



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

Minutes of the October 17, 2008, Meeting of the
Commission on Governmental Ethics and Election Practices
Held in Room 208, Burton M. Cross Office Building,
111 Sewall Street, Augusta, Maine

Present: Michael Friedman, Esq., Chair; Hon. Francis C. Marsano; Hon. Edward M. Youngblood; Hon. Mavourneen Thompson; Walter F. McKee, Esq. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 1:02 a.m., Chair Michael Friedman convened the meeting.

The Commission considered the following items:

In consideration of the Commission's practice to address agenda items out of order to accommodate the attendance of public participants regarding particular items, the following agenda item was taken out of order:

Agenda Item #1A. Complaint against Tyler Clark regarding Use of Photo

Mr. Wayne explained that Sue Bernard, a private citizen, has filed a complaint against Tyler Clark, a candidate for House District 6, regarding his use of a photograph of her in a recent campaign flyer. Ms. Bernard filed the complaint because the flyer seems to indicate that she supports the candidate and, due to her employment, she cannot be viewed as taking sides in an election. She believes she should have been consulted before Mr. Clark used her picture on the flyer.

Ms. Bernard, participating by phone, explained that she did not realize her picture was being taken and that it appears to her that the ad is predominantly featuring her rather than focusing on the candidate or giving him a minor background position. She said that she is from the Fort Fairfield area, where the candidate is running and that she is somewhat well known in Aroostook county because she was the anchor for the evening news in the area for more than 20 years. She said that she has received calls from people asking if

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WEBSITE: WWW.MAINE.GOV/ETHICS

she was involved in the candidate's campaign or endorsing the candidate. Ms. Bernard said that she was not in a position to endorse any candidate due to her employment as the Director of Communications for the Roman Catholic Diocese of Portland.

Mr. Tyler Clark, also participating by phone, stated he apologized for any confusion or complications he may have caused for Ms. Bernard. He said that he had supplied his printer with several photos to be used in the ad. The printer made the selection of the photo of him shaking hands with folks at the parade and Ms. Bernard happened to be there. He said he did not know who Sue Bernard was and would not have used the photo if he had. He said he immediately deleted the photo from his computer and has taken the picture off his website to avoid any confusion.

Mr. Friedman asked Ms. Bernard what she wanted the Commission to do.

Ms. Bernard said she wanted it on the record that she has not endorsed any candidate and would further request that a letter to the editor be written by Mr. Clark stating this.

Mr. Friedman asked if Ms. Bernard had written such a letter herself.

Ms. Bernard stated she had not written a letter but she could do so.

Daniel I. Billings, Esq., stated his concern with the Commission taking a position or making a decision that would imply that a photo taken in a public place, such as the one at issue, constitutes an endorsement under the endorsement statute (21-A M.R.S.A. § 1014-A). He said that he understood Ms. Bernard's concerns given her position but felt that the Commission should not set a precedent that could be interpreted to mean that any photo with a candidate was an endorsement.

Mr. Clark stated that he has pictures of himself with others, such as Senators Snowe and Collins and others who do endorse him which would be more effective than a picture with Ms. Bernard. He said he had no intention of using her photo with him as an endorsement.

Ms. Thompson stated she did not consider this an endorsement according to the statute's definition. She agreed with Mr. Billings' position that the Commission should not expand the definition of endorsement to

include these kinds of photos. She suggested that Ms. Bernard should write the letter stating no endorsement was intended.

Mr. Friedman agreed with Ms. Thompson and also stated that no advantage was gained by Mr. Clark using this photo.

Mr. McKee agreed there was no endorsement given the definition provided in the statute; however, he cautioned candidates to be very careful which pictures are used on their campaign literature.

Mr. Friedman stated that no action by the Commission would be necessary in this matter and suggested that the Commission's expression of advice (for Ms. Bernard to write a letter to the editor) would be sufficient.

The Commission resumed the scheduled order of agenda items at this point.

Due to a long standing relationship with Rep. Tardy, Chair Michael Friedman recused himself from the discussion of the following agenda item.

Mr. Marsano also disclosed that he was Rep. Tardy's designee to the Governor who then appointed him to the Commission and has known Mr. Tardy for many years; however Mr. Marsano stated these relationships do not require recusal on his part.

Ms. Thompson nominated Mr. Youngblood to be temporary chair for this agenda item; seconded by Mr. Marsano. The motion passed unanimously.

**Agenda Item #1. Complaint against Jeffrey F. Miller regarding Improper Claim of Endorsements/
Mr. Miller's Complaint regarding Representative Joshua A. Tardy**

Mr. Wayne explained that on September 29, 2008, Representative Joshua A. Tardy filed a complaint against Democratic House candidate Jeffrey F. Miller, alleging that he improperly claimed to have been endorsed by the Sportsman's Alliance of Maine (SAM). Mr. Wayne said that an article had run in the Lincoln News to this affect, however, a correction was published later by the Editor, Kevin Tenggren, stating that this was an error and that Jeffery Gifford was the endorsed candidate. In a response to Rep. Tardy's complaint, Mr. Miller included a request that the Commission investigate whether Representatives

Joshua Tardy and Jeffery Gifford made a misleading and untrue attack against him which violates the Code of Fair Campaign Practices which they both signed.

Ms. Thompson asked for a review of the Commission's responsibility in enforcing the Code of Fair Campaign Practices.

Mr. Wayne said the Code is voluntary for candidates. He said the Commission's duty is only to distribute the forms and provide a place to file them. He said the Legislature did not intend for the Commission to take any action when a violation has occurred because of First Amendment concerns. He further said the history has been the Commission is available only as a forum to hear complaints but has no jurisdiction to take any action regarding these complaints.

Rep. Tardy stated that he had nothing further to add to his complaint beyond his written material.

Jeffrey Miller, participating by phone, said he received from SAM a letter stating he was awarded the highest grade of "A" for candidacy for the legislature. He said he gave this letter from SAM along with a letter from Maine State Employees Association's (MSEA) endorsing him to the Lincoln News editor, Kevin Tenggren. He said he contacted Kevin Tenggren immediately after discovering the article in the paper and told him the article was in error. Mr. Tenggren told Mr. Miller that he made the error himself and would print a correction in the next issue. Mr. Miller said he did not intentionally mislead anyone. He also said Rep. Tardy's accusation that he failed to report the error is wrong. Mr. Miller stated that he holds himself to the highest degree of integrity and signed the Code of Fair Campaign Practices when he registered as a Clean Elections Act candidate. Mr. Miller said the newspaper is a weekly publication and as soon as he read the article, he contacted the editor to let him know he was not endorsed by SAM but given the grade "A" by SAM.

Mr. McKee asked for clarification as to how the Lincoln News received the information regarding the SAM letter. Mr. Miller said that he had provided the letters to the newspaper and had a conversation with Mr. Tenggren about the letters. He said that he did say "That's a big one" but that was related to getting SAM's grade "A."

Zachary Heiden, Esq., Legal Director for the Maine Civil Liberties Union, cautioned the Commission to interpret this endorsement statute narrowly in order to avoid infringing on a candidate's First Amendment rights. He said Mr. Miller has stated that he had no intention of giving the appearance of an endorsement.

Mr. Clifford Ginn stated that he disagreed with the MCLU's opinion with regard to the Commission's responsibility for interpreting this statute. He said that it was not within the Commission's expertise to apply constitutional law reasoning in interpreting the statute. The Legislature has not given the Commission the responsibility to do so. It is up to the Courts to apply a narrow construction to the statute.

Mr. McKee asked Mr. Tardy what he would like to see happen by the Commission after hearing from Mr. Miller.

Mr. Tardy said he would leave this up to the Commission. He said he was skeptical of Mr. Miller's explanation and that the Lincoln News could get the facts so wrong.

Mr. Miller restated his explanation as to how the miscommunication occurred. He also restated that the editor, Kevin Tenggren, admitted it was his error.

Ms. Thompson asked Mr. Miller who initiated the article.

Mr. Miller restated that he took both letters, one from SAM with the grade "A" rating and one from MSEA with an endorsement, to the editor to run in the paper.

Mr. Marsano stated that the Lincoln News appears to be incompetent and expressed concern that the candidates are prisoners of the newspaper. He said the newspaper created the problem and the Commission cannot rectify or change that.

Mr. Tardy stated that if the Commission's finding is the Lincoln News is grossly incompetent, he would stand by that finding.

Ms. Thompson asked if this situation has happened before. Mr. Wayne said it had not.

Ms. Thompson stated that Mr. Miller initiated the article and the newspaper made the error. She said that since the newspaper corrected the mistake, both candidates received publicity in the matter. She further stated that neither candidate was at fault.

Mr. Youngblood said there was no evidence that Mr. Miller intended to have the wrong information printed in the newspaper. He further stated that the Commission has no authority to enforce the Maine Code of Fair Campaign Practices; therefore, both complaints require no action.

Mr. McKee asked for clarification as to whether the Commission could make a finding with regard to the complaint as it relates to the Code.

Ms. Gardiner stated that the Code of Fair Campaign Practices statute does not give the Commission authority to make a finding. She said the Commission's role is distribution and depository only.

Mr. Marsano said the Commission does provide a forum for candidates and the public to be heard regarding matters believed to be in violation of the Code.

Ms. Gardiner said that has been the Commission's view since there is no other forum to be used, however, it is not the way the statute reads or what it requires.

Mr. Miller stated that the unfairness of this matter has gone beyond this complaint. He said Rep. Gifford and Rep. Tardy have recently started attacking his character in some campaign ads.

At this point, Mr. Friedman resumed as Chair.

Agenda Item #2. Dory Waxman's Complaint against Ed Suslovic regarding Endorsements

Mr. Wayne stated that Clifford Ginn, campaign manager, was present on behalf of the Waxman campaign and Zachary Heiden would be speaking on behalf of Ed Suslovic who was also present. Mr. Wayne explained that Portland City Council candidate Dory Waxman has filed a complaint against her opponent Ed Suslovic alleging that his campaign website and literature has misled voters regarding endorsements of his campaign.

Mr. Clifford Ginn of Portland, stated to the Commission he was here on behalf of Ms. Waxman as her campaign manager, not as her attorney. He said there are three kinds of violations alleged in the complaint: First, he said, is that Mr. Suslovic presented quotations as endorsements that are not in fact endorsements; secondly, he failed to obtain authorization from the endorsements; and third, Mr. Suslovic failed to make the required written disclosure on some of the literature. Mr. Ginn said he disagreed with the MCLU regarding a narrow definition of the endorsement statute. He said the statute's definition of expenditure is much more explicit than the definition of endorsement. He spoke about the reader's interpretation of the literature and said Mr. Suslovic's flyer is confusing to voters. He brought up past case history with this issue regarding Michael Mowles, a 2006 candidate, who ran campaign literature with endorsements from Senators Snowe and Collins. In this case the Commission found Mr. Mowles in violation. He said the reason for the law is because endorsements are very powerful political speech that could be easily abused. He said a statement saying the endorsement was authorized prevents voter confusion.

Ms. Thompson stated that she has a past relationship with Dory Waxman and Ed Suslovic when Ms. Thompson ran for Portland school board.

Ms. Thompson asked Mr. Ginn whether the website endorsements have to have an authorized statement after each quote or is the disclaimer sufficient at the bottom.

Mr. Ginn said the authorized endorsement is different from who paid or authorized. He said statements of authorization to use an endorsement need to be stated separately. He also said the changes that were made to Mr. Suslovic's website after the fact were still misleading to the public.

Mr. Edward Suslovic, Mayor of the City of Portland and At-Large City Councilor, reviewed some facts. He said regarding the website stating Speaker of the House, Glenn Cummings' quote, this was removed immediately when he received a call from Rep. Cummings. He said it was put on a separate page of quotations, not on the endorsements page. He also handed out examples of flyers from candidates around the state containing endorsements that do not have any authorization language printed on them. He said the quotes he used in his palm cards regarding his candidacy were quotes from a Portland Press Herald article. He said because the quote came out of a public record, the need for an authorization is not necessary. He said using endorsements are common practice among all candidates and the authorization language has not

been on campaign literature pieces in the past. He further stated that he didn't feel candidates should bring forth differences of opinions before the Commission as complaints.

Ms. Thompson asked if the website did show an endorsement in the beginning and was then removed.

Mr. Suslovic said that he agreed with Rep. Cummings that there could be an appearance of an endorsement so he removed the quote immediately and phoned Ms. Waxman to let her know the issue was taken care of. He said as far as the palm cards are concerned, he believes the quotes stated are not endorsements because they were quotes taken from the newspaper, which is a public document.

Mr. Friedman asked for clarification on the original website from October 1 through October 3 when the changes were made. He asked whether there was an intention of providing the information as an endorsement.

Mr. Suslovic stated there was never any intention of misleading the public and the changes were made to correct any misinformation as soon as possible.

Mr. McKee pointed out that on October 1 the website said, "What Others are Saying" which could be misleading; however, the change was made the next day for clarification.

Mr. Zachary Heiden said he would caution the Commission to tread carefully with this issue. He spoke to the rights within the constitution and the Commission's jurisdiction. He said the statute definition does not say an endorsement means an expression of support, reading from the statute, "*an endorsement means the expression of support for the election of a clearly identified candidate.*" He further said in this case, there is no endorsement because Rep. Cummings did not specifically say he supported the election of Mr. Suslovic, he merely stated his opinion about Mr. Suslovic. He said the second issue as to whether the quotes were authorized is moot because there were no endorsements made as defined in the statute.

Mr. Marsano referred to the word "endorsement" as a Legislative contrivance that attempts to do something that is nearly impossible to do. He said since the wording, "*for the election,*" was not used in the materials then there appeared to be no endorsement as contemplated by the statute.

Mr. Heiden agreed with this interpretation.

Mr. Marsano said if the website had not contained the word “endorsement,” there would be no issue.

Mr. Heiden said that something is not an endorsement simply because it is labeled as an endorsement, but the words themselves must be a clear expression of support for the election of a candidate in a particular election.

Ms. Thompson asked Mr. Suslovic, for clarification, that the editing of the website after the issue was raised by the Waxman campaign was only to clarify the facts, not an admission of any wrong doing.

Mr. Suslovic confirmed this and said he only wanted to make the information on his website clearer.

Mr. Ginn spoke regarding constitutional arguments and First Amendment rights.

Mr. Friedman asked Mr. Ginn how he would advise providing a public quote on campaign literature.

Mr. Ginn responded that endorsements should be identified as such and that statements that were not endorsements should also be identified as not being endorsements.

Mr. Dan Billings stated that positive comments and opinions from the public are commonly used on campaign literature and are not considered as endorsements. He said using the statutory definition of endorsement, this literature does not constitute an endorsement.

Mr. McKee said the only issue of concern here is the word “endorsement” on the website which was fixed right away by Mr. Suslovic within a day. He said he could not say definitively that there was an endorsement issue in the first place. He stated that while it is important to hear these issues, this particular case was fixed right away by the candidate so he felt there was no further need for discussion.

Mr. Friedman agreed. He further stated that common sense would suggest that people quoted on campaign literature in favor of the candidate do support the candidate. He said these are technically not an

endorsement as defined by statute, and would call them something less than endorsement support. He does not view them as an endorsement.

Mr. Marsano stated that if the label on the website's menu had been slightly different, there would not have been a problem at all.

Ms. Thompson stated she believed that since the Commission is taking no action, no motion was necessary.

Mr. Marsano made a motion to dismiss the complaint; seconded by Ms. Thompson. The motion passed unanimously (5-0).

Agenda Item #3. Request by Maine Republican Party regarding Alexander Cornell du Houx

Mr. Wayne explained that the Maine Republican Party had requested that the Ethics Commission consider whether House candidate Alexander Cornell du Houx's appearance in an advertisement sponsored by VoteVets.org provides him with an unfair advantage and an impermissible in-kind contribution in his District 66 race.

The Commission viewed the video created by VoteVets.org.

Mr. Mark Ellis, Chair of the Republican Party, said Mr. du Houx was given name recognition as a result of this ad which other candidates in this district did not have the benefit of. He said on Mr. du Houx's website there is another ad by VoteVets.org which has a link to their home page. He said from the VoteVets.org home page you can go to another section which lists candidates by state endorsed by VoteVets.org and Mr. du Houx is listed. He said this has given this candidate an unfair advantage and name recognition.

Mr. Phil Roy, Treasurer of the Maine Republican Party, said he wanted to bring out a larger issue than this candidate issue which is a loophole for free voter identification. He said candidates are able to, through this loophole, get publicity without paying for it. He said this issue is something the Commission needs to look at for future discussion. He said federal PACs are allowed to use individual candidates in their promotions for election issues and the candidates do not have to pay for this publicity. He said this creates an unfair advantage to other candidates within the same district who do not receive this recognition.

Ms. Gardiner asked how it was not the same as a candidate who has a business and runs an ad on television for that business.

Mr. Roy said a candidate who has a business and runs ads on a routine basis, is engaged in the usual and normal activity for a business, whereas, the ad featuring Mr. Cornell du Houx is a pin point ad, not normal routine ad. He said this ad is for a campaign, not part of Mr. du Houx's job or business.

Mr. Friedman asked whether if a spouse of a business owner were to run for office and be in this business ad, would that be any different.

Mr. Roy said in this case, that would be considered a gift or in-kind contribution also because the spouse did not usually appear in the advertisements for the business.

Ms. Thompson asked Mr. Ellis and Mr. Roy to comment on how the statute which defines a contribution as "anything of value made for the purpose of influencing a nomination or election" of a candidate relates to this particular ad featuring Mr. Cornell du Houx.

Mr. Ellis said he believes there is value to Mr. du Houx in this video and the value is name recognition since his name is printed on the screen.

Mr. McKee asked how the ad meets the requirement that it be "made for the purpose" of influencing the election. He said that there may be some collateral benefit to Mr. Cornell du Houx but he did not see how the ad was made for the purpose of influencing the House race.

Ms. Thompson said the Commission is bound to adhere to definition within the statute which states that something must be "made for the purpose" of electing a candidate in order to be considered a contribution. She said the ad was not made for Mr. Cornell du Houx's race, but was made to influence the U.S. Senate race of Senator Collins.

Mr. Roy said if you go to VoteVets.org website, you see where Mr. du Houx is endorsed by that organization and this ad gives him recognition. He said no matter how the Commission votes on this issue

today, this loophole which allows for candidates to get valuable voter identification which has been paid for by a federal PAC or some other entity needs to be looked at more closely by the Commission.

Mr. Friedman clarified that the request today is to look at this loophole, not to make a determination on a complaint because no complaint has been filed. This issue can be brought back before the Commission for further discussion after the election. He also said this is a legitimate concern, but there is no need for any action today.

Agenda Item #4. Late Independent Expenditure Report by Maine Democratic Party

Mr. Wayne explained that the Maine Democratic Party filed an independent expenditure report in support of Senator Peter Bowman on September 26, 2008, which was seven days late. The party has submitted a letter explaining the cause of the late filing, and has paid the routine late-filing penalty of \$328.30. He said due to the delay in the reporting, the statute states additional penalties may be assessed because of the delay in matching funds to Sen. Bowman's opponent, former Sen. Mary Andrews. Mr. Wayne explained that the Commission staff recommends no further penalty since the delay caused no harm to Ms. Andrews because the Maine Democratic Party's campaign communication has not even been disseminated.

Mr. Arden Manning and Mr. Daniel Walker, Esq., Maine Democratic Party, said they discovered their mistake internally in the office and reported the expenditure immediately.

Mr. Walker said the mailing that was purchased for Peter Bowman just went out Tuesday of this week.

Mr. Youngblood said there was no reason to impose an additional penalty, especially since this occurred in September. He said if it had happened in October, the outcome may have been different.

Mr. Daniel Billings, on behalf of the Senate Republicans, said that they were satisfied with the explanation offered by Mr. Manning and agreed with Mr. Youngblood's assessment and the staff's analysis. He said no harm was done to the opponent. He said the parties handled this appropriately.

Mr. Marsano made a motion that there be no further action regarding the late report; Ms. Thompson seconded the motion. The motion passed unanimously (5-0).

Agenda Item #5. Inquiry regarding Express Advocacy in Party Mailings

Mr. Wayne said several House candidates have inquired informally whether they are entitled to receive matching funds under the Maine Clean Election Act as a result of mailers sent by the state Democratic and Republican parties in their districts. The Commission staff has found preliminarily that no matching funds are due because of the timing of the mailings (before the start of the rebuttal presumption period) and the lack of express advocacy. Mr. Wayne referred to the flyers from Jane Knapp and Kerri Prescott campaigns by way of example.

Mr. Billings said he agreed with the staff's analysis. He said that, after the election, the Commission should revisit this issue and reconsider some of the Commission's precedents. By way of example of the current interpretation of express advocacy, he referred to a recent mailing by the Maine Democratic Party in support of Deborah Simpson. The piece was intended to be an issue advocacy piece; however, in the production of the piece, the word "for" was added between the name of the candidate and the office she was seeking. The result was that the inclusion of the word "for" converted the piece into express advocacy, which triggered over \$13,000 in matching funds for Rep. Simpson's opponent. He said that this illustrates the absurdity of the rule. He said that the outcome is consistent with the Commission's precedents but he does not think the previous cases in 2006 were correctly decided. He said he has always advised people not to connect the candidate with the office in order to avoid triggering matching funds, based upon past decisions by the Commission.

Ms. Alison Smith, Maine Citizens for Clean Elections, said the area of express advocacy versus issue advocacy has been a sticky one. She said the MCCE has advocated for increasing the length of the rebuttal presumption period. She said that there is an outlet for true issue advocacy through the filing of a rebuttal statement. Otherwise, she stated that any literature dropped after Labor Day that named or depicted a clearly identified candidate should be considered electioneering speech. She said that the Commission moved the line regarding express advocacy with regard to certain political advertisements in the 2006 gubernatorial election. She said that at the time those decisions regarding the gubernatorial ads were made, she understood that the Commission based their decisions at least partly on the fact that the word "Governor" appeared in the television ads only briefly and fleetingly. However, the Commission used that decision as the basis for other decisions regarding static advertisements, such as palmcards and mailers, and determined that they were not express advocacy even if the name of the candidate and the office sought

appeared in the ad but did not have the word “for” between them. She maintained that the Commission’s rule on express advocacy creates a bright line and that communications that name a candidate and the office sought without using the preposition “for” should rightly be considered expressed advocacy under the rule because there is no other reasonable meaning than to urge the election of the candidate. She said that she did not think that the Commission’s decisions in 2006 were consistent with the rule. She said that she agrees that this issue needs to be revisited and that the line needs to be moved back to where it used to be.

Mr. Dan Walker, counsel to Maine Democratic Party, asked the Commission to consider whether expanding the period of time covered by the rebuttable presumption would actually accomplish anything if it is possible to simply file a rebuttal to the presumption. He asked the Commission to consider what the standard would be for a successful rebuttal to the presumption. In the statute, the standard is whether the communication was made “with the intent to influence the nomination, election or defeat of a candidate.” He asked the Commission whether it would be looking for express advocacy or something else in determining whether the presumption had been rebutted. He said that currently the parties take the 35 day period as a very clear line by which to distinguish issue and express advocacy.

Mr. Friedman asked what the Commission’s direction was with this matter.

Mr. Wayne said Mr. Levasseur has requested a determination on a mailer sent by his opponent, Jane Knapp, who used the word Representative in her mailing.

Mr. McKee stated that when someone asks for a determination, he would support the Commission providing one.

Mr. Friedman stated the issue before the Commission was whether the mailer sent out on behalf of Jane Knapp is express advocacy and trigger matching funds.

Mr. Youngblood said that he had not been involved in the Commission’s previous decisions and looking at the flyer today, it appears to him to be expressly endorsing a candidate. However, he said that he understood that under the Commission’s previous decisions the flyer would not be express advocacy. He said it would not be appropriate to change the rules part way through this election cycle, but he strongly

suggested the Commission thoroughly reconsider the issue of express advocacy versus issue advocacy before the next election.

Mr. McKee agreed with Mr. Youngblood.

Mr. Friedman also thought it was express advocacy. However, he also agreed that it would not be appropriate to change the rules in the middle of the election period.

Mr. Marsano made a motion to find no express advocacy in the Jane Knapp mailer and that there be no matching funds paid to Mr. Lavoisier; Mr. McKee seconded. The motion passed (4-1, Chair Friedman opposed).

Mr. McKee recused himself for the next agenda item due to a donation he made to this campaign.

Mr. Marsano disclosed that he made a donation to the Hanley campaign and is a very good friend. Mr. Marsano also stated that Mr. Hanley is not directly involved in this matter and he felt that he could remain fair and impartial in these deliberations.

Mr. Paul Dumas stated that he had no objection to Mr. Marsano participating in the matter.

Agenda Item #5A. Complaint Alleging Lack of Sponsorship Disclosure/Paul R. Dumas, Jr.

Mr. Friedman stated that Mr. Dana Hanley emailed the Commission stating that no action be taken regarding this matter.

Mr. Wayne confirmed this and said that Mr. Hanley stated in his email that he did not want the Commission to take any punitive action on this matter. Mr. Wayne further explained that an anonymous person filed a letter with the Commission stating that he or she had received a one-page pamphlet from the campaign of Paul R. Dumas for Judge of Probate in Oxford County, which lacked a statement identifying the person who made the expenditure for the communication. On its face, the literature is clearly from the candidate. In his written reply, Mr. Dumas states that he believes the pamphlet was a proof that he created on his laptop, and that the palmcard was modified before printing and included the required disclosure. Mr.

Dumas states that all of his advertising and upcoming mailings include the required disclosure, and believes his signs are in full compliance.

Mr. Friedman confirmed that the anonymous person was not present at the meeting.

Mr. Paul R. Dumas stated that the sign issue bothers him the most. He said that he has two types of signs, one being printed on cardboard and laminated and they all have the disclosure on the bottom. He said the other signs are wood made by Rep. John Patrick which also have the disclosure glued and staples onto the sign. He said three of his signs had the disclosure statement pried off with a knife or screwdriver and the labels were on the ground, the remaining 105 are fine. He said the tampered ones were repaired. He said he takes these accusations very seriously and wanted to be present in front of the Commission to answer any concerns or questions that may arise.

Rep. John Patrick provided pictures to the Commission of Mr. Dumas' sign. He said he traveled around the area and looked at 108 signs and all signs meet the requirements, including the three that were repaired because the disclosure was on both sides of the signs. He said he also saw many campaign signs that did not meet the requirements for disclosure. He spoke to the issue of anonymity and accusations that could be lodged with the Commission. He said complaints need to be based on facts provided to the Commission also in order to be credible. He said accusations need to be substantiated before they are brought out into the public arena.

Mr. Friedman said the Commission does not give anonymous complaints much credence. However, he said that the Commission has requested that Mr. Wayne put all complaints on the agenda and then the Commission decides whether to give them any credibility.

Mr. Marsano made a motion that no action be taken; Mr. Youngblood seconded. The motion passed unanimously (4-0).

Ms. Thompson excused herself from the meeting due to time constraints.

Agenda Item #6. Meeting Schedule for the Commission

The Commission determined that currently scheduled meetings for November 24, 2008 and December 29, 2008, are convenient for all.

Other Business

Mr. Wayne explained that Rep. Cynthia Dill had called the Commission with a concern that her leadership PAC had filed its October report late due to a death in her treasurer's family. She said she was concerned the penalty would be a black mark on her record. She requests a pre-emptive waiver of the penalty due to mitigating circumstances.

Mr. Friedman said he did not believe the Commission should waive circumstances that have not taken the proper course of normal procedure. He said if the staff finds a violation, Rep. Dill should come before the Commission at that time.

Executive Session

At 4:05 p.m., Mr. Friedman moved to go into executive session in accordance with Section 405, subsection 6(E) of Title 1 for the purpose of discussing pending litigation. The motion was seconded by Mr. Youngblood. The motion passed unanimously (4-0).

At 4:10 p.m., Mr. Friedman motioned to come out of executive session. Mr. Marsano seconded the motion. The motion passed unanimously (4-0).

Meeting adjourned at 4:11 p.m. by motion from Mr. Marsano; seconded by Mr. McKee. The motion passed unanimously (4-0).

Respectfully submitted,

Jonathan Wayne, Executive Director