

Agenda

Item #4



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

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: August 17, 2010  
Re: Brian Mello's Request concerning Maine Democratic Party Mailings

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The Maine Ethics Commission received a request from Brian Mello on behalf of his wife, Lois A. Snowe-Mello, who is the Republican nominee for State Senate, District 15. She is running against the incumbent Democratic State Senator, Deborah L. Simpson of Auburn. Ms. Simpson is serving in her first term in the State Senate, after defeating Ms. Snowe-Mello in 2008 in an extremely close general election. Both Simpson and Snowe-Mello are participating in the Maine Clean Election Act (MCEA) program.

Following the June 8, 2010 primary election, the Maine Democratic Party sent the three attached mailings to residents of Auburn and other communities within District 15 on themes of

- getting Maine's economy back on track
- making health insurance work, and
- balancing the state budget.

Mr. Mello asks the Commission to consider whether the three mailings qualify as "independent expenditures" in support of Deborah Simpson. If so, Ms. Snowe-Mello would be entitled to receive matching funds under the MCEA. These additional campaign funds would allow her to respond to the mailings sent by the Maine Democratic Party or to engage in other campaign speech.

## **Independent Expenditure Reporting Law**

In Maine state elections, the political parties, political action committees (PACs), and other organizations sometimes pay for communications to voters in order to influence candidate elections. *Some* of these communications require “independent expenditure” reporting. Under 21-A M.R.S.A. § 1019-B(1)(A) (attached), an independent expenditure is

any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate ....

(Emphasis added.) A person or organization that makes an independent expenditure of more than \$100 to support or oppose a candidate is required to file a financial report with the Commission, which includes the date, payee, amount, and purpose of the expenditure. (21-A M.R.S.A. § 1019-B(3))

As discussed below, the term “expressly advocate” is defined narrowly in the Commission’s Rules. Within the last 35 days before a general election, however, the independent expenditure reporting requirement covers a much wider range of communications. During this period, a communication is *presumed* to be an independent expenditure if it merely “names or depicts” a clearly identified candidate and if there is an MCEA candidate in the race. (21-A M.R.S.A. § 1019-B(1)(B)) The Maine Legislature has thus reached a policy decision that the independent expenditure reporting statute is relatively narrow during most of the general election season until the final 35 days before the election.

## **Matching Funds**

MCEA candidates for State Senate in the 2010 general election have received an initial payment of \$19,078 for the Senate. In addition, they may be eligible to receive additional public campaign funds (“matching funds”) that are intended to keep the participant on a roughly even playing field with the opponent and to respond to spending in their race by non-candidate organizations. Independent expenditures by the political parties, PACs, and others are taken into consideration for the calculation of whether a

candidate is entitled to receive matching funds. (21-A M.R.S.A. § 1125(9)) Thus, if the Maine Democratic Party is deemed to have made an independent expenditure to support Deborah Simpson, Ms. Snowe-Mello is entitled to receive matching funds under the MCEA program.

### **Brief History of the Express Advocacy Standard**

The term “expressly advocate” is defined in Chapter 1, Section 10(2)(B) of the Commission’s Rules. Under the Rule,

“Expressly advocate” means any communication that uses phrases such as “vote for the Governor,” “reelect your Representative,” “support the Democratic nominee,” “cast your ballot for the Republican challenger for Senate District 1,” “Jones for House of Representatives,” “Jean Smith in 2002,” “vote Pro-Life” or “vote Pro-Choice” accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, “vote against Old Woody,” “defeat” accompanied by a picture of one or more candidate(s), “reject the incumbent,” or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say “Pick Berry,” “Harris in 2000,” “Murphy/Stevens” or “Canavan!”.

Express advocacy is a term of art that has been adopted in the statutes and rules of several states. It was first used by the U.S. Supreme Court in a 1976 decision, Buckley v. Valeo, 424 U.S. 1 (1976). There, the Court interpreted some recent amendments to federal laws which required the disclosure of candidate-related expenditures by independent groups. The Court held that the U.S. Constitution allowed the government to require financial reporting about *some* speech that related to candidates for political office.

Nevertheless, the Court was concerned that the federal law was too vague, because people and groups engaging in political speech would not be able to know if they were required to file a campaign finance report with the Federal Election Commission (FEC). The Court was also concerned that the law was “overbroad,” meaning that the law as written required financial reporting for speech that was only remotely related to political candidates. Therefore, the Court limited that particular federal law to apply to speech that “expressly advocated” the election or defeat of a “clearly identified”

candidate. The Court drew the line at express advocacy in order to preserve speakers' rights to discuss political issues without filing financial reports with the FEC. In a footnote, the Court provided examples of express advocacy including: "vote for," "elect," "Smith for Congress," *etc.* These phrases become known as the "magic words."

In the decades that followed, several states and campaign finance agencies adopted the express advocacy standard into their campaign finance laws and administrative agency rules to make sure that their regulation of political speech did not exceed what the U.S. Supreme Court had allowed in Buckley. In 1995, the FEC adopted an administrative rule, 11 C.F.R. §100.22(a), which the Commission's Rule on express advocacy, adopted in 1998, closely tracks.

In the past decade, many observers noted that a large amount of political advertising about federal candidates avoided regulation because it did not expressly advocate (*i.e.*, by using the "magic words") the election or defeat of a candidate. In a December 2003 decision, McConnell v. FEC, 540 U.S. 93 (2003), the U.S. Supreme Court clarified that the express advocacy limitation is not constitutionally mandated, and that governments may regulate certain categories of political speech about clearly identified candidates even if the speech does not expressly advocate the election or defeat of a candidate, so long as the regulations are not vague and overbroad. Since that decision, some states and municipalities have chosen to broaden the definition of independent expenditures in the weeks just before an election, just as the Maine Legislature has since done by enacting 21-A M.R.S.A. § 1019-B(1)(B).

The express advocacy standard has been criticized by some reform advocates as too narrow and easy to circumvent. Nevertheless, the advantage of the express advocacy standard is that it provides predictability to the political parties and PACs wishing to know what candidate-related speech requires financial reporting, and it avoids government regulation of candidate-related speech that is protected by the U.S. Constitution.

Moreover, the express advocacy standard *is* the law in Maine for communications disseminated to voters more than 35 days before an election. PACs and party committees wishing to engage in speech about Maine state candidates deserve to have a campaign finance system which is predictable and which allows them to know whether their speech

will trigger matching funds and will require the filing of an independent expenditure report. While this Commission fulfills a unique function in the political process by ensuring a level playing field for MCEA candidates through the distribution of matching funds, it is no less a function of the Commission to safeguard the rights of individuals, PACs, and party committees to engage freely in political expression.

### **Past Express Advocacy Decisions**

Since 2000, the Commission has been asked to consider whether certain communications concerning candidates distributed by PACs and parties expressly advocated for or against the candidates' election. An index of the Commission's past decisions is attached, along with copies of the written communications. In the view of the Commission staff, these decisions by past Commissioners are not binding on you, but I have attached them for your background information. In my opinion, the examples of campaign literature that are most relevant are those concerning Lynn Bromley (considered by the Commission on 11/29/2000), Beth Edmonds (1/10/2001), and Peter Kent (10/17/2008). The Commission did not find these mailings to be express advocacy.

During the 2008 election season, the Commission received some criticism that it had narrowly applied its express advocacy rule in some of its October 20, 2006 decisions regarding mailers sent by the Maine Democratic and Republican Parties. The Commission asked the staff to convene a stakeholder group to consider the issue. The working group met in January 2009, and decided to recommend to the Commission that it apply a slightly broader interpretation of express advocacy.

After waiting for the U.S. Supreme Court's decision in the Citizens United case, the staff reported back to the Commission at its February 25, 2010 meeting. The staff proposed that the Commission adopt some changes on page 2 of its attached advice memo on independent expenditures ("Advice Regarding Independent Expenditures for the 2010 Elections") to clarify how it would apply its express advocacy rule in the future. The Commission adopted the changes proposed by staff, including:

- The memo notes that the Commission had found that 2008 literature concerning candidate Peter Kent sent by the Maine Democratic Party was not express advocacy.

- The memo states that if a communication to voters identifies the office sought by a candidate, the reference to the office *will favor* a determination that the meaning of the communication is to urge the election or defeat of a candidate. The memo, however, underscores that the express advocacy determination will be based on the “entire content” of the communication.

Both Brian Mello and the Maine Democratic Party rely on page 2 of the Commission’s February 25, 2010 advice memo.

### **Argument by Brian Mello**

In his July 9 letter requesting that the Commission consider this matter, Brian Mello argues that Deborah Simpson is identified as a member of the Maine Legislature by the references to her actions as a lawmaker in all three mailings and by the use of the word “lawmakers” in the health insurance mailing. He believes this supports a determination that the mailings expressly advocate for Ms. Simpson’s election. Also, Mr. Mello contends that the mailings were sent to independent voters in Senate District 15, which indicates that the mailings were intended to influence the election. He contrasts the mailings to Ms. Simpson’s “2010 Legislative Report” (also attached) which Mr. Mello accepts as a non-electoral constituent communication.

### **Response by the Maine Democratic Party**

In response to Brian Mello’s July 9 request, I sent a letter on July 22 to the Executive Director of Maine Democratic Party. I received a response from its attorneys at Preti Flaherty Beliveau and Pachios LLP. The party notes that the Simpson mailings do not contain the “magic word” phrases listed in the Commission’s express advocacy rule (“vote for,” “reelect,” “cast your ballot for,” *etc.*) The party states that “the purpose of these mailings was to educate voters on Deborah Simpson’s legislative accomplishments, Democratic positions on healthcare and the economy, and to survey voter opinion.” The party views the Simpson mailings as “issue education.”

The Maine Democratic Party states that it modeled the Simpson mailings on the 2008 Peter Kent literature that is cited on page 2 of the Commission’s February 25, 2010 advice memo. The party also mentions that it relied on advice from the Commission staff

concerning the Simpson mailings. In May, a representative of the Maine Democratic Party showed an earlier draft of the “balancing the budget” literature to the Commission staff. We advised that the party should delete the references to the State Senate to minimize the potential that the Commission could view that mailing as express advocacy. The staff advised the party that – with that change – the Commission staff would not view the mailing as express advocacy. We cautioned, however, that the Commission members would make an independent decision if a complaint were filed, and that advice from the Commission staff is never binding on the Commissioners.

### **Staff Analysis**

The Commission staff recommends that the Commission find that the three mailings do not expressly advocate for Deborah Simpson’s election and are not independent expenditures. The mailings do not contain any of the magic words constituting express advocacy under the Commission’s Rule (*e.g.*, “vote for” or “reelect” or “support”).

Also, we do not believe the content of the mailings meets the test of “hav[ing] no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates ....” There is no explicit urging of any kind in connection with an election. There is no mention of the election, of Ms. Simpson’s candidacy, or of the office of State Senator. The content of the mailings mostly concerns Ms. Simpson’s accomplishments in the Maine Legislature. The only urging in the mailings (sometimes referred to as a “call to action”) is to participate in an issues survey or to call Ms. Simpson to thank her for her activities. The Commission staff therefore believes that the communications do not qualify as expressly advocating for Ms. Simpson’s election.

The Commission staff acknowledges that the mailings *could* be motivated by the 2010 general election. We recommend, however, that you focus your attention on the “reasonable meaning” of the mailings, and not on the intentions of the Maine Democratic Party in paying for them. The staff believes that the party’s mission to elect Democratic candidates does not affect the meaning of the mailings.

We also believe a finding of no express advocacy will promote consistency in the Commission’s decisions. Predictability and consistency is important in the area of

express advocacy, because it is a perennial issue that comes before the Commission each election year. The political parties, PACs, and others do need to know where the express advocacy line is, so that they know whether they are required to file an independent expenditure report or not. The need for predictability and consistency is especially important in a gubernatorial election year.

Mr. Mello also asks the Commission to consider whether the Maine Democratic Party has made a contribution to Ms. Simpson. Under 21-A M.R.S.A. § 1015(5), if the party had consulted with Ms. Simpson, her campaign committee, or their agents concerning the mailings, the party's expenditures on the mailings would constitute a contribution to the candidate. We propose taking no action this aspect of Mr. Mello's request, because there is no evidence that the party consulted with the Simpson campaign.

### **Conclusion**

The staff recommends a finding that the three Maine Democratic Party mailings concerning Deborah Simpson do not expressly advocate for her election and are not independent expenditures. We do view the mailings as supportive of Ms. Simpson, but, in our view, they fall short of the standard of explicit electoral advocacy that would bring them within express advocacy as defined by the Chapter 1, Section 10(2)(B) of the Commission's Rules.



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is getting Maine's economy  
back on track...

**for his future.**

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is getting Maine's economy back  
for



**supported the historic jobs bond package that will put Mainers back to work, invest in Maine's transportation infrastructure and put Maine on the leading edge to develop clean energy.**

The jobs bond package will support and create nearly 3000 jobs in road construction, alternative energy fields, and provide needed capital to Maine's small businesses.

**Call Deb Simpson at 777-1379** and tell her you

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**his future.**



In the past two years Deb Simpson has worked with members of both parties to support a balanced budget and create new jobs to get Maine's economy moving again.



**Simpson has helped create and support jobs.**



**The Right Way. The Maine Way. Simpson has:**

Fought to pass the historic jobs bond with bi-partisan support

Led the way in passing a balanced budget without new taxes

Lowered rate of healthcare uninsured to one of the lowest in the country

appreciate her work to create jobs and get the economy moving again.

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U.S. Postage  
PAID  
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Permit #304

16 Winthrop Street  
Augusta, ME 04332

4 - 607 - 4 \*\*\*\*\*ECRLOT\*\*R 005

Anne Edwards  
Or Current Resident  
14 Tourmaline Ln  
Auburn ME 04210-9229

Paid for by the Maine Democratic Party, 16 Winthrop Street, Augusta, ME.  
Not Paid for or Authorized by any candidate.

# YOUR VIEWS ARE IMPORTANT TO US.

Please take a minute to fill out the following survey and return to:

MAINE DEMOCRATIC PARTY • 16 Winthrop Street • Augusta, ME 04332

Or visit [www.mainesdcc.org](http://www.mainesdcc.org) and fill out the complete survey online.

**1. Over the past two years Maine has cut more than \$1 billion in spending; if the state has to cut more spending in the future to balance the budget, where should those cuts come from?** Please put a check beside the project(s) that you agree with.

- K-12 Education
- Low Income Healthcare programs
- Environmental Protection Programs
- Public Safety and Corrections

**2. In Maine we strike the right balance between protecting personal freedoms and keeping everyone safe.**

- Agree
- Disagree

**3. Which of the following spending priorities will have the biggest long term impact on Maine?** Please put a check beside the project(s) that you agree with.

- Infrastructure
- K-12 Education
- Renewable Energy
- Health Care

**4. Please rank from 1 to 7 the issues that are most important to you with 1 being your top pick.**

- Jobs and the economy
- Environment
- Energy issues
- Health care
- Education
- Taxes
- Infrastructure

**5. What issues would you like to see addressed in the next two years?**

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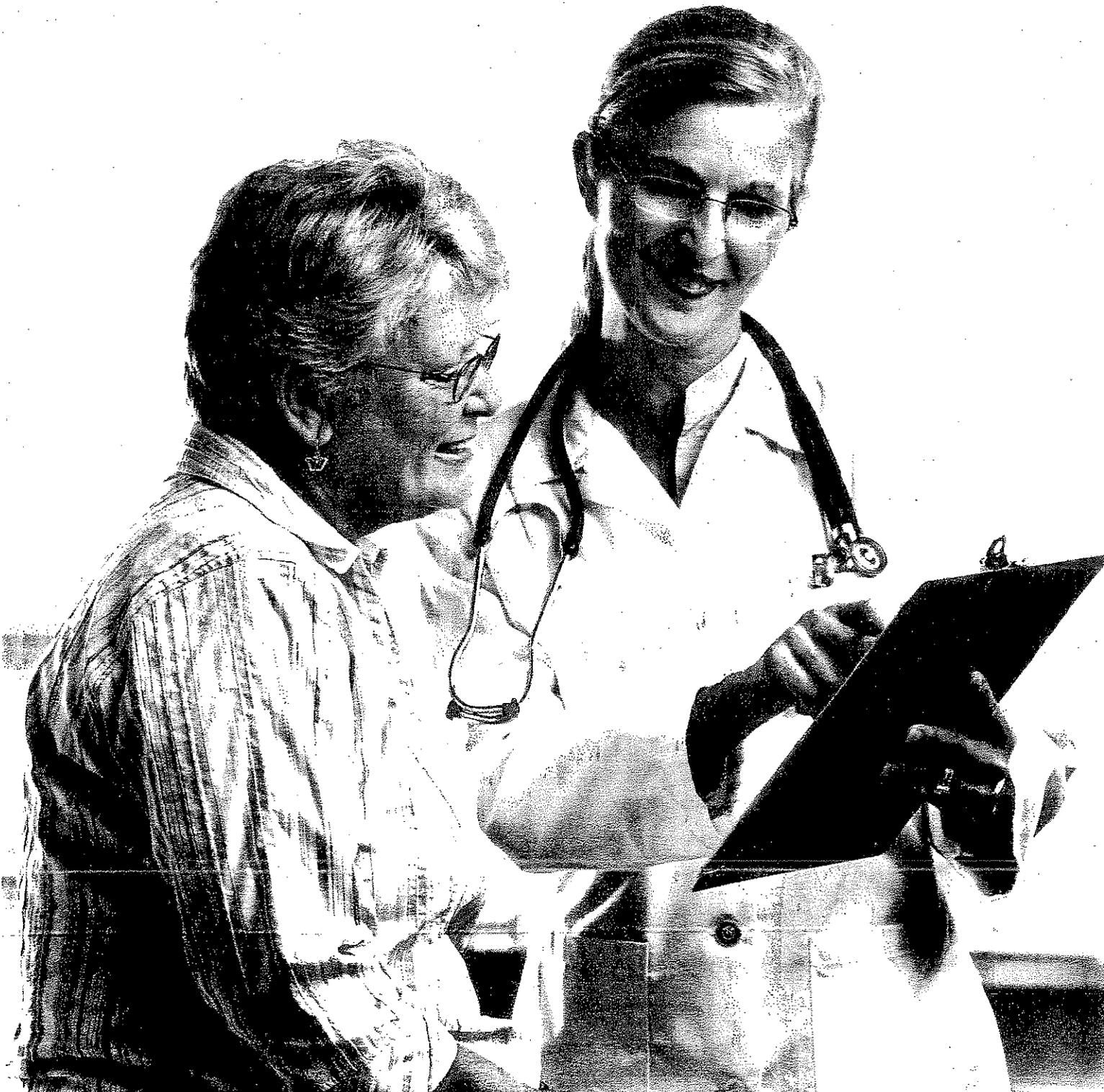
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# DEB SIMPSON

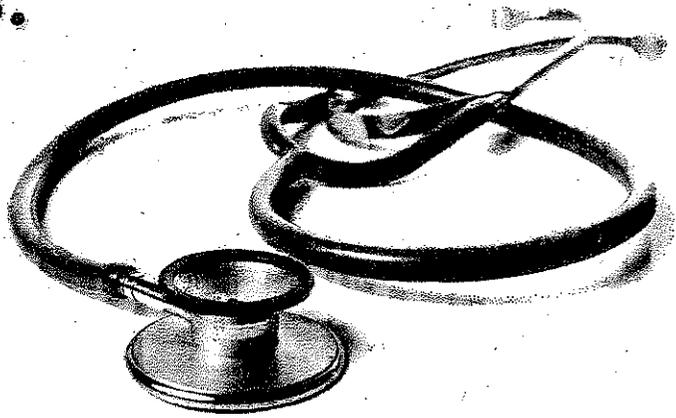
is making health insurance work  
*for Mainers.*

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# DEB SIMPSON

is making health insurance work  
*for Mainers.*



**Deb Simpson** supported a new law to require health insurance companies to disclose, in language everyone can understand, what health insurance plans cover. Too often, Maine families are faced with health insurance policy language that is meant to confuse patients rather than help them make informed decisions about their care.

**Deb** supported the **Patients Bill of Rights** which requires health insurance companies to provide coverage information in a format that is easy for everyone to understand.

## Simpson supported elimination of lifetime health insurance caps.

Deb Simpson joined other lawmakers and made Maine the first state in the nation to ban annual or lifetime health insurance caps for private insurance. Now, Maine families will have peace of mind when dealing with the financial costs of catastrophic illness.

## Simpson Joined Others Calling For Investigation of Anthem

## Maine Lawmakers Ask Congress to Investigate Anthem Rate Hike Request

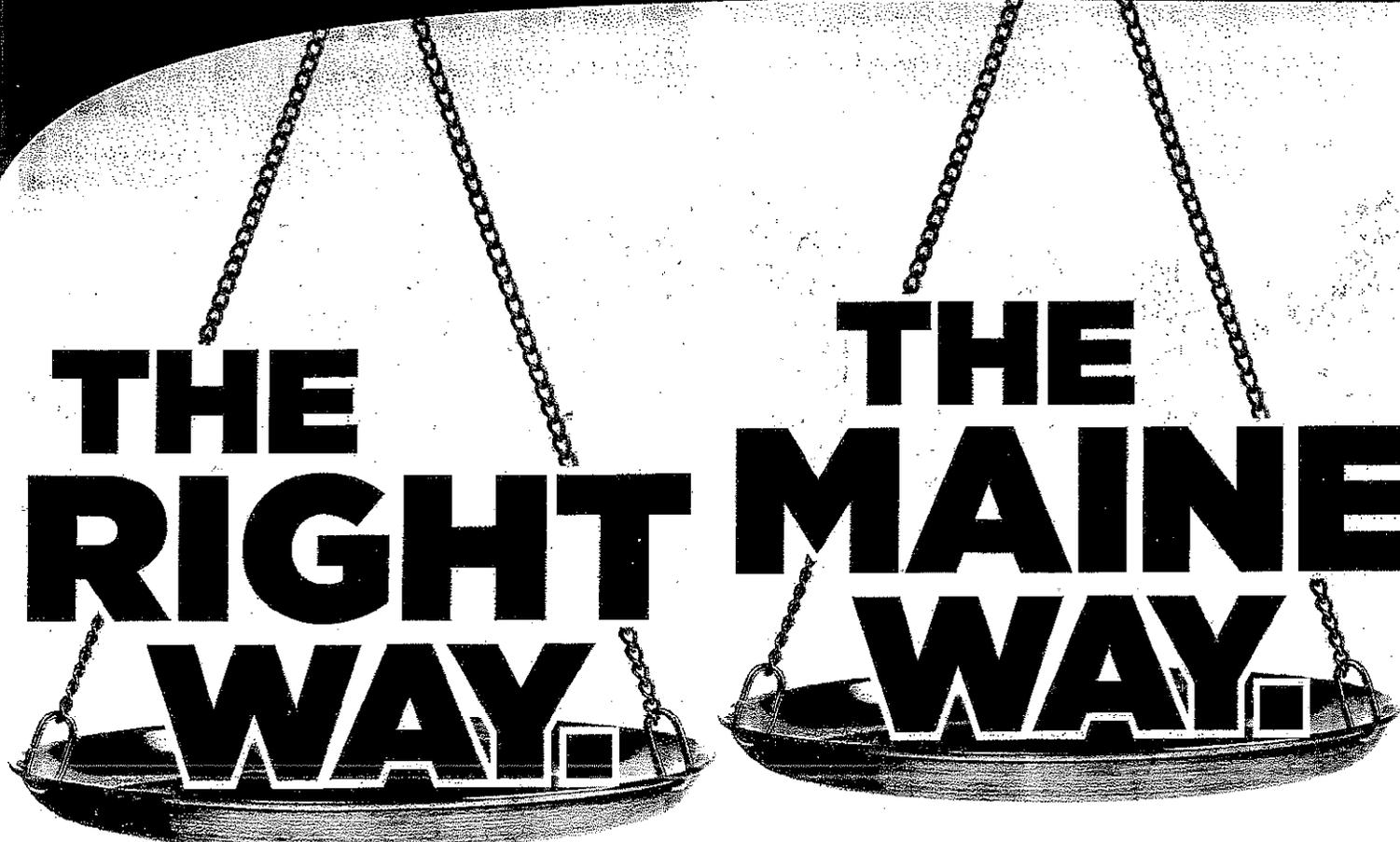
When Anthem Insurance requested a 23% premium increase despite making millions in profits, Deb Simpson joined the call to investigate Anthem to make certain Maine families pay a fair price for health insurance.

Call Deb Simpson at 777-1379 and tell her thanks for making health insurance work better for Maine families.



# DEB SIMPSON

BALANCED THE BUDGET.



**THE  
RIGHT  
WAY.**

**THE  
MAINE  
WAY.**



**DEB  
SIMPSON**  
BALANCED THE BUDGET.

**THE RIGHT WAY. THE MAINE WAY.**

**DEB SIMPSON IS WORKING FOR US.**



In the past two sessions Simpson has worked with members of both political parties to balance a state budget crippled by a national economic slowdown.

**Simpson balanced the budget without raising taxes.**

*"Passage of a budget  
without a lot of rancor - or tax increases -  
is an accomplishment."*

Bangor Daily News 4/20/2010

*The Bangor Daily News*

*has described the work being done in Augusta as being*

*"pretty remarkable"*

**AT A TIME WHEN OTHER STATES AND COMMUNITIES AROUND THE COUNTRY WERE RAISING TAXES AND SLASHING SERVICES,** Deb Simpson and her colleagues worked together to deliver a balanced budget to the Governor and protected the services those most in need rely upon.

Deb Simpson has led the way two years in a row to pass responsible budgets with bipartisan support, something accomplished by few other states in the nation.



Simpson has balanced the budget. Helped create jobs. Cut Taxes.

**THE RIGHT WAY. THE MAINE WAY.** Simpson has:

- \* Led the way in passing a balanced budget without new taxes
- \* Fought to pass the historic jobs bond with bi-partisan support
- \* Lowered rate of healthcare uninsured to one of the lowest in the country

**CALL DEB SIMPSON AT 777-1379**  
**AND TELL HER THANKS AND YOU APPRECIATE HER WORK.**  
**THE RIGHT WAY. THE MAINE WAY.**



## 21-A MRSA §1019-B. REPORTS OF INDEPENDENT EXPENDITURES

*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

**1. Independent expenditures; definition.** For the purposes of this section, an "independent expenditure":

A. Is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and [2003, c. 448, §3 (NEW) .]

B. Is presumed in races involving a candidate who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5 to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 21 days, including election day, before a primary election; the 35 days, including election day, before a general election; or during a special election until and on election day. [2007, c. 443, Pt. A, §20 (AMD) .]

[ 2007, c. 443, Pt. A, §20 (AMD) .]

**2. Rebutting presumption.** A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of making the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and must determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

[ 2003, c. 448, §3 (NEW) .]

**3. (TEXT EFFECTIVE UNTIL 8/1/11) Report required; content; rules.** A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements and matching fund provisions under chapter 14. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 448, §3 (NEW) .]

B. A report required by this subsection must contain an itemized account of each contribution or expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each contribution or expenditure and the name of each payee or creditor. The report must state whether the contribution or expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the contribution or expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate. [2003, c. 448, §3 (NEW) .]

C. A report required by this subsection must be on a form prescribed and prepared by the

commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. [2003, c. 448, §3 (NEW) .]

[ 2003, c. 448, §3 (NEW) .]

**3. (TEXT EFFECTIVE 8/1/11) Report required; content; rules.** A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election in a town or city that has chosen to be governed by this subchapter, a copy of the same information must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements and matching fund provisions under chapter 14. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 448, §3 (NEW) .]

B. A report required by this subsection must contain an itemized account of each contribution or expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each contribution or expenditure and the name of each payee or creditor. The report must state whether the contribution or expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the contribution or expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate. [2003, c. 448, §3 (NEW) .]

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. [2003, c. 448, §3 (NEW) .]

[ 2009, c. 366, §5 (AMD); 2009, c. 366, §12 (AFF) .]

**SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES**

1. **General.** Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.
2. **Definitions.** For purposes of this section, the following phrases are defined as follows:
  - A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
  - B. "Expressly advocate" means any communication that uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!".
  - C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
3. **Reporting Schedules.** Independent expenditures must be reported to the Commission in accordance with the following provisions:
  - A. Independent expenditures aggregating in excess of \$100 per candidate per election but not in excess of \$250 made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, except that expenditures made after the 14th day before an election must be reported within 24 hours of the expenditure.
    - (1) **Quarterly Reports.** Quarterly reports must be filed by 5:00 p.m. on:
      - (a) January 15th and be complete as of January 5th;
      - (b) April 10th and be complete as of March 31st;
      - (c) July 15th and be complete as of July 5th; and
      - (d) October 10th and be complete as of September 30th.



## Advice Regarding Independent Expenditures for the 2010 Elections

*This memo answers some frequently asked questions about whether independent expenditure reporting is required. A copy of the relevant law (21-A M.R.S.A. § 1019-B) is attached with the corresponding Commission rule regarding independent expenditures. For advice about how to file an independent expenditure report, please see the instructions on the reporting form.*

### What is an “independent expenditure?”

Independent expenditures are payments or obligations made by individuals and organizations, acting independently of candidate campaigns, for certain communications referring to clearly identified candidates.

More specifically, payments or obligations made for communications (for example, advertisements and literature) that expressly advocate the election or defeat of a candidate are always considered independent expenditures.

In addition, payments or obligations made for communications are presumed to be independent expenditures if the communication 1) is disseminated within 21 days before a primary election or within 35 days before the general election, 2) names or depicts a clearly identified candidate, and 3) involves a race in which a Maine Clean Election Act certified candidate is running.

These two periods before an election are referred to below as the “presumption periods.”

Presumption Periods for the 2010 Elections		
Election	Length (includes election day)	Dates
Primary	21 days	May 19 – June 8
General	35 days	September 29 – November 2

Some communications are exempt from the presumption, such as slate cards sent by political party committees (please see exceptions below).

### How do I know if my advertisement or literature “expressly advocates” the election or defeat of a candidate?

The term “expressly advocate” is defined in Chapter 1, Section 10(2)(B) of the Commission Rules, which is attached to this memo. The definition includes phrases such as “Jones for House of Representatives” or “Vote for the Governor,” and other words which in context can have no reasonable meaning other than to urge the election or defeat of one or more clearly identified candidates.

Since the Commission adopted the rule, the Commission has been asked whether certain communications constitute express advocacy. In order to provide better guidance to organizations making campaign-related expenditures, the Commission has attached to this memo three examples of campaign literature, which are discussed below.

In February 2010, the Commission gave further consideration to some of its prior determinations applying the express advocacy rule. As a result of this review, the Commission decided to clarify that, in a communication to voters, the identification of the office sought by a candidate named in the communication is a factor that the Commission generally will consider in favor of a determination that the meaning of the communication is to urge the election or defeat of a candidate. The determination of whether the communication constitutes express advocacy will be based on the entire content of the communication, and whether the communication has any reasonable meaning other than to urge the election or defeat of a candidate.

The Commission offers the following guidance on the attached three examples of campaign literature

- In the 2008 general election, the Maine Democratic Party mailed the attached literature concerning Peter Kent. Mr. Kent was a candidate for the Maine House of Representatives, but the literature did not mention his candidacy or the election.

This communication was determined not to contain express advocacy.

- In the 2006 general election, the Maine Democratic Party sent the attached literature in support of Anne Rand. In that election, Ms. Rand was a candidate for the Maine House of Representatives, but she was not an incumbent. Nevertheless, the front of the card included the phrase "Anne Rand/State Representative."
- In the 2008 general election, the Maine Republican Party mailed literature concerning Jane Knapp. Ms. Knapp was a candidate for the House of Representatives, and was not an incumbent. The literature did not mention her candidacy explicitly, but it contained the phrase "Maine Families Deserve a Representative Who Will Fight for Them."

With respect to the Anne Rand and Jane Knapp literature, the Commission advises that the identification of the office sought by a candidate named in a communication will favor a determination that the only reasonable meaning of the communication was to urge the election or defeat of a candidate.

### **If I make an independent expenditure, how does that affect a Maine Clean Election Act candidate?**

Independent expenditures are included in the Commission's determination of whether a Maine Clean Election Act candidate is entitled to receive matching funds. For example, if Candidate A and Candidate B (a Maine Clean Election Act candidate) are opponents in the general election, and a political action committee (PAC) makes an independent expenditure in support of Candidate A, Candidate B may be entitled to receive matching funds. The independent expenditure has the same effect regardless how Candidate A is financing his or her campaign.

### **How do I report independent expenditures?**

Please see the independent expenditure reporting form for instructions on how to file the report. Under the Commission's rules, entering into an obligation to make an independent expenditure may require the filing of a report regardless when the payment for the communication is made.

### **Does making an independent expenditure turn me or my organization into a political action committee?**

The definition of "political action committee" was changed in 2008. If an organization spends more than \$5,000 in a calendar year to influence candidate elections, it must register with the Commission as a political action committee, even if its major purpose is something other than the influencing of candidate elections. (21-A M.R.S.A. § 1052(5)(A)(5)) This new requirement does not apply to individuals.

If your organization's major purpose is to influence candidate or ballot question elections, please contact the Commission to find out what your registration and reporting requirements are.

### **I have heard that I should not coordinate my spending with the candidate I want to support. Why?**

Independent expenditures must be independent of the candidate. Any expenditure made by a third-party in consultation or cooperation with a candidate is considered to be a contribution to the candidate and is not an independent expenditure. For example, if a supporter wants to place an ad supporting a candidate in the local newspaper and asks the candidate to supply him with a campaign photograph, that is enough to make the entire cost of the ad a contribution to the candidate. The cost would have to be reported by the candidate, and the supporter would not be required to file an independent expenditure report. Since MCEA candidates cannot accept contributions, this is not permitted for them. It would be permissible for privately financed candidates to accept the payment for an ad as an in-kind contribution, but the cost of the ad must be \$350 or less because that is the contribution limit for legislative, county candidates and some municipal candidates. Gubernatorial candidates can accept contributions of \$750 or less.

### **What paid communications are covered by the rebuttable presumption?**

The law was designed to apply to written and oral communications intended to influence the nomination, election, or defeat of a candidate. Under the Commission's rules, the following types of communications are covered by the rebuttable presumption:

- Printed advertisements in newspapers and other media
- Television and radio advertisements
- Printed literature
- Recorded telephone messages
- Live scripted telephone calls or messages
- Electronic communications.

This list is not exhaustive and other types of communications may also be covered. In general, any expenditure that has all of the following four elements is covered by the rebuttable presumption:

- an expenditure made to design, produce, or disseminate a communication
- that is disseminated in the last 21 days before a primary election or in the last 35 days before a general election, and
- that names or depicts a clearly identified candidate
- who is in a race involving a Maine Clean Election Act candidate.

If the expenditure is covered by the presumption and is greater than \$100 per candidate, the person making the expenditure must either file an independent expenditure report or a signed statement that the expenditure was not made with the intent to influence the election (see below).

**What determines if a communication is made within the presumption periods that begin on May 19 and September 29?**

The presumption period applies to when the communication is disseminated to voters. The date of the dissemination is the date of the postmark, broadcast, or hand-delivery of the communication.

If expenditures are made before the presumption period to design or produce a communication that is then disseminated during the presumption period, the expenditure may nevertheless be covered by the presumption, and the costs of designing, producing, and disseminating the communication must be reported in an independent expenditure report.

**How do I rebut the presumption that the communication is a campaign-related independent expenditure?**

To rebut the presumption, the person making the expenditure must file a signed written statement that the expenditure was not made in order to influence the election. As a convenience, the Ethics Commission has developed a form that may be used for this purpose but using the form is not mandatory. The person filing a rebuttal statement is welcome to include any relevant evidence. It is acceptable to file the rebuttal statement by faxing it to (207) 287-6775. Please note that if the 48-hour deadline falls on a weekend, the report must be filed on a Saturday or a Sunday.

If a person has a specific communication that appears to be covered by the presumption, but the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

While there is no penalty for failing to file a statement rebutting the presumption within 48 hours, if the Commission determines that the communication was covered by the presumption and an independent expenditure report was not filed on time, the person making the expenditure could be assessed a penalty for late filing.

The Commission will take into consideration any evidence relevant under the statute, including the following:

- Does the language of the communication appear designed to influence the nomination, election, or defeat of a candidate?

- Was the communication disseminated to voters in the district of the candidate(s) mentioned in the communication?
- Was the communication disseminated to voters in other districts?
- How many voters received the communication?
- Is the communication directed to voters at all?
- Does the communication seem primarily designed for some identifiable purpose other than influencing the nomination, election, or defeat of a candidate?
- Does the communication mention all candidates running in the district?
- When was the communication produced, and when was it distributed?

#### **What if the cost of a communication is less than \$100 per candidate?**

The definition of independent expenditure applies only to expenditures for communications. If the person making the communication did not spend or obligate more than \$100 per candidate to design, produce, or disseminate the communication, no independent expenditure report or rebuttal statement is necessary. However, once the aggregated costs for any candidate exceed \$100, a report must be filed for communications regarding that candidate.

*Example: a community organization maintains a list of e-mail addresses of individuals who are concerned about local economic development issues. At no cost, it sends an e-mail to the concerned citizens endorsing a legislative candidate. The organization would not be required to file an independent expenditure report or submit a rebuttal statement because the communication involved no expense.*

Please note that if an organization uses materials produced by another entity (e.g., a legislative scorecard), the cost of producing that material must be included in the total amount for that communication (see below).

#### **Are there any expenditures that are exempt from the reporting requirement and the rebuttable presumption?**

Certain election-related activities are excluded from the legal definition of "expenditure" in the Election Law. Because these activities are not considered expenditures, they do not need to be reported as independent expenditures and the rebuttable presumption does not apply to them. These excluded costs include:

- News stories and editorials distributed through a broadcasting station, newspaper, or other periodical;
- Any communication from a membership organization (e.g., a union or trade association) or corporation to its members or stockholders if that organization is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
- Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate;
- The use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
- The payment by a party committee for a slate card or party candidate listing (see definition below).

For a full list of exceptions to the legal definition of "expenditure," see 21-A M.R.S.A. § 1012(3)(B).

### **Isn't there an exception for communications naming three or more candidates?**

There is an exception for communications involving three or more candidates, but it applies only to state and local party committees and only to communications that meet the following requirements:

- The communication lists the names of at least 3 candidates for election to public office (this can be a combination of federal, state, and local candidates).
- The communication is distributed through public advertising such as broadcast stations, cable television, newspapers and similar media, and through direct mail, telephone, electronic mail, publicly accessible sites on the Internet or personal delivery.
- The treatment of all candidates in the communication is substantially similar (although if required by federal law, a federal candidate may be treated differently).
- The content of the communication is limited to:
  - (1) The identification of each candidate, with which pictures may be used;
  - (2) The offices sought;
  - (3) The offices currently held by the candidates;
  - (4) The party affiliation of the candidates and a brief statement, including campaign slogans, about the party's or the candidates' positions, philosophy, goals, accomplishments, or biographies;
  - (5) Encouragement to vote for the candidates identified;
  - (6) Information about voting, such as voting hours and locations; and
  - (7) Campaign or party logos.

If the communication contains language outside the categories of this paragraph, it does not qualify as a slate card.

### **Are telephone communications covered by the rebuttable presumption?**

In the view of the Commission, the rebuttable presumption in Section 1019-B would cover automated telephone messages and live calls from individuals that are scripted, if the communications have the four elements described above on page 4.

### **Are there any individuals or organizations that are exempt from the presumption?**

Section 1019-B does not exempt any category of individuals or organizations from the rebuttable presumption. Nevertheless, as noted above, some expenditures by membership or news organizations and party committees are excluded from the legal definition of expenditure, and therefore are not covered by the independent expenditure law.

### **Does my membership organization have to report its communications to its members?**

The Election Law contains an exemption for membership organizations that are not organized primarily for the purpose of influencing an election. Communications from those organizations to their members are not considered expenditures, and therefore are not considered independent expenditures. However, if the communication expressly advocates for the election or defeat of a candidate and the cost of the communication is more than \$50 in any one candidate's election, the expenditures must be disclosed in a special report required by 21-A M.R.S.A. § 1019-A. Those expenditures, however, will not trigger matching funds under the Maine Clean Election Act.

### **What if the costs of producing the communication are paid for by an organization that is different than the organization that disseminates the communication? Which organization must file an independent expenditure report or a rebuttal statement?**

Some of the questions posed to the Commission suggest that organizations may purchase or produce copies of a written communication (such as a legislative scorecard or voting record) and provide them to another organization that will distribute them. Persons paying for or disseminating communications covered by the presumption will be expected to demonstrate a high degree of good faith to ensure that all design, production, and distribution costs are reported to the Commission so that the correct amount of matching funds will be received by MCEA candidates.

When calculating whether it has spent more than \$100 per candidate, an organization that has been supplied printed communications covered by the presumption and that distributes them must report *both* its own distribution costs *and* the value of the materials it has distributed. The Commission requests that the organization make a good faith effort to determine the value of the materials by ascertaining the *actual* design and production costs of the materials distributed. If the actual costs cannot be determined with a reasonable effort, the organization should estimate the fair market value of the materials it has distributed. Both the distribution costs and the value of the materials must be included in the independent expenditure report, unless the organization has filed a rebuttal statement.

*Example: A PAC receives 500 copies of literature referring to a candidate that it distributes one week before the general election in order to influence the outcome of the election. By checking with the person or organization that supplied the literature, the PAC determines that the actual cost of the literature was \$400. The PAC spends \$200 distributing the literature. The PAC should file an independent expenditure report with a total expenditure of \$600.*

### **What about legislative scorecards or voting records of legislators?**

Some organizations produce literature that summarizes legislators' voting records on particular issues and rates the legislators on their voting records. If these communications have the four elements of the rebuttable presumption described above on page 4, the person paying for or disseminating the literature will be required to file either an independent expenditure report or a written statement rebutting the presumption if more than \$100 is spent in any candidate's race. For communications that refer to multiple candidates, the Commission's rule (attached) explains how to allocate the cost among the candidates.

The Commission will consider each rebuttal statement on a case-by-case basis. The determination will depend on the factors listed above, and any other evidence deemed relevant

by the Commission. As noted above, many communications sent by a membership organization to its members are not covered by the rebuttable presumption.

**Are communications designed to encourage individuals to register to vote or to vote covered by the presumption?**

The Election Law excludes from the legal definition of expenditure “activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate.” (21-A M.R.S.A. § 1012(2)(B)(10)) Those communications are not covered by the rebuttable presumption. If communications designed to encourage individuals to register to vote or to vote name or depict a clearly identified candidate and meet the other requirements of the presumption (including the \$100 per candidate threshold), the person making the expenditure may rebut the presumption by filing a written statement explaining that the materials were distributed for the purpose of encouraging voting or registration and were not intended to influence the election.

**Are polling, voter surveys, and public opinion research covered by the presumption?**

Some live scripted conversations made by telephone callers within the presumption periods could be covered by the rebuttable presumption. If a public opinion survey within the presumption periods contains references to a candidate, and the person funding the survey believes that the references were not made with the intent to influence the election, the person should file a rebuttal statement. If a survey relates to a public issue and does not mention a candidate’s name, it is not subject to the presumption and no report or rebuttal statement must be filed. If public opinion research (e.g., voter identification information) is contributed to a PAC to influence an election, the PAC must report the research as an in-kind contribution including the fair market value of the research.

**Are Section 527 organizations covered by the law?**

National organizations are subject to the Maine Election Law if they raise or spend money regarding state candidates in Maine. This includes so-called Section 527 organizations that are organized outside the State of Maine. If a Section 527 organization makes an expenditure that is covered by the rebuttable presumption, it is required to file an independent expenditure report or a rebuttal statement.

**What is the consequence of filing an independent expenditure report late?**

The late filing of an independent expenditure report can result in the assessment of a civil penalty up to \$5,000 under 21-A M.R.S.A. § 1020-A(4).

## 21-A M.R.S.A. § 1019-B. REPORTS OF INDEPENDENT EXPENDITURES

**1. Independent expenditures; definition.** For the purposes of this section, an "independent expenditure":

A. Is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and

B. Is presumed in races involving a candidate who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5 to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 21 days, including election day, before a primary election; the 35 days, including election day, before a general election; or during a special election until and on election day.

**2. Rebutting presumption.** A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the Commission within 48 hours of making the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The Commission may gather any additional evidence it deems relevant and material and must determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

**3. Report required; content; rules.** A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the Commission. In the case of a municipal election, a copy of the same information must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the Commission according to a reporting schedule that the Commission shall establish by rule that takes into consideration existing campaign finance reporting requirements and matching fund provisions under Chapter 14. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, Chapter 375, subchapter 2-A.

B. A report required by this subsection must contain an itemized account of each contribution or expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each contribution or expenditure and the name of each payee or creditor. The report must state whether the contribution or expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the contribution or expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

C. A report required by this subsection must be on a form prescribed and prepared by the Commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

**COMMISSION RULES, CHAPTER 1, SECTION 10  
REPORTS OF INDEPENDENT EXPENDITURES**

1. **General.** Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.
  
2. **Definitions.** For purposes of this section, the following phrases are defined as follows:
  - A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
  
  - B. "Expressly advocate" means any communication that uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!".
  
  - C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
  
3. **Reporting Schedules.** Independent expenditures must be reported to the Commission in accordance with the following provisions:
  - A. Independent expenditures aggregating in excess of \$100 per candidate per election but not in excess of \$250 made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, except that expenditures made after the 14th day before an election must be reported within 24 hours of the expenditure.

- (1) **Quarterly Reports.** Quarterly reports must be filed by 5:00 p.m. on:
  - (a) January 15th and be complete as of January 5th;
  - (b) April 10th and be complete as of March 31st;
  - (c) July 15th and be complete as of July 5th; and
  - (d) October 10th and be complete as of September 30th.
- (2) **Pre-Election Report.** A report must be filed by 5:00 p.m. on the 14th day before the election is held and be complete as of that day.

If the total of independent expenditures made to support or oppose a candidate exceed \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure. As long as the total amount spent with respect to the candidate does not exceed \$250, all reports must be filed according to the deadlines in this paragraph. If the total amount spent per candidate exceeds \$250, the reports must be filed in accordance with paragraph B.

[NOTE: FOR EXAMPLE, IF A COMMITTEE MAKES THREE \$80 EXPENDITURES IN SUPPORT OF A CANDIDATE ON SEPTEMBER 20, THE 15TH DAY BEFORE THE ELECTION AND THE 8TH DAY BEFORE THE ELECTION, THOSE THREE EXPENDITURES MUST BE REPORTED ON OCTOBER 10th, AND THE 14TH AND 7TH DAYS BEFORE THE ELECTION, RESPECTIVELY.]

- B. Independent expenditures aggregating in excess of \$250 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission within 24 hours of those expenditures. If any additional expenditures, regardless of amount, increase the total spent per candidate above the threshold of \$250, each additional expenditure must be reported within 24 hours.

[NOTE: FOR EXAMPLE, IF A COMMITTEE HAS REPORTED INDEPENDENT EXPENDITURES TOTALING \$300 IN SUPPORT OF A CANDIDATE, AND THE COMMITTEE MAKES AN ADDITIONAL \$50 INDEPENDENT EXPENDITURE IN SUPPORT OF THE CANDIDATE, THE ADDITIONAL \$50 EXPENDITURE MUST BE REPORTED WITHIN 24 HOURS.]

- C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate. Reports filed after the eighth day before an election must include the following information:

1. the date on which the person making the expenditure placed the order with the vendor for the goods or services;

2. the approximate date when the vendor began providing design or any other services in connection with the expenditure;
  3. the date on which the person making the expenditure first learned of the total amount of the expenditure; and
  4. a statement why the expenditure could not be reported by the eighth day before the election.
- D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.
4. **Multi-Candidate Expenditures.** When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.

- A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

[NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]

- B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]

- C. If a candidate who has received matching funds because of a multi-candidate communication believes that he or she deserves additional matching funds because the communication disproportionately concerns his or her race, the Commission may grant additional matching funds in proportion to the relative treatment of the candidates in the communication.

5. **Rebuttable Presumption.** Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate in a race involving a Maine Clean Election Act candidate and that is disseminated during the 21 days before a primary election and 35 days before a general election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) Printed advertisements in newspapers and other media;
- (2) Television and radio advertisements;
- (3) Printed literature;
- (4) Recorded telephone messages;
- (5) Scripted telephone messages by live callers; and
- (6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.

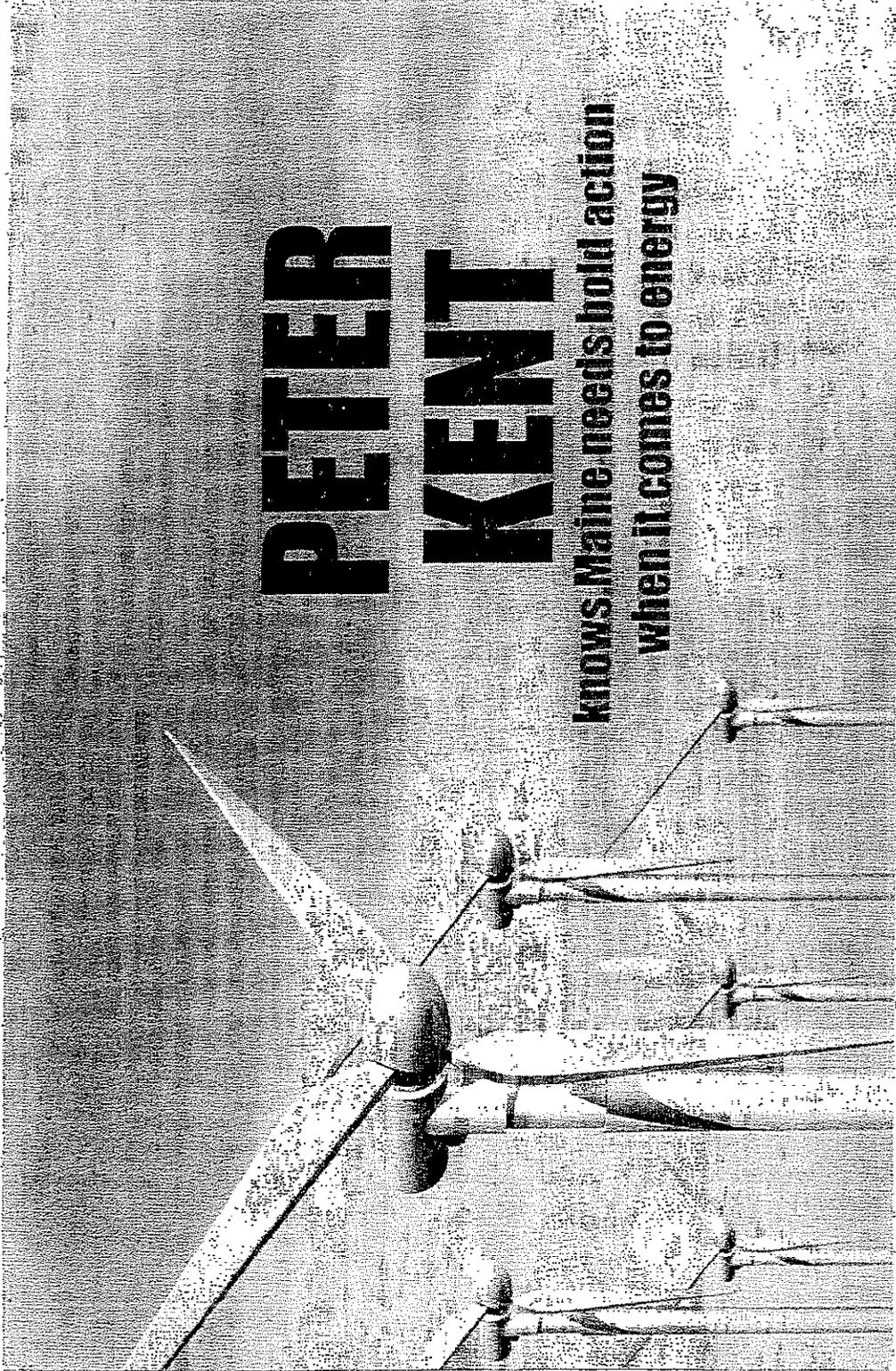
B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate, the candidate's immediate family, or a political committee;
- (2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;
- (3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
- (4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
- (5) other communications and activities that are excluded from the legal definition of "expenditure" in the Election Law.

- C. If an expenditure is covered by the presumption and is greater, in the aggregate, than \$100 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. Independent expenditures aggregating \$100 or less per candidate per election do not require the filing of an independent expenditure report or a rebuttal statement.
- D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the applicable 21-day or 35-day period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.
- E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.
- F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.
- G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

# PETER KENT

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when it comes to energy**





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& ELECTION PRACTICES INDIANA, INC.  
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ANNE RAND



Anne Rand

Anne Rand  
State Representative

**ANNE RAND**

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AND LOWER TAXES*

- Expanding property tax relief for Maine home owners
- Targeting tax relief for the middle class and small businesses, not Bush's billionaires
- Eliminating the tax on business equipment to nurture Maine's small businesses

**ANNE RAND**

*STRENGTHENING COMMITTEES  
AND PROTECTING FAMILIES*

- Increasing the number of...
- Protecting...
- Increasing...
- ...

# ANNE RAND

State Representative

MAINE VALUES, AN INDEPENDENT VOICE

Paid for by the Maine Democratic Party, 16 Winthrop Street, Augusta, ME 04332  
This Communication is not authorized by any candidate or candidate's committee.

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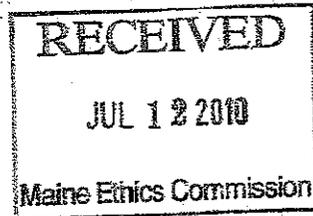
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Mr. Jonathan Wayne  
Commission on Governmental Ethics  
and Election Practices



July 9, 2010

Dear Mr. Wayne:

I am writing pursuant to a number of political mailings that have been sent out by the Maine Democratic Party highlighting Senator Deb Simpson. I have put in your possession originals of these mailings which I request the Commissioners to review with the express purpose of determining if they are an independent expenditure to promote Senator Simpson, or are they a campaign contribution?

It is my view after carefully reviewing the publication, "Advice Regarding Independent Expenditures for the 2010 Elections," that matching funds should be allowed. Some of the bases for making this assumption are as follows:

The mailings are for one person only, not three or more candidates. This person for whom the mailing benefits is a candidate for reelection who has an opponent who is a registered clean election candidate. In the mailings, Deb Simpson was clearly identified as a Maine Lawmaker as such she is identified as a legislator. This is similar to an example on page 2 of the Ethics Publication which found that such identification in a communication will favor a determination that the only reasonable meaning of the communication was to urge the election or defeat of a candidate.

Another factor to consider relevant to page 4 - 5 would be: Does the communication appear designed to influence the nomination, election, or defeat of a candidate? The communications were thinly veiled and meant to put Senator Simpson in the most flattering light possible to potential voters. Was the communication disseminated to voters in the district of the candidate mentioned in the communication? Yes they were but not directed to occupant or resident so that everyone would receive them. Instead they were targeted to registered independents mostly. How many voters received the communication? Again mostly independents with possibly some democrats to veil its true purpose, influencing independents needed to win the election. Is the communication directed to voters at all? Yes, because of the numbers of independents that received the communication a list of registered voters was probably used. Does the communication seem primarily designed for some identifiable purpose other than influencing the nomination, election, or defeat of a candidate? Though disguised as an educational communication, a rational person can see past the veil and determine that it is promoting a candidate. Does the communication mention all candidates running in the district? No, It clearly singles out and promotes Senator Simpson. When was the communication produced, and when was it distributed? The communications started coming out immediately after the primary election in order to avoid the presumption dates and followed one another in quick succession, however considering the time it takes to design, publish and mail a communication, it had to be considered, designed and published during the primary.

The Democratic Party representatives discussed avoiding matching funds with ethics personnel however their past performance in the last campaign in which they showed ethics personnel one communication and the mailed another might leave their motives suspect.

Although the knowledge of the regulations by the commissioners vastly outweighs mine and there might be other pertinent examples, I will leave that to them to investigate and hope that the examples that I have provided will be enough for them to decide to look further into this matter.

I remain respectfully yours,



Brian K. Mello



# 2010 LEGISLATIVE REPORT



## Senator Deb **Simpson** DISTRICT 15

### Senate Wraps Up 2010 Legislative Session

#### CONTACTING SENATOR SIMPSON:

Home Address:  
551 Turner Street  
Auburn, ME 04210

Home Telephone:  
(207) 777-1379

Senate Office:  
3 State House Station  
Augusta, Maine 04333

Phone:  
207-287-1515

Dear Friends and Neighbors,

It has been an honor to serve as your Senator for the past two years. This newsletter contains information about some of the legislation that was passed this session. I am proud of our accomplishments and the way we all worked together to overcome the challenges created by the global recession. In the last 18 months, we closed a nearly \$1 billion budget gap while holding the line on taxes, maintaining the safety net and making state government work better for the people it serves—you.

My focus has been on helping people and making the bureaucracy fairer and more responsive. As always, I encourage you to contact me with any problems you have with the state. I can be reached by phone at 287-1515 or by email at: [www.mainesenate.org/simpson](http://www.mainesenate.org/simpson). I'll be glad to hear from you.

Sincerely,

Deb Simpson  
Senator, District 15

#### Sign Up for Updates!

To keep you informed as things happen here at the State House, you can sign up for a weekly email update. To receive this email, please visit [www.mainesenate.org](http://www.mainesenate.org) and enter your address under "Join Our Mailing List"

# Tougher Penalties for Animal Cruelty

Several well-publicized cases involving the abuse of large numbers of animals highlighted the need to strengthen our animal cruelty laws. This year, I sponsored a bill to make cruelty towards animals a more serious crime. This new law toughens the penalties by allowing the state to charge the criminals for the cost of relocating the animals involved and adding probation as part of the sentencing. This change is especially important as these criminals tend to be repeat offenders and are often violent against people as well. Probation can help cut down on future violations.



## Silver Alert Program

It is estimated that of the 30,000 people suffering from Alzheimer's in Maine, 60% will at some point wander away from their caregiver. This session we established the Silver Alert Program, a significant step that makes our seniors safer. Much like the Amber Alert, the Silver Alert is aimed at finding missing persons who suffer from dementia and other cognitive disorders. This legislation will greatly aid in finding individuals who have gone missing.

## Preserving Maine's Water Quality

In one weekend, the untreated sewage of two recreational boaters contributes the same amount of pollution into the water as the treated sewage of 10,000 people. This year, the Legislature worked to protect Maine waters from this type of pollution by phasing out overboard discharges and improving boat pump-out laws. The state will provide grants to help boaters install systems that eliminate the need to discharge waste. We will also improve the accessibility of sanitation pump-out stations at marinas. These steps will keep our waters clean without placing a burden on Maine boaters.



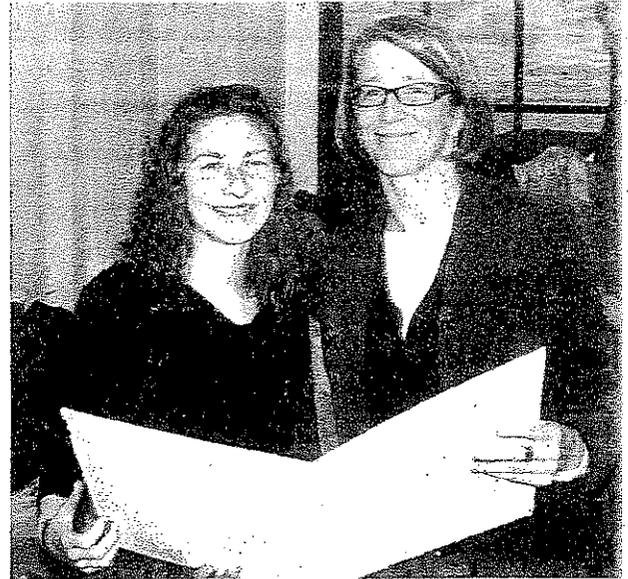
# Promoting Energy Independence

## Making Utilities More Efficient

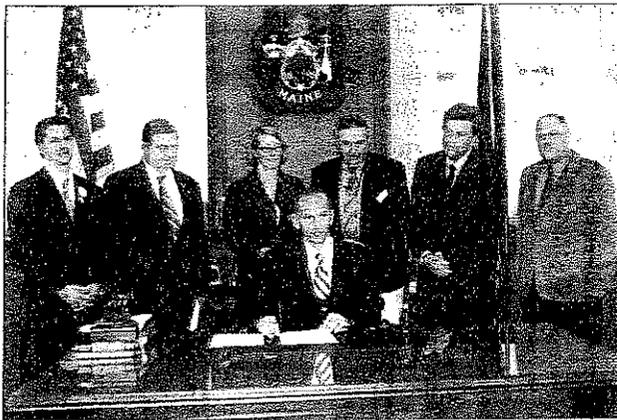
Up to one third of all electricity is lost between the generator and the user. By taking advantage of advancing technology, the Legislature was able to support initiatives that will manage energy use through the creation of a "smart grid policy". This development will improve efficiency, enhance reliability and reduce the cost of electricity for Maine consumers.

## Promoting Renewable Energy

Many Maine residents have taken advantage of solar and wind power incentives. For some though, solar and wind alternatives are not an option, but ground-source heat pump systems are. Legislation was passed directing the Governor's Office of Energy Independence and Security to examine ways to promote and provide incentives for the installation of residential geothermal heating and cooling systems. This brings Maine another step closer to energy independence.



# Protecting Maine's Workers



## Loggers

In the logging industry, highly skilled Maine workers consistently struggle to find work. The lack of employment is due in part to unfair competition from foreign labor and lax enforcement of outdated laws. This session we leveled the playing field and improved opportunity for Maine loggers by subjecting companies that violate foreign labor certification laws to increased penalties, including higher fines and certain prohibitions on hiring foreign laborers. This law gives Maine workers an opportunity to compete for jobs in the Maine woods and punishes companies that use foreign workers improperly.

## Educators

Facing budget shortfalls, some school districts are cutting costs through furlough days instead of layoffs. For educators nearing the end of their careers, this should not have to result in a lifetime reduction in retirement income. To prevent this, I sponsored legislation giving public school employees the option of buying back the time lost due to furlough days so they can maintain the retirement benefits they have earned.

## Vacation Pay

The Legislature passed a law that will honor earned vacation pay and protect unemployed workers from further economic hardship. Under current law, if an employee has vacation time that they have not used and they are laid off, they may not receive any unemployment benefits until they exhaust their vacation time. Under the new law, vacation time is rightfully treated as earned income and will not prevent a worker from collecting unemployment. This is simply a matter of fairness.

2010 Legislative Summary  
Senator Deb Simpson  
3 State House Station  
Augusta, ME 04333

www.mainesenate.org/simpson  
(207) 287-1515

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## LOOKING OUT FOR FAMILIES

### Standing Up for Mainers When They Are Down

We have heard many stories of individuals and families who end up in debt due to an illness. Often times that extraordinary debt negatively impacts their credit report. That was until now. The Legislature enacted a measure to ensure that low income people who make the minimum payments on medically related debt do not have their credit ruined. At its most basic level, this new law protects Maine's poorest families from having their credit destroyed even though they are paying their bills. This step is long overdue.

### Savings Accounts for Low-Income Mainers

With low cost checking accounts, direct deposit and readily available ATMs, most people take basic financial services for granted. For others, primarily lower-income Mainers, cashing a paycheck and paying for checks and money orders eats up a large portion of their income. In fact, those basic services can cost as much as 10% of someone's earnings! This year I proposed the Bank on ME working group comprised of municipal officials and representatives of state and federal financial institutions, community organizations and state agencies to develop ways of connecting low-income people with basic financial services. This will help the working poor get the most out of their income and give them a path out of poverty.





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

July 22, 2010

**By E-Mail and Regular Mail**

Mary Erin Casale  
Executive Director  
Maine Democratic Party  
PO Box 5258  
Augusta, Maine 04332

Dear Ms. Casale:

The Maine Ethics Commission received a request for investigation from Brian Mello on behalf of his wife, Lois Snowe-Mello, who is the Republican nominee for State Senate, District 15. She is running against the incumbent State Senator, Deborah Simpson, a Democrat. I will be scheduling Mr. Mello's request for the Commission's meeting on Thursday, August 26, 2010 at the Commission's office at 45 Memorial Circle, 2<sup>nd</sup> floor, in Augusta.

**Independent Expenditure**

Mr. Mello asks the Commission to consider whether the mailings expressly advocate for the election of Sen. Simpson, in which case the Maine Democratic Party has made an independent expenditure under 21-A M.R.S.A. § 1019-B(1) (attached). Express advocacy is defined in Chapter 1, Section 10(2)(B) of the Commission's Rules. Mr. Mello is relying on an advice memo which the Commission approved at its February 25, 2010 meeting entitled Advice Regarding Independent Expenditures for the 2010 Elections (available on the Commission website).

When Mr. Mello came to the Commission office to deliver the original mailings, he clarified that he is referring to the advice on page 2 of the memo that "[i]dentification of the office sought by a candidate named in the communication *is a factor* that the Commission *generally will consider in favor* of a determination that the meaning of the communication is to urge the election or defeat of a candidate." (italics added to quotation) He believes the reference to "lawmakers" in the health insurance mailing, when combined with the references to actions by Ms. Simpson as a Legislator, could overall be viewed as a reference to the State Senate – the office to which Ms. Simpson is seeking re-election. Mr. Mello also believes that the reference to "lawmakers" is analogous to the use of "Representative" in the Jane Knapp literature cited by the Commission as an example of a factor in favor of express advocacy ("Maine Families Deserve a Representative who will Fight for Them").

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

I have also attached a 2010 Legislative Report from Sen. Simpson, which Mr. Mello told me he views as a straightforward constituent communication.

### **Contribution**

Mr. Mello asks the Commission to consider whether the Maine Democratic Party has made a contribution to Ms. Simpson. Under 21-A M.R.S.A. § 1015(5), if the party had consulted with Ms. Simpson, her campaign committee, or their agents on the mailings, they would constitute a contribution to the candidate.

### **Requested Response**

To assist the Commission in considering this matter, please respond to Mr. Mello's request no later than Friday, August 6, 2010. In your response, please address the following:

- (1) Do any of the mailings expressly advocate for the election of Deborah Simpson, as defined in the Commission's Rule? If not, please explain why.
- (2) If the mailings had reasonable meanings other than to urge the election of Deborah Simpson, please state those meanings, for each one of the three mailings?
- (3) When were the mailings sent?
- (4) For each of the mailings, how many were sent?
- (5) Is Mr. Mello correct that the mailings were sent to unenrolled voters only? If so, what was the rationale for sending the mailings to that specific group?
- (6) Did the Maine Democratic Party consult with Deborah Simpson, her campaign committee, or their agents on the mailings, such as on the content, timing, or recipients of the mailings?

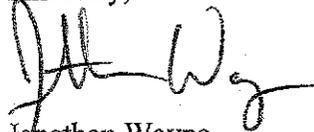
Please feel free to provide any other factual information or legal argument that is relevant to how the Commission should apply its express advocacy definition to these mailings. In past discussions of express advocacy, advocates have raised issues of the purpose of matching funds in the Maine Clean Election Act system, reliance on the Commission's advice, predictability, consistency among Commission decisions, and how vagueness in reporting requirements can affect the ability of outside political groups to express themselves in candidate elections.

Mary Erin Casale  
Page 3  
July 22, 2010

If the Commission were to find that the mailings expressly advocated for Sen. Simpson, the Commission would need to consider issues related to the late filing of independent expenditure reports. I suggest that the party *not* address any issues of late filing in its submission for the August 26 meeting. Those issues could be addressed at a later meeting if the Commission determines that the party's mailings expressly advocated for Sen. Simpson's election.

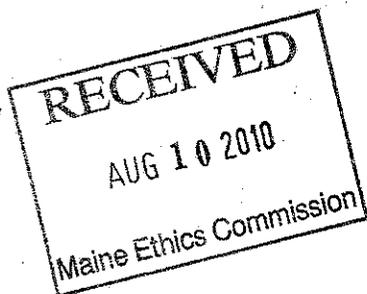
Please call me at 287-4179 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Wayne', written in a cursive style.

Jonathan Wayne  
Executive Director

cc: Daniel W. Walker, Counsel for the Maine Democratic Party  
Brian Mello



J. ANDREW CASHMAN  
jcashman@preti.com

August 10, 2010

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

**RE: Response to Request for Investigation from Brian Mello on Behalf of His Wife Lois Snowe-Mello**

Dear Jonathan,

On behalf of the Maine Democratic Party (“MDP”), I would like to respond to the request for investigation from Brian Mello on behalf of his wife, Lois Snowe-Mello, the Republican nominee for State Senate District 15, which was filed on July 22, 2010. Mr. Mello believes two mailings, attached to his request, constitute express advocacy and an independent expenditure to the Deborah Simpson campaign by the Maine Democratic Party. However, these mailings do not expressly advocate for the election of Deborah Simpson, and therefore, do not constitute an independent expenditure by the Party to her campaign.

To assist the Commission in consideration of this matter, you requested responses to the following six specific questions.

**I. Do any of the mailings expressly advocate for the election of Deborah Simpson, as defined in the Commission’s Rule? If not, please explain why.**

Neither of the mailings questioned by Mr. Mello expressly advocate for the election of Deborah Simpson as defined in the Commission’s Rule.

Pursuant to Chapter 1, Section 10(2)(B) of the Commission’s Rules, “express advocacy” is defined largely through example. The definition may be parsed into four distinct categories of “express advocacy” phrases: 1. commands (“reelect,” “support,” “cast”); 2. the political office sought (“...for Representative”); 3. year of election (“...in 2000”); and 4. “in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s).”

In this case, none of the mailings fall into the 1<sup>st</sup> or 3<sup>rd</sup> categories because they do not include a command or indicate the year of the election. Neither of the mailings includes any of the command phrases provided in Chapter 1, Section 10(2)(B) of the Commission’s Rules as examples of express advocacy, such as: “reelect,” “vote for,” “support the,” “cast your ballot for,” or “vote.” Nor do the mailings include the year of the election, such as “in 2002,” or “in

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August 10, 2010

Page 2

2000,” also provided in the Commission’s Rule as an example of express advocacy. In fact, the mailings make no mention of an election.

The 4<sup>th</sup> category is also inapplicable because the purpose of these mailings was to educate voters on Deborah Simpson’s legislative accomplishments, Democratic positions on healthcare and the economy, and to survey voter opinion. It is important to note that issue education mailings are a common, established practice utilized by the Maine Democratic Party, Maine Republican Party, and numerous interest groups such as the Maine Chamber, Maine Education Association, Maine Heritage Policy Center, Maine League of Conservation Voters, and the Maine Economic Research Institute.

The 3<sup>rd</sup> category, naming the political office sought, is also inapplicable to these mailings. The Commission has provided guidance through its Rule and the 2010 memorandum “Advice Regarding Independent Expenditures for the 2010 Elections.” The Rule includes the example: “Jones for House of Representatives.” The memorandum includes two examples of express advocacy with the following guidance: “the Commission advises that *the identification of the office sought* by a candidate named in a communication will favor a determination that the only reasonable meaning of the communication was to urge the election or defeat of a candidate.” [emphasis added]

In this case, Deborah Simpson is a candidate for reelection as the Senator from District 15. None of the mailings questioned by Mr. Mello include the phrase “State Senate” or any derivation thereof such as “Senate” or “Senator.” The mailings do include the phrase “lawmakers” and “Deb Simpson,” though neither phrase is synonymous with the office itself. “Lawmakers” is defined by Black’s Law Dictionary as “one who makes laws within a given jurisdiction; a member of a legislative body.” Thus, in context the phrase is ambiguous because it could refer to the House, Senate, or a municipal council.

Finally, even though Deb Simpson may be the incumbent Senator, use of her name alone does not constitute naming the office. Chapter 1, Section 10(2)(B) of the Commission’s Rules includes, as an example of express advocacy, “Canavan!” Presumably, “Canavan” could be the name of an incumbent candidate, however the Rule states that the Commission must consider more than just the phrase but also that the phrase “in context *can have no other reasonable meaning than to urge the election or defeat* of one or more clearly identified candidate(s).” [emphasis added] In this case, the use of the phrase “Deb Simpson” was used in the context of the purpose of the mailings to educate voters on: Deborah Simpson’s legislative accomplishments, Democratic positions on healthcare and the economy, and to survey voter opinion. Therefore, in context, the phrase “Deb Simpson” does not meet the definition of express advocacy under the Commission’s Rule because it has a reasonable meaning other than to urge the election or defeat of a clearly identified candidate.

It is important to note that both the Statute (21-A M.R.S.A. § 10190B(1)(A)) and the Rule define “*expressly* advocate” [emphasis added] as a phrase which, in the context, has no other reasonable meaning than to urge “the election or defeat” of a candidate. “Express” is defined by Black’s Law Dictionary as “clearly and unmistakably communicated; directly stated.”

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Thus, the phrase or word must unmistakably advocate specifically for the election or defeat of a candidate. It would be a significant departure from the express statutory language if, in this case, the Commission were to hold that use of an incumbent's name or the phrase "lawmaker," within the context of a mailing which has a reasonable meaning other than the election or defeat of a candidate, constitutes express advocacy. In essence, the Commission would be expanding the clear, narrowly defined, "express," language of the current statute into an unclear, ambiguous standard. Given the current challenges to clean elections systems around the country, it is especially important to maintain a clear standard. The United States Supreme Court has adopted an "express advocacy" test to provide a clearly defined line between regulated and protected speech. In *Buckley v. Valeo*, 424 U.S. 1, 45 (1976), the Court held that all speech which does not, in express terms, advocate the election or defeat of a clearly identified candidate or ballot measure is outside the scope of permissible government regulation. *See id.* In fact, in *Buckley*, the United States Supreme Court went so far as to provide a list of terms denoting express advocacy and to caution regulators against restricting political speech lacking such clear indicia. *See id.*, at 44 fn. 52 (restricting the application of political speech restrictions to "communications containing express words of advocacy of election or against defeat, such as 'vote for,' 'elect,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'") Indeed, the vagueness created by a new ambiguous standard would create uncertainty and lack of predictability for citizens, interest groups, and political parties who make every effort to comply with the Rule.

In fact, the Maine Democratic Party consulted with Commission Staff on numerous occasions in a good faith effort to comply with the Commission's Rule. In reliance on the Commission's "Advice Regarding Independent Expenditures for the 2010 Elections" memorandum, the Party modeled its mailings on the Peter Kent (Exhibit A) example provided in the memorandum to illustrate a communication that did not contain express advocacy. Representatives from the Party had numerous discussions with Commission Staff to ensure that "Peter Kent" principles were properly applied in a mailing that included an incumbent legislator like Deborah Simpson. For example, neither the Peter Kent piece nor the Simpson pieces reference an election, make mention of an office, or ask the reader to do anything other than call Deborah Simpson, just as the Kent piece urges readers to call Peter. These, and other elements, were adopted after several meetings with Commission staff providing guidance on how to properly adapt the Peter Kent piece, which is about a challenger, to an incumbent legislator.

**II. If the mailings had reasonable meanings other than to urge the election of Deborah Simpson, please state those meanings, for each one of the three mailings?**

The two mailings sent by the Party had a reasonable meaning other than to urge the election of Deborah Simpson. The mailings were all issue-based and designed for the purpose of educating voters on Deborah Simpson's legislative accomplishments, Democratic positions on healthcare and the economy, and to survey voter opinion. The third mailing, "2010 Legislative Report," was not created or distributed by the Party and it does not appear to be the subject of Mr. Mello's request.

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August 10, 2010

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**III. When were the mailings sent?**

The mailings were sent after the primary election of this year.

**IV. For each of the mailings, how many were sent?**

In an effort to assist the Commission in its investigation, the Party will publically disclose that several thousand mailings were sent.

The Maine Democratic Party respectfully declines to provide this specific information as a matter of public record in this proceeding. Public disclosure of this politically sensitive information would establish a harmful precedent before this Commission. If the Commission requires disclosure of such politically sensitive campaign information, upon a request for investigation, it will enable opponents to easily identify political strategy and mount an effective opposition to that strategy. This behavior would be reciprocated by most candidates and thereby overwhelm the Commission with requests for investigations intended solely for political opposition research.

**V. Is Mr. Mello correct that the mailings were sent to unenrolled voters only? If so, what was the rationale for sending the mailings to that specific group?**

In an effort to cooperate and assist the Commission in its investigation, the Party will publically disclose that the mailing was selectively distributed to individuals in Senate District 15. There are numerous reasons for selecting certain individuals over others. For example, a mailing is sent to those individuals who, the Party believes, would want to receive the mailing.

The Maine Democratic Party respectfully declines to provide more specific information for the reasons stated above in response to Question IV.

**VI. Did the Maine Democratic Party consult with Deborah Simpson, her campaign committee, or their agents on the mailings, such as on the content, timing, or recipients of the mailings?**

The Maine Democratic Party is extremely careful to avoid any actual or perceived coordination with any candidate. Under no circumstances did the Maine Democratic Party coordinate in any way with Deborah Simpson, her campaign committee, or their agents on mailings.

In summary, pursuant to the foregoing reasons, the mailings do not expressly advocate for the election of Senator Deborah Simpson and the Maine Democratic Party has not made an independent expenditure under 21-A M.R.S.A. § 1019-B(1).

PRETI FLAHERTY

August 10, 2010

Page 5

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Andrew Cashman". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

J. Andrew Cashman

Daniel W. Walker

Counsel to the Maine Democratic Party

RECEIVED

AUG 17 2010

August 15, 2010  
Maine Ethics Commission

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

Dear Mr. Wayne:

Thank you for sending me a copy of the letter from the Counselor to the Democratic Party which I read with great interest. After reading it thoroughly including between the lines, I believe the Counselor's letter is tantamount to an admission of guilt. Throughout his legal maneuvering and manipulations of the facts, I read that he is desperately trying to twist and obscure some facts of the matter. For example: As to question one, he tries to cloud the facts with a lot of definitions, whereas a true face is that three mailings to presumably educate the public was not necessary as Senator Simpson had very aptly done so with her own mailing in an aboveboard manner that did not require three separate mailings to cover the matter.

I also noted that he has made multiple references to Black's Law Dictionary as if to imply that his is the only authoritative reference source. I have included for you a copy of a web page that will, not only, give you another source of legal reference, but, as you will see, it clearly gives as one of the definitions of lawmaker, a member of the Senate.

The Counselor's blustering warning about the commission being overwhelmed by caseloads if they don't agree with his views is really 180 degrees from the truth. I hope the commission will create a ruling that puts a stop to these fictitious educational mailings by political parties as this will clearly put a stop to trying to tiptoe around the rules. Single person mailings are clearly advocating for that person. When you tout someone's supposed accomplishments during an election year, you are clearly advocating for them, period. I believe that this practice must be stopped by all political parties to truly make clean elections clean.

Furthermore, I believe that the Counselor for the Democratic Party's refusal to wholeheartedly cooperate with the commission's investigation is tantamount to an admission of guilt on their part. They were, not only, not at all specific about the dates of their mailings, but were deliberately ambiguous about the true number of their mailings as I suspect they would directly relate to the number of independent voters in District 15. The Counselor readily admits that any truthful revelation of information about these, so called, educational mailings is highly politically sensitive campaign information, thereby admitting that these mailings are truly part of a political campaign and they wish to block any opposition to this form of campaign strategy. This is why we must put a stop to this dastardly, underhanded method by political parties.

In question five, they only admit to something that you already know that they sent mailings to individuals in District 15. As you can see clearly now that these were targeted advocacy mailings, truly educational mailings would not be sent to targeted individuals but to everyone as resident or even occupant. By not revealing to the commission how they came by the names of the individuals they targeted, such as a sorted list of registered voters, they are trying to hide the fact that their supposed educational mailings are truly politically advocating for their party candidate. Let me reinter ate, if the mailings were truly educational they would have been sent to all residents of District 15 as per Senator Simpson's example.

As to Question Six I believe you may find that the mailings occurred while Senator Simpson was conveniently out of the United States.

As far as I'm concerned, they are playing games and trying to make fools out of the commission and if they aren't firmly reprimanded and these underhanded practices stopped I fear that truly clean elections can not take place. They are walking like ducks and quacking like ducks. I hope the commission decides to do some duck hunting.

My sincere thanks for all you and your associates do to try to maintain clean and fair elections for the people of Maine.

Sincerely,

Brian K. Mello

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# lawmaker

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**Associated concepts:** [Assembly](#), [Congress](#), [House of Representatives](#), [Senate](#)

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**Index of Ethics Commission Determinations on Express Advocacy  
(communications attached)**

Date	Description of Communication	Commission Determination
11/29/2000	Literature concerning Lynn Bromley fighting for education	Not found to be EA
11/29/2000	Literature by Stavros Mendros' campaign concerning other candidates' record on education	Not found to be EA
11/29/2000	Literature concerning Kevin Glynn's record on issues on senior citizens issues	Not found to be EA*
1/10/2001	Two pieces of literature concerning candidate Beth Edmonds on taxation	Not found to be EA
1/10/2001	Literature concerning Democratic legislators who purportedly voted to tax social sec. benefits	Found to be EA
10/20/2006	Two pieces of literature concerning Anne Rand (name tag and new direction themes)	Not found to be EA
10/20/2006	Literature concerning Bill Bailey's plan on economic issues	Not found to be EA
10/20/2006	Two pieces of literature concerning Walter Ash (mail carrier and nametag themes)	Not found to be EA
9/22/2006	Six television ads by Republican Governors' Association and Maine Democratic Party	Not found to be EA**
10/10/2008	Baldacci Bunch literature (as it related to House candidates listed in literature)	Found to be EA
10/17/2008	Literature concerning Peter Kent on energy issues	Not found to be EA
10/17/2008	Literature concerning Jane Knapp on economy, taxes, and energy costs	Not found to be EA
10/17/2008	Literature concerning Kerri Prescott on affordable health care	Not found to be EA

\*The Commission voted 3-2 in favor of taking no action on this communication, however one Commission member in the majority stated that she did not feel comfortable as to what express advocacy was in this case.

\*\*Images from television advertisements are not attached.



Promises won't secure  
The future

2B



# ...a good education will.

## Lynn Bromley: Fighting for Education

Every child in Maine deserves a first rate Education, regardless of where they live.

Some of our children are sharing textbooks that are years out of date.

Lynn Bromley will fight to increase State funding of our local public schools, because until we get an up-to-date textbook in the hands of every child, the rest of our efforts won't count for very much.

Some of the children in our community are studying in buildings that are crumbling or temporary "portable" classrooms.

Lynn Bromley will work to make sure the State meets its commitment to fund renovations on our older school buildings and construction of new schools.

Some of the children in our community are lagging behind because we have not set our expectations high enough.

Lynn Bromley believes strongly that we must have accountability and discipline in the classroom, smaller class sizes, higher teacher pay and strict standards for both teachers and students.

**Call Lynn Bromley at 799-1292.**

**Call her to know she's fighting for our kids**

Not authorized by any candidate. Paid for by Senate 21, Bob Crockett Treasurer.



4B

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Cape Elizabeth ME 04107-2937



Dear Friend of Education,

Last Year, the Lewiston School Committee and the Lewiston City Council unanimously requested only one thing of our Legislative Delegation.

We asked them to, Please fully fund Education. Full (55%) state funding of education would have meant approximately \$1,000,000 to the city of Lewiston and the opportunity to substantially reduce property taxes.

Below is a chart on how each of our House Members voted on fully funding education. (H-1143, Roll Call 654)

Rep. William Cote	NO
Rep. Gerry Bouffard	NO
Rep. Richard Mailhot	NO
Rep. Lillian O'Brien	NO
Rep. Stavros Mendros	YES

It is ironic that the only Representative from Lewiston to support full state funding of Education was the Republican, Mendros.

All the Candidates running claim to support education, but only one keeps his word.

If you Truly care about Education and Property Taxes, Please Vote accordingly.

Sincerely,

*Joyce Bilodeau*  
Joyce Bilodeau  
Lewiston Council President

Sincerely,  
*Yvette Silva*  
Yvette Silva  
Ward 1 School Committee



<sup>1</sup>dis-grace \dis-'gr<sup>o</sup>s\ n  
1: loss of grace, favor, or honor vt 2: to bring reproach or shame to  
3: State Representative Kevin Glynn's voting record on Senior's issues.

WHEN SOUTH PORTLAND'S SENIORS NEEDED HIM, STATE REPRESENTATIVE KEVIN GLYNN TURNED HIS BACK ON THEM.

KEVIN GLYNN'S RECORD ON SENIORS:

- x Voted against lowering the costs of prescription drugs (LD 2599, Roll Call #708,710)
- x Voted against providing lower energy rates to low-income Mainers (LD 2140, Roll Call #472,484)
- x Voted against a \$10 million expansion of the Low Cost Drug Program for the Elderly (LD 2552, Roll Call #495)
- x Voted against funding to reduce waiting lists for home-based care (LD 2252, Roll Call #495)
- x Voted against Maine's Patient's Bill of Rights and supported allowing HMO bureaucrats to make medical decisions instead of you and your doctor (LD 750, Roll Call #671)
- x Voted against establishing the Maine Council on Aging (LD 1963, Roll Call #543, 566)
- x Even voted against providing additional money for Meals on Wheels (LD 1552, Roll Call #416)

**OUR SENIOR CITIZENS DESERVE BETTER**  
**Don't settle for this disgrace.**

**VOTE Tuesday, November 7<sup>th</sup>**



Q: Who makes medical decisions for you?

A: Insurance Companies & HMO Bureaucrats!

That's what State Representative Kevin Glynn wants.

Kevin Glynn led the fight against Maine's historic Patient's Bill of Rights which gives YOU the right to make medical decisions and sue your insurance company if they make a decision that harms or kills you (LD 1205, Roll Call 2007)

Kevin Glynn voted against requiring insurance companies to cover the costs of prescription contraceptives (LD 1205, Roll Call 2007)

Kevin Glynn even voted against a program designed to identify and collect information on birth defects (LD 1205, Roll Call 2007)

Kevin Glynn voted against allowing a woman to visit an obstetrician, gynecologist or midwife without a referral (LD 1205, Roll Call 2007)

But there's one decision Kevin Glynn can't make for you...

**VOTE Tuesday, November 7<sup>th</sup>**

**THIS decision is YOURS!**

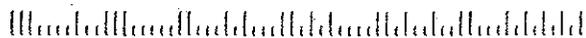
# Trick or treat?



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Augusta, Maine 04330

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\*\*\*\*\*ECRLOT\*\*C-001  
THE WAGNER FAMILY 17 1  
OR CURRENT RESIDENT  
32 SOUTH ST  
FREEPORT ME 04032-1514



# "Trick!

# ...Now give me more of your money!"



**Watch out!** Politician Beth Edmonds is standing shoulder-to-shoulder with the same group of political insiders that has been tricking the citizens of Maine instead of treating them in Augusta.

That's right. Instead of looking out for your hard-earned money, Beth Edmonds is turning her back on Maine taxpayers and standing with the same Augusta politicians that have been *raising your taxes and wildly increasing state borrowing.*



As Maine ran a \$345 million budget surplus, Beth Edmonds' political cronies in Augusta voted to raise Maine's gas tax and car registration fees. Today, with gas prices spiraling higher, the Edmonds Team gas tax is turning into a cruel trick against Maine drivers.



Beth Edmonds' key supporters in the Legislature voted to spend much of the \$345 million surplus on wasteful spending projects including an

unworkable plan to provide expensive and fragile laptop computers to Maine students instead of providing more funds to repair school buildings.



After squandering much of the \$345 million budget surplus, Beth Edmonds' Democrat cronies voted to have the state go out and borrow even more money for her and her friends in Augusta to spend. Her Augusta insider pals supported \$33 million in additional borrowing, leaving Maine government in debt.



While spending all that money, Beth Edmonds' backers promoted broadening the sales tax by allowing every Maine locality to levy an additional local sales tax. That's more tax we would have to pay when we go to buy clothing or rent a movie—and they even wanted to tax funerals and haircuts.



While Maine taxpayers were being hurt by Beth Edmonds' cronies' tax tricks, they decided to treat themselves at our expense. They voted to raise Legislators' pay with our hard-earned tax dollars.

**Beth Edmonds supports a state death tax,  
increased gas taxes and income taxes.  
Tell her to stop supporting increased taxes on families.**

The information in this special report on state tax increases comes from the records of the Maine State Legislature which are available for public inspection on the internet at <http://janus.state.me.us/legis/session> or in person at the State House in Augusta, ME. Additional information was obtained from candidate questionnaires available for viewing at [www.vote-smart.com](http://www.vote-smart.com).

NEW YORK  
SOCIETY



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PO BOX 178  
S FREEPORT ME 04078-017878



# Beth Edmonds Augusta supporters voted for a new state tax on Social Security



*Augusta politicians who wanted to tax Social Security support Beth Edmonds.*

*It is shocking that her allies would turn their back on Maine's senior citizens and vote to create a new state tax on Social Security benefits. However, they did and Governor Angus King vetoed it.*

They voted for a state tax on Social Security benefits because Beth Edmonds' backers wanted to cut an exclusive deal with lobbyists and special interests that have supported their campaigns.

The money her supporters and their insider pals craved was money our senior citizens use for healthcare, medicine, and heating oil in the Maine winter.

This Social Security tax scheme occurred when Maine was running a \$345 million surplus.

This tax ignores the difficult realities senior citizens face when living on a fixed income.

**Why did Beth Edmonds' allies ignore senior citizens?** To them it was more important that their lobbyist friends take a cut from Social Security to fund their own special interest tax break.

A tax on Social Security cuts into the money for prescription drugs and health care seniors need. *Beth Edmonds' supporters didn't care and they voted to tax social security.*

**Tell Beth Edmonds and her friends to keep their hands off Social Security and stop taxing Maine seniors regardless of what their lobbyist friends want**

The bill to tax social security was Legislative Document #1268 as amended. This information can be found on the Maine State Legislature official website at <http://janus.state.me.us/legis>. To contact Beth Edmonds' supporters, call the majority at: 1-800-423-6900.

100 Water Street • Hallowell, Maine 04847

**Maine Democrats  
are trying to sweep  
it under the rug.**

**But the fact  
is they voted  
to tax Social Security.**

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Augusta, ME

\*\*\*\*\*ECPHOT\*\*C-002  
Gilbert Brogan  
7 Dennison Ave  
Freeport, ME 04032-1523

# Don't let the Maine Democrats get away with it. Send them a message - vote Republican on November 7th.

## VETO THIS BILL

**Taxing Social Security poor policy, poor politics**

While a real problem exists, this is not the way to solve it.

It's hard to say which of the following two things is more amazing: that raising some retirees' Social Security taxes to meet the taxes of a retired and their state provided pensions was a good idea; or that legislators apparently help such a law while without generalizing hostile reaction from it affected.

As was perfectly predictable, they're hugey-wringing on both counts. When the news broke this week what can only be called one of the massive blunders of the current administration was swift and pointed thought of hiking taxes on people fixed incomes at a time when the budget has a \$200 million surplus grounds for voter retribution. Fortunately for legislators who for the plan it passed the Maine

late Wednesday afternoon that he hadn't yet made up his mind on the issue, but that he would do so soon.

King should veto the bill, while it attempts to address a real problem, it

## A taxing retirement

To tax or not to tax Social Security in Maine. That is the question.

Social Security has become a vexing problem for Americans in recent years. The trust fund is not so trustworthy anymore and we have to do more than just talk about alternate ways to fund the national retirement account. We have to develop a plan and fix it. Now.

That appears to be a universal opinion. After working for decades, having money taken out of our paychecks to meet our obligation to Social

Maine Democrats did the unthinkable. They voted to tax your Social Security. Not once, but on four separate votes they tried to seize money that rightfully belongs to our senior citizens — money they need to pay for their prescription medicine — and money they need to pay for everyday living expenses.

In fact, a very disturbing pattern has developed with the voting of the Maine Democrats. They raise taxes on one group of Maine citizens to benefit another group.

**These Maine Democrats voted to take money away from the very same retired men and women who elected them.**

## Maine Democrats who voted to tax your Social Security:

### House of Representatives

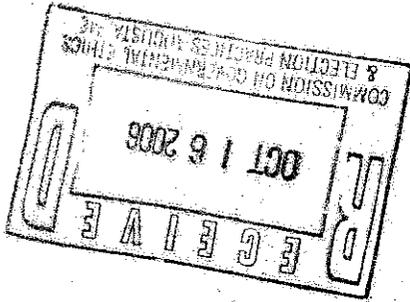
Christina L. Baker	Monica McGlocklin
Linda Rogers McKee	Daniel B. Williams
Gerald N. Bouffard	Jane Saxl
Joseph E. Brooks	Christopher T. Muse
Thomas Bull	Joseph C. Perry
Wendy Pih	Elizabeth Watson
Patrick Colwell	Judith A. Powers
Robert Duplessie	Laura J. Sanborn
Bonnie Green	William R. Savage
Patricia Jacobs	James G. Skoglund
Charles C. LaVerdiere	Stephen S. Stanley
Nancy B. Sullivan	Paul Volenik
Edward Dugay	

Roll Call # 332, Maine House of Representatives May 28, 1999

### Senate

William B. O'Gara	Susan Longley
Carol A. Kontos	Richard P. Ruhlin
Sharon Anglin Treat	Marge Kilkelly
John Nutting	Neria Douglas
Lloyd Lafountain	Mary Cathcart

Roll Call # 174, Maine Senate May 27, 1999



Anne Rand

Anne Rand  
State Representative

# ANNE RAND

State Representative

MAINE VALUES, AN INDEPENDENT VOICE

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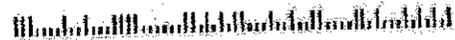
**ANNE RAND**  
GOOD-PAYING JOBS  
AND LOWER TAXES

- Expanding property tax relief for Maine home owners
- Targeting tax relief for the middle class and small businesses, not Bush's billionaires
- Eliminating the tax on business equipment for market-based businesses

**ANNE RAND**  
STRENGTHENING COMMUNITIES  
AND PROTECTING FAMILIES

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Augusta, ME

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or CURRENT RESIDENT  
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PORTLAND ME 04101-5086



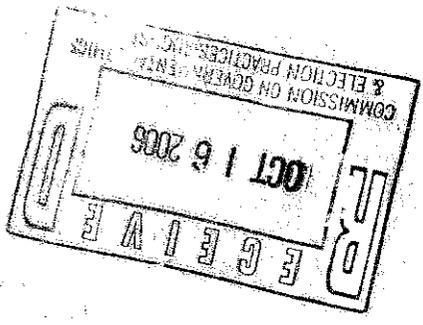
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DENMARK	23 MI.
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SWEDEN	25 MI.
POLAND	27 MI.
MEXICO	37 MI.
CHINA	92 MI.
PERU	16 MI.

# Anne Rand

## State Representative

A new direction for Maine...





# Anne Rand

is working to build a stronger future for Maine and is standing up for hard-working Mainers.

That is why **Anne Rand** is committed to:

- Growing good-paying jobs and building a stronger Maine economy.
- Expanding property tax relief for Mainers.
- Working to make health care affordable for Maine families.
- Dedicated to improving Maine schools and creating new opportunities.
- Practicing fiscal responsibility here in Maine - and demand it from Washington.

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# Bill Bailey IS A COMMUNITY LEADER WITH A PLAN!

MAINE CAN DO BETTER  
BILL BAILEY UNDERSTANDS THE CHANGING FAMILIES  
AND THE NEEDS OF ALL MAINE

## A FOCUS ON JOBS AND THE ECONOMY

We need to create quality, high-paying jobs so we can establish themselves here in Maine. Entrepreneurs finders positive job growth, entrepreneurs, and Mainers are hard workers in need of

## BETTER HEALTH CARE

Our healthcare system is in crisis. We need better care for all Mainers depends on regulation, deregulation, and creating more opportunities for individuals and businesses, meaning better services for

## MAINE NEEDS TAX RELIEF

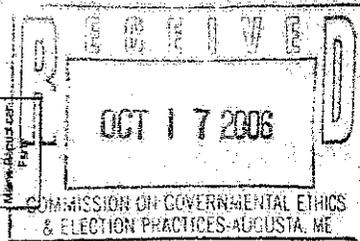
Bill Bailey knows that tax relief will help Mainers. State government has been spending priorities increase individual savings, stimulate small business growth, and



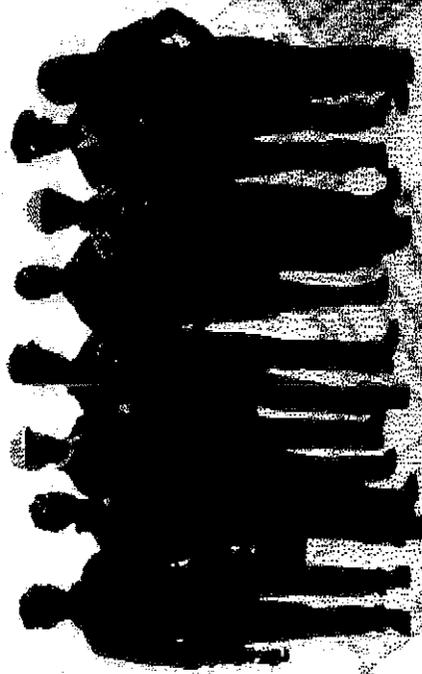
Maine Republican Party  
9 Higgins Street,  
Augusta, ME 04330

60\*\*\*\*\*ECRUISS\*\*R001  
RESIDENT  
RURAL ROUTE, BOXHOLDER  
BOOTHBAY, ME 04537

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Maine Republican Party



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Not authorized by any candidate or candidate committee.



# It's Time To Put Maine Back To Work

**Maine is home to the  
hardest working class  
- anywhere!  
But the numbers show  
Maine is struggling.**

Unfortunately, the current leadership in Augusta refuses to jump-start our economy. They ignore our young people who must leave the state for a better job. They stand in the way of good paying jobs, health care benefits and jobs that allow Maine to prosper.

**THERE IS A SOLUTION: lower taxes, reduced  
spending, streamlined permitting & a focus  
on affordable high-tech healthcare.  
A BETTER ECONOMY MEANS MORE JOBS**



## Overview of Economic Performance: Maine Losing Jobs, Struggling

Maine was the only New England state - and the only state in the nation except for Hurricane Katrina victim, Louisiana - to see economic activity decline.

- Maine was the only New England state with negligible payroll job growth.
- Income growth, though respectable, was the slowest in New England.
- Maine's exports declined for the first time since 2000.

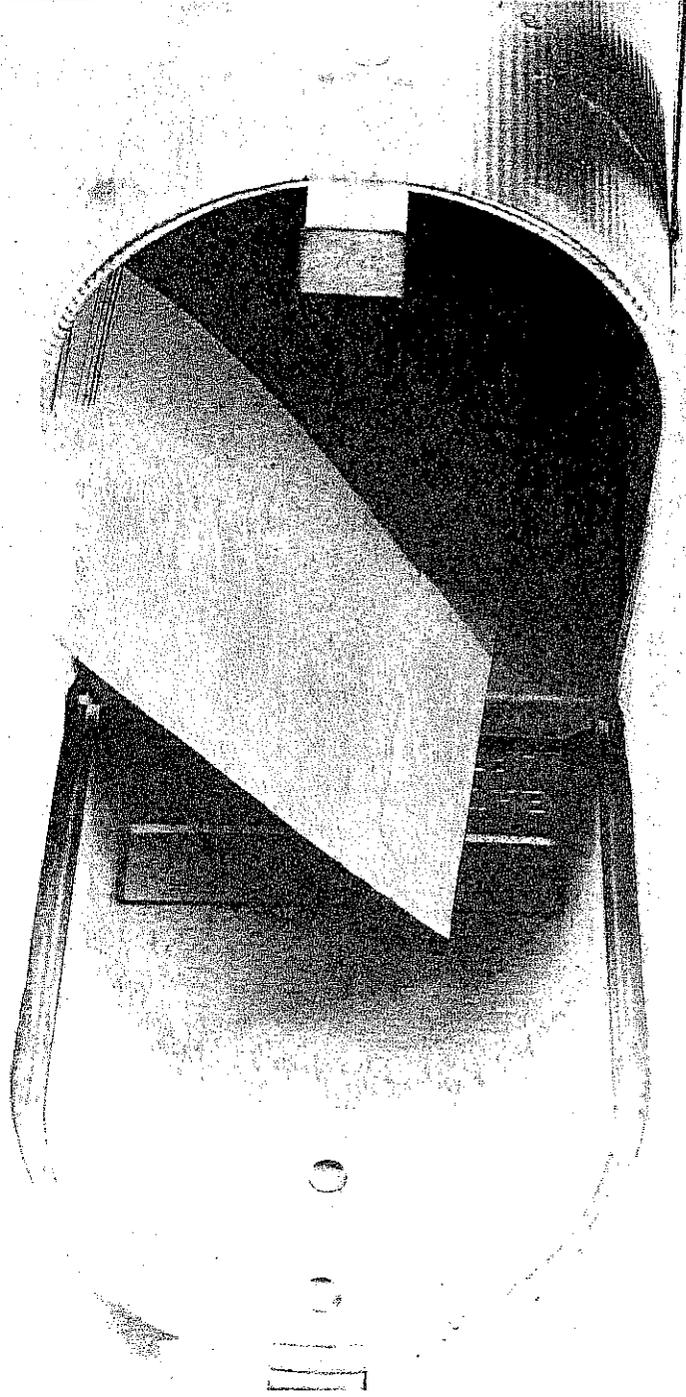
Not only was Maine the only state in the region to experience virtually no job growth, the 2005 benchmark revisions reduced the year-end job count by nearly 6,000.

Source: Federal Reserve Bank of Boston.

**BUT MAINE CAN IMPROVE!**

Q

What do your mailman &  
Rep. Walter Ash  
both have in common?





A: They deliver.

# Rep. Walter Ash

is working to build a stronger future for Maine and is standing up for hard-working Mainers.

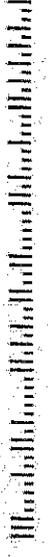
rec'd 1/14/06

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While in Augusta **Walter Ash** delivered:

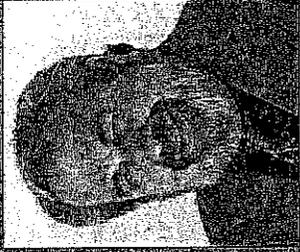
- Voted to double tax refunds for Mainers hit hard by local property taxes. (Roll call #18)
- Voted to protect Maine children and communities from sex offenders by creating stricter sentences. (Roll call #530)
- Voted to increase the minimum wage for Maine workers. (Roll call #484)
- Voted to create more protections for women who have been the victim of domestic violence, and to keep guns out of their abuser's hands. (Roll call #537)

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BELFAST ME 04915-6037



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*Paid for by the Maine Democratic Party, 16 Winthrop Street, Augusta, ME 04332.  
This Communication is not authorized by any candidate or candidate's committee.*



As leader and a voice for our community,  
**Walter Ash** is working to build a stronger  
future for our state. Walter is fighting against  
the failed Bush policies that have left Mothers  
helping and he is standing up for hardworking  
Mothers.

State Representative  
**Walter Ash**

Mothers Help, an independent voice.

HELLO  
my name is

REPRESENTATIVE

WALTER ASH

# State Representative WALTER ASH

MAINE VALUES, AN INDEPENDENT VOICE

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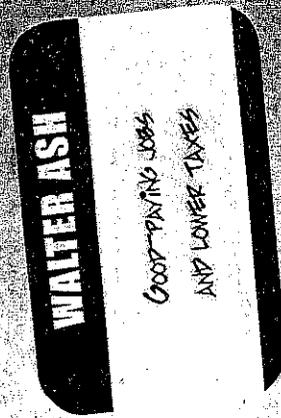
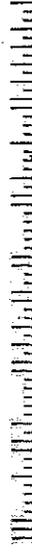
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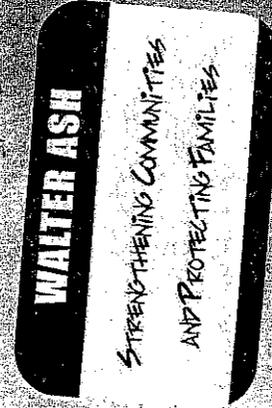
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- Expanding property tax relief for Maine home owners
- Targeting tax relief for the middle class and small business. Instead of Bush's billionaires
- Eliminating the tax on business equipment to nurture Maine's small businesses



- Increasing jail sentences for sexual predators and providing real community protections
- Protecting our environment by eliminating lead and mercury
- Investing in higher education to help prepare Maine workers for the jobs of tomorrow



Gov. Baldacci  
 2 More Years, Then I Can Run For Olympia's Seat. Let me introduce you to my pals from Penobscot County!

Gov. Baldacci



I Want To Be A Professional Politician Too... That's So Much So... That's the Occupation I list on The State's Occupation Website!

Sen. Liz Schneider  
<http://www.maine.gov/legis/senators/bios/123r/bio30s.htm>  
 BIO States... Husband Brent, Occupation: Legislator.



Rep. Dick Blanchard



Rep. Emily Cain



Rep. Mike Dunn

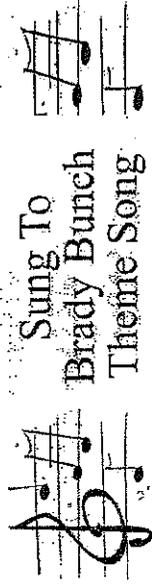
We Democrats Hold All The Power In The House Too. We outnumber Repus, 90 to 59. There are also 2 Independents.



Oh Yeah... Don't Forget This Guy

Perennial Eagle Lake All-Star, John Martin

(We guess the concept of a part-time legislature has surpassed some people)



Here's the story, Of a guy Baldacci, who was bringing up the taxes every day! All his plans increased the spending on the people, Penobscot Dems Will Vote His Way.

Here's the story, Of a girl named Schneider, Who never, ever, votes against the Guv.  
 Grapes In A Bunch,  
 Hanging all together, they're all deep in love.

Till the one day when the people put their foot down,  
 Cause the tax and fees  
 had made them toss their lunch,  
 That this group,  
 Get Voted Out Together,  
 That's the way they'll go... Baldacci Bunch!  
 Baldacci Bunch! - Baldacci Bunch!  
 It's Time They Go Away Baldacci Bunch!

Stomp The Grapes on Nov. 4th!

Paid for and Authorized by the Candidate • Carr-Winocour for Senate • A Clean Elections Candidate • 100 Gillman Falls Ave, Old Town, ME 04468.  
 Please feel free to save this flyer and bring it with you on election day so you know who NOT to vote for after the Obama/McCain Race. It's Easy to Confuse State and Federal Politics

# THE BALDACCI BUNCH



VALERIE CARR-WINOCOUR  
STATE SENATE



Your Voice  
for Working  
Maine Families

Dear Neighbors From Penobscot County,

I offer you this parody, but it's no joke, Maine cannot afford Two More Years of Gov. John Baldacci & John Martin.

Since the fine people of Eagle Lake are unlikely to vote Mr. Martin out of office, we must fix things ourselves.

Sen. Elizabeth Schneider and the Reps from Orono and Old Town continue to give Baldacci blank checks which he keeps signing! Running up state debts. Nice people, bad decisions.

While we can't vote Baldacci out of office, we can turn the State Senate and House to those who will cut off his funding.

Maine's Senate has been run by the Democrats for a Decade and during this time Maine's spending has almost doubled!

This November 4th, VETO Baldacci, Vote Carr-Winocour. I ask humbly for your vote on Election Day! To volunteer and help the cause, please call 827-5265.

Together we can put an end to the mess in Augusta.

Valerie Carr-Winocour

# VETO BALDACCI - VOTE FOR C-W

# STRAIGHT FACTS FOR INDEPENDENT VOTERS

Is Maine Better Off Than It Was 10 Years Ago? Are You?  
 For 10 Years, The Democrats have Controlled the Maine Senate!  
 See for yourself on the State of Maine Website...

<http://janus.state.me.us/house/history/makeup.htm>

## Maine Senate Breakdown Last Decade

YEARS	DEMOCRATS	REPUBLICANS	INDEPENDENTS
97-98	19	15	1
99-00	20	14	1
01-02	19	15	1
03-04	18	17	0
05-06	19	16	0
07-08	18	17	0

## What has the Last Decade Brought Us?

HIGHER TAXES & HIGHER FEES

FEWER JOBS - LESS OPPORTUNITY

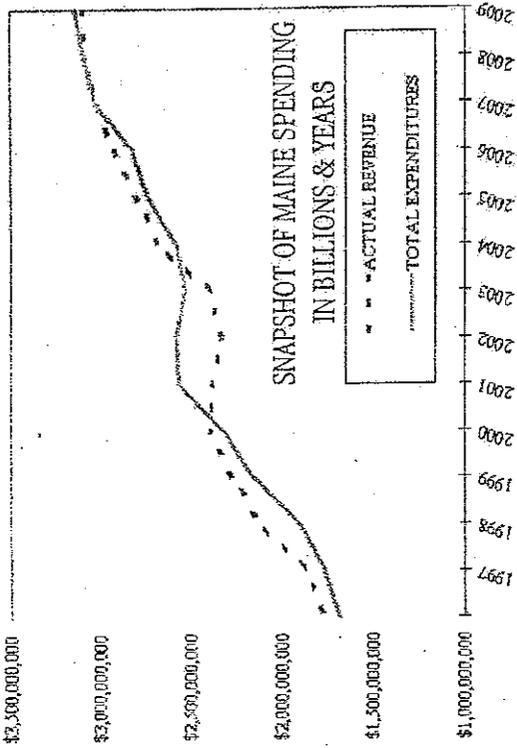
GAVE AWAY LIQUOR REVENUES TO MASSACHUSETTS

4 TOBACCO TAX INCREASES

\$40 MILLION IN NEW BEER, WINE & SODA TAXES

NEW TAXES ON HEALTH CARE SERVICES

AND \$1.5 BILLION IN NEW SPENDING



Schneider is a nice enough woman. But she's WRONG on the issues. She's voted time and time again with Baldacci to raise your taxes, to fund a failing Dirigo Health, to sell our liquor business, to raise tobacco taxes and make it tougher and tougher on working Maine families and small-businesses here in Maine.

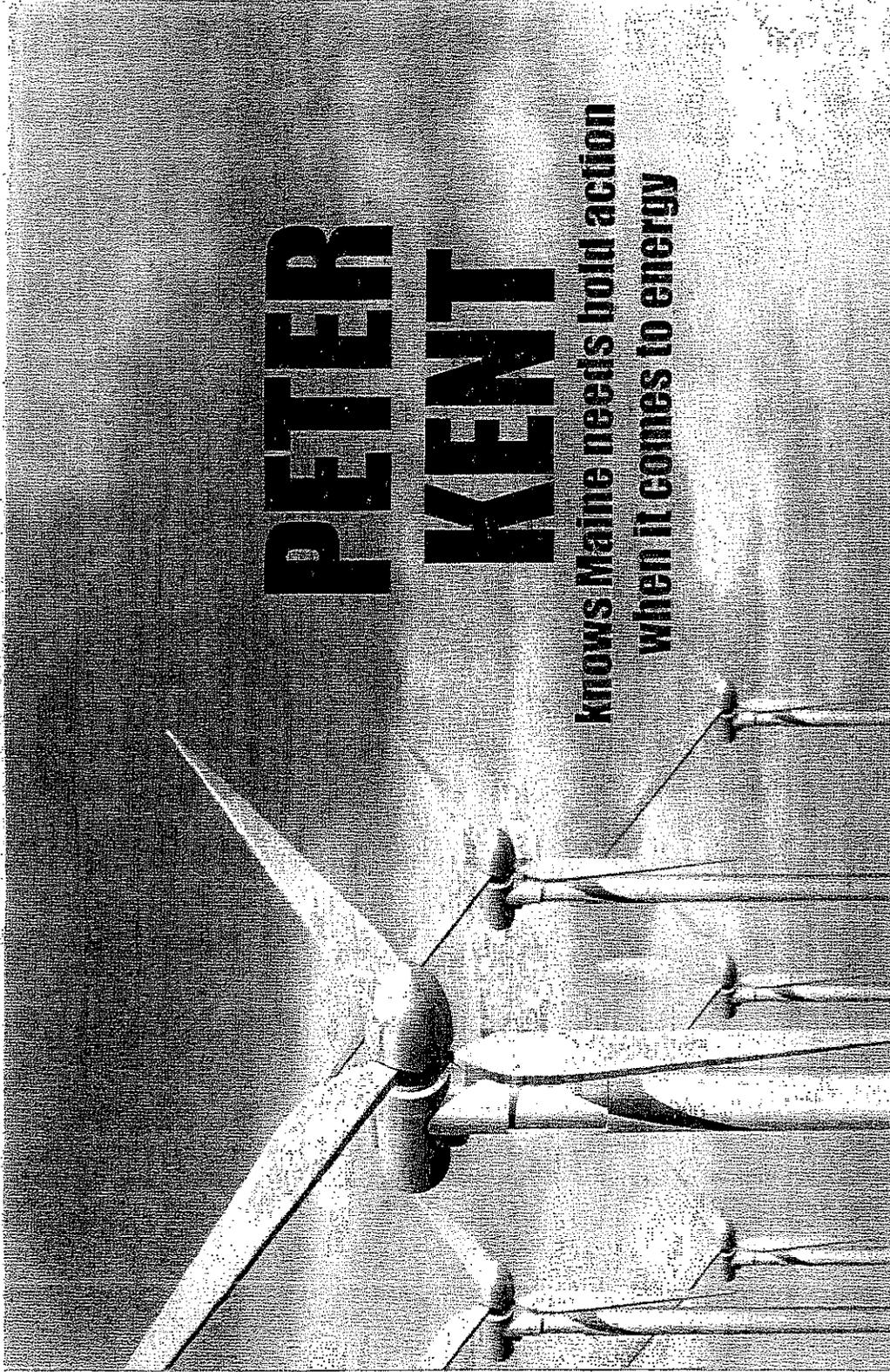
YOU can become the VETO that stops the Baldacci Administration!  
 Swing the balance of power over in the Maine State Senate by voting for

## Valerie Carr-Winocour • Nov. 4th

Serving Penobscot County - Alton, Argyle Twp., Bradford, Edinburg, Enfield, Greenbush, Howland, Hudson, Kingman Twp., LaGrange, Lee, Lincoln, Mattawamkeag, Maxfield, Old Town, Orono, Passadumkeag, Penobscot Nation Indian Island (a/k/a Penobscot Nation Voting District), Springfield, Twombly a/k/a T3-R1, Venzie, Webster Plantation and Winn.

# PETER KENT

**knows Maine needs bold action  
when it comes to energy**





# PETER KENT

**Knows Maine needs bold action when it comes to energy**

Maine has tremendous assets, from wind to wood to tides, that can help us create a better energy future for our state.

Maine can create thousands of good paying jobs, lower energy costs for businesses and consumers, and protect our environment with the right plan of action. However, we need real leaders who are willing to stand up and make it happen.

Peter Kent is committed to ensuring that all Mainers, especially our seniors, stay safe in their homes during the difficult winter we face. He knows we must take action to create a more sustainable energy future. Peter supports significant weatherization efforts for middle and low-income Mainers and businesses, tax credits for alternative and new energy sources, and investment in research and development to bring new power and new jobs to Maine.

Contact Peter Kent with your energy ideas and concerns.  
(207) 442-9255 or pskent5@hotmail.com

16 Winthrop Street  
Augusta, ME 04332



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Tray 4 \*\*\*\*\*ALTO\*\*5-DIGIT 04579  
Paul and Susan Wasserott  
OR CURRENT RESIDENTS  
7 Ledge Wood Dr  
WOOLWICH ME 04579-4145

Paid for by the Maine Democratic Party, 16 Winthrop Street, Augusta, ME 04332.  
This communication is not authorized by any candidate or candidate's committee.

# JANE KNAPP

## FIGHTING FOR YOUR FAMILY



### **Growing Our Economy.**

Maine families are worried about the state of our economy. Jane Knapp understands the economic anxiety, and will work to stimulate the economy, create jobs, and expand opportunity.



### **Keeping Taxes Low.**

Maine families already pay too much in taxes. Jane Knapp will fight to lower taxes for working families so they can keep more of what they make. Maine families can make better decisions about how to spend their money than government bureaucrats.



### **Lowering Energy Costs.**

Jane Knapp knows Maine families are struggling to pay for the high cost of gas and heating oil. That is why she will fight for an energy plan that will lower costs and allow our natural resources to power Maine's future.

**A Growing Economy. Lower Taxes.  
Energy Independence.**

**JANE KNAPP**  
**LEADERSHIP YOU CAN TRUST**

*Call Jane Knapp at 839-3880 and thank  
her for fighting for Maine's families.*





# "MY HEALTH & MY FAMILY'S HEALTH ARE EVERYTHING"

That's the sentiment of mothers and fathers across Maine.

Sadly, today's economy is sapping precious health care dollars from Topsham family budgets.

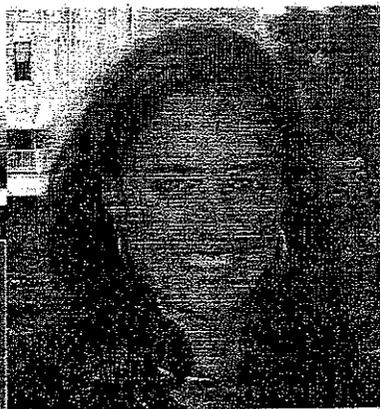
Fortunately, State Representative Kerri Prescott understands how precious affordable health care is to Maine families.



## KERRI PRESCOTT

She's demonstrated her leadership by supporting such legislation as LD 1047, An Act To Lower The Cost of Health Insurance. She also worked to allow Maine families to purchase cheaper insurance coverage from out-of-state companies and to make all health care costs deductible from Maine income taxes.

Kerri Prescott knows every little bit helps in making affordable health insurance a reality for all.



Call State Representative

**Kerri Prescott today at 319-7589**

and encourage her to keep fighting for affordable health care

OUR KIDS NEED MORE THAN JUST ONE A DAY



That's why **Kerri Prescott**  
is taking the lead  
in increasing  
access to  
affordable  
health  
care.



*She Understands.*

Paid for and authorized by the Maine Republican Party, Phil Roy, Treasurer.  
9 Higgins Street, Augusta, ME 04330.  
Not authorized by any candidate or candidate committee.

Maine Republican Party  
9 Higgins Street  
Augusta, ME 04330.

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Party

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**Note on January 28, 2010 Guidance from  
Maine Commission on Governmental Ethics and Election Practices**

On January 28, 2010, the Commission gave further consideration to some of its 2006 determinations applying the express advocacy rule and the effect of these decisions on campaign activity in the 2008 general election. In order to provide better guidance to organizations making campaign-related expenditures in future elections, the Commission decided that the following example of campaign literature concerning candidate Anne Brandt for State Representative could be considered express advocacy under Chapter 1, Section 10(2)(B).

(FRONT)



- Working to make health care affordable for Maine families.
- Dedicated to improving Maine schools.
- Building a stronger Maine economy.
- Committed to lowering energy costs and investing in Maine alternatives energy sources.

**ANNE BRANDT**  
**STATE REPRESENTATIVE**

**A NEW DIRECTION FOR MAINE.**

Paid for by the Maine Independent Party, 12 Main Street, Augusta, ME 04333  
 This communication is not authorized by any candidate or candidate's committee

ADDRESS BLOCK

(BACK)

**MAINE FAMILIES DESERVE A REPRESENTATIVE WHO WILL FIGHT FOR THEM.**



**GROWING OUR ECONOMY**  
**KEEPING TAXES LOW**  
**LOWERING ENERGY COSTS**

Call Anne Brandt at (207)567-8910 and thank her for fighting for Maine families!



J. ANDREW CASHMAN  
[jcashman@preti.com](mailto:jcashman@preti.com)

August 24, 2010

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

RE: Brian Mello Complaint

Dear Jonathan:

It is my understanding that Brian Mello has withdrawn his complaint regarding independent expenditures made by the Maine Democratic Party.

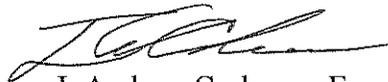
While we respect Mr. Mello's right to withdraw his complaint, we believe that he revealed an important issue regarding the somewhat ambiguous perimeters of "express advocacy" recognized by the Commission.

In light of the coming election season, the Maine Democratic Party, the Maine Republican Party, and others would benefit from more clearly defined guidance from the Commission on this issue. Such guidance would provide clarity to those participating in the process and reduce the need for future complaints on an identical issue.

I, therefore, respectfully request that the Commission provide guidance on its treatment of the issues raised in Mr. Mello's withdrawn complaint.

Thank you for your consideration of this request. I greatly appreciate the time of the Commission and Staff on this matter.

Sincerely yours,



J. Andrew Cashman, Esq.  
Counsel to Maine Democratic Party

JAC/sbf