

Agenda

Item #1

Minutes of the July 19, 2006 Meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine --

Present: Chair Jean Ginn Marvin; Hon. A. Mavourneen Thompson; Hon. Andrew Ketterer.
Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:12 A.M., Chair Ginn Marvin convened the meeting. Ms. Ginn Marvin said that the Commission would return to Item 1 on the agenda after taking up Items 2 through 5 out of order. The Commission considered the following items:

Agenda Item #2 – Request for Investigation re: Constituent Newsletters/Sen. Philip L. Bartlett

Mr. Wayne said that Kate Brogan would speak on behalf of Sen. Philip Bartlett's campaign. Mr. Wayne said that Mr. Hoffses, who originally filed the request for an investigation, would not be present. Mr. Wayne said that Mr. Hoffses considered Sen. Bartlett's newsletter to be campaign-related and includes the Internet address of a partisan website, mainesenate.org. Mr. Wayne said that the legislative caucuses all have websites that promote their members. Mr. Wayne said that in three of the four caucus websites he reviewed, there is no campaign-related material included. Mr. Wayne said that the websites include information on the parties and pages devoted to each member. Mr. Wayne said that Mr. Hoffses also complained about a lack of paid-for disclaimer on the newsletters. Mr. Wayne said that the staff opinion was that this disclaimer was not required on a constituent newsletter, only on campaign materials. Mr. Wayne said that Sen. Bartlett's newsletters do not expressly advocate for his election. Mr. Wayne said that Mr. Hoffses believed that a survey included in the newsletters was being used for campaign purposes. Mr. Wayne said that Sen. Bartlett's response was that the survey was used to determine policy priorities and was not campaign-related. Mr. Wayne said that the Commission

has not previously been called on to determine whether constituent newsletters as a whole were campaign-related until the previous meeting.

Ms. Ginn Marvin said that the use of the Internet and the popularity of Clean Election funding were likely reasons for the increase in constituent newsletter complaints.

Kate Brogan said that she was at the meeting as legal counsel to the President of the Senate and not any campaign. Ms. Brogan said that the content of the newsletters was approved by the President and Secretary of the Senate. Ms. Brogan said that they checked newsletters for campaign-related content and the mailing was handled by the Senate. Ms. Brogan said that the mailing was not campaign-related in any way. Ms. Brogan said that there were 185 other constituent newsletters similar to Sen. Bartlett's, so any change made by the Commission would be substantial.

Ms. Ginn Marvin asked if the Senate had any rules on the timing of constituent mailings. Ms. Brogan said that the Secretary of the Senate sets the timetable for mailings. Ms. Brogan said that the intent is to get out the mailings as soon after the end of the session as possible, although the session sometimes ends close to when the primary election is held. Ms. Brogan said that the staff drafts content and the legislators select which content they wish to be included in their newsletters or draft content on their own.

Ms. Ginn Marvin asked if there was a 21-day deadline mentioned. Mr. Wayne replied that it was included in Paul Nixon's complaint against Rep. Lawrence Bliss. Ms. Gardiner said that the letter from the President of the Senate stated that mailings were sent out well in advance of the general election.

Ms. Brogan said there was no formal rule in the Senate for when mailings go out. Ms. Brogan said that the House may treat the mailings differently from the Senate.

Mr. Ketterer moved, and Ms. Thompson seconded, that the Commission adopt the staff recommendation to take no further action. Mr. Ketterer said that the newsletter does not

advocate for the election or defeat of a candidate, but the survey on public policy would only be useful if the candidate was reelected. Mr. Ketterer said that the newsletter was not a campaign piece in and of itself. Mr. Ketterer said that it was impossible to be entirely fair, as incumbents have the ability to hold press conferences and other powers not shared by challengers.

Ms. Thompson said that she agreed with Mr. Ketterer and the staff recommendation. Ms. Thompson said that as public servants, legislators have a responsibility to communicate with their constituents.

The Commission voted unanimously (3-0) to adopt the staff recommendation and take no further action.

Agenda Item #3 – Request for Investigation re: Constituent Newsletter/Rep. Lawrence Bliss

Mr. Wayne said that Mr. Nixon's complaint was that Rep. Bliss's newsletter contained a link to the House Democrats website and was mailed within 21 days of the primary election. Mr. Wayne said that the statute considers any communication sent within 21 days of an election that mentions a candidate to be an independent expenditure. Mr. Wayne said that this may not apply to Rep. Bliss, since he had no opponents in the primary election. Mr. Wayne said that the independent expenditure reporting requirement can be rebutted and that Mr. Bliss already did so by explaining in a letter that the newsletters were not campaign-related. Mr. Wayne said that the staff recommended no investigation into the complaint by Mr. Nixon.

Rep. Bliss said that he was present as a member of the legislature and not as a candidate. Rep. Bliss said that his communication with constituents included monthly public forums and a monthly e-mail on legislative activities. Rep. Bliss said that the constituent newsletters were paid for by the state. Rep. Bliss said it was best to send the newsletters at the end of the session so that constituents can be informed of what happened during the session. Rep. Bliss said that the newsletters are approved by the Clerk's office, and that his newsletter was the first in the

House to be approved and mailed. Rep. Bliss said that he had no opponent in the primary election.

Ms. Thompson moved, Mr. Ketterer seconded, and the Commission voted unanimously (3-0) to accept the staff recommendation and take no further action.

Agenda Item #4 – Request for Waiver of Late-Filing Penalty/George Thomson

Mr. Wayne said that George Thomson ran against Randall Greenwood in the primary election. Mr. Wayne said that Mr. Thomson was privately financed, while Mr. Greenwood was publicly financed. Mr. Wayne said that Mr. Thomson was required to file a 101% report within 48 hours of exceeding \$1,519 in either contributions or expenditures. Mr. Wayne said that on May 22, Mr. Thomson was asked by his printer whether he wished to do a second mailing. Mr. Wayne said that Mr. Thomson said that he was not aware of his approval of the request being considered an obligation. Mr. Wayne said that the 101% report should have been filed on May 24, but was not filed until 8 days later. Mr. Wayne said that Mr. Greenwood was delayed in receiving matching funds because of the late reporting. Mr. Wayne said that the maximum possible penalty was \$12,000, which the staff considered to be too high in that case. Mr. Wayne said that a penalty of \$253.70 would be appropriate. Mr. Wayne said that Mr. Thomson was responsive when notified that he was late in filing the report. He came into the office the day after he received a voice mail from the staff and wanted to remedy any problem that may have occurred. Mr. Wayne said that, by June 1 when Mr. Thomson did file the report, Mr. Greenwood had only spent \$57.15 of the more \$1,500 in public funds he had already received at that point, so he was not disadvantaged by the delay in receiving matching funds. Mr. Wayne said that Mr. Thomson was a first-time candidate and that he made a conceptual error.

Mr. Thomson said that he had planned on producing two mailings with Spectrum Printing. Mr. Thomson said that he did not have to pay for the mailings until the day before they went out. Mr. Thomson said that his treasurer informed him that the obligation was not incurred until he mailed the check, but he later found out that that was not true. Mr. Thomson said that he wanted

to honor the intent of the law, being that an obligation results from the intent to pay for goods or services.

Ms. Ginn Marvin asked if the second mailing went out. Mr. Thomson replied that it was sent on June 5. Mr. Thomson said that he used a credit card to pay for the mailing on June 3. Mr. Thomson said that he responded to a proof sent to him by the printer by saying in a phone call that it looked good, and that was how he ordered the mailing.

Ms. Thompson asked what the Commission's past practice had been in similar cases. Mr. Wayne said that after 2004, the Commission took obligations more seriously due to a problem with groups obligating expenditures without filing independent expenditure reports. Mr. Wayne said that the Commission clarified in 2005 that the definition of expenditure includes obligations. Mr. Wayne said that Mr. Thomson's phone call where he approved the proof may not be considered an order for the mailing. Mr. Wayne said that in the case of Rep. Dugay, the opponent was disadvantaged and Rep. Dugay was assessed a sizeable penalty. Mr. Wayne said that in most other cases, the penalties were between \$100 and \$200. Mr. Wayne said that \$253 was a proper amount for an unintentional error made in good faith.

Ms. Thompson asked if the staff needed to better explain to candidates that obligations count as expenditures. Mr. Wayne said that it was clear on the form that obligations must be reported. Mr. Wayne said that they could explain that in the Candidate's Guide and in trainings, but it was not always a top priority in the past. Ms. Thompson recommended that the staff include examples of past violations in the Candidate's Guide. Ms. Gardiner said that such examples should illustrate factual situations rather than possible penalty amounts.

Mr. Ketterer said that candidates must follow the rules, even if they are not explained by Commission staff. Mr. Ketterer said that there was a tendency among the parties recruiting candidates to leave out details on the reporting requirements. Mr. Ketterer said any lack of explanation is an error on the part of the party leadership rather than the Commission staff. Mr. Ketterer said that an obligation being included as an expenditure was not intuitive to someone who had not previously run as a candidate.

Mr. Ketterer asked how the staff determined their recommended penalty. Mr. Wayne said that it was half of the unreported amount on the 101% report.

Ms. Ginn Marvin said that some amount of leniency was appropriate in this case.

Ms. Thompson moved, Mr. Ketterer seconded, and the Commission voted unanimously (3-0) to assess a penalty of \$253.70 against George Thomson.

Agenda Item #5 – Request for Waiver of Late-Filing Penalty/Richard Wurfel

Mr. Wayne said that Mr. Wurfel was not a professional lobbyist and was a firefighter by trade. Mr. Wayne said that Mr. Wurfel missed the deadline for several reports and has paid a \$100 penalty. Mr. Wayne said that Mr. Wurfel wishes to request a waiver of the second penalty for late reporting due to personal difficulties.

Mr. Wurfel said that he had spent 29 years as a firefighter and union representative. Mr. Wurfel said that he had assisted firefighters with healthcare issues and volunteered to lobby the legislature on the subject. Mr. Wurfel said that he did not appear at the February Commission meeting due to family issues. Mr. Wurfel said that he was working 130 hours a week. Mr. Wurfel said that he had asked Martha Demeritt for assistance every month with filing reports and that he had difficulty with computers. Mr. Wurfel said that he was exhausted from working and that Paul Gaspar from the Maine Association of Police had taken over most of his lobbying responsibilities. Mr. Wurfel said that he thought April 15 was the last time he had to file a report.

Mr. Ketterer asked Mr. Wurfel if he was still a registered lobbyist. Mr. Wurfel replied that on January 1, the Professional Firefighters Association paid him for a year of lobbying. Mr. Wurfel said that he coordinated the lobbying campaign but not did actually lobby the legislature himself. Mr. Wurfel said that he would not continue in his lobbyist position in 2007.

Ms. Thompson asked Mr. Wurfel what action he would like the Commission to take. Mr. Wurfel said that he would like a waiver of the penalty, but he admits his guilt in filing the report late. Mr. Wurfel said that Martha Demeritt recommended he appear at the February Commission meeting, but he did not attend. Mr. Wurfel said that he would like a reconsideration of the earlier penalty. Mr. Wurfel said that the money to pay the penalties comes out of his personal funds and so he requested either a waiver or reduction of the penalties.

Ms. Thompson asked what the staff recommended after hearing Mr. Wurfel's explanation. Mr. Wayne said that lobbyists were usually assessed the statutory penalty amount. Mr. Wayne said that the Commission used to have a practice of reducing penalties in half for first instances of late filing. Mr. Wayne said that the Commission ended that practice in order to be more consistent in assessing penalties. Mr. Wayne said that the staff would not object to a lowering of Mr. Wurfel's penalty to \$50 or \$0 due to the fact that he would be paying with personal funds and had no intent to continue lobbying.

Ms. Gardiner said that she recalled a past instance where a lobbyist who was also a nurse asked for a waiver due to family and work obligations. Ms. Gardiner said that it was rare for the Commission to waive a late-filing penalty, but it could decide to do so.

Mr. Wurfel said that he wanted the Commission to hear his explanation and was not seeking special treatment.

Ms. Ginn Marvin asked Mr. Wurfel if he arranged for firefighters to visit the legislature. Mr. Wurfel said that he coordinated a large-scale lobbying effort that included an e-mail list. Mr. Wurfel said that he officially began as a lobbyist on January 3 but had done some work on a bill during the previous year before the bill was postponed. Mr. Wurfel said that he was paid about \$300 a month beginning in January 2006.

Ms. Thompson said that the law requires transparency from lobbyists. Ms. Thompson said that Mr. Wurfel had already missed one deadline and should have known to file the next report on time, or he should have had someone else file for him.

Ms. Thompson moved, Mr. Ketterer seconded, and the Commission voted unanimously (3-0) to assess a penalty of \$100 against Richard Wurfel.

Agenda Item #1 – Ratification of Minutes of the June 22, 2006 Meeting

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (3-0) to adopt the minutes of the June 22 meeting as amended.

Public Workshop on Constituent Newsletters

Mr. Wayne said that the Commission received complaints about newsletters sent by legislators to their constituents and neighbors. Mr. Wayne said that Mr. Ketterer suggested at the previous meeting that the Commission hold a public workshop on the issue. Mr. Wayne said that challengers complained that the newsletters unfairly aided incumbents, while the incumbents have said that the newsletters are not campaign-related. Mr. Wayne said there was also an issue where a candidate mailed newsletters outside his district and some argued it was a campaign expenditure. Mr. Wayne recommended that the Commission hear testimony and then decide whether clarifications are needed.

Millicent MacFarland introduced herself as the Clerk of the House. Ms. MacFarland said that each member of the House was allowed one district-wide mailing per legislative session. Ms. MacFarland said that it was possible for House members to choose not to send a newsletter during the first session and instead mail one up until March 1 of the second session, allowing them to send an additional mailing at the end of the second session. Ms. MacFarland said that the newsletters were funded by the House budget and administered by the Clerk's office. Ms. MacFarland said that an average of 4,200 pieces of mail are sent per district, costing around \$500 to print and \$700 to mail. Ms. MacFarland said that House members draft a newsletter or questionnaire with legislative aides. Ms. MacFarland said that the draft is sent to the Clerk's office, which reviews the newsletter. Ms. MacFarland said that the newsletters are required to be factual, cannot advocate for or against any referendum question, and cannot criticize or question the motive of other House members. Ms. MacFarland said that in the event of inappropriate content, she would call the legislative aide who drafted the newsletter and provide suggestions for changes. Ms. MacFarland said that House members may appeal her decision to the Speaker of the House.

Ms. Thompson asked whether there were any issues of partisanship that Ms. MacFarland had encountered. Ms. MacFarland replied that while legislative aides and House

members may not be happy with her decision, an agreement can usually be reached. Ms. MacFarland said that evaluating newsletters was a somewhat subjective process. Ms. MacFarland said that she tries to ensure the newsletters are fair and accurate while still getting their points across. Ms. MacFarland said that it was not appropriate in newsletters to question why House members voted the way they did. She said that the purpose of the newsletters was to present factual information to the constituents, allowing the public to make their own determinations.

Ms. Thompson asked if the minority party leadership ever disagreed with Ms. MacFarland's decision. Ms. MacFarland said that there was one occasion where a newsletter evaluated by her office strongly criticized party leadership and the legislative process. Ms. MacFarland said that the individual chose to send the newsletter out with personal funds.

Mr. Ketterer said that he was not aware that the newsletters were being reviewed by the Clerk or that House members had a right to appeal the decision. Ms. MacFarland said that the policy has been in place for over 20 years. Mr. Ketterer said that it seemed to be uniformly applied and that House members have an obligation to inform their constituents about legislative activities.

Mr. Ketterer said that a more difficult determination for the Commission would be whether a mailing outside of a legislator's district constitutes a campaign expenditure. Ms. MacFarland said that her role was to ensure that she only pay for newsletters mailed to individuals within a House member's district. Ms. MacFarland said it was difficult for mailhouses to prevent a small amount of overlap between districts. Ms. MacFarland said that when a House member's district comprises a specific town, it is easier to ensure the mail only goes to residents within that town. Ms. MacFarland said it was the policy of the House to not allow members to mail newsletters outside their district en masse. Ms. MacFarland said that she compares the size of the mailing to the size of the district to enforce that policy. Ms. MacFarland said that it was rare that she had to investigate mailings outside the legislator's district.

Ms. Thompson asked if there had been instances of legislators sending mass mailings outside their districts. Ms. MacFarland replied that there had been some cases, including one earlier in the year. In that specific case, Ms. MacFarland said that she had difficulty contacting the mailhouse which sent the mailing and receiving the postage statements. Ms. MacFarland said that the Speaker of the House directed her to not pay the bill until she received the necessary information on the mailing. Ms. MacFarland said that the House member decided not to pay for the mailing with legislative funds.

Ms. Thompson asked what a mailhouse was and how it differed from a post office. Ms. MacFarland said that mailhouses both print and mail materials. Ms. MacFarland said that the House had contracts with Atkins Printing and Bangor Letter Shop.

Ms. Thompson said there appeared to be oversight by the Clerk over both the content of the newsletters and the mailing process. Ms. Thompson said that such information might be useful if the Commission received complaints about newsletters. Ms. MacFarland said that House members also have approached her with complaints about other members' newsletters.

Ms. Ginn Marvin asked how often Ms. MacFarland found inappropriate newsletters. Ms. MacFarland replied that there was an average of three to five problematic newsletters per session. Ms. MacFarland said that the House members did not appeal her decision in most cases.

Ms. Ginn Marvin asked if House members could choose their own mailhouse. Ms. MacFarland said they could either use Atkins Printing, with which the House has a contract, or another mailhouse of the legislator's choosing. Ms. MacFarland said that House members sometimes prefer to use their local printer and then send the materials to Atkins Printing for mailing. Ms. MacFarland said that the House will reimburse the mailhouse at the contract rate that the House has with Atkins Printing, with the member covering anything over the contract rate with their personal funds.

Ms. Ginn Marvin asked how the use of personal funds toward newsletters might affect candidates under the Clean Election restrictions. Mr. Wayne replied that since the funds are not being used for campaign purposes, they do not have to be reported.

Ms. Ginn Marvin asked if the House had any deadlines for sending constituent newsletters. Ms. MacFarland said that House members with opponents in the primary election had a deadline of March 1. Ms. MacFarland said that even though the March 1 date fell before the deadline to register as a candidate with the Secretary of State's office, most candidates knew if they would be facing opposition in the primary. Ms. MacFarland said that exceptions were granted if candidates did not know if they would be opposed. Ms. MacFarland said that House members expecting to have an opponent in the general election were expected to have their mailings out by the day of the primary election. Ms. MacFarland said that this requirement can be difficult to enforce due to the low priority the U.S. Postal Service gives to the newsletters compared to political mail, resulting in people receiving the newsletters several weeks after the primary. Ms. MacFarland said that House members who were unopposed in the general election may mail their newsletters up until 60 days before the general election. Ms. MacFarland said that those not running for reelection must send newsletters by the primary election. Ms. MacFarland said that this deadline is due to instances of legislators including in their newsletters pictures of the candidate running for their seat.

Joy O'Brien introduced herself as the Secretary of the Senate. Ms. O'Brien said that unlike the House, Senate does not reimburse members who use their own mailhouses. Ms. O'Brien said that the Senate contracts with a mailhouse to send out all constituent newsletters at one time. Ms. O'Brien said that this system allows for greater oversight on what is being mailed and when. Ms. O'Brien said that the leadership staff meets at the end of the session to decide on a date for the mailing, working within the parameters of the mailhouse. Ms. O'Brien said that a mailing for a typical district comprises between 16,000 and 21,000 pieces and are a standard size. Ms. O'Brien said that none of the newsletters are sent out before the primary but usually go out soon after the primary. Ms.

O'Brien said it could be difficult mailing to addresses within towns split between two districts. Ms. O'Brien said that her office works with the post offices to determine who should receive which candidate's newsletter. Ms. O'Brien said that the contents of the newsletters were partisan but not political. Ms. O'Brien said that the Senate allows its members to communicate their political philosophy with their constituents via the newsletters. Ms. O'Brien said it could be difficult to distinguish between partisan content and campaign-related messages. Ms. O'Brien said that each member of the Senate was allowed 50 pieces of ordinary mail to constituents per day. Ms. O'Brien said that the Senate has, in the past, allowed Senate members to send mass mailings outside their district to address important issues. Ms. O'Brien said that in issues of redistricting, the Senate has only allowed its members to send mail to their current districts and not to the newly apportioned districts. Ms. O'Brien said that any regulation on incumbent candidates sending newsletters outside their current districts should come from the Commission rather than being part of the newsletter oversight in the legislature.

Ms. Ginn Marvin asked about partisan website addresses being included in the newsletters. Ms. O'Brien responded that the official Senate website provides links to party websites. Ms. O'Brien said that the .org website address included in some newsletters is hosted by InforME, which also hosts the official Senate website. Ms. O'Brien said that the same rules against campaign content apply to the .org site that apply to newsletters.

Ms. Ginn Marvin asked if there were any requirements for members to include a "paid for" disclosure statement on the newsletters. Ms. O'Brien replied that the Senate had no such requirement, but the parties sometimes decided on a requirement for their members.

Ms. Ginn Marvin asked whether the surveys on constituent newsletters were used for campaign purposes. Ms. O'Brien replied that the surveys were instead used to find out which matters were important to constituents.

Ms. Ginn Marvin asked if the use of a single mailhouse allows for easier Senate oversight of constituent mailings than the system used by the House. Ms. O'Brien said that the Senate uses their arrangement with the mailhouse to make sure that legislative funds are not used to pay for mailings outside a member's district. Ms. O'Brien said the total bill was around \$165,000, but consolidating the mailings allows for greater control over the timing and destinations of the mailings. Ms. O'Brien said that the presiding officer and members of leadership have the ability to meet and change the rules governing the mailings.

Alison Smith said that she was representing Maine Citizens for Clean Elections. Ms. Smith read a statement expressing the right of the public to know who paid for and mailed campaign communications. Ms. Smith said that the determination of campaign literature relies on a purpose test, which makes mailings outside a legislator's district campaign-related. Ms. Smith said that while the Commission may wish to clarify its rules, there was a strong need for enforcement during the current election cycle. Ms. Smith said that the Commission should reconsider its lack of action against Rep. Glynn at its previous meeting.

Kitty Breskin said that she was working for the campaign of a House candidate from Boothbay Harbor. Ms. Breskin said that both her candidate and his opponent were Clean Election candidates, with the opponent able to exceed the spending restrictions by having the incumbent legislator in his district include mentions of him in his constituent newsletter. Ms. Breskin said the photograph of the incumbent and his chosen successor did not expressly advocate for his election, but did say he was working for the good of the community. Ms. Breskin said that she was not making a formal complaint to the Commission, but was concerned about the use of constituent newsletters to get around the restrictions of the Clean Election Act.

Ms. Thompson asked if it was a House newsletter. Ms. Ginn Marvin said that the newsletter was paid for with state funds.

Ms. Thompson asked if the person in the photograph was, in fact, a candidate when the newsletter was mailed. Ms. Breskin replied that he was.

Ms. Thompson asked if the Clerk of the House had any concerns about the newsletter when it came through her office. Ms. MacFarland said that the Clerk's office did not recognize that the photograph depicted a candidate for the House. Ms. MacFarland said that if she had known he was a candidate, she would have spoken with the House Republican office, telling them that it was not allowed.

Ms. Thompson said it may be a difficult determination if the person mentioned in the newsletter decided to become a candidate after the newsletter was mailed. Ms. Thompson asked if the existing law was inadequate or if the issue was not something that could be regulated. Ms. Thompson asked if a change to the law would prevent people from running for office if they previously appeared in a constituent newsletter.

Mr. Ketterer said that it would be difficult for the Clerk to determine whether any candidates were mentioned or depicted in the newsletters, but they could require legislators to indicate this when they present the newsletters for approval. Mr. Ketterer said that many people running for office are also well-known community leaders who would be likely to appear with incumbent legislators.

Ms. Thompson asked Ms. Breskin if she had any suggested solutions. Ms. Breskin said that she was presenting the issue as a problem with the Clean Elections system, but did not have any specific suggestions.

Ms. Ginn Marvin said that the problem could likely be solved by requiring legislators to certify that no photographs of current candidates appear in their newsletters.

Dan Billings said that he represented Rep. Glynn at the previous Commission meeting and also represented the Woodcock for Governor campaign. Mr. Billings said that he received a newsletter from Rep. Hutton, which includes slogans and partisan comments.

Mr. Billings said that they are political communications and do not represent objective information on the government. Mr. Billings said that it was not a workable rule to forbid mailings outside a legislator's district, being that it would be unfair to incumbents and a violation of First Amendment rights. Mr. Billings said that the purpose test was not useful since there could be many different purposes involved in a mailing. Mr. Billings said that the direct advocacy test was a more appropriate standard, objectively judging campaign materials based on whether they directly advocate for a candidate's election or defeat. Mr. Billings said that there may be legitimate reasons for candidates to appear in a constituent newsletter. Mr. Billings said that if the purpose test was used, many press conferences given by Gov. Baldacci could have been considered to be campaign expenditures. Mr. Billings said that objective evidence such as the contents of the communications should be considered rather than the intent.

Ms. Gardiner asked Mr. Billings if he would support a recommendation to the legislature that constituent newsletters not be mailed within 21 days of an election. Mr. Billings said that under the current law, matching funds for Clean Election candidates should be triggered by any independent expenditures made within 21 days of an election, including constituent newsletters. Mr. Billings said that providing matching funds would be preferable to placing limits on when the newsletters could be mailed.

Ms. Gardiner asked if the legislature would fit the definition of "person" in the statute regarding independent expenditures. Mr. Billings replied that it could be considered a "group or organization" and fall under the definition.

Kate Brogan introduced herself as being legal counsel to the President of the Senate. Ms. Brogan expressed her concern that if the express advocacy standard was used exclusively that Clean Election candidates could spend private money to send communications that circumvented that standard. Ms. Brogan said there should be recognition that all mailings from a candidate during certain times are campaign-related. Ms. Brogan said that it was not unreasonable for the Commission to judge intent in mailings.

Mr. Wayne asked if there was confusion among legislators about what would constitute campaign-related mailings. Ms. Brogan said that legislators and voters knew campaign-related activity when they saw it.

Mr. Wayne said that the Commission could give the staff direction and change its rules after the election. Mr. Wayne said that the issues raised were whether an incumbent's mailing within his own district should be considered a campaign expense and whether mailings outside a legislator's district should be treated as a campaign expense.

Ms. Ginn Marvin recommended that the Commission members give their feedback to Mr. Wayne and take up the issues at a future meeting.

Ms. Thompson asked that the staff summarize the complaints raised about constituent mailings and the effects of possible rule changes. Mr. Wayne agreed to present this information at the August 23 meeting.

Ms. Ginn Marvin invited members of the public to attend the next meeting on August 23 at 9 a.m.

There being no further business, Mr. Ketterer moved, Ms. Thompson seconded and the Commission unanimously voted (3-0) to adjourn.

Respectfully submitted,

Jonathan Wayne
Executive Director

Agenda

Item #2



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

To: Commission Members and Counsel

From: Jonathan Wayne, Executive Director *JW*

Date: August 15, 2006

Re: Request for Investigation re: Alleged Seed Money Violation by Barbara E. Merrill

Gubernatorial candidate John M. Michael filed the attached request for an investigation dated July 28, 2006 against Barbara E. Merrill, another candidate for Governor. Ms. Merrill was certified as a Maine Clean Election Act (MCEA) candidate on June 9. The request alleges that Ms. Merrill impermissibly used \$9,800 in Maine Clean Election Act funds to reimburse two campaign workers for their work during the qualifying period when she should have paid them with seed money contributions. Mr. Michael argues that if he had hired two campaign workers to help him qualify and then paid them with MCEA funds, he could have easily qualified for public funding.

Applicable Law

Restrictions on Seed Money Contributions

Candidates seeking to qualify for public funding under the MCEA must collect a required number of qualifying contributions, which are \$5 checks or money orders from Maine voters payable to the Maine Clean Election Fund. For gubernatorial candidates, the requirement is to collect 2,500 qualifying contributions during the "qualifying period." (21-A M.R.S.A. §1125(3)) Because she is not enrolled in a political party, Ms. Merrill's qualifying period ended on June 2, 2006. (21-A M.R.S.A. §1122(8)(A))

In order to receive public funding, individuals must also qualify as a candidate. In Ms. Merrill's case, that meant collecting more than 4,000 petition signatures by June 1.

To fund these efforts, prospective MCEA candidates may collect a limited amount of private contributions, which are referred to as seed money contributions. Seed money contributions are donations of up to \$100 to the campaign. (21-A M.R.S.A. §1122(9)) The candidate may only receive seed money contributions from individuals – not businesses, political parties, or other organizations. Candidates for governor may collect up to \$50,000 in seed money contributions.

Commission's Duty to Verify Compliance with Seed Money Restrictions

After the candidate has collected the required number of qualifying contributions, he or she must submit them to the Commission by the end of the qualifying period. At that time, the Commission staff decides whether to "certify" that the candidate has met the eligibility requirements to receive public funding.

As part of the candidate's request for certification, the candidate must submit a campaign finance report listing all seed money contributions, expenditures of those contributions, and unpaid debts and obligations. In order to certify the candidate, the Commission has a specific duty to determine that the candidate has complied with the seed money restrictions:

5. Certification of Maine Clean Election Act candidates. Upon receipt of a final submittal of qualifying contributions by a participating candidate, the commission shall determine whether or not the candidate has:

- A. Signed and filed a declaration of intent to participate in this Act;
- B. Submitted the appropriate number of valid qualifying contributions;
- C. Qualified as a candidate by petition or other means;
- D. Not accepted contributions, except for seed money contributions, and otherwise complied with seed money restrictions:
 - D-1. Not run for the same office as a nonparticipating candidate in a primary election in the same election year; and
- E. Otherwise met the requirements for participation in this Act.

(21-A M.R.S.A. §1125(5)) (underlining added)

Restrictions on Expenditures and Obligations Prior to Certification

Prior to certification by the Commission, the candidate must limit his or her expenditures to seed money collected:

To be eligible for certification, a candidate may collect and spend only seed money contributions subsequent to becoming a candidate as defined by section 1, subsection 5 and throughout the qualifying period. ... Prior to certification, a candidate may obligate an amount greater than the seed money collected if the value of the goods and services received from a vendor does not exceed the amount paid to the vendor.

(21-A M.R.S.A. §1122(9), underlining added)

The underlined sentence was inserted by the Legislature in 2005 at the suggestion of the Commission to clarify a candidate's opportunity to enter into obligations during the qualifying period. In the 2000, 2002, and 2004 elections, the Commission staff interpreted the preceding sentence to mean that during the qualifying period a candidate could not obligate more than the amount of any seed money that remained unspent at the end of the qualifying period. Because some candidates use their seed money contributions as down payments for goods and services to be received later, they inadvertently violated the seed money restrictions.

The 2005 amendment was suggested by the Commission staff in order to provide candidates with the flexibility to enter into obligations to pay vendors for goods and services during the qualifying period provided that the value of services received from a vendor during the qualifying period did not exceed the amount paid to the vendor. (For example, a House candidate who raised \$200 in seed money and paid it to a vendor, could obligate another \$300 by ordering goods from the vendor but could only receive \$200 worth of goods from the vendor prior to certification.) This amendment effectively prohibited candidates from receiving goods and services on credit from vendors, which might be a contribution that was forbidden by the seed money restrictions and might give the candidate an unfair advantage relative to other candidates who could not receive credit from vendors.

The Commission staff put gubernatorial candidates on notice of this restriction on page 3 of a memo dated June 24, 2005 that was posted on the Commission's website. The Commission also advised candidates of this restriction on page 29 of the 2006 Candidate Guidebook (attached), which was mailed to Ms. Merrill's campaign on January 13, 2006.

Candidate's Duty to Report Obligations

Under Maine's Election Law and the Commission's Rules, the definition of the term "expenditure" includes an obligation to pay vendors for goods and services to influence an election. (21-A M.R.S.A. §1012(3)(A)(2) and Chapter 1, Section 7(A) and (B) of the Commission's Rules) The Maine Clean Election Act specifically requires candidates to report expenditures and obligations. (21-A M.R.S.A. §1125(12)) Obligations are reported on a separate schedule of the candidate campaign finance reporting form, Schedule D.

Volunteerism

Almost all candidates rely on volunteers for free labor. The donation of time by a volunteer is excluded from the definition of campaign contribution and expenditure. (21-A M.R.S.A. §1012(2)(B)(1) and (3)(B)(1)) If, however, a campaign chooses to pay a worker or a consultant those payments are treated in the same way as payments to other vendors that provide goods or services to campaigns.

Request for Investigation by John M. Michael

Barbara E. Merrill submitted her qualifying contributions to the Ethics Commission in ten batches beginning on May 26. The Commission staff certified her on June 9, and authorized the state government to pay her \$400,000 in MCEA funds for the general election. As part of the certification process, the Commission reviewed Merrill's financial reporting for compliance with the seed money restrictions.

Mr. Michael's request takes note that on June 16 the Merrill campaign made a payment of \$1,500 in MCEA funds to Harold James Webster and a payment of \$8,300 in MCEA funds to Dyer Associates. The expenditures were reported on Schedule B of Merrill's July 25 post-primary campaign finance report with the remarks of:

Reimbursement for Work Done Collecting \$5.00
Contributions [for Webster]

Consultations During \$5.00 Contribution Phase [for Dyer
Associates]

(see attached print-out of Schedule B). Based on this reporting alone, the two payments totaling \$9,800 made with MCEA funds appear to be reimbursement for work performed during the qualifying period. Webster and Dyer received no compensation from Merrill during the qualifying period, other than a \$200 reimbursement for fuel paid to Webster.

Mr. Michael complains that these expenditures show that the Merrill campaign owed obligations to Jim Webster and Dick Dyer (of Dyer Associates) for their services during the qualifying period which were unreported in Merrill's June 2 seed money report. He objects to Merrill's failure to report such an obligation.

More importantly, Mr. Michael complains that Ms. Merrill received services from Webster and Dyer during the qualifying period and that the value of these services exceeded what she paid them during the qualifying period. If true, it would seem to be a violation of the seed money restrictions in 21-A M.R.S.A. §1122(9) quoted above. Although Mr. Michael did not cite the legal provision, he referred to the description of it on page 3 of the June 24, 2005 memo to gubernatorial candidates.

Mr. Michael makes the equitable argument that Merrill gained an unfair advantage in her quest for public funding by receiving assistance from "hire[d] helpers," and that if he had hired people to collect qualifying contributions he would have easily qualified:

It is our argument that because the candidate qualified with 2,564 accepted qualifications, a \$9,800 obligation to consultants assisting her effort is directly related to her ability to achieve the required number of contributions, and the candidate would have been unable to qualify as a clean election candidate had this obligation not been made.

The Michael for Governor campaign is further asserting that if an equivalent expenditure was authorized for our campaign, we could have easily obtained an additional 2,000 qualifying contributions for our effort, and our effort to qualify for public financing, now on appeal, would not have been denied. We further believe that with the ability to hire helpers for such an effort, we could have qualified by the April 18th deadline to receive additional financing. (underlining and bold text in original)

Notably, Mr. Michael does not state what remedy he is requesting from the Commission with regard to Ms. Merrill's alleged seed money violation.

Response by Phil Merrill, Deputy Treasurer for the Merrill Campaign

Phil Merrill responded to Mr. Michael's request for an investigation in a letter dated July 29. He states that Webster and Dyer were volunteers who donated a great deal of time to the campaign during the qualifying period. He states that the campaign owed no obligation to them at the time the candidate was certified.

After certification, Merrill states, the campaign decided "to front load our negotiated payments to them by paying a retainer at the outset." The reporting of the June 26 expenditures "reflected a concern" that Webster and Dyer had suffered a loss of income during the qualifying period, but the June 16 payments totaling \$9,800 were for work that would be performed during the general election period from June to November.

The Commission staff finds this explanation believable in itself, but it seems to be at odds with the way the June 16 payments were reported as straightforward reimbursement for work performed during the qualifying period.

Analysis by Commission Staff

Seed Money Violation

The Commission staff believes that Mr. Michael has raised a legitimate issue. Candidates should be held to strict standards in qualifying for public financing in order to protect the public treasury and to ensure that the same standards are applied to all candidates. Once the Legislature adds a statutory requirement for qualifying for MCEA funds, it is the candidates' responsibility to learn of that requirement and to comply with it. The Commission staff provided adequate notice of this restriction to the candidates in its 2005 memo to gubernatorial candidates and its 2006 Candidate Guidebook. Candidates are welcome to ask the Commission for guidance if they are confused about the requirements, and many legislative candidates have asked what obligations they can enter into during the qualifying period.

One significant factor in your deliberations should be the fairness to those candidates who attempted to qualify for public financing but fell short: David Jones,

Nancy Oden, Mr. Michael (who is contesting his qualification), and others. In particular, both Jones and Michael collected a substantial number of qualifying contributions. It is distinctly possible that they chose to rely exclusively on volunteers and on staff who were paid with seed money contributions, because they believed they could not promise staff that they would be paid with MCEA funding for work collecting qualifying contributions.

In the staff's opinion, your resolution of this matter should depend on your assessment of the facts based on testimony you will hear at the August 23 meeting. Specifically, the crucial question is: were Dyer and Webster truly acting as volunteers during the qualifying period, or was the reporting of the June 16 payments accurate? The staff has requested that Phil Merrill be present at the August 23 meeting to explain the campaign's position that it did not owe Webster and Dyer an obligation for work performed prior to the candidate being certified as a Maine Clean Election Act candidate. The staff has also suggested that Jim Webster and Dick Dyer be present as well. The Commission may wish to have all three of these individuals provide sworn testimony.

If the Commission's conclusion is that Webster and Dyer were working on a voluntary basis during the qualifying period and were not owed an obligation by the campaign, then the Merrill campaign complied with the seed money restrictions. In that case, the staff would recommend that you take no further action.

If, however, you determine that the Merrill campaign did owe an obligation to Webster and Dyer, then the Merrill campaign violated one of the seed money restrictions in §1122(9) by obligating \$9,800 to Webster and Dyer for services rendered by them that exceeded the amount paid to them prior to certification.

Such a violation would be substantial in terms of dollar amount. During the seed money (or qualifying) period, the Merrill campaign received and spent \$6,255 in seed money contributions. The amount of the alleged obligation, \$9,800, thus exceeded the total amount of seed money collected and spent by the Merrill campaign. Indeed, it exceeds the amount of assistance by hired staff and consultants paid for during the qualifying period by most of the other prospective MCEA candidates for Governor.

While the Commission is authorized to waive minor deviations from the seed money restrictions under §1122(9) and Chapter 3, Section 2(3)(E) of the Commission's Rules, such a significant seed money violation seems outside the scope of violations that could be waived by the Commission.

Remedy for Any Violation

If you find that the Merrill campaign violated the seed money restrictions, the staff sees that you have two options:

Disqualification from public funding. If you find that the Merrill campaign did not comply with the seed money restrictions, the staff believes you should give serious consideration to disqualifying Barbara Merrill as a publicly funded candidate. The legal

basis for disqualification would be 21-A M.R.S.A. §1125(5), which is quoted above. Under that provision, in order to certify a candidate the Commission must determine that the candidate has complied with the seed money restrictions. If the Commission can no longer conclude that the campaign complied with the seed money restrictions, my interpretation of §1125(5) is that it is within the Commission's authority to determine that the Merrill campaign has not met the qualifications for public funding under the MCEA.

The Commission staff does not raise this as an option lightly, because the practical implications of disqualification would be extremely difficult. The determination would effectively require Ms. Merrill to run a privately financed campaign. She may appeal the Commission's determination to Superior Court. As part of any disqualification decision, the Commission would have to wrestle with the difficult question of what action to take with respect to the MCEA funds that she has already spent or obligated.

While the staff believes the Commission should consider this as an option, you should also consider two countervailing factors:

- More than 2,500 Maine citizens expressed their support for public funding of Ms. Merrill's campaign by providing her with \$5 qualifying contributions, and disqualification of the candidate would arguably frustrate their intentions in making the contributions; and
- Disqualification may be perceived as greatly disproportionate to the degree of non-compliance involved in obligating MCEA funds to pay campaign workers during the qualifying period.

Assess a civil penalty. If the Commission were to find that the campaign failed to comply with the seed money provisions, the Commission could assess a civil penalty under 21-A M.R.S.A. §1127(1). Under that provision: "a person who violates any provision of this chapter or rules of the commission ... is subject to a fine not to exceed \$10,000 payable to the fund." Chapter 3, Section 6(6) of the Commission's Rules would forbid the candidate from using MCEA funds to pay the penalty, so the candidate would have to use other sources of funds.

BARBARA E. MERRILL

CANDIDATE'S FULL NAME

**SCHEDULE B
EXPENDITURES**

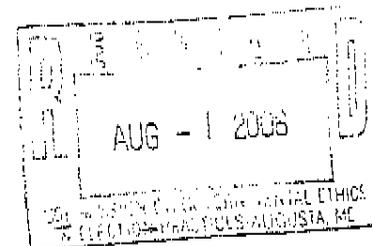
- Itemize each expenditure made during the reporting period.
- Enter the date, payee, expenditure type, and amount for each expenditure.
- For expenditure types which require a remark, enter a description of the goods and services purchased.
- Only enter expenditures that have actually been paid. Enter unpaid debts and obligations on Schedule D.

Expenditures paid with non-campaign funds: Whenever an expenditure is made on behalf of a candidate with funds other than campaign funds, the campaign must reimburse that expenditure with campaign funds. Following the instructions above, enter the information for the vendor that actually provided the goods or services. In the remarks section, include the name of the person reimbursed and any other required remarks.

Expenditure Types Requiring <u>NO</u> Remark		Expenditure Types Which <u>REQUIRE</u> Remark	
PRT	Print media ads	SAL	Campaign workers' salaries
TVN	TV or cable ads, production costs	CNS	Campaign consultants
RAD	Radio ads, production costs	PRO	Other professional services
LIT	Campaign literature (printing and graphics)	EQP	Equipment
POS	Postage for U.S. Mail	FND	Fundraising events
MHS	Mail house (all services purchased)	TRV	Travel (fuel, mileage, lodging, etc.)
PHO	Phone banks, automated telephone calls	OTH	Other
FOD	Food for campaign events, volunteers		
OFF	Office rent and utilities		
WEB	Internet and e-mail		
POL	Polling and survey research		
RTA	Return of authorized MCEA funds		
RTU	Return of unauthorized MCEA funds		

DATE EXPENDITURE MADE	NAME OF EACH PAYEE	EXPENDITURE TYPE (use code from above)	REMARK (if the expenditure type requires a remark, describe all goods and services purchased)	AMOUNT
6/16/2006	HAROLD JAMES WEBSTER	PRO	REIMBURSEMENT FOR WORK DONE COLLECTING \$5.00 CONTRIBUTIONS	1,500.00
6/16/2006	DYER ASSOCIATES	CNS	CONSULTATIONS DURING \$5.00 CONTRIBUTION PHASE	8,300.00

Michael for Governor
POB 233
Auburn, ME 04212
Ph: 207-777-3183
Fax: 207-777-4960



07/28/06

Mr. Jonathan Wayne, Executive Director
State of Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135

**RE: Complaint and Request for Investigation against Campaign Committee
BarbaraMerrill.com and Gubernatorial Candidate Barbara Merrill**

Dear Mr. Wayne,

On behalf of Michael for Governor, I am requesting that the Ethics Commission investigate the information included herein.

On June 2, 2006, gubernatorial candidate Barbara Merrill submitted a seed money report to the Ethics commission staff reporting the financial activity of her campaign and her effort to qualify for public financing of her campaign under the Maine Clean Election Act, MRSA Title 21-A §1121 - 1128, "MCEA". In that report, she reported that her campaign had no debts or obligations. The reporting of such obligations is required under MRSA Title 21-A §1125(12). The Ethics Commission proceeded to certify her as a clean election candidate, assuming that because she had no debts or obligations and otherwise complied with requirements of MCEA, her seed money report substantially complied with the restrictions imposed on it to qualify. See MRSA Title 21-A §1125(5D).

On July 24, 2006, Rep. Merrill submitted a 42-day post primary report, in which she listed expenditures associated with her campaign finances received as a result of her qualifying for financing under the MCEA. In this report, she itemized an expenditure to Harold James Webster on 6/16/2006, and an expenditure to Dyer Associates on 6/16/2006. The reported purpose of these expenditures, by her own admission, was to provide payment for services received during the qualifying period, while still under the restrictions of seed money expenditures. This is not only a violation of the MCEA, MRSA Title 21-A §1125(5D), but the purpose of these expenditures and the aggregate amount (almost \$10,000) of services provided but not paid for is a very serious violation of the MCEA. This also violates MRSA Title 21-A §1012(3A(2)), as it presumably constituted a promise or agreement to make an expenditure. The candidate should have reported the expenditures on the seed money report, and should amend the seed money report to reflect this expenditure. This would make the candidate not in substantial compliance with the seed money restrictions required to comply, because the expenditures constitute significant infractions of the seed money restrictions.

Furthermore, this obligation was incurred in violation of Ethics Commission rules regarding participation in the MCEA, listed in a memo dated June 24, 2005 and distributed to all candidates. See page 3 of the memo.

"A candidate may obligate herself to pay a vendor more than she has received in seed money contributions, **except that the candidate cannot receive goods and services from the vendor with a value of more than she has paid.**" *Emphasis added*

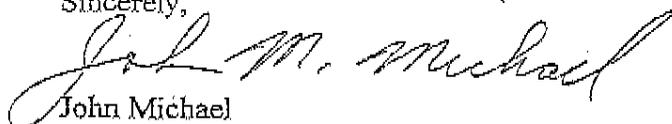
At the time of filing the seed money report, the candidate had received all of the services from these consultants, but had not paid for any of the services.

Clearly, these services were provided before the candidate qualified as a clean election candidate. It is our argument that because the candidate qualified with 2,564 accepted contributions, a \$9,800 obligation to consultants assisting her effort is directly related to her ability to achieve the required number of contributions, and the candidate would have been unable to qualify as a clean election candidate had this obligation not been made.

The Michael for Governor campaign is further asserting that if an equivalent expenditure was authorized for our campaign, we could have easily obtained an additional 1,000 qualifying contributions for our effort, and our effort to qualify for public financing would not have been denied.

If you have any questions regarding the assertions set forth herein, I would be happy to address them.

Sincerely,



John Michael



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

To: Prospective Gubernatorial Candidates
From: Jonathan Wayne, Executive Director
Date: June 24, 2005
Re: Participating in the Maine Clean Election Act for the 2006 Elections

The attached memo is an updated version of a March 11 memo for prospective candidates for Governor who may be considering participation in the Maine Clean Election Act. It clarifies a few points and reflects amendments to the Election Law and Commission Rules during 2005. The primary changes and clarifications are:

- Candidates may not receive payments of Maine Clean Election Act funds until they qualify for the ballot after January 1, 2006.
- Lobbyists cannot make seed money contributions during the legislative session, except after March 15 during an election year. (The same requirement applies to traditionally financed candidates.)
- Candidates must report the occupation and employer of all individuals giving more than \$50 in seed money contributions. (The same requirement applies to traditionally financed candidates.)
- Chapter 301 of the Public Laws of 2005 broadened the categories of goods and services that candidates, supporters, and political parties may provide to campaigns *without* making a contribution. For example: candidates may pay for unlimited travel for their own campaigns; party committees may give voter identification information to candidates; and party committees may sponsor campaign events for candidates provided that more than three candidates attend. These goods and services are excluded from the legal definition of a "contribution," which is attached to the memo.

Seed money contributions must strictly comply with the following restrictions:

- Only individuals may contribute seed money contributions;
- Lobbyists may not make seed money contributions during the legislative session, except after March 15 of an election year;
- No contribution may be accepted from groups or associations, such as political action committees, party committees, labor unions, businesses, or trade associations;
- Individuals may contribute no more, in the aggregate, than \$100;
- Gubernatorial candidates may accept no more than a total of \$50,000 in seed money contributions;
- The campaign may accept no cash receipts other than seed money contributions;
- Loans may not be accepted;
- All expenditures must be made with seed money contributions, and not from any other source of funds; and
- A candidate may obligate herself to pay a vendor more than she has received in seed money contributions, except that the candidate cannot receive goods and services from the vendor with a value of more than she has paid.

All seed money contributions must be disclosed in campaign finance reports submitted to the Commission (discussed below) so the Commission can verify that the seed money contributions have complied with the restrictions.

The candidate and members of his or her family may each give up to \$100 in seed money, provided the money comes from the contributor's personal funds. All seed money contributions must be from the personal funds of the individuals disclosed in campaign finance reports. Misrepresentation of the identity of seed money contributors will be viewed as a serious violation of the Election Law.

If the immediately preceding election cycles do not contain sufficient electoral data, the commission shall use information from the most recent applicable elections.

9. **Matching funds.** When any campaign, finance or election report shows that the sum of a candidate's expenditures or obligations, or funds raised or borrowed, whichever is greater, alone or in conjunction with independent expenditures reported under section 1019-B, exceeds the distribution amount under subsection 8, the commission shall issue immediately to any opposing Maine Clean Election Act candidate an additional amount equivalent to the reported excess. Matching funds are limited to 2 times the amount originally distributed under subsection 8, paragraph A, C, E or F, whichever is applicable.

10. **Candidate not enrolled in a party.** An unenrolled candidate certified by April 15th preceding the primary election is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election candidate and a general election candidate as specified in subsections 7 and 8. For an unenrolled candidate not certified by April 15th at 5:00 p.m. the deadline for filing qualifying contributions is 5:00 p.m. on June 2nd preceding the general election. An unenrolled candidate certified after April 15th at 5:00 p.m. is eligible for revenues from the fund in the same amounts as a general election candidate, as specified in subsections 7 and 8.

11. **Other procedures.** The commission shall establish by rule procedures for qualification, certification, disbursement of fund revenues and return of unspent fund revenues for races involving special elections, recounts, vacancies, withdrawals or replacement candidates.

12. **Reporting; unspent revenue.** Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

13. **Distributions not to exceed amount in fund.** The commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund as set forth in section 1124. Notwithstanding any other provisions of this chapter, if the commission determines that the revenues in the fund are insufficient to meet distributions under subsections 8 or 9, the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than \$500 per donor per election for gubernatorial candidates and \$250 per donor per election for State Senate and State House candidates, up to the applicable amounts set forth in subsections 8 and 9 according to rules adopted by the commission.

14. **Appeals.** A candidate who has been denied certification as a Maine Clean Election Act candidate, the opponent of a candidate who has been granted certification as

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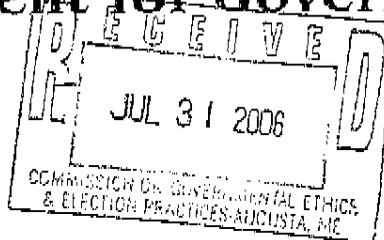
Phil Merrill

2077856639

p.2

Barbara Merrill

Independent for Governor



July 29, 2006

Jonathan Wayne, Executive Director
Maine Commission of Ethics and Governmental Practices
State Street, Augusta, Maine 04330

Dear Sir:

I am in receipt of your notice of the complaint filed by Mr. Michael which has raised an issue concerning payments to Harold Webster and Richard Dyer by this campaign. On review, we can see how this misunderstanding may have developed and the purpose of this letter is to clarify the issue with regard to these payments.

During the period in which we were collecting \$5 donations to the Clean Election Fund, neither Mr. Webster nor Mr. Dyer were vendors of goods or services to the campaign. They were volunteers who, along with several other individuals, donated a great deal of time to organize and coordinate the collection and reporting associated with the effort. There was never any report of a debt to them in this period because there was none to report. On the day that the effort was completed, the candidate expressed a debt of gratitude and that was it.

In the following period, as the general election campaign was being organized, the decision was made to ask Mr. Webster to accept employment as the manager of the campaign and retain Mr. Dyer to work on press and public relations. In the process of negotiation, it was recognized and understood that standard compensation for campaign work is well below what they would earn if they continued in their usual private employment. This fact was reflected in the total amounts we agreed to pay each individual for the period from June 2006 to November 2006. This posed a special difficulty for the two of them and their families because of their loss of income in the previous months as a result of their volunteer activities. Therefore, the campaign offered to front load our negotiated payments to them by paying a retainer at the outset. That is reflected and pointed to openly, if incompletely, in our filing. There was no existing debt.

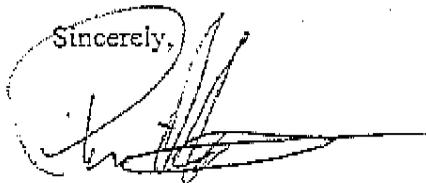
Since receiving the complaint from Mr. Michaels, I have once again reviewed the language of 21-A MRSA Section 1122(9) which states, "Prior to certification, a candidate may obligate an amount greater than the seed money collected if the value of the goods and services received from a vendor does not exceed the amount paid to the vendor." I must admit that this statute's meaning would seem to be subject to several interpretations, but it is hard to see how it applies in this case because there was no "obligation" "prior to certification" in regards to either individual.

In fact providing a retainer when contracting for consulting services or to hire an employee is standard business practice and the amount we paid in each instance is well within these perimeters. This is particularly true when dealing with short term agreements such as going to work for a four-month campaign. A review of the reports of other candidates seems to reflect this.

For these reasons we might have not reported at all that the initial retainers reflected concern for their depleted finances, but it was a factor in our offering this arrangement and we would not have done it if we thought it violated the letter or spirit of the law, so we reported it.

However, our staff regularly relies on your staff to clarify our understanding of this somewhat complex and developing body of law and we do not believe contesting their judgement serves our purpose or the important purpose of preserving support of the public for the Clean Election Law. Therefore, if, after reviewing these facts, you do not concur that these retainers to Mr. Dyer and Mr. Webster were not clearly allowed under the law, then Mr. Webster and Mr. Dyer stand ready to promptly return the retainer payments.

Sincerely,



Philip Merrill
Deputy Treasurer



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

August 7, 2006

Phil Merrill
BarbaraMerrill.Com
PO Box 1010
Union, ME 04862

Dear Mr. Merrill:

Thank you for your very prompt letter of July 29 in response to John Michael's July 28 request for an investigation. This is to inform you that Mr. Michael's request is scheduled to be considered at the next meeting of the Commission on August 23, 2006 at 9:00 a.m.

Mr. Michael's request takes note that on June 16 the Merrill campaign made a payment of \$1,500 to Harold James Webster and a payment of \$8,300 to Dyer Associates. The campaign made these payments with Maine Clean Election Act (MCEA) funds paid to the campaign on June 9. The expenditures were reported on Schedule B of the 42-day post-primary campaign finance report with the remarks of:

Reimbursement for Work Done Collecting \$5.00
Contributions [Webster]

Consultations During \$5.00 Contribution Phase [Dyer
Associates]

Mr. Michael's complaint raises the issue whether those payments violate the following restriction in the definition of seed money contribution in 21-A MRSA Section 1122(9):

To be eligible for [MCEA] certification, a candidate may collect and spend only seed money contributions subsequent to becoming a candidate as defined by section 1, subsection 5 and throughout the qualifying period. ... Prior to certification, a candidate may obligate an amount greater than the seed money collected if the value of the goods and services received from a vendor does not exceed the amount paid to the vendor.

Although Mr. Michael did not cite this legal provision explicitly, he noted that this restriction was included in a memo addressed to gubernatorial candidates dated June 24, 2005 that was posted on the Commission's website. This Commission also advised

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

Phil Merrill

- 2 -

August 7, 2006

candidates of this restriction on page 29 of the 2006 Candidate Guidebook, which was mailed to your campaign on January 13, 2006.

Based on the campaign's financial reporting alone, one could conclude that during the qualifying period the Merrill campaign received and spent \$6,255 in seed money contributions, that the campaign received services from Mr. Dyer and Mr. Webster worth \$8,900 during the qualifying period, and that these services were not paid for with seed money contributions but ultimately were paid for with MCEA funds.

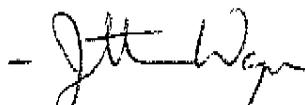
I appreciate that your July 29 letter states that the June 16 payments were retainers for work that would be performed by Mr. Dyer and Mr. Webster during the general election campaign, but that explanation does not easily square with the stated purpose of the payments as reported in the post-primary report. Moreover, the post-primary report lists a payment of \$1,596.40 to Mr. Webster on July 5 for salary for the period of June 3 to June 29 and a payment of \$2,000 to Mr. Dyer on July 6 for public relations consulting services during the month of June.

My view as the Commission staff director is that Mr. Michael's request raises a legitimate issue which should be considered by the Commission members at their August 23 meeting. The issue may be resolved if the Commission members accept your explanation that Mr. Dyer and Mr. Webster were strictly volunteers during the qualifying period and that there was no understanding that their work would be compensated if the candidate qualified for public financing. This is to request that you be present at the August 23 meeting to present the Merrill campaign's position on this issue. I would also suggest that Mr. Dyer and Mr. Webster be available at the August 23 meeting to explain whether they believed their pre-certification efforts were strictly on a volunteer basis and what their understanding was with regard to the payments made to them on June 16. The campaign may wish to explain whether the June 16 payments covered the same period as the July 5-6 payments.

For your information, Mr. Michael sent another letter dated July 31, 2006 alleging that the campaign's financial reporting failed to disclose an obligation to Harold James Webster and Dyer Associates.

If you have any further written information to provide to the Commission regarding this matter, please provide it no later than Monday, August 14. Please telephone me at 287-4179 if you have any questions.

Sincerely,

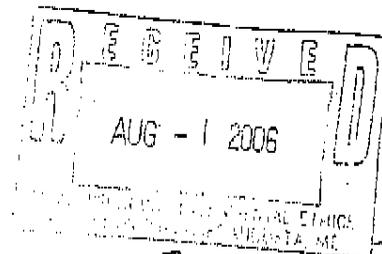


Jonathan Wayne
Executive Director

cc: Gubernatorial Candidates

6/21/2006	MOUNTAIN TOP VIDEOS	TVN		18,651.75
6/30/2006	BERYL LEACH	TRV	EXPENSE REIMBURSEMENT	43.00
7/3/2006	USPS	POS		100.00
7/3/2006	MOUNTAIN TOP VIDEOS	TVN		3,000.00
7/5/2006	REDCLYFFE SHORE MOTEL	TRV	LODGING	144.43
7/5/2006	MINUTE MAN SIGNS OF BELFAST	PRT	BANNERS	273.00
7/5/2006	PETER STOWELL	CNS	WORK ON CAMPAIGN RESEARCH	769.00
7/5/2006	PETER STOWELL	CNS	CAMPAIGN RESEARCH JUNE 15-30	1,000.00
7/5/2006	WAL-MART	OTH	OFFICE SUPPLIES	195.85
7/5/2006	HAROLD J WEBSTER	SAL	PAYMENT 6/3-6/29	1,596.40
7/6/2006	DYER ASSOCIATES	CNS	PR CONSULTATIONS MONTH OF JUNE	2,000.00
7/7/2006	FRANKLIN TRADING POST	TRV	FUEL FOR CAMPAIGN PURPOSES	54.76

Michael for Governor
POB 233
Auburn, ME 04212
Ph: 207-777-3183
Fax: 207-777-4960



07/31/06

Mr. Jonathan Wayne, Executive Director
State of Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135

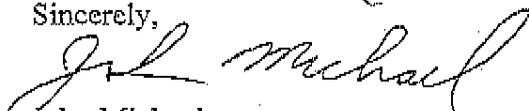
**RE: Complaint and Request for Investigation against Campaign Committee
BarbaraMerrill.com and Gubernatorial Candidate Barbara Merrill**

Dear Mr. Wayne,

Please add the attached copy of Ethics Commission Rules, Chapter 1, Section 7 regarding the appropriate time to report a campaign expenditure.

It is our view that the Merrill campaign has also violated this rule with the expenditures mentioned in the 7/28 complaint, specifically item (3)(B), which states that an expenditure must be reported at the time that an order for a good or service is placed, a contract is signed, or the service is delivered, whichever is sooner.

Sincerely,


John Michael

ordinary course of the vendor's business and the terms are substantially similar to extensions of credit made to nonpolitical debtors that are of similar risk and size of obligation.

SECTION 7. EXPENDITURES

1. Expenditures By Consultants, Employees, and Other Agents of a Political Campaign. Expenditures made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc. employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee shall be deemed expenditures by the candidate or committee. Such expenditures must be reported by the candidate or committee as if made or incurred by the candidate or committee directly.
2. Expenditures By Political Action Committees. In addition to the requirements set forth in 21-A M.R.S.A. Section 1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.
3. Timing of Reporting Expenditures.
 - A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.
 - B. Expenditures must be reported at the earliest of the following events:
 - (1) The placement of an order for a good or service;
 - (2) The signing of a contract for a good or service;
 - (3) The delivery of a good or the performance of a service by a vendor;
 - (4) A promise or an agreement (including an implied one) that a payment will be made; or
 - (5) The making of a payment for a good or service.
 - C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the



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

January 13, 2006

Hon. Barbara E. Merrill
265 Lower Road
Appleton, Maine 04862

Dear Ms. Merrill:

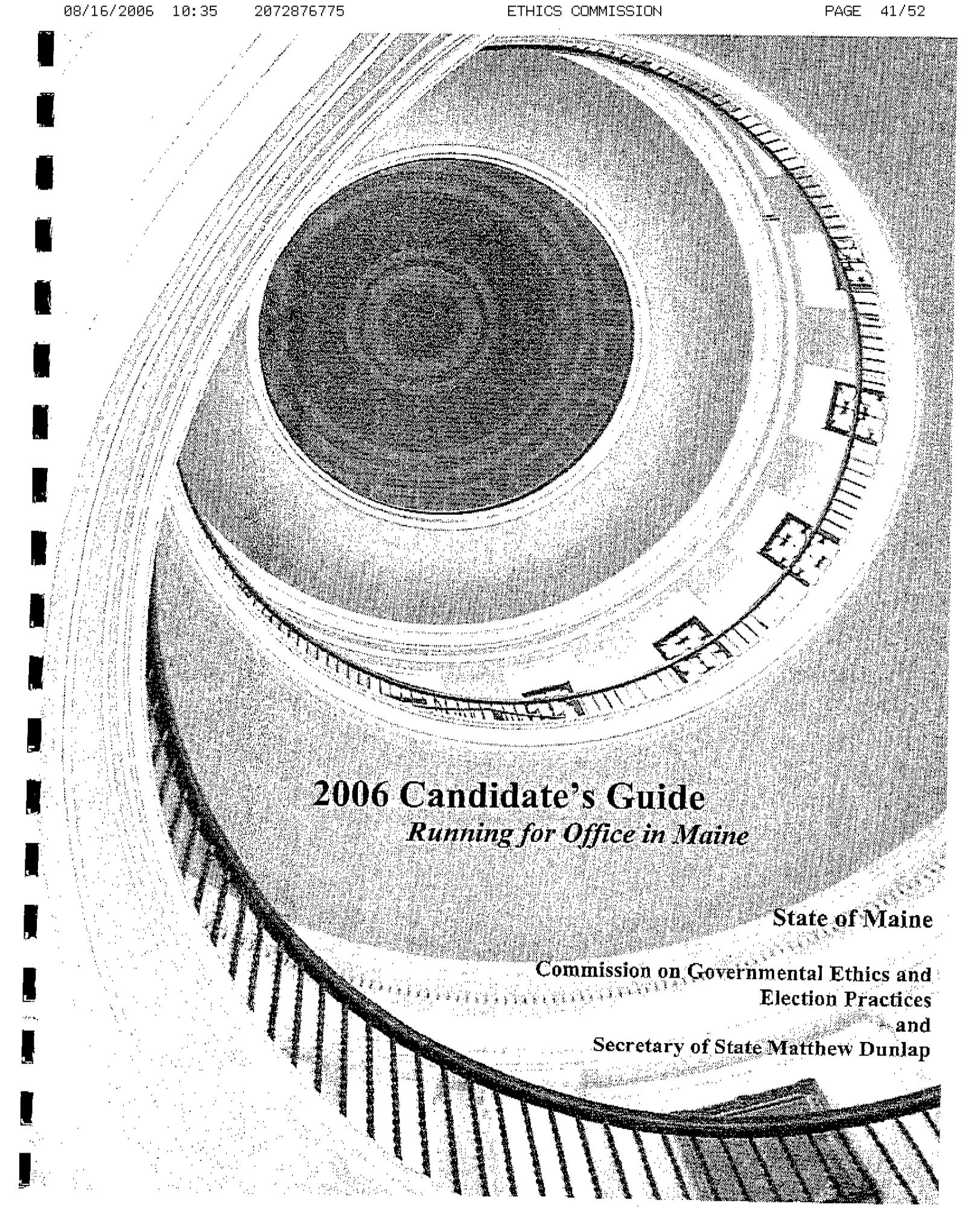
The Ethics Commission staff is sending out the 2006 Candidate Guidebooks to all declared candidates for Governor, and we thought we should include you as a prospective candidate.

If the office you are seeking this year remains uncertain, I may take the liberty of telephoning you to inquire in confidence whether there's any chance you will attempt to qualify for public financing under the Maine Clean Election Act. Depending on how many gubernatorial candidates will seek public financing, the Commission may need to lobby the Legislature for additional funding to ensure that sufficient funds will be available.

If we can answer any questions about this year's race, please feel free to telephone us at 287-4179. Thank you.

Sincerely,

Jonathan Wayne
Executive Director



2006 Candidate's Guide
Running for Office in Maine

State of Maine

Commission on Governmental Ethics and
Election Practices
and
Secretary of State Matthew Dunlap

Seed Money Contributions

After registering with the Commission, a candidate becomes a "participating candidate". Participating candidates may accept limited private contributions of up to \$100 from individuals ("seed money contributions") before requesting certification as a MCEA candidate.

The total amount of seed money a participating candidate may collect is:

- \$500 for candidates for State Representative
- \$1,500 for candidates for State Senator; and
- \$50,000 for gubernatorial candidates.

Seed money contributions must strictly comply with the following restrictions:

- Only individuals may contribute seed money contributions, up to \$100 in the aggregate.
- All seed money contributions must be from the personal funds of the individual.
- You and members of your family may each give up to \$100 in seed money, provided the money comes from your/their own personal funds.
- No contribution may be accepted from groups or associations, such as political action committees, party committees, labor unions, businesses, or trade associations.
- Lobbyists may not make seed money contributions to the Governor, legislators, constitutional officers, or their staff and agents during the legislative session (even with their personal funds), except after March 15 of an election year.
- All expenditures must be made with seed money contributions, and not from any other source of funds.

Goods and services that are provided to the campaign at no cost or at a cost of less than fair market value are considered in-kind contributions, and are subject to the seed money restrictions. Certain types of goods and services (see Appendix) are excluded from the legal definition of "contribution." The donation of these "exempt" goods and services to a campaign is not considered a contribution. Candidates may obligate themselves to pay a vendor more than they have collected in seed money contributions, but they cannot receive goods and services that are worth more than the amount the candidate paid the vendor. *

The campaign may accept no cash receipts other than seed money contributions. Loans may not be accepted.

Candidates should remember that prior to certification they can spend only seed money contributions. They are prohibited from accepting and spending any other funds, including loans. (Expenditures of the candidate's personal funds for campaign goods and services which are not reimbursed by the campaign are in-kind contributions. They are subject to the seed money restrictions.)

Your campaign treasurer is required to keep a record of the name and address of every contributor who gives more than \$10. If the contributor has given more than \$50 in the aggregate, the Election Law also requires your treasurer to keep a record of the contributor's occupation and employer and to disclose that information in campaign finance reports submitted to the Commission. The Commission recommends asking each contributor for his or her occupation and employer at the time the contribution is made. If you or your treasurer has requested the information and is unable to obtain it from the contributor, you should enter "information

If a person contributes more than \$50 of seed money in the aggregate, the treasurer must also keep a record of the person's occupation and employer.

Title 21-A, §1122, Definitions

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§1122. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [IB 1995, c. 1, §17 (new).]

1. Certified candidate. "Certified candidate" means a candidate running for Governor, State Senator or State Representative who chooses to participate in the Maine Clean Election Act and who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5. [IB 1995, c. 1, §17 (new).]

2. Commission. "Commission" means the Commission on Governmental Ethics and Election Practices established by Title 5, section 12004-G, subsection 33. [IB 1995, c. 1, §17 (new).]

3. Contribution. "Contribution" has the same meaning as in section 1012, subsection 2. [IB 1995, c. 1, §17 (new).]

4. Fund. "Fund" means the Maine Clean Election Fund established in section 1124. [IB 1995, c. 1, §17 (new).]

5. Nonparticipating candidate. "Nonparticipating candidate" means a candidate running for Governor, State Senator or State Representative who does not choose to participate in the Maine Clean Election Act and who is not seeking to be certified as a Maine Clean Election Act candidate under section 1125, subsection 5. [IB 1995, c. 1, §17 (new).]

6. Participating candidate. "Participating candidate" means a candidate who is running for Governor, State Senator or State Representative who is seeking to be certified as a Maine Clean Election Act candidate under section 1125, subsection 5. [IB 1995, c. 1, §17 (new).]

7. Qualifying contribution. "Qualifying contribution" means a donation: [IB 1995, c. 1, §17 (new).]

A. Of \$5 in the form of a check or a money order payable to the fund in support of a candidate;

[IB 1995, c. 1, §17 (new).]

B. Made by a registered voter within the electoral division for the office a candidate is seeking;

[IB 1995, c. 1, §17 (new).]

C. Made during the designated qualifying period and obtained with the knowledge and approval of the candidate; and

[IB 1995, c. 1, §17 (new).]

D. That is acknowledged by a written receipt that identifies the name and address of the donor on forms provided by the commission.

[IB 1995, c. 1, §17 (new).]

8. Qualifying period. "Qualifying period" means the following. [2001, c. 465, §3 (amd).]

A. For a gubernatorial participating candidate, the qualifying period begins November 1st immediately preceding the election year and ends at 5:00 p.m. on April 15th of the election year unless the candidate is unenrolled, in which case the period ends at 5:00 p.m. on June 2nd of the election year.

[2001, c. 465, §3 (amd).]

B. For State Senate or State House of Representatives participating candidates, the qualifying period begins January 1st of the election year and ends at 5:00 p.m. on April 15th of that election year unless the candidate is unenrolled, in which case the period

Title 21-A, §1122, Definitions

ends at 5:00 p.m. on June 2nd of the election year.

[2001, c. 465, §3 (amd).]

9. Seed money contribution. "Seed money contribution" means a contribution of no more than \$100 per individual made to a candidate, including a contribution from the candidate or the candidate's family. To be eligible for certification, a candidate may collect and spend only seed money contributions subsequent to becoming a candidate as defined by section 1, subsection 5 and throughout the qualifying period. A participating candidate who has accepted contributions or made expenditures that do not comply with the seed money restrictions under this chapter may petition the commission to remain eligible for certification as a Maine Clean Election Act candidate in accordance with rules of the commission, if the failure to comply was unintentional and does not constitute a significant infraction of these restrictions. Prior to certification, a candidate may obligate an amount greater than the seed money collected if the value of the goods and services received from a vendor does not exceed the amount paid to the vendor. A candidate may not collect or spend seed money contributions after certification as a Maine Clean Election Act candidate. A seed money contribution must be reported according to procedures developed by the commission. [2005, c. 301, §28 (amd).]

IB 1995, Ch. 1, §17 (NEW).

PL 2001, Ch. 465, §3 (AMD).

PL 2005, Ch. 301, §28 (AMD).

Title 21-A, §1125, Terms of participation

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§1125. Terms of participation

1. Declaration of intent. A participating candidate must file a declaration of intent to seek certification as a Maine Clean Election Act candidate and to comply with the requirements of this chapter. The declaration of intent must be filed with the commission prior to or during the qualifying period, except as provided in subsection 11, according to forms and procedures developed by the commission. A participating candidate must submit a declaration of intent within 5 business days of collecting qualifying contributions under this chapter, or the qualifying contributions collected before the declaration of intent has been filed will not be counted toward the eligibility requirement in subsection 3. [2005, c. 301, §29 (amd).]

2. Restrictions on contributions for participating candidates. Subsequent to becoming a candidate as defined by section 1, subsection 5 and prior to certification, a participating candidate may not accept contributions, except for seed money contributions. A participating candidate must limit the candidate's seed money contributions to the following amounts: [IB 1995, c. 1, §17 (new).]

A. Fifty thousand dollars for a gubernatorial candidate;

[IB 1995, c. 1, §17 (new).]

B. One thousand five hundred dollars for a candidate for the State Senate; or

[IB 1995, c. 1, §17 (new).]

C. Five hundred dollars for a candidate for the State House of Representatives.

[IB 1995, c. 1, §17 (new).]

The commission may, by rule, revise these amounts to ensure the effective implementation of this chapter. [IB 1995, c. 1, §17 (new).]

3. Qualifying contributions. Participating candidates must obtain qualifying contributions during the qualifying period as follows: [2001, c. 465, §4 (amd).]

A. For a gubernatorial candidate, at least 2,500 verified registered voters of this State must support the candidacy by providing a qualifying contribution to that candidate;

[IB 1995, c. 1, §17 (new).]

B. For a candidate for the State Senate, at least 150 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate; or

[IB 1995, c. 1, §17 (new).]

C. For a candidate for the State House of Representatives, at least 50 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate.

[IB 1995, c. 1, §17 (new).]

A payment, gift or anything of value may not be given in exchange for a qualifying contribution. A candidate may pay the fee for a money order in the amount of \$5, which is a qualifying contribution, as long as the donor making the qualifying contribution pays the \$5 amount reflected on the money order. Any money order fees paid by a participating candidate must be paid for with seed money and reported in accordance with commission rules. [2001, c. 465, §4 (amd).]

4. Filing with commission. A participating candidate must submit qualifying contributions to the commission during the qualifying

Title 21-A, §1125, Terms of participation

period according to procedures developed by the commission, except as provided under subsection 11. [IB 1995, c. 1, §17 (new).]

5. Certification of Maine Clean Election Act candidates. Upon receipt of a final submittal of qualifying contributions by a participating candidate, the commission shall determine whether or not the candidate has: [2005, c. 301, §30 (amd).]

A. Signed and filed a declaration of intent to participate in this Act;

[IB 1995, c. 1, §17 (new).]

B. Submitted the appropriate number of valid qualifying contributions;

[IB 1995, c. 1, §17 (new).]

C. Qualified as a candidate by petition or other means;

[IB 1995, c. 1, §17 (new).]

D. Not accepted contributions, except for seed money contributions, and otherwise complied with seed money restrictions;

[2003, c. 270, §1 (amd).]

D-1. Not run for the same office as a nonparticipating candidate in a primary election in the same election year; and

[2003, c. 270, §2 (new).]

E. Otherwise met the requirements for participation in this Act.

[IB 1995, c. 1, §17 (new).]

The commission shall certify a candidate complying with the requirements of this section as a Maine Clean Election Act candidate as soon as possible and no later than 3 business days after final submittal of qualifying contributions. [2005, c. 301, §30 (amd).]

Upon certification, a candidate must transfer to the fund any unspent seed money contributions. A certified candidate must comply with all requirements of this Act after certification and throughout the primary and general election periods. Failure to do so is a violation of this chapter. [2005, c. 301, §30 (amd).]

6. Restrictions on contributions and expenditures for certified candidates. After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on bank accounts. All revenues distributed to certified candidates from the fund must be used for campaign-related purposes. The commission shall publish guidelines outlining permissible campaign-related expenditures. [2005, c. 301, §31 (amd).]

7. Timing of fund distribution. The commission shall distribute to certified candidates revenues from the fund in amounts determined under subsection 8 in the following manner. [2001, c. 465, §4 (amd).]

A. Within 3 days after certification, for candidates certified prior to March 15th of the election year, revenues from the fund must be distributed as if the candidates are in an uncontested primary election.

[2001, c. 465, §4 (amd).]

B. Within 3 days after certification, for all candidates certified between March 15th and April 15th of the election year, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested primary election.

[2001, c. 465, §4 (amd).]

B-1. For candidates in contested primary elections receiving a distribution under paragraph A, additional revenues from the fund must be distributed within 3 days of March 15th of the election year.

[2001, c. 465, §4 (new).]

C. Within 3 days after the primary election results are certified, for general election certified candidates, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested general election.

[2001, c. 465, §4 (amd).]

Funds may be distributed to certified candidates under this section by any mechanism that is expeditious, ensures accountability and safeguards the integrity of the fund. [2001, c. 465, §4 (amd).]

8. Amount of fund distribution. By July 1, 1999 of the effective date of this Act, and at least every 4 years after that date, the commission shall determine the amount of funds to be distributed to participating candidates based on the type of election and office as

Text current through the 122nd Legislature, Second Special Session (July 30, 2006), document created 2005-10-01, page 2.

Title 21-A, §1125, Terms of participation

follows. [2003, c. 688, Pt. A, §21 (amd).]

A. For contested legislative primary elections, the amount of revenues to be distributed is the average amount of campaign expenditures made by each candidate during all contested primary election races for the immediately preceding 2 primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives.

[2003, c. 453, §1 (amd).] —

B. For uncontested legislative primary elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all uncontested primary election races for the immediately preceding 2 primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives.

[2003, c. 453, §1 (amd).]

C. For contested legislative general elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all contested general election races for the immediately preceding 2 general elections, as reported in the initial filing period subsequent to the general election, for the respective offices of State Senate and State House of Representatives.

[2003, c. 688, Pt. A, §21 (amd).]

D. For uncontested legislative general elections, the amount of revenues to be distributed from the fund is 40% of the amount distributed to a participating candidate in a contested general election.

[2003, c. 453, §1 (amd).]

E. For gubernatorial primary elections, the amount of revenues distributed is \$200,000 per candidate in the primary election.

[2003, c. 453, §1 (new).]

F. For gubernatorial general elections, the amount of revenues distributed is \$400,000 per candidate in the general election.

[2003, c. 453, §1 (new).]

If the immediately preceding election cycles do not contain sufficient electoral data, the commission shall use information from the most recent applicable elections. [2003, c. 688, Pt. A, §21 (amd).]

9. Matching funds. When any campaign, finance or election report shows that the sum of a candidate's expenditures or obligations, or funds raised or borrowed, whichever is greater, alone or in conjunction with independent expenditures reported under section 1019-B, exceeds the distribution amount under subsection 8, the commission shall issue immediately to any opposing Maine Clean Election Act candidate an additional amount equivalent to the reported excess. Matching funds are limited to 2 times the amount originally distributed under subsection 8, paragraph A, C, E or F, whichever is applicable. [2003, c. 688, Pt. A, §22 (rpr).]

10. Candidate not enrolled in a party. An unenrolled candidate certified by April 15th preceding the primary election is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election candidate and a general election candidate as specified in subsections 7 and 8. For an unenrolled candidate not certified by April 15th at 5:00 p.m. the deadline for filing qualifying contributions is 5:00 p.m. on June 2nd preceding the general election. An unenrolled candidate certified after April 15th at 5:00 p.m. is eligible for revenues from the fund in the same amounts as a general election candidate, as specified in subsections 7 and 8. [2001, c. 465, §6 (amd).]

11. Other procedures. The commission shall establish by rule procedures for qualification, certification, disbursement of fund revenues and return of unspent fund revenues for races involving special elections, recounts, vacancies, withdrawals or replacement candidates. [IB 1995, c. 1, §17 (new).]

12. Reporting; unspent revenue. Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information. [IB 1995, c. 1, §17 (new).]

13. Distributions not to exceed amount in fund. The commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund as set forth in section 1124. Notwithstanding any other provisions of this chapter, if the commission determines that the revenues in the fund are insufficient to meet distributions under subsections 8 or 9, the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than \$500

Title 21-A, §1125, Terms of participation

per donor per election for gubernatorial candidates and \$250 per donor per election for State Senate and State House candidates, up to the applicable amounts set forth in subsections 8 and 9 according to rules adopted by the commission. [IB 1995, c. 1, §17 (new).]

14. Appeals. A candidate who has been denied certification as a Maine Clean Election Act candidate, the opponent of a candidate who has been granted certification as a Maine Clean Election Act candidate or other interested persons may challenge a certification decision by the commission as follows. [2005, c. 301, §32 (amd).]

A. A challenger may appeal to the full commission within 7 days of the certification decision. The appeal must be in writing and must set forth the reasons for the appeal.

[2005, c. 301, §32 (amd).]

B. Within 5 days after an appeal is properly made and after notice is given to the challenger and any opponent, the commission shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the commission decision was improper. The commission must rule on the appeal within 3 days after the completion of the hearing.

[IB 1995, c. 1, §17 (new).]

C. A challenger may appeal the decision of the commission in paragraph B by commencing an action in Superior Court according to the procedure set forth in section 356, subsection 2, paragraphs D and E.

[IB 1995, c. 1, §17 (new).]

D. A candidate whose certification by the commission as a Maine Clean Election Act candidate is revoked on appeal must return to the commission any unspent revenues distributed from the fund. If the commission or court find that an appeal was made frivolously or to cause delay or hardship, the commission or court may require the moving party to pay costs of the commission, court and opposing parties, if any.

[IB 1995, c. 1, §17 (new).]

IB 1995, Ch. 1, §17 (NEW).
PL 2001, Ch. 465, §4-6 (AMD).
PL 2003, Ch. 270, §1,2 (AMD).
PL 2003, Ch. 448, §5 (AMD).
PL 2003, Ch. 453, §1,2 (AMD).
PL 2003, Ch. 688, §A21,22 (AMD).
PL 2005, Ch. 301, §29-32 (AMD).

§ 2

H. authorization by the candidate for the Commission, its agents or representatives to conduct financial audits of the candidate's campaign financial records and account(s).

3. Seed Money Restrictions.

A. General. After becoming a candidate and before certification, a participating candidate may collect and spend only seed money contributions. The restrictions on seed money contributions apply to both cash and in-kind contributions.

B. Total Amount.

(1) A participating candidate must limit the candidate's total seed money contributions to the following amounts:

- (a) fifty thousand dollars for a gubernatorial candidate;
- (b) one thousand five hundred dollars for a candidate for the State Senate; or
- (c) five hundred dollars for a candidate for the State House of Representatives.

(2) Notwithstanding any other provision of this chapter, a candidate may carry forward to a new candidacy of that candidate campaign equipment or property, subject to the reporting requirements of Title 21-A, chapter 13 [Campaign Reports and Finances].

(3) The Commission periodically will review these limitations and, through rulemaking, revise these amounts to ensure effective implementation of the Act.

C. Campaign surplus. A candidate who has carried forward campaign surplus according to Title 21-A, chapter 13, subchapter II [§ 1017(8) and § 1017(9)], and who intends to become a participating candidate, must dispose of campaign surplus in accordance with the requirements of Title 21-A, chapter 13, subchapter II [§ 1017(8)]; provided, however, that a candidate may carry forward only those portions of campaign surplus that comply with the provisions of this Act regarding seed money contributions [§ 1122(9) and 1125(2)]. Any campaign surplus (excluding campaign equipment or property) carried forward under this provision will be counted toward that candidate's total seed money limit.

INFORMATIONAL NOTE: The Commission will provide educational materials to all former candidates who have a campaign surplus describing the requirement that individuals must dispose of campaign surplus to remain eligible for participation as a Maine Clean Election Act candidate.

D. Return of Contributions Not in Compliance with Seed Money Restrictions. A participating candidate who receives a contribution exceeding the seed money per donor restriction or the total amount restriction must immediately return the contribution and may not cash, deposit, or otherwise use the contribution.

- E. **Case-by-Case Exception.** A participating candidate who has accepted contributions or made expenditures that do not comply with seed money restrictions may petition the Commission to remain eligible for certification as a Maine Clean Election Act candidate. The Commission may approve the petition and restore a candidate's eligibility for certification if the candidate successfully establishes all of the following criteria:
- (1) the failure to comply was the result of an unintentional error;
 - (2) the candidate immediately returned all contributions that did not comply with seed money restrictions or paid for goods or services contributed that did not comply with seed money restrictions;
 - (3) the candidate petitioned the Commission promptly upon becoming aware of the unintentional error; and
 - (4) the failure to comply did not involve expenditures by the participating candidate significantly in excess of seed money total amount restrictions or otherwise constitute systematic or significant infractions of seed money restrictions.
- F. **Accepting a loan from any source including a financial institution prior to certification, or spending money received in the form of a loan, is a violation of the seed money restrictions of the Act.**
- G. **Other.** A seed money contributor may also make a qualifying contribution to the same participating candidate provided that the contributor otherwise meets the requirements for making a qualifying contribution.
4. **Qualifying Contributions.**
- A. **General.** A participating candidate may collect qualifying contributions only during the relevant qualifying period and only after filing a Declaration of Intent with the Commission. Qualifying contributions must be acknowledged using forms provided by the Commission. The forms will include an affirmation by the contributor that the contributor received nothing of value in exchange for the signature and contribution.
- B. **Required Number of Qualifying Contributions.** A participating candidate must obtain the number of qualifying contributions during the qualifying period as required by the Act [§ 1122(7); § 1122(8); § 1125(3)].
- C. **Exchanges For Qualifying Contributions Prohibited.**
- (1) A participating candidate or an agent of that candidate may not give or offer to give a payment, gift, or anything of value in exchange for a qualifying contribution.
 - (2) This provision does not prohibit a participating candidate or that candidate's agent from collecting qualifying contributions at events

- F. Disbursements With No Campaign Value. If a traditionally financed candidate has received monetary contributions which are disbursed in ways that do not in any way influence the nomination or election of the candidate, those receipts will not be considered by the Commission in calculating matching funds for his or her opponent. Such disbursements may include repaying a loan received by the candidate, refunding a contribution to a contributor, or transferring funds to a party or political committee for purposes that do not relate to the candidate's race.
4. Advance Purchases of Goods and Services for the General Election.
- A. If a preponderance of consulting services, or the design, printing, or distribution of campaign literature and advertising, including radio and television advertising, purchased prior to the primary election by an opponent of a certified Maine Clean Election Act candidate are used for the general election, then the portion to be used for the general election must be counted as a general election receipt in calculating the amount of matching funds for the certified Maine Clean Election Act candidate.
- B. If a certified candidate in a general election believes that an opponent, or person or committee making an independent expenditure, has failed to disclose an advance purchase for the general election, the certified candidate shall submit a written request for an investigation to the Commission no later than August 30 of the election year, or within 30 days of the opponent's filing of the 42-day post-primary report, whichever is later. The request must identify the pre-primary election expenditure that is believed to be for the general election and must state a specific basis for believing that the goods and services purchased were not used for the primary election.
- C. The Commission will request a response from the opposing candidate or other respondent, and will make a determination whether the expenditure should be counted toward the certified candidate's eligibility for matching funds.

SECTION 6. LIMITATIONS ON CAMPAIGN EXPENSES.

A certified candidate must:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts plus any authorized Matching Fund allocations;
2. not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§ 1125(2) and § 1125(13)];
3. use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use;
4. not use revenues distributed from the Fund to purchase goods to sell for profit;

5. not spend more than the following amounts of Fund revenues on post-election parties, thank you notes, or advertising to thank supporters or voters:
 - A. \$250 for a candidate for the State House of Representatives;
 - B. \$750 for a candidate for the State Senate; and
 - C. \$2,500 by a gubernatorial candidate.

The candidate may also use his or her personal funds for these purposes; and

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission.

SECTION 7. RECORD KEEPING AND REPORTING

1. Record Keeping by Participating and Certified Candidates. Participating and certified candidates must comply with applicable record keeping requirements set forth in Title 21-A, chapter 13, subchapter II. [§1016].
 - A. Fiduciary Responsibility for Funds. All funds provided to a certified candidate or to a candidate's authorized political committee must be segregated from, and may not be commingled with, any other funds. Matching fund advance revenues for which no spending authorization has been issued must be deposited in a federally insured financial institution until the candidate receives authorization to spend those funds.
 - B. Meal Expenses. A candidate or treasurer must obtain and keep a record for each meal expenditure of more than \$50. The record must include itemized bills for the meals, the names of all participants in the meals, the relationship of each participant to the campaign, and the specific, campaign-related purpose of each meal.
 - C. Vehicle Travel Expenses. A candidate or treasurer must obtain and keep a record of vehicle travel expenses for which reimbursements are made from campaign funds. Reimbursement may be based using either the standard mileage rate or actual expenses. The candidate must use one method exclusively during an election campaign.
 - (1) Standard Mileage Rate. The standard mileage rate is a set rate per mile that a candidate may use to compute reimbursable vehicle travel expenses. Reimbursement should be calculated using the standard mileage rate currently prescribed for employees of the State of Maine. For each trip for which reimbursement is made, a record should be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement.

Agenda

Item #3



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

To: Commission Members and Counsel
From: Jonathan Wayne, Executive Director *JW*
Date: August 15, 2006
Re: Merrill-Woodcock Qualifying Contributions

On July 24, 2006, the Ethics Commission received the attached request for an investigation from Benjamin F. Dudley on behalf of the Maine Democratic State Committee. The committee complains that on March 25 gubernatorial candidates Chandler E. Woodcock and Barbara E. Merrill made \$5 qualifying contributions to each other. In addition, Ms. Merrill's husband and deputy treasurer, and Sen. Woodcock's campaign manager also gave qualifying contributions to the opposing campaigns.

The request alleges that Woodcock and Merrill's receipt of qualifying contributions from each other violated 21-A M.R.S.A. §1125(3) which prohibits giving something of value in exchange for receiving a qualifying contribution:

3. Qualifying contributions. Participating candidates must obtain qualifying contributions during the qualifying period as follows:

A. For a gubernatorial candidate, at least 2,500 verified registered voters of this State must support the candidacy by providing a qualifying contribution to that candidate; ...

A payment, gift or anything of value may not be given in exchange for a qualifying contribution. A candidate may pay the fee for a money order in the amount of \$5, which is a qualifying contribution, as long as the donor making the qualifying contribution pays the \$5 amount reflected on the money order. Any money order fees paid by a participating candidate must be paid for with seed money and reported in accordance with commission rules. (underlining added)

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

The request also argues that the \$5 qualifying contributions offend a core principle of the Maine Clean Election Act: that taxpayer funding should be triggered upon a showing of legitimate public support.

On behalf of the Woodcock campaign, attorney Daniel I. Billings has responded as follows: during the weekend of March 24-26, the two campaigns had adjacent booths at a sportsman's show in Wilton. The people involved in the campaigns spent the whole weekend together. The two candidates made qualifying contributions to each other as a token of good will and as recognition of the hard work required for a gubernatorial candidate to qualify for public funding. He also raises the procedural objection that Mr. Dudley's request should have been brought within the seven-day appeal period after the two candidates were certified.

Ms. Merrill responds that the qualifying contributions are within the spirit of the Maine Clean Election Act and consistent with the non-partisan spirit that she has brought to government service.

Staff Analysis

Alleged Exchange

The Commission staff finds the explanation that the qualifying contributions were made by Woodcock and Merrill as a token of good will completely believable. The prohibition in §1125(3) seems to refer to a situation in which a campaign is giving something of value in order to *induce* someone to make a qualifying contribution to the campaign. There is no evidence of inducement here. If Woodcock and Merrill claim the

contributions were made simply as a token of good will, the staff recommends that the Commission accept that explanation at face value.

Even if an exchange of qualifying contributions between opposing candidates were deemed to be prohibited, the staff believes the exchange would not threaten these candidates' qualification for public funds. Without counting these four qualifying contributions, both candidates still received more than enough to meet the eligibility requirements.

Qualifying Contributions as Support for a Candidate

Mr. Dudley is correct that under the Maine Clean Election Act qualifying contributions are a sign of support for a candidate. In order for a candidate for Governor to qualify for public funding, at least 2,500 Maine voters "must support the candidacy by providing a qualifying contribution to that candidate". (§1125(3), underlining added)

The definition of qualifying contribution includes the requirement:

7. Qualifying contribution. "Qualifying contribution" means a donation:

- A. Of \$5 in the form of a check or a money order payable to the fund in support of a candidate (21-A M.R.S.A. §1122(7), underlining added)

The same phrase "in support of" is used to define contribution limits for privately financed candidates, in Title 21-A M.R.S.A. §1015. In both contexts, the phrase suggests that the act of giving the funds constitutes the demonstration of support for the candidate.

The Maine Clean Election Act does not require that the donor's true intent must be for that particular candidate to win, nor does it require that the individual giving the \$5 qualifying contribution intend to vote for the candidate.

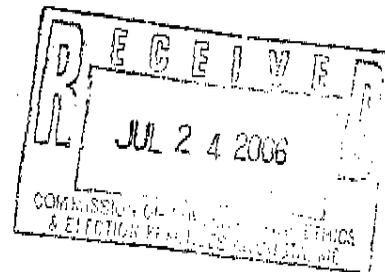
A broader understanding of support apparently has developed among candidates and contributors. Many candidates do not restrict their solicitation of \$5 to known supporters. It is not uncommon for potential contributors to telephone the Commission to ask whether they can give qualifying contributions to more than one candidate for the same office, and the staff has responded that this is permissible since there is nothing in the statute to prohibit it. To the extent that the issue has come up in offering informal advice, the Commission staff has interpreted the \$5 qualifying contribution to be a sign that the contributor supports the candidate qualifying for public financing. The Commission staff views Ms. Merrill and Sen. Woodcock's contributions to be consistent with this broad notion of support.

The statute certainly is open to interpretation as to what form of support must be intended by giving a qualifying contribution. The Maine Citizens for Clean Elections have submitted some written suggestions that the Commission and Legislature should strengthen the notion that qualifying contributions are an expression of support for the candidate. The Commission staff has been comfortable with the broader understanding that has developed, but would be pleased to implement any more specific view of support that may be mandated by the Legislature.

Staff Conclusion

The Commission staff recommends taking no action on the request for investigation.

July 24, 2006



VIA HAND DELIVERY

Jonathan Wayne, Director
Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333-0135

**RE: Complaint and Request for Investigation against Candidate
Committees Woodcock for Governor and BarbaraMerrill.com**

Dear Director Wayne:

Please accept on behalf of the Maine Democratic State Committee the following complaint against the "Woodcock for Governor" and "BarbaraMerrill.com" candidate committees and request that the Ethics Commission investigate further the information provided below.

The aforementioned committees support, respectively, Republican gubernatorial candidate Chandler E. Woodcock ("Candidate Woodcock") and gubernatorial candidate Barbara E. Merrill ("Candidate Merrill"). Earlier this year, it was determined by this Commission that both Candidate Woodcock and Candidate Merrill had each qualified to receive up to \$1.2 million in public funding to support their candidacies under the Maine Clean Election Act, 21-A M.R.S.A. 1121-1128 (the "Act").

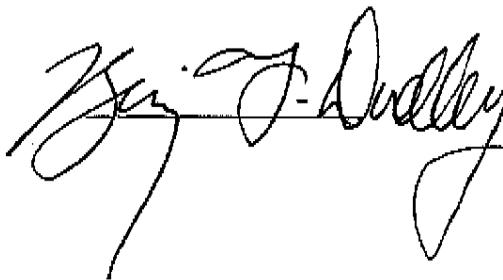
In order to qualify for public funding, each candidate submitted "qualifying contributions" in the amount of \$5.00 each from at least 2500 verified registered Maine voters. Among other things, the Act bars candidates from giving "anything of value" in exchange for receiving a qualifying contribution. See 21-A M.R.S.A. 1125 (3) ("A payment, gift or anything of value may not be given in exchange for a qualifying contribution").

According to records filed by both committees, Candidate Woodcock provided a Candidate Merrill with a \$5.00 qualifying contribution in order to assist her in her efforts to qualify for public financing of her gubernatorial campaign under the Act. Candidate Woodcock's campaign manager, Christopher Jackson, did the same. Candidate Merrill, in turn, provided Candidate Woodcock with a \$5.00 qualifying contribution in order to assist him in his efforts to qualify for public financing of his campaign under the Act. Her husband and Deputy Treasurer, Phil Merrill, did the same. What makes this apparent swap of qualifying contributions seem to be even less coincidental, and therefore of greater concern to this Commission, is that all of these contributions occurred during a 72-hour period between March 24-26, 2006. The contributions between the opposing candidates themselves, in fact, occurred on the very same day: March 25, 2006. A copy of the relevant documentation submitted by Woodcock for Governor and BarbaraMerrill.com is attached hereto at Tab A.

Based on the foregoing facts, none of which appear to be disputable, an investigation by the Commission into whether Candidates Woodcock and Merrill provided each other with something "of value" -- namely, other \$5.00 qualifying contributions -- in exchange for receiving these qualifying contributions is more than warranted. If proven, such a *quid pro quo* arrangement between opponents in a gubernatorial election not only violates 21-A M.R.S.A. 1125(3), but also offends one of the core principles upon which the Act was established: that taxpayer funding of a candidate's campaign should be triggered only upon a showing of *legitimate* public support for that candidate in the form of qualifying contributions.

Should you have any questions about the foregoing, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay J. Dudley". The signature is written in a cursive style with a large, sweeping initial "J" and a long, trailing flourish at the end.

Municipal Registrars: please circle the number of each contributor who is registered to vote in the district of the candidate. Above your signature, insert the total number of contributors on this page who are registered in the district. Please also cross out any blank lines or contributors who are not registered in the candidate's district.

STATE OF MAINE
 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
 Mail: 135 State House Station Office: 242 State Street
 Augusta, Maine 04333-0135
 Tel: (207) 287-4179 Fax: (207) 287-6775

Contributors: Please make checks or money orders payable to:
 MAINE CLEAN ELECTION FUND

QUALIFYING CONTRIBUTIONS RECEIPT AND ACKNOWLEDGMENT

Candidate's Name: Barbara E. Merrill (Please Print) Office Sought: Governor District #: Maine

Qualifying Contributions for the Town or City of Farmington

The candidate named above acknowledges receipt of a \$5 qualifying contribution from each of the undersigned contributors. By signing this receipt, each contributor affirms that he/she has contributed \$5 from their personal funds and has received nothing of value in exchange for his/her signature and contribution. ALL NAMES MUST BE FROM THE TOWN OR CITY LISTED ABOVE.

No.	Date	Check/M.O.#	Contributor's Name (Please Print)	Residence Address (No PO Box)	Contributor's Signature
1	3-25-06	47995	Barbara E. Merrill	259 Middle St	<i>[Signature]</i>
2					
3					
4					
5					
6					
7					
8					
9					
10					

These qualifying contributions were received with my knowledge and consent. I have not submitted any duplicate signatures.

4/4/06 Date
[Signature] Signature of Candidate

I have verified that 1 contributors circled above are registered to vote in the electoral division of the candidate.

4-13-06 Date
[Signature] Signature of Registrar

Administrators: please check the number of each contributor who is registered to vote in the district of the receipt. Above your signature, insert the total number of contributors on this receipt who are registered in the district. Please also check out any other listed contributors who are not registered in the candidate's district.

MAINE STATE COMMISSION ON GOVERNMENT ETHICS AND ELECTION PRACTICES
 100 State House Station
 Augusta, Maine 04333-0100
 Tel: (207) 287-4100 Fax: (207) 287-4175
 100 State Street

QUALIFYING CONTRIBUTIONS RECEIPT AND ACKNOWLEDGEMENT

Candidate's Name: Chandler Woodbury District: GOVERNOR
 Qualifying Contributions for the Town or City of: APPELLANT

RECEIVED
 APR 3 2006
 COMMISSION ON GOVERNMENT ETHICS
 100 STATE STREET, AUGUSTA, ME

Contributors: Please make checks or money orders payable to: Maine Clean Election Fund.

The candidate named above acknowledges receipt of a qualifying contribution on behalf of any unregistered contributors. By signing this receipt, each contributor affirms that listing their contribution is from their personal funds and was not made in exchange for either signature and contribution. All names listed hereon are known to the candidate.

No.	Date	Check No.	Contributor's Name (Last, First, Middle Initial)	Residence Address (No. P.O. Box)	Contributor's Signature
1	3-29-06	5117	Paul M. Woodbury	265 Lower Rd	[Signature]
2	3-25-06	2819	Julie M. Woodbury	265 Lower Rd	[Signature]
3					
4					
5					
6					
7					
8					
9					
10					

I have verified that all contributors listed above are registered to vote in the electoral division of the candidate.
 These qualifying contributions were received with my knowledge and consent. I have not submitted any duplicate signatures.
 Date: 4-2-06
 Signature of Candidate: [Signature]

I have verified that all contributors listed above are registered to vote in the electoral division of the candidate.
 Date: 3/29/06
 Signature of Registrar: [Signature]

CFEENCS-14433

Municipal Registrars: please circle the number of each contributor who is registered to vote in the district of the candidate. Above your signature, insert the total number of contributors on this page who are registered in the district. Please also cross out any blank lines or contributors who are not registered in the candidate's district.

STATE OF MAINE
 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
 Mail: 135 State House Station
 Augusta, Maine 04333-0135
 Office: 242 State Street
 Tel: (207) 287-4179 Fax: (207) 287-8775

Contributors: Please make checks or money orders payable to:
 MAINE CLEAN ELECTION FUND

Candidate's Name: Barbara E. Merrill (Please Print)
 Office Sought: Governor
 District #: Maine
 Qualifying Contributions for the Town or City of BOLDWINHAM

The candidate named above acknowledges receipt of a \$5 qualifying contribution from each of the undersigned contributors. By signing this receipt, each contributor affirms that he/she has contributed \$5 from their personal funds and has received nothing of value in exchange for his/her signature and contribution. ALL NAMES MUST BE FROM THE TOWN OR CITY LISTED ABOVE.

No.	Date	Check/M.O.#	Contributor's Name (Please Print)	Residence Address (No PO Box)	Contributor's Signature
1	3/26/06	97877	CHRIS JACKSON	32 SPENCER DR	<i>Chris Jackson</i>
2					
3					
4					
5					
6					
7					
8					
9					
10					

These qualifying contributions were received with my knowledge and consent. I have not submitted any duplicate signatures.
 4/14/06
 Signature of Candidate: *Barbara Merrill*

I have verified that 1 contributors circled above are registered to vote in the electoral division of the candidate.
 5/23/2006
 Date
 Signature of Registrar: *Annika C. Ross*

DS-1006-1

1



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

July 24, 2006

Barbara Merrill
Merrill for Governor
PO Box 1010
Union, ME 04862

Daniel I. Billings, Esq.,
Marden, Dubord, Bernier & Stevens
PO Box 708
Waterville, ME 04901-0708

Dear Ms. Merrill and Mr. Billings:

The Ethics Commission received the attached request for an investigation from the Maine Democratic State Committee. It alleges that qualifying contributions made by Phil and Barbara Merrill to the Woodcock campaign, and the qualifying contributions made by Sen. Woodcock and his campaign manager to the Merrill campaign, constitute an exchange that is forbidden by 21-A M.R.S.A. §1125(3):

A payment, gift or anything of value may not be given in exchange for a qualifying contribution.

Please respond to the request in writing no later than Monday, August 7. I will place this matter on the agenda for the Commission's next meeting on August 23rd at 9:00 a.m. My telephone number is 287-4179 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Wayne".

Jonathan Wayne
Executive Director

cc: Benjamin F. Dudley

**MARDEN, DUBORD,
BERNIER & STEVENS**

ATTORNEYS AT LAW

WILLIAM P. DUBORD
ALTON C. STEVENS
J. WILLIAM DRUARY, JR.
ROBERT M. MARDEN
DAVID E. BERNIER
DANIEL I. BILLINGS
DANIEL W. MARRA

ROBERT A. MARDEN
(of Counsel)

44 ELM STREET
P.O. BOX 708
WATERVILLE, ME 04903-0708

(207) 873-0186
FAX (207) 873-2245
E-MAIL: mds@gwi.net
<http://www.mainclawfirm.com>

ALBERT L. BERNIER
(RETIRED)
F. HAROLD DUBORD
(1891-1964)
RICHARD J. DUBORD
(1921-1970)
HAROLD C. MARDEN
(1900-1994)

August 9, 2006

Jonathan Wayne, Executive Director
State of Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333-0135

**RE: Maine Democrat Party's Complaint and Request for Investigation against
Candidate Committees Woodcock for Governor and BarbaraMerrill.com**

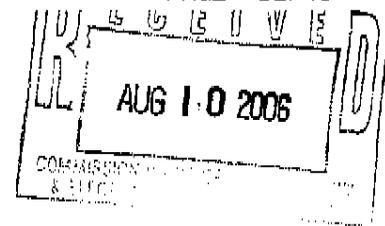
Dear Jonathan:

I am writing on behalf of Woodcock for Governor in response to your letter of July 24, 2006 seeking a response to the complaint filed by Maine Democrat Party. The complaint is without merit and should be dismissed without action.

The complaint is not timely. Though the complaint is not framed as an appeal of the certification of Senator Woodcock and Representative Merrill as Clean Elections candidates, the appeal challenges both candidates' qualifications as Clean Elections candidates. Appeals of certification of Clean Elections candidates must be made within 7 days of the certification decision. Both candidates in question were certified more than 7 days before the complaint was filed. Therefore, the complaint is not timely and no action should be taken.

The complaint also does not allege facts which, if true, would constitute a violation of the law. The complaint does not allege that anyone involved personally received anything of value. All that is alleged is that an exchange of qualifying contributions took place. Qualifying contributions, by definition, are \$5 payments in the form of a check or money order made payable to the Maine Clean Election Fund. 21-A M.R.S.A. §1122(7). As a result, none of the individuals mentioned in the complaint received anything of value. The only recipient of anything of value was the Maine Clean Election Fund.

The Maine Democrat Party, in its complaint and in statements made to the media, allege a conspiracy between the Woodcock and Merrill campaigns to defraud the taxpayers. An explanation of how the contributions in question came about illustrates that this claim is ludicrous. On the weekend of March 24th-26th, both campaigns had booths at a sportsman's



Jonathan Wayne, Executive Director
August 9, 2006
Page 2

show in Wilton. By coincidence, the booths were placed side by side. As a result, the people involved in the campaigns spent the whole weekend together, explaining the Clean Elections system to voters and seeking qualifying contributions for their respective candidates. Senator Woodcock, Representative Merrill, and others involved in this effort made qualifying contributions to the respective campaigns as a token of good will and as recognition of the hard work required for a candidate for Governor to qualify as a Clean Elections candidate. If the candidates and their campaigns had not found themselves together on this weekend, the contributions may never have been made.

Senator Woodcock is a strong supporter of the Clean Elections Act. He urges candidates of all political persuasions to run as Clean Elections candidates. He sees his qualifying contribution to Representative Merrill as support for her decision to run as a Clean Elections candidate and as a show of support for the Clean Elections system. He believes strongly that the Commission should take no action which could be seen as discouraging such contributions.

Though not part of this complaint, Benjamin Dudley and the Maine Democrat Party have alleged that the fact that a number of Republican legislators made qualifying contributions to Representative Merrill is further evidence of collusion between the Merrill and Woodcock campaigns. This claim is ridiculous. At the time the qualifying contributions in question were made, Senator Woodcock was involved in a competitive primary campaign for the Republican nomination, which he was not assured of winning. The Woodcock campaign did not have the time or resources to be concerned with Representative Merrill's effort to qualify as a Clean Elections candidate. It is also significant to note that when the qualifying contributions in question were made, a number of the Republican legislators who made qualifying contributions to Representative Merrill were supporting other candidates for the Republican nomination.

The Commission should see the pending complaint for what it is – a partisan political ploy in the middle of a heated campaign. The Maine Democrat Party is attempting to use the Commission to undermine the legitimacy of two of its candidate's opponents. The Commission should not be a party to such actions.

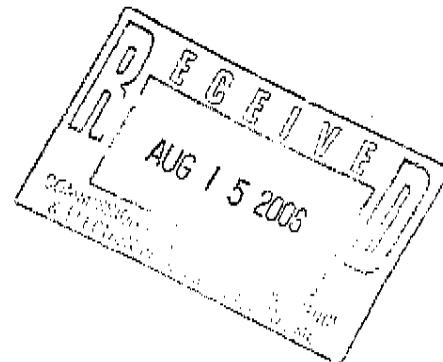
Very truly yours,



Daniel I. Billings
e-mail: dbillings@gwi.net

Barbara Merrill

Independent · Governor



Jonathan Wayne, Director
Commission on Governmental Ethics
135 State House Station
Augusta, ME 04333

August 15, 2006

RE: The Maine Democratic Party's request for an investigation into the exchange of \$5 qualifying contributions between State Rep. Barbara Merrill and State Senator Chandler Woodcock

Dear Director Wayne:

I am at some loss to respond to this charge because I find so little merit in the allegation.

I was at a sportsman's show in Wilton, Maine, meeting voters and asking for \$5 qualifying contributions. Chandler Woodcock had a booth next to ours. Chandler Woodcock and I served in the legislature together and I respect him as a person of sincere convictions. Over the course of the three days at the show, I gave a contribution to him and he gave one to me. My husband also gave one to him. I view my actions as consistent with the non-partisan spirit I bring to government service and with the spirit of the clean election law.

The fact that Gov. Baldacci's party leadership sees a problem with this is a vivid demonstration of just how foolishly partisan they have become.

Sincerely,

State Representative Barbara Merrill
Independent Candidate for Governor

From: Alison Smith [mailto:asmith3@maine.rr.com]
Sent: Thursday, August 10, 2006 2:47 PM
To: Wayne, Jonathan
Cc: Jon Bartholomew; 'Eric Johnson'; 'Ann Luther'; 'Ken Morgan'; 'Jesse Graham'; ryan@nrnm.org; 'Barbara Burt'
Subject: Re: Swapping \$5 Qualifying Contributions

Dear Jonathan,

Thanks for the opportunity to weigh in with our coalition's thinking prior to the Commission's meeting on August 23rd. We are pleased that the Commission will take up the issue of the exchange of qualifying contributions between two rival candidates as well as the larger issue you bring up.

MCCE is very concerned that attempts to game the system -- by candidates and political parties who assist opponents' efforts to gain access to public funds -- undermine the legitimacy of the qualifying process, and in doing so may undermine the Clean Election Act itself. Because the law intends the qualifying process to be a test of support among voters, such activities are inconsistent with the law and should not be allowed. MCCE supports an Ethics Commission investigation to determine how widespread such activity was in this election cycle.

MCCE favors measures that strengthen the qualifying process as a measure of genuine support for candidates running for office. MCCE believes that language in statute, rules, educational materials and on forms should affirm the purpose of the qualifying process and make clear that efforts to undermine its legitimacy are a violation of the law.

We've taken a crack at what these sorts of changes might look like (see below, underlined segments), and will be very interested to hear what you think.

We do intend to attend the hearing on the 23rd and will further flesh out these and some other ideas in preparation for that meeting.

Sincerely,

Alison

Amendments to Definitions:

7. Qualifying contribution. "Qualifying contribution" means a donation:

- A. Of \$5 in the form of a check or a money order payable to the fund in support of a candidate; [IB 1995, c. 1, §17 (new).]
- B. Made by a registered voter within the electoral division for the office a candidate is seeking; [IB 1995, c. 1, §17 (new).]
- C. Made during the designated qualifying period and obtained with the knowledge and approval of the candidate; and [IB 1995, c. 1, §17 (new).]

D. That is acknowledged by a written receipt that identifies the name and address of the donor on forms provided by the commission. [IB 1995, c. 1, §17 (new).]

E. Made as an expression of the voter's support for that candidate in that race.
[IB 1995, c. 1, §17 (new).]

Amendments to Terms of participation:

New paragraph (might require a additional definition -- for "Qualifying Process"):

Purpose of the Qualifying Process

The purpose of the qualifying process is to determine whether or not a participating candidate has genuine support among voters in that candidate's race. Any effort by any person to undermine that purpose is a violation of this Act.

3. Qualifying contributions. Participating candidates must obtain qualifying contributions during the qualifying period as follows:

A. For a gubernatorial candidate, at least 2,500 verified registered voters of this State must support the [candidacy] **candidate** by providing a qualifying contribution to that candidate; [IB 1995, c. 1, §17 (new).]

B. For a candidate for the State Senate, at least 150 verified registered voters from the candidate's electoral division must support the [candidacy] **candidate** by providing a qualifying contribution to that candidate; or [IB 1995, c. 1, §17 (new).]

C. For a candidate for the State House of Representatives, at least 50 verified registered voters from the candidate's electoral division must support the [candidacy] **candidate** by providing a qualifying contribution to that candidate. [IB 1995, c. 1, §17 (new).]

A payment, gift or anything of value may not be given in exchange for a qualifying contribution. A qualifying contribution is made as an expression of support for a specific candidate in a particular race, and may not be made for any other purpose. A candidate may pay the fee for a money order in the amount of \$5, which is a qualifying contribution, as long as the donor making the qualifying contribution pays the \$5 amount reflected on the money order. Any money order fees paid by a participating candidate must be paid for with seed money and reported in accordance with commission rules.

Amendment to Chapter 3 Rules:

4. Qualifying Contributions.

A. General. A participating candidate may collect qualifying contributions only during the relevant qualifying period and only

after filing a Declaration of Intent with the Commission. Qualifying contributions must be acknowledged using forms provided by the Commission. The forms will include an affirmation by the

contributor that the qualifying contribution was made as an expression of support for that candidate in that race and for no other purpose, and that the contributor received nothing of value in

exchange for the signature and contribution.

B. Required Number of Qualifying Contributions. A participating candidate must obtain the number of qualifying contributions during the qualifying period as required by the Act [§ 1122(7); § 1122(8); § 1125(3)].

C. Exchanges For Qualifying Contributions Prohibited.

(1) A participating candidate or an agent of that candidate may not give or offer to give a payment, gift, or anything of value in exchange for a qualifying contribution.

(2) This provision does not prohibit a participating candidate or that candidate's agent from collecting qualifying contributions at events where food or beverages are served, or where campaign promotional materials are distributed, provided that the food, beverage, and campaign materials are offered to all persons attending the event regardless of whether or not particular persons make a qualifying contribution to the participating candidate.

(3) This provision does not prohibit a candidate from using seed money to pay the fee for a money order provided the

qualifying contributor pays the \$5 amount reflected on the

Amendment to the form:

The candidate named above acknowledges receipt of a \$5 qualifying contribution from each of the undersigned contributors. By signing this receipt, each contributor affirms that he/she has contributed \$5 from their personal funds as an expression of support for the candidate named above and has received nothing of value in exchange for his/her signature and contribution. ALL NAMES MUST BE FROM THE TOWN OR CITY LISTED ABOVE.

Agenda

Item #4



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

To: Commission Members and Counsel
From: Jonathan Wayne, Executive Director JW
Date: August 15, 2006
Re: Request for Investigation by Barbara E. Merrill re: Alleged Push Poll

On July 25, 2006, the Ethics Commission received the attached request for an investigation from Barbara E. Merrill, candidate for the office of Governor. Ms. Merrill had received an e-mail from Brunswick resident Andrew Paiement stating that he responded to a telephone survey that contained some statements about Ms. Merrill and her husband. She characterizes the statements as "very negative."

Ms. Merrill requested that the Commission investigate whether the survey qualifies as a push poll, as defined in the Election Law. (21-A M.R.S.A. §1014-B) The Maine Democratic Party has acknowledged responsibility for the survey. It denies that the survey was a push poll, and states that "the primary purpose of the Party's survey was to gain a better understanding of voter attitudes toward the candidates running for governor, as well as toward various public policy issues." To assist me in making a recommendation, I interviewed Mr. Paiement and another respondent to the poll, Peter Lord. My notes of the interviews are attached.

Push polls are commonly understood to be surveys which contain disparaging statements about candidates and are intended to change the votes of the respondents or suppress their votes, rather than to gather information. Push polls are not prohibited by Maine Law, but an organization conducting a push poll must make certain disclosures including identifying the organization sponsoring the push poll during the telephone survey. The organization must also register a person as an agent with the Commission. The Commission may assess fines of up to \$500 for violations of the statute. (21-A M.R.S.A. §1014-B(2) and (3))

Definition of Push Poll in Maine Election Law

In order to qualify as a push poll, a survey must contain all five required elements listed in 21-A M.R.S.A. §1014-B(1)(A)-(E):

A. A list or directory is used, exclusively or in part, to select respondents belonging to a particular subset or combination of subsets of the population, based on demographic or political characteristics such as race, sex, age, ethnicity, party affiliation or like characteristics;

- B. The survey fails to make demographic inquiries on factors such as age, household income or status as a likely voter sufficient to allow for the tabulation of results based on a relevant subset of the population consistent with standard polling industry practices;
- C. The pollster or polling organization does not collect or tabulate survey results;
- D. The survey prefaces a question regarding support for a candidate on the basis of an untrue statement; and
- E. The survey is primarily for the purpose of suppressing or changing the voting position of the call recipient.

If a telephone survey does not have one or more of these elements, it is not a push poll under the Maine Election Law.

Response by Maine Democratic Party

In response to a request by the Commission staff, the party has provided:

- a sworn statement of Thomas R. Kiley, the president of the firm that oversaw the poll;
- 12 of the actual 63 questions asked within the survey; and
- the actual tabulations of results for three of the questions, regarding the respondent's age and household income, and the likelihood that the respondent would vote in the 2006 elections.

Staff Analysis

The Commission staff is persuaded that the survey was not a push poll, as defined in Maine Election Law. The sworn affidavit of Mr. Kiley and the 12 questions provided strongly suggest that the survey did, in fact, make inquiries based on age, household income, and likelihood of voting. This is consistent with the information provided by respondent Peter Lord, who stated that the survey did inquire about his age and economic status.

Mr. Kiley's affidavit states that the survey results were tabulated. The party has provided tabulations of the results for the three questions concerning age, household income, and likelihood of voting.

The affidavit also states that respondents were selected randomly from a computer file of telephone numbers, and that no criteria were used to include or exclude potential respondents other than that they were registered voters and likely to vote. There is no evidence available that contradicts this statement in the affidavit.

These aspects of the Democratic Party's survey suggest that at least three (paragraphs 1(A)-(C)) of the five required elements of a push poll were not present. In

addition, the descriptions of the poll by Andrew Paiement and Peter Lord suggest that the survey was intended to gather information on voter attitudes:

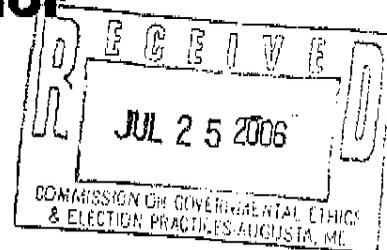
- *Length.* Both participants said the poll was at least 25 minutes long or longer, which may indicate that the purpose of the survey was collecting information rather than changing or suppressing votes.
- *Timing.* The poll was conducted nearly 3½ months before the general election.
- *Perceived purpose.* Mr. Lord stated that he believed the poll was “definitely” testing what statements would influence him as a voter.

Staff Conclusion

The Commission staff concludes that the telephone survey was not a push poll. While the Commission staff appreciates that other gubernatorial candidates and commentators will take exception with some of the survey's statements as described by Andrew Paiement and Peter Lord, as a general matter negative campaign tactics are not within the jurisdiction of the Commission. The staff recommends taking no further action on Ms. Merrill's request for an investigation.

Barbara Merrill

Independent for Governor



July 25, 2006

Mr. Jonathan Wayne, Executive Director
State of Maine Commission on Governmental Ethics and Election Practices
135 State House Station
242 State Street
Augusta, Maine 04333-0135

Dear Mr. Wayne,

This letter is a formal request to have the Ethics Commission review allegations of a "push poll" conducted on behalf of the Maine Democratic Party on or about July 16th.

As you have been made aware, an individual from Brunswick contacted me to complain about a poll he participated in and alleged that the nature of the poll was very negative toward me, my family and candidates Woodcock and LaMarche. He was so irritated by the poll that he claims he sent an Email to the Attorney General. Subsequent news reports indicate that the LaMarche campaign received similar complaints.

As you know, under MRSA Title 21-A §1014b, push polling is illegal in Maine and the ultimate authority for determining a push poll rests with the Ethics Commission. Only you can uncover what the questions were and for what purpose they were asked.

On behalf of the people of the State of Maine, I thank you for your prompt attention to this review.

Sincerely,

A handwritten signature in cursive script that reads "Barbara E. Merrill".

Representative Barbara Merrill
Independent - Appleton



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

To: File

From: Jonathan Wayne

Date: July 25, 2006

Re: Conversation with Andrew Paiement

This evening I interviewed Andrew Paiement, who said he complained to Barbara Merrill and the Attorney General's Office regarding polling questions he was asked. He stated the following:

Mr. Paiement received the call the Sunday before last at about 4:00 or 5:00 p.m. The caller was a woman who said that she was conducting a poll about the governor's race.

She asked him how he would vote if the election were held today. The choices were Baldacci, Woodcock, Merrill, and LaMarche. She did not pronounce Baldacci's name correctly, and Mr. Paiement had to help her with his name.

Then the caller introduced Baldacci. She described Baldacci as a small business owner; that he had balanced the budget; there was no new broad-based tax; and mentioned Dirigo Health.

Mr. Paiement was unsure whether the descriptions of the Governor were made before or after the question about how he would vote.

Then there were 3 or 4 (maybe 5) questions each about the other candidates. He believes there were no questions about Baldacci other than who Mr. Paiement would vote for.

Some of the questions involved a statement about the candidate and then Mr. Paiement was asked whether he strongly agreed; agreed; was unsure; disagreed; or strongly disagreed. He said one option for some of the questions was "I do not believe the statement" instead of "I strongly disagree."

Woodcock was described as a gym teacher and athletic director.

One question regarding Woodcock was: He would make abortion illegal with no exceptions. Do you strongly agree? Agree?

Another question regarding Woodcock was: He wants to teach Christianity in science class. Do you strongly agree? Agree?

The caller also mentioned something about Woodcock having an anti-environmental stance and had voted against removing arsenic from wood products. Mr. Paiement had to help her pronounce arsenic. He cannot remember whether those statements were part of a "do you agree" question or were statements made about Woodcock's record separate from a question.

The questions about Barbara Merrill suggested she had a lack of experience, and mentioned her husband a number of times. He remembers one question that began: "If you vote for Barbara Merrill and her husband," The poll did not explicitly describe her as a disgruntled Democrat, as was reported in the press.

The only question about LaMarche that he remembers was concerning single-payer healthcare.

The caller said that he would get a second telephone call and that if he pressed the number one during the second call, his responses would be recorded in the poll. He did not receive the second call.

The call took somewhere between 30 and 60 minutes.

He did not e-mail the Merrill campaign and the Attorney General until this past Saturday.

Mr. Paiement asked that if I received a copy of the poll questions, he would like to see a copy.



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

To: File

From: Jonathan Wayne

Date: August 4, 2006

Re: Conversation with Peter Lord

Yesterday, I interviewed Peter Lord, who participated in a telephone survey sponsored by the Maine Democratic Party that is the subject of a request for an investigation by Barbara Merrill. He told me the following:

He said that he received a telephone call about 2-3 weeks ago. The survey took around 25 minutes.

The caller asked if she could speak to the youngest voter in the household. Peter replied that he was the youngest voter. The caller said she was taking a political poll regarding the Maine gubernatorial race.

Peter said that the first section of the survey was not about candidates. It was about general political issues and his views on them, for example: "Do you support abortion?" He is not sure that the caller asked him that particular question, but that was an example of the kind of question that he was asked.

He is sure that the caller asked for his age and that he was asked about his economic status: "Are you upper-middle class, middle class, poor, ... ?" He replied that he was middle class. She may have asked whether he was male or female, but she did not ask if he was a likely voter.

Some sections of the survey were about a single candidate. At the end of the section he was asked: "If you had to vote for governor now, who would you vote for?" He was given four options: Baldacci, Woodcock, LaMarche, and an independent woman whose name he forgot. [When I asked whether it was Barbara Merrill, he confirmed that was the candidate.]

During each candidate section, the caller would make statements about the candidate and then would ask something like: "How much does this affect your opinion of the candidate: a lot? A little? Or, you do not believe the statement." Some of the statements were negative, for example: "Woodcock supported such-and-such a bill, but now he is

campaigning against it.” He remembers questions suggesting that Woodcock was right-wing or fundamentalist, and did that affect his opinion of the candidate.

Peter said that not all questions were negative and some were positive. Regarding Woodcock, there was a statement that Peter thought was a “plug” for Woodcock and that turned around the question about social issues, such as “Woodcock has high morals.”

He does not remember if there was an entire section on Pat LaMarche. He remembers that in the first part of the survey LaMarche was described as a radio DJ pushing for some position. The survey did not focus on her a lot.

He cannot remember if there was a section on the other independent candidate [Merrill].

Regarding Baldacci, he does remember positive statements made about him, but cannot remember if there were negative statements made about him.

He was repeatedly asked if he had to vote for governor now, who would he vote for. He stated that he definitely got the impression that the caller was trying to test what statements would influence him as a voter.

Title 21-A, §1014-B, Push polling

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§1014-B. Push polling

1. Push poll defined. For purposes of this section, "push poll" means any paid telephone survey or series of telephone surveys that are similar in nature that reference a candidate or group of candidates other than in a basic preference question, and when: [2001, c. 416, §1 (new).]

A. A list or directory is used, exclusively or in part, to select respondents belonging to a particular subset or combination of subsets of the population, based on demographic or political characteristics such as race, sex, age, ethnicity, party affiliation or like characteristics;

[2001, c. 416, §1 (new).]

B. The survey fails to make demographic inquiries on factors such as age, household income or status as a likely voter sufficient to allow for the tabulation of results based on a relevant subset of the population consistent with standard polling industry practices;

[2001, c. 416, §1 (new).]

C. The pollster or polling organization does not collect or tabulate survey results;

[2001, c. 416, §1 (new).]

D. The survey prefaces a question regarding support for a candidate on the basis of an untrue statement; and

[2001, c. 416, §1 (new).]

E. The survey is primarily for the purpose of suppressing or changing the voting position of the call recipient.

[2001, c. 416, §1 (new).]

"Push poll" does not include any survey supporting a particular candidate that fails to reference another candidate or candidates other than in a basic preference question. [2001, c. 416, §1 (new).]

2. Push polls; political telephone solicitations; requirements. Push polling must be conducted in accordance with this subsection. [2003, c. 448, §1 (amd).]

A. A person may not authorize, commission, conduct or administer a push poll by telephone or telephonic device unless, during each call, the caller identifies the person or organization sponsoring or authorizing the call by stating "This is a paid political advertisement by (name of persons or organizations)," and identifies the organization making the call, if different from the sponsor, by stating "This call is conducted by (name of organization)."

[2001, c. 416, §1 (new).]

B. If any person identified as either sponsoring or authorizing the call is not required to file any document with election officials pursuant to this Title, a valid, current, publicly listed telephone number and address for the person or organization must be disclosed during each call.

[2001, c. 416, §1 (new).]

C. If any person sponsoring or authorizing the call is affiliated with a candidate, the candidate's name and the office sought by that candidate must be disclosed during each call.

[2001, c. 416, §1 (new).]

D. If the call is an independent expenditure, as defined in section 1019-B, that a candidate has not approved the call must be disclosed during each call.

[2003, c. 448, §1 (amd).]

Title 21-A, §1014-B, Push polling

It is not a violation of this subsection if the respondent voluntarily terminates the call or asks to be called back before the required disclosures are made, unless the respondent is in any way encouraged to do so by the person initiating the call. [2003, c. 448, §1 (amd).]

A person may not state or imply false or fictitious names or telephone numbers when providing the disclosures required under this subsection. [2003, c. 448, §1 (amd).]

All oral disclosures required by this subsection must be made in a clear and intelligible manner and must be repeated in that fashion upon request of the call respondent. Disclosures made by any telephonic device must offer respondents a procedure to have the disclosures repeated. [2003, c. 448, §1 (amd).]

This subsection does not apply to a push poll or political telephone solicitation or contact if the individuals participating in the call know each other prior to the call. [2003, c. 448, §1 (amd).]

A person who violates this subsection may be assessed a forfeiture of \$500 by the commission. [2003, c. 448, §1 (amd).]

3. Registered agents; requirements; registration. Persons conducting push polling shall register and comply with the requirements of this subsection. [2001, c. 416, §1 (new).]

A. A person who conducts a paid push poll or political telephone solicitation or contact, prior to conducting that poll, solicitation or contact, must have and continuously maintain for at least 180 days following the cessation of business activities in this State a designated agent for the purpose of service of process, notice or demand required or permitted by law, and shall file with the commission identification of that designated agent. Conducting business in this State includes both placing telephone calls from a location in this State and calls from other states or nations to individuals located within this State. The designated agent must be an individual resident of this State, a domestic corporation or a foreign corporation authorized to do business in this State. This paragraph does not apply to any entity already lawfully registered to conduct business in this State.

[2001, c. 416, §1 (new).]

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

- (1) The name, address and telephone number of the designated agent; and
- (2) The name, address and telephone number of the person conducting business in this State.

[2001, c. 416, §1 (new).]

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

[2001, c. 416, §1 (new).]

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

[2001, c. 416, §1 (new).]

4. Permitted practices. This section does not prohibit legitimate election practices, including but not limited to: [2001, c. 416, §1 (new).]

A. Voter identification;

[2001, c. 416, §1 (new).]

B. Voter facilitation activities; or

[2001, c. 416, §1 (new).]

C. Generally accepted scientific polling research.

[2001, c. 416, §1 (new).]

PL 2001, Ch. 416, §1 (NEW).

PL 2003, Ch. 448, §1 (AMD).



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

August 8, 2006

Michael K. Mahoney, Esq.
Preti Flaherty Beliveau & Pachios LLP
PO Box 8546
Portland, ME 04112-9546

Dear Mr. Mahoney:

On July 25, 2006, the Commission on Governmental Ethics and Election Practices received the attached request for an investigation from Barbara E. Merrill, candidate for the office of governor. Ms. Merrill complains that a survey sponsored by the Maine Democratic Party is a push poll, as defined by 21-A M.R.S.A. §1014-B. The party's chair has been quoted in press stories as stating that the survey was not a push poll, and has made specific statements about the survey suggesting it was a standard poll for conducting political research.

If a survey is a push poll, the organization conducting the survey must make certain disclosures including identifying the organization sponsoring the push poll during the telephone survey. Violations of these requirements may result in penalties of up to \$500.

Basis for Request

Certain telephone surveys designed to influence the voting position of recipients are defined as push polls under 21-A M.R.S.A. §1014-B(1). In order to qualify as a push poll, a survey must contain all five required elements listed in paragraphs (1)(A) - (E):

- A. A list or directory is used, exclusively or in part, to select respondents belonging to a particular subset or combination of subsets of the population, based on demographic or political characteristics such as race, sex, age, ethnicity, party affiliation or like characteristics;
- B. The survey fails to make demographic inquiries on factors such as age, household income or status as a likely voter sufficient to allow for the tabulation of results based on a relevant subset of the population consistent with standard polling industry practices;
- C. The pollster or polling organization does not collect or tabulate survey results;
- D. The survey prefaces a question regarding support for a candidate on the basis of an untrue statement; and

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

Michael K. Mahoney

- 2 -

August 8, 2006

E. The survey is primarily for the purpose of suppressing or changing the voting position of the call recipient.

In order to better understand the nature of the survey, I interviewed two individuals who participated in it. Both said that several of the questions about their support for candidates were prefaced with statements about the candidates, some of which may have been misleading or objectionable on other grounds. Nevertheless, certain aspects of the survey suggest that it genuinely was intended to gather information on voter attitudes:

- *Length.* Both participants said the poll was at least 25 minutes long or longer, which may indicate that the purpose of the survey was collecting information rather than changing or suppressing votes.
- *Timing.* The poll was conducted nearly 3 ½ months before the general election.
- *Perceived purpose.* Mr. Lord stated that he believed the poll was "definitely" testing what statements would influence him as a voter.

Accordingly, it is not yet clear to the Commission staff whether or not this survey meets the criteria to constitute a push poll.

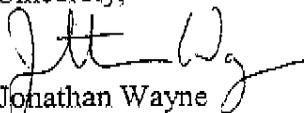
Requests for Information and Documents

To assist the Commission in making a determination, we request that the party provide information and documents supporting the party's position that the survey was not a push poll. Relevant information and documents may include:

- a statement of the primary purpose of the poll;
- all scripts, statements, and questions used in the survey, including any inquiries into such factors such as age, household income or status as a likely voter; and
- tabulations of survey results, including any tabulations of results based on subsets of population.

Please feel free to include other information that you believe is relevant. I have not included with Ms. Merrill's complaint an e-mail she received from Peg Meyers. After interviewing Ms. Meyers, I confirmed she was surveyed by a pollster hired by another candidate. Please telephone me at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne
Executive Director

cc: Benjamin F. Dudley, Chair, Maine Democratic Party
Candidates for Governor

PreTiFlaherty

MICHAEL K. MAHONEY
mmahoney@preti.com

August 14, 2006

VIA ELECTRONIC & U.S. MAIL

Jonathan Wayne, Director
Commission on Governmental Ethics
135 State House Station
Augusta, Maine 04333-0135

RE: Barbara Merrill "Push Poll" Inquiry

Dear Director Wayne:

Please accept on behalf of the Maine Democratic Party the following response to your letter dated August 8, 2006. That letter, as you are aware, relates to Barbara Merrill's complaint that the Party conducted a "push poll" in July, 2006.

Ms. Merrill is correct in asserting that the Party conducted a telephonic survey of likely voters. The survey took place on July 16-18, 2006 by Kiley & Company, a respected public-opinion research based in Boston, Massachusetts. She is incorrect, however, in her accusation that the survey constitutes a push poll, as that term is defined in 21-A M.R.S.A. § 1014-B (1). As the Commission is aware, in order to qualify as a push poll, a telephonic survey must satisfy all five of the required elements listed in that statutory subsection. As described below, and as the attached documentation illustrates, the Party's telephonic survey fails to meet several of these elements. Consequently, Ms. Merrill's complaint should be dismissed.

Element #1: A list or directory is used, exclusively or in part, to select respondents belonging to a particular subset or combination of subsets of the population, based on demographic or political characteristics such as race, sex, age, ethnicity, party affiliation or like characteristics.

Party Survey: Attached hereto at Tab A is the affidavit of Thomas R. Kiley, the principal of Kiley & Company, which conducted the survey in question. As Mr. Kiley attests in this affidavit, 500 respondents to the survey were randomly selected from an up-to-date computer file of residential telephone numbers throughout the state. See Kiley Affidavit, ¶ 10. No directory or list was used, exclusively or in part, to select respondents belonging to a particular subset or subsets of the population.

1150899.1

PreTi Flaherty Beliveau & Pachios LLP Attorneys at Law

One City Center | Portland, ME 04101 | TEL 207.791.3000 | FAX 207.791.3111 | Mailing address: P.O. Box 9546 | Portland, ME 04112-9546

Augusta

Bath

Boston

Concord

Portland

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PRETI FLAHERTY
Jonathan Wayne, Director
August 14, 2006
Page 2

Element #2: The survey fails to make demographic inquiries on factors such as age, household income or status as a likely voter sufficient to allow for the tabulation of results based on a relevant subset of the population consistent with standard polling industry practices.

Party Survey: Mr. Kiley's affidavit attests that the survey questionnaire collected demographic, behavioral and attitudinal data about each respondent, including:

- (a) party affiliation, if any;
- (b) likelihood of voting in the November 2006 election;
- (c) age;
- (d) educational attainment;
- (e) membership in a labor union or employee association;
- (f) whether the respondent has school-age children, and if so, whether the children attend public or private school;
- (g) whether the respondent owns a firearm;
- (h) political outlook – i.e., whether the respondent considers himself/herself a liberal, moderate liberal, moderate conservative or a conservative;
- (i) position on the abortion issue;
- (j) socioeconomic status;
- (k) religious affiliation, if any; and
- (l) gender.

See Kiley Affidavit, ¶ 7. These questions are likewise reflected in the excerpts from the actual survey itself, attached hereto at Tab B. These excerpts make clear that a primary focus of the survey was to make demographic inquiries of respondents so that the Party would be able to tabulate and analyze the survey results in a manner consistent with standard polling practices.

Element #3: The pollster or polling organization does not collect or tabulate the polling results.

Party Survey: As the Mr. Kiley's affidavit discusses, the results of the Party's survey were collected and extensively tabulated. Each question in the survey was cross-tabulated by three pages of demographic, behavioral and attitudinal subgroups. An excerpt from the tabulations is attached hereto at Tab C. This excerpt consists of pages 4, 163 and 187 of the 219-page Cross Tabulations Report prepared by Kiley and Associates for the Party analyzing the responses to the July 16-18 survey.

Element #4: The survey prefaces a question regarding support for a candidate on the basis of an untrue statement.

Party Survey: The survey's questions relating to particular candidates were prefaced with facts that are true and are a matter of public record.

PRETI FLAHERTY
Jonathan Wayne, Director
August 14, 2006
Page 3

Element #5: The survey is primarily for the purpose of suppressing or changing the position of the call recipient.

Party Survey: As Mr. Kiley's affidavit attests, his understanding from the outset is that the primary purpose of the Party's survey was to gain a better understanding of voter attitudes toward the candidates running for governor, as well as toward various public policy issues. See Kiley Affidavit, ¶ 6. It was not intended to suppress or change the position of any respondent. That the survey was not directed towards any particular subset of the population only underscores that its goal was to collect voter opinions, not alter them.

I trust that the foregoing adequately dispels any notion that the Party's July 16-18 survey was a "push poll." On the contrary, the survey was a detailed inquiry (taking an average of 22 minutes to complete) of a randomly-selected group of respondents, whose methodology was based on accepted principles of statistical sampling, and whose results were painstakingly collected and tabulated. See Kiley Affidavit, ¶ 11. Although the Commission, in order to conclude that the survey was not a push poll, need only find that one of the five required elements was not met, it can comfortably find here that four, if not all five, of the elements of a push poll are glaringly absent. For this reason, the Party respectfully requests that the Commission dismiss the complaint brought by Ms. Merrill.

The Party will be represented at the August 23, 2006 hearing on this matter and looks forward to discussing it further with Commission members, staff and counsel.

Sincerely,



Michael K. Mahoney

Enclosures

TAB A

AFFIDAVIT OF THOMAS R. KILEY

I, Thomas R. Kiley, having been duly sworn according to law, hereby depose and state as follows:

1. My name is Thomas R. Kiley.

2. I am the president and principal of Kiley & Company, located at 667 Boylston Street, Boston, Massachusetts 02116. Kiley & Company has since the early 1980s been principally engaged in the business of conducting public-opinion research for a broad range of political, public-policy, and institutional clients.

3. Neither I nor this firm has ever been engaged to conduct what is defined as a "push pull" under Maine law.

4. In July 2006, the Maine Democratic Party contracted with our firm to conduct a public-opinion survey in connection with the 2006 gubernatorial election.

5. At the time our firm was contracted, the directive from the Party was to conduct a telephone survey of 500 likely Maine voters, in support of the Party's statewide coordinated campaign (Maine Victory 2006).

6. The purpose of the survey was to gain a better understanding of voter attitudes toward the candidates running for governor, as well as toward various public-policy issues.

7. My firm then developed a detailed survey questionnaire consisting of sixty-three (63) questions that, among other things, collected demographic, behavioral, and attitudinal data about each respondent, including:

- (a) party affiliation, if any;
- (b) likelihood of voting in the November 2006 election;
- (c) age;
- (d) educational attainment;
- (e) membership in a labor union or employee association;
- (f) whether the respondent has school-age children, and if so, whether the children attend public or private school;
- (g) whether the respondent owns a firearm;
- (h) political outlook -- i.e., whether the respondent considers himself/herself a liberal, moderate liberal, moderate conservative or a conservative;
- (i) position on the abortion issue;
- (j) socioeconomic status;
- (k) religious affiliation, if any; and
- (l) gender.

8. The survey likewise tested respondents' views on a number of public-policy issues, including the economy, health care, state taxation and spending, and public education.

9. The survey also tested respondents' views toward the various gubernatorial candidates, and inquired for whom the respondent would vote if the election were being held tomorrow.

10. Once the questionnaire was finalized, a representative sample of respondents was randomly selected from an up-to-date computer file of residential telephone numbers in the state. Some numbers were intentionally altered by computer to ensure the inclusion of those with unlisted, as well as listed, telephone numbers. A total of 500 interviews were conducted.

11. Once contacted, respondents were screened to ensure that they are in fact registered to vote and are likely to participate in the November general election in Maine; only those registered and likely to vote were included in the survey. No other criteria were used to include or exclude potential respondents. The sample was scientifically designed to ensure that all members of the respondent universe would have an equal chance of being included in the survey.

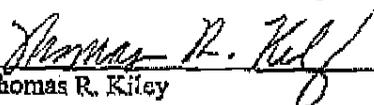
12. The survey methodology was based on accepted principles of statistical sampling, designed to yield results with a margin of error of +/- 4.4 percent, at a 95 percent confidence level.

13. The telephone interviews were conducted on July 16-18, 2006 by trained professionals working from a central, monitored location. On average, the interviews required 22 minutes to complete.

14. Following the completion of interviewing, our firm collected and tabulated the results, subjecting the data to a rigorous statistical analysis. Each question in the survey was cross-tabulated by three pages of demographic, behavioral, and attitudinal subgroups.

15. Topline and cross-tabular results were provided to the Party on or about July 19, 2006.

Dated: August 11, 2006


Thomas R. Kiley

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, SS

August 14, 2006

Personally appeared the above-named Thomas R. Kiley and subscribed to the truth of the foregoing statements by him made and that the statements are based upon his own personal knowledge.

Before me,


Notary Public

MICHELLE M. DeJOIE
NOTARY PUBLIC
MY COMMISSION EXPIRES NOV 8, 2007

TAB B

REDACTED

(RESUME ALL:)

201. These last few questions are only for tabulation purposes, and are strictly confidential. First, in which category does your age fall?

- 01 = Under 25
- 02 = 25 to 29
- 03 = 30 to 34
- 04 = 35 to 39
- 05 = 40 to 44
- 06 = 45 to 49
- 07 = 50 to 54
- 08 = 55 to 59
- 09 = 60 to 64
- 10 = 65 and over

202. What was the last grade of school you completed?

- 1 = Grade school or less (1-8)
 - 2 = Some high school (9-11)
 - 3 = High school grad
 - 4 = Vocational/Technical
 - 5 = Some college/2-yr college
 - 6 = Four-year college grad
 - 7 = Post-graduate work
-

11

203. Are you or is anyone in your household a member of a labor union or employee association?

- 1 = Yes, self
- 2 = Yes, other household member
- 3 = Yes, both
- 4 = No, not a union household

204. Do you have any school-age children living with you? (IF YES:) Do they attend public schools or non-public schools?

- 1 = Yes, public schools
- 2 = Yes, non-public schools
- 3 = Yes, both
- 4 = No, no children

205. Do you or any member of your family own a firearm? (IF YES:) Is that you personally or someone in your household?

- 1 = Yes, self
- 2 = Yes, household member
- 3 = Yes, both
- 4 = No, not a gun-owning household

8 = Not sure

206. On most political issues, do you consider yourself a liberal, a moderate liberal, a moderate conservative, or a conservative?

- 1 = Liberal
- 2 = Moderate liberal
- 3 = Moderate conservative
- 4 = Conservative

5 = Moderate/Middle-of-the-road

8 = Not sure

207. On the issue of abortion would you say you are strongly pro-life, mostly pro-life, mostly pro-choice, or strongly pro-choice?

- 1 = Strongly pro-life
- 2 = Mostly pro-life
- 3 = Mostly pro-choice
- 4 = Strongly pro-choice

8 = Not sure

12

208. If you were asked to use one of these names for the economic class you belong to, which would you say you belong in—upper class, upper middle-class, middle class, working class, or lower class?

- 1 = Upper class
- 2 = Upper middle-class
- 3 = Middle-class
- 4 = Working class
- 5 = Lower class

- 8 = Not sure

209. Is your religious background Protestant, Catholic, other Christian, Jewish, something else, or none?

- 1 = Protestant
- 2 = Catholic
- 3 = Other Christian
- 4 = Jewish
- 5 = Something else (RECORD VERBATIM)
- 6 = None

- 9 = Refused

(IF PROTESTANT/CODE 1 OR OTHER CHRISTIAN/CODE 3:)

210. Do you consider yourself either a fundamentalist Christian or an evangelical Christian?

- 1 = Fundamentalist
- 2 = Evangelical
- 3 = Neither

- 8 = Not sure
- 9 = Refused

(RESUME ALL:)

211. How often do you attend religious services—more than weekly, weekly, a few times a month, seldom, or never?

- 1 = More than weekly
- 2 = Weekly
- 3 = Few times a month
- 4 = Seldom
- 5 = Never

- 8 = Not sure
- 9 = Refused

212. GENDER, BY OBSERVATION:

- 1 = Male
- 2 = Female

"THANK YOU FOR YOUR COOPERATION"

TAB C

Killey & Company, Inc.
Boston, MA

Maine Statewide Survey
July 2006

Q3. Looking ahead to November, there will be an election in Maine for Governor, U.S. Senate, and other offices. What are the chances that you will vote in that election: are you almost certain to vote, will you probably vote, are the chances 50-50, or will you probably not vote in that election?

	REGION						MIDDLE WEST				DISTRICT				GENDER				AGE				EDUCATION									
	South		East		West		Midwest		North		South		East		West		Midwest		North		South		East		West		High sch./ less coll		Some coll		Coll grad	
	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%		
ALL ME VOTERS	500	100%	185	67%	117	132	352	124	265	235	265	130	224	146	115	120	117	148	179	131	187	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	
Almost certain	428	86%	155	55%	107	112	303	106	222	207	224	98	202	128	95	109	94	130	139	109	179	88%	88%	88%	88%	88%	88%	88%	88%	88%		
Probably vote	72	14%	30	11%	11	20	49	18	43	28	31	41	32	23	20	11	23	18	40	22	8	14%	14%	14%	14%	14%	14%	14%	14%	14%		
Probably not vote	140	28%	168	60%	179	93%	159	53%	164	124	134	154	248	104	184	94	204	124	224	174	54	28%	28%	28%	28%	28%	28%	28%	28%	28%		

Table 2 Banner 1

Killey & Company, Inc.
Boston, MA

2001. Age.

Maine Statewide Survey
July 2005

	REGION				MEDIA MGMT		DISTRICT		GENDER		AGE			GENDER/AGE				EDUCATION				
	West		North		Port- Bang-		CD 1 CD 2		Men Woman		<40 40-59 60+			Men >50		Woman >50		High school/ less coll grad				
	Total	South Coast	Coast	North	Land	oc	CD 1	CD 2	Men	Woman	<40	40-59	60+	>50	<50	>50	<50	>50	High school/ less coll grad	Some Coll	Coll grad	
ALL ME VOTERS	800	185	57	117	132	352	265	235	265	130	224	146	115	120	117	148	179	131	107	100%	100%	100%
Under 25	33	12	5	8	8	23	10	14	14	33	-	-	18	-	14	-	17	11	6	9%	8%	3%
25 to 29	74	6%	8%	7%	6%	6%	7%	6%	8%	25%	-	-	16%	-	12%	-	9%	8%	3%	12%	12%	12%
30 to 34	26	9	3	4	5	16	8	13	9	26	-	-	8	-	18	-	5	9	11	15%	15%	15%
35 to 39	51	5%	5%	3%	7%	5%	6%	5%	7%	20%	-	-	7%	-	15%	-	3%	7%	6%	20%	20%	20%
40 to 44	28	8	-	13	6	22	3	11	13	15	28	-	13	-	15	-	6	11	11	13%	13%	13%
45 to 49	61	5%	12%	5%	4%	5%	4%	4%	6%	22%	-	-	11%	-	13%	-	4%	9%	6%	22%	22%	22%
50 to 54	43	16	9	7	11	30	12	25	19	33%	-	-	21%	-	22%	-	19	7	17	33%	33%	33%
55 to 59	94	9%	9%	6%	8%	6%	10%	8%	9%	35%	-	-	18%	-	19%	-	11%	5%	9%	35%	35%	35%
60 to 64	46	23	4	11	8	35	8	28	18	46%	-	-	21%	-	25%	-	17	11	19	46%	46%	46%
65 to 69	9%	12%	6%	9%	6%	10%	7%	10%	8%	54%	-	-	19%	-	21%	-	8%	8%	10%	54%	54%	54%
70 to 74	57	21	9	13	13	42	14	34	23	57%	-	-	33%	-	23%	-	22	15	20	57%	57%	57%
75 to 79	11%	11%	14%	11%	10%	12%	11%	13%	10%	64%	-	-	29%	-	20%	-	12%	11%	11%	64%	64%	64%
80 to 84	62	29	10	9	14	45	14	38	24	62%	-	-	29%	-	24%	-	33	14	30	62%	62%	62%
85 to 89	12%	16%	13%	7%	11%	13%	12%	14%	13%	68%	-	-	28%	-	24%	-	22%	10%	11%	68%	68%	68%
90 to 94	59	22	6	18	13	44	13	31	28	71%	-	-	31%	-	26%	-	28	16	25	71%	71%	71%
95 and over	12%	12%	9%	16%	10%	13%	11%	12%	12%	73%	-	-	33%	-	23%	-	22	17	11	73%	73%	73%
	41	9	4	5	22	19	19	14	26	81%	-	-	41%	-	15%	-	15%	9%	8%	81%	81%	81%
	8%	5%	6%	5%	17%	5%	15%	5%	11%	81%	-	-	28%	-	28%	-	43%	42	26	81%	81%	81%
	10%	3%	1%	2%	27	7%	23	5%	5%	81%	-	-	10%	-	7%	-	6%	4%	2%	81%	81%	81%
	21%	19%	23%	24%	20%	22%	18%	20%	22%	81%	-	-	7%	-	7%	-	4%	2%	2%	81%	81%	81%

Agenda

Item #5



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

To: Commission Members and Counsel -
From: Jonathan Wayne, Executive Director *JW*
Date: August 15, 2006
Re: Late Filing Penalty for Incomplete Campaign Finance Report

Complaint and Response

Republican consultant Roy Lenardson filed a request for an investigation regarding literature mailed in mid-July by the Maine Democratic Party on behalf Sen. Lynn Bromley and Rep. Walter Ash. Both Legislators are seeking re-election. Mr. Lenardson stated that he could not locate the costs of the mailers in the party's campaign finance report filed on July 25. The Commission staff had already received a copy of the Walter Ash mailer from his opponent Jayne Crosby Giles, who inquired whether the party's expenditure in support of Ash entitled her to matching funds.

In response to a questionnaire sent by the Commission staff, the Maine Democratic Party disclosed: the costs of the Bromley and Ash literature; the vendor from whom the party purchased the literature (Bridge Communications); that the party had not yet paid the vendor; and other information. The party also amended its July 25 report to show three obligations to Bridge Communications totaling \$22,539.48.

Duty to Report Expenditures

Under Maine Election Law, candidates, party committees, and political action committees (PACs) are required to report their expenditures. (21-A M.R.S.A. §§1017(5), 1017-A(2), and 1060(4)) "Expenditure" is defined in Maine Election Law to include a promise or agreement to make a payment of money to influence the election – that is, an obligation:

3. Expenditure. The term "expenditure:"

A. Includes:

- (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any person to political office, except that a loan of money to a candidate by a financial institution in this State made in

accordance with applicable banking laws and regulations and in the ordinary course of business is not included;

(2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure;

21-A M.R.S.A. §1012(3)(A) (underlining added). In 2005, the Commission adopted a rule clarifying that placing an order with a vendor for a good or service is an expenditure that must be reported by a candidate, PAC, or party committee:

3. Timing of Reporting Expenditures.
 - A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.
 - B. Expenditures must be reported at the earliest of the following events:
 - (1) The placement of an order for a good or service;
 - (2) The signing of a contract for a good or service;
 - (3) The delivery of a good or the performance of a service by a vendor;
 - (4) A promise or an agreement (including an implied one) that a payment will be made; or
 - (5) The making of a payment for a good or service.

Chapter 1, Section 7(3) of the Commission's Rules. The rule was sparked by three independent expenditure reports which were filed late in the 2004 elections.

Proposed Penalty for Not Filing a Substantially Compliant Report

Under 21-A M.R.S.A. §1017-A(2) and (3), party committees are required to report expenditures that are made on behalf of candidates and other expenditures. That duty includes reporting obligations, which are listed on Schedule E of the party committee reporting form.

The three obligations to Bridge Communications totaling \$22,539.48 should have been reported on Schedule E of the party's post-primary report when it was originally filed on July 25. The Commission staff believes that because these obligations were not included in the July 25 report, the report did not substantially comply with the party's reporting

obligations under 21-A M.R.S.A. §1017-A(2) and (3). The unreported obligations represented 20.6% of the party's total expenditures and obligations for the period (\$109,610.12).

Since the report did not substantially conform to the reporting requirements, the staff recommends that the report be considered late under 21-A M.R.S.A. §1020-A(2) and that the Commission assess a civil penalty. In keeping with the Commission's customary procedures, the preliminary penalty amount is calculated according a formula in §1020-A(4-A), but a maximum penalty of \$5,000 is imposed under subsection 5-A. The calculation of the penalty is shown on the attached penalty matrix.

The counsel for the party was informed of the proposed penalty on August 11 by way of letter, and the party could not submit a response to the proposed penalty in time for the Commission meeting packet. The party will submit a response to the proposed penalty at some time before the August 23 meeting.

It should be noted that the obligations totaling \$22,539.48 exceed the amount spent on the Bromley and Ash literature. It is reasonable to presume that the Democratic Party may have sent literature regarding other candidates.

Guidance Issue – Reporting Non-Express Advocacy

The Bromley literature is styled as a legislative update, and provides information about the Senator's legislative accomplishments. The Ash mailer invited constituents to contact the Representative to express views about pending legislation or other matters. Thus, the mailers did not expressly advocate the election of Bromley or Ash. Indeed, the literature makes no mention of the general election at all.

PACs are required to report "each expenditure made to support or oppose any candidate, campaign, political committee, political action committee," (21-A M.R.S.A. §1060(4), underlining added) Party committees are required to report expenditures "made on behalf of a candidate, political committee, political action committee, or party committee" (21-A M.R.S.A. §1017-A(2), underlining added)

The staff would like to discuss with the Commission whether PACs and party committees are required to report the specific amount spent per candidate on communications that do not contain express advocacy, or whether the committees are only required to report the total paid to the vendor without reference to the Legislator-candidates identified in the literature.

From: Roy Lenardson [mailto:roy@strategicadvocacy.com]
Sent: Wednesday, July 26, 2006 10:59 AM
To: Wayne, Jonathan
Subject: Disclaimer, incorrect reporting

Jonathan, sorry to bother you again....

I have attached a copy of the Lynn Bromley mailer that went out under the disclaimer of the "Maine Democratic Party". However, in reviewing the PAC report of the party filed this week - I can find nothing for printing costs that would reflect that. Clearly it would have to have been paid by the party as they used permit #31 and mailed at the non-profit rate, for which only state parties are legally eligible. The mailer went out prior to the (July 18 deadline) I do note that under the Senate Democrat PAC there is an expense for \$18,000 on political communication for a firm in Louisiana—which you will recall, this out-of-state firm is the main vendor for the Senate Democrats mailing program.

I am specifically interested in the following:

1. The total cost of the Lynn Bromley mailer.
2. The record of who paid for the mailer.
3. The vendor, including dates of the contract
4. Who paid for the postage?
5. A confirmation that the report is or is not in "substantial compliance" (Either the Senate Dems or the Party)
6. Confirmation that permit 31 is the non-profit Democrat Party postage permit

I should also note that I have been told there were a number of House mailings that were similar - I believe Janet Mills and Walter Ash.

Thank you.

Please consider this a formal inquiry, and I will be happy to answer any questions.

Roy Lenardson
Strategic Advocacy, LLC
605 US Route One, Suite B
Scarborough, Maine 04074
207.329.0992 (c)
207.510.7631 (o)
207.221.1041(f)
roy@strategicadvocacy.com

FROM :

FAX NO. :

Jul. 25 2006 08:19AM P2

S T A T E
LEGISLATIVE
U P D A T E

**HELPING
MAINE'S
ECONOMY
GROW**

**QUALITY
HEALTH
CARE**

**COMMITMENT
TO
EDUCATION**

FROM :

FX NO. :

Jul. 26 2006 08:19AM P1

LEGISLATIVE NEWS ABOUT SENATOR LYNN BROMLEY

Eliminating the Tax on Business Equipment

The legislature finally succeeded in repealing the personal property tax on business equipment without unduly harming our towns and cities. The parties all came together to remove a tax that discouraged investment in new equipment for manufacturing, allowing employers and businesses to grow and add quality jobs.

Helping Working Families by Increasing the Minimum Wage

The legislation increased the minimum hourly wage from \$6.50 to \$6.75 by October of this year and to \$7.00 by October of next year. This will help Maine workers be more self-sufficient as we move closer to having livable wages.

Fighting for Quality Health Care

This year, the Maine State Senate allocated \$10 million for Medicaid Part D prescription drug coverage while also preserving MaineCare.

Dirigo Health Program

Senator Bromley and her colleagues also fought successfully to protect the Dirigo Health Program -- the Governor's low-cost insurance program for individuals and small businesses.

Education

She continued to make education a Maine priority. The Senate invested \$5.8 million in the University of Maine and the Community Colleges. The legislature expanded access to nursing programs to fill the great need for nurses in our state. The legislature also created a tax deduction for student loans to make college more affordable.

K-12 School Funding

In a continued effort to reduce property tax and to increase the state's share of funding local schools, the legislature increased education funding by \$42 million, the highest it has been since the early 1990s.

For more information on these issues, or to discuss any other issue or concern, please contact:

SENATOR LYNN BROMLEY

Mail: 102 Mitchell Road
South Portland, ME 04106
Phone: (207) 799-2065
Email: lynbrom@attglobal.net

Please contact Senator Bromley -- your input makes all the difference.

16 Winthrop Street
Augusta, ME 04332

Philip Nixon
or Current Resident
156 Preble St
South Portland, ME 04106-2226

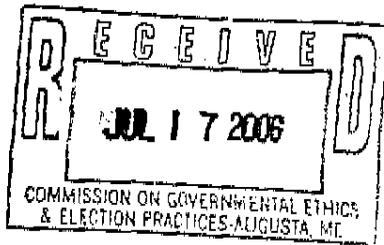
AUTO SCH 5-DIGIT 04106
2 2



Non-Profit
U.S. Postage
PAID
Permit #1
Portland, ME

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.





July 17, 2006

Mr. Jonathan Wayne
State of Maine
Commission on Governmental Ethics and
Election Practices
135 State House Station
Augusta, Maine 04333-0135

Dear Jonathan:

As follow up to our conversation this morning, I am faxing with this letter a copy of a postcard mailer that I received on Saturday, July 15, 2006. The postcard has been paid for by the Maine Democratic Party at 16 Winthrop Street, Augusta, Maine 04332. The content of the card promotes my opponent, an incumbent legislator, Walter Ash.

The card appears to be a campaign postcard for the benefit of Mr. Ash. The legislative session has ended and this has been mailed long after the June 13th Primary. Thus, we are into the "campaign season."

I am writing to see if this campaign expenditure has triggered any matching funds for my campaign as a Clean Elections Candidate.

I would appreciate yours and the Commission's response.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Jayne Crosby Giles".

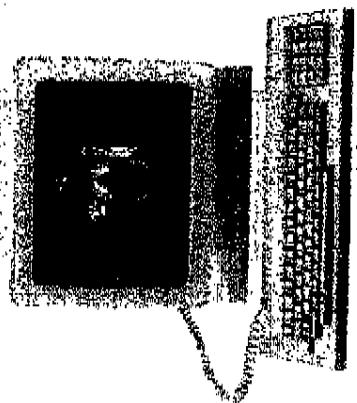
Jayne Crosby Giles
Candidate, House District #43

15 Tozier Street, Belfast, Maine 04915
338-4650, x2704 (work) OR 338-0711 (home)

YOUR INPUT MATTERS.
 Please contact your State Representative.



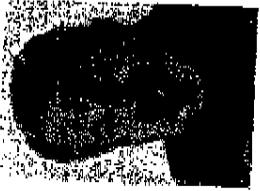
Mail a letter



Send an email



Give a call



Your views are important.
Please feel free to contact
Rep. Ash should you need
assistance with a state agency
or want to voice your concerns
about pending legislation, or any
other matter important to you.

Representative Walter Ash
District 43

Mail to: 36 Searsport Avenue
Belfast, ME 04915

At home: 338-3485
In Augusta: 1-800-423-2900

Email: Eastsidegarage@adelphia.net
Or visit him online at:
www.housedemocrats.maine.gov

16 Winthrop Street
Augusta, ME 04332

Non-Profit
U.S. Postage
PAID
Permit #1
Portland, ME

16 ME - Conifer US - 25

*****5-DIGIT 04915
Our Friends At
15 Tozier St
Belfast, ME 04915-6037



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.



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

VIA FAX & MAIL

August 3, 2006

Mr. Benjamin Dudley, Chairman
Maine Democratic Party
P.O. Box 5258
Augusta, ME 04332

Dear Chairman Dudley:

On July 26, 2006, the Maine Ethics Commission received a complaint from Roy Lenardson of Strategic Advocacy, LLC, regarding the attached mailer that appears to have been sent by the Maine Democratic Party (MDP) on behalf of Senator Lynn Bromley. Additionally, on July 17, 2006 Jayne Crosby Giles, a candidate for House District 43, filed an inquiry regarding the attached mailer for Representative Walter Ash which also appears to have been sent by the MDP. Mr. Lenardson asserts that the costs associated with these mailers do not appear on any recent party campaign finance reports even though it includes a statement attributing the expenditures to the Maine Democratic Party and was received by constituents in both districts in mid-July. A review of the party's campaign finance reports confirms this assertion.

If the MDP made these expenditures, it should have been included in a campaign finance report either as an expenditure on Schedule B or as an unpaid debt or obligation on Schedule D. Therefore, the Commission requests a formal response from you in writing no later than Friday, August 11, 2006 to the following questions:

- What was the cost of the mailer to Senator Bromley's district? What was the cost of the mailer to Representative Ash's district?
- Who paid for the mailer? On what date was the obligation for the mailers incurred and on what date was the invoice paid? Who is the vendor who produced and disseminated the mailings? When were the mailers sent to the districts? Please provide all supporting documents including but not limited to: contracts, invoices, and receipts.
- If the obligation was incurred and/or paid for prior to July 18, 2006, what are the reasons why it was not disclosed on the 42-Day Post-Primary, or 6-Day Pre-Primary report?

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

Benjamin Dudley
August 3, 2006
Page 2

- Who paid for the postage to mail these communications to Senator Bromley's and Representative Ash's district? Is Permit #1 the non-profit postage permit for the Maine Democratic Party?

Thank you for your prompt attention to this request.

Sincerely,



Martha Demeritt
Party Registrar

Enc.

cc: Senator Lynn Bromley
Representative Kevin Glynn
Representative Walter Ash
Jayne Crosby Giles

Roy Lenardson
Daniel Billings, Esq.
Michael Mahoney, Esq.

PretiFlaherty

MICHAEL K. MAHONEY
mmahoney@prcti.com

August 10, 2006

VIA ELECTRONIC & U.S. MAIL

Martha Demeritt
Party Registrar
Commission on Governmental Ethics
135 State House Station
Augusta, Maine 04333-0135

RE: Strategic Advocacy / Crosby Giles Inquiry

Dear Ms. Demeritt:

Please accept, on behalf of the Maine Democratic Party, the following response to your inquiry dated August 3, 2006 regarding complaints received by you from Roy Lenardson of Strategic Advocacy, LLC and House Candidate Jane Crosby Giles.

At the outset, the Party would like to state that its 42-day post-primary report erroneously omitted the two mail pieces that are the subject of your Aug. 3rd inquiry. The omissions were the result of a communications lapse within the Party. The Party corrected Schedule E of its 42-day post-primary report within three business days of learning of the omission from the Commission, and has taken steps to minimize the risk of this sort of error repeating itself.

Although neither piece was required under 21-A M.R.S.A. § 1014 to have a disclaimer, both pieces included the following: "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." That the Party included this information voluntarily only underscores the fact that the omission in its 42-Day Post-Primary Report was in no way intended to hide its association with these mail pieces.

To provide the Commission with as complete a response as possible, below are answers to the specific questions posed by you in your Aug. 3rd letter:

What was the cost of the mailer to Senator Bromley's district?

\$2253.39. See attached invoice.

What was the cost of the mailer to Rep. Ash's district?

\$1016.18. See attached invoice.

1150289.1

Preti Flaherty Beliveau & Pachios LLP Attorneys at Law

One City Center | Portland, ME 04101 | TEL 207.791.3000 | FAX 207.791.3111 | Mailing address: P.O. Box 9546 | Portland, ME 04112-9546

Augusta

Bath

Boston

Concord

Portland

www.preti.com

PRETI FLAHERTY
Martha Demeritt, Party Registrar
August 10, 2006
Page 2

Who paid for the mailer?

The Maine Democratic Party

On what date was the obligation for the mailers incurred and on what dates was the invoice paid?

Bromley: Obligation incurred on June 27, 2006; invoice not yet paid.
Ash: Obligation incurred on June 16, 2006; invoice not yet paid.

Who is the vendor who produced and disseminated the mailings?

Bridge Communications, 50 Progress Circle, Newington, Connecticut.

When were the mailers sent to the districts?

Bromley: The piece was put into the mail on July 20, 2006.
Ash: The piece was put into the mail on July 14, 2006.

If the obligation was incurred and/or paid for prior to July 18th, what are the reasons why it was not disclosed on the 42-Day Post-Primary, or 6-Day Pre-Primary report?

As discussed above, the Party's failure to disclose these obligations on the 42-Day Post-Primary Report was the result of a communications lapse within the organization.

Who paid for the postage to mail these communications to Senator Bromley's and Rep. Ash's district?

Bridge Communications paid the postage, but built that cost into the overall price paid by the Party for producing and disseminating the pieces.

Is Permit #1 the non-profit postage for the Maine Democratic Party?

No. Permit #1 is owned by Bridge Communications.

In conclusion, I hope that the foregoing adequately addresses this unfortunate situation from the Party's perspective. I also trust that the Party's prompt correction of this situation demonstrates its ongoing commitment to full disclosure of its activities and has minimized any prejudice that others may have suffered as a result of this error.

Sincerely,



Michael K. Mahoney

INVOICE

ME-Bromley-2006-06

Date: 6/30/06

**BRIDGE
COMMUNICATIONS**

50 Progress Circle, Unit 7A
Newington CT. 06111
Phone 860.665.8116
Fax 860.665.1318
Email: bcipam@snet.net or
bcommunications@snet.net

Maine Senate - Bromley

Attn: Brian Hawkins

Email: senate@mainedems.org

Piece Title	Qty	BCI Prod. Cost
Contact Card/Issues	7,269	\$2,253.39
	Balance Due:	\$2,253.39

Please overnight all payments to:

Bridge Communications, Inc.
Attn: A/R - Pam Madrazo
50 Progress Circle, Unit 7A
Newington, CT 06111

INVOICE

ME-Ash-2006-07

Date: 7/24/06

**BRIDGE
COMMUNICATIONS**

50 Progress Circle, Unit 7A
Newington CT. 06111
Phone 860.665.8116
Fax 860.665.1318
Email: bcipam@snet.net or
bcommunications@snet.net

Maine House - Ash

Attn: Paul Brunetti

Email: house@mainedems.org

Piece Title	Qty	BCI Prod. Cost
Contact Card	3,278	\$1,016.18
	Balance Due:	\$1,016.18

Please overnight all payments to:

Bridge Communications, Inc.
Attn: A/R - Pam Madrazo
50 Progress Circle, Unit 7A
Newington, CT 06111

**STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES**

Mail: 135 State House Station, Augusta, ME 04333

Office: 242 State Street, Augusta, Maine

Tel: (207) 287-4179 Fax: (207) 287-6775

Website: www.maine.gov/ethics

Electronic Filing: <http://www.maine.competitionfinance.com>

STATE PARTY COMMITTEE REPORT - 2006

Committee MAINE DEMOCRATIC STATE COMMITTEE

Street address 16 WINTHROP ST. P.O. BOX 5258
(official headquarters of committee)

Check if address is different than previously reported

City, Zip Code AUGUSTA ME 04332

Telephone (207)622-6233

E-mail _____

Treasurer BETTY L. JOHNSON

Street address PO BOX 5258

Check if address is different than previously reported

City, Zip Code AUGUSTA ME 04332-5258

Telephone (207)622-6233

E-mail _____

STATE COMMITTEE FILING PERIODS (Check applicable period below)

Due Date	Reporting Period
<u>07/25/2006</u>	<u>June 02, 2006 - July 18, 2006</u>

REPORT TYPE : State -- 42-Day Post-Primary

Is this an amendment?

Yes No

I CERTIFY THAT I HAVE EXAMINED THIS REPORT AND TO THE BEST OF MY KNOWLEDGE IT IS TRUE, CORRECT AND COMPLETE.

Treasurer's Signature

8/14/2006

Date

REPORTING EXEMPTION: Any party committee receiving and expending less than \$1,500 in one calendar year is exempt from the reporting requirements for that year.

Maine Democratic State Committee

(Schedule E Only)

Name of Party

SCHEDULE E

TOTAL UNPAID OBLIGATIONS (OTHER THAN LOANS)

List all goods or services that have not been invoiced and all existing unpaid bills.

Date obligation Incurred	Creditor's name, address, zip code	Purpose	Amount
06/16/2006	BRIDGE COMMUNICATIONS 50 PROGRESS CIRCLE, UNIT 7A NEWINGTON CT 06111	CONTACT CARD	9,218.78
06/27/2006	BRIDGE COMMUNICATIONS 50 PROGRESS CIRCLE, UNIT 7A NEWINGTON CT 06111	CONTACT CARD	6,660.35
07/17/2006	BRIDGE COMMUNICATIONS 50 PROGRESS CIRCLE, UNIT 7A NEWINGTON CT 06111	SURVEY CARD	6,660.35

Total \$22,539.48

Maine Democratic State Committee

8/15/2006

Name of Party

Date Submitted

**SCHEDULE F
SUMMARY SECTION**

RECEIPTS

THIS PERIOD ONLY

- 1. Contributions Received (Schedule A, Line 4)
- 2. Other Receipts (interest income, etc.)
- 3. Loans Received (Schedule D)
- 4. TOTAL RECEIPTS THIS PERIOD (Lines 1 + 2 + 3)

274,544.28
384.39
0.00
274,928.67

EXPENDITURES

THIS PERIOD ONLY

- 5. Contributions to or on behalf of others (Schedule B, Line 3)
- 6. Operating Expenses (Schedule B-1, Line 3)
- 7. Loans Repayments Made (Schedule D)
- 8. TOTAL EXPENDITURES THIS PERIOD (Lines 5 + 6 + 7)

-900.00
87,070.64
0.00
86,170.64

IN-KIND SUMMARY

Fair Market Value Totals

- Total In-Kind Contributions this period (Schedule C)
- Total In-Kind Expenditures this period (Schedule C)

0.00
0.00



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

VIA FAX & MAIL

August 11, 2006

Mr. Michael Mahoney, Esq.
PretiFlaherty
P.O. Box 9546
Portland, ME 04112

Dear Mr. Mahoney:

We appreciate your August 10, 2006 response to our request for information regarding two mailings by the Maine Democratic Party. The Commission will consider this matter at their next meeting on August 23, 2006 where the staff will recommend a \$5,000 penalty for failure to substantially comply with the law.

The 42-Day Post-Primary report amendment made by the Maine Democratic State Committee on August 9, 2006 – 22 days after the filing deadline – included information that accounted for more than 25% of the expenditures for the filing period. For this reason, the staff believes the original filed report, filed on July 25, 2006 did not substantially comply with the disclosure requirements of 21-A M.R.S.A. §1017-A(2). For this reason the staff is considering the report late under 21-A M.R.S.A. §1020-A(2) and will be recommending the assessment of a civil penalty as if the report were filed 22 days late.

If you wish to provide any additional written materials to the Commission responding to the proposed penalty, please submit them no later than August 15, 2006 so that the members will have sufficient time to review them.

Sincerely,

Martha Demeritt
Party Registrar

Enc. Penalty Matrix

cc: Benjamin Dudley
Roy Lenardson
Daniel Billings, Esq.

08/14/2006 10:43 2072876775

ETHICS COMMISSION

PAGE 02/03

Maine Democratic State Committee
42-Day Post-Primary Report

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

- CONTRIBUTION/EXPENDITURE PENALTY MATRIX
LATE PARTY COMMITTEE REPORTS

21-A M.R.S.A. Section 1020-A

A campaign finance report is timely filed when a properly signed copy of the report, substantially conforming to the disclosure requirements, is received by the Commission before 5 p.m. on the date it is due. A penalty begins to accrue after 5:00 p.m. on the day the report is due. Penalties are based on a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

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

<i>Example:</i> The party committee treasurer files the report two calendar days late. The committee has not had any previous late filings in the past 2 years. The committee reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:	
\$2,500	Greater of the amount of total contributions received or expenditures made during the filing period.
X .01	Percent prescribed for first violation
\$25.00	One percent of total contributions
X 2	Number of calendar days late
\$50.00	Total penalty Commission may assess

PARTY COMMITTEE	
Your penalty is calculated as follows:	
Contributions/Expenditures	\$274,928.67
Percent prescribed:	X .01
	\$2,749.28
Number of days late:	X 22
Total penalty accrued:	\$60,484.31
Maximum penalty	\$5,000

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

Any penalty of less than \$5 is waived.

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

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

Maximum penalties:

State Party Committees: \$5,000
Municipal, District, & County Committees \$500

08/14/2006 10:43 2072876775

ETHICS COMMISSION

PAGE 03/03

Page 1 of 1

Maine Democratic State Committee

8/11/2006

Name of Party

Date Submitted

**SCHEDULE F
SUMMARY SECTION**

RECEIPTS**THIS PERIOD ONLY**

1. Contributions Received (Schedule A, Line 4)
2. Other Receipts (interest income, etc.)
3. Loans Received (Schedule D)
4. **TOTAL RECEIPTS THIS PERIOD (Lines 1 + 2 + 3)**

274,544.28
384.39
0.00
274,928.67

EXPENDITURES**THIS PERIOD ONLY**

5. Contributions to or on behalf of others (Schedule B, Line 3)
6. Operating Expenses (Schedule B-1, Line 3)
7. Loans Repayments Made (Schedule D)
8. **TOTAL EXPENDITURES THIS PERIOD (Lines 5 + 6 + 7)**

-900.00
87,070.64
0.00
86,170.64

IN-KIND SUMMARY**Fair Market Value Totals**

- Total In-Kind Contributions this period (Schedule C)
- Total In-Kind Expenditures this period (Schedule C)

0.00
0.00

Title 21-A, §1012, Definitions

(4) Any unreimbursed travel expenses incurred and paid for by an individual who volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election;

(4-A) Any unreimbursed travel expenses incurred and paid for by the candidate or the candidate's spouse;

(5) The payment by a party's state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution of a party candidate listing;

(6) Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this Title, lists of registered voters and voter identification information, created or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;

(7) Compensation paid by a political party to an employee of that party for the following purposes:

(a) Providing advice to any one candidate for a period of no more than 20 hours in any election;

(b) Recruiting and overseeing volunteers for campaign activities involving 3 or more candidates; or

(c) Coordinating campaign events involving 3 or more candidates;

(8) Campaign training sessions provided to 3 or more candidates;

(8-A) Costs paid for by a party committee in connection with a campaign event at which 3 or more candidates are present;

(8-B) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes;

(8-C) The use or distribution of any communication, as described in section 1014, obtained by the candidate for a previous election and fully paid for during that election;

(9) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider; or

(10) 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.

[2005, c. 301, §7 (amd).]

3. Expenditure. The term "expenditure:" [2005, c. 301, §8 (amd).]

A. Includes:

(1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any person to political office, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;

 (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure;

(3) The transfer of funds by a candidate or a political committee to another candidate or political committee; and

(4) A payment or promise of payment to a person contracted with for the purpose of supporting or opposing any candidate, campaign, political committee, political action committee, political party, referendum or initiated petition; and

[2003, c. 615, §1 (amd).]

B. Does not include:

(1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by any political party, political committee or candidate;

(1-A) Any communication distributed through a public access television station if the communication complies with the laws and rules governing the station and all candidates in the race have an equal opportunity to promote their candidacies through the

Title 21-A, §1017-A, Reports of contributions and expenditures by party committees

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PLEASE NOTE: The Revisor's Office CAN NOT perform research for or provide legal advice or interpretation of Maine law. If you need legal assistance, please contact a qualified attorney.

§1017-A. Reports of contributions and expenditures by party committees

1. Contributions. A party committee shall report all contributions in cash or in kind from an individual contributor that in the aggregate in a campaign total more than \$200. The party committee shall report the name, mailing address, occupation and place of business of each contributor. Contributions of \$200 or less must be reported, and these contributions may be reported as a lump sum. [1993, c. 680, Pt. C, §2 (amd).]

* **2. Expenditures on behalf of candidates, others.** A party committee shall report all expenditures in cash or in kind of the committee made on behalf of a candidate, political committee, political action committee or party committee registered under this chapter. The party committee shall report: [1993, c. 715, §1 (amd).]

A. The name and address of each candidate and the identity and address of a campaign or committee;

[1991, c. 839, §23 (new); §33 (aff).]

B. The office sought by a candidate and the district that the candidate seeks to represent; and

[1991, c. 839, §23 (new); §33 (aff).]

C. The date and amount of each expenditure.

[1993, c. 715, §1 (amd).]

3. Other expenditures. Operational expenses and other expenditures in cash or in kind of the party committee that are not made on behalf of a candidate, committee or campaign must be reported as a separate item. The party committee shall report: [1993, c. 715, §2 (amd).]

A. The name and address of each recipient;

[1993, c. 715, §2 (new).]

B. The reason for the expenditure; and

[1993, c. 715, §2 (new).]

C. The date and amount of each expenditure.

[1993, c. 715, §2 (new).]

4. Filing schedule. [2003, c. 302, §2 (rp).]

4-A. Filing schedule. A state party committee shall file its reports according to the following schedule. [2005, c. 301, §18 (amd).]

A. Quarterly reports must be filed:

(1) On January 15th and must be complete up to January 5th;

(2) On April 10th and must be complete up to March 31st;

(3) On July 15th and must be complete up to July 5th; and

(4) On October 10th and must be complete up to September 30th.

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

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§1020-A. Failure to file on time

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

* **2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission before 5 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means: [2003, c. 628, Pt. A, §3 (amd).]

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

[1999, c. 729, §5 (amd).]

B. An error by the commission staff;

[1999, c. 729, §5 (amd).]

C. Failure to receive notice of the filing deadline; or

[1999, c. 729, §5 (amd).]

D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

[1999, c. 729, §5 (new).]

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

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

* **4-A. Basis for penalties.** The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows: [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

A. For the first violation, 1%;

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

B. For the 2nd violation, 3%; and

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

Text current through the 122nd Legislature, Second Special Session (July 30, 2005), document created 2005-10-01, page 1.

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

C. For the 3rd and subsequent violations, 5%.

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

Any penalty of less than \$5 is waived. [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation. [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty. [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as an original of the same report is received by the commission within 5 calendar days thereafter. [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

The penalty for late filing of an accelerated campaign finance report as required in section 1017, subsection 3-B may be up to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation. The commission shall make a finding of fact establishing when the report was due prior to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2. [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

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

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed: [2003, c. 628, Pt. A, §4 (amd).]

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D or F; section 1017, subsection 4; and section 1019-B, subsection 3;

[2003, c. 448, §4 (amd).]

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E;

[2003, c. 628, Pt. A, §4 (amd).]

C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E;

[2003, c. 628, Pt. A, §4 (amd).]

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B; or

[2003, c. 628, Pt. A, §4 (amd).]

E. Three times the unreported amount for reports required under section 1017, subsection 3-B, if the unreported amount is less than \$5,000 and the commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report.

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

6. Request for a commission determination. Within 3 days following the filing deadline, a notice must be forwarded to a candidate and treasurer whose registration or campaign finance report is not received by 5 p.m. on the deadline date, informing them of the basis for calculating penalties under subsection 4 and providing them with an opportunity to request a commission determination. The notice must be sent by certified United States mail. Any request for a determination must be made within 10 calendar days of receipt of the commission's notice. The 10-day period during which a determination may be requested begins on the day a recipient signs for the certified mail notice of the proposed penalty. If the certified letter is refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. A candidate or treasurer requesting a determination may either appear in person or designate a representative to appear on the candidate's or treasurer's behalf or submit a notarized written explanation of the mitigating circumstances for consideration by the commission. [RR 1995, c. 2, §38 (cor).]

7. Final notice of penalty. After a commission meeting, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the treasurer. [RR 2003, c. 1, §14 (cor).]

If no determination is requested, the commission staff shall calculate the penalty as prescribed in subsection 4-A and shall mail final

Title 21-A, §1060, Content of reports.

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§1060. Content of reports

The reports must contain the following information and any additional information required by the commission to monitor the activities of political action committees: [1985, c. 161, §6 (new).]

1. **Identification of candidates.** The names and mailing addresses of any candidate whom the committee supports, intends to support or seeks to defeat. The report must indicate the office that the candidate is seeking, the political party represented by the candidate, if any, the date of the contest and whether the contest is an election or a primary; [1985, c. 161, §6 (new).]
2. **Identification of committees; parties.** The names and mailing addresses of any political committee or political party supported in any way by the registrant; [1985, c. 161, §6 (new).]
3. **Identification of referendum or initiated petition.** The referendum or initiated petition which the committee supports or opposes and the names and mailing addresses of the organizations to which expenditures were made; [1985, c. 161, §6 (new).]
- * 4. **Itemized expenditures.** An itemization of each expenditure made to support or oppose any candidate, campaign, political committee, political action committee, political party, referendum or initiated petition, including the date, payee and purpose of the expenditure and the address of the payee. If expenditures were made to a person described in section 1012, subsection 3, paragraph A, subparagraph (4), the report must contain the name of the person; the amount spent by that person on behalf of the candidate, campaign, political committee, political action committee, political party, referendum or initiated petition; the reason for the expenditure; and the date of the expenditure. The commission may specify the categories of expenditures that are to be reported to enable the commission to closely monitor the activities of political action committees; [2005, c. 301, §27 (amd).]
5. **Aggregate expenditures.** An aggregation of expenditures and cumulative aggregation of expenditures to a candidate, campaign, political committee, political action committee, referendum or initiated petition; [1991, c. 839, §30 (amd).]
6. **Identification of contributions.** Names, occupations, places of business and mailing addresses of contributors who have given more than \$50 to the political committee after the committee has registered under section 1053, the amount contributed by each donor and the date of the contribution. The information already reported as required by section 1053, subsection 7 should not be duplicated; and [2003, c. 615, §4 (amd).]
7. **Other expenditures.** Operational expenses and other expenditures in cash or in kind that are not made on behalf of a candidate, committee or campaign. [1991, c. 839, §31 (new); §33 (aff).]

PL 1985, Ch. 161, §6 (NEW).
 PL 1991, Ch. 839, §30,31 (AMD).
 PL 1991, Ch. 839, §33 (AFF).
 PL 2003, Ch. 615, §3,4 (AMD).
 PL 2005, Ch. 301, §27 (AMD).

SECTION 7. EXPENDITURES

1. Expenditures By Consultants, Employees, and Other Agents of a Political Campaign. Expenditures made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc. employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee shall be deemed expenditures by the candidate or committee. Such expenditures must be reported by the candidate or committee as if made or incurred by the candidate or committee directly.
2. Expenditures By Political Action Committees. In addition to the requirements set forth in 21-A M.R.S.A. Section 1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.
3. Timing of Reporting Expenditures.
 - A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.
 - B. Expenditures must be reported at the earliest of the following events:
 - (1) The placement of an order for a good or service;
 - (2) The signing of a contract for a good or service;
 - (3) The delivery of a good or the performance of a service by a vendor;
 - (4) A promise or an agreement (including an implied one) that a payment will be made; or
 - (5) The making of a payment for a good or service.
 - C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.
4. Advance Purchases of Goods and Services for the General Election.
 - A. Consulting services, or the design, printing or distribution of campaign literature or advertising, including the creation and broadcast of radio and television advertising, contracted or paid for prior to the primary election must be received prior to the primary election in order to be considered primary election expenditures.



Agenda

Item #6



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

To: Commission Members and Counsel
From: Jonathan Wayne, Executive Director *JW*
Date: August 15, 2006
Re: Complaint Against MERI

On July 25, 2006, the Ethics Commission received the attached complaint against the Maine Economic Research Institute (MERI). The complaint was filed by John R. Hanson, Executive Director of the Maine State Building and Construction Trades Council. It concerns a publication entitled Roll Call 2006 (hereafter "Roll Call") that was distributed as an insert in Maine newspapers in late July. It is subtitled "A Report on the 122nd Maine State Legislature from an Economic Point of View."

The Roll Call contains a rating for all 186 members of the 122nd Legislature. The rating is based on the members' voting records on legislation which MERI believes will benefit Maine's economy.

Main Points of the Complaint

The complaint expresses a number of points of view, which can be summarized as follows:

- The Roll Call does not contain the specific bills which form the basis of the ratings, and there are differences of opinion about which policies promote a healthy economy and quality jobs.
- MERI is a "special interest organization" "promoting a political perspective ... to the public at large" and that political fact should be indicated in the publication.
- The Roll Call uses the seal of the State of Maine, which suggests some official authority or endorsement.
- The Roll Call should contain a "disclaimer" to better inform readers as to the political nature of the publication.

Response by MERI

The president of MERI, Edward J. McLaughlin has submitted a four-page letter with attachments including correspondence with the Commission staff dating back to 1999. In summary, he states that MERI is a nonpartisan research organization that is "dedicated to improving Maine's economy and business environment by providing objective information to enhance economic policy-making." Mr. McLaughlin notes that the issues chosen by MERI are the result of scientific study, and that MERI's board of directors includes members of both major political parties and independents.

Staff Analysis of Complaint by Mr. Hanson

The staff concludes that the Roll Call does not violate any provision of the campaign finance law or Commission Rules. Each of Mr. Hanson's main points is discussed below.

The Roll Call does not contain the specific bills which form the basis of the ratings, and there are differences of opinion about which policies promote a healthy economy and quality jobs.

The Commission staff appreciates that many have strong opinions regarding MERI's selection of bills and its legislative ratings. Nevertheless, MERI's choice of bills or how specifically the bills are listed in its publications is not within the jurisdiction of the Commission. MERI is entitled to conduct its own analysis as it sees fit and to publish it. Those disagreeing with MERI's analysis are free to rebut it in their communications. That is part of the political process.

MERI is a "special interest organization" "promoting a political perspective ... to the public at large" and that political fact should be indicated in the publication.

The Roll Call should contain a "disclaimer" to better inform readers as to the political nature of the publication.

Based on the descriptions of MERI received by the Commission staff, much of MERI's activities appear directed at informing MERI's *subscriber-businesses* about legislation and legislator activity. Since 2004, however, it has published brochures and guides directed toward the public at large (e.g., the 2004 Voter Guide, and the 2005 and 2006 Roll Call). The staff is most familiar with the 2004 Voter Guide which was the subject of two complaints filed with the Commission. Although the issue is open to interpretation, my personal view is that the voter guide, in particular, seems intended to influence elections from a political perspective. That perspective is: providing positive comment about Legislators who are helping Maine's economy in MERI's opinion, and negative comment about Legislators who are hurting Maine's economy in MERI's opinion.

In any case, even if MERI is viewed as a political organization, the Election Law and Commission Rules do not require that the Roll Call publication contain any particular disclosure, statement, or marking. More than 21 days before an election, only those communications expressly advocating the election or defeat of a candidate must contain the "paid for" disclaimer that is familiar from political signs and advertising. (21-A M.R.S.A. §1014)

Thus, Maine law requires the "paid for" disclaimer based on the *content* of the publication, not whether the organization sponsoring it is registered as a political action committee or is political in nature. Because the Roll Call does not contain express advocacy, it is not required to include this disclaimer.

It should be noted that in 2005 the Legislature amended the disclosure requirement in 21-A M.R.S.A. §1014 to include any communication that names or depicts a clearly identified candidate and that is disseminated to voters during the 21 days before an election – even if the communication does not contain express advocacy. (See subsection 2-A) Thus, organizations distributing the MERI Roll Call or Voter Guide within the last 21 days before the election may be required to include the disclaimer stating what persons financed the communication and whether it was authorized by the candidates.

The Roll Call uses the seal of the State of Maine, which suggests some official authority or endorsement.

The use of the seal of the State of Maine is not within the jurisdiction of the Commission. Moreover, the staff cannot find that MERI's use of the seal violates any statute. The only restriction that could arguably apply is the prohibition on the use of the seal for commercial purposes in 1 M.R.S.A. §204. Because the last page of the Roll Call does solicit new subscribers to MERI which is a paid service, MERI may wish to consider whether the use of the seal on the cover of the Roll Call is consistent with that provision.

Other Issue: Is MERI a political action committee?

Mr. Hanson contends that MERI is a political organization that is promoting a political perspective to the public at large. It is not clear whether he intends to argue that MERI qualifies as a political action committee as defined in Maine Election Law. I flag this issue for your attention as something which the Commission could consider at a future meeting, if a specific request were filed or if the Commission is inclined to take it up on its own. Mr. McLaughlin has not addressed the issue in his response. The purpose of the PAC law is better disclosure of what persons or organizations are raising and spending money to influence state elections in Maine. If MERI were deemed a PAC, it would be required to register and file regular campaign finance reports.

Mr. McLaughlin has met with the staff of the Commission at least three times to discuss whether MERI is conducting its business in compliance with Maine Election law. First,

he and MERI's counsel, Douglas S. Carr, met with my predecessor, Bill Hain, in October 1999. Following that meeting Mr. Carr sent a letter dated November 1, 1999 confirming MERI's understanding of the meeting. That letter states that if MERI engaged in conduct that might be deemed political activity, it would do so as part of a PAC separate and apart from the activities of MERI.

Mr. McLaughlin met with me in August 2004 prior to my first general election as the Commission's Executive Director, and sent a confirming letter dated August 11. I responded with a letter dated August 17 stating my conclusion as *Executive* Director that as long as MERI confined itself to activities described in its August 11 letter, it did not appear to qualify as a PAC and it did not appear that it would be required to file independent expenditure reports. That letter – like all advice from staff – is based on the evidence available at the time and is not binding on the Commission.

On June 28, 2006, I met again with Mr. McLaughlin, Glen Foss, MERI's Vice President, and Douglas Carr. I noted that since our August 2004 meeting, MERI had published 50,000 voter guides for the 2004 elections and had produced a new publication, the Roll Call, which MERI proposed to send directly to the public at large. I advised them that if MERI continued to expand its publications to the public, that could increase the perception that MERI is attempting to influence elections. That advice is summarized at the end of an August 4, 2006 guidance letter. As I note in the letter, the question of whether MERI is a PAC is not an easy one because of the ambiguity of part of the PAC definition. ((21-A M.R.S.A. §1052(5)(A)(2))

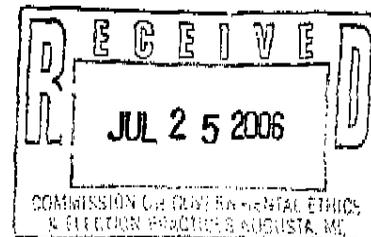
Staff Conclusion

The staff recommends that the Commission dismiss the complaint, unless Mr. Hanson can point to a particular requirement which is violated by the Roll Call. If a specific request is filed, or if the Commission were so inclined on its own, it could consider at a future meeting whether MERI is a political action committee.

Maine State Building and Construction Trades Council

277 Hinckley Road, P.O. Box 249, Clinton, Maine 04927

July 24, 2006



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

Dear Director Wayne:

Please consider this letter a formal complaint filing in the matter of an insert published in today's Bangor Daily News by the Maine Economic Research Institute. This "Report on the 122nd Maine State Legislature..." purports to provide "...an Economic Point of View." However, no listing of specific bills or Legislative Documents is included to provide a reader with the specific issues used in determining each Legislator's rating. Moreover, while suggesting the report is compiled from the perspective of creating a "healthy" economy, strong businesses, and quality jobs, there is significantly widespread and legitimate difference of scholarly economic and political opinion as to precisely what best promotes these objectives.

What is at issue in this instance is that this publication represents itself to the general public as something of an authority on what constitutes meaningful ingredients to building a strong economy. A review of several of the Legislative issues, published elsewhere by the Institute, (see: www.fixmaine.com) raise profound questions about its characterizations and subsequent Legislative ratings.

The Maine Building and Construction Trades Council would argue that the Maine Economic Research Institute is a special interest organization, and as such, is promoting a political perspective and agenda not only to its members, supporters and subscribers, but to the public at large. Clearly, this political fact should be acknowledged and indicated on the Report, as is in this case, the State of Maine Seal, (suggesting we might note, some official authority or endorsement). At the very least, it would seem appropriate to attach some disclaimer to better inform readers as to the political nature of the publication.

Finally, whatever the eventual outcome of this complaint, the Trades Council is persuaded that there is a need for greater public awareness of issues so critical to our system of government and the shaping of public policy. We look forward to participating in the discussion.

Sincerely,

John R. Hanson, Executive Director

Xc: Bangor Daily News
info@me-ri.org



MAINE ECONOMIC RESEARCH INSTITUTE

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Augusta, Maine 04330-9412
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ROLL



CALL

2006

Powerful Information
for
Effective Action®

A Report on the
122nd Maine State Legislature
from an Economic Point of View

Accountability at your
Fingertips

Volume IV, July 2006

HOW MAINE'S 186 LEGISLATORS VOTED ON BILLS IMPORTANT TO MAINE'S ECONOMY AND THE JOBS IT SUPPORTS

The production and distribution of this report has been paid for by the Maine Economic Research Institute and its content is the Institute's sole responsibility.

Connecting the dots to a stronger economy

For more than a decade parents have watched their children leave Maine to find quality jobs. The most recent report from the Federal Deposit Insurance Corporation (FDIC Spring 2006) reveals that Maine is the only state in New England to have a negative job growth in their 4th Quarter 2005 and 1st Quarter 2006 statistics. This new report ranks Maine a poor 48th in job growth.

Maine:

The Way Life Should Be...

Maine is a special place. We enjoy a quality of life that is second to none. From the rock bound coast and islands to the rugged mountains of western Maine, from the rolling hills and fertile fields of Aroostook County to the unmatched majesty of our abundant lakes and forests, there is nothing quite like Maine. And Maine people value the clean and healthy environment as a place to live and to raise our families.

It's not just the pristine environment that blinds us to this place. Maine is a safe place, with among the lowest crime rates in our nation. Our schools are also rated among the best and more Maine people own their homes than in practically any other state. These things are important to us and our elected officials should be praised for taking actions to support their achievements.

However, there is work to do. For too long Maine's economy has been under-performing its potential. It's no secret to Maine people. The number one priority for Maine citizens in this decade, identified through reliable polls and surveys,

is job quality jobs with benefits for our kids, jobs for Maine people. A strong economy is, and always will be, the foundation for a superior quality of life.

It's time to focus our elected officials on improving Maine's economy. We at the Maine Economic Research Institute (MERI) are optimistic that this goal can be achieved. We believe in the common sense savvy of Maine people. Given the facts, they make the right decisions; but what are the facts? Who is supporting a strong Maine economy and who needs to hear from you?

The information within these pages provides you with the tools to ask the right questions of your legislators and candidates for political office. Your questions will help focus our state government on creating a stronger economy.

Our mission is to create a stronger Maine economy, to support healthy Maine businesses, and to provide quality jobs for Maine people. We present this report on the economic performance of the Maine Legislature for your consideration. The rest is up to you...



SEE INSIDE

MAINE ECONOMIC RESEARCH INSTITUTE • ROLL CALL 2006

Legislative Districts By city/town: Senate Districts in purple (S), House Districts in red (H).

Abbot	27	27
Acton	2	144
Addison	29	33
Albion	24	54
Alfred	3	138
Andover	14	42
Anson	26	28
Arundel	4	140
Ashland	34	1
Athens	26	24
Auburn	15	68-70
Augusta	24	36-38
Balldisville	29	31
Baldwin	13	99
Bangor	32	15-18
Bar Harbor	28	35
Bath	19	62,65
Boals	29	33
Balfax	23	43
Belgrade	18	83
Benton	23	54,55
Berwick	2	145
Bothel	14	91
Bridford	4,5	135-137
Bingham	28	88
Blue Hill	28	37
Boothbay	20	61
Boothbay Harbor	20	61
Bowdoinham	19	67
Brafford	30	13
Brewer	31	20,21
Bridgewater	34	6
Bridgton	13	98
Bristol	20	61
Brookline	28	36
Brooks	23	42
Brooksville	28	37
Brownfield	13	97
Brownville	27	27
Brunswick	10	63,65,66
Buckfield	14	94
Bucksport	31	40
Burnham	23	45
Buxton	3	130,131
Caleis	29	31
Cambridge	27	27
Camden	22	66
CANAAN	26	28
Canton	14	93
Cape Elizabeth	7	121,123
Caribou	35	4
Carmel	33	23
Casco	12	101
Castine	31	37
Charleston	33	24
Chelsea	31	52
Cherryfield	29	33
China	24	53
Clifton	23	20
Clinton	23	29
Columbia Falls	29	33
Cooper	29	30
Corinna	33	25
Corinth	33	22,25
Cornish	2	99
Cornville	26	28
Crystal	34	5
Cumberland	11	108
Cushing	22	49
Cutler	29	32
Damariscotta	29	51
Danforth	29	11
Dodham	31	20
Deer Isle	29	36
Denmark	13	99
Dennysville	29	20
Dexter	33	24
Dixfield	14	93
Dismant	33	29
Dover-Foxcroft	27	26
Durham	13	103
Eagle Lake	35	1
East Machias	29	30
East Millinocket	27	10
Easton	34	6
Eastport	29	52
Eddington	31	20
Edgecomb	20	51

Elliot	1	148
Ellsworth	28	38
Emblan	26	58
Etna	13	23
Eustis	18	91
Fairfield	28	84
Falmouth	11	112,113
Farmington	21	79
Farmington	18	89
Fort Fairfield	34	6
Port Kent	35	1
Frankfort	23	41
Franklin	29	30
Freedom	23	45
Freeport	10	106
Frenchville	33	2
Friendship	20	49
Frye Island	12	103
Fryeburg	13	97
Gardiner	21	59
Gorham	6	129,130
Gry	11	109,110
Greenbush	30	13
Greene	12	75
Greenville	27	27
Guilford	27	27
Hallowell	21	79
Hampden	33	39
Harmony	27	24
Harrington	29	33
Harrison	13	98
Hartland	27	28
Hatron	14	96
Hermon	32	23
Hiram	13	37
Hodgdon	34	8
Houlton	34	8
Howland	30	12
Island Falls	34	9
Islesboro	23	44
Jackman	26	68
Jay	14	87
Jefferson	28	50,52
Jonesboro	28	30
Jonesport	29	33
Kennobunk	4	140,141
Kennebunkport	4	137
Kingfield	18	91
Mittery	1	149,151
Lagrange	30	13
Lee	30	11
Leeds	17	81
Levant	33	22
Lewiston	16	70-74
Liberty	23	44
Limerick	2	138
Limestone	35	3
Limington	3	99
Lincoln	30	12
Lincolnton	23	44
Lisbon	17	104,105
Litchfield	21	80
Littleton	34	7
Livemore	17	61
Livemore Falls	17	61
Long Island	11	108
Lovell	14	98
Lubec	29	32
Machias	29	32
Machiasport	29	32
Madawaska	35	2
Madison	28	86
Manchester	21	83
Marietta	35	7
Mars Hill	34	6
Mattawamkeag	30	17
Mechanic Falls	17	100
Medway	37	10
Mexico	14	83
Millbridge	29	33
Millford	31	12
Millinocket	22	10
Milo	27	26
Minot	17	99
Monmouth	21	88
Monson	27	27
Monticello	34	7
Montville	23	45

Monroe	23	44
Mount Desert	28	35,36
Mount Vernon	18	23
Naples	13	101
New Gloucester	15	105
New Sharon	18	67
New Sweden	35	3
New Vineyard	18	90
Newcastle	20	51
Newfield	2	138
Newport	33	25
Nobleboro	20	50
Norridgewock	26	86
North Berwick	2	146
North Yarmouth	11	108,109
Norway	13	95
Oakfield	34	9
Oakland	24	76,78
Ogunquit	1	149
Old Orchard Beach	5	132
Old Town	30	14
Orland	31	41
Orono	30	18,19
Orrington	31	40
Owls Head	22	47,48
Oxford	13	100
Palermo	23	45
Paris	13	94
Parsonsfield	2	97
Parson	27	9
Penbrooke	29	30
Penobscot	31	37
Perry	29	31
Peru	14	93
Phillips	18	96
Phillipsburg	19	64
Pittsfield	25	29
Poland	15	101,103
Portland	8,9	114-120
Pownal	10	106,109
Presque Isle	34	5,7
Princeton	29	11
Rangely	18	91
Raymond	12	103
Readfield	18	82
Richmond	19	67
Ripley	27	24
Rockland	23	47
Rockport	23	46
Rockwood	26	88
Roxbury	14	92
Rumford	14	92
Sabatias	17	75
Saco	5	133,134
Sanford	3	142-144
Sangerville	27	26
Scarborough	6,7	122,128
Searsport	23	44
Searsport	29	41
Sebago	13	99
Seedsfield	28	37
Shapleigh	2	138
Sherman	34	9
Sidney	24	78
Skowhegan	26	85
Smithfield	18	84
Smytha	34	6
Solon	26	86
Sorrento	28	34
South Berwick	1	146,148
South Bristol	20	51
South Portland	7	122-124
South Thomaston	23	42
Southwest Harbor	28	33
Springfield	30	11
St. Agaths	25	2
St. Albans	27	28
St. Francis	35	1
Standish	12	102,103
Steuben	19	32
Stockholm	25	2
Stockton Springs	23	41
Stonington	28	30
Strong	13	90
Surry	28	37
Swans Island	23	36
Thomaston	22	48
Theridike	23	45

Topfield	29	11
Topham	19	60,65
Trenton	28	38
Turner	17	96
Union	22	49
Unity	23	45
Van Buren	35	3
Vanceboro	29	11
Vassalboro	24	58
Vinalhaven	22	36,48
Waldoboro	20	50
Warren	22	49
Washburn	33	7
Washington	20	52
Waterboro	3	139
Waterford	14	95
Waterville	25	76,77
Wayne	18	81
Weed	18	82
Wells	2	147,149
Wesley	29	30
West Bath	19	64,65
West Gardiner	21	79
West Paris	14	95
Westbrook	6,9	125,126
Whitefield	20	52
Whiting	29	32
Whitneyville	29	30
Wilton	18	90
Windham	12	110,111
Windsor	20	58
Winn	30	11
Winslow	25	54
Winter Harbor	28	34
Winterport	23	42
Winthrop	21	82
Wiscasset	20	53
Woodland	35	3
Woodloch	19	65
Yarmouth	11	107
York	1	140,150

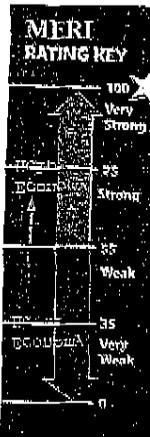
Legislative Districts

By city/town: Senate Districts in purple (S), House Districts in red (H). Please refer to this chart to find your Senate and House district numbers by city or town. Then use the numbers to locate your Senator and/or Representative.

SENATE & HOUSE: Page three presents information on the Maine Senate (S - Senators). Pages four, five and six present information on the Maine House of Representatives (H - Representatives). The color bar to the right of each legislator's photo indicates their MEER rating. A score of 55 or better indicates helping Maine's economy. A gold star is awarded for a score of 75 or better to legislators with exceptional voting records on important economic issues. These ratings measure voting records from the perspective of creating a healthy economy, strong businesses, and quality jobs in Maine. Our purpose, as a non-partisan research and analysis institute, is to promote more informed participation in state government. To learn more about how to help Maine become a better place to work and to live, we invite you to visit our website at www.fixmaine.com.

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MAINE ECONOMIC RESEARCH INSTITUTE • ROLL CALL 2006



<p>Senate District 1</p> <p>Mary Black Andrews Residence: York York County</p>	<p>Senate District 2</p> <p>Richard A. Nease Residence: ACORN York County</p>	<p>Senate District 3</p> <p>Jonathan T. Courtney Residence: Spritvale York County</p>	<p>Senate District 4</p> <p>Nancy B. Sullivan Residence: Biddeford York County</p>	<p>Senate District 5</p> <p>Barry J. Robbins Residence: Seaco York County</p>	<p>Senate District 6</p> <p>Phillip L. Barlett II Residence: Gorham Cumberland County</p>	<p>Senate District 7</p> <p>Lynn Bramley Residence: South Portland Cumberland County</p>	
<p>Senate District 8</p> <p>Ethan K. Strimling Residence: Portland Cumberland County</p>	<p>Senate District 9</p> <p>Michael F. Brennan Residence: Portland Cumberland County</p>	<p>Senate District 10</p> <p>Beth Edwards Residence: Freeport Cumberland County</p>	<p>Senate District 11</p> <p>Karl W. Turner Residence: Cumberland Cumberland County</p>	<p>Senate District 12</p> <p>Bill Diamond Residence: Windham Cumberland County</p>	<p>Senate District 13</p> <p>David H. Hastings II Residence: Fryeburg Cumberland County</p>	<p>Senate District 14</p> <p>Bruce S. Bryant Residence: Dixfield Oxford County</p>	
<p>Senate District 15</p> <p>Lois A. Snowe-Mello Residence: Poland Androscoggin County</p>	<p>Senate District 16</p> <p>Peggy R. Notunda Residence: Lewiston Androscoggin County</p>	<p>Senate District 17</p> <p>John M. Nutting Residence: Leeds Androscoggin County</p>	<p>Senate District 18</p> <p>Chandler C. Wondolck Residence: Farmington Franklin County</p>	<p>Senate District 19</p> <p>Arthur P. Mays, III Residence: Beth Sagadahoc County</p>	<p>Senate District 20</p> <p>Dana L. Dow Residence: Waldoboro Lincoln County</p>	<p>Senate District 21</p> <p>Scott W. Cowper Residence: Tullahoma Kennebec County</p>	<p>Senate District 22</p> <p>Christine A. Savage Residence: Union Knox County</p>
<p>Senate District 23</p> <p>Carol Wesson Residence: Montville Waldo County</p>	<p>Senate District 24</p> <p>Elizabeth H. Mitchell Residence: Vanalton Kennebec County</p>	<p>Senate District 25</p> <p>Kenneth T. Gagnoh Residence: Waterville Kennebec County</p>	<p>Senate District 26</p> <p>Peter Mills Residence: Skowhegan Somerset County</p>	<p>Senate District 27</p> <p>Paul T. Davis, Sr. Residence: Bangorville Piscataquis County</p>	<p>Senate District 28</p> <p>Dennis S. Damon Residence: Trenton Hancock County</p>	<p>Senate District 29</p> <p>Kevin L. Rye Residence: Perry Washington County</p>	<p>Senate District 30</p> <p>Elizabeth W. Schneider Residence: Orono Penobscot County</p>
<p>Senate District 31</p> <p>Richard W. Posen Residence: Bangor Penobscot County</p>	<p>Senate District 32</p> <p>Joseph C. Poiry Residence: Bangor Penobscot County</p>	<p>Senate District 33</p> <p>Debra D. Pomeroy Residence: Hampden Penobscot County</p>	<p>Senate District 34</p> <p>Dean F. Colony Residence: Hallowell Androscoggin County</p>	<p>Senate District 35</p> <p>John L. Martin Residence: Eagle Lake Aroostook County</p>			

How the Votes Are Selected

All legislation that the Maine Economic Research Institute (MERI) considers for inclusion in its *Economic Rating* calculations is first tested against those issues that Maine employers have identified as critical to their success and their ability to create economic opportunity for Maine citizens... *Jobs*. To accurately determine these issues, MERI employs a periodic scientific survey of Maine employers (*Senior Management Survey*). This study is highly significant and is representative of Maine's mix of business sectors. Legislation that passes this test is moved on to the next step.

To further refine its selection of legislation, MERI draws upon the expertise of a 14-member Advisory Committee. The Committee members are government affairs professionals representing a broad cross-section of Maine employers with diverse political affiliations. There are Democrats, Republicans, Independents, and those not enrolled in any political party on the Committee to keep the selection process sharply focused on economic issues. MERI and its methodologies are strictly nonpartisan. The Committee meets every two weeks during a legislative session to scrutinize each selected bill for relevancy and significance against the issues identified by Maine employers. By the end of the legislative session the Committee will have reviewed hundreds of bills and narrowed the final list to the most critical legislation (generally between 15 - 25 bills). Final selections are discussed and debated one more time by the Committee before their final recommendations are sent on to MERI's Board of Directors.

MERI's Directors are business owners and senior managers from a broad cross-section of Maine's business sectors. The Board, like the Advisory Committee, is comprised of members from across the political spectrum and is nonpartisan. Prior to meeting, the Board is sent the Advisory Committee recommendations along with a synopsis of the bills and an explanation of why the Committee selected specific bills. The Board reviews the recommended legislation and then meets with the Advisory Committee to discuss the final selections. After careful review and discussion, MERI's Board votes on which legislation to include in the Economic Rating calculations. The resulting selections are those legislative initiatives from each session which are most important to the widest possible range of Maine employers and which are also fundamental to a strong economy.

Unfriendly Business Policy

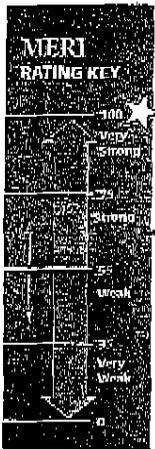
MAINE BUSINESS SERVABILITY INDEX: MAINE COMPARED TO OTHER STATES FROM 1999 THROUGH 2005. (SERVABILITY INDEX IS A POLICY ENVIRONMENT SCORE FOR SMALL BUSINESSES, LIKE RESTAURANTS, THAT RANGES FROM 0 TO 100, HIGHER IS BETTER.)

Year	Score
2005	49
2004	46
2003	45
2002	49
2001	48
2000	42
1999	42

SOURCE: Small Business & Entrepreneurship Council

More than ninety percent of Maine employers are small businesses...yet the most recent report from the Small Business & Entrepreneurship Council (SBEC October 2005) reveals that Maine is a poor 49th in the US as a place to run a small business.

MAINE ECONOMIC RESEARCH INSTITUTE • ROLL CALL 2006



House District 1
Troy D. Jackson
Residence: Earl Kent
County: Arundel



House District 2
Rosalie Parais
Residence: Frenchville
County: Arundel



House District 3
William J. Bennett
Residence: Van Buren
County: Arundel



House District 4
Peter Edgocomb
Residence: Carleton
County: Arundel



House District 5
Jeremy Fischer
Residence: Prince Job
County: Arundel



House District 6
Jacqueline A. Lundgren
Residence: Main Hill
County: Arundel



House District 7
John W. Churchill
Residence: Weymouth
County: Arundel



House District 8
Roger L. Sherman
Residence: Boston
County: Arundel



House District 9
Henry L. Joy
Residence: Island Falls
County: Arundel



House District 10
Herbert E. Clark
Residence: Millbrook
County: Arundel



House District 11
David W. McLeod Sr.
Residence: Lee
County: Arundel



House District 12
Rodrick W. Carr
Residence: Liberty
County: Arundel



House District 13
Robert S. Guthroa
Residence: Old Town
County: Arundel



House District 14
Richard D. Blaneau
Residence: Old Town
County: Arundel



House District 15
Jacqueline R. Norton
Residence: Guyton
County: Arundel



House District 16
Patricia A. Blancheau
Residence: Bangor
County: Arundel



House District 17
Sean Faircloth
Residence: Bangor
County: Arundel



House District 18
Michael Edward Dinn
Residence: Bangor
County: Arundel



House District 19
Drilly Ann Cain
Residence: Bangor
County: Arundel



House District 20
Darren M. Hall
Residence: Bangor
County: Arundel



House District 21
Charles D. Fisher
Residence: Bangor
County: Arundel



House District 22
Cameron D. Grayson
Residence: Bangor
County: Arundel



House District 23
David H. Richardson
Residence: Bangor
County: Arundel



House District 24
Douglas A. Thomas
Residence: Bangor
County: Arundel



House District 25
Joshua A. Terry
Residence: Bangor
County: Arundel



House District 26
James D. Amis
Residence: Bangor
County: Arundel



House District 27
Bert E. Richardson
Residence: Bangor
County: Arundel



House District 28
Vaughn A. Stebbins
Residence: Bangor
County: Arundel



House District 29
Glenn Allen Pitts
Residence: Bangor
County: Arundel



House District 30
Howard C. McFarland
Residence: Bangor
County: Arundel



House District 31
Anne C. Perry
Residence: Bangor
County: Arundel



House District 32
Harold Ian Emery
Residence: Bangor
County: Arundel



House District 33
Edward R. Dugay
Residence: Bangor
County: Arundel



House District 34
Leonard Earl Dorman
Residence: Bangor
County: Arundel



House District 35
Theodore S. Koffman
Residence: Bangor
County: Arundel



House District 36
Hannah Pingeau
Residence: Bangor
County: Arundel



House District 37
James A. Schatz
Residence: Bangor
County: Arundel



House District 38
Robert H. Cunningham
Residence: Bangor
County: Arundel



House District 39
Brian M. Dupuy
Residence: Bangor
County: Arundel



House District 40
Kimberley C. Peason
Residence: Bangor
County: Arundel



House District 41
R. Kenneth Lindell
Residence: Bangor
County: Arundel



House District 42
Jeff Kralin
Residence: Bangor
County: Arundel



House District 43
Walter E. Ash
Residence: Bangor
County: Arundel



House District 44
Barbara E. Merrill
Residence: Bangor
County: Arundel



House District 45
John F. Platt
Residence: Bangor
County: Arundel



House District 46
Stephen Downer
Residence: Bangor
County: Arundel



House District 47
Edward J. Mazurak
Residence: Bangor
County: Arundel



House District 48
Christopher Reeder
Residence: Bangor
County: Arundel



House District 49
Wesley E. Richardson
Residence: Bangor
County: Arundel



House District 50
A. David Trinne
Residence: Bangor
County: Arundel



House District 51
Jonathan D. McKane
Residence: Bangor
County: Arundel



House District 52
Elizabeth G. Miller
Residence: Bangor
County: Arundel



House District 53
Peter L. Rimes
Residence: Bangor
County: Arundel



House District 54
Kenneth C. Fletcher
Residence: Bangor
County: Arundel



House District 55
Judd D. Thompson
Residence: Bangor
County: Arundel



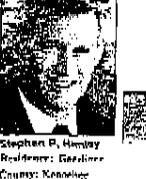
House District 56
Kimberly J. Davis
Residence: Bangor
County: Arundel



House District 57
Arthur L. Lemas
Residence: Bangor
County: Arundel



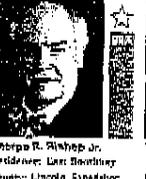
House District 58
William P. Rowena
Residence: Bangor
County: Arundel



House District 59
Stephen P. Hensley
Residence: Bangor
County: Arundel



House District 60
Charles Earl Grayson III
Residence: Bangor
County: Arundel

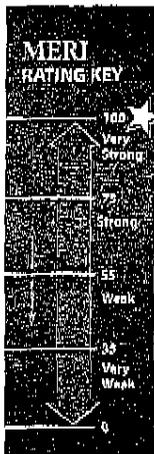


House District 61
George R. Rishop Jr.
Residence: Bangor
County: Arundel



House District 62
Thomas R. Vanden
Residence: Bangor
County: Arundel

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<p>House District 63</p> <p>John Richardson Residence: Kennebunk County: Cumberland</p>	<p>House District 64</p> <p>Lolla J. Parry Residence: Phippsburg County: Cumberland, Sagadahoc</p>	<p>House District 65</p> <p>Carol A. Gross Residence: Westwich County: Cumberland, Sagadahoc</p>	<p>House District 66</p> <p>Steve Derozafsky Residence: Kennebunk County: Cumberland</p>	<p>House District 67</p> <p>Deborah J. Hutton Residence: Newidulham County: Sagadahoc</p>	<p>House District 68</p> <p>Thomas F. Shields Residence: Auburn County: Androscoggin</p>	<p>House District 69</p> <p>Deborah L. Palindor-Rimpton Residence: Auburn County: Androscoggin</p>
<p>House District 70</p> <p>Sonya G. Simpson Residence: Auburn County: Androscoggin</p>	<p>House District 71</p> <p>Elaine Mekan Residence: Lewiston County: Androscoggin</p>	<p>House District 72</p> <p>William R. Walcott Residence: Lewiston County: Androscoggin</p>	<p>House District 73</p> <p>Lillian LaFortune Residence: Lewiston County: Androscoggin</p>	<p>House District 74</p> <p>Margaret A. Craven Residence: Lewiston County: Androscoggin</p>	<p>House District 75</p> <p>Sarah E. Lantley Residence: Sabattus County: Androscoggin</p>	<p>House District 76</p> <p>Marilyn E. Conway Residence: Waterville County: Kennebec</p>
<p>House District 77</p> <p>Lisa T. Marrantz Residence: Waterville County: Kennebec</p>	<p>House District 78</p> <p>Robert W. Norberg Residence: Oakland County: Kennebec</p>	<p>House District 79</p> <p>Carrie L. McCoy Residence: West Gardiner County: Kennebec</p>	<p>House District 80</p> <p>Nancy E. Smith Residence: Monmouth County: Androscoggin, Kennebec</p>	<p>House District 81</p> <p>Rodney G. Jennings Residence: Leeds County: Androscoggin, Kennebec</p>	<p>House District 82</p> <p>Patrick S. A. Flood Residence: Winthrop County: Kennebec</p>	<p>House District 83</p> <p>Stanley A. Moody Residence: Manchester County: Kennebec</p>
<p>House District 84</p> <p>Edward D. Ploch Residence: Fairfield County: Kennebec, Somerset</p>	<p>House District 85</p> <p>Melvin E. Richardson Residence: Southport County: Somerset</p>	<p>House District 86</p> <p>Philip A. Givels Residence: Madison County: Somerset</p>	<p>House District 87</p> <p>Raymond G. Pinna Residence: Jay County: Somerset</p>	<p>House District 88</p> <p>Wright H. Pinkham Sr. Residence: Lexington County: Piscataquis, Somerset</p>	<p>House District 89</p> <p>James T. Mills Residence: Parisville County: Franklin</p>	<p>House District 90</p> <p>Thomas B. Stevens Residence: Wilton County: Franklin</p>
<p>House District 91</p> <p>Allen R. Jordan Residence: Bethel County: Oxford</p>	<p>House District 92</p> <p>John L. Francis Residence: Bethel County: Oxford</p>	<p>House District 93</p> <p>Timothy E. Wetmore Residence: Bethel County: Oxford</p>	<p>House District 94</p> <p>Bruce D. Hantley Residence: Paris County: Oxford</p>	<p>House District 95</p> <p>H. Edwin Millett Jr. Residence: Waterford County: Oxford</p>	<p>House District 96</p> <p>Joan Bryson-Ducharme Residence: Turner County: Androscoggin, Oxford</p>	<p>House District 97</p> <p>Rebecca M. Hunt Residence: Fryburg County: Oxford, York</p>
<p>House District 98</p> <p>Richard H. Byrum Residence: Barre County: Cumberland, Oxford</p>	<p>House District 99</p> <p>Philip A. Greeney Jr. Residence: Canby County: Cumberland, Oxford, York</p>	<p>House District 100</p> <p>James M. Hensley Residence: Oxford County: Androscoggin, Oxford</p>				

TO CONTACT YOUR LEGISLATOR:
 General Phone (switchboard) 207-624-9494
GOVERNOR: 207-287-3531 • governor@maine.gov • www.maine.gov/governor
SENATE: 1-800-423-6900 (messages sessions only)
Democrats: 207-287-1515 • www.mainesenate.org
Republicans: 207-287-1505
HOUSE: 1-800-423-2900 (messages sessions only)
Democrats: 207-287-1430 • www.maine.gov/legis/housedems
Republicans: 207-287-1440 • www.mehousegap.com

TAX BURDEN: State and local tax burden is the most important measure of how taxes affect individual citizens and businesses. Tax burden is simply what we are being asked to pay vs. what we can afford to pay (the ratio of total state and local tax revenues divided by personal income). In their most recent report the Tax Foundation listed Maine as having the highest state & local tax burden in the country. Moreover, Maine has had the highest or second highest state and local tax burden in the US for more than ten consecutive years. To add to Maine's tax burden difficulties, a 2004 report by Ernst & Young found that Maine also placed the highest state & local tax burden on its businesses at 24.4 % (state and local business taxes per dollar of capital income). This is no way to grow an economy or create quality jobs.

Highest-Tax Burden

Maine	25.1%
Rhode Island	24.8%
Connecticut	24.7%
Vermont	24.6%
Massachusetts	24.5%
New Hampshire	24.4%

SOURCE: Bureau of Economic Analysis, Department of Commerce, and The Tax Foundation

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MERI RATING KEY

100 Very Strong
75 Strong
50 Average
25 Weak
0 Very Weak

House District 101 Richard M. Gabra Residence: Naples County: Androscoggin, Cumberland	House District 102 Gary W. Moore Residence: Randolph County: Cumberland	House District 103 John C. Robinson Residence: Raymond County: Androscoggin, Cumberland	House District 104 Robert A. Naybe Residence: Lithas County: Androscoggin	House District 105 Michael A. Vaughan Residence: Durbin County: Androscoggin, Cumberland	House District 106 David C. Webster Residence: Fryburg County: Cumberland	House District 107 Richard D. Wootton Residence: Yarmouth County: Cumberland	
House District 108 Torrence P. McKeown Residence: Cumberland County: Cumberland	House District 109 Susan M. Ariell Residence: Gray County: Cumberland	House District 110 Mark E. Bryant Residence: Wintham County: Cumberland	House District 111 Gary E. Plummer Residence: Windham County: Cumberland	House District 112 Gerald M. Davis Residence: Palermo County: Cumberland	House District 113 John R. Braultigan Residence: Palermo County: Cumberland	House District 114 Boyd F. Marley Residence: Portland County: Cumberland	
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House District 123 Jane S. Shwelo Residence: South Portland County: Cumberland	House District 124 Kevin J. Givens Residence: South Portland County: Cumberland	House District 125 Robert W. Dupinasse Residence: Westbrook County: Cumberland	House District 126 Timothy B. Discoli Residence: Westbrook County: Cumberland	House District 127 Darlene J. Curley Residence: Scarborough County: Cumberland	House District 128 Harold A. Orsagh Residence: Scarborough County: Cumberland	House District 129 Christopher R. Baraboo Residence: Gosham County: Cumberland	House District 130 David W. Farrington Residence: Gorham County: Cumberland, York
House District 131 Donald G. Marum Residence: Hallowell County: York	House District 132 George W. Hooper Sr. Residence: Old Chelsea County: York	House District 133 Donald E. Pilon Residence: Freeport County: York	House District 134 Linda M. Volantino Residence: Freeport County: York	House District 135 Joseph T. Twomey Residence: Millisport County: York	House District 136 Stephen R. Ondaufte Residence: Skowhegan County: York	House District 137 H. Stephen Seavey Jr. Residence: Kennebunk County: York	House District 138 James J. Campbell Sr. Residence: West Newfield County: York
House District 139 Lawrence E. Jacobson Residence: East Waterbury County: York	House District 140 Robert A. Dalgle Residence: Arundel County: York	House District 141 Christopher W. Bebbidge Residence: Kennebunk County: York	House District 142 David E. Bowles Residence: Sanford County: York	House District 143 John L. Tuttle Jr. Residence: Sanford County: York	House District 144 Joan M. Nasa Residence: Aramoosook County: York	House District 145 Richard J. Butts Residence: Berwick County: York	House District 146 Richard B. Brown Residence: North Berwick County: York
House District 147 Ronald F. Collins Residence: Wells County: York	House District 148 Sarah O. Lewis Residence: Ellis County: York	House District 149 Drewley S. Moulton Residence: Cape Neddick County: York	House District 150 David N. Ott Residence: York County: York	House District 151 Walter A. Wunner Sr. Residence: Kittery County: York			

PERSONAL INCOME GAP

What a difference a border makes! New Hampshire ranks 34th in the nation for its per capita personal income and Maine ranks a lowly 34th.

PER CAPITA PERSONAL INCOME \$38,408

PER CAPITA PERSONAL INCOME \$31,252

SOURCE: Bureau of Economic Analysis, Department of Commerce

PERSONAL INCOME GAP: "Increased personal income is fundamental to achieving a high quality of life for Maine citizens. It is also a direct reflection of economic growth and prosperity." "In 2004 (most recently available data from the US Bureau of Economic Analysis) Maine ranked 34th in the nation on per capita personal income. Maine consistently ranked in the low to mid-thirties nationally since the early 1990s."

SOURCE: Maine Economic Growth Council, "Measures of Growth In Focus", 2006.

Connecting the dots to a stronger economy

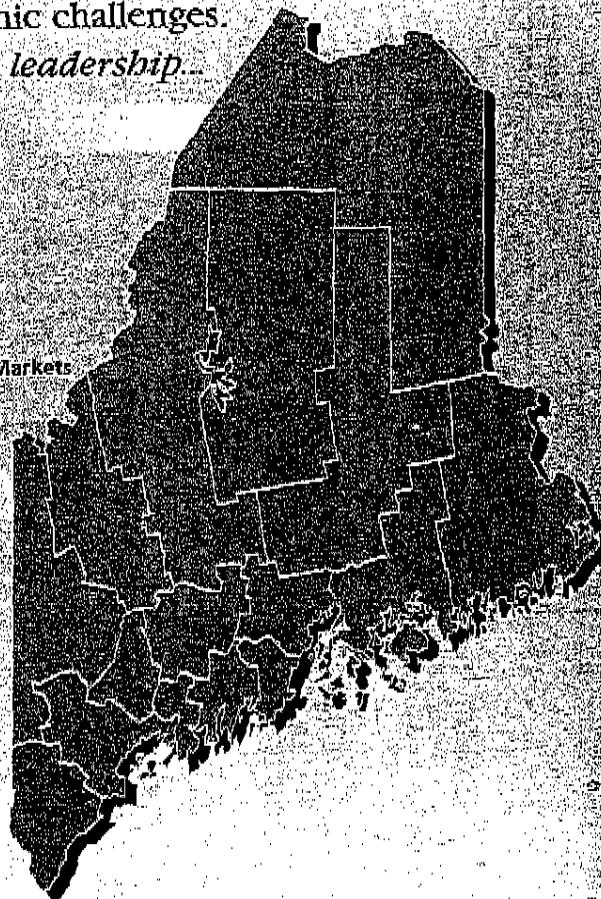
Other states have overcome economic challenges. So can Maine! And it all begins with *leadership*...

START Doing

- Attract/Support Jobs and Personal Income Growth
- Focus on Energy Technology/Cost Reduction
- Decrease Tax Burden
- Improve Governmental Function and Efficiencies
- Encourage Competitive Health Insurance/Healthcare Markets
- Speak up: Let Elected Leaders Hear from You

STOP Doing

- Excessive Growth in Government Spending
- Reinventing the Wheel. Develop a Comprehensive, Long-Term Economic Plan... And Stick to It
- Fragmented Approach by the Business Community
- Political Infighting... Work Together
- Adding Layers of Regulation/Red Tape
- Complaining... Become a Part of the Solution



A Bright Economic Future for Maine

It's about economic opportunity for all Maine people.

KEEP Doing

- Focus on a Clean, Healthy Environment
- Investing in Education and a High Quality Workforce
- Providing High Quality Healthcare Systems
- Investing in Research & Development
- Growing International Exports
- Promoting Tourism
- Improving Quality of Internet & Cellular Communications
- Investing in Roads, Bridges, Seaports
- Providing Business Support with High Quality Banking

MAINE ECONOMIC RESEARCH INSTITUTE • ROLL CALL 2006

The MERI system does a first rate job...

Every Legislator will tell you they are for jobs, for a strong economy, and that they want to help create opportunity and prosperity. Legislators have been saying this as long as anyone can remember yet we have results that are something different. Something just doesn't add up.

What are the facts about Maine's economy and the economic voting performance of our legislators? The Maine Economic Research Institute's (MERI) mission is to provide you with the information. And how well does MERI do the job? According to one state Senator, *"I think it's (MERI) the best thing that has happened on behalf of the citizens of Maine in my 12 years as a legislator."*

And a Bates College Professor Emeritus of Political Science wrote,

"This rating system is one of the most sophisticated, most realistic and most accurate I have seen in decades of studying interest-group ratings of legislators..."

The MERI system does a first rate job."

MERI advocates for a strong Maine economy. MERI subscribers support healthy businesses and quality jobs as fundamental to the "way life should be" in Maine. If

The Maine Economic Research Institute is an independent, private, not-for-profit corporation governed by a board of directors who are business owners, CEO's, and senior staff representing a diverse group of Maine companies. The board and staff are focused on creating a healthy Maine economy, strong businesses, and quality jobs.

"I think it's (MERI) the best thing that has happened on behalf of the citizens of Maine in my 12 years as a legislator."

you agree that Maine's economy is an important issue needing our attention, MERI provides you with powerful information; information you can use to engage in the process.

HERE'S WHAT YOU CAN DO... AND IT WON'T TAKE A LOT OF YOUR TIME.

- Communicate with your legislators and candidates for public office. Call them. Write them. Meet them face-to-face. They really do want to hear from you.

- Tell them what you think about improving Maine's economy and what you want them to focus on in Augusta.

- Stay in touch. Give our elected officials the benefit of your ongoing advice and support throughout the legislative session.

- Listen to what they have to say. And measure what they do. Accountability and Performance Review is the key to continuous improvement.



"No Really..."

I support a strong Maine economy."

Do they really? **Get the Facts.** Subscribe to MERI today. Your support for the production and distribution of information like the *MERI Roll Call* will keep the focus on improving Maine's economy and creating jobs...for us and our kids.

www.fixmaine.com

Powerful Information for Effective Action®

To subscribe to MERI or to order additional copies contact:

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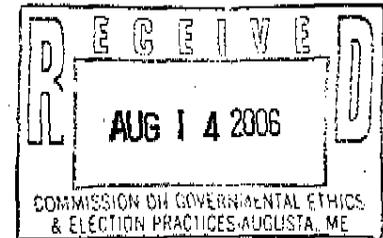
email: info@me-ri.org



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MAINE ECONOMIC RESEARCH INSTITUTE



August 14, 2006

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TIM WALTON

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

Dear Mr. Wayne:

This letter is in response to the complaint filed by John R. Hanson, Executive Director of the Maine State Building and Construction Trades Council, regarding an insert placed in the July 24, 2006 issue of the Bangor Daily News by the Maine Economic Research Institute ("MERI"). Mr. Hanson voices three criticisms about MERI's 2006 Roll Call newspaper insert: 1) he complains that the bills upon which MERI's legislative ratings are based are not listed in the publication; 2) he argues that Roll Call should state that there are differences of opinion about how best to create a healthy economy; and 3) he claims that the use of the State of Maine seal on the cover of Roll Call is inappropriate, because MERI is promoting a "political perspective and agenda."

Mr. Hanson's criticisms are unsound. Even if his critique were valid, none of the claims would constitute a violation of any laws or regulations administered by the Maine Commission on Governmental Ethics and Election Practices. Therefore, this complaint against MERI should be dismissed. A brief description of MERI, along with a specific response to each of Mr. Hanson's claims, follows:

The MERI Mission

MERI is an independent, nonpartisan, not-for-profit corporation governed by a board of directors who are business owners, CEOs, and senior staff representing a diverse group of Maine employers. MERI is dedicated to improving Maine's economy and business environment by providing objective information to enhance economic policy-making. Committed to a healthy economy and quality jobs, MERI conducts nonpartisan research and tracks legislator performance on critical business and economic issues. As an integral part of achieving MERI's economic goals it publishes periodic documents and reports. The 2006 Roll Call is one of the ongoing reports that MERI has published since the organization was founded in 1999. Roll Call is no different in aim and content than the many other educational legislator reports published by other organizations in Maine,

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Maine Economic Research Institute
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including organizations such as the Maine People's Alliance, the Maine League of Conservation Voters, or any number of similar groups. MERI's 2006 Roll Call is a report on the full 122nd Maine State Legislature from an economic point of view similar to reports from other state organizations expressing, for example, an environmental point of view. MERI's methodology treats all 186 Maine State Legislators exactly the same and as such is explicitly fair to each Legislator.

MERI has made every reasonable effort to ensure it complies with all laws and regulations for all its activities. Shortly after MERI was formed, staff and legal counsel met with and sent follow-up correspondence to the former Director of the Maine Commission on Governmental Ethics and Election Practices, William C. Hain, III (*see attached letter from November 1, 1999*) affirming our meeting with him on MERI's status as a 501(c)6. We followed-through with a meeting and an exchange of letters (*see attachments*) with you in August 2004, to ensure that our new products stayed within the letter of the law. Most recently, we met again with you and the Commission's Assistant Director, Paul Lavin on June 28, 2006. This most recent meeting was to inform you about MERI's 2006 publication plans including drafts of the 2006 Roll Call. You wrote back to us on August 4, 2006 (*see attached letter*), offering your personal opinion that the 2006 Roll Call does not appear to contain express advocacy within the meaning of Chapter 1, § 10(2) of the Commission's Rules such that MERI would be required to file an independent expenditure report. From the date of our founding, we have worked diligently to ensure MERI stays within the bounds of its charter and all applicable laws and regulations.

Mr. Hanson's Complaint Is Unsound.

1. The Bills Used to Determine Legislative Ratings Are on MERI's Website.

Mr. Hanson complains that "...no listing of specific bills or Legislative Documents is included to provide a reader with the specific issues used in determining each Legislator's rating." While no law or regulation requires MERI to list the bills that make up the legislative ratings, the Roll Call explicitly encourages readers to visit MERI's website at www.fixmaine.com where they will find all this information and more. The Roll Call also clearly explains in great detail how votes are selected on page 3 of the Roll Call, and exactly what MERI is on page 8.

2. MERI Has the Right to Express Its Viewpoint As to What Constitutes a Strong Economy.

MERI's central purpose is to create an environment that will foster a healthy economy, strong businesses, and quality jobs. Mr. Hanson complains that it is inappropriate for MERI to present itself as an authority on economic matters when others may hold different opinions about how to promote MERI's objectives.

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Maine Economic Research Institute
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As an initial matter, no law or regulation prohibits MERI from expressing its viewpoint about economic issues simply because others may have competing viewpoints. Differing views are of the hallmarks of a free and open society. Mr. Hanson is free to air his own opinion about what constitutes a healthy economy if he disagrees with MERI's viewpoint.

Furthermore, there is empirical support for MERI's position on economic matters. The issues that MERI identifies as fundamental to a strong economy are not arbitrarily selected. Instead, those issues are identified by Maine employers from around the state, through the use of scientifically designed and executed surveys. Sixty-six percent of the employers providing MERI guidance through their responses to these surveys are small businesses with fifty or fewer employees. Thus, MERI's work is guided by those issues most critical to the success of small Maine businesses—the very backbone of Maine's economy. MERI's approach and methodology are strictly and exclusively driven by economic issues.

Through the direct and scientifically analyzed input from a representative sample of employers throughout Maine, MERI's work does lend significant weight and authority to its understanding of what it takes to build a stronger Maine economy. The most recent (2005) Senior Management Survey received responses from 531 business leaders from a broad and representative spectrum of Maine industry sectors. The study's participants also offer a diverse geographical representation of Maine employers. This carefully designed and executed study has a statistical error factor of less than 4.5% at the .95 level of confidence, clearly representative of the answers expected from most Maine employers. These data are as close as one can get to the center of Maine's economy.

Mr. Hanson, while making no specific reference, also takes issue with how MERI characterizes legislative issues. MERI relies on the language of legislation itself and makes it easy for visitors to its website to link directly to the full language of proposed legislation on the official state legislative website. As a service to our subscribers, MERI also summarizes the legislative bills it tracks. These summaries are based on the summaries provided by the legislative website and may include what Maine employers report as important to them.

3. MERI's Use of the Maine Seal Is Appropriate.

Finally, Mr. Hanson takes issue with MERI's use of the Maine Seal on the cover of Roll Call. He claims that this use is inappropriate because MERI "is promoting a political perspective and agenda." Once again, there is no law or regulation that would prohibit MERI's use of the Maine Seal in this instance. Mr. Hanson's interpretation as to why MERI used the State of Maine Seal on the Roll Call is simply wrong. The seal was included with pride for our state and to make clear reference that the issues within are those of Maine's economy. You will find on MERI's 2005 Roll Call not only the seal but also an image of our state with: "*This Report was printed in Maine on paper Manufactured in Maine.*" The seal was used as a positive connection to our state and not for the cynical reasons suggested in the complaint. MERI believes its work will lead to a stronger economy that will benefit all Maine citizens and the use of the seal reflects our optimistic expectations and commitment to reaching this goal.

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**Maine Economic Research Institute
08142006**

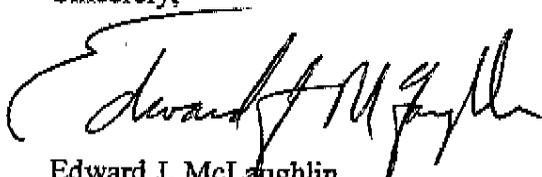
Contrary to Mr. Hanson's claim that MERI is a political organization, the group is instead designed to consider all relevant economic issues with a broad view that captures key issues that cut across Maine's economy. To help maintain its economic perspective and avoid politicizing the process, MERI's Board of Directors includes members from both major political parties and those not affiliated with any political party. The Board's diverse political affiliation and MERI's mission keep its focus on the economy and away from inserting any political points of view in its work. It is MERI's Board of Directors - Maine business leaders - who decide what legislation is used in MERI's calculation of its ratings of legislators. It should be noted that MERI has no members. MERI's financial support is exclusively derived from subscriptions to its information, sponsorship of its programs, and sales of its products. Subscription was built into MERI's organizational design to further remove any real or perceived outside influence.

Conclusion

The 2006 Roll Call does not violate any aspect of Maine law or regulations, and Mr. Hanson's complaint should be dismissed. However, MERI does agree with one point raised in Mr. Hanson's letter - there is a need for greater public awareness of issues so critical to our system of government and the shaping of public economic policy. This is why MERI was created and it is why we published the 2006 Roll Call.

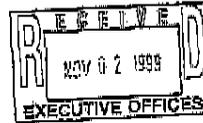
Thank you for the opportunity to clear up any misinterpretations of MERI and its work.

Sincerely,



Edward J. McLaughlin
President

PERKINS, THOMPSON, HINCKLEY & KEDDY
 A PROFESSIONAL CORPORATION
 ATTORNEYS AND COUNSELORS AT LAW
 ONE CANAL PLAZA - P.O. BOX 428
 PORTLAND, MAINE 04112-0428



DOUGLAS S. GARR
 dgarr@phktlw.com

AREA CODE 207
 TELEPHONE 774-2000
 FAX 871-8028

November 1, 1999

William C. Hain, III, Director
 Commission on Governmental, Ethics and Elections Practices
 133 State House Station
 Augusta, ME 04333-0135

Re: Compliance with Maine Election Laws Title 21-A M.R.S.A.

Dear Mr. Hain:

Thank you for taking the time in your busy schedule to meet with Ed McLaughlin, Director of the Maine Economic Research Institute (MERI) and myself, legal counsel to MERI, on Friday, October 22, 1999. Based on our conversation and the material enclosed herewith, we are seeking clarification and confirmation that MERI need not register or report under the provisions of Title 21-A M.R.S.A. §§ 1001-1105, Campaign Reports and Finances, or the provisions of §§ 1121-1128, The Maine Clean Election Act.

As we indicated to you on October 22, MERI is a non-profit Maine Corporation organized under the laws of the State of Maine. MERI will be seeking tax-exempt status under Section 501(c)(6) of the Internal Revenue Code. MERI's Mission Statement and Primary Purpose set forth at Article II of its Bylaws is as follows:

"Maine Economic Research Institute will file as a tax exempt 501(c)(6) organization. Its primary purpose is to improve Maine's business environment by providing objective information to enhance economic policy making."

I also enclose herewith Attachments 1, 3 and 7 to the 501(c)(6) Application for tax exempt status (which should remain confidential) to better inform you as to the detailed description of the organization's proposed activities.

MERI is not organized for the purpose of influencing the nomination or election of any person to state or county office. MERI is not organized to influence the outcome of any election, candidate or question. MERI, or its personnel, may, from time to time, have incidental communications with persons who are elected state officials or who are seeking election to state or county office to better inform them of MERI's Mission Statement and to share with them information on business issues which are deemed important to improving Maine's business environment.

William Hain, MD
November 1, 1999
Page 2

Based on our careful review and analysis of the aforementioned state statutes and their regulations, we do not believe MERI falls within the definition of a "Political Action Committee" nor will it or make contributions or expenditures consistent with the definitions thereof set forth at Title 21-A, M.R.S.A. §1052 of sub-chapter 4, Reports by Political Action Committees. Based on this analysis, our previous conversations with you regarding MERI's statement of purpose and the enclosed information, it is our understanding that you do not believe that MERI needs to register or report as a Political Action Committee in the State of Maine. We believe that MERI's past, present and future activities will be consistent with its statement of purpose and the enclosed information.

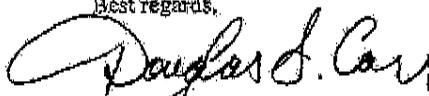
We believe that all conduct which might be deemed to constitute political activities should be undertaken by a specific Political Action Committee ("PAC"). It is contemplated that when such activity is to be considered, it shall be undertaken by such a PAC which will be organized consistent with the laws of the State of Maine prior to the undertaking of such activity. All such activity shall be undertaken solely within the PAC, separate and apart from the activities of MERI.

Should you require additional information or have any questions regarding this letter or the enclosures, please contact me at the above address and number. Should you believe that it would be helpful for us to schedule a subsequent follow up meeting with you or your staff to review this letter and the enclosed information, please contact me or Ed McLaughlin so that we may arrange a mutually convenient time for a such a meeting in the immediate future.

If this letter is consistent with your understanding and does not require further clarification, we would appreciate a written response confirming there is no present obligation on the part of MERI to register as a PAC as the purpose and activities of MERI do not constitute political action or otherwise bring MERI within the applicable laws requiring registration and filing as a PAC.

Thank you for kind assistance in this matter.

Best regards,


Douglas S. Carr

DSC/trr
Enclosures

cc: Edward J. McLaughlin



MAINE ECONOMIC RESEARCH INSTITUTE

11 August 2004

EDWARD J. McLAUGHLIN
PRESIDENT & CEO

BOARD OF DIRECTORS

JEFFREY S. JETER
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Jonathan Wayne, Executive Director
Maine Commission on Government Ethics &
Election Practices

135 State House Station
Augusta, Maine 04333-0135

Dear Mr. Wayne:

I appreciate your willingness to provide guidance in helping to understand how the Commission on Government Ethics & Election Practices' (*hereinafter the "Commission"*), new Chapter 448 rules will work, and for the opportunity to discuss with you the mission of the Maine Economic Research Institute. I also appreciate that you were willing to discuss these matters on an informal basis as I believe this is the best way to do business and that relationships are what really make the intent of legislation successful. Your help has been very professional and very informative. Thank you.

However, my current sense that there is considerable confusion by many about the new rules, and that the rules themselves beg for much more clarity, has compelled me to write this letter. It seems that the new rules are a developing product at this stage with firm interpretation yet to come. As such, I need to ensure that my understanding of our conversations to-date is correct.

In our discussions I introduced you to the Maine Economic Research Institute (MERI), its nonpartisan research and analysis mission, and our subscriber based structure. I also informed you about my earlier discussions with your predecessor about MERI's mission of research, analysis, and reporting. As part of the introduction, I showed you some of MERI's current products and informed you about how we use and distribute them. Of particular focus was our most recent product—MERI's Voter Guide which we will begin selling sometime in August of this year. It is my understanding that your view, and that of your predecessor is that MERI's activities and ongoing products do not require MERI to file any reports with the Commission. It is also my understanding that you believe, in consultation with the Commission's assigned Assistant Attorney General, that MERI's new Voter Guide will not trigger any reporting requirement by MERI to the Commission.

In addition, it is my understanding that as long as MERI is selling its Voter Guide and using individual copies for development work (*for the purpose of*

Powerful Information For Effective Action®

7 UNIVERSITY DRIVE • AUGUSTA, MAINE 04330-9412

business: (207) 622-9075 • fax: (207) 622-0371 • email: info@mc-ri.org • website: www.mc-ri.org

Page 2

MERI/Ethics Commission

11 August 2004

encouraging sales), that MERI will not have the responsibility for assigning value to the Voter Guide for reporting purposes. The value of the Voter Guide will be the purchase price paid, and that it may or may not be the buyer's responsibility to report the Voter Guide's value to the Commission. It is our understanding that it will not be MERI's responsibility to report or file with the Commission.

Finally, we discussed MERI's regular speaking engagements where we travel the state speaking primarily to business groups about our research. During these briefings we discuss our methodology, our research, survey results, and economic research by others. MERI does not at any time advocate for or against the election or defeat of any candidate. My understanding is that you do not see any issues with our briefings that would require reporting to the Commission.

I trust I have correctly described our conversations to-date and interpreted your views on the issues we have covered. If this letter misstates or inaccurately summarizes any of our several conversations or does not accurately reflect your view of the position of the Commission with respect to the MERI activities, please notify us in writing at once. I want to reiterate my appreciation for your helpful response to my questions and your willingness to work constructively with us on these important issues.

Sincerely,



Edward J. McLaughlin
President



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

August 17, 2004

Edward J. McLaughlin
Maine Economic Research Institute
7 University Drive
Augusta, Maine 04430-9412

Dear Mr. McLaughlin:

This is in response to your letter of August 11. Your letter is generally correct, and may be relied upon by the Maine Economic Research Institute (MERI). As long as MERI does not exceed the scenarios described in the fourth and fifth paragraphs of the letter (at the bottom of the first page, and running onto the second page), MERI does not appear to meet the legal definition of a political action committee in 21-A M.R.S.A. Section 1052(5) and would not be required to file reports of independent expenditures under 21-A M.R.S.A. Section 1019-B. If it engaged in activities not described in the letter, however, it could be required to file reports with the Commission.

I've enjoyed meeting with you and getting to know more about MERI. Please telephone me at 287-6219 if you have any questions.

Sincerely,

Jonathan Wayne
Executive Director

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775



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

August 4, 2006

Edward J. McLaughlin
President and CEO
Maine Economic Research Institute
7 University Drive
Augusta, ME 04330-0371

Dear Mr. McLaughlin:

This letter is to confirm the advice I gave to you at our recent meeting. Since then, John R. Hanson, Executive Director of the Maine State Building and Construction Trades Council, has filed a complaint against the Maine Economic Research Institute (MERI) relating to its 2006 Roll Call publication. My understanding is that this publication was distributed as an insert in Maine newspapers around July 24, 2006.

At the meeting, you outlined the mission of MERI and its activities. You described:

- the research conducted by the organization, including the senior management survey and the public survey regarding business issues;
- MERI's analysis of how legislation of interest to the business community, especially its tracking of about 15 bills per year, is determined by your advisory committee and survey of government relations professionals;
- your reporting of analysis results in the Almanac of Maine Politics and a voter guide, which was published for the first time in 2004; and
- MERI's organizational structure, which includes subscriber businesses and a board of directors which you described as bipartisan.

You mentioned that in 2004 MERI printed 50,000 copies of a voter guide which was distributed by organizations and individuals that had purchased the guides from MERI. In 2005, MERI produced for the first time a publication entitled Roll Call. You stated that it was your intention to publish a 2006 Roll Call, which would be distributed as an insert in newspapers in July. If I have misstated any details of our conversation, please feel free to correct my recollection.

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

Edward J. McLaughlin

- 2 -

August 4, 2006

Independent Expenditure Reporting

Applicable Law

Up until the last 21 days before an election (including on election day), an independent expenditure is a payment by an organization or person other than a candidate for a communication that expressly advocates the election or defeat of a clearly identified candidate. (See 21-A M.R.S.A. §1019-B(1)(A)) Express advocacy is defined in Chapter 1, §10(2) of the Commission's Rules, and involves such phrases such as "Vote for the Governor", "Re-elect your Representative" or other words, which in context, can have no reasonable meaning other to urge the election or defeat of a clearly identified candidate.

Less than 21 days before an election, the definition of what is an independent expenditure is much broader: an independent expenditure is presumed to have been made if the communication merely names or depicts a clearly identified candidate and if a Maine Clean Election Act candidate is in the race. (21-A M.R.S.A. §1019-B(1)(B))

The presumption is rebuttable. The organization paying for the communication may attempt to rebut the presumption by submitting a written statement to the Ethics Commission explaining that the purpose of the communication was other than to influence an election. If a rebuttal statement is filed, the Commission must decide whether the expenditures were made to influence the nomination, election, or defeat of a candidate.

Making an independent expenditure of more than \$100 in support of, or in opposition to, a candidate requires the filing of an independent expenditure report with the Commission. The reporting form is available on the Commission's website at www.maine.gov/ethics.

Under the Commission's rules ((Chapter 1, Section 10(5)(E)), the date of dissemination of the communication is the date of the postmark, hand-delivery, or broadcast of the communication.

In 2005, the Commission amended its independent expenditure rule (Chapter 1, Section 10) in order to address questions that arose in the 2004 elections. Those wishing to learn more about independent expenditures should refer to:

- 21-A M.R.S.A. §1019-B
- Chapter 1, Section 7(3) (defining, in general, what actions constitute making an expenditure)
- Chapter 1, Section 10 (describing independent expenditure reporting)
- The independent expenditure reporting form
- Educational materials on independent expenditure reporting that will be available soon on the Commission's website.

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Edward J. McLaughlin

- 3 -

August 4, 2006

Ethics Commission's Consideration of MERI Voter Guide in 2004

In 2004, the Commission received two complaints regarding the MERI voter guide. The first involved a candidate who requested matching funds on the basis of the distribution of the MERI voter guide by a business in her district. The Commission determined that less than \$100 was spent in the candidate's race, so no matching funds were awarded. The Commission did not rule on whether the MERI voter guide was intended to influence the election, or was purely educational in nature.

The Commission received a second complaint that a bank was distributing the MERI voter guide to employees or customers, but that complaint was withdrawn.

Implications for MERI and Distributors of its Publications*Would MERI's distribution of the 2006 Roll Call directly to voters require an independent expenditure report?*

At our meeting, you informed me that MERI would like to distribute the 2006 Roll Call by having it included as an insert in newspapers. I scanned the publication quickly and informed you that – presuming that the Roll Call does not include express advocacy – it would not require the reporting of an independent expenditure provided that it was distributed to voters more than 21 days before an election.

Since the meeting, I have had a chance to review the copy of the 2006 Roll Call supplied by Mr. Hanson. In my personal opinion, it does not appear to contain express advocacy as defined by Chapter 1, Section §10(2) of the Commission's Rules. Accordingly, its distribution to voters more than 21 days before the election would not require the filing of an independent expenditure report.

Please keep in mind that my opinion as Commission staff director is not binding on the Commission, and the final decision on any allegation of a reporting failure is made by the members of the Commission.

Would other organizations' distribution of MERI's voter guide to voters require those organizations to file an independent expenditure report?

My general understanding is that MERI does not intend to distribute the 2006 voter guide directly to voters. Instead, you intend to sell the guide to organizations and individuals that will distribute them to members or voters, or use the guides in other ways.

I have not seen your 2006 version of the MERI voter guide. I did have occasion to review MERI's 2004 voter guide, and in my opinion it did not contain express advocacy. If the 2006 guide included the same type of language as its predecessor and were

Edward J. McLaughlin

- 4 -

August 4, 2006

distributed to voters more than 21 days before the election, that would not require the organizations who distributed the guide to file an independent expenditure report.

If, however, the organizations distributed the guide to voters within the last 21 days leading up to the election, the 21-day presumption would apply because candidates are named and depicted in the publication. Unless the presumption were rebutted, the organizations would be required to file an independent expenditure report if more than \$100 was spent in any single candidate's race.

Is MERI a political action committee?

Although you did not raise the question, at our meeting I suggested we discuss the issue of whether MERI qualifies as a political action committee (PAC) under the Election Law. You related that before MERI was formed you met with my predecessor, William Hain, and described the planned mission and activities of MERI. He advised you that MERI would not be considered a political action committee. At that time, I presume you had no inclination that you would be publishing a voter guide or Roll Call that would be directed toward the general public, and that MERI's activities have expanded since that meeting. You and I met in August 2004, and I sent you the attached advice letter dated August 17, 2004.

The term PAC is defined in 21-A M.R.S.A. §1052(5)(A). I indicated to you that MERI does not appear to qualify as a PAC under paragraphs 5(A)(1), (3), and (4). The question of whether MERI is a PAC under paragraph 5(A)(2) is not an easy one because the term "funding and transfer mechanism" is not a defined term:

5. Political action committee. The term "political action committee:"

A. Includes: ...

(2) A person who serves as a funding and transfer mechanism and spends money to initiate, advance, promote, defeat or influence in any way a candidate, campaign, political party, referendum or initiated petition in this State

At the meeting, I advised that if MERI continues to increase its activities designing and printing publications directed toward the public at large, that will add to the perception that MERI is a political organization in the sense that it is raising and spending money not simply to educate its subscriber-businesses but also to influence the way members of the public vote. Such a perception does not necessarily mean that the organization meets the definition of a PAC under paragraph 5(A)(2), but it is something that you and your board may want to consider. Whether MERI solicits or receives funds from its members,

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ETHICS COMMISSION

PAGE 05/05

Edward J. McLaughlin

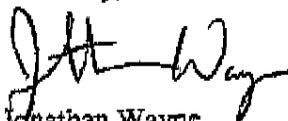
- 5 -

August 4, 2006

or from other sources, to support its activities relating to elections would also be a factor in evaluating the applicability of this part of the PAC definition.

Thank you for your efforts to ensure that MERI complies with the requirements of the Election Law and Commission Rules. Please telephone me at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne
Executive Director

cc: Douglas S. Carr, Esq.
David B. McConnell, Esq.



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

July 31, 2006

Edward J. McLaughlin
President and Chief Executive Officer
Maine Economic Research Institute
7 University Drive
Augusta, ME 04330

Dear Mr. McLaughlin:

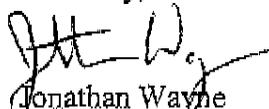
I have enclosed a complaint against the Maine Economic Research Institute filed by John R. Hanson, Executive Director of the Maine State Building and Construction Trade Council. I e-mailed this complaint to you and Douglas S. Carr as a pdf attachment on July 25.

This matter will be considered by the Ethics Commission at its next meeting on August 23 at 9:00 a.m. Please provide a response to the complaint no later than Monday, August 14, which I will forward to the Commission members.

After consulting with Commission Counsel Phyllis Gardiner, I can confirm that I will send a written letter to you memorializing my advice during our recent meeting regarding independent expenditure reporting. I will send that letter to you later this week.

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

Sincerely,


Jonathan Wayne
Executive Director

cc: Douglas S. Carr, Esq.

Title 21-A, §1052, Definitions

[1985, c. 161, §6 (new).]

4. Expenditure. The term "expenditure:" [2005, c. 301, §22 (amd).]

A. Includes:

- (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of influencing the nomination or election of any person to political office; or for the initiation, support or defeat of a campaign, referendum or initiative in this State;
- (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in this paragraph; and
- (3) The transfer of funds by a political action committee to another candidate or political committee; and

[1997, c. 683, Pt. A, §12 (amd).]

B. Does not include:

- (1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless these facilities are owned or controlled by any political party, political committee or candidate;
- (2) Activity designed to encourage individuals to register to vote or to vote, if that activity or communication does not mention a clearly identified candidate;
- (3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;
- (4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by a political action committee in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the political action committee on behalf of any candidate does not exceed \$100 with respect to any election;
- (5) Any unreimbursed travel expenses incurred and paid for by a political action committee that volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election; and
- (6) Any communication by any political action committee member that is not made for the purpose of influencing the nomination for election, or election, of any person to state or county office.

[2005, c. 301, §22 (amd).]

5. Political action committee. The term "political action committee:" [1999, c. 729, §6 (amd).]

A. Includes:

- (1) Any separate or segregated fund established by any corporation, membership organization, cooperative or labor organization whose purpose is to influence the outcome of an election, including a candidate or question;
- (2) Any person who serves as a funding and transfer mechanism and spends money to initiate, advance, promote, defeat or influence in any way a candidate, campaign, political party, referendum or initiated petition in this State;
- (3) Any organization, including any corporation or association, that has as its major purpose advocating the passage or defeat of a ballot question and that makes expenditures other than by contribution to a political action committee, for the purpose of the initiation, promotion or defeat of any question; and
- (4) Any organization, including any corporation or association, that has as its major purpose advocating the passage or defeat of a ballot question and that solicits funds from members or nonmembers and spends more than \$1,500 in a calendar year to initiate, advance, promote, defeat or influence in any way a candidate, campaign, political party, referendum or initiated petition in this State; and

[1999, c. 729, §6 (amd).]

B. Does not include:

- (1) A candidate or a candidate's treasurer under section 1013-A, subsection 1;

Title 21-A, §1052, Definitions

(2) A candidate's authorized political committee under section 1013-A, subsection 2; or

(3) A party committee under section 1013-A, subsection 3.

[1989, c. 833, §13 (amd); §21 (aff).]

PL 1985, Ch. 161, §6 (NEW).
PL 1985, Ch. 614, §23 (AMD).
PL 1989, Ch. 504, §21-23, 31 (AMD).
PL 1989, Ch. 833, §13, 21 (AMD).
PL 1991, Ch. 839, §27 (AMD).
PL 1991, Ch. 839, §33 (AFF).
PL 1995, Ch. 483, §17 (AMD).
PL 1997, Ch. 683, §A12 (AMD).
PL 1999, Ch. 729, §6 (AMD).
PL 2005, Ch. 301, §22 (AMD).

Agenda

Item #7



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

To: Commission Members and Counsel
From: Jonathan Wayne, Executive Director *JW*
Date: August 16, 2006, 9:30 a.m.
Re: Request from Anne Jenness

On the afternoon of August 14, we received the attached letter from Anne Jenness asking the Commission to hear her complaint that she was duped into running as the Green Independent candidate in District 121 by Michael Mowles, a Republican candidate in that district who lost his primary election.

Upon reflection, I bring this matter to your attention now for informational purposes because it relates to the administration of the Maine Clean Election Act, as discussed at the end of this memo. It also relates to your approval at the June meeting of a recommended statutory amendment to prohibit candidates from recruiting an opponent to gain additional public funding under the Maine Clean Election Act.

The Commission's counsel and I have not identified any violation of the campaign finance laws in Ms. Jenness' complaint. I therefore recommend that you take no action on her complaint.

I note that Ms. Jenness is alleging that something of value was offered to her to become a party nominee and not to withdraw as a nominee. Nomination for the election ballot is not within the jurisdiction of the Commission. The facts of the situation are disputed and would be very difficult to determine, but you may find them troubling enough to refer this matter to another state agency for its consideration.

July 25 Telephone Interview from Anne Jenness

Ms. Jenness first telephoned the Commission offices on July 23 or 24 to complain that she had been manipulated. She told me the following in an interview on July 25: she had known Mr. Mowles from a few years ago when she had approached him about obtaining a loan. Mowles came to her house on March 8 or 9, 2006, and asked if she wanted to run against him for the House as the Green Independent candidate in District 121. Initially, she did not let him in the house, saying that she could not run because she intended to move back to Massachusetts. Mr. Mowles telephoned her from his car, and eventually persuaded her to run. She believes he selected her because she was a member of the Green Independent Party.

Between March 8 and 9, Mr. Mowles personally drove her to the homes of Green Independent voters to sign her petitions. Ms. Jenness also carried the petitions of Keith Louis, who is the Green Independent candidate for Senate District 7 running against Kevin Glynn and Lynn Bromley. Ms. Jenness told me that she believes Mr. Mowles consulted Rep. Glynn frequently on the phone, because Mowles kept telephoning someone to talk about issues such as her residency. She did not figure out who it was until she met Rep. Glynn in a parking lot on the March 15 deadline for submitting petitions. He told her that Ben Chipman (of the Green Independent Party) had told him to bring the petitions to the Secretary of State.

Mr. Mowles called me yesterday to say that Ms. Jenness' letter is false, that he lent her money out of good will as a client at her request, and that her complaint is motivated by their current financial dispute.

Similarities to Stephen Haskell

This situation is disturbingly similar to the situation of Stephen Haskell, which I addressed in a memorandum to you on May 10, 2006. On April 11, he telephoned me to explain that he was withdrawing as a candidate and to complain that he felt taken advantage of by Rep. Kevin Glynn and Michael Mowles. The similarities are:

- Both Jenness and Haskell told me that they were recruited to run by an individual who ultimately became their opponent. (Haskell told me twice that Glynn specifically suggested that he run for the Senate, although Glynn told me he suggested a number of offices to Haskell including municipal offices in order to help a fellow party member.)
- Both Jenness and Haskell have mental illnesses. Neither understood that by agreeing to run they would be helping their opponent either electorally or financially.
- While both Jenness and Haskell had an interest in running, neither had the wherewithal as candidates to qualify for the ballot based solely on their own efforts.
- Both Jenness and Haskell wanted to withdraw but were encouraged by Mowles and others to stay in the race.
- Both Jenness and Haskell told me that running for office resulted in very negative consequences for them personally.

Although Mr. Haskell initially brought up his situation with me, he no longer wishes to discuss this matter.

Problem of Recruiting Opponents is Limited

As you may recall, I previously expressed concerns about a 2004 primary election in which an individual who subsequently become a candidate recruited someone else to run for the same office in a party primary. Nevertheless, I want to stress that this problem appears to be a limited one. This year alone, the Commission has worked with over 500 candidates and the staff knows of only 2 cases in which someone has alleged that they were recruited to run by an opposing candidate or potential opponent.

Impact on the Administration of the Maine Clean Election Act

I wish to make you aware of Ms. Jenness' complaint as the administrators of the Maine Clean Election Act because I believe this limited problem has two deleterious effects on the administration of the public funding program:

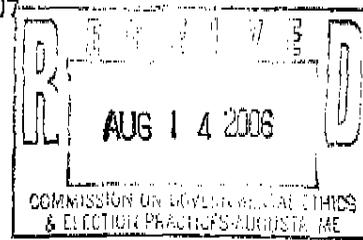
(1) *Increasing the cost of the program.* If candidates recruit opponents - particularly in party primaries - that could increase the cost of the Maine Clean Election Act program. Even if the effect is marginal, it is worth consideration by you and other concerned observers of the election process.

(2) *Lack of confidence in the electoral system.* Occasional references to these situations (*e.g.*, informal comments made to me by various people; a reference on a political chatroom that I have read) suggest to me that politically active people are aware of what happened in these situations. While no laws or rules appear to have been violated, this type of activity might strike many as unethical - particularly because of the fragility of some of the particular candidates recruited. If there is a perception that such activity is permitted and may even be advantageous to candidates, that could discourage others from adhering to high ethical standards and potentially weaken the public's confidence in the electoral system.

Staff Conclusion

The Commission staff recommends that you take no action on this complaint. By e-mail and letter today, I will make Messrs. Glynn, Mowles, and Chipman aware that they are welcome to submit a response if they would like so that the information available to the Commission is not one-sided. Any response from them would be added to your materials for the August 23 meeting immediately.

Anne Jenness
4 Ironclad Road
Cape Elizabeth, Maine 04107
Tel. (207) 741-5109



August 14, 2006

Ethics Commission
Augusta, ME

To Whom It May Concern:

On or about March 8, 2006, Cape Elizabeth Town Councilor Mike Mowles, Vice President of Cape Mortgage Company Mike Mowles and Republican House Rep Candidate Mike Mowles asked me to run as a Green Party House Rep Candidate for the upcoming primary/election in Cape Elizabeth. I told him that I was moving back to Boston and that I could no longer afford to live in Cape Elizabeth. He told me, "You don't need to do that" -- I can get you a mortgage/re-financed through Cape Mortgage Company for \$750,000. I told him that was impossible because I was mortgaged to the hilt and had no income -- He told me that there is a new government program for the disabled who don't have any income -- no problem -- just need 3 things: (1) a letter from Portland Social Security office confirming I was receiving disability payments; (2) a doctor's letter confirming my disability; and, (3) a real estate appraisal. He said we can close "next week." The next day, Mowles called me to meet with Ben Chipman of the Green Party for me to sign some documents/petitions to get me on the ballot. There were two forms: one for me for Green Party House Rep and one for Green Party Senator Candidate Keith Louis. For the next three days (3/13, 3/14 & 3/15), Mowles drove me around Cape Elizabeth so I could collect Green Party signatures for both me and Louis. He had cards for Greens to register if they weren't registered. He had a contact list of the 80 or so Greens in CE and a map of CE. The deadline was March 15 to file these docs in Augusta -- On the day the signed documents were due in Augusta, Mowles told me that someone else could drive them to Augusta -- In the parking lot next to Cape Mortgage Company I inadvertently came across the "driver" to Augusta who I later realized was Republican House Rep (now candidate for Senator) Kevin Glynn. He told me Chipman told him to deliver them to Augusta. I said, "Are those your signatures on those papers or mine?" Glynn tried to hide the documents from me underneath some other papers he was holding but I saw the Green papers sticking out and I snatched them and left to drive to Augusta. He yelled after me, "Are you running, too?"

By the end of March the refinancing loan was still not done. It kept being postponed by Mowles. I told Mowles that I wanted to withdraw from Green Party and wanted to move back to Boston. He handed me a list of creditors with amounts due and told me to pay them all off -- that I must keep current in order to get the refinancing loan. He gave me a check for \$7,000, the total amount due on his printout of my creditors. He had me sign a

mortgage that said I would pay him back within one week of closing, indicating to me that the loan was still imminent or he wouldn't be lending me this money. He asked me if I had any "valuables" to sell and I gave him 9 Rockwell Kent prints and 2 Andrew Wyeth prints and one Jamie Wyeth print. He said he knew people who might be interested in buying them. I trusted Mowles and thought he was doing all this for my benefit and took him to see storage unit with stuff in them. I told storage place that Mowles was helping me.

Mowles and Chipman urged me many times to get Clean Election Funding and, again, they wanted me to sign more documents. I said no, that I needed to withdraw and move back to Boston. On April 28 Mike Mowles gave me another \$7,000 cash and had me sign another mortgage in the amount of \$14,000. For the next few weeks I kept asking Mowles for copies of the mortgages I had signed for him. He would not produce them for me. I attempted to "fire" him and he immediately produced a copy of the 2nd mortgage. I asked him for a copy of the first mortgage but he said he couldn't find it. When I got home and read the copy of the mortgage, I discovered he had changed the mortgage to a promissory note that said payments would begin in June. This was not the document I signed. He had replaced it with a bogus document. I never would have signed and initialed a document that stated payments would begin on June 1, 2006.

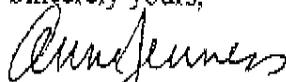
On or about May 23, 2006 I submitted my Withdrawal as a Green Party candidate.

I believe that I was duped by these three people who all simply wanted me to get on the Green Party ballot for the primary on June 13. I believe that there was never going to be refinancing for me and that this was all a scam to assist them in their quests for political gain.

Thank you for reading this brief outline of what has been a complete nightmare for me and my three dogs. The home where I had placed my dogs adopted a new dog in April and they were no longer able to give my dogs a home. I assume I have likewise lost my room in Boston because I have been unable to send them money.

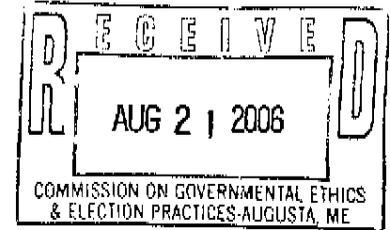
I am very proud to have taken care of my father these last 10 years. He was at Haven Health Center in Cape Elizabeth for 7 and ½ years and because my Cape Elizabeth property doubled in value every year I was able to pay for him to stay at Haven Health Center at \$6,000 a month. He died February 24, 2005 at the age of 94.

Sincerely yours,


Anne Jenness

August 18, 2006

Kevin J. Glynn
109 Huntress Avenue
South Portland, Maine 04106



Hand Delivered

Jean Ginn Marvin, Chairman
State of Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333-0135

RE: Anne Jenness Complaint of 8/14/2006
Agenda Item #7 of 8/23/06 Agenda

Dear Commissioner Marvin:

This letter is my response to the opportunity to provide my views concerning Item #7 on the agenda for your meeting of August 23, 2006. I am in agreement with the conclusion of Executive Director Jonathan Wayne that there was no violation of the campaign finance law related to Ms. Jenness' allegations and with Mr. Wayne's recommendation that no action on the complaint. While Ms. Jenness' letter does not constitute a valid complaint, I wish to respond to her statement and to record my displeasure with the Commission's staff's handling of this matter.

There is only one statement of fact concerning me contained in Ms. Jenness' letter. I do not dispute that I met Anne Jenness once, during the winter of 2006 (February/March). I was asked by Cape Elizabeth Republican Party Chairman Michael Mowles to transport some paperwork to Augusta during one of my trips to Augusta for session. When I stopped by Mr. Mowles' office, I met Anne Jenness. Anne Jenness informed me that she was capable of taking her paperwork to Augusta herself and drove away. I then went to Augusta without any paperwork and have not met her or thought about the encounter again until I received Mr. Wayne's letter. In short, I could not pick her out of a police lineup if I had to. I strongly disagree with any assertion made by Ms. Jenness that I was involved with her candidacy or directing Mr. Mowles regarding the matter. I believe my name has been brought up in this matter in an attempt to damage my candidacy for the State Senate.

I also take issue with the Ethics Commission Staff's handling of this matter.

On Page two of Mr. Wayne's August 16th memo, he states "[b]oth Jenness and Haskell have mental illnesses. Neither understood that they agreeing to run that they would be helping their opponent either electorally or financially." This statement by Mr. Wayne is bigoted and represents an uninformed opinion of those affected by depression or bipolar disease. Many people with mental illness lead productive lives and are contributing members of society. In fact, during Mr. Haskell's brief campaign, he spoke of problems in the Mental Health System and his ability to help the problem because he could bring a consumer's prospective to the process. In Maine, many Non-Profit Community Mental Health Centers have consumers of Mental Health Services on their boards of directors and the Department of Health and Human Services has many advisory boards and panels with consumer representation. People with mental illness participate in the electoral process and have the right to do so. To paint them as frail or incompetent and discourage their involvement in the running of their government is more than unfair—it is discriminatory behavior.

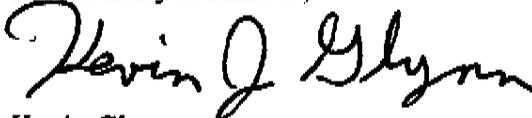
The Commission staff received both phone calls and a written complaint from Anne Jenness over a two week period of time. Mr. Wayne did not supply me with a copy of the Jenness letter nor did he or the Commission staff notify me of the complaint until after the investigation of the matter had been completed. In fact, Mr. Wayne issued a decision and a three page description of what he perceived my involvement to be without interviewing me, without notifying me of the complaint, and without soliciting a response from me. I received notification of the complaint from Mr. Wayne by e-mail at 5:00pm on 8/16/2006. This notification was received after Mr. Wayne completed his investigation and issued a written opinion to the Commission and the public. Because of this process, Mr. Wayne's August 16th memo is factually inaccurate and biased because it does not include any information from me or the others against whom allegations have been made.

In contrast, prior to making any contact with me, Mr. Wayne and his office issued statements to the media concerning my alleged involvement in the matter and supplied copies of written documents pertaining to this matter to the media before I was ever informed that any allegations had been made about me. Is this how you would want to be treated? I think simple fairness suggests that the Commission staff should inform anyone who is the subject of a Commission investigation of the subject matter of the investigation and the allegations contained in the complaint when the investigation is commenced. I hope you agree that those under investigation by Commission staff should not first hear of the investigation by reading about it in the newspaper, as I did in this case.

In the spring of this year, Commission staff looked into the issue of Stephen Haskell's brief candidacy. Following the conclusion of the inquiry, Mr. Wayne issued a decision on the matter on May 10, 2006 finding no violation of Ethics rules or Maine law. That decision was stamped as "Confidential" and was not issued to any of the interested parties, including me. It was not until after Mr. Wayne later gave a copy of the decision to the media and others that he inform the interested parties of the existence of the document and gave a copy of the memo to me or my legal counsel. I certainly understand that the Ethics Commission is subject to Maine's Freedom of Access and do not object to the document being provided to the media, but I believe that a decision regarding someone's conduct should be provided to that person before it is provided to others.

In closing, I wish to thank the Commission members for their time and consideration of this matter and my suggestions for improving the Commission's staff's handling if such matters.

Respectfully submitted,



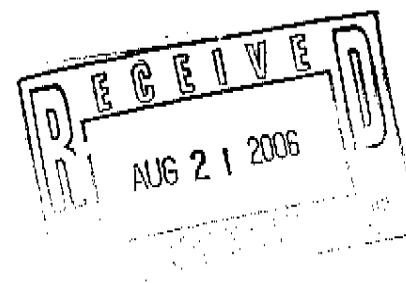
Kevin Glynn

ADDITIONAL MATERIALS

RE: Agenda Item #2

August 23, 2006

Michael for Governor
POB 233
Auburn, ME 04212
Ph: 207-777-3183
Fax: 207-777-4960

**VIA FAX AND US POSTAL SERVICE**

08/18/06

Mr. Jonathan Wayne, Executive Director
State of Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135

**RE: Complaint and Request for Investigation against Campaign Committee
BarbaraMerrill.com and Gubernatorial Candidate Barbara Merrill, response to
Email from Jonathan Wayne dated 8/17/06**

Dear Mr. Wayne,

Thank you for your invitation to make comments to the Commission at your August 23rd meeting with regard to the complaint against Rep. Merrill's campaign. Unless you believe my comments would be particularly helpful to the Commission, I will not be attending the hearing.

I don't claim to be a legal scholar or an expert in this matter, nor do I have any first hand information to provide to the Commission other than what has already been outlined in my complaint. I only request that the Commission give the complaint serious consideration, and from your memo to the commission it appears that this is being done.

In advance of the hearing, I would like to suggest that other Independent candidates for Governor, most importantly Mr. Jones, be invited to add comments to the Commission for the record, the question being: **If you were able to promise MCEA funds to employees to obtain qualifying contributions, would this have made a difference in your ability to qualify as a clean election candidate?** I feel that Mr. Jones is an interested party in this issue, and should be made aware of the proceedings and asked for his input.

As you have stated in your memo to the Commission, I have not to this date recommended a remedy. I believe the Commission has the discretion to issue any civil penalties it deems appropriate, up to \$10,000. I would not presume to make any recommendation in that regard. I would however, like to add comments with regard to disqualification and/or potential remedy for other candidates.

We agree that 21-A M.R.S.A. §1125(5) gives authority to the Commission to disqualify the candidate from MCEA funding at this time. Moreover, we believe 21-A M.R.S.A. §1127(1), taken in conjunction with Ethics Commission rules Chapter 3, Section (3)(E) prescribes the exact remedy which the Commission must take.

Ethics Commission rules Chapter 3, Section (3)(E) states that a candidate who has not complied with seed money restrictions may petition the Commission to remain eligible for certification. The Commission has discretion to approve this petition, but only if the candidate successfully establishes the four criteria outlined in the section. However, if candidate Merrill is found in violation of the MCEA for a substantial expenditure of seed money funds above what was collected in contributions, that violation constitutes a significant infraction of seed money restrictions, and the petition must be denied.

Once the disqualification is established, then we turn to 21-A M.R.S.A. §1127(1), where guidance is provided as to the Commission's ability to use discretion in imposing penalties. In this section, it is clear that the Commission has total discretion over the implementation of a civil penalty, not to exceed \$10,000. In this area, where the Commission has discretion, it can take into account any countervailing factors it deems appropriate. Also, this section allows that a candidate found in violation of the MCEA may be "required to return to the fund all amounts distributed to the candidate from the fund, or any funds not used for campaign purposes" see 21-A M.R.S.A. §1127(1). Once again, the Commission may use mitigating factors in this circumstance to exercise its discretion over whether to require full repayment, or only the portion yet to be spent on campaign related purposes.

We feel very strongly that while we honor the intent of voters who contributed to the MCEA on behalf of Barbara Merrill, to find this violation not sufficient to disqualify the candidate from MCEA funding would be discriminatory, and violate the First and Fourteenth Amendment rights of the candidates who did not qualify for MCEA funds and the contributors to the fund on their behalf. As we asserted in our initial complaint, we believe that a \$9,800 commitment to paid circulators would be sufficient to easily gather enough contributions to overcome any deficiencies that the Commission alleges in our initial submission.

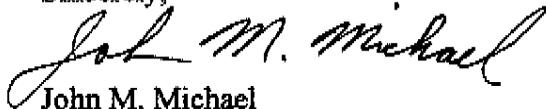
It is necessary to treat each contribution made on behalf of each candidate exactly the same. While a voter making a contribution to the fund may not be able to assume that his or her contribution to the fund will leverage public funding that will espouse the exact point of view that the voter advocates, there is an expectation that every voter's expression of support must count equally. If candidate Merrill is found in violation of the MCEA, then her status as a certified candidate must be revoked in order to preserve the equal protection under the law afforded the contributors to the fund on behalf of the other candidates, and the candidates who are the beneficiaries of these contributions. Otherwise, Ms. Merrill would have been certified under an entirely different set of rules, and our contention is those rules enabled her certification.

If the Commission chooses not to accept our argument that disqualification is necessary, the only equitable alternative to disqualification so as not to disenfranchise all candidates and voters involved would be to allow the non-qualifying candidates a reasonable period of time to seek qualification, with the provision that an additional obligation of future MCEA funds totaling not more than \$9,800 could be incurred by the qualifying candidates. It is our view that with a motion by a Commissioner, and adoption by the body, the Commission has the authority to create such a procedure under 21-A M.R.S.A. §1126, which allows adoption of rules regarding "compliance with the Maine Clean Election Act". This rule could be temporarily adopted as an emergency major substantive rule, see Title 5 §8073. I suggest that a period of two weeks from the date of the hearing be granted any non-qualifying candidate for Governor to exercise this option. That would set a deadline of September 6.

This remedy, in our view, is the only equitable resolution to a situation not involving disqualification of candidate Merrill, should the Commission find that a substantial violation of the MCEA has occurred. The state has no compelling interest in disenfranchising thousands of participating voters that would pass a test of exacting scrutiny necessary to treat these contributors differently.

Thank you for your devoted attention to this matter, and to ensuring that equitable treatment is of utmost concern to the Commission while deliberating this complaint.

Sincerely,

A handwritten signature in cursive script that reads "John M. Michael". The signature is written in black ink and is positioned above the printed name.

John M. Michael

ADDITIONAL MATERIALS

AFFIDAVIT OF RICHARD DYER

RE: Agenda Item #2
August 23, 2006

State of Maine
County of Kennebec

BEFORE ME, the undersigned Notary,

Terry A. Ouellette, on this 22nd
(Notary or Attorney)

day of August , 2006, personally appeared Richard Dyer, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

I volunteered many hours of time for Barbara Merrill during the pre-qualification period. I did it because I had gotten to know her when she served on a board of a nonprofit for which I was doing consulting work. I then came to respect her as a person of real vision and courage when she took up the cause of eminent domain reform which has become so important to me and my family. I was not a vendor of goods or services during the pre-qualification period. I was not owed anything by the campaign prior to or after qualifying for Clean Election Funds.

After Barbara qualified for Clean Election funding, Barbara Merrill, Phil Merrill and Jim Webster talked with me about my consulting with the campaign to help with press and public relations. I made clear that I was happy to help in any way but that I had traditionally not worked for campaigns because campaigns generally provided compensation well below the rate I charged commercial customers and they were notorious for not paying their bills. The campaign agreed to pay a large sum up-front and once the campaign and I arrived at a fixed price that I would charge for services that would run from June 2006 to November 2006, the campaign volunteered to pay half up-front as a retainer, and an agreement was reached. This is not unusual in starting a limited assignment such as this one and Jim thought it was especially appropriate as a recognition of the volunteer work I had done in the pre-qualification period.

Again let me reiterate: I was owed nothing for my work in the qualifying period. I was not employed or paid for the work I did in the pre-qualifying period. My total compensation for the five plus months of work post-qualifying will be well below the rate I charge commercial customers.

Richard Dyer
Richard Dyer
Winthrop, Maine

Subscribed and sworn to before me, this 22nd day of August , 2006.

Notary Seal

Terry A. Ouellette
[signature of Notary]

Terry A. Ouellette
Notary Public, Maine
[printed or typed name of Notary]

NOTARY PUBLIC

My commission expires: 10/25, 2008.

AFFIDAVIT OF PHILIP MERRILL

State of Maine
County of Knox

BEFORE ME, the undersigned Notary,

Rebecca P. Hughes, on this 22nd
(Notary or Attorney)

day of August, 2006, personally appeared Philip Merrill, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

Since I responded to the charge from John Michael, other questions have been raised and I thought it might help the Commission if I provided a full background on the events which led up to the payments in question. This background will show that

- Webster and Dyer were not vendors, employees or consultants to the Merrill campaign prior to the campaign qualifying for clean election funds. (Webster was paid \$200 in repayment for fuel during this period.)
- There was never any "obligation" that the campaign would pay Dyer or Webster for work in the pre-qualification period.
- Dyer and Webster were 2 of about 15 volunteers who gathered 50 or more contributions.
- The campaign as a matter of policy did not pay for gathering \$5 contributions.

The heart of the Michael's complaint is that if he had more money in the pre-qualification period he would have qualified. That is not the experience of the Merrill campaign. With us the amount of seed money was almost irrelevant to collecting \$5 contributions. This grew from guidelines which Barbara Merrill laid out at the outset of the campaign. Barbara was determined to raise as little as possible in seed money and to either make it or not on the basis of her work and the work of volunteers. When we needed money for a mailing or for other unavoidable expenses we would reach out for seed money, but the campaign purposely kept it to a minimum. This approach grew from Barbara Merrill's belief that the next Governor will need to make very difficult decisions on spending, and that not seeking a lot of private contributions from people who may be impacted would make those future decisions easier.

The campaign did experiment with paying for gathering nominating petition signatures. It was not found particularly helpful and far more 95% were gathered by volunteers. Dyer and Webster helped gather petition signatures as volunteers and were never compensated for this work. Webster did receive \$200 repayment for fuel referenced above.

Raising the \$5 contributions as an Independent without help from party activists proved to be the most difficult organizational task I ever participated in a campaign. As late as

30 days before the qualifying period ended, neither Barbara Merrill nor I were confident that we would make it. At this time we reconsidered our plan. We offered to pay a person who had collected nominating signatures to collect \$5 contributions and even considered having the campaign raise several thousand dollars more in seed money so we could offer a significant amount of money as an incentive to a persons who gathered a large number of signatures and helped the campaign qualify. However, on review it was determined that there was no reason to believe that such an approach would succeed. All our experience showed that \$5 contributions were raised in just three ways: either Barbara asking voters directly, friends and volunteers asking people who knew Barbara, or strong supporters of Barbara asking their own circle of friends.

Our experience showed that people who gave \$5 were not yet necessarily convinced that they would vote for Barbara, but before they would give they needed to be convinced that they wanted to help Barbara make her case and they were willing to reach into their pocket to make that happen. This is a very different level of support than what is required for someone to simply sign a nominating petition. So after review, we decided to stay with initial the plan and Barbara held what was referred to inside the campaign as the "hail Mary" press conference, in reference to a final long pass in a football game where the quarterback heaves the ball as far as he can then says a hail Mary in hopes that someone from his team catches it.

At the press conference, Barbara announced that she had filed the required number of petition signatures but that friends of her campaign would have to step forward if she was to qualify for clean election funding. Somewhat to our surprise, it worked. Volunteers and friends kicked into high gear, redoubling their efforts and within a week after the press conference it seemed more likely than not that the campaign would make it. (The mechanics themselves are so complicated we were never really sure until the Commission staff told us we made it.)

Two of the fifteen most active friends and volunteers during this period were Richard (Dick) Dyer and Harold (Jim) Webster. They collected about the same amount as the others and like the others, they were not vendors. They did not ask for or receive pay or promise to be paid for this work.

At or about the time we were turning in the last signatures, Barbara indicated to Dick and Jim that if we qualified she hoped that we would be able to work for the campaign. However, Barbara was always acutely aware of the need to make no commitments on anything until after we qualified. In fact, the Commission staff actually witnessed an example of this prudence on Barbara's part when Barbara and a group of supporters were informed by Commission staff that the time frame in which the determination of qualification would be longer than we anticipated. On hearing the news, Barbara turned to me and asked that I postpone a meeting we had scheduled with a possible campaign consultant until after the period because she didn't want to appear to be committing to make an expenditure until the campaign was fully qualified. I believe the two staff

people present were Paul Lavin and Nathaniel Brown. This was a quick passing moment and they may not have noted it, but anyone who remembers the incident knows how careful the campaign was to avoid any obligation prior to qualifying.

After we did qualify, Barbara wanted Jim to be the campaign manager/field organizer. She asked me to try and hire Jim at a pay range that our budget could absorb. Here a little background is needed. From the beginning, the campaign was convinced that John Baldacci might have trouble raising money for his fall campaign, because its hard to raise large sums with a \$500 limit on contributions, some Democrats are not excited about the Governor's performance, and many believe he should have run clean as he originally promised to do. In comparisan, it is much easier for the Democratic Party itself to raise money because unlike the Baldacci campaign, it can accept large contributions. Expenditures by the party can be made in a fashion in which they trigger no or very little matching funds. This analysis led the campaign to plan on operating from a budget of \$400,000. To some this may sound like a lot of money, but it is about one forth of what Angus King spent to get elected as an Independent 12 years ago.

These factors motivated the campaign to expend a minimum on staff. I knew as I sat down with Jim that he would do as much as he could but that he had taken so much time volunteering in the pre-qualifying period that he had put in less time at work and his family budget reflected it. In contrast, the campaign did not have a cash flow problem. So after I agreed to pay Jim \$650 a week, I sweetened it a little by offering him a portion of that in advance and asked him how much he would need. He told me \$1500 and we agreed that we would pay that at the front end in recognition of his current financial needs and that we would pay him less per week at the outset of the campaign to recoup the advance. The timing of the payments to Jim took into account his current financial needs, but were entirely for his work after the qualification period and none arose from any prior obligation, legal or otherwise.

The practice of paying some up front money when hiring a campaign worker is very common practice. Personally, I almost always insist on it myself in campaigns where I work as a consultant. The short term nature of the jobs and the inevitable pressure at the end to put more money into advertising make it wise for a consultant or employee to get some money up front.

Barbara Merrill then decided she wanted to hire Dick to aid her with press and public relations. Dick is a public relations professional who often charges private sector clients \$175 an hour for his time. We needed to contract for a lot of his time and couldn't pay him near this amount of money. Also we needed to retain Dick for a fixed amount rather than an hourly fee so we could budget for that amount. I have been in business for myself for many years and know from that experience that money up front is often welcomed in a world where there are often cash flow problems. I also knew that in the months leading up to June 2006, Dick had spent many pro bono hours working for the Merrill campaign and working for his family on an unrelated matter. So I offered Dick

\$3500 per month for June-October and \$1100 for November. To make the deal more acceptable, I did two things. I offered to pay him half of the money up front and to reopen the agreement if we did get matching money later on. Dick accepted the deal. When this was reported back to Jim he was told that we had agreed to up front payment to Dick in recognition of work in the pre-qualification period and all other pro bono work he had been doing. Subsequently when Jim came to filling out the campaign finance report he listed his early payment and Dick's as reimbursement for the \$5 period and that understandably raised the concerns which are subject to this hearing. It would have been more accurate to have reported that the timing of the initial payment to him, and the retainer to Dick were made in recognition of their financial needs but were entirely for work done after qualifying.

The Michael's allegation is that the Merrill campaign violated Title 21-A § 1122 (9) which reads:

Seed money contribution. "Seed money contribution" means a contribution of no more than \$100 per individual made to a candidate, including a contribution from the candidate or the candidate's family. To be eligible for certification, a candidate may collect and spend only seed money contributions subsequent to becoming a candidate as defined by section 1, subsection 5 and throughout the qualifying period. A participating candidate who has accepted contributions or made expenditures that do not comply with the seed money restrictions under this chapter may petition the commission to remain eligible for certification as a Maine Clean Election Act candidate in accordance with rules of the commission, if the failure to comply was unintentional and does not constitute a significant infraction of these restrictions. Prior to certification, a candidate may **obligate** an amount greater than the seed money collected if the value of the goods and services received from a vendor does not exceed the amount paid to the vendor. A candidate may not collect or spend seed money contributions after certification as a Maine Clean Election Act candidate. A seed money contribution must be reported according to procedures developed by the commission. [2005, c. 301, §28 (amd).] **Emphasis added.**

Commission staff interprets this to mean the campaign is not in violation unless it hired or contracted with Webster and Dyer during the pre-qualification period and were obligated to pay them for their work. That was not the case and while the statement in the report understandably raised this question, it does not say or even imply that the payment was made to fulfill an obligation. As I have shown, the campaign was under no obligation to pay for volunteer work done by Webster and Dyer during the pre-qualification period and every cent they received is for work after the qualification when they were first hired. There were other volunteers who put in equal time and gathered as many \$5 contributions as Webster and Dyer and they were not compensated nor did they expect to be.

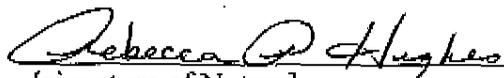
It is not uncommon for a business enterprise to reimburse an expense of a new employee

even though it had no obligation to do so. This is often done with moving expenses or the cost of housing during the transition. The new employer does it not because it is obligated to, but it seems fair and because management believes that sharing the financial stress of the transition is the best way to gain committed enthusiastic workers.


Philip Merrill
Appleton, Maine

Subscribed and sworn to before me, this 22nd day of August, 2006.

Notary Seal


[signature of Notary]

Rebecca P. Hughes
[printed or typed name of Notary]
NOTARY PUBLIC

My commission expires: June 4, 2012



ADDITIONAL MATERIALS

AFFIDAVIT OF HAROLD JAMES WEBSTER **RE: Agenda Item #2**
August 23, 2006

State of Maine
County of Kennebec

BEFORE ME, the undersigned Notary,

Andrew L. Hart , on this 22nd
(Notary or Attorney)

day of August , 2006, personally appeared Harold J. Webster, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

I, Harold J. Webster, am the person who filled out the report to the Ethics Commission on behalf of Barbara Merrill.com in which I listed a payment to me and a retainer to Richard Dyer as a "reimbursement" for the \$5 collection period. This is the first time I have filled out such a form and I sent it in a day early in order to make sure the campaign met the deadline, but immediately after sending it, I worried that it had mischaracterized the two payments.

When I arrived at an employment agreement with the Merrill campaign, they agreed to advance a portion of that pay in recognition that I had fallen behind because of volunteer work during the pre-qualification period. This was important to me because I had intended to catch up by working a lot of overtime in my regular employment with Webster Heating. By going to work with the campaign this became impossible and so the advance was welcomed, and in my mind covered losses for the previous period in the same way that working overtime at Webster Heating would have done. Therefore when I initially listed the advance to me and Dick, I listed them as reimbursement for the \$5 period. In all the pressure to put out the first report and to do it completely and accurately I did not revisit this characterization until after I had sent it. Then I worried that someone might read that to mean I was being paid for work done previously instead of being advanced money for work I was to do.

Neither in my case, nor in the case of Richard Dyer were these "reimbursements" for debts owed. Barbara Merrill made clear during the \$5 collection period that she was going to rely on volunteers and I was glad to be one of them.

I am not a professional campaign aide. I once worked for the state, was President of the Maine State Employees Association and now I make my living working with my brother at Webster Heating Company. I volunteered many hours of time for Barbara during the pre-qualification period because she is a friend and I believe she has the kind of personal strength we need in a governor. I was not a vendor of goods or services during the pre-qualification period. With the exception of the \$200 repayment for expenses mentioned above and reported in the pre-qualification report, I was not paid or owed anything by the campaign prior to qualifying for Clean Election Funds.

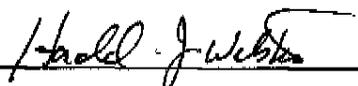
After Barbara qualified for Clean Election funding, I was pleased to sign on as campaign manager, for a rate below what I usually earn working for the Webster Heating Company. Once an overall income figure was arrived at, the campaign offered to pay a small portion of that money up front in recognition of the fact that at my campaign salary it would take some time to catch up with lost income during the pre-qualification period.

However, even when that amount is added into my subsequent payments, my total compensation for my work in the campaign from June onward will be well below my usual compensation. I understand how my choice of the word "reimbursement" led to this misunderstanding and wish I had offered more detail at the time I filed the report, but let me reiterate, all payments I have received are for work performed after the Merrill Campaign Qualified and after I was hired as Campaign Manager.

As to Richard Dyer, he, like many others, volunteered many hours during the \$5 collection period. I worked closely with him during the pre-qualification period. We were fellow volunteers. After Barbara Merrill qualified and the campaign staff was being assembled I was a strong supporter of retaining Mr. Dyer in his professional capacity as a consultant to help with press and public relations. Barbara and Phil Merrill had done most of this during the pre-qualifying period, but with a full time campaign we needed someone like Mr. Dyer helping out.

We negotiated a total fee with Mr. Dyer and then agreed to pay half of that fee as a retainer. We did this because we knew it would make it easier for Dick to accept the lower compensation because of the large amount of pro-bono time he had given the campaign and his family in the previous months.

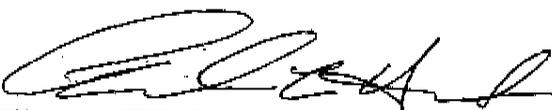
As the Commission reviews this matter I would also draw its attention to the fact that some up-front payment is very common in campaigns in recognition of the fact that they are for a short period of time and represent a loss of job security if not overall compensation. I would also point out our very low level of expenditure on staff during the period in question, this fact alone should set aside any concern that payments were made for debts carried forward as my ill advised use of the term "reimbursement" may have suggested.



Harold James Webster
Belgrade, Maine

Subscribed and sworn to before me, this 22nd day of August, 2006.

Notary Seal:



[signature of Notary]

Andrew L. Hart, Notary Public
~~State of Maine~~
[printed name of Notary]
My Commission Expires **8/2/2007**

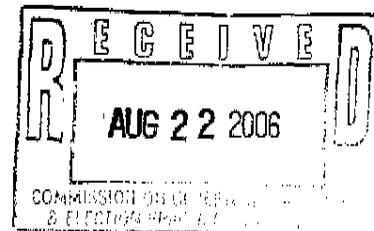
NOTARY PUBLIC

My commission expires: _____, 20____.



PretiFlahertyMICHAEL K. MAHONEY
mmahoney@preti.com

August 21, 2006

**VIA ELECTRONIC & U.S. MAIL**Martha Demeritt
Party Registrar
Maine Ethics Commission
135 State House Station
Augusta, Maine 04333-0135**RE: Maine Democratic Party / Late Filing Penalty**

Dear Ms. Demeritt:

Thank you for the opportunity to comment on the staff's recommended penalty of \$5,000.00 in this matter. I apologize that these comments were not provided to you sooner. I was out of State on vacation from August 11-20th and was only recently able to draft the following response to your August 11th request for comments on this issue.

As you are aware, \$5,000.00 is the maximum penalty that may be imposed on a party committee under Maine law. This is true even in cases where a party committee's campaign finance report is several months late and/or is that party committee's second, third or subsequent violation of 21-A M.R.S.A. § 1020-A. Similarly, \$5,000.00 is the maximum penalty that the Commission may impose on a party committee even when it finds that the Party's failure to file a timely report was intentional or in bad faith. It stands to reason that under these circumstances, the maximum penalty should be reserved for those situations where a party committee's conduct is truly egregious.

In the pending matter, the Party's conduct can hardly be described as egregious. Indeed, the Party believes that imposing the maximum possible penalty in this matter is unwarranted due to the existence of the following mitigating factors:

1. **Lack of Harm to the Public.** Title 21-A M.R.S.A. § 1020-A (2) provides that "[t]he commission may waive a penalty if the commission determines that the penalty is disproportionate to . . . the harm suffered by the public from the late disclosure." Although the Party's 42-Day Post-Primary report failed to include several unpaid obligations, members of the public (and particularly the candidates involved in the relevant legislative races) were fully aware that the Party was responsible for financing the mail pieces in question. That is because the Party, though not obligated to do so under current Maine law, voluntarily included the following disclaimer on all of the mail pieces:

Paid for by the Maine Democratic Party, 16 Winthrop Street, Augusta,
Maine 04332. Not paid for or authorized by any candidate.

PRETI FLAHERTY
Martha Demeritt, Party Registrar
VIA ELECTRONIC & U.S. MAIL
Page 2

The inclusion of these disclaimers only underscores the fact that the Party, by omitting these obligations from the 42-Day Post-Primary Report, was not attempting to hide its association with these mail pieces. On the contrary, these disclaimers provided the public with clear, immediate notice that the Party was financially responsible for these mail pieces.

2. The Party Self-Corrected Most of the Missing Unpaid Obligations. The complaints against the Party in this matter related only to mail pieces that the Party financed on behalf of Senator Lynn Bromley and Representative Walter Ash. Those unreported obligations totaled \$3,269.57. The remaining \$19,269.91 in unreported obligations were not the subject of any complaint to the Commission. Notwithstanding, the Party immediately amended its 42-Day Post-Primary report to add not only the Bromley/Ash obligations, but also the obligations relating to 14 other candidates as well. While reporting all of these obligations indeed was the Party's statutory duty, the fact that it self-corrected over 80 % of the unreported obligations within three (3) business days of discovering them confirms that its intent all along has been to report fully its contributions, expenditures and unpaid obligations.

3. This is the Party's First Offense of This Kind. The Maine Democratic Party has for the last several election cycles been one of the most active political committees in the state, both in terms of contributions received and expenditures made. Admittedly, the Party's sophistication in this regard necessarily means that it is held to higher standard than other, less experienced entities required to file campaign finance reports. However, the fact that the Party – despite the sheer volume of its campaign finance activity in recent years – had not previously been found by the Commission to have failed to file a timely report under § 1020-A illustrates its general commitment to complete reporting of contributions, expenditures and unpaid obligations. It further supports the Party's position that the erroneous 42-Day Post Primary report was an isolated occurrence rather than part of some scheme to falsify reports.

In light of the foregoing, the Party respectfully disagrees with the staff's recommended penalty of \$5000.00 in this matter. A more equitable resolution, in the Party's view would be to base the penalty on the value of the two unreported obligations that were the subject of the actual complaint before the Commission. Using the statutory formula, the penalty would then be calculated as follows: $(\$3,269.57 \times .01) \times 22 \text{ days late} = \719.40 . A penalty in this amount from the Commission would, in the Party's view, strike the proper balance between the seriousness of the Party's error and the several mitigating circumstances present in this case.

Thank you again for the opportunity to submit these comments. I look forward to discussing this matter with the Commission, counsel and you at the August 23rd meeting.

Sincerely,



Michael K. Mahoney

cc: Benjamin Dudley, Party Chair

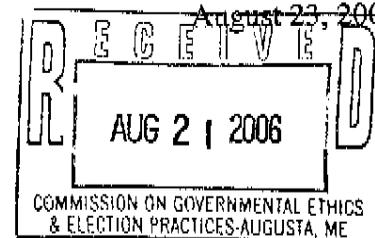
ADDITIONAL MATERIALS

RE: Agenda Item #7

August 23, 2006

August 18, 2006

Kevin J. Glynn
109 Huntress Avenue
South Portland, Maine 04106

*Hand Delivered*

Jean Ginn Marvin, Chairman
State of Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333-0135

RE: Anne Jenness Complaint of 8/14/2006
Agenda Item #7 of 8/23/06 Agenda

Dear Commissioner Marvin:

This letter is my response to the opportunity to provide my views concerning Item #7 on the agenda for your meeting of August 23, 2006. I am in agreement with the conclusion of Executive Director Jonathan Wayne that there was no violation of the campaign finance law related to Ms. Jenness' allegations and with Mr. Wayne's recommendation that no action on the complaint. While Ms. Jenness' letter does not constitute a valid complaint, I wish to respond to her statement and to record my displeasure with the Commission's staff's handling of this matter.

There is only one statement of fact concerning me contained in Ms. Jenness' letter. I do not dispute that I met Anne Jenness once, during the winter of 2006 (February/March). I was asked by Cape Elizabeth Republican Party Chairman Michael Mowles to transport some paperwork to Augusta during one of my trips to Augusta for session. When I stopped by Mr. Mowles' office, I met Anne Jenness. Anne Jenness informed me that she was capable of taking her paperwork to Augusta herself and drove away. I then went to Augusta without any paperwork and have not met her or thought about the encounter again until I received Mr. Wayne's letter. In short, I could not pick her out of a police lineup if I had to. I strongly disagree with any assertion made by Ms. Jenness that I was involved with her candidacy or directing Mr. Mowles regarding the matter. I believe my name has been brought up in this matter in an attempt to damage my candidacy for the State Senate.

I also take issue with the Ethics Commission Staff's handling of this matter.

On Page two of Mr. Wayne's August 16th memo, he states "[b]oth Jenness and Haskell have mental illnesses. Neither understood that they agreeing to run that they would be helping their opponent either electorally or financially." This statement by Mr. Wayne is bigoted and represents an uninformed opinion of those affected by depression or bipolar disease. Many people with mental illness lead productive lives and are contributing members of society. In fact, during Mr. Haskell's brief campaign, he spoke of problems in the Mental Health System and his ability to help the problem because he could bring a consumer's prospective to the process. In Maine, many Non-Profit Community Mental Health Centers have consumers of Mental Health Services on their boards of directors and the Department of Health and Human Services has many advisory boards and panels with consumer representation. People with mental illness participate in the electoral process and have the right to do so. To paint them as frail or incompetent and discourage their involvement in the running of their government is more than unfair—it is discriminatory behavior.

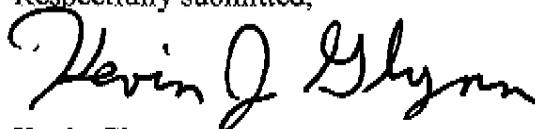
The Commission staff received both phone calls and a written complaint from Anne Jenness over a two week period of time. Mr. Wayne did not supply me with a copy of the Jenness letter nor did he or the Commission staff notify me of the complaint until after the investigation of the matter had been completed. In fact, Mr. Wayne issued a decision and a three page description of what he perceived my involvement to be without interviewing me, without notifying me of the complaint, and without soliciting a response from me. I received notification of the complaint from Mr. Wayne by e-mail at 5:00pm on 8/16/2006. This notification was received after Mr. Wayne completed his investigation and issued a written opinion to the Commission and the public. Because of this process, Mr. Wayne's August 16th memo is factually inaccurate and biased because it does not include any information from me or the others against whom allegations have been made.

In contrast, prior to making any contact with me, Mr. Wayne and his office issued statements to the media concerning my alleged involvement in the matter and supplied copies of written documents pertaining to this matter to the media before I was ever informed that any allegations had been made about me. Is this how you would want to be treated? I think simple fairness suggests that the Commission staff should inform anyone who is the subject of a Commission investigation of the subject matter of the investigation and the allegations contained in the complaint when the investigation is commenced. I hope you agree that those under investigation by Commission staff should not first hear of the investigation by reading about it in the newspaper, as I did in this case.

In the spring of this year, Commission staff looked into the issue of Stephen Haskell's brief candidacy. Following the conclusion of the inquiry, Mr. Wayne issued a decision on the matter on May 10, 2006 finding no violation of Ethics rules or Maine law. That decision was stamped as "Confidential" and was not issued to any of the interested parties, including me. It was not until after Mr. Wayne later gave a copy of the decision to the media and others that he inform the interested parties of the existence of the document and gave a copy of the memo to me or my legal counsel. I certainly understand that the Ethics Commission is subject to Maine's Freedom of Access and do not object to the document being provided to the media, but I believe that a decision regarding someone's conduct should be provided to that person before it is provided to others.

In closing, I wish to thank the Commission members for their time and consideration of this matter and my suggestions for improving the Commission's staff's handling if such matters.

Respectfully submitted,



Kevin Glynn

August 22, 2006

Michael D. Mowles Jr.
423 Ocean House Road
Cape Elizabeth, ME 04107

Jean Ginn Marvin, Chairman
State of Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135

Re: Anne Jenness Complaint of 08/14/2006, Agenda Item #7 on 08/23/2006

Dear Commissioner Marvin:

I am writing you at the invitation of Jonathan Wayne to present a response to his letter to the Commission of August 16, 2006 and that of Anne Jenness from 08/14/2006. I agree with the Staff's recommendation that no action should be taken on this issue as no laws, campaign or otherwise, have been broken. Ms. Jenness' complaint is bogus and her remarks about Cape Mortgage Co. (my place of employment) and me are false. It pains me to see these types of allegations bandied about. Ms. Jenness and I are involved in a civil dispute, which out of respect for her I can only release limited details. My response is intended to address two issues, first the complaint of Anne Jenness as regards the Maine Clean Election Act, and second as regards Anne Jenness as a client of Cape Mortgage Co.

Regarding Anne Jenness and her candidacy seeking the Green Party Nomination to run in the General Election for State Representative; as Jonathan Wayne states in his letter, neither he nor the Commission's Counsel can identify any violation of campaign finance laws in Ms. Jenness' complaint. Ms. Jenness' claims that she was encouraged to run for the Green Party Nomination to run for State Representative in district 121 in return for financial assistance is ridiculous and without substance. As I explained to Jonathan Wayne, this whole complaint stems from Ms. Jenness' attempts to avoid paying a debt and is an abuse of the legal system and of the Commission's time.

While campaigning door to door for the Republican Nomination to run for State Representative I ran into Ms. Jenness (a former client of mine) at her house, however because her three dogs were barking so loud I had to call her on my cell phone to hold a friendly conversation with her. I realized from my walking sheet that she was a registered Green Independent. During our conversation she told me she was a fan of Ralph Nader's and would be interested in helping the Green Party by running for the Green Party Nomination to State Representative as a "place holder". As a favor to her, I put her in touch with Ben Chipman who I knew to be the Executive Director of the Maine Green Independent Party.

Once she had collected her own signatures for her nomination papers she informed me that she needed them transported to Augusta, so as a personal favor to me, I asked State Representative Kevin Glynn to transport some paperwork for me to Augusta. When he arrived to transport the paperwork Ms. Jenness declined the offer and decided to

take it to Augusta herself. I have had no further conversations with Kevin Glynn or Ben Chipman with regards to Ms. Jenness' candidacy for State Representative.

As relates to the Maine Clean Election Act, I support Ms. Jenness' right, as a registered voter, to seek her Party's nomination and election to higher office. Apparently Ms. Jenness properly registered as an official Candidate for the Green Party Nomination to run for State Representative in Cape Elizabeth; however she decided not to register as a Maine Clean Election Candidate and receive clean election funds for her campaign. Since Ms. Jenness and I are in different political parties we were not competing against each other in the June 13th Primary Election and her decision to run had no effect on my clean election funding. Since a Democratic challenger had already announced her candidacy for the Nomination of the Democratic Party to run for State Representative in the Primary and General Election then the winner of the Republican Primary would already have an opponent in the General Election. Thus Ms. Jenness' candidacy would have had no effect on the Maine Clean Election Act funding of either of the other two candidates and thus no effect on this current year's MCEA budget.

Regarding Cape Mortgage Co., as a completely separate issue from her candidacy, after my initial conversation with Ms. Jenness, she later asked if I was interested in obtaining a refinance mortgage for her which I said I would attempt to do. It would normally be a breach of our Privacy Policy to divulge the details of Ms. Jenness' loan requests, however as Ms. Jenness has already breached that confidentiality Policy I will respond to the aspects of her financial matters which she has already made public but continue to leave private the other aspects of her financing.

Every one of Ms. Jenness' remarks about Cape Mortgage Co. and the supposed promises that were made to her are false and untrue. The only true statement in her letter regarding Cape Mortgage Co. was that Ms Jenness did seek a \$700,000+ refinance mortgage through Cape Mortgage Co. for her house near the ocean in Delano Park in Cape Elizabeth. I categorically deny that there was ever any intention on my part or any discussion with Ms. Jenness that my attempt to obtain her a mortgage was in return for her becoming the Green Party Primary Candidate.

Because she was a former client and based on her good credit and the high appraised value of her house, several weeks later I provided her with a personal bridge loan (until the refinance was complete) supported by a typed promissory note which was properly signed and notarized at her own bank. Unfortunately after two months of diligent work by Cape Mortgage Representatives, Ms. Jenness was turned down by over half a dozen national mortgage lenders.

Two months ago my attorney discussed this bridge loan issue with William Lund of the Maine Department of Professional and Financial Regulation's Office of Consumer Credit Regulation and has been given directions on how to proceed with the proper collection of this debt. This is now a civil dispute involving my attorney and Ms. Jenness' attorney and is not a matter for the Commission on Governmental Ethics and Election Practices. Please feel free to contact me if you have any further questions.

Sincerely,

Michael D. Mowles Jr.