

Agenda

Item #1

Minutes of the August 23, 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. Vinton E. Cassidy; Hon. Andrew Ketterer; Hon. A. Mavourneen Thompson. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:12 A.M., Chair Ginn Marvin convened the meeting. The Commission considered the following items:

Agenda Item #1 – Ratification of Minutes of the July 19, 2006 Meeting and Public Workshop on Legislative Communications

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (4-0) to ratify the minutes of the July 19 meeting.

Agenda Item #2 – Request to Investigate Possible Seed Money Violation by Barbara E. Merrill

Mr. Wayne said that the Commission staff received a request for investigation from John Michael. Mr. Wayne said that Mr. Michael was not present, though representatives from the Merrill campaign were and possibly others who may wish to comment. Mr. Wayne said that Mr. Michael's complaint alleged that Jim Webster and Dick Dyer were paid with Maine Clean Election Act funds for work done in the qualifying period, although this work could only be paid for with seed money. Mr. Wayne said that a 2005 amendment to the statute clarified that the campaign could have obligated more than it raised in seed money as long the value of the goods and services received within the qualifying period did not exceed the amount paid to a vendor. In this case the campaign had already received services from Mr. Webster and Mr. Dyer during the qualifying period. Mr. Wayne said that Mr. Michael argued that he could have qualified for

public financing if he had the ability to pay for work done during the qualifying period with MCEA funds. Mr. Wayne said that the Merrill campaign responded that Mr. Webster and Mr. Dyer were volunteers who did not expect to be paid. Mr. Wayne said that the Merrill campaign considered the payment to be advances for future work to be done in the general election. Mr. Wayne said that he received sworn affidavits from Phil Merrill, Mr. Dyer, and Mr. Webster the previous day. Mr. Wayne said that the staff recommendation was that the issue was not a seed money violation if the expenditure was not considered to be a payment for a prior obligation.

Ms. Thompson asked if Barbara Merrill's 42-day post-primary report had undergone a routine review by Commission staff. Mr. Wayne said that John Michael filed his complaint two days after the report was filed, so the staff had not yet reviewed the report at that time. Ms. Thompson asked what the procedure would have been if John Michael had not filed a complaint. Mr. Wayne said that the staff would probably notice the expenditure in question, although new staff members may not have been aware of past issues involving obligations during the qualifying period. Ms. Thompson said that she was not criticizing the staff, but wished to determine what its course of action may have been. Mr. Wayne said that the staff would have called the candidate to obtain an explanation and then bring the matter before the Commission if there appeared to be a violation.

Phil Merrill introduced himself as the deputy treasurer for Barbara Merrill's campaign. Mr. Merrill said that the treasurer was not available when the 42-day post-primary report had to be filed, so he was responsible for filing the report. Mr. Merrill said that he did not dispute the law and was careful not to violate it. Mr. Merrill said that he told his campaign workers that he couldn't obligate payment for their work during the qualifying period. Mr. Merrill said that he postponed discussions with a vendor until after the campaign had qualified for public financing for that reason. Mr. Merrill said that the campaign did not wish to raise a large amount of seed money in keeping with the candidate's views on the Maine Clean Election Act and limiting the impact of private contributions in her campaign. Mr. Merrill said that many campaigns pay workers to collect \$5 qualifying contributions, but the Merrill campaign offered no incentives for the volunteers who collected its contributions. Mr. Merrill said that after the qualifying period, he offered to provide money up front to Mr. Webster in recognition that Mr. Webster was behind

at his regular job due to working for the campaign. Mr. Merrill said that he was not obligated to pay Mr. Webster up front. Mr. Merrill said that the campaign began paying Mr. Webster at \$500 a week and increased the payment to \$650 a week. Mr. Merrill said that Mr. Dyer's usual hourly fee was above what the campaign could afford and he had performed *pro bono* work for the campaign during the qualifying period. Mr. Merrill said that the campaign offered to give Mr. Dyer half of his total payment up front and renegotiate if the campaign received more than \$400,000 in Clean Election funds. Mr. Merrill said that before the report was filed, he went over the numbers with Mr. Webster but not the specific wording of the remarks. Mr. Merrill said that it was not unusual for a payment amount to reflect past work by a campaign staff member without the campaign having an obligation to do so. Mr. Merrill said that Barbara Merrill noticed the remark a day after the report was due. Mr. Merrill said that the campaign would have amended the report and offered an explanation to Commission staff if Mr. Michael had not already sent his complaint.

Ms. Thompson asked what Mr. Merrill would have chosen to include under "remark" on the report. Mr. Merrill said that the expenditure should have been listed as an advance on pay. Mr. Merrill said he might also have included a note that the advance was for financial reasons and because both recipients were in need of the money up front. Mr. Merrill said that such practices were not unusual for campaigns, since they sometimes run out of money to pay workers late in the election cycle.

Ms. Thompson said that Mr. Merrill stated in his affidavit that there was no formal agreement to pay Mr. Dyer and Mr. Webster, but that the advances were given because of volunteer work done in the qualifying period. Mr. Merrill said that the payments did not result from an obligation.

Mr. Cassidy asked if Mr. Merrill thought the comments made on the report were unusual. Mr. Merrill said that they did raise legitimate questions. Mr. Merrill said that the comments incorrectly described the payments. Mr. Merrill said that Mr. Webster wrote the comments but later regretted it.

Mr. Ketterer asked if Mr. Merrill brought any witnesses to provide additional testimony. Mr. Merrill said that Mr. Dyer and Mr. Webster were present, as well as his attorney, Peter Roy. Mr. Ketterer said it would be helpful to have them present even though they already submitted affidavits.

Ms. Thompson asked who actually wrote the remarks for the expenditures in question. Mr. Merrill replied that he did not get a chance to view the report before it was submitted and it was Mr. Webster who actually filled it out.

Ms. Ginn Marvin said that the remarks on the report were clear and that "reimbursement for work done" was not an ambiguous phrase. Ms. Ginn Marvin said that since the campaign submitted the report early, it had extra time to review the report before filing it. Ms. Ginn Marvin said that there seemed to be an agreement that the workers would be paid after the qualifying period. Mr. Merrill said that the campaign had set its own early deadline to submit the report. Mr. Merrill said that he gave the advance to Mr. Webster due to him being behind at his regular job at Webster Heating. Mr. Merrill said that it was understandable that Mr. Webster included that remark on the report.

Jim Webster said that he started volunteering for the campaign shortly after Barbara Merrill decided to run. Mr. Webster said that he had known the family for some time. Mr. Webster said that he took 2 days off per week from his regular job in order to collect qualifying contributions. Mr. Webster said that he had no expectation that he would be paid or hired for his work. Mr. Webster said that his wife wanted him to be made whole for the wages he lost from working on the campaign and so he negotiated an advanced payment after the qualifying period. Mr. Webster said that he recognized after he filed the report that "reimbursement" may have been the wrong term for the payment.

Mr. Ketterer asked what Mr. Webster did as a volunteer for the Merrill campaign. Mr. Webster said that he coordinated phone calls, collected signatures and qualifying contributions, and attended town meetings to circulate nominating petitions. Mr. Webster said that it was more difficult to get qualifying contributions than signatures on the nominating petitions.

Mr. Ketterer asked why Mr. Webster took time off from work instead of working for the campaign on the weekends. Mr. Webster said that he worked for the campaign on the weekends in addition to the 2 days each week.

Mr. Ketterer said that Mr. Webster's comment about receiving payment to be made whole for the money lost from his regular job during the qualifying period sounded like an obligation. Mr. Webster said that there were other volunteers during the qualifying period who were not hired by the campaign or compensated for their time. Mr. Webster said that the advance payment helped him with his family's financial situation.

Ms. Thompson asked if the law prevented campaigns from hiring volunteers after the qualifying period. Ms. Gardiner replied that it did not. Ms. Thompson said that it followed that the law did not prevent a campaign from considering paying a volunteer after the qualifying period with public funding.

Ms. Gardiner said that the Commission must gauge the credibility of the witnesses and their explanations. Ms. Gardiner said that the Commission should consider whether there was an understanding between the campaign and its workers that they would be paid for work during the qualifying period. Ms. Gardiner said it was a factual matter as to whether an obligation arose. Ms. Gardiner said that there was no staff recommendation because the Commission had not heard from the witnesses.

Mr. Cassidy said that the issue was not whether the law should be changed. Mr. Cassidy said that if the wording of the remarks was correct, there was a violation of the law. Mr. Cassidy said that the issue was a question of why the remarks were there and worded as they were. Mr. Webster said that the wording of the remarks was his mistake and that he should have asked the Commission staff for advice prior to filing the report.

Mr. Ketterer said that the expenditures could have been reimbursements and that the Commission assumes that what campaigns report is accurate information. Mr. Webster said that he did not assume that the payments were reimbursements.

Alison Smith said that she was speaking on behalf of Maine Citizens for Clean Elections. Ms. Smith said that it was important for candidates to comply with seed money rules and to file accurate reports. Ms. Smith said that the law allows for gubernatorial candidates to raise up to \$50,000 in seed money, in recognition of the fact that qualifying for public financing requires significant resources. Ms. Smith said that it would set a bad precedent if the Commission allowed for obligations during the qualifying period to be paid with public funds. Ms. Smith said that even without an obligation, campaigns should not be able to use public funds for expenses that were incurred during the qualifying period. Ms. Smith said that if there was not enough seed money to pay for workers, they should not have been paid. Ms. Smith said that since he was filing reports, Mr. Webster should have known what the payments were for.

Dick Dyer of Dyer Associates said that he never intended to work for a political candidate since there was a history in public relations of not getting paid for work done for political campaigns. Mr. Dyer said that he primarily assisted the Merrill campaign with signature-gathering during the qualifying period and less as a public relations consultant. Mr. Dyer said that there was no obligation on the part of the campaign to hire him, but that his work during the qualifying period warranted a consideration of hiring him once the campaign received Clean Election funds.

Mr. Wayne asked Mr. Dyer how much he was going to be paid for his work for the general election. Mr. Dyer said it was around \$16,600 total, \$2,000 a month, with the option to renegotiate if more Clean Election funds were received.

Ms. Gardiner asked when Mr. Dyer first discussed being hired by the Merrill campaign. Mr. Dyer said that he had hoped during the qualifying period that he would be hired, and the discussions began as soon as the Clean Election funds were first available. Ms. Gardiner asked when Mr. Dyer reached a definitive agreement with the campaign. Mr. Dyer said that they reached an agreement the day before he was first paid.

Ms. Ginn Marvin asked what he did working for Dyer Associates. Mr. Dyer said that Dyer Associates was a full service public relations and marketing firm that basically consisted of himself and a part-time employee. Mr. Dyer said that he did research and evaluation on public relations campaigns.

Ms. Ginn Marvin asked if Mr. Dyer was working full time on the Merrill campaign. Mr. Dyer said that the Merrill campaign was one of several clients. Mr. Dyer said that he was spending at least 40 hours on the Merrill campaign.

Ms. Thompson asked Mr. Dyer how he responded to the remark on the finance report that he was paid for "consultations during the \$5 contributions phase." Mr. Dyer said that the remark was inaccurate, as he was also involved in the signature gathering campaign and there was never an obligation to hire him. Mr. Dyer said that he was frustrated that the Merrill campaign took so long to reach a decision on when to hire him and for how much. Mr. Dyer said that although he wanted to be hired for the general election, there was no agreement or expectation that he would be.

Mr. Cassidy asked how much seed money was raised by the Merrill campaign. Mr. Wayne said that the campaign raised \$6,255 and spent all of it before being certified to receive Clean Election funds. Mr. Wayne said that the campaign could have raised up to \$50,000 in seed money.

Ms. Ginn Marvin asked for copies of the report so that the Commission members could see who contributed seed money.

Ms. Gardiner said that the Commission needs to determine as a factual matter whether an obligation was incurred during the qualifying period or whether the payment was a reimbursement as opposed to a payment in recognition of the volunteer work done during the qualifying period. Ms. Gardiner said that recognition differs from reimbursement. Ms. Gardiner

said that the law does not sanction use of Clean Election funds to pay for work done during the qualifying period.

Mr. Wayne said that it was a difficult decision due to the lack of an adequate explanation for why the remarks were entered incorrectly on the report. Mr. Wayne said that the sworn affidavits explained that the payments were advances for work to be done for the general election. Mr. Wayne said that it was hard to discount the accuracy of those affidavits.

Ms. Thompson asked what the Commission staff's response would have been if they had discovered the remarks before Mr. Michael's complaint was filed. Mr. Wayne said that the staff would call the Merrill campaign and ask for an explanation. Mr. Wayne said that if the staff concluded that there was a seed money violation, it would be placed on the agenda of the next Commission meeting.

Mr. Ketterer said that the expenditures appeared to be payments for services provided during the qualifying period. Mr. Ketterer said that if the remarks were a mistake, they should have been reviewed by someone else in the campaign. Mr. Ketterer said that if the remarks were not a mistake, then there was a seed money violation. Mr. Ketterer said that payment up front does not in itself indicate a reimbursement. Mr. Ketterer said that people may volunteer for a campaign with the expectation of being hired later. Mr. Ketterer said that some weight must be given to the sworn affidavits.

Mr. Cassidy said that changing the remarks would not be a minor amendment to the report that would resolve the issue.

Ms. Thompson asked for clarification on the legal weight of the sworn affidavits.

Mr. Ketterer said that the affidavit is equivalent to sworn testimony and so carries more weight than a simple letter. Mr. Ketterer said that Phil Merrill was a member of the Maine Bar and was familiar with the legal importance of the affidavits.

Mr. Cassidy asked how someone looking at the finance reports would know what the reimbursements were for. Mr. Wayne said that the staff prefers that campaigns list the original payee, but often they only include the person being reimbursed.

Ms. Thompson asked when the Merrill campaign was certified to receive Clean Election funds. Mr. Wayne said that they were certified on June 9, so any expenditures after that date were paid with Clean Election funds.

Ms. Thompson said that the law did not prohibit the campaign from hiring someone who volunteered during the qualifying period.

Mr. Cassidy said that he thought that the seed money violation was serious.

Mr. Ketterer asked Mr. Cassidy if his opinion changed due to the testimony heard at the meeting.

Mr. Cassidy said that the comments made the payment seem like a reimbursement rather than recognition of past work.

Ms. Ginn Marvin moved, and Mr. Cassidy seconded, that the Commission find the Merrill campaign in violation of seed money restrictions. Ms. Ginn Marvin said that comments from Mr. Dyer and Mr. Webster made it seem like they wished to be paid back for work done during the qualifying period. Mr. Cassidy said that he agreed.

Ms. Gardiner asked if Ms. Ginn Marvin's motion would find the campaign in violation for both expenditures. Ms. Ginn Marvin said yes and that the campaign had an extra day to discuss the report before filing it. Ms. Ginn Marvin said that the Commission staff did not receive the affidavits until the day before the meeting.

Mr. Cassidy said that when the campaign realized immediately after filing the report that a mistake had been made, no one amended the report or asked the Commission staff for guidance.

Ms. Thompson said according to his affidavit, Mr. Webster was not careful in filling out the finance report. Ms. Thompson said that mistakes may be made and the treasurer was not experienced. Ms. Thompson said that she believed the affidavits.

Mr. Ketterer said that it was not necessary to believe everything in the affidavits. Mr. Ketterer said that the spoken testimony should also be considered, even though it was not sworn.

Ms. Ginn Marvin said that she had not heard of campaigns paying their workers up front. Mr. Ketterer said that many consultants require payment up front.

Mr. Ketterer said that it was troubling that the campaign did not immediately try to remedy the situation if they realized its severity.

Mr. Cassidy asked why Mr. Webster was paid up front if he was friends with the family rather than a consultant. Mr. Ketterer said it could have been due to personal financial circumstances or because the campaign was afraid it wouldn't have any money left to pay him later on.

Ms. Ginn Marvin said that the accuracy of finance reports was important. Ms. Ginn Marvin said that fairness was difficult when the Commission had to judge the intent of a report's contents. Ms. Ginn Marvin said that both Barbara and Phil Merrill were attorneys and could have received advice from the Commission staff if they had questions about the language on the report.

Mr. Cassidy asked if the Commission staff gave adequate notice of the requirements relating to obligating money during the qualifying period. Mr. Wayne said that a memo was sent to all gubernatorial candidates and the information was also included in the Candidate's Guide.

The Commission voted 3-1 to find the Merrill campaign in violation of seed money restrictions. Mr. Cassidy, Ms. Ginn Marvin, Mr. Ketterer voted for the motion; Ms. Thompson voted against the motion.

Mr. Merrill said that the law was clear and that the campaign was informed of the seed money restrictions by Commission staff. Mr. Merrill said that the evidence suggested that the campaign did not qualify for public funding based on the promise of future money to its workers, as Mr. Michael alleged. Mr. Merrill said that more seed money would not have aided the campaign in becoming certified. Mr. Merrill said that Barbara Merrill made a deliberate decision not to raise large amounts of seed money and pay campaign staff. Mr. Merrill said that mistakes were made in filling out the report.

Ms. Ginn Marvin asked Mr. Merrill what he thought should be the remedy for the violation. Mr. Merrill proposed a \$1,000 fine, but said that he found it difficult to come up with a penalty amount since he did not agree with the Commission's determination.

Ms. Ginn Marvin asked for the range of options available to the Commission. Mr. Wayne said that the Commission could disqualify Barbara Merrill from public funding or assess a civil penalty. Mr. Wayne said that any civil penalty could not be paid with Clean Election funds. Mr. Wayne said that the Merrill campaign could possibly collect contributions to pay the penalty, but this was questionable under the law. Mr. Wayne said that a disqualification from public funding was not something mentioned in the statute, but adherence to the seed money restrictions are a requirement for certification. Mr. Wayne said that the Merrill campaign did collect more than the minimum of 2,500 qualifying contributions needed for certification. Mr. Wayne said that the Merrill campaign was the most organized gubernatorial campaign in regard to the certification process. Mr. Wayne said that the error may have been based on a misunderstanding of the law. Mr. Wayne said that it was unclear what would be done with the Clean Election funds that have already been spent if the campaign was disqualified from public funding.

Mr. Ketterer asked about the range of penalty amounts. Mr. Wayne replied that the campaign could be fined up to \$10,000 per violation.

Ms. Gardiner said that the Commission did not have to disqualify the Merrill campaign after finding it in violation, although that was within its discretion. Ms. Gardiner said that, based on the Commission's discussion on the motion, it appeared that the Commission did not find that

the campaign had incurred an obligation during the qualifying period. Ms. Gardiner said that if there was no obligation at the time of certification, the Commission could find that the campaign was not in violation of the seed money requirements at the time of certification. Ms. Gardiner said that a penalty of between \$0 and \$10,000 could be assessed per violation or the campaign could be disqualified, requiring the return of Clean Election funds. Ms. Gardiner said that the Commission could also require the campaign to return the amount of spent public funds in addition to the unspent funds.

Mr. Cassidy said that the Commission should consider each violation separately.

Ms. Ginn Marvin said that the violation occurred after certification. Ms. Ginn Marvin said that the Merrill campaign met the requirements for certification otherwise. Ms. Ginn Marvin recommended a civil penalty.

Mr. Ketterer said that decertification would be an unfair penalty.

Ms. Thompson said that decertification should not be considered, even though it was an option to the Commission. Ms. Thompson said that she had no advice on a penalty amount. Ms. Thompson cited the examples of Peter Cianchette receiving a penalty of \$12,000 and Edward Dugay receiving a penalty of \$4,000.

Ms. Gardiner said that the penalty toward Edward Dugay was for a late filing. Mr. Cassidy said that there was more involved in that case than just a late filing. Ms. Gardiner said that the Peter Cianchette penalty was based on the amounts that were unreported by the campaign.

Mr. Cassidy moved, Mr. Ketterer seconded, and the Commission voted 3-1 to fine Barbara Merrill \$5,000 for each of the two seed money violations. Mr. Cassidy, Ms. Ginn Marvin, and Mr. Ketterer voted for the motion. Ms. Thompson voted against the motion.

Agenda Item #3 – Request to Investigate Merrill-Woodcock Qualifying Contributions

Mr. Wayne said that Benjamin Dudley, on behalf of the Maine Democratic State Committee, filed a complaint concerning Barbara Merrill and Chandler Woodcock exchanging \$5 qualifying contributions. Mr. Wayne said that Mr. Dudley argued that this exchange violated the Maine Clean Election Act, which forbids the exchange of anything of value for a qualifying contribution. Mr. Wayne said that the Woodcock and Merrill campaigns said that they had adjacent booths at a sportsman's show in March. Mr. Wayne said that the two candidates said that they gave each other qualifying contributions as a token of good will. Mr. Wayne said that Rep. Merrill stated in her letter that this exchange was within the spirit of the Maine Clean Election Act. Mr. Wayne said that the Woodcock campaign added that the exchange was an act of generosity in recognition of the difficulty in collecting qualifying contributions. Mr. Wayne said that the staff recommended that the exchange was not prohibited and the Commission should take no action.

Mike Mahoney introduced himself as an attorney with Preti Flaherty on behalf of the Maine State Democratic Committee. Mr. Mahoney said that a qualifying contribution was something of value since it aided the candidate in becoming certified for public funding. Mr. Mahoney said that the definition of a qualifying contribution in the statute stated that it was "in support of the candidate." Mr. Mahoney said that the state party's opinion was that the qualifying contributions were made to support a candidate's election, not just his or her candidacy. Mr. Mahoney said that if Merrill and Woodcock were not giving contributions in support of each other's elections, why else would they exchange contributions? Mr. Mahoney said that the definition of qualifying contribution was an ambiguity in the law.

Dan Billings, attorney for the Woodcock for Governor campaign, said that Sen. Woodcock qualified for public funding in April and Rep. Merrill qualified in June. Mr. Billings said that the Democrats did not raise the issue until later, indicating that the complaint was politically motivated. Mr. Billings said that people gave qualifying contributions to qualify candidates for public funding, not to support that candidate's election.

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation and take no action. Mr. Ketterer said that there were many reasons to give a qualifying contribution other than to support the candidate's election. Mr. Ketterer said that there was no apparent violation in the exchange of qualifying contributions.

Agenda Item #4 – Request to Investigate Alleged Push Poll/Maine Democratic Party

Mr. Wayne said that Barbara Merrill filed a request for an investigation into a telephone survey that was conducted by a Boston firm on behalf of the Maine State Democratic Party. Mr. Wayne said that Rep. Merrill was contacted by a Brunswick resident, who was bothered by the questions in the survey. Mr. Wayne said that Rep. Merrill found the questions to be negative, so she filed a request for the Commission to determine whether the survey was a push poll. Mr. Wayne said that push polls were defined under the law but were not forbidden. Mr. Wayne said that push polls were surveys that were not intended to gather information from the respondents, but to influence the respondent's vote. Mr. Wayne said that the Maine Democratic Party responded to his request for information by providing a portion of the questions asked in the survey. Mr. Wayne said that based on this information, he was confident that the survey was not a push poll. Mr. Wayne said that at least three of the five required elements defining a push poll were not present in the survey. Mr. Wayne said that he received the wording of 12 out of the 63 questions in the survey, tabulated responses from three of the questions, and an affidavit signed by the president of the polling firm. Mr. Wayne said that one of the required elements defining a push poll was that the poll did not tabulate results. Mr. Wayne said that another element was that push polls did not make demographic inquiries of the respondents. Mr. Wayne said that one of the respondents he interviewed told him that the polling agency asked questions about age and income. Mr. Wayne said that in order to be a push poll, the survey must select respondents based on demographic information. Mr. Wayne said that the sworn affidavit indicated that respondents were randomly selected from likely voters. Mr. Wayne said that based on the evidence, the survey was not a push poll and no further action needed to be taken.

Mr. Cassidy asked why Mr. Wayne only received 12 of the 63 questions. Mr. Wayne said that the party may not have wanted to reveal its strategic decisions about future advertising. Mr.

Wayne said that what the Commission staff received was enough to determine that the survey was not a push poll. Mr. Cassidy asked whether any of the unknown questions could have resulted in the survey falling within the definition of a push poll. Mr. Ketterer said that negative and misleading questions would not necessarily have made it a push poll. Ms. Thompson said that all five criteria had to be met in order to define the survey as a push poll, and three of those criteria were already known not to have been met. Mr. Ketterer said that there may have been strategic reasons for why the remaining questions were not released.

Mr. Wayne said that many people may come to the Commission complaining about political advertisements and techniques. Mr. Wayne said that the Commission could only do what was authorized under the statute, and it may be troublesome if the Commission begins evaluating the truth and accuracy of political speech.

Mike Mahoney said that he was available for questions and agreed with the staff analysis.

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation that the survey was not a push poll and to make no further inquiry.

Agenda Item #5 – Proposed Penalty for Late Report/Maine Democratic Party

Mr. Wayne said that on July 26, the day after the parties filed a campaign finance report, the Commission staff received a complaint from Roy Lenardson. Mr. Wayne said that Mr. Lenardson had reviewed the report filed by the Maine Democratic Party and noticed that it did not include an expenditure relating to a legislative update mailing on behalf of Senator Lynn Bromley that had been paid for by the party committee.

Ms. Thompson recused herself from Item #5 due to a potential conflict of interest because she had provided policy consulting services in the past to Se. Bromley.

Mr. Wayne said that Commission staff sent a letter to the Maine Democratic Party stating that the expenditure for the mailing did not appear on its report. Mr. Wayne said that Mr. Lenardson also mentioned other literature mailed in support of Walter Ash and Janet Mills, incumbent legislators running for reelection. Mr. Wayne said that the party's response was that the lack of reporting was due to an oversight and miscommunication within the party. Mr. Wayne said that the party amended its July 25 report on Schedule E, which is used for unpaid obligations, reporting that the party had three obligations totaling approximately \$22,000 to Bridge Communications in Connecticut. Mr. Wayne said that the staff view was that the entire report did not substantially comply with the disclosure requirements. Mr. Wayne said that the law was clear that the party had a duty to report unpaid obligations as well as expenditures. Mr. Wayne said that more than 20% of expenditures were missing from the report, resulting in the entire report being considered late. Mr. Wayne said that according to the formula, the maximum preliminary penalty would have been \$5,000, which is what the staff recommends. Mr. Wayne said that the party committee filed a letter taking issue with how the penalty was calculated.

Mike Mahoney, on behalf of the Maine Democratic Party, said that the party was not opposing the \$5,000 penalty amount but had issues with the matrix used to calculate penalties. Mr. Mahoney said that the maximum penalty amount should be reserved for egregious violations. Mr. Mahoney said that while the party's error was statistically significant, it was less than egregious. Mr. Mahoney said that the penalty matrix leaves the staff with little discretion in determining penalties. Mr. Mahoney said that perhaps the Commission could take up his suggestion at a later meeting.

Jayne Crosby Giles introduced herself as a candidate for House in district 43. Ms. Crosby Giles said that she filed an inquiry in July over a mailing on behalf of Representative Ash in her district. Ms. Crosby Giles said that she was a candidate in 2004 running against Representative Ash. Ms. Crosby Giles said that in the final days of that campaign, the House Democratic Party sent out a postcard mailer that was not reported within 24 hours. Ms. Crosby Giles said that the lack of reporting delayed her receipt of matching funds until the Friday night before the election. Ms. Giles said that there was a \$1,500 fine assessed six months after the election. Ms. Giles asked that the Commission impose the full \$5,000 fine. Ms. Crosby Giles said that the Maine

Democratic Party made two mailings so far on behalf of her opponent in the general election. Ms. Crosby Giles said that under current rules, those mailings were not considered campaign materials since they did not contain express advocacy, so she did not receive matching funds. Ms. Crosby Giles said that she did not have the resources to counter the mailings.

Mr. Ketterer thanked Ms. Crosby Giles for coming to the meeting and said that he felt powerless to take any action before the 2004 election in regard to the unreported mailing. Mr. Ketterer said that the Commission was very concerned about such conduct, particularly when it involves close elections.

Roy Lenardson said that it was difficult to determine on whose behalf payments were made when they are listed as lump sum expenditures or obligations. Mr. Lenardson said that it would be useful to know which districts were affected by party expenditures. Mr. Lenardson recommended that anyone found in violation should be required to attend a refresher course on filing accurate reports rather than just receiving a monetary penalty.

Mr. Cassidy moved, Mr. Ketterer seconded, and the Commission voted unanimously (3-0) to adopt the staff recommendation and assess a fine of \$5,000.

Ms. Ginn Marvin thanked everyone who spoke on the issue and said that the Commission would take their suggestions under advisement.

Agenda Item #6 – Complaint against Maine Economic Research Institute

The Commission decided to take up Item #8 out of order and return to Item #6.

Agenda Item #6 – Complaint against Maine Economic Research Institute

Mr. Wayne said that John Hanson, who was the executive director of the Maine State Building and Construction Trades Council, filed a complaint against the Maine Economic Research

Institute ("MERI") regarding a publication called "Roll Call 2006" that MERI distributed as a newspaper insert in July.

John Hanson said that he was a resident of Bangor and an employee of the Maine State Building and Construction Trades Council. Mr. Hanson said that the Council was not in itself a labor union, but instead an umbrella organization representing 14 local trade unions and between 5500-6000 Maine craftspeople. Mr. Hanson said that he spoke with Commission staff several weeks ago regarding the complaint process. Mr. Hanson said that he saw "Roll Call 2006" in the Bangor Daily News and noticed that more than 90% of legislators from one party received above a 50% rating, with some of them receiving a star. Mr. Hanson said the highest rating achieved by the other party was 54%. Mr. Hanson said that the publication included references to legislation but no indication of how the ratings were determined. Mr. Hanson said the publication included quotations from unidentified Maine senators and a quotation from a Bowdoin College professor complimenting the ratings. Mr. Hanson said that he later discovered that the publication was distributed not only in the Bangor Daily News but in major newspapers throughout the state. Mr. Hanson said that the publication was political in nature rather than a legitimate survey. Mr. Hanson said that MERI's website included commentary by Professor Douglas Hodgkins. Mr. Hanson said that comments by lobbyists supposedly accounted for 50% of a legislator's total rating. Mr. Hanson said that Professor Hodgkins' comments indicated that 75% or more of the total rating came from lobbyists' comments. Mr. Hanson said that it was common practice for labor unions to distribute ratings of legislators to their members, but a widespread distribution of ratings to the general public would fall under the category of political activity. Mr. Hanson referred to an opinion column written by David Vail, a professor at Bowdoin College, and Mike Hillard of the University of Southern Maine. Mr. Hanson said that the column considered MERI's study not to be a comprehensive survey. Mr. Hanson displayed a copy of "Roll Call 2006" that included a handwritten note reading, "see how Walter Wheeler voted, district 151." Mr. Hanson said that Walter Wheeler provided him with the copy and said that it was being distributed in his district. Mr. Hanson said that Representatives Faircloth, Bryant, Duchesne, Gerzofsky, Miller, Piotti, and Smith also reported that "Roll Call 2006" was being distributed in their districts with handwritten headings. Mr. Hanson asked that MERI release a list of its members. Mr. Hanson said that the survey was clearly advocating the election

or defeat of candidates. Mr. Hanson said that MERI should be required to register as a political action committee and disclose how much was paid on the newspaper inserts. Mr. Hanson said he questioned whether MERI had authorization to use the state seal on their publication. Mr. Hanson said that the Commission has the authority to address his complaint based on the sections of statute governing political action committees.

Phyllis Gardiner left the meeting due to another obligation.

Ms. Ginn Marvin asked Mr. Hanson what specific requirement was violated by MERI's mailing. Mr. Hanson cited the definitions of "campaign" and "expenditure" in 21-A M.R.S.A. §1052. Mr. Hanson said that 21-A M.R.S.A. §1055, titled "Publication or distribution of statements," was also applicable to MERI's activity. Mr. Hanson estimated that the newspaper inserts in the Portland Press Herald, Bangor Daily News and Lewiston Sun-Journal cost \$187,000. Mr. Hanson said that those were political expenditures and that MERI fit the definition of a political action committee.

Ms. Thompson said that the Commission determined in 2004 that MERI's activities did not qualify it as a PAC. Ms. Thompson asked if anything had changed since that decision that might result in MERI falling within the definition of a PAC. Mr. Wayne said that MERI met with the Commission staff beginning in 1999. Mr. Wayne said that there had been an expansion in MERI's activities since his meeting with the group in 2004. Mr. Wayne said that MERI's original intention had been to conduct research in order to inform its paying members. Mr. Wayne said that MERI began publishing a voter guide in 2004, distributing 50,000 copies that year. Mr. Wayne said that he was aware that MERI was going to publish a voter guide, but did not know how many copies would be distributed. Mr. Wayne said that the content of "Roll Call 2006" was similar to the voter guide.

Ms. Thompson asked if, according to Mr. Hanson's testimony, MERI qualifies as a PAC. Mr. Wayne said that Mr. Hanson did not address the question in his original letter to the Commission staff. Mr. Wayne said that the Commission may want to ask Mr. Hanson and MERI to submit further letters on whether or not the group qualifies as a PAC. Mr. Wayne said that the definition

of a PAC was ambiguous, containing four scenarios. Mr. Wayne said only the second scenario, relating to a "funding and transfer mechanism," could possibly apply to MERI.

Mr. Hanson said that a determination could not be made until the Commission gains further information from MERI on its activities. Mr. Hanson said that since 2002, MERI board members contributed, personally or through their companies, \$85,259 to PACs and candidates. Mr. Hanson said that 96% went to Republican candidates and PACs, 3.9% went to Democratic candidates and PACs, and less than 1% went to independent candidates. Mr. Hanson said that this information merits further investigation into whether MERI was a political advocacy organization.

Ms. Thompson asked if there were any issues the Commission should consider other than whether MERI was a PAC. Mr. Wayne said there were no other issues at that time. Mr. Wayne said that if "Roll Call 2006" or a voter guide was distributed within 21 days of the election, they could be considered independent expenditures that must be reported to the Commission.

Ms. Thompson said that she was concerned that the Commission's counsel was not present and the Commission did not have time to review all of the information that Mr. Hanson had just provided.

Mr. Ketterer said that the Commission should hear from the MERI representatives and then decide whether to take any action.

Mr. Hanson said that he would provide a copy of his testimony and other exhibits that he did not discuss at the meeting.

Ed McLaughlin introduced himself as president of MERI. Mr. McLaughlin said that MERI did not distribute "Roll Call 2006" directly to households or provide any copies with hand-written notation. Mr. McLaughlin said that anyone purchasing copies of "Roll Call 2006" receives a disclaimer asking them to follow all necessary rules and regulations and to identify who was distributing the copies. Mr. McLaughlin said that all copies of the publication contained a

disclosure statement indicating that the publication was paid for by MERI. Mr. McLaughlin said that MERI was a non-profit, non-partisan organization governed by a board of directors representing a diverse array of Maine businesses. Mr. McLaughlin said that MERI's goal was to improve Maine's business environment by providing objective information to enhance economic policymaking, which includes conducting non-partisan research. Mr. McLaughlin said that MERI did not operate to influence elections or act as a political action committee. Mr. McLaughlin said that MERI's legal counsel met with William Hain, who was then the executive director of the Commission, to go over MERI's planned activities. Mr. McLaughlin said that the response from the Commission staff was that MERI was not a PAC. Mr. McLaughlin said that MERI had grown since 1999, but its reports remain essentially the same. Mr. McLaughlin said that MERI met with the Commission staff whenever it anticipated a change in its activity. Mr. McLaughlin said that other organizations, such as the Maine AFL-CIO, publish similar ratings of legislators. Mr. McLaughlin gave several examples of organizations that gave disproportionately high ratings to legislators from one political party and not another. Mr. McLaughlin said that the rating methodologies were not designed to favor one party or another, but were based on issues important to each organization. Mr. McLaughlin said there was nothing inherent in MERI's ratings that would prevent a Democrat or independent from scoring highly. Mr. McLaughlin said that MERI was about promoting economic opportunity, but was not a political organization. Mr. McLaughlin said that Mr. Hanson's testimony did not reveal any violations of the laws and rules by MERI. Mr. McLaughlin said that MERI's board of directors was made up of Democrats, Republicans, and independents. Mr. McLaughlin said that MERI also works with a company to conduct a scientific study of business concerns.

Mr. Ketterer said that he did not give much weight to the notion that MERI's scoring unfairly disadvantages Democrats over Republicans. Mr. Ketterer said that he suspected that MERI had a set of bills during the legislative session representing the concerns of MERI's members and watched how each legislator voted on those bills. Mr. Ketterer said that a legislator who voted for most of those selected bills would thus score highly in MERI's ratings.

Mr. Ketterer asked Mr. McLaughlin if his group was concerned that legislators with high ratings were reelected while legislators with low ratings were defeated. Mr. McLaughlin said that MERI

was concerned about the public being informed on what was happening in the legislature. Mr. McLaughlin said that MERI was satisfied with the public communicating with legislators about their concerns without necessarily voting for or against them in the next election. Mr. McLaughlin said that MERI wishes to bring more attention to economic issues.

Mr. Ketterer asked if it was true that MERI would urge the reelection of people who received high scores on the "Roll Call 2006" survey and would be dissatisfied if legislators who received low scores were reelected. Mr. McLaughlin said that MERI did not suggest that people vote for or against any legislators. Mr. McLaughlin said that MERI did not advocate for elections and instead was focused on research analysis and reporting.

Kathryn Weare introduced herself as the owner and manager of the Cliff House and the vice chair of MERI's board of directors. Ms. Weare said that MERI had been careful to advance its policies within the boundaries of the law. Ms. Weare said that despite the private activities of its members, MERI was not a political organization.

P.D. Merrill said that he had done business in Maine since 1979. Mr. Merrill said that he founded Merrill's Marine Terminal with his father in Portland. Mr. Merrill said that he became involved with MERI due to the potential for long-term action to promote business. Mr. Merrill said that MERI provided information to the public, but it was up to the individuals to decide what to do with that information. Mr. Merrill said that MERI was based on organizations that previously existed in other states.

Michael McNamara said that he recently retired from the banking industry. Mr. McNamara said that a survey of 500-700 businesses in Maine was used to determine which bills influenced the "Roll Call 2006" rankings. Mr. McNamara said that the rankings were unbiased and that MERI never intended to be a PAC.

Ms. Thompson asked if anything discussed by Mr. Hanson and the MERI representatives fell under the Commission's jurisdiction. Mr. Wayne replied that from Mr. Hanson's testimony, there were no violations of the law. Mr. Wayne said that whether MERI's activities were

political would be a subjective determination. Mr. Wayne said that some of MERI's activities, such as the voter guide, were political and had the intent of influencing elections. Mr. Wayne said that it would be possible for the Commission staff to gather additional information to present to the Commission so that it could determine at a later meeting whether MERI constituted a PAC.

Mr. Cassidy said that it was difficult to determine the reaction of those reading "Roll Call 2006." Mr. Cassidy said that MERI's intent seemed to be to show the public which issues were important to candidates.

Mr. Ketterer said that Mr. Hanson raised some legitimate issues, such as the question of whether MERI's activities define it as a PAC. Mr. Ketterer said that if this was the case, the issue would fall under the Commission's jurisdiction. Mr. Ketterer said that further inquiry was needed. Mr. Ketterer said that he found it difficult to believe that MERI had no interest in seeing certain legislators be re-elected.

Ms. Ginn Marvin said that MERI met with Commission staff to ensure that it did not become a PAC. Ms. Ginn Marvin said that the Commission staff could review MERI's activities again and determine if anything it has done would cause it to fall under the definition of a PAC. Ms. Ginn Marvin said that the PAC issue was not mentioned by Mr. Hanson in his letter requesting a Commission determination. Ms. Ginn Marvin said that the Commission should therefore only take action on Mr. Hanson's original complaint in regard to the "Roll Call 2006" publication.

Ms. Ginn Marvin moved, Mr. Ketterer seconded, and the Commission voted unanimously (4-0) to dismiss John Hanson's complaint against MERI with regard to "Roll Call 2006."

Mr. McLaughlin said that all groups similar to MERI should be evaluated to see if their activities qualify them as PACs.

Agenda Item #8 – Dates for Commission Meetings in September and October

The Commission decided to hold its next regular meetings on September 22, October 3, and October 20.

Agenda Item #7 – Complaint by Anne Jenness

Mr. Wayne said that Ms. Jenness called him to complain about unethical mistreatment of her as a candidate by Michael Mowles, a legislative candidate; Rep. Kevin Glynn, a Senate candidate; and Ben Chipman, an organizer for the Green Independent party. Mr. Wayne said that he had examined Ms. Jenness's petitions which took some time and she filed a letter a week prior to the meeting. Mr. Wayne said that Ms. Jenness wrote that she had known Mr. Mowles previously due to his job as a mortgage broker in Cape Elizabeth. Mr. Wayne said that Ms. Jenness wrote that Mr. Mowles came to her one week before the deadline to submit petition signatures to be a candidate and proposed to her that she run as a Green Independent candidate for House district 121. Mr. Mowles was running in the Republican primary for the same district and, if he won, would have been Ms. Jenness' opponent. Mr. Wayne said that Ms. Jenness explained that Mr. Mowles drove her around to collect signatures. Mr. Wayne said that after qualifying for the ballot, Ms. Jenness decided to withdraw as a candidate, while Mr. Mowles and Mr. Chipman tried convincing her to stay in the race. Mr. Wayne said that Ms. Jenness said that Mr. Mowles made two loans of \$7,000 each to her and offered her cash in an effort to keep her in the race until after the primary election, at which time she could have been replaced with another Green Independent candidate. Mr. Wayne said that Rep. Glynn and Mr. Mowles submitted responses. Mr. Wayne said that Mr. Mowles said that he lent Ms. Jenness some money and asserted that their financial dispute was the rationale behind her complaint. Mr. Wayne said that if what Ms. Jenness said was true, it was not a violation of any laws administered by the Commission. Mr. Wayne said that the Secretary of State's office administers the petition process to become a candidate. Mr. Wayne said that there were laws regarding people being offered money to be candidates or to influence candidates to run for office. Mr. Wayne said that the Commission may wish to consider referring the matter to another state agency for consideration.

Ms. Thomson asked if Ms. Jenness could bring her complaint to another agency if the Commission did not take action. Mr. Wayne said that she could. Mr. Wayne said that the only part of Ms. Jenness's complaint that may have been a violation of the law was her statement that she was offered a loan in order to become a candidate.

Ms. Jenness said that Mr. Mowles came to her house and asked her to run as a Green Independent candidate. Ms. Jenness said she was not interested in politics and had not previously met Rep. Glynn. Ms. Jenness said that she had planned to move to Boston.

Ms. Ginn Marvin asked if Mr. Mowles offered Ms. Jenness additional mortgage money to remain in the race. Ms. Jenness said that he had offered her a \$7,000 check to pay for her debts after she told him she was withdrawing. Ms. Ginn Marvin asked where the check came from. Ms. Jenness said it came from White Horse, Mr. Mowles' mortgage company. Ms. Jenness said that the second payment of \$7,000 came in the form of cash. Ms. Jenness said that Mr. Mowles collected the signatures and managed everything involved with her campaign.

Ms. Ginn Marvin said that while Ms. Jenness had a legitimate complaint, it did not appear to fall within the Commission's jurisdiction. Ms. Ginn Marvin asked where else Ms. Jenness might take her complaint. Mr. Wayne said that it would probably be the Maine State Attorney General's office.

Ms. Thompson asked if there were any violations of the Maine Clean Election Act that the Commission may be able to reach a determination on. Mr. Wayne said that recruiting opponents may have resulted in a greater payout of Clean Election funds than if the race was uncontested in the primary, but Mr. Mowles was already facing primary opposition. Mr. Wayne said that the issue could result in a lack of confidence in the administration of the Maine Clean Election Act. Ms. Thompson asked if there was any misuse of the Clean Election rules specific to Ms. Jenness's complaint. Mr. Wayne said that that was not the case, as Ms. Jenness did not attempt to qualify for Clean Election funds.

Ms. Jenness said that she was not interested in taking her complaint to another agency.

Other Business

Philip Morris Napier said that the Secretary of State's office refused to place his name on the ballot as "Philip Morris Napier – Thu Peoples Hero." Mr. Napier said that the Secretary of State's office also refused to list his party designation as "Pissed-Off Patriots." Mr. Napier said that the term was not obscene as the Secretary of State's office has claimed. Mr. Napier said that every candidate should have to gather their own signatures and should all be given the same amount of money once they qualify for the ballot. Mr. Napier said that his campaign strategy was his uniqueness, including his name, and that by having his name on the ballot as he wanted, it would level the playing field in regards to his opponents. Mr. Napier said that he included his party designation on all 322 ballot petition pages submitted to the Secretary of State's office.

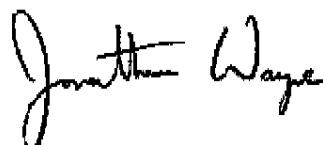
Ms. Ginn Marvin said that the Commission was unable to help Mr. Napier with his complaint. Mr. Napier said that Julie Flynn in the Secretary of State's office told him that herself, the Secretary of State, and the Attorney General made the decision to disallow his ballot name requests and that there was no provision for appeal. Mr. Napier said that going to the Commission was the only other appeal process he knew of without going to court.

Mr. Wayne said that it was not the business of the Commission how Mr. Napier's name appeared on the ballot. Ms. Ginn Marvin said that the Commission primarily oversaw elections and how they were financed. Mr. Napier said that his issues were just as important as any financing matter. Ms. Ginn Marvin recommended that he go to private counsel. Mr. Napier said that he could not get a lawyer. Mr. Napier said that if the Commission really wished to be fair, it should provide him with \$1.2 million so that he has equal financing with the other gubernatorial candidates. Ms. Ginn Marvin said that he could receive public funding if he qualifies for it in the next election cycle. Mr. Napier said that if the Secretary of State's office has no appeal process, the Commission should develop one. Ms. Ginn Marvin thanked Mr. Napier for coming, but said that she disagreed with his suggestion and that there was nothing the Commission could do.

Mr. Wayne said that there was legislation requiring the Commission to issue a report to its oversight committee by September 1 regarding financial reporting on ballot questions. Mr. Wayne said that under current law, in order to register as a PAC, an organization has to raise or spend \$1,500 relating to a candidate election or ballot question. Mr. Wayne said that the staff was fine with the current law and he would include that recommendation with the report if the Commission agreed. The Commission members all stated that they agreed with the staff view. In addition, the report was to address the issue of whether PACs should be required to report more frequently. Mr. Wayne said that the filing schedule was satisfactory and would not need to be changed. The Commission members agreed.

There being no further business, Mr. Ketterer moved, Mr. Cassidy seconded, and the Commission unanimously voted (4-0) to adjourn.

Respectfully submitted,

A handwritten signature in black ink that reads "Jonathan Wayne". The signature is written in a cursive, flowing style.

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

From: Jonathan Wayne, Executive Director

Date: September 15, 2006

Re: Preliminary Information - Republican Governor Association Advertisements

This memo is a preliminary outline of Pat LaMarche's request for matching funds under the Maine Clean Election Act based on two advertisements by the Republican Governors Association. Because of the complexities of the issues and because we received submissions from the interested parties only yesterday, I will be sending you a fuller memo separately on September 19 or 20 after I have had an opportunity to consider this matter and confer with the Commission's counsel.

Advertising by Republican Governors Association

The Republican Governors Association (RGA) has run two television advertisements in Maine. In the view of the Commission staff, both ads are supportive of Chandler Woodcock's campaign for governor. The ads currently are posted at <http://www.rga.org/Multimedia/Default.aspx>. I urge you to review both ads on the website, and I will attempt to show them to you at the September 22 meeting.

Question for the Commission: Do the advertisements “expressly advocate” the election of Chandler Woodcock?

The LaMarche for Governor campaign has inquired whether it is entitled to matching funds under the Maine Clean Election Act (21-A M.R.S.A. §1125(9)), because the advertisements represent independent expenditures as defined at 21-A M.R.S.A. §1019-B(1)(A):

For the purposes of this section, an “independent expenditure”:

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

The determination of whether the advertisements represent independent expenditures therefore turns on whether the advertisements “expressly advocate” the election of Chandler Woodcock. Express advocacy is defined in the rules of the Commission as:

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

Commission Rules, Chapter 1, Section 10(B)(2). Thus, a communication can include express advocacy in two ways: it can contain some of the sample phrases included in the rule in quotation marks (which have become known as the “magic

words”), or the communication can contain language which in context can have no other reasonable meaning than to urge the election or defeat of a clearly identified candidate. The focus of the rule is on the language contained within the communication, and not on the intentions or motivations of the sponsor of the communication.

Argument by LaMarche Campaign

The LaMarche campaign has made three submissions:

- the original request dated September 1 concerning the first RGA ad;
- a second letter dated September 12 requesting consideration of both RGA ads; and
- a memo and affidavit submitted September 14 offering further comments.

The campaign argues that: “Given the context, style, timing, subject and script of the ad[s], and the fact that [the ads were] paid for by an entity organized to elect Republican governors, [they] have no reasonable meaning other than to support the election of Mr. Woodcock.” The campaign also argues that the Woodcock campaign coordinated with the RGA in the making of the advertisements, which would make the RGA’s expenditures a contribution to the Woodcock campaign.

Responses by RGA and Chandler Woodcock

The RGA denies that either of its advertisements includes express advocacy. It argues that “neither of the advertisements contains words or phrases that urge the viewer to take any kind of electoral action.” (underlining in original) The RGA states that it is “talking about important issues such as Maine’s excessive tax burden, structural gap, and lagging economy.” It concedes that:

“while the RGA’s discussion of these issues may in fact have the effect of helping to elect Senator Woodcock ..., these issues are much larger than any one candidate or campaign for political office.”

The response from the Woodcock campaign rebuts in detail the allegation that the RGA ads were produced in cooperation with the campaign, and states that the ads do not contain express advocacy.

Complaint by the Maine Democratic Party

The staff received by e-mail late this afternoon a complaint from the Maine Democratic Party regarding these issues, which I have enclosed.

Request to Consider Advertising of Maine Democratic Party

Both the Woodcock campaign and the RGA argue that if the Commission believes that the RGA advertisements contain express advocacy, the Commission should apply same “express advocacy” standards to television advertising sponsored by the Maine Democratic Party in support of Governor John Baldacci. Those ads are available at the web address of <http://www.mainedems.org/Multi-media.aspx>.

Title 21-A, §1019-B, Reports of independent expenditures

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§1019-B. Reports of independent expenditures

1. Independent expenditures; definition. For the purposes of this section, an "independent expenditure": [2003, c. 448, §3 (new).]

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

[2003, c. 448, §3 (new).]

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

[2003, c. 448, §3 (new).]

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

[2003, c. 448, §3 (new).]

3. Report required; content; rules. A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the municipal clerk. [2003, c. 448, §3 (new).]

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

[2003, c. 448, §3 (new).]

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

[2003, c. 448, §3 (new).]

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

[2003, c. 448, §3 (new).]

PL 2003, Ch. 448, §3 (NEW).

Title 21-A, §1015, Limitations on contributions and expenditures

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§1015. Limitations on contributions and expenditures

1. Individuals. An individual may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$500 in any election for a gubernatorial candidate or more than \$250 in any election for any other candidate. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse. [1999, c. 729, §2 (amd).]

2. Committees; corporations; associations. A political committee, other committee, corporation or association may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$500 in any election for a gubernatorial candidate or more than \$250 in any election for any other candidate. [1999, c. 729, §2 (amd).]

3. Aggregate contributions. No individual may make contributions to candidates aggregating more than \$25,000 in any calendar year. This limitation does not apply to contributions in support of a candidate by that candidate or his spouse. [1985, c. 161, §6 (new).]

4. Political committees; intermediaries. For the purpose of the limitations imposed by this section, contributions made to any political committee authorized by a candidate to accept contributions on the candidate's behalf are considered to be contributions made to that candidate. [1985, c. 161, §6 (new).]

For the purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate, are considered to be contributions from that person to the candidate. The intermediary or conduit shall report the original source and the intended recipient of the contribution to the commission and to the intended recipient. [1985, c. 161, §6 (new).]

* **5. Other contributions and expenditures.** Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate. [1989, c. 504, §§7, 31 (amd).]

The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees or their authorized agents is considered to be a contribution to that candidate. [1989, c. 504, §§7, 31 (amd).]

6. Prohibited expenditures. A candidate, a treasurer, a political committee, a party or party committee, a person required to file a report under this subchapter or their authorized agents may not make any expenditures for liquor to be distributed to or consumed by voters while the polls are open on election day. [1991, c. 839, §11 (amd); §34 (eff).]

7. Voluntary limitations on political expenditures. A candidate may voluntarily agree to limit the total expenditures made on behalf of that candidate's campaign as specified in section 1013-A, subsection 1, paragraph C and subsections 8 and 9. [1995, c. 384, §2 (new).]

8. Political expenditure limitation amounts. Total expenditures in any election for legislative office by a candidate who voluntarily agrees to limit campaign expenditures as provided in subsection 7 are as follows: [1999, c. 729, §3 (amd).]

A. For State Senator, \$25,000;

[1999, c. 729, §3 (amd).]

3. Any traditionally funded candidate with a Maine Clean Election Act opponent shall file the following three reports detailing the candidate's total campaign contributions, obligations and expenditures to date, except that a candidate who has not received, spent, or obligated the amount sufficient to require a report under subsection 2 may file an affidavit, by the date the report is due, attesting that the candidate has not received, spent or obligated that amount:
 - A. a report filed not later than 5 p.m. on the 42nd day before the date on which an election is held that is complete as of the 44th day before the date of that election;
 - B. a report filed not later than 5 p.m. on the 21st day before the date on which an election is held that is complete as of the 23rd day before the date of that election; and
 - C. a report filed not later than 5 p.m. on the 12th day before the date on which an election is held that is complete as of the 14th day before the date of that election.
4. 24-Hour Report. Any candidate who is required to file a 101% report must file an updated report with the Commission reporting single expenditures of \$1,000 or more by candidates for Governor, \$750 by candidates for State Senator, and \$500 by candidates for State Representative made after the 14th day before any election and more than 24 hours before 5 p.m. on the date of that election. The report must be submitted to the Commission within 24 hours of those expenditures.
5. Filing by Facsimile or Electronic Means. For purposes of this section, reports may be filed by facsimile or by other electronic means acceptable to the Commission, and such reports will be deemed filed when received by the Commission provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. General. Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.
2. Definitions. For purposes of this section, the following phrases are defined as follows:
 - A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
 - B. "Expressly advocate" means any communication that uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat"



accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"

- C. "Independent expenditure" has the same meaning as in Title 21-A, section 1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
3. Reporting Schedules. Independent expenditures must be reported to the Commission in accordance with the following provisions:
- A. Independent expenditures aggregating in excess of \$100 per candidate per election but not in excess of \$250 made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, except that expenditures made in the last 11 days before an election must be reported within 24 hours of the expenditure.
- (1) Quarterly Reports.
- (a) A report must be filed on January 15th and be complete as of January 5th;
- (b) A report must be filed on April 10th and be complete as of March 31st;
- (c) A report must be filed on July 15th and be complete as of July 5th; and
- (d) A report must be filed on October 10th and be complete as of September 30th.
- (2) Pre-Election Report. A report must be filed on the 12th day before the election is held and be complete as of that day.

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

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).]

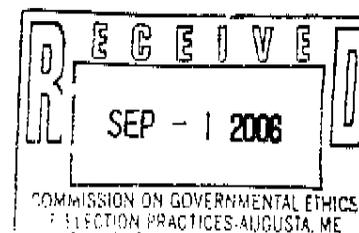
9. Matching funds. When any campaign, finance or election report shows that the sum of a candidate's expenditures or obligations, or funds raised or borrowed, whichever is greater, alone or in conjunction with independent expenditures reported under section 1019-B, exceeds the distribution amount under 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



September 1, 2006

Jonathan Wayne, Executive Director
Commission on Governmental Ethics and Election Practices
242 State Street
Augusta, ME 04333-0135

VIA HAND DELIVERY

RE: Inquiry Concerning RGA Television Advertising

Dear Mr. Wayne:

As you know, the Republican Governors' Association (RGA), through their Maine PAC, has begun airing a television commercial in support of the Republican candidate for governor, Chandler Woodcock. This commercial raises two issues concerning compliance with Maine's Clean Elections laws.

The first issue is whether this commercial was produced "in cooperation, consultation or concert with, or at the request or suggestion of" Mr. Woodcock or his political committee, or by an agent of Mr. Woodcock or his committee. It is difficult to imagine how this commercial could have been produced without the cooperation of Mr. Woodcock or his campaign. The ad features close-up, professionally shot footage of Mr. Woodcock. One could reasonably assume that either Mr. Woodcock cooperated with the filming of this ad or he or his campaign supplied the footage in question. The production of a commercial that contains both current and archival footage raises numerous questions about cooperation and consultation between Mr. Woodcock and the RGA.

The second issue is whether the commercial falls under the category of "express advocacy" and should therefore trigger matching funds for the other gubernatorial candidates running under Maine's Clean Elections law.

At the outset, it is critical to understand that the primary Mission of the RGA is "to assist in the election of Republican gubernatorial candidates and the reelection of incumbent Republican Governors." To fulfill its Mission, the RGA, on behalf of the Woodcock Campaign, has purchased \$170,000-\$200,000 worth of airtime on Maine television stations.

The script for the ad, which follows, reads like a typical campaign ad:

*New Solutions to change Maine's direction take experience.
Volunteering for military service.
A public school teacher for 25 years.
Seeking solutions as a state senator.
Chandler Woodcock's experience means new solutions for Maine's future.*

*A plan to lower taxes to cap out of control state spending.
A promise to create a more affordable healthcare program.
Tell Chandler Woodcock you support new solutions to change Maine's direction.*

The visual component of the ad shows Mr. Woodcock in an historical photograph and in various locations, including talking to citizens in a manner associated with campaigning. It is shot in the style of standard political ads and the voiceover is clearly that of political advertising. A reasonable person viewing this advertisement would understandably believe it is asking for support for Mr. Woodcock's campaign.

The RGA is attempting to classify this television advertisement as an issues ad in an obvious effort to prevent disbursement of additional campaign funds to other Clean Elections candidates.

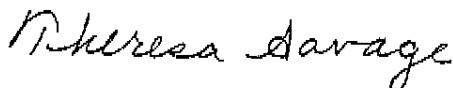
The Ethics Commission rules state that express advocacy includes an advertisement in which an individual is clearly identified as a candidate for office. Mr. Woodcock is clearly identified by film and photograph as well as by name. Presumably, the justification for labeling this as an "issues ad" is that the commercial does not explicitly ask the viewer to vote for Mr. Woodcock. However, to accept an ad as an "issues ad" which clearly identifies a candidate, and which is written, filmed and produced in the exact style of an advocacy ad, and which is paid for by an organization whose Mission is to elect candidates to the office which the subject of the ad is seeking, is to dishonor the spirit and intent of the Clean Elections laws. Nor can the letter of the law permit such an interpretation. Explaining the definition of "express advocacy" in a brochure on Independent Expenditure Reports, the Commission notes that "communications, *which in context*, can have no other reasonable meaning than to urge the election" of a candidate for office is express advocacy and an independent expenditure. Given the context, style, timing, subject and script of the ad, and the fact that it is paid for by an entity organized to elect Republican governors, the ad has no reasonable meaning other than to support the election of Mr. Woodcock.

On behalf of the LaMarche for Governor campaign, I submit these issues to the Commission only for purposes of an inquiry and to activate the disbursement of funds to other Clean Elections gubernatorial candidates equal to the amount spent on the RGA commercial.

Please contact me if you have any questions or require any additional information.

Thank you.

Respectfully submitted,



Theresa Savage, Treasurer



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

September 6, 2006

By E-Mail and Regular Mail

Charlie Spies, General Counsel
Republican Governors Association
1747 Pennsylvania Ave., N.W. Suite 250
Washington, DC 20006

Dear Mr. Spies:

The Maine Commission on Governmental Ethics and Election Practices received the attached inquiry from the LaMarche for Governor campaign relating to a television advertisement sponsored by the Republican Governors Association (RGA) in support of Chandler Woodcock. The LaMarche campaign inquires whether it would be entitled to matching funds under the Maine Clean Election Act (21-A M.R.S.A. §1125(9)).

The inquiry asks the Commission to determine whether the advertisement contains express advocacy, which would result in RGA making an independent expenditure under 21-A M.R.S.A. §1019-B(1)(A). The inquiry also asks the Commission to determine whether Sen. Woodcock, his authorized committee, or their agents cooperated or consulted in the production of the ad. Cooperation or consultation in the ad could result in a contribution to Sen. Woodcock's campaign under 21-A M.R.S.A. §1015(5).

The Commission staff requests the RGA to provide the following information no later than Wednesday, September 13. I intend to schedule this matter for the Commission's consideration at its next meeting on September 22. *By making this request the Commission staff does not wish to imply any non-compliance by the RGA, the Woodcock campaign, or the Maine Republican Party, but rather is seeking information under Chapter 1, Section 5 of the Commission's rules to assist the staff in making a recommendation to the Commission on Ms. LaMarche's request for matching funds:*

- (1) Does the RGA believe the advertisement contains express advocacy as defined by Chapter 1, Section 10(2)(B) of the Commission's rules?
- (2) Did the RGA produce the advertisement in cooperation or consultation with Sen. Woodcock, his authorized political committee or their agents?

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

Charlie Spies

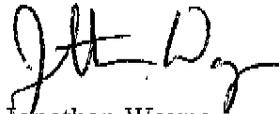
- 2 -

September 6, 2006

- (A) In particular, did the RGA obtain the videotape or film of the candidate at campaign events in cooperation or consultation with the candidate, his committee, or their agents? I note that there appear to be two campaign events within the ad.
- (B) From what source did the RGA obtain the photograph of Sen. Woodcock sitting in a military vehicle? A smaller version of the photograph (with different outlines) is available on the Woodcock campaign's website.

By copy of this letter, I am letting the Woodcock campaign and the Maine Republican Party know that they are welcome to provide any information they believe is relevant. Thank you for your cooperation. Please telephone me or Assistant Director Paul Lavin at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne
Executive Director

cc: Daniel I. Billings, Esq., Counsel for the Woodcock Campaign
Julie O'Brien, Chair, Maine Republican Party
Theresa Savage, Treasurer, LaMarche for Governor Campaign
Gubernatorial Candidates

LaMarche for Governor

September 12, 2006

Jonathan Wayne, Executive Director
Commission on Governmental Ethics and Election Practices
242 State Street
Augusta, ME 04333-0135

VIA ELECTRONIC MAIL ATTACHMENT

RE: Supplemental Inquiry Concerning RGA Television Advertising

Dear Mr. Wayne:

On September 1, 2006, the LaMarche for Governor campaign requested an inquiry into advertising by the Republican Governors Association (RGA), in support of the Republican candidate for governor, Chandler Woodcock. Since that time, the RGA aired a second ad in support of Mr. Woodcock. Our campaign, therefore, is amending our initial inquiry to include the second commercial.

This second commercial raises the same two issues concerning compliance with Maine's Clean Elections laws as did the first ad:

- 1) Whether this commercial was produced "in cooperation, consultation or concert with, or at the request or suggestion of" Mr. Woodcock or his political committee, or by an agent of Mr. Woodcock or his committee; and
- 2) Whether the commercial falls under the category of "express advocacy" and should therefore trigger matching funds for the other gubernatorial candidates running under Maine's Clean Elections law.

It should be noted that the second ad explicitly places Mr. Woodcock's name together with the office which he is seeking. While this may, in the minds of some, more clearly cross the "express advocacy" line, we believe that a reasonable person viewing either ad, in the context of a contested gubernatorial election, could come to no conclusion other than that the ads are advocating for the election of Mr. Woodcock.

Please contact me directly if you have any questions or require any additional information. Thank you.

Respectfully submitted,

Blair Bobier, Policy Director

PO Box 5007, Augusta ME 04330
www.pat2006.com
221.0263 office/756.5163 cell

CHAIRMAN
Governor Mitt Romney
Commonwealth of Massachusetts



VICE CHAIRMAN
Governor Sonny Perdue
State of Georgia

REPUBLICAN GOVERNORS ASSOCIATION

September 14, 2006

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

VIA E-MAIL: Jonathan.Wayne@maine.gov

Dear Mr. Wayne:

The Republican Governors Association ("RGA") is currently running issue advertisements and contributing to the policy discussion in Maine. Our advertisements are created and run completely independently of any candidate or campaign in Maine, and clearly do not meet the definition of "expressly advocating" the election or defeat of a clearly identified candidate under Maine law, under Federal Constitutional principles, and under generally understood Maine political practice. The RGA is, through our RGA-Maine PAC, talking about important issues such as Maine's excessive tax burden, structural budget gap, and lagging economy. Senator Chandler Woodcock has a background that has, as a State Senator, made him effective at fighting for new solutions. The RGA supports the policy options -- like lowering taxes and capping state government spending -- that Senator Woodcock is now fighting for to change Maine's direction, and we look forward to continuing to discuss those policy options in our issue advertisements.

In your letter of September 6, 2006 you asked the RGA to address a series of questions raised by the LaMarche for Governor Campaign's inquiry to the Maine Commission on Governmental Ethics and Election Practices ("Commission"). We will answer each of your questions below, and would be pleased to provide more extensive answers or legal briefing if you or the Commission would find that to be helpful.

- (1) *Does the RGA believe the advertisement contains express advocacy as defined by Chapter 1, Section 10(2)(B) of the Commission's rules?*

No. The RGA's issue advertisements do not expressly advocate the election or defeat of any clearly identified candidate. Maine's Statutory structure makes clear that for an expenditure to be regulated under Maine law outside of 21 days before an election, that expenditure must either "expressly advocate" the election or defeat of a clearly identified candidate, or be made in "cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents." The second "coordination" element will be answered in response to your

Question (2) below. The first "express advocacy" determination should be made by a facial evaluation of the content of the advertisements.

The LaMarche Campaign's Inquiry to the Commission indicated that they believe the RGA's advertisement contains express advocacy because, "A reasonable person viewing this advertisement would understandably believe it is asking for support for Mr. Woodcock's campaign." Although we are sympathetic to the confusion that the public and Ms. LaMarche may face in figuring out what advertisements constitute issue advocacy, as opposed to express advocacy of the election or defeat of a candidate, it is for this very reason that the United States Supreme Court has required that bright lines be drawn (i.e. *Buckley*'s requirement of "explicit words of advocacy") so that groups and individuals wishing to exercise their Constitutional right to political speech have clear guidelines of how to comply with the law.¹ Consequently, under Maine law the standard for whether an advertisement is regulated as an Independent Expenditure is not what a "reasonable person" would guess, but instead is whether the communication "expressly advocates the election or defeat of a clearly identified candidate."² The scripts for both advertisements being run by the RGA are attached³ and neither of the advertisements contains words or phrases that urge the viewer to take any kind of electoral action, let alone express advocacy as defined in the Commission's Rules Chapter 1, Section 10(2)(B).

Chapter 1, Section 10(2)(B) of the Commission's Rules also indicates that in the Commission's view, communications of "campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say 'Pick Berry,' 'Harris in 2000,' 'Murphy/Stevens' or 'Canavan!'" could constitute express advocacy. This expansion of the definition of "expressly advocates" beyond specific "magic words" to include "communications... which in context can have no other reasonable meaning..." has no Maine statutory authority, and appears to instead be a creation of Commission Rules. Please note that this language derives from the 9th Circuit's *Furgatch* opinion. The *Furgatch* opinion, however, stated that "speech may only be termed 'advocacy' if it presents a clear plea for action, and thus speech that is merely informative is not covered by the Act. Finally, it must be clear what action is advocated. Speech cannot be 'express advocacy of the election or defeat of a clearly identified candidate' when reasonable minds could differ as to whether it encourages the reader to take some other kind of action." *FEC v. Furgatch*, 807 F.2d 857, 864 (9th Cir. 1987).

The RGA's advertisements talk about important policy issues in Maine and even provide a phone number to contact Chandler Woodcock and encourage him to support new solutions to change Maine's direction. The issues discussed in the RGA's

¹ See Attachment A. Although this Interpretive Bulletin from the Massachusetts Office of Campaign & Political Finance is, of course, not binding on a Maine Commission, the detailed explication of "Express Advocacy as defined by the federal courts" that begins on page 2 may nonetheless be instructive.

² 21-A M.R.S.A. Sec. 1019-B 1 (definition of "Independent Expenditure").

³ See Attachment B "New Solutions" and Attachment C "Tax Crunch."

⁴ Governor Baldacci's campaign recently sent a letter to television stations bragging that "Maine's gas tax ranks 15th in the country" and that Maine's tax burden has fallen from the 2nd to now only the 3rd highest in the country. See Letter from Michael V. Saxl on behalf of Committee to Re-elect John Baldacci, September 7, 2006.

advertisements all come from news articles, government documents, and policy reports about the challenges facing Maine. There is a fundamental policy argument going on in Maine right now – liberals and those in power are arguing that everything is good in Maine,⁴ and others, like the RGA and Senator Woodcock, are arguing that Maine should go in a new direction and can do better than the current tax burden, structural budget gap, and out of control spending. These are important issues that affect all Maine residents, and while the RGA's discussion of these issues may in fact have the effect of helping to elect Senator Woodcock (by talking about policies he supports) or defeat Governor Baldacci (by educating people on economic environment that he is responsible for), these issues are much larger than any one candidate or campaign for political office.

Please note also that there is an established understanding of what does and does not constitute express advocacy in Maine, and the advertisements that the RGA is currently running are well within what is understood to constitute issue advocacy. For example, Maine Democratic Party Chairman Ben Dudley (not one to usually stick up for Republicans party organizations) said "the Republican Governors Association has been careful not to cross the line into directly advocating for Woodcock's election."⁵ Independent candidate Barbara Merrill is quoted in the same newspaper article as saying that RGA's ad is an issue ad, not direct advocacy, but "It's a loophole that you can drive \$200,000 through... Democrats are going to cry foul today, but they're going to do the same thing tomorrow."⁶ Ms. Merrill turned out to be prophetic, because the day after the RGA began running issue ads, the Maine Democratic Party began running substantively similar issue advertisements.

The RGA believes that the advertisements that we are currently running, as well as the ones the Maine Democratic Party ("MDP") are running, are clearly issue ads. To the extent, however, that the Commission disagrees and in response to the LaMarche inquiry rules that the RGA's advertisements somehow contain express advocacy, we would respectfully request that you make the same ruling regarding the advertisements being run by the MDP. Ms. LaMarche has not filed a similar inquiry regarding the MDP advertisements in an apparent attempt to score political points by attacking Senator Woodcock because he is a clean elections candidate. The RGA, however, is running our advertisements independently of Senator Woodcock and the clean elections status of the clearly identified candidate in an advertisement is not legally material to the determination of whether the advertisement in question expressly advocates the election or defeat of said candidate. If the MDP or RGA advertisements are found to expressly advocate the election or defeat of either candidate, then the cost of that advertisement (whether by the RGA or by the MDP) would qualify as spending that would trigger additional funds for the other clean elections candidates.

⁴ David Farmer, *Ad Campaign Touts Woodcock*, Sun Journal, September 1, 2006.

⁶ *Id.*

The LaMarche campaign is requesting that the Commission also consider a second issue advertisement that the RGA is running in Maine. Specifically, some of the language shown on the final image of the advertisement includes: "Chandler Woodcock/Governor/New Solutions to Change Maine's Direction." Please address whether this second advertisement expressly advocates the election of Chandler Woodcock.

The RGA's second advertisement, like our first one, talks about issues that are currently important in Maine and does not expressly advocate the election or defeat of any clearly identified candidate. The implication of the LaMarche campaign's second letter of inquiry to the Commission, and your question, is that the word, "Governor", appearing once in our advertisement, might change the nature of the advertisement. It does not. This advertisement (Attachment C) does not contain any words that would indicate electoral advocacy (such as "Vote Woodcock for Governor," or "Woodcock for Governor," which would constitute express advocacy). Instead, after a discussion of the tax and economic policy issues currently being debated in Maine, the advertisement ends with a call to action to "Tell Chandler Woodcock you support new solutions to change Maine's direction." Pictured on the screen during that verbal call to action is a picture of a church steeple, a picture of Senator Woodcock, the words, "Chandler Woodcock", "Governor", "New Solutions to Change Maine's Direction", and a phone number to call Senator Woodcock, as well as the RGA-Maine PAC's disclaimer. The verbal and graphic emphasis during this scene is to tell Senator Woodcock to support policies that take Maine in a new direction – no elections or electoral advocacy is referenced or implied.

Please note that (again, strangely not referenced in the LaMarche letters) one of the MDP advertisements also similarly contains a graphic of the word "Governor." At the end of the MDP's so-called "Saved Jobs" ad, the screen says "John Baldacci The Jobs Governor." In the context of that MDP advertisement, we do not believe the inclusion of that graphic constitutes express advocacy. If, however, the Commission believes that it is problematic in the RGA's advertisement, then we would respectfully suggest that it is even more problematic in the MDP's advertisement (because the MDP advertisement does not contain a call to action on policy issues like the RGA's does).

(2) Did the RGA produce the advertisement in cooperation or consultation with Sen. Woodcock, his authorized political committee or their agents?

No. The RGA is running issue advertisements in Maine completely independent of Sen. Woodcock, his authorized political committee, or their agents (collectively hereinafter "Woodcock Campaign"). In an abundance of caution, the RGA set up an independent "Maine Issue Ad Unit" to create and place issue advertisements. The consultants that are part of RGA's Maine Issue Ad Unit have not had, and will not have, any contact with the Woodcock Campaign.

- (A) *In particular, did the RGA obtain the videotape or film of the candidate at campaign events in cooperation or consultation with the candidate, his committee, or their agents? I note that there appear to be two campaign events within the ad.*

No. All of the moving images in the RGA's issue advertisements in Maine were collected independently of the Woodcock Campaign. Specifically, the footage of Senator Woodcock was obtained by reviewing the schedule of public events listed on the Woodcock website and then sending a cameraman to videotape Senator Woodcock at one of those public events. The cameraman did not identify himself or who or what entity he was shooting footage on behalf of.

- (B) *From what source did the RGA obtain the photograph of Sen. Woodcock sitting in a military vehicle? A smaller version of the photograph (with different outlines) is available on the Woodcock campaign's website.*

All still images used in the RGA issue advertisement were publicly available and obtained through a search of the World Wide Web. The RGA's Maine Issue Ad Unit did not contact the Woodcock Campaign to obtain the photographs.

Thank you in advance for your consideration of our responses. Please do not hesitate to contact me at (202) 662-4156 if there is any additional information that I can provide to you.

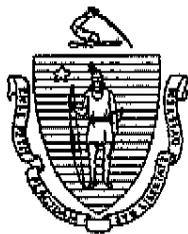
Sincerely,



Charles R. Spies
General Counsel

Enclosures

ATTACHMENT A



THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE ROOM 411

BOSTON MASSACHUSETTS 02108

MICHAEL J. SULLIVAN
DIRECTOR

TEL: (617) 727-8352
(800) 462-OCPP
FAX: (617) 727-8549

OCPP-IB-06-01

Issued: July 10, 2006

INTERPRETIVE BULLETIN

Express Advocacy and Issue Advocacy

This office is frequently asked for guidance regarding the applicability of the Massachusetts campaign finance law, M.G.L. c. 55, to various types of advertisements or other communications that might be viewed as "issue oriented," but which might also be seen as praising or disparaging a candidate. For example, an advertisement might be aired or published prior to an election that clearly identifies a candidate, describes the public policy issues that the group paying for the ad believes the candidate has mishandled or is mistaken on, and urges persons to call the candidate. The ad does not, however, ask voters to vote for the candidate's opponent or against the candidate. Similarly, an ad might praise a candidate's position on an issue, but stop short of asking for a vote in favor of the candidate.

This Bulletin provides guidance regarding whether such communications involve the making of expenditures subject to the requirements of the Massachusetts campaign finance law.

I. Summary

In general, a communication is regulated under the Massachusetts campaign finance law if it contains "express advocacy," as opposed to "issue advocacy." A communication contains "express advocacy" regarding a clearly identified candidate if it contains one of the following: (1) explicit words that urge the nomination, election or defeat of the candidate, such as "vote for," "elect," "support," "cast your ballot for," "Smith for Senate," "vote against," "defeat," or "reject" or synonymous words, such as "unseat"; (2) words that urge other electoral action, such as words asking viewers or readers to campaign for or contribute to, the candidate; (3) words, symbols or graphic representations that relate to the candidate's nomination or election (e.g., "vote," "election," or "candidate"), if in the context of the entire communication, the words exhort the reader/viewer/listener to take action to support the nomination, election or defeat of the candidate; or (4) a symbol or other graphic representation explicitly supporting or opposing the candidate if combined with a word or symbol relating to the nomination or election of the candidate, e.g., the candidate's name with an "x" drawn through it combined with a reference to the date of the election, or a copy of the ballot with only one candidate's name checked. Communications that do not contain these features may be considered "issue advocacy."



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The distinction between "express" and "issue" advocacy is significant in part because, under M.G.L. c. 55, business corporations, or organizations that receive funds from business corporations, may not pay for communications supporting or opposing candidates or political parties. In addition, where an expenditure would be permitted under Chapter 55, e.g., it would not be made using corporate funds, the campaign finance law would still require disclosure of the expenditure.

Also, if an organization or group makes an expenditure for a communication containing express advocacy *and also* raises funds for the purpose of paying for the communication, the organization or group becomes a political committee and must organize and register as such with OCPF. Political committees must disclose not only expenditures but also receipts. In contrast, if a communication is "issue advocacy," as defined in this Bulletin, no disclosure is required under the Massachusetts campaign finance law, unless it is coordinated, as discussed below.

Even if a communication is considered "issue advocacy," it may still be regulated *if it is coordinated with a candidate or the candidate's committee*. An expenditure made to distribute, publish or broadcast a coordinated communication relating to a candidate's nomination or election is considered an in-kind contribution subject to the campaign finance law if a candidate or his committee can exercise control over the communication. In addition, such an expenditure is considered an in-kind contribution where there has been substantial discussion or negotiation between the candidate or the candidate's committee and the spender over the communication's (1) contents; (2) timing; (3) location, mode, or intended audience (e.g., choice between newspaper or radio advertisement); or (4) "volume" (e.g., number of copies of printed materials or frequency of media spots).

II. "Express advocacy" as defined by the federal courts

a. Buckley v. Valeo and its progeny

In *Buckley v. Valeo*, 424 U.S. 1 (1976) the Supreme Court articulated a distinction between contributions and expenditures, stating that while restrictions on contributions entail only a marginal restriction upon the contributor's ability to engage in free communication, restrictions on expenditures for political communication represent substantial restraints on political speech and are therefore entitled to the closest scrutiny. *Buckley*, 424 U.S. at 19-26.¹ Applying this level of scrutiny, the Court determined that the Federal Election Campaign Act's restriction on expenditures "relative to a clearly identified candidate" in 2 U.S.C. § 608(e)(1) was impermissibly vague. See *Buckley*, 424 U.S. at 39. The vagueness deficiency could, however, be avoided "by reading [the statute] as limited to communications *that include explicit words of advocacy of election or defeat of a candidate*." (Emphasis added).

In a footnote, the Court provided examples of words of express advocacy, such as "vote for," "elect," "support," "defeat," and "reject." This became known as the "magic words" requirement. In addition, the Court examined the disclosure provisions in 2 U.S.C. § 431, which defined "expenditure" to include the use of money or other assets "for the purpose of ...

¹ The Court upheld a \$1,000 limitation on contributions by individuals to candidates, stating that the limitation concerned "precisely on the problem of large campaign contributions - the narrow aspect of political association where the actuality and potential for corruption have been identified - while leaving persons free to engage in independent political expression," i.e., the provision was sustained because the government demonstrated a "sufficiently important interest" and the statute was "closely drawn" to avoid infringement of constitutional rights. *Buckley*, 424 U.S. at 26-29.

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influencing" a federal election." See *Buckley*, 424 U.S. at 61. Again, the court determined that to avoid vagueness problems, the statute should be interpreted to reach only funds used for communications that expressly advocate for the election or defeat of a candidate. *Id.*

The "magic words" requirement led to a situation where groups could finance certain communications with money not regulated by the federal campaign finance statute that avoided magic words, but which were, in reality, designed to support or oppose candidates. These communications became known as "issue ads." As a result, the definitions of "express advocacy" and "issue advocacy" have been the subject of much debate and litigation. See Trevor Potter and Kirk L. Jowers, *The New Campaign Finance Sourcebook*, Chapter 7, which collects and discusses various circuit court rulings (Brookings Institution, 2005).

Ten years after *Buckley*, the Supreme Court again considered express advocacy and "magic words" in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) ("*MCFL*"). In *MCFL* the Court, in construing the words of 2 U.S.C. § 441b(a) (the ban on corporate independent expenditures), i.e., "in connection with any election," reiterated that where a campaign finance statute provides a vague definition of expenditures that are regulated by the statute, *Buckley* requires the use of words that explicitly call for the election or defeat of a candidate. In *MCFL*, the Court determined that a Special Edition of a publication that urged voters to "vote 'pro-life'," identified pro-life candidates, and provided their photographs, contained express advocacy. In reaching this conclusion, the Court looked at the words used in the publication to determine its "essential nature." See *MCFL*, 479 U.S. at 249, where the Court stated:

The Edition cannot be regarded as a mere discussion of public issues that by their nature raise the names of certain politicians. Rather, it provides in effect an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than "Vote for Smith" does not change its essential nature. The Edition goes beyond issue discussion to express electoral advocacy.

Federal court decisions since *MCFL* have generally continued to narrowly interpret "express advocacy" to require specific words of electoral advocacy. They have also recognized, however, that the "magic words" listed in *Buckley* are not exclusive. See, e.g., *Maine Right to Life v. FEC*, 98 F.3d 1 (1st Cir. 1996) (*per curiam*) and *Chamber of Commerce of the United States v. Moore*, 288 F.3d 187 (5th Cir. 2002). For example, in *Moore* the court stated:

We think it is clear that the examples of express advocacy listed in the *Buckley* footnote are illustrative rather than exhaustive because there are a variety of other words and phrases that convey precisely the same meaning. But express advocacy necessarily requires the use of language that explicitly and by its own terms advocates the election or defeat of a candidate. If the language of the communication contains no such call to action, the communication cannot be express advocacy. Thus, communications that discuss in glowing terms the record and philosophy of specific candidates, like the advertisements at issue here, do not constitute express advocacy under *Buckley* and *MCFL* unless they also contain words

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that exhort viewers to take specific electoral action for or against the candidates.

288 F. 3d at 196-197.

Similarly, in *FEC v. Christian Coalition*, 52 F. Supp. 2d 45 (D.D.C., 1999), the court held that a mailing by the Georgia Christian Coalition before the 1994 Georgia primary advocated the election of Congressman Gingrich because it "was expressly directed at the reader-as-viewer," when the letter stated that "The Primary Elections are here!" and then provided two items "[t]o help you prepare for your trip to the voting booth." *Christian Coalition*, 52 F. Supp. 2d at 58. The court stated:

while the scorecard leaves ambiguous which candidates the Coalition supports, the following sentence of the letter removed all doubt about the purpose of the Coalition's mailing with respect to one election. "The only incumbent Congressman who has a Primary election is Congressman Newt Gingrich - a Christian Coalition 100 percenter. Make sure that you save this scorecard for November, however, because all other Congressmen are opposed in the General Election." The unmistakable meaning of the letter is that because Newt Gingrich has voted as the Coalition would have wanted him to on every vote the Coalition considered significant, the readers should vote for him in the primary election. . . . While marginally less direct than saying 'vote for Newt Gingrich,' the letter in effect is explicit that the reader should take with him to the voting booth the knowledge that Speaker Gingrich was a 'Christian Coalition 100 percenter' and therefore the reader should vote for him.

Christian Coalition, 52 F. Supp. 2d at 65.

The *Christian Coalition* case illustrates the application of the "express advocacy" standard synthesized from earlier federal court opinions (at pages 61-62 of the opinion) to a communication that supported or opposed a candidate, contained words relating to an election, and called for some action relating to the election. In these circumstances, the court indicated that, given the words used in a letter distributed by the Coalition and the timing of the communication, the letter exhorted the reader to take electoral action to support the election or defeat of a clearly identified candidate, and therefore it should be considered express advocacy.

b. BCRA and electioneering communications

Congress enacted the Bipartisan Campaign Reform Act (BCRA) in 2002, in part to address the perception that expenditures intended to influence candidate elections were being disguised as "issue advocacy," i.e., communications that support or oppose a candidate but avoid words calling for electoral action, to allow the funding of last minute election advertising that could be hidden from campaign finance disclosure requirements. BCRA amended the federal campaign finance law (FECA) to close this perceived loophole by creating a new category of expenditures called

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“electioneering communications” that are regulated by federal limits and disclosure provisions.²

Electioneering communications are defined as broadcast, cable, or satellite communications referring to a clearly identified candidate for federal office, airing within sixty days of the candidate’s general election or thirty days of the candidate’s primary election, and targeting the candidate’s electorate. 2 U.S.C. § 434(f). The definition was intended to include “sham issue ads” paid for with prohibited (corporate or labor) funds, i.e., ads that clearly are intended to influence an election but avoid the use of *Buckley*’s magic words, and therefore escape regulation. 2 U.S.C. § 441b. See Potter and Jowers, at 56.

The Supreme Court upheld the electioneering communications provision against constitutional challenge in *McConnell v. FEC*, 540 U.S. 93 (2003).³ The Court indicated that, unlike the language that had been at issue in *Buckley*, the electioneering communications law was not overly broad or vague. The Court stated that “[I]n narrowly reading the FECA provisions in *Buckley* to avoid problems of vagueness and over breadth, we nowhere suggested that a statute that was neither vague nor overbroad would be required to toe the same express advocacy line.” 540 U.S. at 192. In supporting the governmental interest justifying the electioneering communications provision, the Court observed that the statute survives constitutional scrutiny in part because “*Buckley*’s magic words requirement is functionally meaningless.” 540 U.S. at 689.

McConnell related to an assessment by the Court of BCRA’s recently enacted electioneering communications provision, however, which finds no counterpart in the Massachusetts campaign finance law. The discussion that follows, in Part III, considers the extent to which the definition of “express advocacy” supplied by federal courts can be adopted in Massachusetts.

III. Application of the “express advocacy” definition within the context of the Massachusetts campaign finance law

The Massachusetts campaign finance law contains, in several places, language similar to the language in the 1975 federal law that the Supreme Court found vague and overbroad in *Buckley* and therefore subject to constitutional challenge.

For example, Section 1 of Chapter 55 defines “expenditure” to include money or other things of value spent “for the purpose of influencing the nomination or election” of a candidate. Financial activities that meet the definition of “expenditure” in Section 1 are subject to the limits and disclosure provisions of the statute. In addition, in accordance with Section 1, a group or organization that raises funds and makes expenditures to support or oppose a candidate is subject to the disclosure and other requirements that apply to political committees.

² In general, federal rules require that electioneering communications relating to federal candidates be financed using funds from sources permissible under the federal campaign finance law (e.g., such communications may not be financed by corporations or unions). Once payments exceed \$10,000, the disbursements and the sources of the funds used must be disclosed within 24 hours. See 11 CFR 100.29 and 11 CFR 104.20, and the Federal Election Commission brochure on electioneering communications (<http://www.fec.gov/pages/brochures/electioneering.shtml>).

³ However, on January 23, 2006, the Supreme Court, in *Wisconsin Right to Life v. FEC* (04-1581), remanded a challenge to the application of the electioneering communication provision to the District Court, stating, in a short per curiam decision, that in upholding the electioneering communication provision “against facial challenge” in *McConnell*, the Court “did not purport to resolve future as-applied challenges.” *Wisconsin Right to Life* demonstrates that this is a developing area of the law and that further guidance will be needed in the future.

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In addition, where a communication contains express advocacy, funds derived from business corporations may not be used to finance the communication. See Section 8, which states that business corporations may not "directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party." A business corporation (or an organization that receives corporate funds into its general treasury) may, however, pay for a non-coordinated communication that contains only issue advocacy without being regulated by the Massachusetts campaign finance law. Finally, if an organization or group makes expenditures *and raises funds* for the purpose of paying for a communication that contains express advocacy, the organization or group would be required to register as a political committee and disclosure would be required of the organization's financial activity. See M.G.L. c. 55, § 1 and IB-88-01.

Because the language in Sections 1 and 8 is similar to the language described as vague and overbroad in *Buckley*, the "express advocacy" qualification must be read into both sections. The Massachusetts campaign finance law does not provide any guidance, however, regarding the definition of that term, but we may appropriately refer to the meaning supplied by federal court decisions interpreting similar statutes. See, e.g., *Cyran v. Ware*, 413 Mass. 452, 470 (1992).

Although communications that would be defined as "electioneering communications" in the context of federal law are becoming increasingly evident in Massachusetts elections, the Massachusetts legislature, as of the date of this bulletin, has not adopted an electioneering communications provision.⁴ Therefore, in comparison to federal law, Massachusetts law has a vague definition of expenditures, including expenditures that might, in the federal context, be subject to regulation as electioneering communications. This means that there is a much greater degree of ambiguity regarding whether such communications, in connection with Massachusetts elections, involve the making of expenditures within the scope of the Massachusetts campaign finance law.

After *Buckley* was decided, the Massachusetts campaign finance law was amended to include a provision, M.G.L. c. 55, § 18A, which regulates independent expenditures.⁵ The legislature, tracking language in *Buckley*, drafted Section 18A to regulate express advocacy made independently of a candidate or the candidate's committee. Since there is no definition in Chapter 55, however, regarding the meaning of "express advocacy," we must look to *Buckley*, *MCFL*, and other federal decisions construing the term for guidance.

Based on the analysis in *Buckley*, *MCFL* and other federal court opinions, for a communication to contain "express advocacy" and be regulated as an expenditure, it must contain

⁴ Other states (e.g., California, Connecticut, Florida, Illinois, North Carolina, Ohio, Vermont and Washington) have, however, enacted such statutes.

⁵ Section 18A requires the filing of a report disclosing independent expenditures made by any "individual, group or association not defined as a political committee" that "expressly advocate" the election or defeat of a clearly identified candidate or candidates within seven days of any such expenditure exceeding \$100 during a calendar year. The statute defines an "independent expenditure" as an expenditure "made without cooperation or consultation with any candidate, or a nonelected political committee organized on behalf of a candidate, or any agent of a candidate and which is not made in concert with, or at the request or suggestion of, any candidate, or any nonelected political committee organized on behalf of a candidate or agent of such candidate." Business corporations may not make independent expenditures. See M.G.L. c. 55, § 8.

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one of the following: (1) explicit words that urge the nomination, election or defeat of the candidate, such as "vote for," "elect," "support," "cast your ballot for," "Smith for Senate," "vote against," "defeat," or "reject" or synonymous words, such as "unseat," (2) words that urge other electoral action, such as words asking viewers or readers to campaign for or contribute to, the candidate, (3) words, symbols or graphic representations that relate to the candidate's nomination or election (e.g., "vote," "election," or "candidate") if in the context of the entire communication, the words (as in the *Christian Coalition* case) exhort the reader/viewer/listener to take action to support the nomination, election or defeat of the candidate, or (4) a symbol or other graphic representation explicitly supporting or opposing the candidate if combined with a word or symbol relating to the nomination or election of the candidate, e.g., the candidate's name with an "x" drawn through it combined with a reference to the date of the election, or a copy of the ballot with only one candidate's name checked.

Where an organization or individual makes an expenditure containing express advocacy in coordination or consultation with a candidate or the candidate's committee, the organization or individual has made an in-kind contribution to the candidate. In-kind contributions are subject to the limits and disclosure requirements of the campaign finance law. In addition, as discussed in Part IV, coordinated communications that do not contain express advocacy may also, in certain instances, be subject to the campaign finance law.

IV. Coordination of communications that do not contain express advocacy

In striking down limits on independent expenditures, the Court, in *Buckley*, seemed to recognize that money spent on communications that are "coordinated" with a candidate or his campaign or agents may be considered an in-kind contribution, even in the absence of express advocacy. Specifically, the Court compared the federal statutory limit on independent expenditures in Section 608(e)(1) with the separate limit, in Section 608(c)(2)(B), on expenditures "on behalf of" a candidate. The Court stated that the limit on independent expenditures, which it found unconstitutional under the First Amendment, applied *only* to independent expenditures for express advocacy, but in contrast, Section 608(c)(2)(B), applied to "all expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate as contributions subject to the limitations set forth in § 608(b)." ⁶ See *Buckley*, 424 U.S. at 47 (fn. 53). Therefore, *Buckley* reflects an understanding that expenditures that are so "coordinated" with a campaign that they may not be considered independent expenditures may be treated as in-kind contributions to a candidate.⁷ The Court did not, however, distinguish coordinated express advocacy from coordinated issue advocacy or define the extent of coordination that would be sufficient to cause an expenditure to be considered a contribution.

In *Clifton v. Federal Election Commission*, 114 F.3d 1309 (1997), however, the First Circuit Court of Appeals considered the extent to which federal regulations governing coordination are permissible. In *Clifton*, the Court assessed the constitutionality of the FEC's regulations⁸ restricting corporate contacts with candidates or candidate agents with respect to voter guides and voter

⁶ Section 608(b) contained the limits on contributions from individuals and committees to candidates. See *Buckley*, 424 U.S. at 13 (fn. 12).

⁷ Tracking the language in *Buckley*, federal law currently treats coordinated expenditures as contributions. See 2 U.S.C. § 441 a(a)(7)(B)(i), which states that "expenditures made by any person in cooperation, consultation, concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate."

⁸ 11 C.F.R. § 114.4(c)(4) and (5).

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records, and determined that the regulations were invalid, in part because they banned *all* oral communication between corporations involved in publishing voter guides and candidates. The court stated that to be subject to regulation, there must be "some level of collaboration beyond a mere inquiry as to the position taken by a candidate on an issue." *Id.* What level of "coordination" might be sufficient to find an in-kind contribution was not resolved, however, in *Clifton*.

The question of whether coordinated issue advocacy may be regulated was more squarely addressed in *Christian Coalition*, in which the District Court for the District of Columbia found that coordinated issue advocacy was subject to campaign finance regulation, but "the standard for coordination must be restrictive, limiting the universe of cases triggering potential enforcement actions to those situations in which coordination is extensive enough to make the potential for corruption through legislative *quid pro quo* palpable without chilling protected contact between candidates and corporations and unions." 52 F. Supp. 2d at 86-91. The court tried to strike a balance between the position of the Coalition that only coordinated express advocacy can be regulated and the position of the FEC that any consultation about the candidate's plans, projects or needs renders subsequent expenditures "coordinated" contributions and therefore in-kind contributions. 52 F. Supp. 2d at 92.

In *Christian Coalition*, the court stated that, based on *Buckley*, "expressive coordinated expenditures" have the status of in-kind contributions. "Expressive" coordinated expenditures are expenditures that relate to a candidate's nomination or election that, unlike expenditures for other non-communicative materials, might be paid for by a supporter of a candidate. 52 F. Supp. 2d at 85 (fn. 45). Because expressive expenditures raise First Amendment concerns, they can be regulated only if sufficiently coordinated with the candidate or his committee.

Applying the analysis used in *Christian Coalition*, whether a coordinated communication can be treated as an in-kind communication depends on consideration of a number of factors, including the timing and content of a communication. If requested or suggested by a candidate or the candidate's committee, a communication that, given its timing or content, relates to an election would be considered an in-kind contribution. Even if the communication is not aired or published at the request or suggestion of a candidate or committee, however, a communication may still be considered an in-kind contribution if it is coordinated with the candidate or the candidate's committee.

In the *Christian Coalition* case, the court fashioned the following framework for determining whether an expressive communication relating to an election is "coordinated," and therefore an in-kind contribution:

The fact that the candidate has requested or suggested that a spender engage in certain speech indicates that the speech is valuable to the candidate, giving such expenditures sufficient contribution-like qualities to fall within the Act's prohibition on contributions.

In the absence of a request or suggestion from the campaign, an expressive expenditure becomes "coordinated" where the candidate or her agents can exercise control over, or where there has been substantial discussion or negotiation between the campaign and the spender over, a communication's (1) contents; (2) timing; (3) location, mode, or intended audience (e.g., choice between newspaper or radio advertisement); or (4) "volume" (e.g., number of

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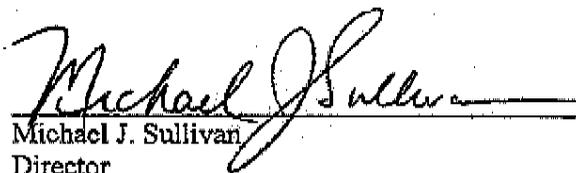
Page 9

copies of printed materials or frequency of media spots). Substantial discussion or negotiation is such that the candidate and the spender emerge as partners or joint venturers in the expressive expenditure, but the candidate and spender need not be equal partners. (52 F. Supp. 2d at 92).

We find this articulation persuasive and consistent with *Buckley*. Where a communication that relates to a candidate's nomination or election is "coordinated," as that term is defined by the *Christian Coalition* case, this office would consider the coordinated communication to involve the receipt of an in-kind contribution. As such, payments associated with the communication would be subject to the disclosure requirements and limits of the Massachusetts campaign finance law.

Establishing sufficient coordination to trigger regulation requires demonstration of "some to-and-fro" between an organization or individual making an expenditure and a campaign. See *Christian Coalition*, 52 F. Supp. 2d at 93 (stating that the conversations relating to a voter guide must "go well beyond inquiry into negotiation"). For example, coordination of expenditures for "get-out-the-vote telephone exhortations must rise to the level of discussion or negotiation over (1) the contents of the script; (2) when the calls are to be made; (3) the 'location' or audience, including discussion of which databases are to be used; or (4) the number of people to be called." *Id.* A similar analysis would be applied to other types of coordinated communications. Each instance of possible coordination must be assessed, however, on a case-by-case basis, and we strongly encourage individuals or entities that are considering such expenditures to meet first with OCPF to ensure compliance with the campaign finance law.

We encourage candidates, committees and interested individuals or groups to contact OCPF for guidance prior to the publication or broadcast of messages that might be considered to either contain express advocacy or coordinated communications subject to this Bulletin.


Michael J. Sullivan
Director

ATTACHMENT B

RGA Maine Pac
"New Solutions" Final
TV | 30

(Copyright RGA Maine PAC, 2006.)

VO: New solutions to change
 Maine's direction take experience.

Volunteering for military service.¹

A public school teacher for twenty-
 five years.²

Seeking solutions as a State
 Senator.³

Chandler Woodcock's experience
 means new solutions for Maine's
 future.

A plan to lower taxes.⁴

¹ "Mr. Woodcock enlisted in the Army
 and served in Vietnam - MPBN -
www.mainepublicradio.org

² "... (Woodcock) served more than
 twenty-five years as a public high school
 teacher..." - MPBN -

www.mainepublicradio.org

³ "... Woodcock, who served as assistant
 Republican leader in the Senate..." -
Governing.com - 2006 Governors
Election Guide

⁴ "He (Woodcock) called for lowering
 the state's top income tax rate." -
Morning Sentinel - 8/18/06, Portland
Press Herald, 8/18/06, Kennebec
Journal, 8/18/06 - "Woodcock has
promised to lower taxes..." -
Governing.com - www.governing.com

To cap out of control state
 government spending.⁵

A promise to create a more
 affordable health care program.⁶

Tell Chandler Woodcock you
 support new solutions to change
 Maine's direction.

Graphic Disclaimer: Not Paid for or
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 for by the RGA-Maine PAC.
 1747 Pennsylvania Ave. NW
 Washington DC 20006

⁵ "Woodcock said government spending
 is out of control..." - "He said the
 spending taxpayer bill of rights
 referendum which would cap
 government spending and make it harder
 to raise taxes, will force government to
 prioritize..." - Portland Press Herald -
8/18/06, Morning Sentinel, 8/18/06,
Kennebec Journal, 8/18/06, -
 (Woodcock is) "speaking for less
 government." - Republican Joseph
 Kumiszczka, Cumberland, ME -
Kennebec Journal, 8/18/06

⁶ "(He) has promised to lower taxes and
 create a more balanced and affordable
 health care program." - Governing.com
 - www.governing.com

ATTACHMENT C

RGA Maine Pac
"Tax Crunch" V3
TV | 30

(Copyright RGA Maine PAC, 2006.)

VO: The nation's highest tax burden for ten consecutive years.¹

The eighth highest gas tax.²

A four hundred and twenty five million dollar structural budget gap.³

The Federal Reserve Bank (of Boston) says Maine was one of only two states in the country to experience an economic decline in 2005.⁴

Maine needs new solutions.

Chandler Woodcock's plan:

Cut unfair income taxes.⁵

Reduce Maine's property tax burden.⁶

Cap government spending.⁷

Tell Chandler Woodcock—you support new solutions to change Maine's direction.

Graphic:
 201-287-1505

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¹ The Tax Foundation – Maine's State & Local Tax Burden

² The Tax Foundation – The Facts on Maine's Tax Climate

³ Maine State Legislature, Office of Fiscal and Program Review, Structural Gap Estimate, March 2006

⁴ "In fact, Maine was the only state in the country to see a decline over this period, except for Louisiana." – In the Shadows of the National Recovery: An Overview of New England's Economic Performance in 2005 – Federal Reserve Bank of Boston

⁵ "He called for lowering the state's top income tax rate..." – Portland Press Herald – 8/18/06, Morning Sentinel, 8/18/06, Kennebeck Journal, 8/18/06

⁶ "Reduce Maine's over reliance on property taxes" – Woodcock checked "yes" on AARP questionnaire – www.aarp.org

⁷ "He said the pending "taxpayer bill of rights" referendum, which would cap government spending will force government to make priorities" – Portland Press Herald – 8/18/06, Morning Sentinel, 8/18/06, Kennebeck Journal, 8/18/06.

CHAIRMAN
Governor Mitt Romney
Commonwealth of Massachusetts



VICE CHAIRMAN
Governor Sonny Perdue
State of Georgia

REPUBLICAN GOVERNORS ASSOCIATION

September 14, 2006

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

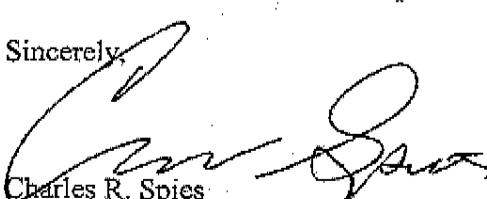
VIA E-MAIL: Jonathan.Wayne@maine.gov

Dear Mr. Wayne:

On behalf of the RGA, we wish to clarify one additional point regarding the LaMarche inquiry to the Commission. In the LaMarche letter of September 1, 2006, the assertion is made that the "primary mission" of the RGA is "to assist in the election of Republican gubernatorial candidates and the reelection of Republican Governors." That statement is incorrect. Although we do not believe that the stated mission of an organization is relevant to the Commission's legal analysis of whether an advertisement expressly advocates the election or defeat of a candidate, it is nonetheless important to correct the record and note that the RGA in fact has a three part mission, of which the LaMarche inquiry truncated and only submitted to you one part. The other two parts are: "To utilize the talent, knowledge, creativity of the governors to effectively debate and shape public policy on issues affecting the states" and "To enable Republican Governors to express, develop and promote the philosophy of the Republican party at the state and local levels nationwide." Attached is the RGA's Mission Statement from our website, www.rga.org. It is curious, to say the least, that the LaMarche campaign left off the parts of the RGA's Mission Statement that deal with the organization's policy and issue focus.

Thank you in advance for your consideration of our responses. Please do not hesitate to contact me at (202) 662-4156 if there is any additional information that I can provide to you.

Sincerely,



Charles R. Spies
General Counsel

Enclosure



Republican Governors Association

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About Republican Governors Association

Mission Statement

The RGA mission is as follows:

- 1) To assist in the election of Republican gubernatorial candidates and the reelection of incumbent Republican Governors.
- 2) To utilize the talent, knowledge, creativity of the governors to effectively debate and shape public policy on issues affecting the states; and
- 3) To enable Republican Governors to express, develop and promote the philosophy of the Republican party at the state and local levels nationwide.



◊ RGA Ev

Nevada Gov
Forum
9.21.2006

RGA Great P
Pheasant Hu
9.25.2006

New York R
9.28.2006



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BERNIER & STEVENS**

ATTORNEYS AT LAW

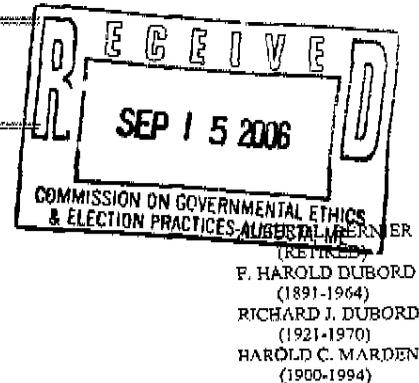
44 ELM STREET
P.O. BOX 708
WATERVILLE, ME 04903-0708

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

September 14, 2006

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)



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

RE: Complaint filed by Lamarche for Governor campaign

Dear Jonathan:

I am writing on behalf of Woodcock for Governor in response to the complaint filed by the Lamarche for Governor campaign concerning television advertisements being run by the Republican Governors Association ("RGA"). The allegation that Senator Woodcock or his campaign cooperated with the RGA in the production of the RGA's ad is without merit and is unsupported by any evidence. It is disappointing that one of our opponents would make an allegation which directly attacks Senator Woodcock's integrity without any evidence to substantiate the claim.

Senator Woodcock takes very seriously his obligations as a Clean Elections candidate. He has insisted from the start that everyone involved in the campaign understand the limitations that he has agreed to abide by and has reiterated to me on several occasions the importance he places on compliance with the requirements of the Clean Elections Act. To date, I have seen nothing to indicate that Senator Woodcock or his campaign has not fully complied with Maine law and Commission rules and guidelines.

Neither Senator Woodcock nor anyone associated with the campaign played any role in the production of the RGA ads. We first became aware of the ads when they appeared on television. The video featured in the ad was obtained at public events that Senator Woodcock attended. Senator Woodcock's public schedule appears on the campaign website. A person with a video camera appeared at several public events and recorded Senator Woodcock. When the person was approached by people associated with the campaign, the cameraman would not identify himself. We had no idea for what purpose the video would be used or what person or entity employed the cameraman, but because all the video was taken in public, the campaign could not interfere with the taping.

Jonathan Wayne, Executive Director
September 14, 2006
Page 2

It should be noted that the cameraman apparently employed by the RGA is not the only person who has been following Senator Woodcock on the campaign trail. The Maine Democrat Party has hired a person who has identified herself as Senator Woodcock's "tracker" who has been recording Senator Woodcock at public events.

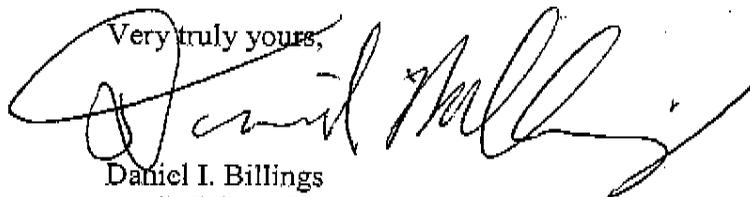
The photo of Senator Woodcock sitting in a military vehicle in Vietnam was not provided to the RGA by Senator Woodcock or anyone involved in the campaign. However, the image would be easy for anyone to obtain because it appears on the campaign's website and has been featured in over 200,000 pieces of campaign literature. The suggestion by the Lamarche campaign that the use of the photo in the ad is evidence of wrongdoing is ridiculous.

Though the Woodcock campaign was not involved in the production of the RGA ads, I have seen the ads and do not believe the ads contain express advocacy. The standard suggested by the Lamarche campaign is not consistent with Maine law. If the Commission determines that the RGA ads do constitute express advocacy, I request that the Commission review the television ads produced by the Maine Democrat Party. If the RGA ads trigger matching funds, the Democrats' ads should as well.

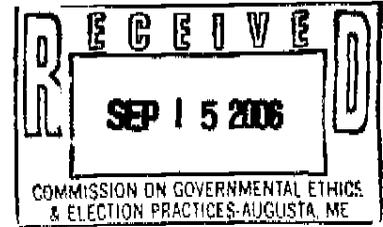
Though I personally believe that the law should be changed so that such ads would trigger matching funds for Clean Elections candidates, the Legislature has made the policy decision that ads which do not include express advocacy will not trigger matching funds until 21 days before an election. In 2005, the Legislature considered a bill submitted by the Commission which contained a provision which would have expanded that period to 30 days before an election. I testified in favor of this change before the Legal & Veterans Affairs Committee. Unfortunately, the Committee made the decision to remove the provision from the bill. This policy decision by the Legislature must be respected by the Commission.

I plan to be in attendance at the Commission's September 22nd meeting and will be glad to answer any questions that Commission members or staff may have at that time.

Very truly yours,



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



**BEFORE THE COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES**

**AFFIDAVIT OF JEFF TOORISH IN SUPPORT OF LAMARCHE FOR GOVERNOR
INQUIRY INTO RGA INDEPENDENT EXPENDITURE**

STATE OF MAINE)
) ss:
County of Cumberland)

I, Jeff Toorish, being first duly sworn, say:

1. I viewed the television commercial paid for and produced by the Republican Governors Association (RGA), calling for Maine people to "Tell Chandler Woodcock" what they think on commercial television in Maine.

2. I have been involved in the production of numerous political commercials and in many other forms of political news and advertising. I have decades of experience in television production, including work as a producer, reporter, on-air talent and consultant. I have worked on electronic news gathering teams, documentaries, commercials and feature film type productions. During my more than thirty years of experience, I have been involved in just about every type of production there is. I have worked as a producer and reporter at two Maine TV stations, WABI in Bangor and WMTW in Portland/Auburn. I was also the News Anchor and political reporter at WMTW. I have produced video and advertisements for trade groups such as the Maine Pulp & Paper Association; political candidates; and non-profit organizations such as the New England Forestry Foundation.

3. I am considered by my peers to be an expert in the field of political journalism and political advertising and I have won numerous television awards for journalism from the Associated Press, Maine Association of Broadcasters, Montana Association of Broadcasters and others. I have also won three Tellie® awards for TV advertising as well as a Pollie® award for political advertising.

4. Having viewed the RGA ad, I believe the subject of the ad, candidate Chandler Woodcock, was posing for the video camera. To attain the quality of video shown in the ad, Mr. Woodcock would have had to spend an inordinate amount of time “chatting” with the people shown in the ad, more time than a candidate typically spends with potential voters at events of the type being filmed.

5. Having spent many years as a political broadcast journalist, I can attest that politicians will speak longer and strike what they believe are positive poses when they know they are being filmed. I believe that when the video crew showed up, Mr. Woodcock either knew or surmised who they were and what they were there for. As such, he began posturing for them.

6. The clearest way to determine whether or not Mr. Woodcock was cooperating with the filming of him would be for the Commission to subpoena the raw footage from the shoots. They would give a clear portrait of Mr. Woodcock’s actions during the videotaping.

7. It is unheard of for a production company or advertising agency to not archive the raw footage.

8. The ad also shows a vintage photo of Mr. Woodcock sitting in a jeep wearing a military uniform. This photo is available on Mr. Woodcock’s website, however, the quality and size of the photo on the website raises questions about its suitability for broadcast. Specifically, the size of the photo on the website may not be of sufficient resolution (from the web) to be

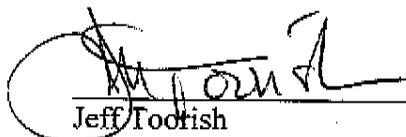
usable in a broadcast video. This raises the question of whether the Woodcock campaign supplied the photo directly to the RGA.

9. In the ad, there appears to be video of Mr. Woodcock walking down a hallway and standing in a classroom. I believe this to be video of a stand-in or actor pretending to be Mr. Woodcock. If, however, it is Mr. Woodcock, there would be no question that Mr. Woodcock was not merely cooperating but was actively involved in the execution of the video production.

10. There is video from at least two locations in the commercial. That is clear from the change in clothes worn by the candidate. This leads me to believe that Mr. Woodcock was aware of, and cooperated with, the filming of the ad.

11. It is my professional and expert opinion that the RGA television advertisement in question, based on the foregoing, involved cooperation and/or consultation between the RGA and Mr. Woodcock and/or his campaign.

DATED this 2nd day of September, 2006.


Jeff Toofish

Subscribed and sworn to before me this 13th day of Sept, 2006.


Notary Public for Maine

My Commission Expires: May 18 2010

MEMORANDUM

TO: Jonathan Wayne, Director, Commission on Governmental Ethics and Election Practices

FR: Blair Bobier, Policy Director, LaMarche for Governor

RE: Republican Governors Association Advertising for Chandler Woodcock

DT: September 14, 2006

Introduction

This memorandum is submitted in support of the Commission's inquiry into advertising by the Republican Governors Association (RGA) on behalf of Republican gubernatorial candidate, Chandler Woodcock. Although the inquiry encompasses two issues—whether the Woodcock campaign cooperated with the RGA and whether the advertising constitutes “express advocacy”—this memorandum considers only the second issue.

Issue

The issue presented by the RGA ads is whether a reasonable person viewing them would consider them to be advocating the election of Chandler Woodcock for governor.

Facts

The RGA, whose primary mission is “to assist in the election of Republican gubernatorial candidates,” began airing television commercials in Maine in support of Chandler Woodcock's candidacy in late August of this year. According to various published reports, the RGA spent approximately \$200,000 on just the first of the two ads. Both ads feature Chandler Woodcock exclusively. No other candidate for any political office is depicted. The visual component of the first ad shows Mr. Woodcock in an historical photograph and in various locations, including talking to citizens in a manner associated with campaigning. It is shot in the style of standard political ads and the voiceover is that of political advertising. Both ads are being aired in September, the traditional start of the campaign season, within 67 days of the November 7 election.

The lead sentence of a news story in the September 1 edition of the *Lewiston Sun Journal* said the ad is being shown “on behalf of Republican gubernatorial candidate Chandler Woodcock.” The RGA featured this portion of the *Sun Journal* article on their website at <http://www.rga.org/News/Rcad.aspx?ID=302> under the headline of “National Groups Flex Their Spending Muscles in Maine's Gubernatorial Election.”

Applicable Law

The Commission must decide whether the ads in question “expressly advocate” for the election of Chandler Woodcock pursuant to the Commission’s rules. The definition of “expressly advocate” is found in Chapter 1, Section 10 (2)(B):

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

Analysis

The governing definition of expressly advocate contains two distinct clauses set apart by the word “or.” The first clause considers whether specific phrases are used in conjunction with advertising related to a candidate. The second of the two ads, which includes the word “governor” in connection with Mr. Woodcock, as well as a campaign slogan, should be considered express advocacy pursuant to the first clause of the definition. However, contrary to some popular misconceptions, the analysis does not end there.

If an ad does not contain any of the listed phrases, or similar ones, the second clause of the definition clearly *requires* the Commission to consider the context of the ads, and whether they “can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s).”

There is no question that Mr. Woodcock is the one and only clearly identified candidate in both ads. The analysis then must turn to the context. The ads exclusively feature a Republican gubernatorial candidate and are being paid for by an organization whose mission is to elect Republican gubernatorial candidates. They are being shown during the election season and are written, filmed and produced in the style of advertising that advocates for the election of a candidate. For all intents and purposes, they are campaign ads.

The news media recognizes that these ads are essentially advocating for Mr. Woodcock’s election as evidenced by the *Sun Journal* article. The RGA recognizes that these ads advocate for Mr. Woodcock’s election because it featured the *Sun Journal* article on their website. As the *Kennebec Journal* queried in an editorial: “Would the Republican Governors’ Association spend an estimated \$200,000 to run this ad if Chandler Woodcock weren’t running for governor? Of course not.” *That* is the context in which these ads must be viewed. These are not “issues” ads. They are clearly not for the

purposes of educating the electorate or for comparing the views of all the candidates for governor.

Since the Commission's definition of express advocacy considers the "reasonable meaning" of the ads, the ads should be viewed through the lens of a reasonable person. This means the ads shouldn't be viewed through the eyes of party officials, government employees, judges or lawyers. If a reasonable person viewed these ads and was asked what they were about, what would that person's response be? The answer is clear.

Conclusion

The RGA ads unmistakably advocate for the election of Chandler Woodcock.

Verrill Dana^{LLP}

Attorneys at Law

MICHAEL V. SAXL
OF COUNSEL
msaxl@verrilldana.com

45 MEMORIAL CIRCLE
AUGUSTA, MAINE 04332-5307
207-623-3889 • FAX 207-622-3117
www.verrilldana.com

September 15, 2006

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

Dear Mr. Wayne:

Please accept this letter on behalf of the Committee to Re-elect Governor Baldacci as a formal complaint and a request that the Commission determine that the Republican Governors Association Maine PAC's recent advertisement (the "RGA Ad") was an independent expenditure expressly advocating the election of Chandler Woodcock for Governor. The tagline "Woodcock- Governor" in the context of the advertisement qualifies as express advocacy under Maine law and Commission rules. Therefore, the RGA Maine PAC violated Maine law and Commission rules by failing to report the independent expenditure to the Commission.

Independent Expenditure

Maine law requires that all independent expenditures in excess of \$100 made by a political action committee which expressly advocate the election or defeat of a candidate must be reported to the Commission. 21-A M.R.S.A. § 1019-B. If the independent expenditures made by a PAC totals in excess of \$250 per candidate per election, then the expenditures must be reported to the Commission within 24 hours. Commission Rules, Chapter 1, Section 10(3)(B).

Because the cost of the RGA Ad obviously exceeded \$250, and because the RGA Ad constituted express advocacy, RGA Maine PAC was required to report the expenditure within 24 hours.

Express Advocacy

Maine law and Commission rules define express advocacy as:

...any communication that uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or *communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly*

September 15, 2006

Page 2

identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!".
Commission Rules, Chapter 1, Section 10(2)(B) (emphasis added).

In supporting the clarification and strengthening of "the independent electioneering expenditures in races involving a Maine Clean Elections act candidate" (LD 1196, Summary of legislation), Representative Kevin Glynn said,

This legislation will set a new standard whereby candidates who have ads who (sic) are done on their behalf; those independent expenditures are going to count for matching funds for clean election candidates. Additionally, if you are running as a traditional candidate and one of these ads is done on behalf of a clean elections candidate, the amount of money that you can spend in your election campaign without triggering matching funds will be raised. (Legislative Record – House, May 21, 2003, in support of the Majority Ought to Pass as Amended Report as Amended by Committee amendment "A" (S-205)..

Representative Glynn aptly described the issue we have today. The RGA Ad expressly advocates for the election of Senator Woodcock to Governor, and thereby would disadvantage the other clean elections candidates and traditional candidates if additional clean elections funds are not released along with a commensurate increase in the amount that the traditionally funded candidates can spend.

The RGA Ad is clearly electioneering. There can be no other logical conclusion from viewing the advertisement than that the RGA wants the viewer to vote for Senator Woodcock. Taken "in context", the ad is clearly stating the office Senator Woodcock is seeking as well as reasons to vote for him. The ad's clearly implied message is, "Vote for Woodcock." As a result, this advertisement is express advocacy. The construction of the advertisement goes so far as to actually pull identical language from Senator Woodcock's own advertisement for his election with the tagline "Woodcock – Governor). See the Woodcock advertisement at www.woodcockforgovernor.com/html/meet_chandler.php . Given the content and the construction of the advertisement, the viewer is left with no reasonable conclusion than that the RGA Ad expressly advocates the election of Senator Woodcock.

The legislature themselves left little doubt that they wanted such independent expenditures to be considered express advocacy. The passage of LD 1196 established that all independent expenditures within 21 days of the election are presumed to be express advocacy. It gave 48 hours for the third-party payor to rebut that presumption. (21-A MRSA sec.1019-B) In so doing the legislature effectively said that when third parties participate in electioneering that the Clean Elections Act should, to use Representative Glynn's words, "level the playing field."
(Legislative Record – House, May 21, 2003).

September 15, 2006

Page 3

Matching Funds

The timely reporting of independent expenditures in support of a Maine Clean Elections Act candidate is critical because it affects the timing of any release of matching funds to the other Maine Clean Elections Act qualified candidates. Matching funds are clearly defined under Maine law as follows:

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.

21-A M.R.S.A. § 1125(9) (emphasis added).

Under this law, matching funds in the amount equal to the independent expenditure made by the Republican Governors Association in support of Senator Woodcock should serve to trigger matching funds equal to the amount spent airing the RGA Ad for the other candidates qualified under Maine's Clean Elections Act. In addition, this expenditure should increase the amount the Committee to Re-elect Governor Baldacci can spend prior to triggering matching funds for Senator Woodcock's campaign.

Please let me know if you are in need of additional information as you consider this important matter. Many thanks in advance for your attention to this matter.

Sincerely,

Michael V. Saxl

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: September 15, 2006

Re: Amy McKenna's Complaint Against House Democratic Campaign Committee

Amy McKenna is the Republican candidate for the Maine House of Representatives for District 63, which includes part of Brunswick. She became aware that a flyer was being distributed in her community on behalf of Charlie Priest, the Democratic candidate. The flyer states that it was paid for by the House Democratic Campaign Committee (HDCC), which is a political action committee (PAC). Paul Brunetti, the Caucus Director for the House Democratic candidates, responded by letter on behalf of the PAC.

Coordinated Expenditure

Mr. Priest is participating in the Maine Clean Election Act candidate (MCEA). Ms. McKenna asks whether it is proper for a PAC to support a MCEA candidate.

A PAC such as the HDCC may make expenditures to support a candidate, provided that they are made independently of the candidate. If a PAC were to support a candidate by providing goods and services directly to the candidate or to make expenditures in cooperation or consultation with the candidate, those activities would constitute a contribution to the candidate. This is prohibited for Maine Clean Election Act candidates. (21-A M.R.S.A. §§1012(2)(A)(1), 1015(5) and 1125(6))

The HDCC states that the flyer was "done completely independent[ly] of the candidate." The staff agrees with Ms. McKenna that it can be difficult to determine whether a PAC has cooperated with a candidate in making an expenditure. Nevertheless, the staff is prepared to accept the explanation offered by Mr. Brunetti. There is no evidence presented that the PAC acted in cooperation or consultation with the candidate or his campaign. The Commission members may wish to inquire further about any coordination at the September 22 meeting.

Independent Expenditure Reporting

The House Democratic Campaign Committee states that fewer than 1,000 copies of the flyers were printed and the cost was less than \$8. The flyer included a disclosure statement that it was "Printed In-House With Volunteer Labor." Mr. Brunetti has not

indicated whether the flyer was distributed by volunteers, or by paid employees of the party. Presuming that the flyer was distributed by party volunteers wishing to help the candidate, there would be no labor costs attributed to the communication.

The literature expressly advocates the election of Mr. Priest to the Legislature. It thus qualifies as an independent expenditure under 21-A M.R.S.A. §1019-B(1)(A). The HDCC is not required to file an independent expenditure report for the \$8 cost, however, because the amount is under the \$100 threshold for reporting. Since no independent expenditure report has been filed or is required, Ms. McKenna is not entitled to matching funds under the Maine Clean Election Act.

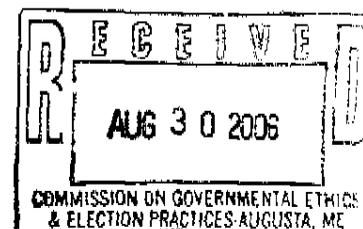
“Paid for” Disclosure

The flyer states that it was: “Paid for and Authorized by HDCC. Steve Vogt, Treasurer/PO Box 2021, Augusta, ME 04338/Printed In-House With Volunteer Labor.” This disclosure does not comply with 21-A M.R.S.A. §1014(2) because it does not indicate whether the communication was authorized by the candidate. Instead, the literature states that it was “Paid for and Authorized by” the PAC.

The use of the phrase “Paid for and Authorized By” is language commonly used by candidates in connection with campaign literature that they have designed and financed. It appears that someone associated with the party used this disclosure without realizing it was not compliant for a party committee, and it has been rectified. The staff of the Maine Democratic Party met with the Commission staff earlier this week to go over a number of legal requirements, including the “paid for” disclosure.

Staff Recommendation

The Commission staff recommends that the Commission find the House Democratic Campaign Committee in violation of 21-A M.R.S.A. §1014(2) by failing to include the required disclosure on the flyer it produced in support of Charlie Priest. The Election Law does not authorize the assessment of a penalty for this violation because it was corrected within 10 days after the party received notification of the violation.



August 24, 2006

Sandy Thompson
Candidate Registrar
Maine Ethics Commission
135 State House Station
Augusta, ME 04112

Dear Ms. Thompson,

This letter is in response to Amy McKenna's complaint with the Ethics Commission on August 7 regarding a flyer distributed in support of Charlie Priest.

In response to the 2 issues, this piece was done completely independent of the candidate Charlie Priest. We acknowledge the disclaimer was incomplete because it did not explicitly include the words "Not Authorized by any Candidate or Candidate's Committee." Our intention was not to mislead the public as to who approved or paid for this piece, as a disclaimer is prominently positioned on the piece. As soon as the omission was brought to our attention by Jonathan Wayne the HDCC immediately suspended distribution of this piece.

The HDCC distributed fewer than 1000 of these pieces. As they were printed in-house, the cost to the HDCC PAC was under \$8. As this is under the \$100 reporting requirement, we did not file an independent expenditure report. We will include this expenditure when required on future campaign finance reports.

We apologize for any confusion this piece may have caused. Again, we have altered future disclaimers to fully comply with the rules of the Ethics Commission, and have taken all remaining pieces of literature out of circulation. The HDCC is fully committed to taking any additional steps to rectify this situation.

Sincerely,

Paul Brunetti
Caucus Director

CC: Steve Von Vogt

P.O. Box 2021 • Augusta, Maine 04338
(207)622-1912 x110 • Fax (207)622-2657
house@mainedems.org



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

August 17, 2006

Mr. Stephen Von Vogt, Treasurer
House Democratic Campaign Committee
P.O. Box 15087
Portland, Maine 04112

Dear Mr. Von Vogt:

The Commission received a complaint on August 7, 2006 concerning the literature produced by the House Democratic Campaign Committee (HDCC) in support of Charlie Priest, the House Democratic candidate in District 63 (see attached).

The two issues raised in the complaint are: (1) the literature did not contain the correct disclosure statement required by Section 1014(1) of the Election Law and (2) whether the production of the literature was done in coordination with the candidate *or* independently of the candidate. If it was coordinated with the candidate, the candidate received an in-kind contribution, which is not permissible under the Maine Clean Election Act. If it was done independently of the candidate, the independent expenditure must be reported if the cost was greater than \$100.

The Commission requests that HDCC provide a written response to the two issues identified above. Please include information on the number of pieces produced and the cost.

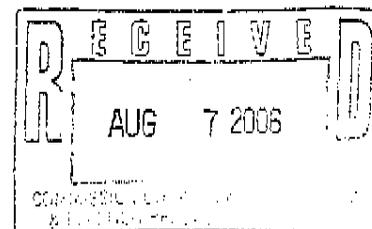
Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Sandy Thompson'.

Sandy Thompson
Candidate Registrar

cc. Ms. Amy McKenna
Martha Demeritt



August 7, 2006

Questions Regarding House Democratic Campaign Committee (HDCC) PAC Literature for Charles Priest.

Does the literature contain proper disclosures?

Sandy Thompson's email of August 4, 2006 states **if the candidate had no knowledge** of the literature, it should disclose that it was: "Not authorized by candidate." The literature stated "paid for and authorized by HDCC" but does not contain the disclosure.

Is it proper for a PAC (HDCC), to support a MCEA candidate for House District 63 with campaign literature when that PAC (HDCC) lists the current incumbent of House District 63 as a primary fund raiser and decision maker for the PAC?

According to public on line filings (March 2006) of HDCC, Representative John Richardson, the current incumbent of House District 63, is listed as a principal officer of HDCC as well as a "primary fund raiser and decision maker" for the PAC. The July 2006 report identifies Richardson as a "primary fund raiser and decision maker" for the PAC.

How does the ethics commission decide if the spending was done "without the candidate's knowledge"? Especially with all the affiliations noted above?

What compensation do I receive if it is determined that the distributed literature was not properly written or paid for? How many copies did the PAC print?

A handwritten signature in cursive script, appearing to read "Amy L. McKernan".

Amy L. McKernan

Vote!

Charlie **PRIEST**

State Legislature

Committed to a Prosperous Brunswick!

- Protecting Consumers, Workers, and Families
- Access to Quality Healthcare for All Mainers
- Affordable Housing
- Preserving our Natural Heritage and Environment
- Providing Opportunity through Education

Experience that Matters!

Charlie Priest is a practicing attorney who lives in Brunswick with his wife, Patricia Ryan. They have two daughters, Claire and Jenny. Charlie represented Brunswick in the Maine Legislature from 1984-1990. He also was elected to the Brunswick Town Council where he served as chair.

Please Vote Tuesday, November 7!

CONTACT CHARLIE PRIEST

Phone: 725-5439

Paid for and Authorized by HDCC, Steve VonVogt, Treasurer
PO Box 2021, Augusta, ME 04338
Printed In-House With Volunteer Labor

Title 21-A, §1012, Definitions

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we do require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication is current to the end of the Second Special Session of the 122nd Legislature, which adjourned July 30, 2005, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

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.

§1012. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 161, §6 (new).]

1. **Clearly identified.** "Clearly identified," with respect to a candidate, means that: [1985, c. 161, §6 (new).]

A. The name of the candidate appears;

[1985, c. 161, §6 (new).]

B. A photograph or drawing of the candidate appears; or

[1985, c. 161, §6 (new).]

C. The identity of the candidate is apparent by unambiguous reference.

[1985, c. 161, §6 (new).]

2. **Contribution.** The term "contribution:" [2005, c. 301, §7 (amd).]

A. Includes:

(1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office or for the purpose of liquidating any campaign deficit of a candidate, 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, express or implied, whether or not legally enforceable, to make a contribution for such purposes;

(3) Funds received by a candidate or a political committee that are transferred to the candidate or committee from another political committee or other source; and

(4) The payment, by any person other than a candidate or a political committee, of compensation for the personal services of other persons that are provided to the candidate or political committee without charge for any such purpose; and

[1995, c. 483, §3 (amd).]

B. Does not include:

(1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;

(2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the individual on behalf of any candidate does not exceed \$100 with respect to any election;

(3) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if the charge to the candidate is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed \$100 with respect to any election;

Title 21-A, §1015, Limitations on contributions and expenditures

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§1015. Limitations on contributions and expenditures

1. Individuals. An individual may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$500 in any election for a gubernatorial candidate or more than \$250 in any election for any other candidate. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse. [1999, c. 729, §2 (amd).]

2. Committees; corporations; associations. A political committee, other committee, corporation or association may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$500 in any election for a gubernatorial candidate or more than \$250 in any election for any other candidate. [1999, c. 729, §2 (amd).]

3. Aggregate contributions. No individual may make contributions to candidates aggregating more than \$25,000 in any calendar year. This limitation does not apply to contributions in support of a candidate by that candidate or his spouse. [1985, c. 161, §6 (new).]

4. Political committees; intermediaries. For the purpose of the limitations imposed by this section, contributions made to any political committee authorized by a candidate to accept contributions on the candidate's behalf are considered to be contributions made to that candidate. [1985, c. 161, §6 (new).]

For the purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate, are considered to be contributions from that person to the candidate. The intermediary or conduit shall report the original source and the intended recipient of the contribution to the commission and to the intended recipient. [1985, c. 161, §6 (new).]

5. Other contributions and expenditures. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate. [1989, c. 504, §§7, 31 (amd).]

The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees or their authorized agents is considered to be a contribution to that candidate. [1989, c. 504, §§7, 31 (amd).]

6. Prohibited expenditures. A candidate, a treasurer, a political committee, a party or party committee, a person required to file a report under this subchapter or their authorized agents may not make any expenditures for liquor to be distributed to or consumed by voters while the polls are open on election day. [1991, c. 839, §11 (amd); §34 (aff).]

7. Voluntary limitations on political expenditures. A candidate may voluntarily agree to limit the total expenditures made on behalf of that candidate's campaign as specified in section 1013-A, subsection 1, paragraph C and subsections 8 and 9. [1995, c. 384, §2 (new).]

8. Political expenditure limitation amounts. Total expenditures in any election for legislative office by a candidate who voluntarily agrees to limit campaign expenditures as provided in subsection 7 are as follows: [1999, c. 729, §3 (amd).]

A. For State Senator, \$25,000;

[1999, c. 729, §3 (amd).]

Title 21-A, §1014, Publication or distribution of political statements

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§1014. Publication or distribution of political statements

1. Authorized by candidate. Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. The following forms of political communication do not require the name and address of the person who made or authorized the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section. [2005, c. 301, §10 (amd).]

2. Not authorized by candidate. If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication. If the communication is in written form, the communication must contain at the bottom of the communication in print that is no smaller in size than 10-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE." [2003, c. 510, Pt. F, §1 (amd); c. 599, §15 (aff).]

2-A. Communication. If a communication that names or depicts a clearly identified candidate is disseminated during the 21 days before an election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate. [2005, c. 301, §11 (new).]

3. Broadcasting prohibited without disclosure. No person operating a broadcasting station within this State may broadcast any communication, as described in subsections 1 and 2, without an oral or written visual announcement of the name of the person who made or financed the expenditure for the communication. [1983, c. 161, §6 (new).]

3-A. In-kind contributions of printed materials. A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a cause to be voted upon at referendum. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include the name or title of that candidate, political committee or political action committee as the authorizing agent for the printing and distribution of the in-kind contribution. [1991, c. 839, §9 (new).]

The use or distribution of in-kind printed materials contributed to a candidate, political committee or political action committee must be reported as an expenditure on the campaign finance report of that candidate, political committee or political action committee. [1991, c. 839, §9 (new).]

3-B. Newspapers. A newspaper may not publish a communication described in subsection 1 or 2 without including the disclosure required by this section. For purposes of this subsection, "newspaper" includes any printed material intended for general circulation or to be read by the general public. When necessary, a newspaper may seek the advice of the commission regarding whether or not the communication requires the disclosure. [2005, c. 308, §1 (new).]

Title 21-A, §1014, Publication or distribution of political statements

* 4. **Enforcement.** An expenditure, communication or broadcast made within 10 days before the election to which it relates that results in a violation of this section may result in a civil forfeiture of no more than \$200. An expenditure, communication or broadcast made more than 10 days before the election that results in a violation of this section may result in a civil forfeiture of no more than \$100 if the violation is not corrected within 10 days after the candidate or other person who committed the violation receives notification of the violation from the commission. Enforcement and collection procedures must be in accordance with section 1020-A. [1995, c. 483, §6 (amd).]

5. **Automated telephone calls.** Automated telephone calls that name a clearly identified candidate must clearly state the name of the person who made or financed the expenditure for the communication, except for automated telephone calls paid for by the candidate that use the candidate's voice in the telephone call. [2005, c. 301, §12 (new).]

PL 1985, Ch. 161, §6 (NEW).
PL 1987, Ch. 188, §17 (AMD).
PL 1989, Ch. 504, §5, 6, 31 (AMD).
PL 1991, Ch. 466, §37 (AMD).
PL 1991, Ch. 839, §8-10 (AMD).
PL 1995, Ch. 483, §6 (AMD).
PL 2003, Ch. 302, §1 (AMD).
PL 2003, Ch. 510, §F1 (AMD).
PL 2003, Ch. 510, §F2 (AFF).
PL 2003, Ch. 599, §15 (AFF).
PL 2005, Ch. 301, §10-12 (AMD).
PL 2005, Ch. 308, §1 (AMD).

Title 21-A, §1019-B, Reports of independent expenditures

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§1019-B. Reports of independent expenditures

1. Independent expenditures; definition. For the purposes of this section, an "independent expenditure": [2003, c. 448, §3 (new).]

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

[2003, c. 448, §3 (new).]

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

[2003, c. 448, §3 (new).]

2. Rebutting presumption. A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of making the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and must determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate. [2003, c. 448, §3 (new).]

3. Report required; content; rules. A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the municipal clerk. [2003, c. 448, §3 (new).]

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

[2003, c. 448, §3 (new).]

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

[2003, c. 448, §3 (new).]

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

[2003, c. 448, §3 (new).]

PL 2003, Ch. 448, §3 (NEW).

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: September 15, 2006
Re: John N. Frary's Complaint Against Maine Democratic Party

Submissions by John N. Frary and the Maine Democratic Party

John N. Frary, the chair of the Franklin County Republican Party, has requested that the Ethics Commission examine two mailings paid for by the Maine Democratic Party which he believes promote the candidacy of Rep. Janet Mills. The first mailer was a postcard to her constituents inviting them to telephone her regarding pending legislation or for assistance with a state agency. This card was similar to the one sent by the party for Rep. Walter Ash, which was discussed at the August Commission meeting. The second mailing was an invitation to a community forum on consumer and elder protection issues.

Mr. Frary argues that these mailings have the effect of increasing Rep. Mills' name recognition as a candidate, and requests that the Republican candidate in the race, Lance Harvell, receive any matching funds due under the Maine Clean Election Act.

The Maine Democratic Party has responded that:

- the mailings do not represent an independent expenditure because they were sent more than 21 days before the election and do not expressly advocate Rep. Mills' re-election or defeat of Rep. Mills;
- the mailers were not a contribution to Rep. Mills because she did not know that the party was going to send either mailing and did not receive anything of value directly from the party; and
- the mailings were merely a meeting notice and constituent outreach, and there is no evidence that they were intended to promote her candidacy.

Mr. Frary submitted a written reply arguing that even if the communications do not contain express advocacy, they appear to be expenditures to further Rep. Mills' candidacy due to their timing and the inefficiency of sending mailers to every household as a means of inviting constituents to a community forum, and that the Maine Democratic Party has held community forums on consumer issues only in districts of Democratic incumbent Legislators who are in close elections.

Staff Analysis

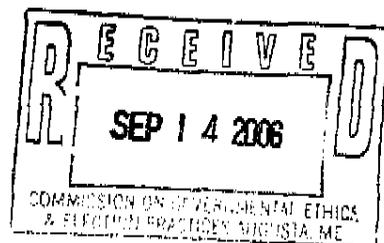
The staff recommends the view that the mailers and the community forum do not constitute independent expenditures or contributions to Rep. Mills' campaign. Because the mailers were sent more than 21 days before the election and do not expressly advocate for Rep. Mills' re-election, they do not represent independent expenditures under 21-A M.R.S.A. §1019-B(1)(A).

The party has stated that the expenditures for the mailings were not coordinated with Rep. Mills, so they were not a contribution to her campaign. The Commission staff recommends that the Commission accept that explanation, and does not believe that any further investigation of whether Rep. Mills cooperated with the mailings is warranted.

Even if Rep. Mills knew of the mailer for the community forum, the staff recommends that the Commission view the community forum as a service to constituents by Rep. Mills and the Attorney General. If Mr. Frary is correct that these community forums were organized only in competitive districts of incumbent Legislators seeking re-election, I can understand his concern that the events may have been selected, at least in part, for political reasons. Nevertheless, they are opportunities for Legislators to impart valuable information to constituents and to hear their concerns. I would urge the Commission not to intrude on legislative communications by viewing the costs of the community forums (if any) and the promotional materials as campaign contributions.

Staff Recommendation

The staff recommends that the Commission take no further action on the request, and not award any matching funds to Lance Harvell.



September 11, 2006

John N. Frary
355 Red Schoolhouse Road
Farmington, ME 04938
778-6685
ifrary8070@aol.com

Jonathan Wayne, Executive Director
Maine Ethics Commission
135 State House Station
Augusta, ME 04333-0135

Dear Mr. Wayne,

I have received Mr. Mahoney's response, on behalf of the Maine Democratic Party (hereinafter "the state party"), to my complaint regarding the mass mailing in House District 89 (hereinafter the "Mills pieces" as Mr. Mahoney labels them).

Mr. Mahoney argues that the Mills pieces are not really Mills pieces at all, but independent expenditures by the state party, which are not independent expenditures under 21-A.M.R.S.A. 1019-B because they were sent outside the 21-day and did not explicitly advocate her election. Although a little convoluted, this appears to be consistent with your interpretation of the rules as communicated by telephone.

Mr. Mahoney's argument that they do not *implicitly* advocate her election confines that adverb in a semantic strait-jacket ill-adapted to common usage. Is this objection relevant, or is the state party covered by the 21-day, implicit advocacy or not?

Mr. Mahoney is quite right in asserting that I presented no evidence that the state party sent out the Mills pieces with the knowledge of Rep. Mills. I have none—no secret memos, no wiretap transcripts, no covert witnesses. The claim that Rep. Mills knew nothing of the Mills pieces seemed to me implausible, but I suppose it is not impossible. Is the Commission empowered to investigate this question, or is the question of collusion irrelevant under the rules?

I understand the problem adumbrated in paragraph six of Mr. Mahoney's letter, that "any number of activities undertaken by political parties—including independent expenditures—would be unlawful" if too restrictive an interpretation is placed on the Clean Election laws. I must negotiate the same mine-field as a county chairman working for the entire GOP slate. The Commission' ruling on this case may provide some useful elucidation.

In his final paragraph Mr. Mahoney seems to be gilding the legal lily; or else he is exhibiting a naivete and guilelessness seldom associated with the legal profession.

I quote: "...there is no evidence suggesting that these pieces that these pieces were distributed for the purpose of influencing Rep. Mills' reelection. Neither mentions the upcoming election, or the

CC:PL

fact that Rep. Mills is a candidate.”

Can it be that Mr. Mahoney has never heard of the decisive importance of simple name recognition in political campaigns? Nearly as I can remember I've know this to be commonplace political wisdom since 1958. I expect that the rest of us know, even if Mr. Mahoney does not, that the purpose of these mailings was to influence the election. That is what state and county political committees do during the election season.

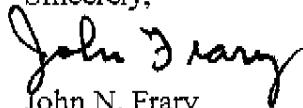
The plain fact of the matter is that the State Democratic Party sent out a mass mailing entirely within House District 89 with Janet Mills' name and face. The expenditure of perhaps \$2,400 assembled about 24 people to hear information about identity theft which has been common knowledge for a couple of years. This was cost effective for getting Rep. Mills' name out, but not cost effective as an informational measure.

As I've said, I do not consider generating useless activity by the Commission to be a form of entertainment. If you find Mr. Mahoney's legal reasoning entirely convincing than I will raise no objection to a summary dismissal.

If, however, it is within the Commission's scope and you think it worthwhile, I would prefer to see the issue resolved by a formal ruling explaining why this mailing does not trigger matching funds and affirming that it was, nevertheless, politically motivated. At the very least this would be helpful to the public's understanding of Clean Election rules.

Apart from the request for matching funds, I am anxious to have the Commission examine the propriety of the Attorney General's intervention in the political campaign on the transparent pretext of informing the public about identity theft. It appears that his activities have been confined to districts where Democratic candidates are in close competition. The political advantage of mailings like the Mills pieces is self-evident. The expense of the mailings are clearly not commensurate with the purported public benefit. The question of the use of public funds by a public official in running these political events requires some attention.

Sincerely,

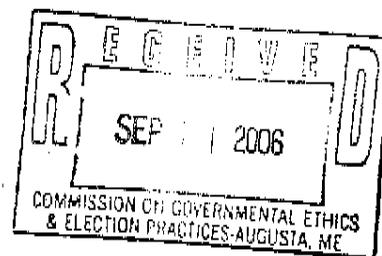


John N. Frary

Chairman, Franklin County Republican Committee

PretiFlahertyMICHAEL K. MAHONEY
mmahoney@preti.com

September 8, 2006

VIA ELECTRONIC & U.S. MAILJonathan Wayne, Director
Maine Ethics Commission
135 State House Station
Augusta, Maine 04333-0135**RE: Frary / Rep. Janet Mills Matter**

Dear Director Wayne:

Please accept on behalf of my client, the Maine Democratic Party, the following response to a complaint regarding two mail pieces financed by the Party, each of which mentions Representative Janet Mills (hereinafter the "Mills pieces").

It is my understanding that the complainant has alleged that the mail pieces constitute either an independent expenditure under 21-A M.R.S.A. §1019-B, or an in-kind contribution under 21-A M.R.S.A. § 1015. They are neither, for the following reasons:

Independent Expenditure: Outside of 21 days before an election, a communication constitutes an independent expenditure only if it expressly advocates the election or defeat of a clearly identified candidate. In this case, the Mills pieces advocated neither her election nor her opponent's defeat. Indeed, the pieces do not reference – explicitly or implicitly – the election at all. Accordingly, they do not qualify as independent expenditures pursuant to 21-A M.R.S.A. §1019-B.

In-Kind Contribution, 21-A M.R.S.A. § 1015 (5): Title 21-A M.R.S.A. § 1015 (5) provides that expenditures like the Mills pieces constitute an in-kind contribution only where the expenditures are made "in cooperation, consultation or concert with, at the request or suggestion of a candidate, candidate's political committee or their agents." In this case, the Party planned and carried out these expenditures without the knowledge or participation of Representative Mills. Although not an "independent expenditure" under § 1019-B, they were, in a literal sense, expenditures made independently of Representative Mills. The complaint fails to present any evidence to the contrary.

In-Kind Contribution, 21-A M.R.S.A. § 1012 (2): As discussed above, § 1015 (5) provides that if an expenditure is made "in consultation, cooperation or concert with, at the request or suggestion of" a candidate, it is considered a contribution to that candidate. From this, it follows that any expenditure not made in consultation, cooperation or concert with, at the request or suggestion of a candidate, should not be considered a contribution to that candidate.

PRETI FLAHERTY
Jonathan Wayne, Director
September 8, 2006
Page 2

Likewise, the term "contribution" is defined, in part, as a "gift, subscription, loan, advance or deposit of anything of value." 21-A M.R.S.A. § 1012 (2). The use of this terminology suggests that the "thing of value" must be received by the candidate in order to qualify as a contribution to him/her. If the expenditure is made without the candidate's knowledge, it cannot be said that he/she received it. Indeed, if non-coordinated expenditures like the Mills pieces were deemed contributions, then any number of activities undertaken by political parties – including independent expenditures – would be unlawful where a Maine Clean Elections Act candidate is involved. Since the Mills pieces were in no way coordinated with Rep. Mills, they cannot be considered contributions to her campaign.

Even assuming, for the sake of argument, that a party committee's non-coordinated expenditure could be a contribution to a candidate, that is not the case here. Under § 1012 (2), only those things of value that are given "for the purpose of influencing the . . . election of any person to state . . . office" are contributions. In this case, there is no evidence suggesting that these pieces were distributed for the purpose of influencing Rep. Mills' reelection. Neither mentions the upcoming election, or the fact that Rep. Mills is a candidate. They lack any facts or opinions about Rep. Mills or her views on any public policy issues. One piece is merely a meeting notice. That this notice may have been mailed to constituents instead of appearing in a local newspaper does not mean that the piece was distributed for the purpose of influencing the election. The other piece is merely a reminder to constituents that they may contact her if they have concerns or questions about matters involving state government. This sort of bland constituent outreach, on its face, cannot reasonably be characterized as an attempt to influence the outcome of the upcoming election. As such, the pieces do not qualify as "contributions" under § 1012 (2).

For the foregoing reasons, the Party respectfully requests that this complaint be dismissed by the Commission. I look forward to discussing this matter further with the Commission, staff and counsel at the September 22, 2006 meeting.

Sincerely,



Michael K. Mahoney

cc: Benjamin Dudley, Party Chairman



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

August 17, 2006

Michael K. Mahoney
Preti Flaherty Beliveau Pachios & Haley LLC
PO Box 1058
Augusta, ME 04332-1058

Dear Mr. Mahoney:

The Maine Ethics Commission received the attached request for an investigation from John H. Frary, Chairman of the Franklin County Republican Committee. He objects to two cards mailed out on behalf of Rep. Janet Mills. I telephoned Mr. Frary this morning, and he confirmed that he would like the Commission members to consider this matter at their next available monthly meeting, which would be in September.

Please respond to the request no later than Friday, September 8. In particular, please address whether the mailings or the community forum qualify as an independent expenditure under 21-A M.R.S.A. §1019-B or as a contribution to Rep. Mills' campaign under 21-A M.R.S.A. §1012(2) or §1015(5). By copy of this letter, I am also letting Rep. Mills know she is welcome to submit a response if she would like.

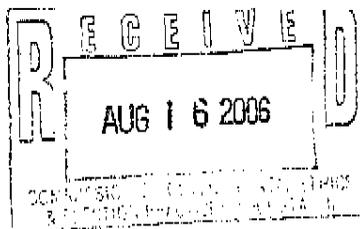
If you would like to discuss this matter, please telephone me at 287-4179. Thank you.

Sincerely,

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

Jonathan Wayne
Executive Director

cc: Hon. Janet T. Mills
Benjamin F. Dudley
Lance Harvell
John N. Frary



August 15, 2006

John N. Frary
Chairman, Franklin County Republican Committee
355 Red Schoolhouse Road
Farmington, ME 04938
778-6685

Maine Ethics Commission
135 State House Station
Augusta, ME 04333

Dear Commissioners,

I am writing to request the Commission to examine an issue that has arisen in House District 89 (Farmington, Industry). I refer to a mailing paid for by the Maine Democratic Party announcing an August 16 community forum on consumer protection laws, with Attorney General Steven Rowe in attendance (documents enclosed).

Dissemination of information on consumer protection is no doubt laudable, but there are a number of features in this effort which seem to clash with the Clean Election rules prohibiting independent campaign expenditures.

First, the photograph of Rep. Mills adorning the mailings has no obvious relevance to the problems of consumer protection.

Second, the timing is suspect. The issues being dealt with are not novel. Unless the Attorney General has some new developments to impart, a public meeting taking place on the shoulder of the campaign season represents an obvious political purpose.

Third, a mass mailing publicizing a candidate, as opposed to a public announcement in the local newspapers, has a clear political impact. The usefulness of mass mailing to get a candidate's name out is pretty widely recognized.

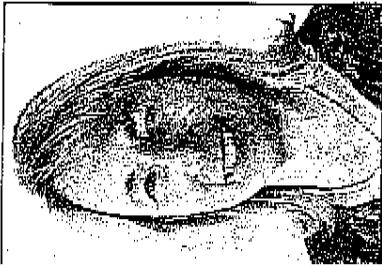
Fourth, the mailing in question has the effect of promoting a single candidate, as opposed to the three or more permitted by the Clean Election rules.

If the commissioners conclude that this complaint has merit, I am requesting they determine the cost of this mailing and provide the equivalent sum to the campaign budget of Mr. Lance Harvell, the Republican candidate in House District 89.

Respectfully,

A handwritten signature in cursive script that reads "John N. Frary".

John N. Frary
Chairman, Franklin County Republican Committee



Rep. Janet Mills

State Representative Janet Mills will host a community forum on Wednesday, August 16 at 3 p.m., to inform constituents of consumer and elder protection laws. Attorney General Steve Rowe will attend as Representative Mills' guest to answer questions and discuss the protections Maine offers to consumers and senior citizens, covering such issues as identity theft and elder financial abuse.

- WHO:** Representative Mills, Attorney General Steve Rowe
- WHAT:** Community Forum on consumer protection laws
- WHERE:** Hazel Thompson Apartment Complex, Titcomb Hill Rd., Farmington
- WHEN:** Wednesday, August 16, 3:00 p.m.

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

REPRESENTATIVE JANET MILLS

Address: P.O. Box 110
Farmington, ME 04938

At Home: 778-4848

In Augusta: 1-800-423-2900

Email: jmills@mainelegal.net

Or visit her online at:

www.housedemocrats.maine.gov

Your input makes all the difference.

16 Winthrop Street
Augusta, ME 04332

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Our Friends At
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YOUR OPINION MATTERS!

COMMUNITY MEETING

PLEASE ATTEND





Your views are important. Please feel free to contact Rep. Mills 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 Janet Mills
District 89

Mail to: P.O. Box 110
Farmington, ME 04938

At home: 778-4848

In Augusta: 1-800-423-2900

Email: jmills@mainelegal.net

Or visit her online at:
www.housedemocrats.maine.gov

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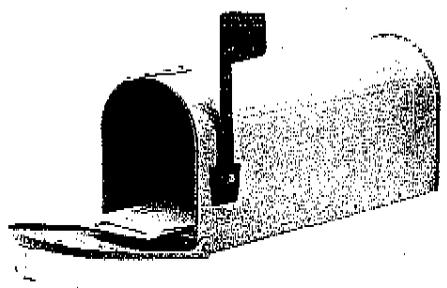
16 ME - Contact Us - Mills

*****AUTO**5-DIGIT 04938
Our Friends At 2
398 Knowlton Corner Rd 2
Farmington, ME 04938-6213



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.

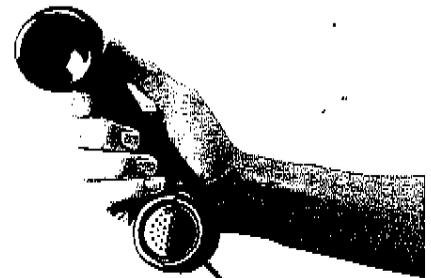
YOUR INPUT MATTERS.
Please contact your State Representative.



Mail a letter



Send an email



Give a call

Title 21-A, §1012, Definitions

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§1012. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 161, §6 (new).]

1. **Clearly identified.** "Clearly identified," with respect to a candidate, means that: [1985, c. 161, §6 (new).]

A. The name of the candidate appears;

[1985, c. 161, §6 (new).]

B. A photograph or drawing of the candidate appears; or

[1985, c. 161, §6 (new).]

C. The identity of the candidate is apparent by unambiguous reference.

[1985, c. 161, §6 (new).]

2. **Contribution.** The term "contribution:" [2005, c. 301, §7 (amd).]

A. Includes:

(1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office or for the purpose of liquidating any campaign deficit of a candidate, 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, express or implied, whether or not legally enforceable, to make a contribution for such purposes;

(3) Funds received by a candidate or a political committee that are transferred to the candidate or committee from another political committee or other source; and

(4) The payment, by any person other than a candidate or a political committee, of compensation for the personal services of other persons that are provided to the candidate or political committee without charge for any such purpose; and

[1995, c. 483, §3 (amd).]

B. Does not include:

(1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;

(2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the individual on behalf of any candidate does not exceed \$100 with respect to any election;

(3) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if the charge to the candidate is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed \$100 with respect to any election;

Title 21-A, §1015, Limitations on contributions and expenditures

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§1015. Limitations on contributions and expenditures

1. Individuals. An individual may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$500 in any election for a gubernatorial candidate or more than \$250 in any election for any other candidate. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse. [1999, c. 729, §2 (amd).]

2. Committees; corporations; associations. A political committee, other committee, corporation or association may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$500 in any election for a gubernatorial candidate or more than \$250 in any election for any other candidate. [1999, c. 729, §2 (amd).]

3. Aggregate contributions. No individual may make contributions to candidates aggregating more than \$25,000 in any calendar year. This limitation does not apply to contributions in support of a candidate by that candidate or his spouse. [1985, c. 161, §6 (new).]

4. Political committees; intermediaries. For the purpose of the limitations imposed by this section, contributions made to any political committee authorized by a candidate to accept contributions on the candidate's behalf are considered to be contributions made to that candidate. [1985, c. 161, §6 (new).]

For the purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate, are considered to be contributions from that person to the candidate. The intermediary or conduit shall report the original source and the intended recipient of the contribution to the commission and to the intended recipient. [1985, c. 161, §6 (new).]

5. Other contributions and expenditures. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate. [1989, c. 504, §§7, 31 (amd).]

The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees or their authorized agents is considered to be a contribution to that candidate. [1989, c. 504, §§7, 31 (amd).]

6. Prohibited expenditures. A candidate, a treasurer, a political committee, a party or party committee, a person required to file a report under this subchapter or their authorized agents may not make any expenditures for liquor to be distributed to or consumed by voters while the polls are open on election day. [1991, c. 839, §11 (amd); §34 (aff).]

7. Voluntary limitations on political expenditures. A candidate may voluntarily agree to limit the total expenditures made on behalf of that candidate's campaign as specified in section 1013-A, subsection 1, paragraph C and subsections 8 and 9. [1995, c. 384, §2 (new).]

8. Political expenditure limitation amounts. Total expenditures in any election for legislative office by a candidate who voluntarily agrees to limit campaign expenditures as provided in subsection 7 are as follows: [1999, c. 729, §3 (amd).]

A. For State Senator, \$25,000;

[1999, c. 729, §3 (amd).]

Title 21-A, §1019-B, Reports of independent expenditures

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§1019-B. Reports of independent expenditures

1. Independent expenditures; definition. For the purposes of this section, an "independent expenditure": [2003, c. 448, §3 (new).]

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

[2003, c. 448, §3 (new).]

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

[2003, c. 448, §3 (new).]

2. Rebutting presumption. A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of making the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and must determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate. [2003, c. 448, §3 (new).]

3. Report required; content; rules. A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the municipal clerk. [2003, c. 448, §3 (new).]

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

[2003, c. 448, §3 (new).]

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

[2003, c. 448, §3 (new).]

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

[2003, c. 448, §3 (new).]

PL 2003, Ch. 448, §3 (NEW).

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
Date: September 14, 2006
Re: Complaint Against David Babin

Complaint by William D. Dobrowolski

David Babin is a Maine Clean Election Act (MCEA) candidate for State Senate, District #8, in Portland. He is running against the incumbent, Sen. Ethan Strimling. The Ethics Commission received the attached complaint from William D. Dobrowolski relating to advertising purchased by the Babin campaign in a community newspaper in Portland, the West End News. He complains that Mr. Babin has used his MCEA funds to support the Taxpayer Bill of Rights (TABOR) citizen initiative and is thereby violating a restriction in the Commission's official guidelines for the use of MCEA funds:

Maine Clean Election Act funds may not be spent to: ... make independent expenditures supporting or opposing any candidate, ballot measure, or political committee.

Mr. Dobrowolski states that "[t]here is nothing in those ads that promote [Babin's] run for the senate seat, but rather advocate a positive vote for TABOR." He specifically complains about three advertisements in the August 4-16 edition of the West End News, and one ad in the following edition dated August 18-30.

Response by David Babin

Mr. Babin has met with the Commission staff twice, submitted a number of examples of his campaign materials (attached), and responded in writing through his attorney, Daniel I. Billings. He states that:

- The advertisements contain a prominent picture of Mr. Babin, along with the candidate's name and "Babin State Senate" logo, which all advance his candidacy.
- Mr. Babin has made his support of TABOR a central part of his campaign, and has expressed his views on TABOR in order to promote his campaign.
- Mr. Babin has run ads which discuss his positions on other issues.
- It is a traditional campaign purpose to promote the candidate's view on the important issues of the day, including citizen initiatives.
- Mr. Babin is a serious candidate who is not running a sham candidacy.

Staff View and Recommendation

The staff appreciates the concern of Mr. Dobrowolski that MCEA funds should not be used for electoral purposes other than to advance the campaign of the candidate receiving the funds. As a general matter, it is a legitimate concern and the staff believes the Commission should not shrink from taking action in instances where MCEA funds clearly have been used contrary to the Commission's guidelines. In addition to the provision of the expenditure guidelines quoted above, one other provision has relevance to this complaint:

Maine Clean Election Act funds may not be spent to: ... promote political or social positions or causes other than the candidate's campaign

After considering these ads in the context of Mr. Babin's broader campaign, however, the staff does not believe there was any misuse of public funds. Candidates are free to adopt whatever positions they want, and it is not surprising that some 2006 candidates would explain their views on TABOR in order to influence the electorate. Candidates' detailed views on TABOR have already been part of a number of candidates' campaigns, including the Republican primary election. While the views expressed by David Babin may have the effect of encouraging a positive vote on TABOR, they also promote the candidate to voters who share his views. A review of his written campaign materials shows that while his views on TABOR are a primary theme of his campaign, he is not a single-issue candidate.

I believe the Commission and its staff should be on guard for individuals seeking to advance a political agenda who qualify for MCEA funds only in order to finance that agenda and not a campaign for political office. That does not appear to be true in Mr. Babin's case, however.

Staff Recommendation

The Commission staff recommends taking no further action on the complaint.

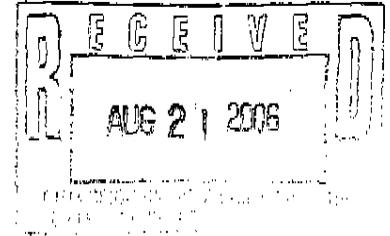
Aug 19 06 01:02p

Dobrowolski

207-774-5480

p. 2

William D. Dobrowolski
132 Partridge Circle
Portland, Maine 04102
August 18, 2006



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

Complaint Against David J. Babin

Dear Mr. Wayne,

Mr. Babin is a candidate for the Maine State Senate seat in District 8 and, according to your records, is funded by the Clean Election Act funds. In that case, he should be abiding to the Commission's Guidelines on Permissible Expenditures of MCEA Funds for candidates.

Previously I sent to you copies of three ads of David Babin that appeared in "the West End NEWS", August 4 -16, 2006 that concerned me. I am now enclosing three copies of his ads that appear in the August 18 -30, 2006 of the same paper. I ask that you pay specific attention to the one marked with an "X" since this ad has absolutely nothing to do with his election bid.

The basis for the complaint is found on Page 55 of the Guidelines that reads "*Maine Clean Election Act funds may not be spent to: ...make independent expenditures supporting or opposing any candidate, ballot measure, or political committee*". I believe that the first three ads sent to you and the new one marked with an "X" all relate to the Tax Payer Bill of Rights which will appear on the ballot this November. There is nothing in those ads that promote his run for the senate seat, but rather advocate a positive vote for TABOR.

Because I feel strongly about the Clean Election Fund and its proper use, please accept this letter as a formal complaint against David J. Babin. I can be reached at the above address, or by telephone at 774-5480.

Sincerely,

William D. Dobrowolski

Aug 19 06 01:01p

Dobrowolski

207-774-5480

p. 1



To: Jonathan Wayne, Executive Director
From: Bill Dobrowolski
Date: August 19, 2006
Subject : Complaint Against David J. Babin

This fax has five (5) pages including this cover sheet.

Attached is a formal complaint with copies of recent ads. This appears to me to be outside the scope of permissible intended use of MCEA funds. I am available should you want to talk to me at 774-5480.

Thanks for looking at this situation.

Regards, *Bill Dobrowolski*

The West End News

Who Supports Sports Reports? We Support Short Sports Reports!

FREE

Volume 6, Number 13 Portland, ME August 18-30, 2006

Photo: Doug Emison



BABIN

STATE SENATE

The Good News:

Maine's Taxpayer Bill Of Rights

- Responsible growth of government without any cuts in services.
 - Sensible, predictable and fair taxation policies for all Mainers.
 - Solid protection for schools, infrastructure fire & police depts.
- Maine's Taxpayer Bill Of Rights puts the power in our hands. Tax and Spend liberal legislators, union bosses and career "not-for-profit" bureaucrats are totally dependent on tax increases. Get ready for "chicken little" opponents spewing lies to scare you in their attempts to drain you of your hard earned dollars.

"Join me in voting for Maine's Taxpayer Bill Of Rights"

Paid for and authorized by David J. Babin, 123 Cumberland Avenue, Portland



THE WEST END NEWS

Who Supports Sports Reports? We Support Short Sports Reports!

FREE

Volume 6, Number 13 Portland, ME August 18-30, 2006

BABIN STATE SENATE



ATTENTION DEMOCRATS: Your party has been hijacked by self-serving politicians and bloodsucking bureaucrats.

- Welfare programs that foster dependency and ignorance have sapped the pride and work ethic out of generations of once-proud Mainers.
- Portland has become a welfare magnet for out-of-state parasites and illegal aliens looking for a free ride while our truly needy go without.
- Liberal legislators with their socialist-elite agenda have classified you and convinced you that you are victims; powerless and dependent on government for your existence, validation and self worth.

REJECT THE VICTIM STATUS MENTALITY! TAKE BACK YOUR POWER! DEMAND THAT GOVERNMENT STEP ASIDE. BE BRAVE IN YOUR PURSUIT OF HAPPINESS!

Paté for and authorized by David J. Babin, 123 Cumberland Avenue, Portland

Are We Still NEWS

Who Supports Sports Reports? We Support Short Sports Reports!

Volume 6, Number 13 Portland, ME August 18-30, 2006

FREE

Paid for and authorized by David J. Babin, 123 Cumberland Avenue, Portland

Photo: Doug Emerson

BABIN

STATE SENATE



"...it's all GEORGE BUSH'S fault!"

Aren't you fed up with the Democrats' mantra?

Only MAINE and LOUISIANA had FAILED ECONOMIES last year.
Louisiana had Hurricane Katrina...Maine had the Democrats.

Democrats have had 30 years to run Maine's economy into the ground.
Once again: the highest tax burden in the country.

GROW UP!

**GET OVER YOUR BUSH HATRED. DO YOUR HOMEWORK.
SEND A NEW TEAM TO AUGUSTA.**

the West End NEWS

"The NEWS Never Takes a Vacation!"

FREE

Volume 6, Number 12 Portland, ME August 4-16, 2006

BABIN

STATE SENATE

...the sky will not fall!

- ✓ SENSIBLE and PREDICTABLE growth of government
- ✓ Responsible use of OUR tax dollars
- ✓ SECURITY for our schools, our seniors and truly needy
- ✓ End Maine's OPPRESSIVE tax burden

Maine's Taxpayer Bill Of Rights NEVER requires a budget cut.

"Join me in voting for Maine's Taxpayer Bill Of Rights"

Paid for and authorized by David J. Babin, 123 Cumberland Avenue, Portland

Photo: Doug Emerson



The West End NEWS

"The NEWS Never Takes a Vacation!"

Volume 6, Number 12 Portland, ME August 4-16, 2006

FREE

Paid for and authorized by David J. Babin, 123 Cumberland Avenue, Portland

Photo: Doug Emerson

BABIN



STATE SENATE

MAINE: A state of ECONOMIC DISASTER.

- ✓ Highest Tax Burden in the country
- ✓ 49th in small business survival
- ✓ Our young people leaving for opportunities at 4 times the national average

"It doesn't have to be this way."

Election after election the democrats FAILED to deliver real tax relief. LD-1 has been a failure for Portland: skyrocketing taxes and rents. The "Circuit Breaker program" is not enough.

"Join me in voting for The Taxpayer Bill of Rights. It's just what Maine needs!"

Aug 15 06 01:47p

Dobrowolski

207-774-5480

p.4

The West End NEWS

"The NEWS Never Takes a Vacation!"

FREE

Volume 6, Number 12 Portland, ME August 4-16, 2006

BABIN

STATE SENATE



"I support MAINE'S TAXPAYER BILL OF RIGHTS"

Portland NEEDS a senator that supports real tax relief. Seniors and low wage earners are being taxed out their homes. Small businesses struggle to survive our oppressive tax climate.

- ✓ It's NOT a "tax cap".
- ✓ It's NOT a cut to any service or program.
- ✓ Our schools, fire and police departments will NOT be CUT
- ✓ Do NOT fall for the LIES of AARP, UNION BOSSES and MMA

Maine's Taxpayer Bill Of Rights NEVER requires a budget cut.

Paid for and authorized by David J. Babin, 123 Cumberland Avenue, Portland

**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: mdbs@gwi.net
<http://www.maine-lawfirm.com>

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

September 8, 2006

HAND DELIVERED

Vincent W. Dinan, Staff Auditor
State of Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333-0135

RE: Complaint against David J. Babin

Dear Mr. Dinan

I am writing on behalf of David Babin in response to your request for a written response to William Dobrowolski's complaint concerning the content of campaign ads that Mr. Babin placed in *The West End NEWS*.

We reject Mr. Dobrowolski's claim that "[t]here is nothing in those ads that promote [Mr. Babin's] run for the Senate seat" and that the ads constitute an independent expenditure in support of the Taxpayer Bill of Rights. Each of the ads prominently features Mr. Babin's picture and his "Babin State Senate" logo at the top of the ad. These features of the ads promoting Mr. Babin's candidacy are the things that are most likely to be noticed by someone looking through the paper. Mr. Babin has run similar ads which discuss his positions on other issues. The ads at issue here also feature text describing Mr. Babin's position on the Taxpayer Bill of Rights and his reasons for his reasons for holding that position. The ad also urges readers to join Mr. Babin in voting for Maine's Taxpayer Bill of Rights. This language alone does not transform the ad from a Babin for State Senate ad into an independent expenditure for the Taxpayer Bill of Rights because the primary purpose of the ad is to promote Mr. Babin's candidacy for the State Senate.

The Expenditure Guidelines for 2006 Maine Clean Election Act Candidates state that expenditures for campaign related purposes are those which are traditionally accepted as necessary to promote the election of a candidate for political office. It should not be disputed that using campaign funds to promote a candidate's view on the important issues of the day is traditionally accepted as necessary to promote the election of a candidate for political office. The fact that a particular issue is to be decided by referendum does not mean that the issue is

Vincent W. Dinan, Staff Auditor
September 8, 2006
Page 2

one which will not be discussed by candidates. In fact, we have a history in Maine of candidates who have initiated referendums and then made the referendum issue a central part of their campaigns. In 1972, Robert Monks initiated a referendum to eliminate "the big box" which allowed for straight ticket voting and made that an issue in his campaign for the U.S. Senate. In 1982, Charles Cragin initiated a referendum to enact income tax indexing and made that issue a central part of his campaign for Governor. It is also common for candidates for office to be asked about and to take positions on issues that are to be decided by referendum. In this case, Mr. Babin has made his support for the Taxpayers Bill of Rights a central part of his campaign.

Though the expenditure guidelines state that Maine Clean Election funds may not be spent to make independent expenditures supporting or opposing a ballot measure, the guidelines do not state that a candidate may not express a view on a referendum question as part of an expenditure promoting that candidate's candidacy. That is what has been done here.

It should also be noted that one of Mr. Babin's opponents, Ethan Strimling, has been a vocal opponent of the Taxpayer Bill of Rights. This fact illustrates that the Taxpayer Bill of Rights is an issue of importance that is appropriate for discussion as part of a campaign for the State Senate.

It is my view that the limitation on using Clean Elections funds for independent expenditures is intended to prevent sham candidates who qualify for Clean Elections funds with the intention of using the money for a purpose other than promoting their candidacy. David Babin is a serious candidate who has run before and who is working hard to win the election. He is using Clean Elections funds to further his candidacy. It is not the role of the Commission to pass judgment on the campaign strategy, political positions, or statements made by Clean Elections candidates.

Very truly yours,



Daniel I. Billings

e-mail: dbillings@gwi.net

“David Babin to Challenge Senator Ethan Strimling for District 8 State Senate seat”

Senate District 8 covers Portland's Peninsula to Stroudwater and the islands.

from February 24, 2006 press release: David Babin of Cumberland Avenue announced his candidacy for the Maine State Senate, District 8. Babin stated, “Everyday Maine becomes less affordable for working singles, families and our seniors. You and I need more affordable healthcare coverage with real options and choices; we must create a business friendly Portland. Sensible and predictable growth of our government is vital for a strong Maine economy. Our educated, young people are leaving Maine at four times the national average for good jobs and opportunities. Portland needs a senator who is committed to supporting Maine’s **Taxpayer Bill Of Rights.**”

David outlined his three top priorities: reduce Maine’s tax burden, create affordable health insurance through competition and adopt a school funding formula that treats Portland fairly and demand accountability overseeing these funds.

“The current funding formula recently passed by the Legislature does not meet the demands of the voters to provide 55% of state funding to educate Portland’s children.” said Babin. “I am going to go to Augusta to make sure that the voter’s wishes are upheld and to assure Portland receives its fair share.” David previously challenged Senator Strimling in 2004 for the State Senate seat.

More about me:

✓ “I am **Pro-Life**. I support a ban on *Partial Birth Abortion*.”
Senator Strimling supports abortion rights with “no restrictions”.

✓ “I support a constitutional amendment to establish **Marriage** as a union between one woman and one man.”
Senator Strimling supports same-sex marriage.

✓ “I support our **Second Amendment** freedom rights with **no restrictions**”
Senator Strimling supports legislation to further regulate and limit our Second Amendment rights.

✓ **Immigration:** “Public Officials have a responsibility to enforce our laws; I support working to identify and deport **illegal aliens** and encourage regular, random I.N.S. & I.C.E. sweeps of Portland. Fine, penalize, revoke licenses for Portland businesses that hire these **criminal aliens**.”

Senator Strimling supported legislation that prohibits all state employees from inquiring as to a person’s immigration status. Maine is currently regarded as a “sanctuary state” and a magnet for illegal aliens.

“I grew up in the East Deering and Munjoy Hill neighborhoods and attended Portland schools and graduated from Portland High School in 1973. I am employed by Goodwill Industries as a Program Manager for three residential rehabilitation programs for people with traumatic brain injuries. I live in East Bayside with Edward, my life-partner of twenty four years.”

David Babin For Senate Committee
123 Cumberland Avenue
Portland, Maine 04101

207.774.5467
Babin123@msn.com

“David Babin to Challenge Senator Ethan Strimling for District 8 State Senate seat”

Senate District 8 covers Portland's Peninsula to Stroudwater and the islands.

from February 24, 2006 press release: David Babin of Cumberland Avenue announced his candidacy for the Maine State Senate, District 8. Babin stated, “Everyday Maine becomes less affordable for working singles, families and our seniors. You and I need more affordable healthcare coverage with real options and choices, we must create a business friendly Portland. Sensible and predictable growth of our government is vital for a strong Maine economy. Our educated, young people are leaving Maine at four times the national average for good jobs and opportunities. Portland needs a senator who is committed to supporting Maine’s **Taxpayer Bill Of Rights.**”

David outlined his three top priorities: reduce Maine’s tax burden, create affordable health insurance through competition and adopt a school funding formula that treats Portland fairly and demand accountability overseeing these funds.

“The current funding formula recently passed by the Legislature does not meet the demands of the voters to provide 55% of state funding to educate Portland’s children.” said Babin. “I am going to go to Augusta to make sure that the voter’s wishes are upheld and to assure Portland receives its fair share.” David previously challenged Senator Strimling in 2004 for the State Senate seat.

More about me:

✓ “I am **Pro-Life**. I support a ban on *Partial Birth Abortion*.”
Senator Strimling supports abortion rights with “no restrictions”.

✓ “I support a constitutional amendment to establish **Marriage** as a union between one woman and one man.”
Senator Strimling supports same-sex marriage.

✓ “I support our **Second Amendment** freedom rights with **no restrictions**”
Senator Strimling supports legislation to further regulate and limit our Second Amendment rights.

✓ **Immigration:** “Public Officials have a responsibility to enforce our laws; I support working to identify and deport **illegal aliens** and encourage regular, random I.N.S. & I.C.E. sweeps of Portland. Fine, penalize, revoke licenses for Portland businesses that hire these **criminal aliens**.”

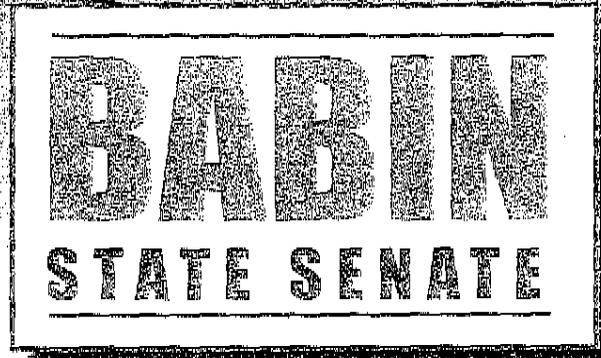
Senator Strimling supported legislation that prohibits all state employees from inquiring as to a person’s immigration status. Maine is currently regarded as a “sanctuary state” and a magnet for illegal aliens.

“I grew up in the East Deering and Munjoy Hill neighborhoods and attended Portland schools and graduated from Portland High School in 1973. I am employed by Goodwill Industries as a Program Manager for three residential rehabilitation programs for people with traumatic brain injuries. I live in East Bayside with Edward, my life-partner of twenty four years.”

David Babin For Senate Committee
123 Cumberland Avenue
Portland, Maine 04101

207.774.5467
Babin123@msn.com

The Independent Voice for Portland



It doesn't matter if you are a Republican or a Democrat, a Green-independent or just plain Independent. What Portland needs now, more than ever, is a Senator who will work across party lines and restore Portland's independent voice in Augusta.

**David Babin, fighting for Portland
not a political party.**

Paid for and authorized by Babin for Senate Committee.
David Babin, 123 Cumberland Ave, Portland, ME 04101.

BABIN

STATE SENATE



I care deeply for Portland and will be a tireless advocate for the city and its people.

-David Babin

ELIMINATE WASTEFUL SPENDING

- Maine has one of the highest tax burdens in the country
- Provide property tax relief for home owners and to help keep rents low for Portland tenants
- I support Maine's taxpayer bill of rights for real and fair tax reform

SUPPORT SMALL BUSINESS

- Maine ranks a low 48th as "business friendly" in the country
- Our districts current senator has one of the lowest "Maine Economic Research Institute Rating" in the state
- Ease restrictive city and state regulations and codes that hinder growth

MAKE HEALTHCARE MORE AFFORDABLE

- I support allowing Maine people the ability to buy cheaper health insurance from other states
- Repeal the tax on health insurance
- Eliminate costly healthcare pilot programs

THANKS TO YOUR SUPPORT, THE
TAXPAYER BILL OF RIGHTS WILL PASS
IN NOVEMBER!

THIS MAKES IT EVEN MORE IMPORTANT
FOR YOU TO VOTE FOR ME AS I AM THE
ONLY DISTRICT 8 STATE SENATE
CANDIDATE WHO WILL WORK TO
UPHOLD THE LAW.



"NOT JUST ANOTHER PRETTY FACE"

BABIN FOR STATE SENATE

Authorized by David Babin and paid for by Babin For State Senate, 123 Cumberland Avenue, Portland Maine 04101
774-5467 Babin123@msn.com

You will notice that this is not a flashy promotional piece, but a simple postcard to tell you that relief is on the way. But you need to make it happen by voting for the one candidate who will support real meaningful tax relief.

"The difference between my opponents and myself is that I'll give it to you straight."

Portlanders need tax burden relief! Portlanders will not get tax burden relief as long as we keep electing the same senators and representatives who support special tax breaks¹ for their friends while denying the same for other Maine businesses.

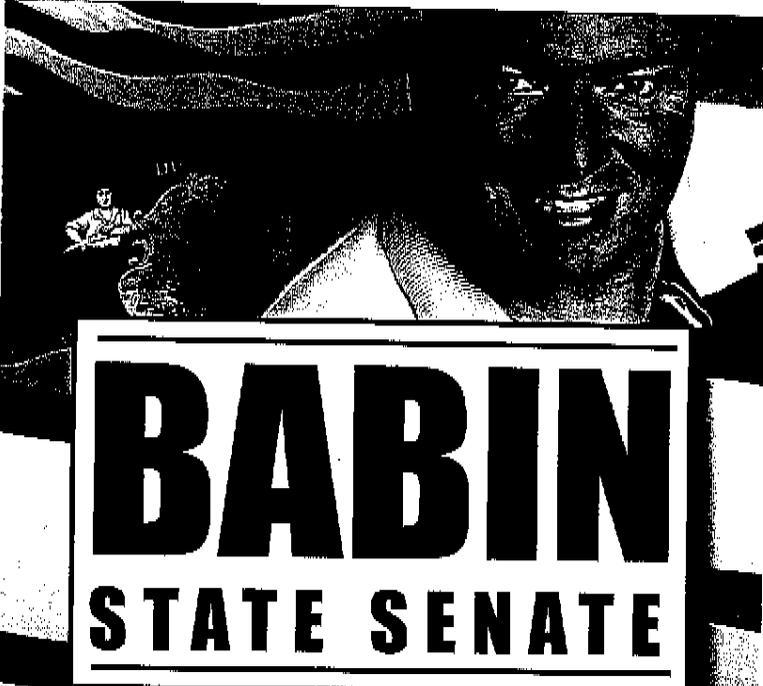
Maine Govt needs a diet! The *Taxpayer Bill of Rights* will put our state and local govts on a diet, one that allows govt to consume a portioned meal and when necessary to have extra bites, seek voter approval.

Maine needs new leadership! We need to change the way Maine does business. We need leaders who will work to revitalize Maine's economy. I want to be one of those leaders and hope you will support me in that goal. I look forward to working with others who want the best for Maine and I encourage you to vote for those who are looking out for Maine, not their cronies.

**BABIN FOR STATE SENATE
123 GUMBERLAND AVENUE
PORTLAND MAINE 04101**

Handwritten signature/initials

¹ LD 2056 Exemption placed in BETR repeal bill that provides an exception for one Maine retail business while not repealing the personal property taxes for any other Maine retail businesses.



BABIN
STATE SENATE

**The Independent
Voice for Portland**

I am running for the Maine Senate to bring an independent voice to Augusta. My first priority will be to set priorities. It's easy to make new promises, I think it's time we keep the promises we have already made to Maine people. My top priorities are to fully fund our schools, protect access, preserve choices and maintain quality in healthcare and to lower Maine's crushing property tax burden so Portland residents are not forced to sell their homes. I am ready to work for Portland, and I would really appreciate your support.

- David Babin

Munjoy Hill, West End, House Island, Nason's Corner,
Parkside, Downtown, Longfellow Woods, Rosemont,
Great Diamond Island, Oakdale, Stroudwater,
Little Diamond Island, Peaks Island,
Cushing Island, and Bayside.

BABIN STATE SENATE

"The Independent Voice for Portland"

AS YOUR STATE SENATOR, MY PRIORITIES WILL BE:

- To provide meaningful property tax relief for home owners and to keep rents low for Portland tenants
- Ease restrictive city and state regulations to support our small local businesses
- Fully fund our classrooms and put the bureaucracy on a budget
- Make health insurance more affordable

ABOUT DAVID BABIN

David grew up in East Deering and Munjoy Hill neighborhoods and is a 1973 graduate of Portland High School. David has always made service part of his life and has focused on homelessness, AIDS and advocacy for senior citizens. David is currently managing a residential rehabilitation program for people with traumatic brain injuries.

**David cares deeply for Portland
and will be a tireless advocate for the
city and its people.**

Paid for and authorized by the Candidate,
123 Cumberland Avenue, Portland, ME 04101

9-11-01

NEVER FORGET

3000 MURDERED BY ISLAMIC TERRORISTS

**Remember those who were
incinerated alive or jumped to
their deaths during the World
Trade Center ATTACK.**

**Remember those killed in the
AA flight 77 ATTACK on our
Pentagon.**

**Remember the heroes of
flight United 93**

**"I support border enforcement
and the deportation of illegal
aliens"**

BABIN
STATE SENATE



Paid for and authorized by David J. Babin, 123 Cumberland Avenue

BABIN

STATE SENATE



Photo: Doug Emerson

“Not Just Another Pretty Face.”

Paid for and authorized by David J. Babin, 123 Cumberland Avenue, Portland

BABIN

STATE SENATE



“Join me in supporting Maine’s TAXPAYER BILL OF RIGHTS”

**Portland NEEDS a senator that supports real tax relief.
Seniors and low wage earners are being taxed out their homes.
Small businesses struggle to survive our oppressive tax climate.**

**It’s NOT a “tax cap”. It’s NOT a cut to any service or program.
Our schools, fire and police departments will NOT be CUT
Don’t fall for the LIES and SCARE TACTICS of its opponents!**

The Taxpayer Bill of Rights NEVER requires a budget cut.

Paid for and authorized by David J. Babin, 123 Cumberland Avenue, Portland

Photo: Doug Emerson

BABIN

STATE SENATE



“The Taxpayer Bill Of Rights is just what Maine needs.”

#1 tax burden in the country...it doesn't have to be this way

- **Our taxes are growing faster than our incomes**
- **Skyrocketing property taxes and high rents**
- **Oppressive income taxes for low wage earners**

Don't fall for their SCARE TACTICS and LIES !

Support the TAXPAYER BILL OF RIGHTS this November

Paid for and authorized by David J. Babin, 123 Cumberland Avenue, Portland

BABIN

STATE SENATE



Photo: Doug Emerson

Thank you for voting on June 13th

Paid for and authorized by David J. Babin, 123 Cumberland Avenue, Portland

West End Politics

Senate Race Heats Up

By ED KING

In the first campaign forum of the political season, the three candidates for Portland's primary state senate seat fielded a flurry of questions, while some of their supporters tried to frame the debate in terms that would present their opponents in a negative light.

Ethan Strimling, the incumbent, Republican David Babin, and Green Independent Kelsey Perchinski answered questions about healthcare, taxes, the Taxpayer Bill of Rights (TABOR), the environment, and education.

Babin defended his support for the Taxpayer Bill of Rights (see related story) which Strimling opposes and vowed to fight against. Perchinski also opposes TABOR, saying "there has to be a better way."

Strimling called for a more fair tax system in which those who could afford it would pay more and those with lower incomes would pay less. He said that there were "way too many sales tax exemptions."

Babin said that "the last thing we need to do is raise taxes." He said there should be no tax at all for anyone earning under \$28,000 a year, and that there was enough revenue-it just needed to be spent more wisely.

Perchinski said that the main issues she would focus on would be affordable healthcare, housing, the minimum wage, and promoting alternative fuel sources such as solar panels.

Perchinski and Strimling both expressed support for the state's Dirigo health plan, which Babin opposes, saying that government regulation has driven private insurance companies out of the state. He said he was supportive of the choice of options that private health care insurers would provide. (In his 2002 Senate campaign, in response to a healthcare-related issue, Strimling was quoted as saying that the government

shouldn't be in the health care business.)

Corey Hascall, Strimling's former campaign manager, who is currently listed as the moderator of Fighting for Portland, Strimling's campaign organization, referred to Babin's "anti-choice, and anti-civil rights" positions and asked Perchinski why she would align herself with the conservative Republican. Perchinski volunteered with Babin's 2004 campaign as his campaign manager and website designer. The two were employed at the time at Goodwill Industries, where Babin still works. Perchinski is the program manager at WMPG, the local radio station. She says that she joined the Babin campaign because she did not want to see Strimling run unopposed. Her current campaign platform is radically different than the one that Babin has put forward, including opposition to the Taxpayer Bill of Rights.

Jon Hinck, the Democrat who is running against West End Representative John Edet, referred to Republican national economic policies such as 'supply-side economics' and asked the candidates if they supported those policies. (Many of the attendees at the forum were probably still in diapers when the Reagan administration introduced 'supply-side economics' in the early 1980s.)

Babin responded to Hinck by saying that he (Babin) was a Republican, but that people should "think locally". He called Maine's economy "a mess", which he blamed on the policies of Maine Democrats. Strimling said he did not support the national Republican economic policies of the last 30 years.

When asked about their weaknesses as candidates, Babin said that he would probably worked too hard if elected to the office. Strimling said that he

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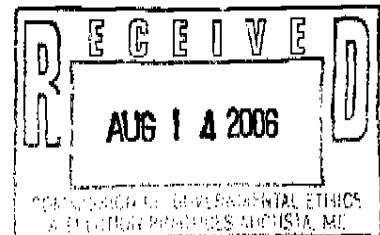
Senate Race Heats Up

CONTINUED

probably submitted too many bills in the last legislative session, and it would have been better if he had focused on fewer. Perchinski said her weakness might be not being familiar enough with some of the lesser issues in the campaign.

Agenda

Item #6

HAND DELIVERED

August 14, 2006

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

RE: Advisory Opinion Request – State Party Committees and Political Action Committees

Dear Mr. Wayne:

We are contacting you in our capacities as Counsel to the Maine Republican Party and the Maine Democratic Party to request an advisory opinion from the Commission on several issues related to state party committees and political action committees (“PAC’s). The recent controversies which have come before the Commission have raised some of these questions while others derive from a perceived lack of clarity in Maine law. The Maine Republican Party and the Maine Democratic Party would like this guidance so that the Parties and all of their candidates can fully comply with all aspects of Maine law during the 2006 campaigns.

First, we are seeking an opinion on the applicability and interpretation of the statutory provisions governing the activities of party committees. Second, we are requesting guidance on when “acceptance” of a contribution by a legislator from a lobbyist or employer of a lobbyist is deemed to have taken place and, finally, what constitutes a proper role for PAC’s in candidate elections.

I. STATE PARTY COMMITTEES

Under 21-A M.R.S.A. §1017-A, state party committees are required to report contributions and expenditures made to or on behalf of a candidate, with certain express exclusions. One of those exclusions is found in 21-A M.R.S.A. §1012(2)(B)(7), which provides that contributions to candidates do *not* include compensation to party committee employees when that employee provides advice to any one candidate for no more than twenty (20) hours in one election.

While that exclusion provision is clear, what is less clear is how an employee’s allowed contact with a candidate affects other employees of the party and what affect that initial twenty (20) hours of campaign advice has on future actions of the party committee. Our review of the applicable statutes and Commission rules does not appear to provide an answer, and, as a result, we respectfully ask for your guidance on the following questions:

1. How is “advice” defined for purposes of section §1012(2)(B)(7)? What specific types of activities would constitute “advice” which must then be counted toward the twenty (20) hour threshold? Are certain activities *not* considered “advice” for purposes of this section?

August 14, 2006

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2. If a state party committee employs several staff (i.e. field organizers, finance staff), does the twenty (20) hour limit apply to *each* staff person *individually* or is the threshold calculated on a collective basis? What documentation is required to show the twenty (20) hour threshold has or has not been met?
3. When a state party committee is paying staff (i.e. field organizers), who have worked less than twenty (20) hours on a candidates' campaign, does that make *all* other employees of that committee "agents" of the party under §1015(5) by virtue of the fact that they have a common employer?
4. Would that analysis change if the state party committee employec (i.e. field organizer) who is advising the candidate exceeds the twenty (20) hour threshold provided for in §1012(2)(B)(7)?
5. If a state party committee employee (i.e. field organizer) is giving advice to a candidate, does that preclude the state party committee from making an independent expenditure for that same candidate in that election cycle? Is the state party committee's ability to make an independent expenditure affected by whether or not the twenty (20) hour threshold has been met?
6. Based on the answer to #5, are there things a state party committee can do to assure their involvement does not constitute a "contribution?"
 - a. For example, if a state party committee employee is giving advice to a candidate, can a separate political action committee ("PAC") be formed to make the independent expenditures for that candidate if contact between the PAC and the state party committee was limited to only a few distinct employees (e.g. executive director) who were not otherwise advising the candidate?
7. If a separate PAC can be formed to make independent expenditures, could that PAC use the state party committee's mailing permit without that action constituting coordination with the candidate?
8. Considering the small number of vendors in Maine, if a state party committee and a candidate use the same vendor for campaign literature or advertising, would that fact alone constitute coordination under the statutes? If the answer is yes, what safeguards must be put in place to prevent coordination between those parties?
9. 21-A M.R.S.A. §1012(2)(B)(7) allows paid state party committee employees to provide up to twenty (20) hours of advice to candidates without that time being considered a contribution, does that same provision apply to legislative caucus PAC's?

II. POLITICAL ACTION COMMITTEES

We respectfully request your guidance on the allowed activities of PAC's seeking to involve themselves in both participating and non-participating candidate elections. In particular, we are requesting a Commission opinion on the following questions:

August 14, 2006
Page 3 of 3

1. Under Maine law, is an individual citizen (not a PAC) prohibited from spending an unlimited amount of his or her own money to advocate for the election of a candidate for Governor, if those expenditures are not "in cooperation, consultation or concert with, or at the request or suggestion of..." that candidate?
2. If #1 is not prohibited, can citizens associate with each other in spending their individual money, again, independent from the candidate's campaign?
3. Under Maine law, can a PAC be formed to advocate for the election of one candidate to one office, assuming that the PAC operates independently of the candidate and makes no "contribution" to that candidate's campaign?
4. If #3 is not allowed, would the illegality be cured if the PAC also advocated for the election of one or more candidates for the Legislature?
5. If #3 is not allowed, does that law violate Article 1, Section 4 of the Maine Constitution allowing for freedom of speech and publication?
6. Under Maine law, is there any distinction between a PAC advocating for the election of a non-participating candidate and a PAC advocating for a participating candidate, assuming that no "contributions" are made from the PAC?

III. LOBBYIST EMPLOYER CONTRIBUTIONS

Finally, we would also appreciate your guidance on the proper interpretation of 1 M.R.S.A. §1015(3)(B) which states that a Legislator may not "intentionally accept" a contribution from a lobbyist employer while the Legislature is convened. Our question concerns the Commission's interpretation of "acceptance." For example:

A lobbyist employer sends a contribution check while the Legislature is adjourned and the legislator receives that check during that adjournment, but fails to cash the check. If the check is received before, but cashed after, the Legislature has convened, has a violation of 1 M.R.S.A. §1015(3)(B) occurred? In other words, does acceptance of the contribution occur when the check is received, or when it is cashed?

We appreciate your willingness to consider all of the above questions and provide guidance as we enter the busy general election season. Thank you for your consideration and please do not hesitate to contact us if we can provide further information or clarification.

Very truly yours,



Daniel P. Riley, Jr., Esq.
Counsel to the Maine Republican Party
Bernstein Shur
146 Capitol Street
Augusta, Maine 04330
(207) 623-1596



Michael Mahoney, Esq.
Counsel to the Maine Democratic Party
Preti Flaherty
45 Memorial Circle
Augusta, Maine 04330
(207) 623-5300

DRAFT - NOT FOR DISTRIBUTION

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

September 14, 2006

Daniel P. Riley, Esq.
 Counsel to the Maine Republican Party
 Bernstein Shur
 146 Capitol Street
 Augusta, Maine 04330

Michael Mahoney, Esq.
 Counsel to the Maine Democratic Party
 Preti Flaherty
 45 Memorial Circle
 Augusta, Maine 04330

Dear Mr. Riley and Mr. Mahoney:

On August 14, 2006, you submitted to the Commission on Governmental Ethics and Election Practices (the "Commission") a request for an advisory opinion on several issues regarding the roles of party committees and political action committees in supporting candidates and on the issue regarding the acceptance by Legislators of contributions from lobbyist employers. We have repeated each question below with our answer.

I. State Party Committees

1. How is "advice" defined for purposes of §1012(2)(B)(7)? What specific types of activities would constitute "advice" which must then be counted toward the twenty (20) hour threshold? Are certain activities not considered "advice" for purposes of this section?

Advice is not specifically defined in statute or rule. Keeping in mind the plain English meaning of "advice,"¹ in order for compensation paid by the state party to be excepted from the definition of "expenditure" under 21-A M.R.S.A. §1012(2)(B)(7), the activities of state party employees acting in an advisory role in connection with a candidate should relate to traditional campaign consulting areas, e.g., strategic planning, message development, public relations and media consulting and management, polling, issue research, opposition research, fundraising strategies, etc. Activities that constitute "advice" are not limited to the ones mentioned. However, the activity should have as its primary purpose the provision of guidance, recommendations, direction, or coordination to aid a candidate in the conduct of his or her campaign. For example, assisting a candidate in developing a message about the candidate or about a particular issue is providing "advice." Drafting a speech or article is not. Certain activities clearly do not fall within the intent of the exception. Door-to-door canvassing on behalf of a candidate, making arrangements for campaign appearances, or conducting lit drops are among the types of activities that would not be "advice."

In several of the following questions, you have implied that you believe that "field organizers" and "finance staff" are the types of party employees whose work would fall within the exception. While a person's job title may not be indicative of his or her actual activities, many of the usual

¹ "Advice" is guidance or recommendations offered with regard to future action. *Compact Oxford English Dictionary, Third Edition, 2005.*

activities of a field organizer or finance staff would not fall within the exception. However, the determination should be made on the particular activity, not the job classification.

2. If a state party committee employs several staff (i.e., field organizers, finance staff), does the twenty (20) hour limit apply to each staff person individually or is the threshold calculated on a collective basis? What documentation is required to show the twenty (20) hour threshold has or has not been met?

As the statute is written, the twenty hour limit applies to an individual employee of the party and is not a limit on the total amount of staff time the party can provide to a candidate. Neither Title 21-A nor the Commission's rules requires the party to maintain a record of the amount of time provided by each staff person to a candidate or candidates. However, the party is required to list any expenditures made on behalf of a candidate. Since the amount of time provided to the candidate cannot exceed twenty hours in order to be excepted from the definition of expenditure, the party should be able to track the employee's time to know when it has reached that limit, and to report, as required by 21-A M.R.S.A. §1017-A(2), the employee's compensation for time over twenty hours.

3. When a state party committee is paying staff (i.e., field organizers), who have worked less than twenty (20) hours on a candidate's campaign, does that make all other employees of that committee "agents" of the [candidate] under §1015(5) by virtue of the fact that they have a common employer?

While the party employee who is providing advice to a candidate would be considered an agent of the candidate for the purposes of 21-A M.R.S.A. §§1015 and 1019-B, we do not consider other employees of the party to be agents of the candidate simply because there is a common employer. To view the agency relationship extending to all employees of the party would, among other things, result in a situation where political party committees would be effectively barred from making independent expenditures on behalf of candidates. This was not the legislative intent in establishing the exception in §1012(2) and (3). Certainly, that is not how the law has been interpreted in the past. That is not to say that another employee of the party would not be considered an agent of the candidate if there are other factors that would give rise to an agency relationship or that would indicate substantial involvement with the candidate's campaign.

4. Would that analysis change if the state party committee employee (i.e., field organizer) who is advising the candidate exceeds the twenty (20) hour threshold provided for in §1012(2)(B)(7)?

Assuming that, in this scenario, the candidate would be paying the party for the services provided by the party employee, the analysis would be the same. The party employee paid by the candidate would be an agent of the candidate for the purposes of 21-A M.R.S.A. §§1015 and 1019-B, but other party employees would not, barring any other circumstances that would establish an agency relationship between or indicate substantial involvement with the candidate and any other employee.

5. If a state party committee employee (i.e., field organizer) is giving advice to a candidate, does that preclude the state party committee from making an independent expenditure for that same candidate in that election cycle? Is the state party committee's ability to make an independent expenditure affected by whether or not the twenty (20) threshold has been met?

The mere fact that a party employee is providing or has provided advice to a candidate does not bar the party from making independent expenditures for that candidate. However, the expenditure for a communication could be considered a contribution to a candidate if that party employee were in any way involved in expressing or communicating the candidate's strategy, plans, activities, needs, or other information material to the candidate's campaign to other party employees responsible for the communication; involved in the creation, development, dissemination, or distribution of the communication; or otherwise significantly involved in any other phase or aspect of the communication.

In considering a complaint against a party and a candidate for making a coordinated expenditure, the Commission would consider the steps that the party takes to prohibit the flow of information between the employee who is advising the candidate and other party employees responsible for the communication. A written policy describing the procedures to accomplish this would be helpful in responding to any such complaint, but would not by itself overcome a complaint.

Whether the twenty hour threshold has been met does not alter the analysis of whether coordination has occurred.

6. Based on the answer to #5, are there things a state party committee can do to assure their involvement does not constitute a "contribution?"

a. For example, if a state party committee employee is giving advice to a candidate, can a separate political action committee ("PAC") be formed to make the independent expenditures for that candidate if contact between the PAC and the state party committee was limited to only a few distinct employees (e.g., executive director) who were not otherwise advising the candidate?

The option of creating a separate political action committee to make independent expenditures and which has very limited communications with the party would provide the greatest protection for both the party and the candidate from making coordinated expenditures.

7. If a separate PAC can be formed to make independent expenditures, could that PAC use the state party committee's mailing permit without that action constituting coordination with the candidate?

The use of the state party committee's mailing permit would be permissible under two conditions. First, such use would have to be allowable under postal regulations. Second, the disclosure statement on the communication must indicate that the communication was paid for by the PAC, not the state party committee.

8. Considering the small number of vendors in Maine, if a state party committee and a candidate use the same vendor for campaign literature or advertising, would that fact alone

constitute coordination under the statutes? If the answer is yes, what safeguards must be put in place to prevent coordination between those parties?

The Commission would not consider the use of the same vendor by the party committee and a candidate to be coordination solely on that basis. However, a complaint could be made if there were evidence of coordination whereby the vendor, in the course of doing business with the candidate, obtained information which it provided to the party, which was material to and used for the communication paid for by the party, and which was not otherwise in the public domain. The use of publicly available photographs would not be considered coordination.

9. 21-A M.R.S.A. §1012(2)(B)(7) allows paid state party committee to provide up to twenty (20) hours of advice to candidates without that time being considered a contribution, does the same provision apply to legislative caucus PACs?

No. The exclusion applies only to state and local party committees.

II. Political Action Committees

1. Under Maine law, is an individual citizen (not a PAC) prohibited from spending an unlimited amount of his or her own money to advocate for the election of a candidate for Governor, if those expenditures are not "in cooperation, consultation or concert with, or at the request or suggestion of..." that candidate?

No, there is no limit on the amount that an individual can spend on independent expenditures to support or oppose the election of a particular candidate.

2. If #1 is not prohibited, can citizens associate with each other in spending their individual money, again, independent from the candidate's campaign?

Yes, Title 21-A does not restrict individuals from associating with each other to make independent expenditures in support of or opposition to a candidate.

3. Under Maine law, can a PAC be formed to advocate for the election of one candidate to one office, assuming that the PAC operates independently of the candidate and makes no "contribution" to that candidate's campaign?

Yes, a political action committee may be formed to advocate for the election of one candidate even without the stated conditions. The fact that a political action committee operates independently and makes no contribution to the candidate's campaign is not determinative of its classification as a political action committee. Though, due to contribution limits, its activities could be very limited if it did not operate independently of the candidate.

Though you do not directly refer to it, your question relates to the interpretation of the second paragraph of 21-A M.R.S.A. §1015(4).

For the purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate, are considered to be contributions from that person to the candidate. The intermediary or conduit shall report the original source and the intended recipient of the contribution to the commission and to the intended recipient.

The Commission views that provision narrowly as applying primarily to the practice known as “earmarking” by which a contributor gives funds to an intermediary with the direction that the intermediary contribute the funds directly to the candidate.

Other individuals have raised a concern about an alternate interpretation which reads the provision without the prepositional phrase (“...including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate...”):

For the purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate...are considered to be contributions from that person to the candidate.

Read without the phrase, the statute could be interpreted to mean that a person would be prohibited from giving a cash contribution to a political action committee or other entity on behalf of a particular candidate. Thus, a person would be limited to making cash or in-kind contributions directly to a candidate or making separate independent expenditures, but could not otherwise provide financial support on behalf of a particular candidate if the contribution passes through the hands of a third party. We do not believe that is the intent behind §1015(4).

Title 21-A does not establish any limit to the amount of money an individual or a political action committee or other entity can spend on independent expenditures on behalf of a candidate. Nor does it limit the ways that persons can associate in order to support a candidate. Reading §1015(4) without the prepositional phrase results in an overly broad construction which could lead to an impermissible restriction of political speech and association. Therefore, the Commission views the phrase as an essential, not optional, element of the provision. The provision only prohibits the earmarking of funds whereby an individual gives funds to a third party with the intent that the third party in turn gives those funds directly to a particular candidate. Section 1015(4) does not prohibit a person from making a contribution to a political action committee or other entity with a request or specific instructions for the funds to be spent on behalf of a particular candidate.

4. If #3 is not allowed, would the illegality be cured if the PAC also advocated for the election of one or more candidates for the Legislature?

Given the answer above, there would be no illegality to be cured.

5. *If #3 is not allowed, does that law violate Article 1, Section 4 of the Maine Constitution allowing for freedom of speech and publication?*

Given the answer above at Question 3, §1015(4) of Title 21-A does not violate the Maine Constitution.

6. *Under Maine law, is there any distinction between a PAC advocating for the election of a non-participating candidate and a PAC advocating for a participating candidate, assuming that no "contributions" are made from the PAC?*

There is no such distinction under Maine law.

III. Lobbyist Employer Contributions

Finally, we would also appreciate your guidance on the proper interpretation of 1 M.R.S.A. §1015(3)(B) which states that a Legislator may not "intentionally accept" a contribution from a lobbyist employer while the Legislature is convened. Our question concerns the Commission's interpretation of "acceptance." For example:

A lobbyist employer sends a contribution check while the Legislature is adjourned and the legislator receives that check during that adjournment, but fails to cash the check. If the check is received before, but cashed after, the Legislature has convened, has a violation of 1 M.R.S.A. §1015(3)(B) occurred. In other words, does acceptance of the contribution occur when the check is received, or when it is cashed?

A contribution is considered to be accepted when it is received, *i.e.*, in the possession of the Legislator, the Legislator's authorized political committee, or their authorized agents.

We hope that you find this guidance helpful. If you have any further questions regarding these matters, please contact Executive Director Jonathan Wayne at 287-4179.

Sincerely,

Jean Ginn Marvin
Chair

Title 21-A, Chapter 13, CAMPAIGN REPORTS AND FINANCES

B. Does not include:

- (1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;
- (2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the individual on behalf of any candidate does not exceed \$100 with respect to any election;
- (3) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if the charge to the candidate is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed \$100 with respect to any election;
- (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

Title 21-A, Chapter 13, CAMPAIGN REPORTS AND FINANCES

- (6) Any communication by any person that is not made for the purpose of influencing the nomination for election, or election, of any person to state or county office;
- (7) 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;
- (8) 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 campaign;
- (9) 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;
- * (10) 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;
- (10-A) Costs paid for by a party committee in connection with a campaign event at which 3 or more candidates are present;
- (11) Campaign training sessions provided to 3 or more candidates;
- (11-A) 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; or
- (12) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider.

[2005, c. 301, §8 (amd).]

4. Exploratory committee. [1991, c. 839, §3 (rp); §34 (aff).]

5. Party candidate listing. "Party candidate listing" means any communication that meets the following criteria. [2005, c. 301, §9 (new).]

A. The communication lists the names of at least 3 candidates for election to public office.

[2005, c. 301, §9 (new).]

B. The communication is distributed through public advertising such as broadcast stations, cable television, newspapers and similar media, and through direct mail, telephone, electronic mail, publicly accessible sites on the Internet or personal delivery.

[2005, c. 301, §9 (new).]

C. The treatment of all candidates in the communication is substantially similar.

[2005, c. 301, §9 (new).]

Title 21-A, Chapter 13, CAMPAIGN REPORTS AND FINANCES

3. Aggregate contributions. No individual may make contributions to candidates aggregating more than \$25,000 in any calendar year. This limitation does not apply to contributions in support of a candidate by that candidate or his spouse. [1985, c. 161, §6 (new).]

* **4. Political committees; intermediaries.** For the purpose of the limitations imposed by this section, contributions made to any political committee authorized by a candidate to accept contributions on the candidate's behalf are considered to be contributions made to that candidate. [1985, c. 161, §6 (new).]

For the purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate, are considered to be contributions from that person to the candidate. The intermediary or conduit shall report the original source and the intended recipient of the contribution to the commission and to the intended recipient. [1985, c. 161, §6 (new).]

* **5. Other contributions and expenditures.** Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate. [1989, c. 504, §§7, 31 (amd).]

The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees or their authorized agents is considered to be a contribution to that candidate. [1989, c. 504, §§7, 31 (amd).]

6. Prohibited expenditures. A candidate, a treasurer, a political committee, a party or party committee, a person required to file a report under this subchapter or their authorized agents may not make any expenditures for liquor to be distributed to or consumed by voters while the polls are open on election day. [1991, c. 839, §11 (amd); §34 (aff).]

7. Voluntary limitations on political expenditures. A candidate may voluntarily agree to limit the total expenditures made on behalf of that candidate's campaign as specified in section 1013-A, subsection 1, paragraph C and subsections 8 and 9. [1995, c. 384, §2 (new).]

Agenda

Item #7

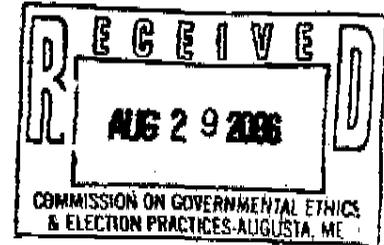


Thomas & Lynda Quinn

P.O. Box 36

Showhegan, Maine 04976

State of Maine
Commission on Governmental Ethics
And Election Practices
135 State House Station
Augusta, ME 04333-0135



I respectfully request of the Commission a wavier of my penalties for late reports as I was a write-in candidate for the office of Somerset County Commissioner/District #3 and was unaware of any regulations concerning finance reporting. I used less than \$700 of personal monies and had no written guidelines to follow prior to the primary.

Thank you for your consideration,

Lynda Nutting Quinn
Candidate for Somerset County Commissioner/District #3



Welcome to the Campaign Finance Electronic Filing System Site

Menu Home Help Logout Change Password Admin Page

9/13/2006

Home Page for Ms. Lynda N. Quinn

CAMPAIGN YEAR 2006

REPORT TYPE	REPORTING PERIOD	DUE DATE	DATE FILED	STATUS	LAST MODIFIED
Candidate Registration			08/18/2006 10:44 a.m. EST	Filed	8/18/2006
6-Day Pre-Primary	11/3/2004 to 6/1/2006	6/7/2006	08/18/2006 10:48 a.m. EST	Filed	8/18/2006
42-Day Post-Primary	6/2/2006 to 7/18/2006	7/25/2006	08/18/2006 10:55 a.m. EST	Filed	8/18/2006
6-Day Pre-General	7/19/2006 to 10/26/2006	11/1/2006			
42-Day Post-General	10/27/2006 to 12/12/2006	12/19/2006			

24-Hr Report of Late Contributions and Expenditures N/A MULTIPLE

Please click on the following buttons to Download schedule information in excel format.

Download Contribution A

Download Contribution A1

Download Expenditure B



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

August 18, 2006

Ms. Lynda N. Quinn
 P.O. Box 36
 Skowhegan, ME 04976

BY CERTIFIED MAIL

Dear Ms. Quinn:

RE: Late 42-Day Post-Primary Campaign Finance Report Due 07/25/2006.

You filed a 42-Day Post Primary campaign finance report on 8/18/2006. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report is \$149.63. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been 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. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

NOTE: The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) 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; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) 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.

The Maine Clean Election Act requires all revenues distributed to certified candidates from the fund to be used for campaign-related purposes. Commission guidelines regarding permissible campaign-related expenditures do not include the payment of a penalty as a permissible expenditure.

Sincerely,

Sandra Thompson
 Candidate Registrar

cc. Treasurer *via reg. mail*

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

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

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

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

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

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate 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 amount of the total contributions received or expenditures made during the filing period
<u>X .01</u>	Percent prescribed for first violation
\$25.00	One percent of total contributions
<u>X 2</u>	Number of calendar days late
\$50.00	Total penalty

Your penalty is calculated as follows:

Contributions/Expenditures: \$	<u>623.48</u>
Percent prescribed:	<u>X 1%</u>
	\$ <u>6.23</u>
Number of days late:	<u>X 24</u>
Total penalty accrued:	\$ <u>149.63</u>

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
21-A M.R.S.A. Section 1020-A(5)

\$5,000 for reports required to be filed 42 days before an election (gubernatorial candidate only),
6 days before an election, 42 days after an election, and for 48-hour reports;
\$1,000 for semiannual reports.



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

August 18, 2006

Ms. Lynda N. Quinn
 P.O. Box 36
 Skowhegan, ME 04976

The Commission staff has made a preliminary determination, based upon application of the statutory formula, that a penalty of \$149.63 applies for the late filing of your 42-Day Post-Primary campaign finance report. *If you agree with this determination, please make your check or money order in that amount payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333, within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like the Commission to make a formal determination of any penalty to be assessed in this case.*

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay the full amount of any penalty. Please direct any questions you may have about this matter to Sandy Thompson 287-7651.

Cut Along Dotted Line

For Office Use Only:
 Account: CGEEP
 Fund: 014 Approp: 02

To Commission on Governmental Ethics and Election Practices
 135 State House Station
 Augusta, Maine 04333

From: Ms. Lynda N. Quinn

RE: Penalty for late filing of 42-Day Post-General Campaign Finance Report

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

Please Make Check or Money Order Payable to Treasurer, State of Maine

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

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we do require that you include the following disclaimer in your publication:

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The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

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.

§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).]

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, §1020-A, Failure to file on time

notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission. [RR 2003, c. 1, §14 (cor).]

8. Failure to file report. The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. If a candidate fails to file a report after 3 written communications from the commission, the commission shall send up to 2 more written communications by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the communications required by this subsection is guilty of a Class E crime. [2003, c. 628, Pt. A, §5 (rpr).]

8-A. Penalties for failure to file report. The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A. [2003, c. 628, Pt. A, §6 (new).]

9. List of late-filing candidates. The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection. [1995, c. 483, §15 (new).]

10. Enforcement. The commission staff has the responsibility for collecting the full amount of any penalty and has all necessary powers to carry out this responsibility. Failure to pay the full amount of any penalty levied under this subchapter is a civil violation by the candidate, treasurer, political party or other person whose campaign finance activities are required by this subchapter to be reported. Thirty days after issuing the notice of penalty, the commission shall report to the Attorney General the name of any person who has failed to pay the full amount of any penalty. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the penalty. This action must be brought in the Superior Court for Kennebec County or the District Court, 7th District, Division of Southern Kennebec. [1999, c. 426, §33 (amd).]

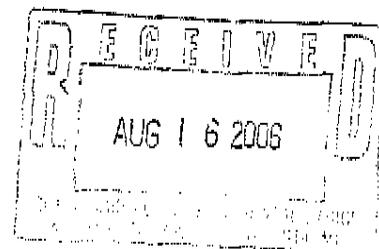
MRSA , §T.21A, SEC.1020A/4, 5. (AMD) .
 IB 1995, Ch. 1, §15 (AMD) .
 PL 1995, Ch. 483, §15 (NEW) .
 PL 1995, Ch. 625, §B5 (AMD) .
 RR 1995, Ch. 1, §10 (COR) .
 RR 1995, Ch. 2, §38 (COR) .
 PL 1999, Ch. 426, §32,33 (AMD) .
 PL 1999, Ch. 729, §5 (AMD) .
 PL 2001, Ch. 470, §11 (AFF) .
 PL 2001, Ch. 470, §7,8 (AMD) .
 PL 2001, Ch. 714, §PF1 (AMD) .
 PL 2001, Ch. 714, §PF2 (AFF) .
 PL 2003, Ch. 302, §4 (AMD) .
 PL 2003, Ch. 448, §4 (AMD) .
 PL 2003, Ch. 628, §A3-6 (AMD) .
 RR 2003, Ch. 1, §14 (COR) .

Agenda

Item #8

Blais for Sheriff

PO Box 107332
Portland, Maine 04104



August 13, 2006

Gavin O'Brien
Candidate Registrar
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

Dear Gavin,

On August 12, 2006, I received a letter from the State Ethics Commissions advising that I had failed to file the "42 day campaign finance report" for the Blais for Sheriff campaign in Cumberland County. The letter indicated that based on this failure to file, I have been assessed a fine of \$115.00 and that I have the option to file an appeal with the commission within 10 days. Subsequently, please accept this letter as my request to appeal the decision of the commission to assess the fine and to find that I have failed to file the proper report.

As you may recall, I was a write-in candidate for the office of Sheriff in Cumberland County. During the primary election period, my campaign staff and I were in contact with your office on several occasions seeking direction on issues related to write-in campaigns. You and your staff could not have been more helpful!

After the primary election, my staff and I attempted to obtain official word from the State regarding whether I had obtained the necessary amount of votes (300) to secure a place on the ballot in November. On numerous occasions, we contacted your office in an attempt to secure the official voting tabulations for my campaign. We were told that the results were not yet available. On several occasions we were referred to the Bangor Daily News for "unofficial" results. When we called the Bangor News, they said they do not track results of write-in campaigns. Your office eventually told us that the results had been forwarded to the Governors office and that we must wait until the Governor signs off on the results before they were made public.

Several weeks after the primary election, Steven Scharf, the secretary of the Cumberland County Republican Committee, informed me that he received the voting results from the State indicating that I had officially received 474 votes in the primary election.

On July 28, 2006, I sent an e-mail message to you advising that I had yet to receive correspondence from your office as to whether my campaign had been successful obtaining the required amount of votes in the primary and asking for the treasurers packet needed to file the finance reports. (See enclosure.) You apparently forwarded my inquiry to Melissa Packard, Director of Elections and Commissions, on that same day.

On August 1, 2006, I received an e-mail response from Melissa Packard. Melissa agreed that there has been a delay on behalf of the State in both notification to me that we had received the necessary votes to be placed on the November ballot and in sending the treasurers packet to my treasurer, Terry Hand. Melissa said that she notified the Ethics Commission on August 1, 2006 that I was a candidate that would be on the November ballot. (See enclosure.)

The Blais for Sheriff treasurer, Terry Hand, received the treasurer's packet on July 31, 2006 (4 days after the filing deadline). She filed the 42-day report 3 days later on August 3, 2006.

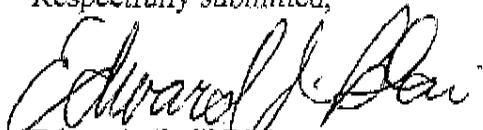
Based on the enclosed information, I believe that you would agree that my campaign was unable to file the appropriate finance reports any earlier than we did. I also suspect and understand that the fact that we were a write-in campaign contributed to the confusion surrounding this issue.

In addition, it is my understanding that the State has an obligation to notify a candidate within three days after a filing deadline if the candidate has not yet filed a finance report. Again, if the filing deadline was July 27, 2006 and I received official notification on August 12, 2006, the State was not in compliance with this requirement. (See enclosure.)

Based on the information provided in this letter and in the submitted enclosures, I respectfully request that the Commission waive any and all fines / penalties assessed to my campaign and would also request that a finding that we failed to file the 42-day finance report on time be rescinded.

Both Bill Holmes, my campaign manager, and I are career law enforcement officers. We both have a unique understanding and respect for the law. Bill and I will make ourselves available to speak with the commissioners and / or anyone else you would like us to speak with to answer any questions they may have regarding this issue.

Respectfully submitted,



Edward "Ted" Blais

Subscribed and sworn to be the above named Edward "Ted" Blais who made oath to the truth of the foregoing affidavit signed by him in my presence, this 15th day of August, 2006.



Kathleen B. Wahl, Comm. Expires 8-4-2010

Print | Close

Subject: RE: **Date:** Fri, 4 Aug 2006 11:55:31 -0400
From: O'Brien, Gavin
To: Blais For Sheriff \((Ted\)

Thank you, I see that the report has been filed. I noticed that the in-kind contributions from William Holmes included his occupation, "communications director," but no employer is listed. Could you or your treasurer amend the report to include that information if you have it? Other than that I didn't see any issues with the report.

I think I may have asked you this before, but I just wanted to confirm that you did not spend or collect any money for your campaign before July (including signs, in-kind contributions, etc.). Thanks again.

--
Gavin O'Brien
Candidate Registrar
Maine Commission on Governmental Ethics and Election Practices
(207) 287-4709

-----Original Message-----

From: Blais For Sheriff (Ted) [mailto:blais@blaisforsheriff.com]
Sent: Friday, August 04, 2006 11:28 AM
To: O'Brien, Gavin
Subject: Re:

Hello Gavin,

I have passed all the info on to my treasurer, Terry Hand. She is filing the data asap.

Thank you,

Edward (Ted) J. Blais
P.O.Box 10732
Portland, Maine 04104
(207)642-6672
www.blaisforsheriff.com

----- Original Message -----

From: O'Brien, Gavin [mailto:Gavin.O'Brien@maine.gov]
To: blais@blaisforsheriff.com
Sent: Thu, 3 Aug 2006 09:02:54 -0400
Subject:

If you raised or spent any money on your campaign before June 2, you should file both the 6-day pre-primary and 42-day post-primary reports. If you had activity between June 2 and July 18, you only have to file the 42-day post-primary report at this time. Please also send us the registration form when you receive that in the mail.

I have attached a pdf file to this email containing instructions on how to file reports electronically. Let me know if you have any questions.

Accessing the E-Filing site:

www.maine.gov/ethics - click on "Filer Login" link on the left side of the page

User Code: [REDACTED]
Password: [REDACTED]

--
Gavin O'Brien
Candidate Registrar

Read-

Maine Commission on Governmental Ethics and Election Practices
(207) 287-4709

2006-09-15 17:56:00
207-287-4709



Edward Blais <chiefblais@gmail.com>

My Write-in

2 messages

Edward Blais <chiefblais@gmail.com>

Tue, Jun 27, 2006 at 8:04 AM

To: "Flynn, Julie" <julie.flynn@maine.gov>

Hello Julie,

Do we have an official count to my write-in candidacy for Sheriff of Cumberland County?

PS: Dennis Hersom is Mark Dion's campaign manager.

Thanks,

TED

Flynn, Julie <Julie.Flynn@maine.gov>

Tue, Jun 27, 2006 at 8:56 AM

To: Edward Blais <chiefblais@gmail.com>

Cc: "Packard, Melissa" <Melissa.Packard@maine.gov>

We are proofreading the tabulation, which we intend to transmit to the Governor this Friday, June 30th. The results are not official until that occurs.

Julie L. Flynn

Deputy Secretary of State

101 State House Station

Augusta, ME 04333-0101

Telephone: (207) 624-7734

Fax: (207) 287-5428

[Quoted text hidden]



Edward Blais <chiefblais@gmail.com>

candidate information

Edward Blais <chiefblais@gmail.com>

Fri, Jul 28, 2006 at 10:27 AM

To: "Flynn, Julie" <julie.flynn@maine.gov>

Hello Julie,

This is Ted Blais, running for sheriff of Cumberland County. My campaign manager Bill Holmes told me that he got the official word that I had enough write in votes to be on the ballot in November. But I have not received anything about the official word. Plus, Terry Hand has volunteered to be my treasurer and she told me I should have a packet of treasurer info that needs to be updated immediately. I have been waiting for a packet in the mail but have not received anything yet.

Can you tell me the status of my candidacy?

Thanks,

TED BLAIS



Edward Blais <chiefblais@gmail.com>

candidate information

Packard, Melissa <Melissa.Packard@maine.gov>

Tue, Aug 1, 2006 at 9:43 AM

To: chiefblais@gmail.com

Cc: "Flynn, Julie" <Julie.Flynn@maine.gov>

Dear Mr. Blais:

I apologize for the delay in informing you that you did receive enough votes to be the Republican's candidate for Cumberland County sheriff. Your name will appear on the General Election ballot.

The packet that your treasurer is waiting for will be coming from the Commission on Governmental Ethics and Election Practices. We have informed that agency that you will be a candidate for November.

The Division of Election will need you to file the Sheriff Candidate Consent Form and submit written certification from the Maine Criminal Justice Academy that you have met the training standards. I have attached the Sheriff Candidate Consent Form to this email.

Please contact me if you have additional questions.

Melissa K. Packard

Director of Elections and Commissions

(207) 624-7650

-----Original Message-----

From: Flynn, Julie

Sent: Friday, July 28, 2006 10:39 AM

To: Packard, Melissa

Subject: FW: candidate information

Julie L. Flynn

Deputy Secretary of State

101 State House Station

Augusta, ME 04333-0101

Telephone: (207) 624-7734

Fax: (207) 287-5428

[Quoted text hidden]



Sheriff Consent Form.doc
43K



Edward Blais <chiefblais@gmail.com>

candidate information

Packard, Melissa <Melissa.Packard@maine.gov>
To: Edward Blais <chiefblais@gmail.com>

Tue, Aug 8, 2006 at 5:49 PM

Dear Mr. Blais:

We will be mailing you a certificate and letter later this month. In the interim I will mail you a hard copy of the town by town results so that you can see how many votes you received from each municipality.

In addition to the Sheriff Consent form that you sent as an attachment to your email, we also need to provide written certification from the Director of the Maine Criminal Justice Academy that you meet the training qualifications.

You can mail the original documents to Division of Election, 101 State House Station, Augusta, ME 04333-0101

Melissa K. Packard
Director of Elections and Commissions
(207) 624-7650

-----Original Message-----

From: Edward Blais [mailto:chiefblais@gmail.com]
[Quoted text hidden]



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

August 7, 2006

Mr. Edward J. Blais
17 Deer Hill North
Standish, ME 04084

BY CERTIFIED MAIL

Dear Mr. Blais:

RE: Late 42-Day Post-Primary Campaign Finance Report Due 7/25/2006.

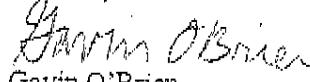
You filed a 42-Day Post-Primary campaign finance report on 8/4/2006. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report would be \$115.00. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been 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. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

NOTE: The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) 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; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) 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.

The Maine Clean Election Act requires all revenues distributed to certified candidates from the fund to be used for campaign-related purposes. Commission guidelines regarding permissible campaign-related expenditures do not include the payment of a penalty as a permissible expenditure.

Sincerely,


Gavin O'Brien
Candidate Registrar

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

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

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

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

For the first violation, 1%

For the second violation, 3%

For the third and each subsequent violation, 5%

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

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate 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 amount of the total contributions received or expenditures made during the filing period
<u>X .01</u>	Percent prescribed for first violation
\$25.00	One percent of total contributions
<u>X 2</u>	Number of calendar days late
\$50.00	Total penalty

Your penalty is calculated as follows:

Contributions/Expenditures:	\$ <u>1150.00</u>
Percent prescribed:	<u>x 0.01</u>
	\$ <u>11.50</u>
Number of days late:	<u>x 10</u>
Total penalty accrued:	\$ <u>115.00</u>

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
21-A M.R.S.A. Section 1020-A(5)

\$5,000 for reports required to be filed 42 days before an election (gubernatorial candidate only),
6 days before an election, 42 days after an election, and for 48-hour reports;
\$1,000 for semiannual reports.



Welcome to the Campaign Finance Electronic Filing System Site

- Menu
- Home
- Help
- Logout
- Change Password
- Admin Page

Mr. Edward J. Blais

42-Day Post-Primary Amended Report History
Campaign Year 2006

Please select an amended report to view/print:

- 42-Day Post-Primary
- 42-Day Post-Primary Filed: 8/13/2006 8:40:10 AM
- 42-Day Post-Primary Filed: 8/13/2006 9:47:18 AM
- 42-Day Post-Primary Filed: 8/3/2006 9:59:58 PM

Return to Home Page

canvass. I was informed the man he had not been notified by the Secretary of State that he had qualified for the general ballot as a primary write-in candidate. He did not know of our registration requirement or when he had to file finance reports. He said his only campaign activity was a fundraiser earlier in July and a purchase of t-shirts.

Arvin Oberier

7/31/06

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).]

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, §1020-A, Failure to file on time

notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission. [RR 2003, c. 1, §14 (cor).]

8. Failure to file report. The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. If a candidate fails to file a report after 3 written communications from the commission, the commission shall send up to 2 more written communications by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the communications required by this subsection is guilty of a Class E crime. [2003, c. 628, Pt. A, §5 (rpr).]

8-A. Penalties for failure to file report. The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A. [2003, c. 628, Pt. A, §6 (new).]

9. List of late-filing candidates. The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection. [1995, c. 483, §15 (new).]

10. Enforcement. The commission staff has the responsibility for collecting the full amount of any penalty and has all necessary powers to carry out this responsibility. Failure to pay the full amount of any penalty levied under this subchapter is a civil violation by the candidate, treasurer, political party or other person whose campaign finance activities are required by this subchapter to be reported. Thirty days after issuing the notice of penalty, the commission shall report to the Attorney General the name of any person who has failed to pay the full amount of any penalty. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the penalty. This action must be brought in the Superior Court for Kennebec County or the District Court, 7th District, Division of Southern Kennebec. [1999, c. 426, §33 (amd).]

MRSA , ST.21A,SEC.1020A/4,5 (AMD).

IB 1995, Ch. 1, §15 (AMD).

PL 1995, Ch. 483, §15 (NEW).

PL 1995, Ch. 625, §B5 (AMD).

RR 1995, Ch. 1, §10 (COR).

RR 1995, Ch. 2, §38 (COR).

PL 1999, Ch. 426, §32,33 (AMD).

PL 1999, Ch. 729, §5 (AMD).

PL 2001, Ch. 470, §11 (AFF).

PL 2001, Ch. 470, §7,8 (AMD).

PL 2001, Ch. 714, §PP1 (AMD).

PL 2001, Ch. 714, §PP2 (AFF).

PL 2003, Ch. 302, §4 (AMD).

PL 2003, Ch. 448, §4 (AMD).

PL 2003, Ch. 628, §A3-6 (AMD).

RR 2003, Ch. 1, §14 (COR).

Agenda

Item #9



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

To: Commission Members

From: Vincent W. Dinan, Staff Auditor

Date: September 14, 2006

Subject: Candidate Audits Completed in September, 2006

Materials submitted with the September Commission packet include six candidate audit reports completed over the past month as part of the Commission's new audit initiative. The audit program we have undertaken follows the procedures described in our audit memorandum approved by the Commission at its June, 2006 meeting. Our primary focus is to examine and report on candidate compliance with the provisions of the Maine Clean Election Act (MCEA) and the Commission's rules governing political contributions and expenditures.

Campaigns are chosen for examination using a statistically random selection procedure, and candidates for both the House of Representatives and the State Senate are included in the process. Our main objective over the course of the election cycle is to audit about 20 percent of publicly funded legislative candidates. In addition, we will examine the reported expenditures of all publicly funded gubernatorial candidates. We will perform other audit-related activities as time and resources permit.

We also plan to provide the Commission with regular advisories concerning trends and issues that we observe or that surface or develop during the course of our examinations. The initial results of our program have been encouraging in that the candidates audited have been determined to be substantially compliant with the terms of the MCEA and the Commission's rules.



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

September 14, 2006

AUDIT REPORT NO. 2006-SEN001

Candidate: Kenneth W. Fredette
Senate District 28

Background

Kenneth W. Fredette is a candidate for the Maine State Senate, District 28. Mr. Fredette was certified by the Commission as an MCEA candidate on April 19, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

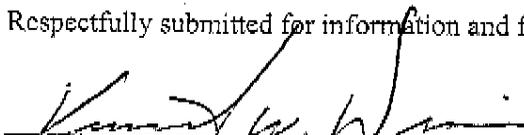
Examination of selected candidate expenditure transactions occurring between April 19 – June 1, 2006 (Six Day Pre-Primary Report), and June 2 – July 18, 2006 (42 Day Post-Primary Report), as recorded in the candidate's accounting records, and as reported to the Commission, to determine if the identified transactions (1) were properly approved by the candidate or his/her authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

The auditors examined documentation supporting 67 percent of the expenditures reported on Mr. Fredette's "Six Day" report, and 41 percent of the expenditures listed on his "42 Day" report.

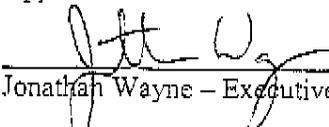
Audit Findings

No exceptions were noted.

Respectfully submitted for information and file.


Vincent W. Dinan - Staff Auditor

Approved:


Jonathan Wayne – Executive Director

Cc: Kenneth W. Fredette



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

September 14, 2006

AUDIT REPORT NO. 2006-HR001

**Candidate: Zachary E. Smith
House District 5**

Background

Zachary E. Smith is a candidate for the Maine House of Representatives, District 5. Mr. Smith was certified by the Commission as a Maine Clean Election Act (MCEA) candidate on April 21, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

Examination of selected candidate expenditure transactions occurring between April 19 – June 1, 2006 (Six Day Pre-Primary Report), and June 2 – July 18, 2006 (42 Day Post-Primary report), as recorded in the candidate's accounting records, and as reported to the Commission, to determine if the identified transactions (1) were properly approved by the candidate or his/her authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

The auditors examined documentation supporting 97 percent of the expenditures reported on Mr. Smith's "Six Day" report, and 88 percent of the expenditures listed on his "42 Day" report.

Audit Findings

No exceptions were noted.

Respectfully submitted to the Commission for information and file.

Vincent W. Dinan - Staff Auditor

Approved:

Jonathan Wayne – Executive Director

Cc: Zachary E. Smith



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

September 14, 2006

AUDIT REPORT NO. 2006-HR002

**Candidate: Representative Judd Thompson
House District 55**

Background

Representative Judd Thompson is a candidate for re-election to the Maine House of Representatives, District 55. Rep. Thompson was certified by the Commission as an MCEA candidate on April 10, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

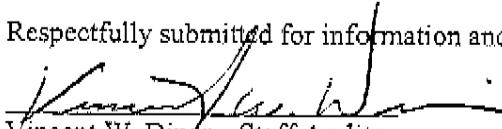
Examination of selected candidate expenditure transactions occurring between April 19 – June 1, 2006 (Six Day Pre-Primary Report), and June 2 – July 18, 2006 (42 Day Post-Primary Report), as recorded in the candidate's accounting records, and as reported to the Commission, to determine if the identified transactions (1) were properly approved by the candidate or his/her authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

The candidate reported that no expenditures were made by him during the "Six Day" period. The auditors examined documentation supporting 100 percent of the expenditures reported on Rep. Thompson's "42 Day" report.

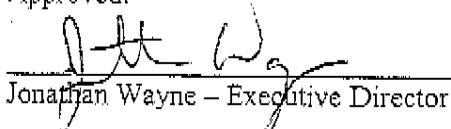
Audit Findings

No exceptions were noted.

Respectfully submitted for information and file.


Vincent W. Dinan - Staff Auditor

Approved:


Jonathan Wayne – Executive Director

Cc: Rep. Judd Thompson



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

September 14, 2006

AUDIT REPORT NO. 2006-HR003

**Candidate: Dean A. Cray
House District 28**

Background

Dean A. Cray is a candidate for the Maine House of Representatives, District 28. Mr. Cray was certified by the Commission as a Maine Clean Election Act (MCEA) candidate on March 7, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

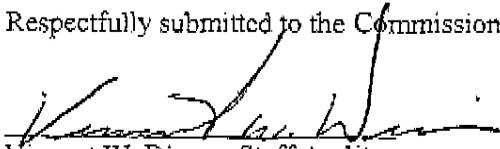
Examination of selected candidate expenditure transactions occurring between April 19 – June 1, 2006 (Six Day Pre-Primary report), and June 2 – July 18, 2006 (42 Day Post-Primary report), as recorded in the candidate's accounting records, and as reported to the Commission, to determine if the identified transactions (1) were properly approved by the candidate or his/her authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

The auditors examined documentation supporting 80 percent of the expenditures reported on Mr. Cray's "Six Day" report, and 48 percent of the expenditures listed on his "42 Day" report.

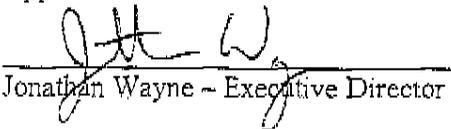
Audit Findings

No exceptions were noted.

Respectfully submitted to the Commission for information and file.


Vincent W. Dinan - Staff Auditor

Approved:


Jonathan Wayne - Executive Director

Cc: Dean A. Cray



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

September 14, 2006

Audit Report No. 2006-HR004

**Candidate: Cynthia A. Dill
House District 121**

Background

Cynthia A. Dill is a candidate for the Maine House of Representatives, District 121. Ms. Dill was certified for funding by the Commission under the authority of the Maine Clean Election Act (MCEA) on April 20, 2006. MCEA candidates are required to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

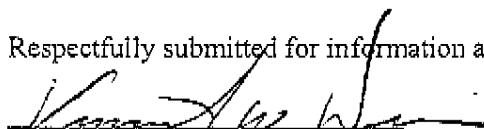
Examination of selected candidate expenditure transactions occurring between April 19 – June 1, 2006 (Six Day Pre-Primary Report), and June 2 – July 18, 2006 (42 Day Post-Primary Report), as recorded in the candidate's accounting records, and as reported to the Commission, to determine if the identified transactions (1) were properly approved by the candidate or his/her authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

The auditors examined documentation supporting 33 percent of the expenditures reported on Ms. Dill's "Six Day" report, and 87 percent of the expenditures listed on her "42 Day" report.

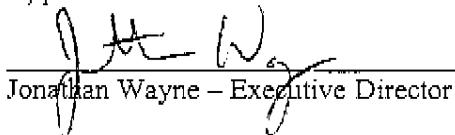
Audit Findings

No exceptions were noted.

Respectfully submitted for information and file,


Vincent W. Dinan - Staff Auditor

Approved:


Jonathan Wayne – Executive Director

Cc: Cynthia A. Dill



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

September 14, 2006

Audit Report No. 2006-HR005

**Candidate: Adam Scharff
House District 146**

Background

Adam Scharff is a candidate for the Maine House of Representatives, District 146. Mr. Scharff was certified for funding by the Commission under the authority of the Maine Clean Election Act (MCEA) on April 28, 2006. MCEA candidates are required to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

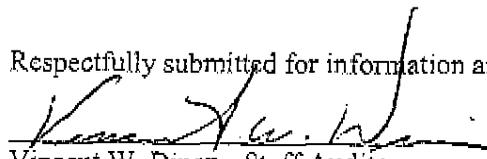
Examination of selected candidate expenditure transactions occurring between April 19 – June 1, 2006 (Six Day Pre-Primary Report), and June 2 – July 18, 2006 (42 Day Post-Primary Report), as recorded in the candidate's accounting records, and as reported to the Commission, to determine if the identified transactions (1) were properly approved by the candidate or his authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

The auditors examined documentation supporting 50 percent of the expenditures reported on Mr. Scharff's "Six Day" report, and 100 percent of the expenditures listed on his "42 Day" report.

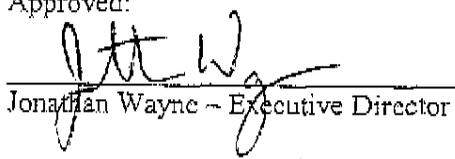
Audit Findings

No exceptions were noted.

Respectfully submitted for information and file,


Vincent W. Dinan - Staff Auditor

Approved:


Jonathan Wayne - Executive Director

Cc: Adam Scharff

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

Agenda Item

#2

CHAIRMAN
Governor Mitt Romney
Commonwealth of Massachusetts



VICE CHAIRMAN
Governor Sonny Perdue
State of Georgia

REPUBLICAN GOVERNORS ASSOCIATION

September 16, 2006

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

VIA E-MAIL: Jonathan.Wayne@maine.gov

Dear Mr. Wayne:

There is no difference in Maine or Federal Constitutional law regarding the standard for "express advocacy" as applied to advertisements referring to clean elections candidates versus advertisements referring to non-clean elections candidates. The implication to the contrary that the Committee to Re-elect Governor Baldacci ("Baldacci Campaign") is promoting is a political diversionary tactic and legally disingenuous.

Please accept this letter on behalf of the Republican Governors Association ("RGA") as a formal complaint and request that the Commission evaluate whether the Maine Democratic Party's ("MDP") recent advertisement was an independent expenditure expressly advocating the election of John Baldacci for Governor. We believe that neither the RGA nor the MDP's advertisements in fact cross the line into expressly advocating the election or defeat of a candidate. According to television station logs, however, the MDP has already spent approximately \$350,000 on television advertisements attacking Chandler Woodcock and/or promoting John Baldacci. It is critical – and legally mandated – that the Commission apply the same standard for determining "express advocacy of election or defeat" to both the MDP and the RGA advertisements.

At 4:57 PM on Friday afternoon the Baldacci Campaign sent you a politically charged letter that adds no new relevant legal analysis to the briefings that the Commission has already received from the LaMarche Campaign and the RGA. Representative Glynn's statements from the Legislative Record, even with the selective editing employed by the Baldacci Campaign, in fact strengthen the argument that the RGA's advertisements do not constitute express advocacy under Maine Law. In the selected quotation, Representative Glynn is referring to the 2003 changes in Maine law to institute a 21-day period in which there is a presumption that advertisements that name or depict a clearly identified candidate are an independent expenditure. If the RGA were in fact running the advertisements that we are today, but within 21 days of election day, then it is correct that our advertisements would almost certainly be considered to be Independent Expenditures under Maine law. The converse, however, is also correct.

Because the RGA is currently running our advertisements outside of the 21 day window, the stricter “names or depicts a clearly identified candidate” standard does not apply, and instead “expressly advocates the election or defeat of a clearly identified candidate” is the legal standard. As was explained in my previous letter to the Commission, the RGA’s advertisements do not meet that express advocacy of election or defeat standard under Maine law, under Federal Constitutional principles, and under generally understood Maine political practice.

The Baldacci Campaign’s argument concedes that the RGA advertisements do not contain words of express advocacy, but instead argue that they feel that the “implied message” of one of our advertisements is “Vote for Woodcock.” Fortunately, the legal standard for express advocacy is not what a political opponent’s self-serving feeling regarding the “implied message” of an advertisement is. The RGA can just as easily assert that the clearly implied message of the MDP’s advertisement closing with “John Baldacci the Jobs Governor” is “Vote for Baldacci,” but the RGA’s (equally self-serving) guess at the message of the MDP ad does not mean that it rises to the legal standard of express advocacy.

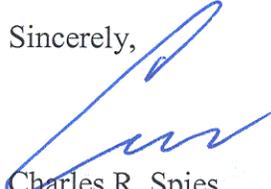
The Baldacci Campaign makes much of the idea that there is now a Woodcock campaign television advertisement that contains the Woodcock campaign logo coupled with the word “Governor.” The use of the Woodcock campaign logo is substantively different from the RGA’s issue advertisement in which, as was explained in detail in our previous submission to the Commission, the word governor is one of many words and concepts pictured on the screen, and the verbal and graphic emphasis during the scene (and whole advertisement) is to tell Senator Woodcock to support policies that take Maine in new direction. No election or electoral advocacy is referenced or implied in the RGA advertisement. The Baldacci Campaign additionally asserts that the RGA “went so far as to actually pull identical language” from the Woodcock advertisement. That assertion is false. The RGA’s advertisement in question first aired on or about Thursday, September 7th. Our media-tracking research indicates that the referenced Woodcock Campaign advertisement first aired on or about Wednesday, September 13th. Consequently, there is no way that the RGA’s Issue Ad team could have “pulled the language” from the Woodcock Campaign advertisement.

As was noted in our previous submission, if the Commission ultimately believes that the inclusion of the word “Governor” is problematic in the RGA’s advertisement, then the inclusion of the slogan (and graphic) “John Baldacci the Jobs Governor” in the MDP’s advertisement must be treated the same. In fact, in the MDP’s advertisement, the only text on the closing screen (aside from the disclaimer at the bottom) is “John Baldacci the Jobs Governor.” Additionally, and unlike the RGA’s advertisement where the word Governor is de-emphasized in smaller size than other text, in the MDP advertisement the word Governor is part of the campaign slogan “the Jobs Governor” and is emphasized on screen.

The Baldacci Campaign closes their complaint with a discussion of matching funds. Suffice it to say that all of their analysis applies equally to the advertisements being run by the MDP. Under 21-A M.R.S.A Sec. 1125(9) cited in the Baldacci Campaign letter, the independent expenditure made by the MDP in support of John Baldacci should serve to trigger matching funds equal to the amount spent airing the MDP advertisement for the other candidates qualified under Maine's Clean Elections Act, including Senator Woodcock's campaign.

Thank you for, again, your consideration of our responses. Please do not hesitate to contact me at (202) 662-4156 if there is additional information that I can provide to you.

Sincerely,



Charles R. Spies
General Counsel



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

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: September 15, 2006

Re: Advertisements by the Republican Governor Association and the Maine Democratic Party

This memo discusses the request of the LaMarche for Governor campaign for matching funds under the Maine Clean Election Act (MCEA) based on two advertisements by the Republican Governors Association (RGA). The LaMarche campaign argues that both advertisements expressly advocate the election of Chandler Woodcock, the Republican candidate for governor. The Baldacci campaign has submitted a complaint arguing that the second of the two RGA advertisements contains express advocacy.

The Woodcock campaign and the RGA both deny that the ads contain express advocacy. They request that if the Commission believes either RGA ad expressly advocates the election of Chandler Woodcock, the Commission should also consider whether advertising by the Maine Democratic Party expressly advocates the re-election of John Baldacci as governor. The staff agrees that the Commission should consider the Maine Democratic Party's advertisements.

This is the first time that the Commission has had to apply the express advocacy rule in the context of a large matching funds decision in a gubernatorial election, and the

first express advocacy determination for the Commission since the 2000 elections. It draws attention to the limited scope of the independent expenditure statute and the Commission's 1998 rule.

I have enclosed as Attachment A to this memo a brief primer on matching funds which may be helpful as background for this and other decisions in the next two months. In addition, the staff wishes to underscore for the Commission and the public that it is now commonplace for third-parties such as political action committees to spend money independently of MCEA candidates in order to promote them. To single out any MCEA candidate for criticism because others have spent money in support of his election – as some commentators have done in the case of Chandler Woodcock – seems unwarranted to the Commission staff.

Advertising by Republican Governors Association and Maine Democratic Party

The Republican Governors Association (RGA) has run two television advertisements in Maine. In the view of the Commission staff, both ads are supportive of Chandler Woodcock's campaign for governor, and the second ad (beginning with the graphic "State of Maine/Nation's Highest Tax Burden") may well cross the line into expressly advocating Chandler Woodcock's election. The ads currently are posted at <http://www.rga.org/Multimedia/Default.aspx> . I urge you to review both ads on the website, and (if requested) they can be shown to you at the September 22 meeting.

The Maine Democratic Party has run four ads regarding the gubernatorial election. Those ads are available at the web address of <http://www.mainedems.org/Multimedia.aspx> . In the view of the Commission staff, only one of these advertisements –

entitled "He Said He Would" – arguably could be considered expressly advocating the Governor's re-election. The staff view is that none of the Maine Democratic Party's advertisements constitutes express advocacy.

Definition of Independent Expenditure Under Maine Election Law

The LaMarche, Baldacci, and Woodcock campaigns collectively request that the Ethics Commission decide whether the RGA and Maine Democratic Party advertisements are independent expenditures as defined at 21-A M.R.S.A. §1019-B(1):

For the purposes of this section, an "independent expenditure":

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

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

If these advertisements were shown in the last 21 days before the election, they would be presumed to be independent expenditures under Paragraph 1(B) and would trigger matching funds, unless the independent spenders successfully demonstrated to the Commission that the expenditures were not intended to influence the election.

Because the RGA and Maine Democratic Party ads were broadcast more than 21 days before the election, however, your determination must be made under Paragraph 1(A) and therefore turns on whether the advertisements "expressly advocate" the election of Chandler Woodcock or Governor Baldacci.

Background on Express Advocacy

Commission Rule

In 1998, the Commission adopted a definition of express advocacy in its rules:

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

Commission Rules, Chapter 1, Section 10(B)(2).

Brief History of Concept of Express Advocacy

The concept of express advocacy has been part of state laws, agency rules, and court decisions for 30 years. Traditionally, it has been understood to include a narrow category of political speech. To understand why, it is helpful to understand the concept's history. I have attached a memorandum, dated

November 21, 2000, from the Commission's counsel on this topic. My remarks that follow attempt to summarize her memo and provide a brief update.

In 1976, in a decision entitled Buckley v. Valeo, 424 U.S. 1 (1976), the U.S. Supreme Court interpreted some recent amendments to federal laws which required the disclosure of candidate-related expenditures by independent groups. The Court held that the U.S. Constitution allowed the government to require financial reporting about some speech that related to candidates for political office.

Nevertheless, the Court was concerned that the federal law was too vague, because it people and groups engaging in political speech would not be able to know if they were required to file a financial report with the FEC. The court was also concerned that the law was "overbroad," meaning that the law as written required financial reporting for speech that was only remotely related to political candidates. Therefore, the court limited that particular federal law to apply to speech that "expressly advocated" the election or defeat of a "clearly identified" candidate. The court drew the line at express advocacy in order to preserve speakers' rights to discuss political issues without filing financial reports with the FEC. In a footnote, the Court provided examples of express advocacy including: "vote for," "elect," "Smith for Congress," *etc.* These phrases become known as the "magic words."

In the decades that followed, several states and campaign finance agencies adopted the express advocacy standard into their campaign finance laws and administrative agency rules to make sure that their regulation of political speech

did not exceed what the U.S. Supreme Court had allowed in Buckley. In 1995, the FEC adopted an administrative rule, 11 C.F.R. §100.22(a), which the Commission's rule on express advocacy, adopted in 1998, closely tracks.

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

Strength and Weakness of the Express Advocacy Standard

A common criticism of the express advocacy standard is that it is not difficult to design advertising that has the effect of influencing candidate elections yet avoids express advocacy. Some of the RGA and Maine Democratic Party advertisements are examples of this. As a result, expenditures of independent

¹ In McConnell, the court upheld a provision in the so-called McCain-Feingold law, 2 U.S.C.A § 434(f)(3)(A), requiring the reporting of expenditures by independent groups if the advertisements mention a clearly identified federal candidate, are broadcast within a specific time period prior to the election, and are targeted to an identified audience.

groups to influence the election of candidates are not disclosed, or are not disclosed as quickly. In Maine's public financing system, non-express advocacy communications that are made more than 21 days before an election are not taken into consideration for matching funds, which some have concluded is a major loophole.

The advantage of the express advocacy standard is that it provides predictability to political action committees and party committees wishing to know what candidate-related speech requires financial reporting, and it avoids government regulation of candidate-related speech that is protected by the U.S. Constitution.

Reliance on Express Advocacy Standard by PACs and Political Parties

In spite of the recognition that the express advocacy standard is narrow and may lead to the perception that campaign finance restrictions and reporting requirements are easily undermined or evaded, it is the law in Maine for communications disseminated to voters more than 21 days before an election. PACs and party committees wishing to engage in speech about Maine state candidates deserve to have a campaign finance system which is predictable and which allows them to know whether their speech will trigger matching funds and will require the filing of an independent expenditure report. While this Commission fulfills a unique function in the political process by ensuring a level playing field for MCEA candidates through the distribution of matching funds, it

is no less a function of the Commission to safeguard the rights of individuals, PACs, and party committees to engage freely in political expression.

Arguments by LaMarche and Baldacci Campaigns on Express Advocacy

The LaMarche campaign has made three submissions:

- the original request dated September 1 concerning the first RGA ad;
- a second letter dated September 12 requesting that the Commission consider both RGA ads; and
- a memo and affidavit submitted September 14 offering further comments.

The campaign argues that, “[g]iven the context, style, timing, subject and script of the ad[s], and the fact that [the ads were] paid for by an entity organized to elect Republican governors, [they] have no reasonable meaning other than to support the election of Mr. Woodcock.” The campaign also argues that the Woodcock campaign coordinated with the RGA in the making of the advertisements, which would make the RGA’s expenditures a contribution to the Woodcock campaign. That contention is discussed at the conclusion of this memo.

The Baldacci campaign has submitted a letter, dated September 15, arguing that the second RGA ad constitutes express advocacy and should be taken into consideration for matching funds.

Responses by RGA and Chandler Woodcock

The RGA denies that either of its advertisements includes express advocacy. It argues that “neither of the advertisements contains words or phrases that urge the viewer to take any kind of electoral action.” (underlining in original)

The RGA states that it is "talking about important issues such as Maine's excessive tax burden, structural gap, and lagging economy." It concedes that "while the RGA's discussion of these issues may in fact have the effect of helping to elect Senator Woodcock ..., these issues are much larger than any one candidate or campaign for political office."

The response from the Woodcock campaign rebuts in detail the allegation that the RGA ads were produced in cooperation with the campaign, and states that the ads do not contain express advocacy.

Analysis of Second RGA Advertisement

As noted above, express advocacy is defined in the Commission's rules as:

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

Commission Rules, Chapter 1, Section 10(B)(2).

Under this rule, a communication may include express advocacy in one of two ways: either by containing some of the sample phrases included in the rule within quotation marks (the "magic words"), or if the communication contains language which

in context can have no other reasonable meaning than to urge the election or defeat of a clearly identified candidate.

The Commission staff recommends that you focus your attention on the “reasonable meaning” of the advertisements, particularly on the language included in the communications. We suggest that you do not focus on the intentions of the organizations that paid for them. It seems likely that the RGA and Maine Democratic Party intended that all of the advertisements would influence the election. The staff believes that it is not relevant that the RGA’s mission is, in part, to elect Republicans to governors’ offices because the RGA’s mission does not affect the meaning of the advertisements.

The Commission staff concludes that the second RGA advertisement may well expressly advocate the election of Chandler Woodcock, because:

- Roughly one-half of the ad unmistakably is about Chandler Woodcock.
- The second half of the ad, following the description of Maine’s current economic condition, describes Woodcock’s “economic plan” consisting of future actions that Woodcock could only take (or could take much more effectively) if he becomes governor.
- The final frame of the ad contains the text “Chandler Woodcock/Governor/New Solutions to Change Maine’s Direction.”

Language in Final Frame of the Ad

In the view of the staff, a significant factor is the language contained within the final image (or frame) in the ad:

Chandler
Woodcock
Governor

New Solutions to Change Maine's Direction

207-287-1505

[Paid for disclosure]

We conclude that the use of the word "governor" in that frame directly below the candidate's name – particularly in the specific context of this advertisement – could move the communication as a whole into the category of express advocacy.

The language "Chandler Woodcock/Governor ..." is very close to one of the examples of express advocacy in the Commission's rule:

Jones for House of Representatives

(Ch. 1, §10(B)(2)) This example is based on "Smith for Congress" in the FEC Rule §100.22(a), which was one of the examples of express advocacy identified by the U.S. Supreme Court in Buckley v. Valeo. The inclusion of this example in the Commission's rule recognizes that a communication may expressly advocate the election of a candidate without using such verbs as "vote for," "elect," or "support" and may still affirmatively urge the viewer or listener to take some electoral action.

If "Woodcock for Governor" would be express advocacy under the Commission's rule (as the RGA concedes in its September 14 letter on page 4, top paragraph), it is reasonable to view "Woodcock/Governor" as express advocacy also. The omission of the preposition "for" is only a marginal semantic difference in the context of the advertisement, especially after it follows the clear expression that Maine "needs" the new solutions in Chandler Woodcock's economic plan. Indeed, it is hard to conceive of a

plausible alternative interpretation for the word “Governor” in the second RGA advertisement other than urging that Chandler Woodcock become the governor of the State of Maine.

Presentation of Chandler Woodcock’s Economic Plan as Solution to Maine’s Economic Problems

The staff recommends that the Commission consider the words “Chandler Woodcock/Governor/New Solutions to Change Maine’s Direction” in relation to the content in the ad preceding it. The first half of the ad describes Maine’s economic situation in dismal terms, and concludes “Maine needs new solutions.” In the view of the Commission staff, this communicates a sense of urgency.

With a noticeable shift to upbeat music and brighter colors, the ad then lists three elements of Chandler Woodcock’s “economic plan” as solutions to Maine’s dismal economic situation:

Cut Unfair Income Taxes
Reduce Property Tax Burden
Cap Government Spending.

The advertisement does not explain who Chandler Woodcock is or that his current office is as a State Senator, so it may be unclear to many viewers in what context Chandler Woodcock could implement his “plan.” The final frame clarifies this and puts the entire ad into context for the viewer: he could take these actions as governor.

The Commission staff believes that the discussion of Sen. Woodcock’s economic “plan” also is a consideration in favor of express advocacy. The word “plan” is

commonly associated with political candidates or public officials who are, will be, or seek to be in a position to implement a plan. It refers to a program for future action.

Other Possible Meanings of the Ad

Pure Issue Advocacy is Not a Reasonable Meaning

The RGA asks the Commission understand that the ad primarily advocates positions on economic, tax, and public spending issues. It states that there already is “a fundamental policy argument going on in Maine right now,” and that the RGA “is contributing to the policy discussion in Maine,” and “talk[ing] about important policy issues in Maine.” (RGA Letter dated September 14, p.1, 1st ¶; p.2 bottom ¶) The RGA notes that its issues discussion “may” have an effect on Maine’s gubernatorial election, but suggests that it is secondary:

These are important issues that effect all Maine residents, and while the RGA’s discussion of these issues may in fact have the effect of helping to elect Senator Woodcock (by talking about policies he supports) or defeat Governor Baldacci (by educating people on [an] economic environment that he is responsible for), these issues are much larger than any one candidate or campaign for political office. (RGA letter, at 3, top ¶)

The Commission staff disagrees that the electoral advocacy in the second RGA ad is as indirect or coincidental as the RGA suggests. The entire focus of the second half of the ad is on Chandler Woodcock and his economic plan. If the meaning of this ad were purely the advocacy of issues, it is not clear:

- why the Republican Governors Association would run this issue advertisement approximately two months before a general election for the office of governor;
- why a discussion of economic ideas would focus on State Senator Chandler Woodcock alone when there are many prominent advocates in

and outside of the Maine Legislature for reducing lower taxes and government spending; and

- why the office of governor would be mentioned in the final frame directly below Chandler Woodcock's name.

The purported meaning of this communication as purely a discussion of economic issues is not "reasonable" as required by the Commission's rule.

Telephoning Chandler Woodcock is Not a Reasonable Meaning

The audio of the advertisement invites the public to "Tell Chandler Woodcock you support new solutions to change Maine's direction" and shows the telephone number of the Senate Republican office (including area code) as a means, presumably, of contacting the Senator. It is not uncommon for Maine residents to be asked to telephone their elected officials when important matters of policy are being considered by the U.S. Congress or the Maine Legislature. Nevertheless, the invitation in the second RGA advertisement to telephone Senator Woodcock seems incongruous in the context of the rest of the ad:

- There is no suggestion that Chandler Woodcock's economic plan is under consideration or yet to be determined, so there does not appear to be any rationale for the viewer to telephone Chandler Woodcock in order to influence it.
- The broadcast of the advertisement on Portland and Bangor television stations has brought the advertisement to regions of the state which are far from Chandler Woodcock's current legislative district in Franklin County. There does not appear to be any reason for a viewer in York or Machias to telephone a state senator in Franklin County who has less than three months remaining in office, and without the Legislature being in session, regarding his economic ideas.
- The advertisement seems directed at viewers who already support Chandler Woodcock's ideas. There seems to be even less reason for a

viewer who already agrees with the Senator's plan to telephone him to tell him that he agrees with his ideas.

Overall, in our view the invitation to telephone Sen. Woodcock is not plausible or reasonable as an alternative meaning of the ad.

Conclusion on Express Advocacy in Second RGA Advertisement

For the above reasons, the Commission staff concludes that the second RGA advertisement should be interpreted as expressly advocating the election of Chandler Woodcock as governor. A central reason for this conclusion is the presence of the word "governor" in the final frame of the ad. While the use of the word "governor" might not – without reference to the other content – be sufficient to make the communication as a whole express advocacy, when viewed within the entirety of the ad, it is an important factor in determining the ad's meaning.

The RGA likely will argue at the September 22 meeting that a finding of express advocacy would lower the bar for what constitutes express advocacy in Maine, and would leave political action committees and party committees perplexed as to where the express advocacy line is. As noted above, that is a legitimate concern because predictability for independent spenders such as PACs and party committees is an important objective for a state's system of campaign finance laws. With respect to any unfairness to the RGA in particular, it should be noted that, in the view of the staff, the RGA could have avoided any question of express advocacy by omitting the word "governor" from the final frame.

While this is the view of a majority of the Commission staff, it recognizes that the Commission members may view the ad differently and may wish to interpret the express advocacy rule more narrowly.

Maine Democratic Party Advertisement – He Said He Would

The Woodcock campaign and the RGA have requested that the Commission consider whether the Maine Democratic Party's ads regarding the gubernatorial candidates contain express advocacy. The RGA focuses its attention on the advertisement entitled "He Said He Would." The staff believes that this advertisement does not rise to the level of express advocacy.

The advertisement is narrated by a Portsmouth naval shipyard worker who tells viewers how Governor Baldacci worked with Congress and community leaders to keep the shipyard open, saved hundreds of jobs in Maine paper mills, and created 24,000 jobs. The RGA focuses on the text in the final frame of the ad:

John Baldacci
the **Jobs** Governor

In addition, there is one audio reference to "Governor Baldacci", another audio reference to "Governor Baldacci's leadership", and one text of "Gov. John Baldacci."

The RGA argues that if "Chandler Woodcock/Governor/New Solutions to Change Maine's Direction" converts the second RGA advertisement to express advocacy, the "He Said He Would" advertisement should also be considered express advocacy. While the staff agrees that the final frames in both ads have some similarities that suggest the similar treatment, we believe other factors distinguish the two advertisements and that

there are reasons for concluding that "He Said He Would" advertisement does not rise to the level of express advocacy.

References to an Incumbent's Accomplishments or Actions in Office are Not, In Themselves, Express Advocacy

During election season, many individuals and organizations have sought and will seek to engage in speech about the records or accomplishments of an officeholder who is seeking re-election. For example, the Commission has considered communications that explicitly referred to the office currently held by incumbent legislators, cited their legislative voting records, and have concluded that they "help [the] economy." Other communications suggest that an incumbent legislator has been "good" or "bad" on a particular issue such as the pro-life/abortion rights debate or environmental issues, and cites the incumbent's record of performance as an elected official relating to the issue. It would significantly broaden the interpretation of the existing rule for the Commission to consider all of these communications contain express advocacy just because they make an explicit reference to an incumbent's office and the incumbent's record or accomplishments.

In the view of the Commission staff, such a decision would significantly lower the bar for what constitutes express advocacy and would have the potential to sharply increase confusion by independent groups about where the express advocacy line is drawn and what speech would require the filing of a financial report with the Commission. If the Commission were to adopt the view urged by the RGA regarding the "He Said He Would" advertisement, consider as an example the following hypothetical advertisement in a community newspaper sponsored by a local taxpayer group:

Senator Carla Jones has proven herself as a tax-fighter.
She's voted to reduce the income tax and our local property taxes here in town,
and to limit the size of the government in Augusta.

Carla Jones

The **Small Government** Senator

The view urged by the RGA would have the potential to inhibit an entire class of speech about incumbents that make no reference to an election.

No Explicit Reference to Future Action by the Candidate

The "He Said He Would" advertisement does not contain any explicit reference to actions John Baldacci would take if re-elected. There is no reference to the candidate's "plan" or "program."

It may be argued that the phrase "the Jobs Governor" implies a promise of future action and is an invitation to the viewer to vote for John Baldacci if the viewer approves of Baldacci's contribution to job creation. This interpretation assumes that the viewer will make certain logical connections, however, and there is nothing in the text or context of the ad that clearly conveys that invitation. In the view of the Commission staff, if there is an invitation to vote for the Governor in this ad, it is very subtly implied, and is not expressed to the degree shown in the second RGA ad.

No Call to Action

The "He Said He Would" advertisement contains no call to action whatsoever, and certainly no reference to the election. The viewer is, in fact, not addressed in any way by the ad.

Staff Conclusion on "He Said He Would" Advertisement

In conclusion, the staff cannot conclude that the only reasonable meaning of the "He Said He Would" advertisement is to elect John Baldacci, any more than it can conclude that the only meaning of statements such as "Representative Jones has helped the economy" or "Senator Smith has voted to hurt the environment" is to elect or defeat those candidates. To view "He Said He Would" as express advocacy would lower the bar of express advocacy to such an extent that it would cause significant confusion for a number of organizations wishing to convey messages – both positive and negative – about incumbents and their record in office.

First RGA Advertisement and Other Advertisements by Maine Democratic Party

The Commission staff believes that the first RGA ad and the other ads by the Maine Democratic Party could not be considered express advocacy under the Commission Rule.

Conclusion and Options on Express Advocacy

On the issue of whether the advertisements expressly advocate the election of John Baldacci and Chandler Woodcock, the staff proposes two options for your consideration. We believe that you could vote to adopt either option consistently with your 1998 rule on express advocacy.

Option #1 – Find that Only the Second RGA Ad is Express Advocacy

Applying the Commission's express advocacy rule should focus your attention on the exact language in the advertisements and their "reasonable meaning." A majority of staff members believes that there is a difference between the expressed nature of the advocacy in the second RGA ad and the other ads, and that the second RGA ad expressly advocates the election of Chandler Woodcock.

If you believe the RGA has crossed the line into express advocacy and choose to make that determination, we recommend that you identify those aspects of the advertisement which have led you to your decision. That guidance would assist other political action committees and party committees who wish to communicate their views about candidates while avoiding what has been defined as express advocacy by the Commission. As noted above, the staff view has been influenced by the following factors:

- Roughly one-half of the ad relates to Chandler Woodcock.
- The second half of the ad describes Woodcock's "economic plan" consisting of future actions that Woodcock could only take (or could take much more effectively) if he became governor.
- The final frame of the ad contains the text "Chandler Woodcock/Governor/New Solutions to Change Maine's Direction." The introduction of the word "Governor" after the preceding promotional content urges his election to governor.

The Baldacci campaign argues that the RGA has not filed a financial report of its independent expenditure as required by 21-A M.R.S.A. §1019-B. If you believe this is correct, the Commission staff recommends that you require the filing of an independent

expenditure report to facilitate the payment of matching funds, but that you should waive any monetary penalty.

Option #2 – Find that None of the RGA or Maine Democratic Party Advertisements is Express Advocacy

You may conclude that the best course of action is to apply the Commission's express advocacy rule in a strict fashion, encompassing a very narrow category of speech other than the magic words that expressly advocates the election or defeat of a candidate. Certainly other speech could have been included in the second RGA advertisement that would have more clearly advocated the candidate's election (*e.g.*, "As your governor, Chandler Woodcock will cut unfair income taxes") This approach may seem attractive to the extent that it might provide a brighter line between express advocacy and discussion of issues and candidates to guide independent spenders, such as Maine's political parties and political action committees.

The Commission could, if it wished, accompany this view with a recommendation for changing the statute or rule (in light of the U.S. Supreme Court's McConnell decision) so that the independent expenditure laws would better capture the scope of campaign-related speech and improve the administration of matching funds.

Coordination Between the RGA and the Woodcock Campaign

The LaMarche campaign argues strongly that the Commission should investigate whether Chandler Woodcock, his political committee, or their agents coordinated and cooperated with the RGA in the production of its advertisements. Expenditures made by a political action committee in cooperation or consultation with a candidate are

contributions to the candidate under 21-A M.R.S.A. §1015(5). None of the written submissions has raised the issue of coordination between the Maine Democratic Party and the Baldacci campaign.

Both the RGA and the Woodcock campaign deny that there was any coordination. With regard to the film or videotape of the candidate, the Woodcock campaign states that a cameraman appeared at several public events and recorded Chandler Woodcock. When the cameraman was approached by the campaign, he did not identify himself. The RGA has submitted a similar account.

The LaMarche campaign has submitted an affidavit of Jeff Toorish, a former news producer and reporter at two Maine television stations. He is a consultant for the campaign and received payments during its pre-certification qualifying period -- facts which were omitted from his affidavit. Mr. Toorish suggests that the Commission subpoena the raw footage of the advertisements, and may wish to direct your attention at the September 22 meeting to specific spots in the RGA advertisements in order to justify the request.

With regard to a personal photograph of the candidate from some time ago sitting in a military vehicle, the Woodcock campaign has responded that it was "not provided to the RGA by Senator Woodcock or anyone involved in the campaign." The RGA states that "All still images used in the RGA issue advertisements were publicly available and obtained through a search of the World Wide Web."

The staff believes the Woodcock campaign and the RGA have adequately responded to the question of coordination, but you may conclude that further fact-gathering is appropriate.

Appendix A – Primer on Matching Funds

Purpose of Matching Funds

The statutory purpose of matching funds under the MCEA is open to interpretation because the MCEA does not include an explicit statement of the purpose of matching funds. Some have commented that the payment of matching funds:

- (1) levels the playing field among candidates;
- (2) provides participating candidates with an opportunity to receive last-minute campaign funds to counter advertising or literature by third-parties such as political action committees and party committees; and
- (3) makes the Maine Clean Election Act a viable option overall for candidates who are willing to consider public financing.

Maximum Amount of Matching Funds

In June, the Commission paid an initial amount of \$400,000 to the three participating candidates (Woodcock, Patricia LaMarche, and Barbara Merrill). Each of the candidates could be eligible to receive up to an additional \$800,000 in matching funds based on their opponents' fundraising and spending and independent expenditures by "third-parties" such as political action committees (PACs) and party committees.

Calculation of Matching Funds

Matching funds for the general election are based on comparing the following total for all candidates in the race (including both MCEA and privately financed). The Commission compares the total of:

- the candidate's receipts or expenditures (whichever is greater); and

- amount of “independent expenditures” made by third-parties such as political action committees and party committees.

(21-A M.R.S.A. §1125(9)) In the gubernatorial race, once one candidate’s total exceeds \$400,000 (the initial distribution amount), any other MCEA candidates in the race with a lesser total receives matching funds to equalize their total with the candidate with the greatest total. (Examples are below.)

Effect of Finding Express Advocacy on Matching Funds

The two charts below provide examples of how a Commission determination of express advocacy would impact matching funds in this race. Please note that the example amounts of Baldacci and Napier’s receipts and the independent expenditures are not actual, and have been selected to dramatize how the matching funds calculation works.

*Scenario 1
(RGA advertisements costing \$100,000
found to be express advocacy)*

	Baldacci	Woodcock	Merrill	LaMarche	Napier
Receipts for general election	\$225,000	\$400,000	\$400,000	\$400,000	\$5,000
Independent expenditure by RGA		\$100,000			
Total without matching funds	\$225,000	\$500,000	\$400,000	\$400,000	\$5,000
Resulting matching funds			\$100,000	\$100,000	
Total with matching funds	\$225,000	\$500,000	\$500,000	\$500,000	\$5,000

In this scenario, the Commission would pay \$100,000 to Merrill and LaMarche to bring their total to \$500,000 to be equal to Woodcock. Also, the Maine Democratic Party and the Baldacci campaign could spend another \$275,000 before raising Baldacci’s total above \$500,000 and triggering any further matching funds to the MCEA candidates in the race.

*Scenario 2
(RGA advertisements costing \$100,000
and Maine Democratic Party advertisements costing \$200,000
found to be express advocacy)*

	Baldacci	Woodcock	Merrill	LaMarche	Napier
Receipts for general election	\$225,000	\$400,000	\$400,000	\$400,000	\$5,000
Independent expenditures by RGA, Maine Democratic Party	\$200,000	\$100,000			
Total without matching funds	\$425,000	\$500,000	\$400,000	\$400,000	\$5,000
Resulting matching funds			\$100,000	\$100,000	
Total with matching funds	\$425,000	\$500,000	\$500,000	\$500,000	\$5,000

In this scenario, the Commission would make the same payments to Merrill and LaMarche as in scenario 1. The difference is that any future fundraising by the Baldacci campaign or independent expenditures in his support exceeding \$75,000 would trigger the payment of matching funds to the MCEA candidates in the race.

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ETHICS COMMISSION

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State of Maine
Department of Attorney General

MEMORANDUM

TO: Peter B. Webster, Esq., Chairman, and all Members of the
Commission on Governmental Ethics and Election Practices

FROM: Phyllis Gardiner, Assistant Attorney General

DATE: November 21, 2000

RE: Express Advocacy and the Triggering of Matching Funds under the Clean
Election Act

The Commission has received a number of complaints about particular communications (primarily direct mail pieces) made in the last few days before the general election. The key issue in each of these complaints is whether these communications should, or should not, have been reported as independent expenditures and whether or not they should have triggered the release of matching funds. Although the Commission has had occasion in the past to interpret and apply the concept of "express advocacy" as used in Title 21-A, the Commission's rule defining express advocacy is relatively new, having been enacted as part of the rulemaking to implement the Clean Election Act. Accordingly, this is the first opportunity for the Commission to interpret and apply the rule in the context of the public funding program. For that reason, I thought it would be helpful to provide you with some background and analysis of federal case law on this topic, to guide you in interpreting the regulatory definition and applying the legal principles of express advocacy to the particular communications which are the subject of the complaints now pending before you.

Background:

The concept of express advocacy was first defined by U.S. Supreme Court in 1976, in *Buckley v. Valeo*, 424 U.S. 1 (1976). The Court interpreted the phrase "relative to a clearly identified candidate" in § 608(e)(1) of the Federal Election Campaign Act (the \$1,000 limit on independent expenditures) to mean "expressly advocate the election or defeat of a clearly identified candidate" in order to preserve the provision against invalidation on vagueness grounds. The Court also construed the phrase "for the purpose of influencing" in § 434(e) of FECA (the requirement to disclose such expenditures) in the same fashion, to avoid constitutional problems of overbreadth. In footnote #52 of its opinion, the Court stated that this construction would restrict the application of these statutory provisions to communications containing express words of advocacy of election or defeat, such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," and "reject."

Buckley thus created a 3-part test for determining what constitutes express advocacy:

- 1) the communication must clearly identify a candidate, either by name, description, photograph, or other depiction;
- 2) the communication must advocate the candidate's election or defeat; and
- 3) the advocacy must be express, not implied.

The specific words and phrases listed in footnote #52 of *Buckley*, however, are the only guidance given by the Court as to what it would construe as express, rather than implied, advocacy under part three of this test.

Ten years later, in *Federal Elections Commission v. Mass Citizens for Life, Inc.*, 479 U.S. 238 (1986), the U.S. Supreme Court, for the first and so far only time, applied this concept to a specific communication. The Court held that a special edition newsletter which exhorted readers to "vote pro-life," rated all the candidates in the primary election according to how they had voted on pro-life issues, and pictured 13 candidates (out of a total of 400 candidates in the election) with the highest ratings, constituted express advocacy for the election of those particular candidates:

The publication not only urges voters to vote for "pro-life" candidates, but also identifies and provides photographs of specific candidates fitting that description. The Edition cannot be regarded as a mere discussion of public issues that by their nature raise the names of certain politicians. Rather, it provides in effect an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than "Vote for Smith" does not change its essential nature. The Edition goes beyond issue discussion to express electoral advocacy. The disclaimer of endorsement cannot negate this fact.

479 U.S. at 249 (emphasis added). While the communication did not contain the magic words listed in *Buckley* footnote #52 in connection with the name of a specific candidate, it did contain an explicit verbal exhortation to "vote pro-life" and that, juxtaposed next to a limited group of candidates identified as pro-life, was deemed the functional equivalent of stating "vote for" these named candidates.¹

In a decision rendered less than a month after the Supreme Court decided *Massachusetts Citizens for Life*, the Ninth Circuit Court of Appeals adopted a slightly different approach, in *FEC v. Furgatch*, 807 F.2d 857 (9th Cir. 1987), cert. denied, 484 U.S. 850 (1987). The communication at issue in *Furgatch* was an advertisement

¹ One might interpret this decision as loosening the test for determining express vs. implied advocacy under *Buckley*; however, the District Court in Maine has rejected that interpretation. *Maine Right to Life Committee, Inc. v. FEC*, 914 F. Supp. 8, 10, n. 2 (D. Me. 1996), aff'd per curiam, 98 F.3d 1 (1st Cir. 1996), cert. denied, 522 U.S. 810 (1997).

discussing President Carter's performance, which ran in the New York Times and the Boston Globe the week before the 1980 presidential election. It began with the exhortation: "DON'T LET HIM DO IT" and proceeded to express several negative statements about Carter's actions as President, followed by the refrain "and we let him" or "we are letting him do it." The last sentence of the ad stated, "If he succeeds the country will be burdened with four more years of incoherencies, ineptness and illusion, as he leaves a legacy of low-level campaigning." The ad concluded by repeating "DON'T LET HIM DO IT."

The Court considered that determining whether this advertisement expressly advocates the defeat of Jimmy Carter was "a very close call." The Ninth Circuit rejected the notion that express advocacy should be limited to the use of certain key phrases, however, observing that the short list of words included in *Buckley* "does not exhaust the capacity of the English language to expressly advocate the election or defeat of a candidate." The Court decided that it was necessary to look at the communication "as a whole" and "with limited reference to external events" to determine if it constitutes express advocacy. The Ninth Circuit then articulated its own 3-part test for defining express advocacy:

First, even if it is not presented in the clearest, most explicit language, speech is "express" for present purposes if its message is *unmistakable and unambiguous, suggestive of only one plausible meaning*;

Second, speech may only be termed "advocacy" if it presents a *clear plea for action*, and thus speech that is merely informative is not covered by the Act; and

Finally, it *must be clear what action is advocated*. Speech cannot be "express advocacy of the election or defeat of a clearly identified candidate" when reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action.²

807 F.2d at 864 (emphasis added). The Court emphasized that "if any reasonable alternative reading of speech can be suggested, it cannot be express advocacy subject to the Act's disclosure requirements." *Id.*

The FEC adopted a rule in 1995, with a two-part definition of "express advocacy." Subpart (a) lists the magic words of *Buckley* footnote #52 and attempts to set forth the test articulated in *Buckley* and *Massachusetts Citizens for Life*, while subpart (b) borrows language directly from *Furgatch*.³ This rule was challenged a year later in

² Although not set forth as a separate prong of the test in *Furgatch*, it is a given that the speech also must clearly identify the candidate.

³ 11 C.F.R. §100.22 provides as follows:

Expressly advocating means any communication that -

Maine, and Judge Hornby's decision, which was subsequently upheld by the First Circuit, provides the guidance we must follow today. *Maine Right to Life Committee, Inc. v. FEC*, 914 F. Supp. 8 (D. Me. 1996), *aff'd per curiam*, 98 F.3d 1 (1st Cir. 1996), *cert. denied*, 522 U.S. 810 (1997). Finding that both the Supreme Court and the First Circuit⁴ had adopted a "bright line" test to define express advocacy in order to avoid intruding on First Amendment rights to "engage in issue-oriented political speech," Judge Hornby declared subpart (b) of the FEC definition to be overly broad and, therefore, unconstitutional. As a result, it is unenforceable in this Circuit.

Reading the opinion is instructive because Judge Hornby articulates why he believes the *Furgatch* test, although extremely appealing in its attempt to "deal with the vagaries of language," nonetheless can create a chilling effect on First Amendment rights of expression.

What the Supreme Court did [in *Buckley*] was draw a bright line that may err on the side of permitting things that affect the election process, but at all costs avoids restricting, in any way, discussion of public issues.

914 F.Supp. at 12 (emphasis added). Under this approach, certain communications may go unreported, without disclosure of the identity of the author or source of financing, even though they may have an acknowledged effect on a candidate's prospects in the election. Nonetheless, as Judge Hornby observed:

(a) Uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Nixon's the One," "Carter '76," "Reagan/Bush" or "Mondale!"; or

(b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because —

(1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

(2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

⁴ In *Faucher v. Federal Election Commission*, 928 F.2d 468, 472 (1st Cir. 1991), *cert. denied* 502 U.S. 820 (1991), the First Circuit Court of Appeals upheld a ruling by Judge Hornby invalidating an FEC rule on voter guides because the rule encompassed both issue and express advocacy. The First Circuit interpreted *Buckley* and *Massachusetts Citizens for Life* as adopting a "bright line test" for express advocacy. 928 F.2d at 471.

The advantage of this rigid approach, from a First Amendment point of view, is that it permits a speaker or writer to know from the outset exactly what is permitted and what is prohibited. In the stressful context of public discussions with deadlines, bright lights and cameras, the speaker need not pause to debate the shades of meaning in language. The result is not very satisfying from a realistic communications point of view... but it does recognize the First Amendment interest as the [Supreme] Court has defined it.

Id. (emphasis added). Indeed, as the First Circuit noted in *Faucher*, "trying to discern" where issue advocacy in a particular political communication crosses the threshold and becomes express advocacy "invites just the sort of constitutional questions the Court sought to avoid in adopting the bright-line express advocacy test in *Buckley*."⁵

The District Court for the District of Columbia set forth an interpretation of the express advocacy test, which is consistent with our District Court's reading:

1) the communication must, in effect, contain an explicit directive, conveyed by using an active verb, or its functional equivalent (e.g., "Smith for Congress" or an unequivocal symbol); and

2) the verb, or its equivalent, considered in the context of the entire communication, including its temporal proximity to the election, must unmistakably exhort the reader/viewer/listener to take electoral action to support the election or defeat of a clearly identified candidate.

FEC v. Christian Coalition, 52 F. Supp. 2d 45 (D.D.C. 1999). "While some have complained that 'express advocacy' cannot be so limited as to be easily avoided by linguistic sleight-of-hand, this Court must conclude that that is precisely how the Supreme Court has narrowed the Act." *Id.*

The consistent theme of all the various articulations of this test by the courts, including *Furgatch*, is that there can be no ambiguity in the message for it to constitute express advocacy. How the reader or listener actually interprets the message is of no consequence because whether it constitutes express advocacy must be determined as a matter of law. This means the communication cannot be considered express advocacy unless no reasonable person could interpret the message as anything other than an explicit directive to support the election or defeat of a clearly identified candidate.

The majority of federal and state courts that have addressed express advocacy questions over the past 15 years have adopted the stricter, bright line test employed in the

⁵ Accord *FEC v. Colorado Republican Federal Campaign Committee*, 839 F.Supp. 1443, 1456 (D.Colo. 1993), aff'd on other grounds 53 F.3d 1015 (10th Cir. 1995) ("trying to determine whether the surrounding circumstances, coupled with the implications of the Advertisement, constitute 'express advocacy' leads to the type of semantic dilemma which the [Supreme] Court sought to avoid by adopting a bright-line rule").

First Circuit,⁶ and even those that have applied *Furgatch* analysis have concluded, more often than not, that the communications at issue did not contain express advocacy.⁷ Efforts in other states to apply broader definitions of express advocacy have generally been struck down.⁸ The Supreme Court has refused certiorari in every case to date.

The Commission's Chapter 1 Rules:

The definition of "express advocacy" contained in Chapter 1 §8(2)(b) of the Commission's rules tracks, almost verbatim, subpart (a) of the FEC definition, which was upheld by the First Circuit. The first part of the Chapter 1 definition lists the "magic words" and phrases drawn directly from *Buckley* (e.g., "vote for" "elect" "support") and from *Massachusetts Citizens for Life* (e.g., "vote Pro-Life"). The second half of the definition refers to words "which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s)." However, the examples used to illustrate this aspect of the definition are "posters, bumper stickers, advertisements, etc. which say 'Pick Berry,' 'Harris in 2000,' 'Murphy/Stevens' and 'Canavan!'" In all of these examples, the candidate's name is expressed in such a manner and/or location as to constitute an exhortation to vote for that candidate. The reference to "context" in this part of the rule, read narrowly as Judge Hornby would seem inclined to do, may be limited in scope to the text of the communication itself. Context in the sense of reference to external events was only included in subpart (b) of the federal rule. Indeed, the plaintiffs in *Maine Right to Life Committee v. FEC*, did not challenge subpart (a) of the FEC regulation because it so "closely tracks" the language of *Buckley*, as adopted and applied in *Massachusetts Citizens for Life*. 914 F. Supp. at 11.

Normally, a reviewing court will give deference to the administrative agency's interpretation of its own rules and the statutes it is charged with administering, but in this

⁶ E.g., *Perry v. Bartlett*, 2000 WL 1468449 (4th Cir. 2000); *Iowa Right to Life Committee v. Williams*, 187 F.3d 963 (8th Cir. 1999); *FEC v. Christian Action Network, Inc.*, 110 F.3d 1049 (4th Cir. 1997); *FEC v. Central Long Island Tax Reform Immediately Committee*, 616 F.2d 45 (2nd Cir. 1980); *Virginia Society for Human Life, Inc. v. FEC*, 83 F.Supp.2d 668 (E.D. Va. 2000); *Kansans for Life v. Goede*, 38 F.Supp.2d 928 (D. Kan. 1999); *Right to Life of Dutchess County, Inc. v. FEC*, 6 F. Supp. 2d 248, 253 (S.D.N.Y. 1998)(striking down part (b) of FEC rule); *Osterberg v. Peca*, 12 S.W.3d 31, cert. denied 120 S.Ct. 2690 (Tex. 2000).

⁷ See *FEC v. Christian Coalition*, 52 F.Supp.2d 45 (D.D.C. 1999); *FEC v. National Organization for Women*, 713 F.Supp. 428 (D.D.C. 1989); *FEC v. Christian Action Network*, 894 F.Supp. 946 (W.D.Va. 1995), aff'd per curiam, 92 F.3d 1178 (4th Cir. 1996). But see *Oregon ex rel. Crumpton v. Keisling*, 982 P.2d 3 (Or.App. 1999)(finding a communication to be express advocacy under *Furgatch* test). In *Elections Board of Wisconsin v. WMC*, 597 N.W.2d 721 (Wis. 1999), cert. denied, 120 S.Ct. 408 (1999), the Wisconsin Supreme Court suggested that the state could adopt a definition of express advocacy that encompassed more than the specific list of magic words in *Buckley* footnote 52, but it must still be "limited to communications that include explicit words of advocacy of election or defeat of a candidate."

⁸ E.g., *West Virginians for Life, Inc. v. Smith*, 960 F.Supp. 1036 (S.D.W.Va. 1996); *Kansans for Life, Inc. v. Goede*, 38 F.Supp. 928 (D.Kan. 1999); cf. *Oregon ex rel. Crumpton v. Keisling*, 982 P.2d 3 (Or.App. 1999)(applying *Furgatch* test).

arena the Supreme Court and the First Circuit have already spoken, and the Commission has to apply the concept of express advocacy consistent with the holdings of those cases.⁹

Analysis of the Pending Complaints:

With the analysis of these federal precedents in mind, the Commission must evaluate the specific direct mail communications, which are the subject of the complaints now pending before you, in order to ascertain whether they constitute "express advocacy."¹⁰ I have attached copies of these communications, numbered accordingly for ease of reference.

1 Maine Democratic Party complaint re: direct mail piece by MSEA PAC on health care issues, relating to Senate candidates Lynn Bromley and Beth Edmonds

The direct mail pieces distributed by the Maine State Employees Association PAC (attached hereto as Exhibits #1A and 1B) clearly identify two individuals – Lynn Bromley and Beth Edmonds, respectively – who were at the time of distribution candidates for seats in the State Senate. Neither piece, however, actually mentions that they are candidates for elective office. Indeed, there is no mention of a Senate race or an election anywhere in the text of the mailing. The communication focuses on one person, but it does so in the context of addressing an issue – health care.

The magic words of express advocacy listed in the first part of the rule and in *Buckley* do not appear anywhere in the text of these mailings. Moreover, the candidates' names do not appear in a context such as "Bromley 2000" that would seem to fit the second part of the Chapter 1 definition. The communications make a number of positive statements about what Lynn Bromley or Beth Edmonds is doing or will do (e.g., she "is leading the fight to make healthcare affordable," "will work to protect and strengthen the Patient's Bill of Rights," and "will fight to increase access to affordable health insurance"), but it is not obvious from the text of the message that she will do so only if elected to office. The only action which the reader is urged to take is to "call Lynn Bromley [or Beth Edmonds]" and "tell her to keep fighting to make healthcare affordable

⁹ Contrast the situation in Wisconsin, where the state Supreme Court was bound only by U.S. Supreme Court precedent and not by any federal circuit court decisions. In response to a spate of complaints about specific political communications, the State Elections Board interpreted express advocacy more broadly than the bright-line test of *Buckley*, to include consideration of the context of the communication. While the Wisconsin Supreme Court held out the possibility that a broader definition, as in *Furgatch*, might pass constitutional muster, the court reversed the Board's decisions on the grounds that they constituted retroactive rulemaking. In effect, the Board had broadened the scope of its own definition without prior notice to any of the regulated parties. *Elections Board of Wisconsin v. WMC*, 597 N.W.2d 721 ¶31 (Wis. 1999).

¹⁰ Other pending complaints not listed here also involve whether certain expenditures for communications qualify as independent expenditures that must be reported, but the resolution of those complaints turns on other factual and legal issues, not on whether the message itself constitutes express advocacy -- e.g., Pat Dutille complaint re: Rep. Shiah letter, and Maine Republican Party/Dwayne Bickford complaint re: Democratic Party mailing concerning candidate Don Gean.

for Maine families." Thus, there is no unambiguous statement exhorting the reader to vote for Bromley or Edmonds.

2 Ruth McCleery Watson complaint re: direct mail piece by Senate 21 PAC on education issues, relating to Senate candidate Lynn Bromley

The brochure distributed by the Senate 21 PAC is very similar to the MSEA mailing discussed in item #1, except that it focuses on education as opposed to healthcare. Once again, a full page photograph (the same one, in fact) clearly identifies Lynn Bromley, but it does not state that she is a candidate for anything. The text indicates that she "will work to make sure the State meets its commitment" to fund school construction, but it does not suggest, for example, that she could do so only if elected to the Senate. The call to action to the reader says "call Lynn Bromley at 799-1292. Tell her to keep on fighting for our kids," once again avoiding any direct reference to an election, to voting or even to her candidacy. No magic words are included, and there is no pointed exhortation to vote for Lynn Bromley.

Positive statements about individual candidates in relation to specific issues, such as those on education and health care printed in these mailings, may well induce the reader to support the identified candidates if they share the views that are expressed on those particular issues. As the federal courts have noted, however, the fact that such communications may clearly favor one candidate, and may affect the result of the election, is not the test. *See, e.g., FEC v. Christian Action Network*, 894 F.Supp. 946 (W.D.Va. 1995), *aff'd per curiam*, 92 F.2d 1178 (4th Cir. 1996) (admittedly negative advertisements with messages openly hostile to proposals of Clinton and Gore held not express advocacy because "devoid of any language that directly exhorted the public to vote").

3 Beth Edmonds complaint re: direct mail pieces by Maine Unlimited PAC on: a) social security taxes and b) death tax, gas tax and income taxes

The direct mail pieces distributed by the Maine Unlimited PAC use a somewhat different approach. Item #3A focuses on the issue of Social Security benefits and contains several statements alleging that Beth Edmonds' "supporters," "backers" and "allies," have "turned their back on Maine's senior citizens" by voting to tax Social Security benefits. Once again, however, the message does not mention an election, or Beth Edmonds' candidacy for the State Senate; it does not name her opponent or state that the reader should vote against Edmonds. It exhorts the reader to "Tell Beth Edmonds and her friends to keep their hands off Social Security and stop taxing Maine seniors regardless of what their lobbyist friends want."

Item #3B also makes a number of statements about Beth Edmonds' "supporters," "backers" and "political cronies" and various taxes that they allegedly voted to raise. It is somewhat more pointed in stating that Edmonds herself also supports "a state death tax, increased gas taxes and income taxes." It refers to her as a "politician," raising the

inference that she is a candidate, but it does not mention an election, an opponent, or candidacy for any particular office. The reader is not urged to vote against Edmonds or to support her unnamed opponent; the concluding message is simply "tell her to stop supporting increased taxes on families."

4 Ian Catlett/House Democratic Campaign Committee complaint re: Stavros Mendros direct mail piece addressing voting record of House candidate Lillian O'Brien

The postcard mailing in item #4 focuses on the issue of education and property taxes. It mentions five individual House members comprising Lewiston's "Legislative Delegation," indicates that they are "candidates" and lists how they voted on a bill to "fully fund" education. The chart indicates that four of these legislators voted "No" while only one voted "Yes." That candidate, Rep. Stavros Mendros, is then singled out with the statement: "It is ironic that the only Representative from Lewiston to support full state funding of Education was the Republican, Mendros." The postcard concludes by stating: "If you Truly care about Education and Property Taxes, Please Vote accordingly."

Because the message singles out Rep. Mendros as the only House member from Lewiston who voted for "fully funding education," and then urges the reader to "vote accordingly," it arguably constitutes express advocacy of Rep. Mendros as a candidate for re-election to the House. It is far more difficult to construe it as expressly advocating a vote against Rep. Lillian O'Brien, however, which is what the complaint before you asserts. Even though she is listed as one of the four House members voting "no" on the education funding bill, she is obviously not running against Rep. Mendros. The message compares Mendros favorably to his Democratic colleagues from Lewiston; not to his political opponent in the race for re-election.

5 Sandra Choate complaint re: postcard discussing Rep. Elizabeth Watson

In contrast to the communications discussed above, this postcard mailing includes one of the specific phrases listed in the definition of express advocacy: "On November 7, *vote for Elizabeth Watson and join the fight for Maine's seniors*" (emphasis added). The candidate is clearly identified, as is the office for which she is seeking re-election, and voting for the candidate is the only action which the reader is urged to undertake.

Triggering of Matching Funds:

If a communication by an individual or PAC expressly advocates the election or defeat of a clearly identified candidate, then it must be reported as an independent expenditure, pursuant to 21-A M.R.S.A. §1019, assuming it was not made in cooperation or concert with the candidate. Once reported, that independent expenditure has to be factored into the calculation of matching funds if a Clean Election candidate is in the race, pursuant to the formula in the Commission's rules, 94-270 CMR Chapter 3 §6(3)(B). Entities making expenditures on advertisements or direct mailings have to

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ETHICS COMMISSION

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SEP-03-2003 11:17

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make their own determinations as to whether those communications contain express advocacy and, therefore, must be reported. The text of such political communications are not included in the reports filed with the Commission, and the Commission has no administrative procedure for reviewing them unless and until a complaint is raised.

Thus, when the MSEA PAC chose to report what it spent on the direct mail pieces attached hereto as items #1A and 1B as an independent expenditure on behalf of Senate candidates Edmonds and Bromley, it triggered the release of matching funds to those candidates' opponents. Under the circumstances, it is not clear that the staff had any option but to release the matching funds based on the filing of the report. In contrast, the Senate 21 PAC and Maine Unlimited did not report what they spent on the printing and distribution of items #2, 3A and 3B, presumably because they did not consider them express advocacy; accordingly, matching funds were not triggered.

The Commission's ruling on these complaints after the fact may provide sufficient guidance to assist PACs and others in the future as to what should, and should not be reported as an independent expenditure. Given the difficulties of achieving total clarity in this area, however, the Commission also may want to consider including recommendations regarding the treatment of independent expenditures and their relationship to matching funds in its study report to the Legislature on the Clean Election Act.

Conclusion:

I hope this memorandum is helpful as you consider the complaints pending before the Commission. If you have questions or desire clarification of any of the above before the meeting next week, please let me know.

ADDITIONAL MATERIALS

RE: Agenda Item #2
September 22, 2006

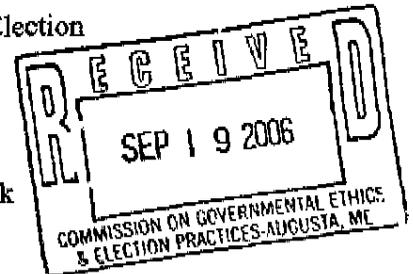
SUPPLEMENTAL MEMORANDUM

TO: Jonathan Wayne, Director, Commission on Governmental Ethics and Election Practices

FR: Blair Bobier, Policy Director, LaMarche for Governor

RE: Republican Governors Association Advertising for Chandler Woodcock

DT: September 19, 2006



Purpose

This supplemental memorandum is being submitted to bring several recently published items to the Commission's attention. All of these items were published after the LaMarche campaign's initial memorandum was filed with the Commission.

The First RGA Ad

The Portland Press Herald regularly analyzes campaign ads in a feature known as "Ad Watch." On September 16, 2006, the Press Herald analyzed the first RGA ad under the headline of "Woodcock details himself, priorities." The "name" of the ad given to it by the Press Herald is "Republican Governors Association, in support of Chandler Woodcock, one of five candidates in the governor's race." (Emphasis added).

A caption under a still shot of the ad reads: "A Republican Governors Association ad for Chandler Woodcock says the candidate has made tax cuts a focal point of his campaign." (Emphasis added).

As is clear from the headline for the article and the caption under the still shot, the Portland Press Herald clearly believes this ad is in support of and for Chandler Woodcock. *There is absolutely no mention in the analysis or description of this ad as being an "issues" ad or anything other than an ad for the purposes of promoting the candidacy of Chandler Woodcock.*

This analysis by an independent and neutral voice and experienced observer of the political process is additional and conclusive proof that the ad in question has "no other reasonable meaning than to urge the election" of the very clearly identified Chandler Woodcock.

The Second RGA Ad

The Press Herald analyzed the second RGA ad today, September 19, 2006, under the headline "Woodcock ad corrects deficit error in original." The "name" given to the ad is identical to that of the first: "Republican Governors Association, in support of Chandler Woodcock, one of five candidates in the governor's race." (Emphasis added).

Once again, the name of the ad and the headline of the article demonstrate that the Press Herald and its staff clearly believe this ad is one supporting the candidacy of Chandler Woodcock. Once again, there is no mention of this being an "issues" ad. The analysis does note that while the ad "does not mention Democratic Gov. John Baldacci by name, it clearly is designed to paint an unflattering picture of his performance as governor." This is not only further proof that the ad is being run to urge the election and defeat of particular candidates, but that the purpose of an ad can be gleaned from both its message and its context.

On September 18, 2006, the staff of the Bangor Daily News, in an opinion piece entitled "The Advocacy Express" had this to say about the second RGA ad:

"The simple part of a complaint by Green gubernatorial candidate Pat LaMarche is whether a television ad campaign by the Republican Governors Association is advocating that voters elect GOP candidate Chandler Woodcock. Of course it is — especially where the campaign, after offering its ideas about the dismal condition of Maine under Gov. John Baldacci, extols the wonders of candidate Woodcock and then flashes on the screen: 'Chandler Woodcock Governor.'"

Conclusion

Are these two RGA ads advocating the election of Chandler Woodcock? To paraphrase the Bangor Daily News—of course they are. The staff of the Lewiston Sun Journal, the Bangor Daily News, the Kennebec Journal and the Portland Press Herald have each written about these ads and each have treated them as advocating for the election of Chandler Woodcock.

While the Commission, of course, does not have to accept the apparently unanimous view of the state's political reporters and editorial writers, it is equally obvious that this is compelling and persuasive evidence that the ads "have no other reasonable meaning than to urge the election" of Chandler Woodcock.

AD WATCH

Woodcock details himself, priorities

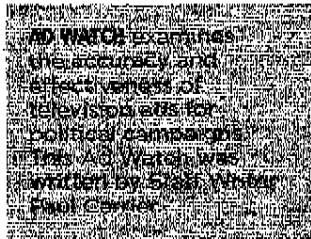
NAME: Republican Governors Association, in support of Chandler Woodcock, one of five candidates in the governor's race.

AD TITLE: "New Solutions"

DESCRIPTION: This 30-second ad produced by McAuliffe Message Media combines biographical information about Woodcock with a summary of his priorities. It opens with a shot of two bicyclists riding past a church, followed by footage of a man in a school hallway, Woodcock in his Army uniform during the Vietnam War, a teacher in a classroom and video clips of Woodcock on the campaign trail.

As an announcer reads the script, written messages reinforce key words and terms from the script. The ad closes with a written message that says Woodcock would provide "New Solutions to Change Maine's Direction." The telephone number of the Senate Minority Office in the Legislature flashes on the screen, together with a disclaimer that the ad was paid for by the RGA-Maine political action committee in Washington, D.C.

SCRIPT: "New solutions to change Maine's direction take experience - volunteering for military service; a public-school teacher for 25 years; seeking solutions as a state



senator. Chandler Woodcock's experience means new solutions for Maine's future - a plan to lower taxes; to cap out-of-control state-government spending; a promise to create a more affordable health-care program. Tell Chandler Woodcock you support new solutions to change Maine's direction."

ACCURACY: The ad is accurate in its description of Woodcock's background as a Vietnam War veteran, retired high-school teacher and incumbent state senator. It also is accurate in claiming that Woodcock has made tax cuts, spending controls and affordable health care focal points of his campaign.

However, the ad overstates Woodcock's platform when it says he has unveiled "a plan" to cut taxes and cap government spending and made "a promise" to create an affordable health-care system. Woodcock clearly supports all of those things, but he has not

A Republican Governors Association ad for Chandler Woodcock says the candidate has made tax cuts a focal point of his campaign.

rolled out a comprehensive plan to cut taxes or a comprehensive plan to rein in government spending.

What he has proposed is cutting the top income-tax rate of 8.5 percent in a series of steps over an unspecified period of time. His "plan" to cut government spending consists primarily of supporting the "Taxpayer Bill of Rights," a spending-cap referendum that will be on the statewide ballot Nov. 7. Woodcock did not sponsor that referendum.

Affordable health care is a plank in Woodcock's platform and he has been critical of the Dirigo Health program created by Democratic Gov. John Baldacci. Although he says he is committed to making health care more affordable, he has not promised to do so.

EFFECTIVENESS: The ad is effective because it provides biographical information about

Woodcock, who clearly is not as well-known to voters as Baldacci, an incumbent governor who formerly served on the Bangor City Council, in the Legislature and in Congress. It also provides brief, catchy, easy-to-understand summaries of Woodcock's priorities as a candidate. And it successfully plays on the belief, as suggested by opinion polls, that many Mainers are dissatisfied with Baldacci's job performance.

At the same time, the ad's emphasis on Woodcock's "experience" may be problematic because no candidate in the governor's race has more political experience than Baldacci. If the ad is designed to sell Woodcock because of his experience, voters who value experience may well conclude that Baldacci is a more attractive candidate because he has more of it.

Woodcock ad corrects deficit error in original

Portland Press Herald - Maine Sunday Telegram

[E-mail this page](#)

[Reader Comments \(below\)](#)

Tuesday, September 19, 2006

NAME: Republican Governors Association, in support of Chandler Woodcock, one of five gubernatorial candidates.

AD TITLE: "Tax Crunch"

DESCRIPTION: This 30-second ad features an off-screen announcer talking about what he describes as Maine's high tax burden, budget problems and lagging economy. As he speaks, written messages reinforcing the key points of the script are superimposed on an image of the State House dome, accompanied by citations for the various claims that are made in the ad.

The ad closes with video clips of Republican candidate Chandler Woodcock on the campaign trail, accompanied by graphics that reiterate the announcer's description of Woodcock's priorities. Although the ad does not mention Democratic Gov. John Baldacci by name, it clearly is designed to paint an unflattering picture of his performance as governor.

SCRIPT: "The nation's highest tax burden for 10 consecutive years. The eighth-highest gas tax. A \$425 million structural budget gap. The Federal Reserve Bank of Boston says Maine was one of only two states in the country to experience an economic decline in 2005. Maine needs new solutions. Chandler Woodcock's plan: cut unfair income taxes, reduce Maine's property-tax burden, cap government spending. Tell Chandler Woodcock you support new solutions to change Maine's direction."

ACCURACY: This ad is a remake of an earlier version that contained a major factual error. The original version, which aired briefly before one television station yanked it and a second station threatened to do so, said Maine has a \$733 million budget gap. That is not true. The current two-year state budget, which runs through June 30, 2007, is balanced.

The revised ad says, instead, that Maine has "a \$425 million structural budget gap." That is a projection for the next budget cycle. In fact, the estimate cited in the ad is conservative. A June estimate by the Legislature's Office of Fiscal and Program Review pegs the projected shortfall for the two-year budget cycle starting July 1, 2007, at about \$500 million.

As the ad claims, the Tax Foundation reports that Maine has had the nation's highest combined state-and-local tax burden since 1997. Other ratings that focus exclusively on state taxes, rather than combined state and local taxes, rank Maine's tax burden somewhat lower, and improving.

The Tax Foundation listed only seven states with higher gas taxes than Maine as of Dec. 31, 2005, but the American Petroleum Institute ranked Maine 15th as of July 2006.

A report on New England's economic performance in 2005, released this year by the Federal Reserve Bank of Boston, said, as the ad claims, that Maine and Louisiana were the only states in the country to experience economic declines in 2005.

The ad correctly points out that Woodcock wants to cut income and property taxes and cap government spending, although the description of Maine's income tax as "unfair" is subjective. Maine already has a law on the books that caps government spending, but critics charge that the existing caps are weak. Woodcock and independent candidate Phillip Morris Napier support a spending-cap referendum - the Taxpayer Bill of Rights - that will be on the ballot Nov. 7. Baldacci, Green Independent Patricia LaMarche and independent Barbara Merrill oppose it.

EFFECTIVENESS: The ad's gloomy picture of Maine's economy, and of state government's taxation and spending practices, may persuade some undecided voters to back Woodcock because the economy and taxes always are important election issues in a governor's race. But the inaccurate deficit claim in the original version of the ad prompted the Maine Democratic Party to run a

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Woodcock ad corrects deficit error in original

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1 of 2 of 2

rebuttal ad of its own, so some voters may be wary of all of the Republican Governors Association's fiscal claims, even though the error in the first version of the ad has been corrected. the accuracy and effectiveness of television ads for political campaigns. This Ad Watch was written by Staff Writer Paul Carrier. -->

The Advocacy Express

Monday, September 18, 2006 - Bangor Daily News

The simple part of a complaint by Green gubernatorial candidate Pat LaMarche is whether a television ad campaign by the Republican Governors Association is advocating that voters elect GOP candidate Chandler Woodcock. Of course it is — especially where the campaign, after offering its ideas about the dismal condition of Maine under Gov. John Baldacci, extols the wonders of candidate Woodcock and then flashes on the screen: "Chandler Woodcock Governor."

Ms. LaMarche has complained about this to the Maine Commission on Governmental Ethics and Election Practices, which is expected to meet Sept. 22 when it will consider the issue. State statute and commission rules are clear about what constitutes express advocacy, thereby requiring the group that aired the ad campaign to file an independent expenditure report, which would in turn trigger matching funds for other Clean Election candidates and raise the spending bar for Gov. Baldacci, who is running on private funds.

Advocating expressly for a candidate, the rules say, means using words such as "Jones for House of Representatives" or "Jean Smith in 2002." Is "Chandler Woodcock Governor" an equivalent in the context of the pro-Woodcock ad? Sure. It is a clear plea for voters to act by supporting his candidacy.

The second question raised by the LaMarche complaint is whether state Sen. Woodcock or his campaign in any way cooperated, consulted or worked in concert with the RGA in the production of this ad, which would be a serious violation. Both the candidate and the RGA say there was no connection between the two, and there is no evidence to the contrary.

A separate issue, not before the commission, concerns the ad campaign's accuracy. One ad laments, for instance, Maine's \$733 million structural budget gap. This is insulting to Maine voters for a couple of reasons. The ad assumes Mainers don't know that a budget gap — in this case, one a couple of years old — is a projection of a future shortfall, a measure made by analysts to tell lawmakers how much money they must trim from a hypothetical budget based on a wide range of spending assumptions.

Budget gaps are common but they do not persist because they are not allowed to. The RGA believes, apparently, that Maine voters are too numb to figure out the Legislature and the governor balance (sometimes well, sometimes through pure hokum) the budget in each biennium and, often, within a biennium.

One further complication: Each of the three well-funded challengers in this race are running almost solely against Gov. Baldacci, who was the unmentioned target of the RGA ad.

If the commission agrees that the ad campaign amounted to express advocacy, it would attempt to mitigate the whack at the governor by awarding two of the governor's opponents even more money to run against him.

Assuming the RGA ads were effective, this amounts to a net penalty to the incumbent for no good reason, and it does so on the taxpayer's dime. This flaw in the Clean Election system was pointed out when the act was drafted and has yet to be adequately addressed.



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

To: Commission Members
From: Staff and Counsel
Date: September 21, 2006
Re: Past Decisions on Express Advocacy

At the November 2000 and January 2001 meetings, the Ethics Commission was called upon to apply the Commission's 1998 rule defining express advocacy. I have attached in order some of the communications considered by the Commission:

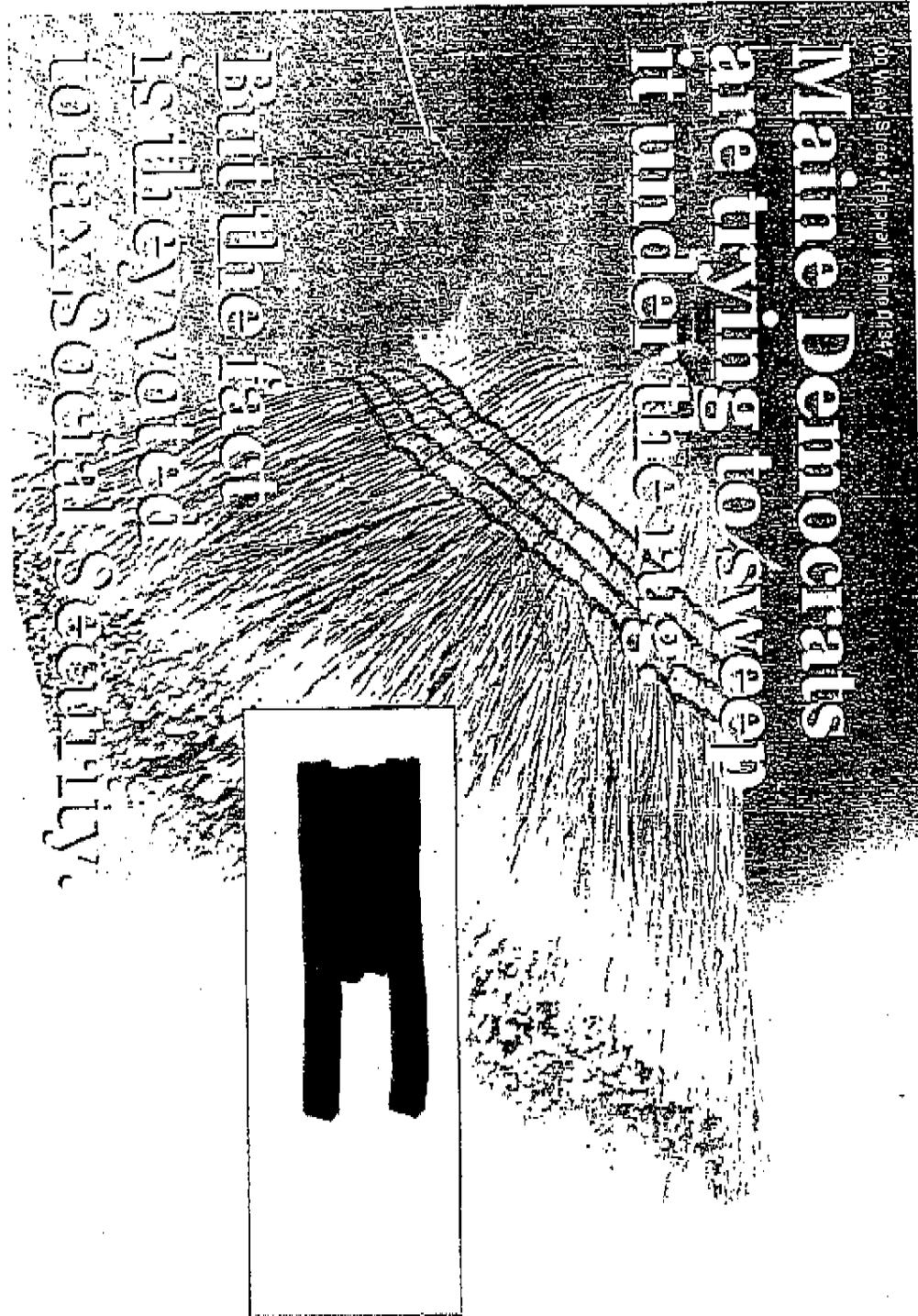
FOUND TO BE EXPRESS ADVOCACY:

Maine GOP Victory 2000 flyer

NOT FOUND TO BE EXPRESS ADVOCACY:

Stavros Mendros postcard
Mailer about Kevin Glynn on senior citizen issues*
Lynn Bromley "Fighting for Education" flyer
Maine Unlimited brochure on social security and death taxes in Beth Edmonds
racc

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



Non-Profit Org
 U.S. Postage
PAID
 Permit #2000
 Augusta, ME

NOV-06-00 MON 07:16 AM

FAX:

PAGE 2

Dear Friend of Education,

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

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

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

Rep. William Cole	NO
Rep. Gerry Bouffard	NO
Rep. Richard Mallon	NO
Rep. Lillian O'Brien	NO
Rep. Stavros Mendros	YES

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

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

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

Sincerely,

Joyce Bilodeau
Joyce Bilodeau
Lewiston Council President

Sincerely,
Yvette Silva
Yvette Silva
Ward 1 School Committee

Maid for and authorized by the CRESSNA, 135 Hopan Rd. Lewiston, Me 04240 Michael Bunnage Treasurer.

366

4



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

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

KEVIN GLYNN'S RECORD ON SENIORS:

- x Voted against lowering the costs of prescription drugs (LD 1299, 1300, 1301, 1302, 1303)
- x Voted against providing lower energy rates to low-income Mainers (LD 1240, 1241, 1242, 1243, 1244)
- x Voted against a \$10 million expansion of the Low Cost Drug Program for the Elderly (LD 1232, 1233, 1234, 1235)
- x Voted against funding to reduce waiting lists for home-based care (LD 1236, 1237, 1238, 1239)
- x Voted against Maine's Patient's Bill of Rights and supported allowing HMO bureaucrats to make medical decisions instead of you and your doctor (LD 1230, 1231, 1232, 1233)
- x Voted against establishing the Maine Council on Aging (LD 1245, 1246, 1247, 1248)
- x Even voted against providing additional money for Meals on Wheels (LD 1272, 1273, 1274)

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

VOTE Tuesday, November 7th



Q: Who makes medical decisions for you?

A: Insurance Companies & HMO Bureaucrats!

That's what State Representative Kevin Glynn wants.

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

Kevin Glynn voted against requiring insurance companies to cover the costs of prescription contraceptives.

Kevin Glynn even voted against a program designed to identify and collect information on birth defects.

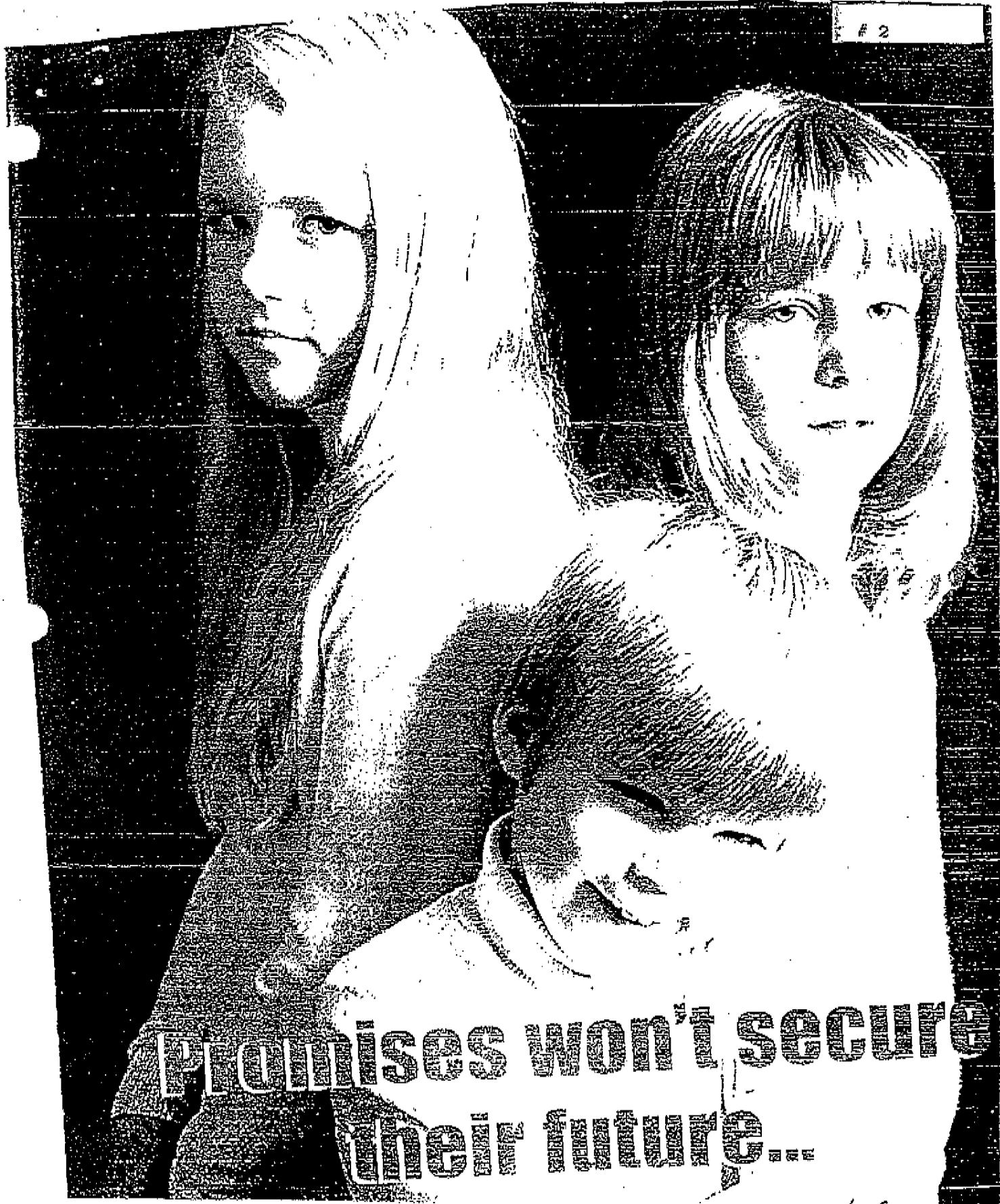
Kevin Glynn voted against allowing a woman to visit an obstetrician, gynecologist or midwife without a referral.

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

VOTE Tuesday, November 7th

THIS decision is YOURS!

2



PROMISES WON'T SECURE
 THEY

2B



...a good education will.

Lynn Bromley: Fighting for Education

Every child in Maine has a right to a high quality education, regardless of where they live.

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

Lynn Bromley will work to increase state funding of our local public schools. We won't let our children have outdated textbooks in their hands or let our children be the first in their class to be cut out of their schools.

Some of our children in some communities are studying in buildings that are crumbling and overcrowded and that have classrooms

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

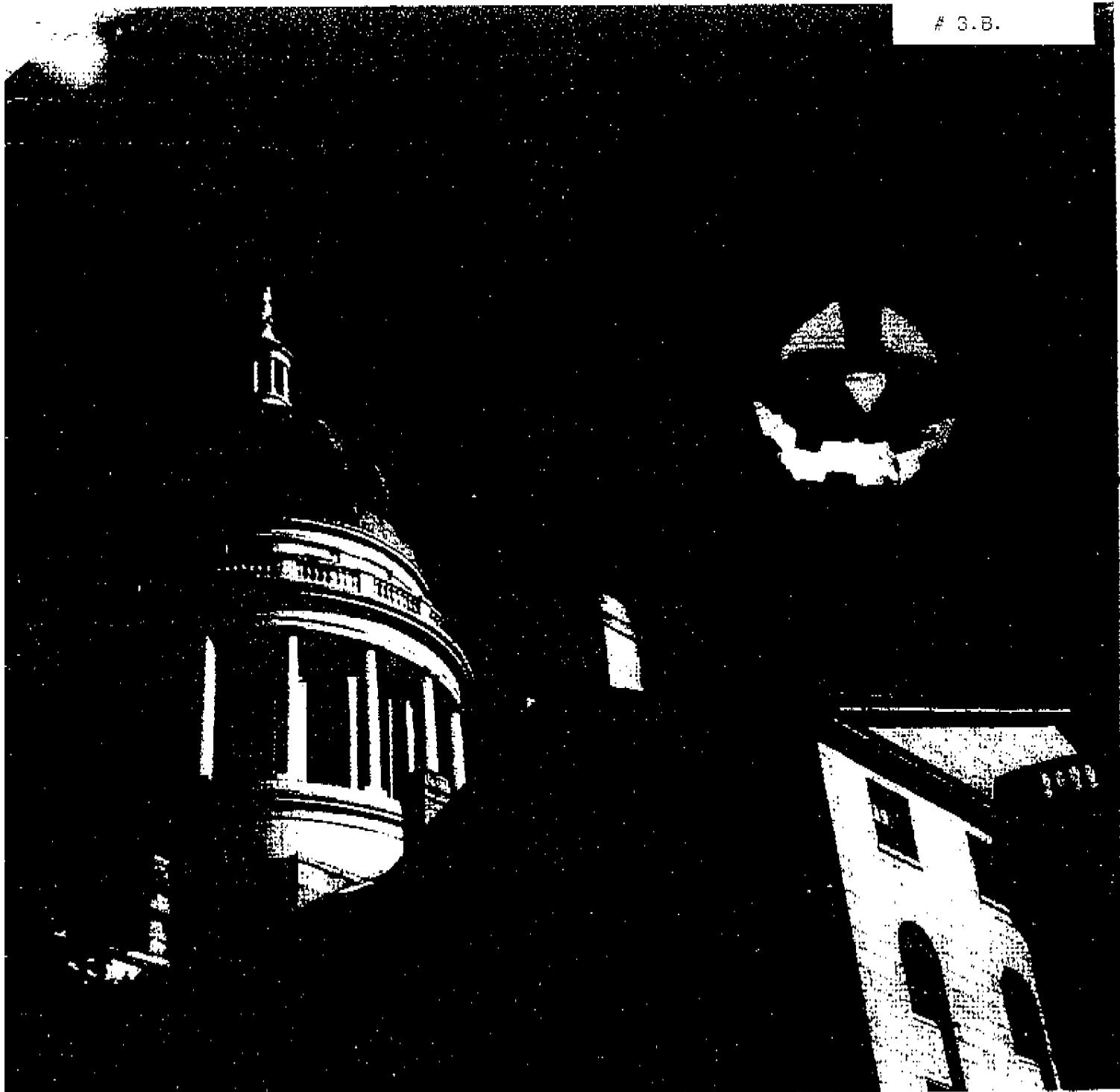
Some of the children in our communities are struggling behind because we have not set our expectations high enough.

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

Call Lynn Bromley at 799-1292.

...a good education will.

3.B.



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

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

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

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

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

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

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

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

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

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

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

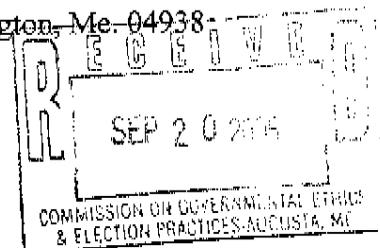
Agenda Item

#4

Representative Janet Mills
District 89
P.O. Box 110
Farmington, Me. 04938

September 15, 2006

Jonathan Wayne, Director
Commission on Governmental Ethics
and Election Practices
135 State House Station
Augusta, Me. 04333



Re: John Frary's letter, Consumer Protection Forum in Farmington

Dear Mr. Wayne and Commission Members:

I submit the following comments regarding the letter sent to you last month by John Frary, Franklin County Republican Chair, concerning the Consumer Protection Forum I held in Farmington on August 16, 2006, at a senior citizens facility:

1. I issued my own news releases and flyers advertising the Consumer Protection Forum. I was unaware of the mailing by the Maine Democratic Party regarding the forum until I read about it in the Lewiston Daily Sun just before the forum took place. I did not see the mailing until I received it in my post office box a day or so after the forum. I had no prior knowledge of the mailing and no participation in it.

2. The forum featured Attorney General Steve Rowe and included a discussion with Franklin County Sheriff Dennis Pike (an Independent), the Wilton Police Chief and a Farmington Police Department detective (both non-elected and nonpartisan). The forum was educational in nature and dealt with identity theft, "phishing," "skimming," and a variety of measures to prevent fraud. It focused particularly on measures to protect senior citizens. The forum was open to the public and was well received.

3. The forum lasted over an hour, it was videotaped and broadcast on local public access television, and there was no discussion of politics or political campaigns during the forum. Mr. Frary did not attend the forum to enlighten himself as to its value. The videotape, however, is available to confirm the content of the forum.

4. For fifteen years I served as the elected District Attorney for Franklin, Androscoggin and Oxford Counties and for four years I served as an Assistant Attorney General in the Criminal Division of the Attorney General's Office. This background, quite aside from my legislative service, makes me particularly qualified to conduct a forum on the subject of consumer fraud.

I hope these comments assist the Commission in its review of Mr. Frary's concerns. As I understand Mr. Frary's letter, his complaint is with the Maine Democratic Party, not with me, so I do not plan to attend the Commission meeting. I would be happy to provide any additional information on request.

Thank you for your consideration of this matter.

Yours very truly,



Janet T. Mills
State Representative
District 89

JTM:ms
cc. Me.Democratic Party