditure of \$1,000;
- (2) For a candidate for the state Senate, a single expenditure of \$750; and
- (3) For a candidate for the state House of Representatives, a single expenditure of \$500.

A report filed pursuant to this paragraph must be filed within 24 hours of the expenditure. [2003, c. 628, Pt. B, §3 (amd).]

The commission shall provide forms to facilitate compliance with this subsection. The commission shall notify a candidate within 48 hours if an amount reported on any report under paragraph B exceeds 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate in the same race and no report has been received under paragraph A.

[2003, c. 628, Pt. B, §3 (amd).]

4. New candidate or nominee. A candidate for nomination or a nominee chosen to fill a vacancy under chapter 5, subchapter III is subject to section 1013-A, subsection 1, except that the candidate shall register the name of a treasurer or political committee and all other information required in section 1013-A, subsection 1, paragraphs A and B within 7 days after the candidate's appointment or at least 6 days before the election, whichever is earlier. The person required to file a report under section 1013-A, subsection 1 shall file a campaign report under this section 15 days after the candidate's appointment or 6 days before the election, whichever is earlier. The report must include all contributions received and expenditures made through the completion date. The report must be complete as of 4 days before the report is due. Subsequent reports must be filed on the schedule set forth in this section. The commission shall send notification of this requirement and registration and report forms to the candidate and the candidate's treasurer immediately upon notice of the candidate's and treasurer's appointments.

[1991, c. 839, §16 (amd).]

5. Content. A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name of each payee and creditor. Total contributions with respect to an election of less than \$500 and total expenditures of less than \$500 need not be itemized. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A. Until December 31, 1992, the candidate is responsible for the timely and accurate filing of each required report. Beginning January 1, 1993, the candidate and the treasurer are jointly responsible for the timely and accurate filing of each required report.

[1991, c. 839, §17 (amd).]

5-A. Valuation of contributions sold at auction. Any contribution received by a candidate that is later sold at auction shall be reported in the following manner.

A. If the contribution is sold at auction before the commencement of the appropriate reporting period specified in subsections 1 to 4, or during that period, the value of the contribution is deemed to be the amount of the purchase price paid at auction. [1987, c. 726, §2 (new).]

B. If the contribution is sold after the termination of the appropriate reporting period specified in subsections 1 to 4, the value of the contribution is the difference between the value of the contribution as originally reported by the treasurer and the amount of the

Title 21-A, §1020-A, Failure to file on time

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§1020-A. Failure to file on time

1. Registration. A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1. [1995, c. 483, §15 (new).]

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission before 5 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty 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; [1999, c. 729, §5 (amd).]

B. An error by the commission staff; [1999, c. 729, §5 (amd).]

C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (amd).]

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. [1999, c. 729, §5 (new).]

[2003, c. 628, Pt. A, §3 (amd).]

3. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty. [1995, c. 625, Pt. B, §5 (amd).]

4. Basis for penalties.

[2001, c. 470, §7 (amd); T. 21-A, §1020-A, sub-§4 (rp).]

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, 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%; [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

Title 21-A, §1020-A, Failure to file on time

C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

Any penalty of less than \$5 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 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 registration or 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.

The penalty for late filing of an accelerated campaign finance report as required in section 1017, subsection 3-B may be up to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation. The commission shall make a finding of fact establishing when the report was due prior to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2.

[2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

5. Maximum penalties.

[2001, c. 470, §8 (amd); T. 21-A, §1020-A, sub-§5 (rp).]

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed:

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D or F; section 1017, subsection 4; and section 1019-B, subsection 3; [2003, c. 448, §4 (amd).]

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E; [2003, c. 628, Pt. A, §4 (amd).]

C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; [2003, c. 628, Pt. A, §4 (amd).]

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B; or [2003, c. 628, Pt. A, §4 (amd).]

E. Three times the unreported amount for reports required under section 1017, subsection 3-B, if the unreported amount is less than \$5,000 and the commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report. [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]
[2003, c. 628, Pt. A, §4 (amd).]

6. Request for a commission determination. Within 3 days following the filing deadline, a notice must be forwarded to a candidate and treasurer whose registration or campaign finance report is not received by 5 p.m. on the deadline date, informing them of the basis for calculating penalties under subsection 4 and providing them with an opportunity to request a commission determination. The notice must be sent by certified United States mail. Any request for a determination must be made within 10 calendar days of receipt of the commission's notice. The 10-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 10-day period begins on the day the post office indicates it has given first notice of a certified letter. A candidate or treasurer requesting a determination may either appear in person or designate a representative to appear on the candidate's or treasurer's behalf or submit a notarized written explanation of the mitigating circumstances for consideration by the commission.

[RR 1995, c. 2, §38 (cor).]

7. Final notice of penalty. After a commission meeting, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the treasurer.

If no determination is requested, the commission staff shall calculate the penalty as prescribed in subsection 4-A and shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

[RR 2003, c. 1, §14 (cor).]