

MAINE ETHICS COMMISSION

-----X

IN THE MATTER OF:

MAINE HERITAGE POLICY CENTER

-----X

October 20, 2006

HELD AT: County of Kennebec
State of MaineBEFORE: HONORABLE ANDREW KETTERER
Chair
HONORABLE MICHAEL FRIEDMAN
HONORABLE VINTON CASSIDYCOMMISSION STAFF: JONATHAN WAYNE, Executive Director
PHYLLIS GARDNER, ESQ.APPEARANCES: DANIEL BILLINGS, ESQ.
CARL LINDEMANN (Via Telephone)
JONATHAN CRASNICK
JONATHAN BARTHOLOMEW

TRANSCRIBER: LaVALLE CLAPP

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	RE <u>DIRECT</u>	RE <u>CROSS</u>	<u>VD.</u>	<u>J</u>
None						

E X H I B I T S

<u>PETITIONER</u>	<u>DESCRIPTION</u>	For <u>I.D.</u>	In <u>Ev.</u>
None			

<u>RESPONDENT</u>	<u>DESCRIPTION</u>	For <u>I.D.</u>	In <u>Ev.</u>
None			

1
2 [START TAPE 1, SIDE A]

3 [ON THE RECORD]

4 HONORABLE ANDREW KETTERER: Number 19;
5 Jonathan what is that one? What is it
6 though.

7 MR. JONATHAN WAYNE: A request by Carl
8 Lindeman who is currently in Texas and
9 [unintelligible] and by phone and there are
10 four other people who would probably like to
11 comment on this. All right.

12 HONORABLE ANDREW KETTERER: How about if
13 we take a five-minute recess where you try to
14 get the . . . the individual on the phone.

15 MR. WAYNE: Okay.

16 HONORABLE ANDREW KETTERER: Can you do
17 that? We'll come back in five minutes.

18 MALE VOICE: How many is left Drew?

19 HONORABLE ANDREW KETTERER: What?

20 MALE VOICE: How many are left?

21 [OFF THE RECORD]

22 [ON THE RECORD]

23 HONORABLE ANDREW KETTERER: I am
24 chairing the meeting today. Thanks for
25 bringing this matter to our attention. We

1
2 have received and read your correspondence of
3 yesterday October 19th to our Executive
4 Director Jonathan Wayne; and I am now going
5 to turn to him to further clarify any
6 thoughts he may have regarding the complaint
7 you filed.

8 MR. CARL LINDEMANN: Very good.

9 HONORABLE ANDREW KETTERER: This just
10 came in at the end of the business day
11 yesterday and so I have not had a chance to
12 discuss it with Phyllis Gardiner. And my
13 overall recommendation to you is to put this
14 off until next week because I think it
15 deserves a serious response from the Maine
16 Heritage Policy Center and more staff
17 consideration. But what the issues is, is
18 that there are . . . generally there are two
19 types of financial reports that are filed
20 with this office by people who are raising or
21 spending money with respect to a valid
22 question like Tabor [phonetic]. Either the
23 organization files as a PAC. . . it qualifies
24 as a PAC. They register and they file
25 regular reports with us at scheduled

1
2 deadlines, or there is another provision in
3 the law which we don't have a good name for
4 it. We always [unintelligible] refer to it
5 by its section number which is 1056-B. It
6 says that "any person not defined as a
7 political action committee who solicits
8 service, seeks contributions, or makes
9 expenditures aggregating in excess of \$1,500
10 for the purpose of initiating or promoting,
11 or defeating, or influencing in any way
12 ballot questions must file a report with the
13 commission." It is a relatively new
14 requirement in the law and it hasn't really
15 been flushed out very much by this
16 Commission. But what Mr. Lindemann is saying
17 is that the . . . this local research
18 organization in the Maine Heritage Policy
19 Center has been out in front speaking
20 favorable about Tabor. And so that its
21 expenses, I imagine, arguing putting their
22 staff time since that influencing the
23 election in his view and for Tabor. That
24 ought to be a financial cost that is reported
25 to this Commission. And that is all I have

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

to say about [unintelligible].

HONORABLE ANDREW KETTERER: All right, any questions by Commission members for Jonathan?

MALE VOICE: No.

HONORABLE ANDREW KETTERER: Okay. And Mr. Lindemann, do you want to augment any . . . we do have your correspondence highlighting what the nature of your Complaint is. Is there anything additional that you want to add so that we will hear that?

MR. LINDEMANN: Yes, well also as Mr. Wayne knows that the . . . that this product [unintelligible] here, and that I would welcome the opportunity if this were put till next week that I could also perhaps appear in person which would be preferable as well.

But in any case, the only other piece with this is we are looking at what happens in this dynamic as the research organization takes on the role of [unintelligible] communications and public relations for the

1
2 proponent PAC offering [unintelligible]. And
3 I would also say that Maine Heritage Policy
4 Center has taken on this role. And what that
5 means is that it introduced a whole new
6 dynamic to the political process where many
7 of the expenditures that are now reportable
8 and investigable [phonetic] disappear. And
9 that, again, apart from this particular issue
10 I am concerned about this dynamic of becoming
11 an accepted norm, and so many of the things
12 that we have reported now such as people
13 serving as spokespeople who are writing op ed
14 pieces, providing that kind of public
15 relations support now that can be subsumed by
16 third-party organizations that have no report
17 responsibilities. And that would be
18 . . . again, whether that is legal or not
19 that is for your determination. Whether that
20 is preferable or not is a matter for you to
21 consider.

22 HONORABLE ANDREW KETTERER: Thank you.
23 Are there questions by Commission members for
24 the Complainant Mr. Lindemann?

25 MALE VOICE: No.

1
2 HONORABLE ANDREW KETTERER: Okay, no
3 questions for you, so you may be off the hook
4 there. Are there members of the public who
5 are present who want to comment on this
6 issue? Yes, why don't we take this gentleman
7 across [unintelligible]. You're a regular,
8 yes. Why don't you come up sir, and would
9 you kindly state your name for us?

10 MR. JOHN CRASNICK: Yes, thank you. My
11 name is John Crasnick. I am from Portland,
12 Maine. I am the Executive Director of a
13 group called Democracy Maine [phonetic] which
14 is a nonprofit also out of Portland. What I
15 would like to come out and say is that
16 Democracy Maine is in support of this
17 Complaint being filed and we agree that this
18 is an issue that has to be looked into much,
19 much more closely. Democracy Maine is also a
20 nonprofit and, again, I might note that we
21 have been involved against Tabor. But that
22 aside, when I . . . when we began . . . when
23 we began to influence that referendum, I
24 spoke with Martha DeMerrit [phonetic] who
25 said that any nonprofit, the form is called

1
2 persons others than a PAC, has to file that
3 form when \$1,500 has been spent by certain
4 dates. And we realized that our date was
5 going to be, I think it's November 1st, the
6 date is actually when we have to file that
7 form.

8 What I will say is that for quite some
9 time now the Maine Heritage Policy Center has
10 played an integral role in the . . . in the
11 campaign to enact Tabor. The staff has
12 stated their favor of Tabor, has written
13 reports in favor of Tabor, it has brought
14 out-of-state speakers to speak in favor of
15 Tabor, and their Web site is clearly in favor
16 of Tabor. And we say the voters before
17 November 7th deserve to know where the funds
18 and resources are coming from that are
19 allowing the Maine Heritage Policy Center to
20 advocate for this legislation. And I do have
21 some articles that I will . . . I will give
22 to you that shows for quite some time how
23 involved Heritage has been. And I think any
24 claim from the Maine Heritage Policy Center
25 is that they are educating rather than

1
2 advocating which is not, not credible. And I
3 would just give you the data and suggest that
4 you . . . that everybody read these articles
5 very closely and require Maine Heritage
6 Policy Center to disclose how much money they
7 are spent to influence Tabor and where that
8 money has come from.

9 HONORABLE ANDREW KETTERER: Thank you
10 Mr. Crasnick. Questions by Commission
11 members for the witness.

12 ALL VOICES: [No response heard.]

13 HONORABLE ANDREW KETTERER: Thank you
14 for your testimony.

15 MR. CRASNICK: Thank you.

16 HONORABLE ANDREW KETTERER: I'm trying
17 to get this right.

18 MR. LINDEMANN: [Interposing] If I may
19 just throw in . . . at the last minute I sent
20 some documentation very much [unintelligible]
21 similar to what Mr. Crasnick has offered,
22 various clippings and actually it sounds like
23 some presentations made by officials in the
24 Maine Heritage Policy Center.

25 HONORABLE ANDREW KETTERER: Yes, I think

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

we have that.

MR. LINDEMANN: Very good.

HONORABLE ANDREW KETTERER: Thank you.
Dan, do you want to make some comments?

[PAUSE]

MR. DANIEL BILLINGS: I am Dan Billings.
I am here on behalf of the Maine Heritage
Policy Center and I certainly agree with your
. . . respective judgment recommendation to
defer any action on this today. I only got
involved in this matter in less than 48 hours
ago and have done some . . . spent some time
preparing for this meeting today but not as
much as I would like to.

I do think it is important to address
just what the role of the Maine Heritage
Policy Center has been on this . . . on this
matter. The Maine Heritage Policy Center is
not acting as political action committee on
behalf of the Tax Bill . . . Taxpayer's Bill
of Rights [phonetic]. There is another
committee that is raising and spending money
on behalf of the passage of the bill. That
organization is filed as a PAC. The Maine

1
2 Heritage Policy Center unlike the
3 [unintelligible] . . . the organization
4 represented by the previous speaker is not
5 running advertisements in newspapers
6 advocating for the Taxpayer's Bill of Rights.
7 They have not solicited funds to support it.
8 There is no . . . there is no money being
9 spent on TV ads through the organization or
10 anything like that.

11 What they have done is first they
12 drafted the legislation as model legislation
13 and it made that model legislation available
14 to people who are interested in it. It went
15 forward both as a legislative document
16 sponsored from the Legislature by a member of
17 the Legislature and also went forward as
18 . . . as a referendum and an initiative.
19 Again, the Maine Heritage Policy Center wrote
20 the initiative another group actually filed
21 it as an initiative and collected the
22 signatures and so forth.

23 And they have obviously been vocal about
24 the measure. And I would have to, you know,
25 we can go into, you know, the factual

1
2 determination where the line starts on
3 advocacy or simply education on the matter.
4 But I do think that it is important to note
5 that this isn't an issue where someone is
6 doing mailings, running advertisements,
7 anything like that. What is happening is
8 people who work for this organization are
9 vocal in the public on an issue of public
10 concern. And they do, as has been said, they
11 have reviewed it at forums and presented
12 information about the . . . about the, about
13 the referendum. And we have offices in both
14 [unintelligible].

15 But we are talking about people speaking
16 on an issue as representatives of the group,
17 and I think it is important to recognize
18 that. It is not a matter of someone running
19 ads or that kind of thing. Looking at 1056-B
20 the language of the . . . of the statute is
21 very broad. It talks about you are in excess
22 of \$1,500 for the purposes of initiating,
23 promoting, defeating, or influencing in any
24 way a valid question you must file a report.
25 So there is not a direct advocacy testing

1
2 here that's [phonetic] defeating and
3 influencing in any way.

4 I question whether a statute that broad
5 would withstand a Constitutional challenge.
6 And it brings to light I think there are all
7 sorts of organizations who haven't filed with
8 the Commission who, if you start adding up
9 staff time, would fall into that including a
10 large number of municipalities who have been
11 very vocal in their opposition to the
12 Taxpayer's Bill of Rights, and who have
13 people who work for the municipality who
14 appear at forums and speak and so forth. I
15 notice that municipalities are using tax
16 money to communicate that . . . to promote
17 the governing body's views to the public.
18 Looking at the Web site I haven't found any
19 of that reported anywhere. As far as . . . I
20 mean in the headlines recently the Roman
21 Catholic Church, the Bishop is . . . has come
22 out, he has made his communication known on
23 it.

24 In the headlines the last few days the
25 Maine Chamber has put this group together

1
2 having a series of meetings. From what I
3 have seen in the press so far I haven't been
4 able to [unintelligible] from that. But then
5 you have to act very carefully in this area.
6 I think there is no question that someone is
7 spending money running ads, that kind of
8 thing they need to report.

9 The other thing that I think is
10 important to think about here is there are a
11 number of ways that things can be reported.
12 Some of the other organizations on the other
13 side instead of reporting under 1056-B, what
14 they have done is reported their staff time
15 as an in-kind contribution to the PAC that is
16 opposing the Taxpayer's Bill of Rights. So
17 in that case to their credit you are getting
18 an itemized . . . The Maine Municipal
19 Association, the Maine Educational
20 Association, they put a number on their staff
21 time that shows up on a PAC report as a in-
22 kind contribution. But no one knows where
23 the money came from to pay for that staff
24 time. So there are a number of ways this
25 could be addressed if it was determined the

1
2 that Maine Heritage Policy Center's
3 activities did trigger reporting. So it is
4 not . . . it doesn't necessarily mean it
5 would come under this statute.

6 HONORABLE ANDREW KETTERER: Dan, it
7 sounds like there is a consensus for tabling
8 the matter pending further resolution and
9 receipt of additional information. Would you
10 be in a position to work with staff to
11 . . . I mean I think Jonathan is going to
12 have and staff are going to have some
13 questions.

14 MR. BILLINGS: Sure.

15 HONORABLE ANDREW KETTERER: Is that
16 something you can do—

17 MR. BILLINGS: Sure these next few days.

18 HONORABLE ANDREW KETTERER: Yes.

19 MR. BILLINGS: And certainly like I said
20 a copy of the information that has been
21 provided by the [unintelligible] for that.

22 HONORABLE ANDREW KETTERER: Yes, I think
23 it is just too . . . I mean to be . . . hard
24 to get our arms around an issue this big.
25 And I think you have enlightened us as to

1
2 additional factors and how other similar
3 groups may or may not have been treated. You
4 know, we try and take that into account too.
5 So as always you have been able to enlighten
6 us with good information. And the
7 Commission, I am sure, appreciates that.

8 Do the Commission members have any
9 questions for Dan at this particular time?
10 Having in mind it sounds like we are going to
11 have more about this maybe next week. Do you
12 have anything Mike?

13 MR. MICHAEL FRIEDMAN: No.

14 HONORABLE ANDREW KETTERER: Okay.
15 Thanks Dan. Any other members of the public
16 who are here who want to be heard on this
17 issue at this time? Yes, Jonathan.

18 MR. JONATHAN BARTHOLOMEW: Yes. Jon
19 Bartholomew, Common Cause Maine. And I just
20 want to say that our interest is in
21 disclosure and transparency. And, you know,
22 it is important for the public to know who is
23 spending how much money on political matters.

24 HONORABLE ANDREW KETTERER:

25 [Unintelligible].

1
2 MR. BARTHOLOMEW: So I think that if
3 they exceeded \$1,500 influencing this
4 election they should be reporting, and that
5 is all we are talking about is reporting as
6 opposed to most of the discussion we had here
7 earlier today, it's not about matching funds;
8 it is just about that public disclosure which
9 is critical. And if they have to do it so
10 should Maine People's Alliance and the Maine
11 Center for Economic Policy and all of these
12 other groups that are doing it. And perhaps
13 it could be done by them showing it as an in-
14 kind contribution to the Epson-I pack,
15 whatever the organization is actually called.

16 Either way, it still shows that money
17 was spent by Maine Heritage Policy Center.
18 We are not . . . this form doesn't ask for
19 where do you get your funding, does it?

20 MALE VOICE: Yes.

21 MR. BARTHOLOMEW: It does?

22 MALE VOICE: That's it.

23 HONORABLE ANDREW KETTERER: Yes, no
24 [unintelligible].

25 [CROSS TALK]

1
2 MR. WAYNE: Your contributions received
3 . . . the 1056-B form, do you have . . . it's
4 in both directions. If you have solicited
5 money specifically for the referendum, you
6 report that. If you spend money specifically
7 for the referendum...

8 MR. BARTHOLOMEW: But if it is just
9 coming out of your general organizational
10 budget. You didn't do any fundraising
11 specifically for that issue.

12 MR. WAYNE: Well that is
13 [unintelligible].

14 MR. BARTHOLOMEW: [Interposing] Yes.

15 MR. WAYNE: It's not . . . like so far
16 that is . . . that is the
17 staff interpretation of the statute but
18 there's some interpretation going on.

19 MR. BARTHOLOMEW: Okay. All right; all
20 right. Either way I mean we are concerned
21 about disclosure, so the public knows who is
22 doing what.

23 HONORABLE ANDREW KETTERER: Thank you.
24 And questions for Jon?

25 MALE VOICE: No questions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HONORABLE ANDREW KETTERER: Thank you very much. Any other members of the public who would like to be heard today on this issue?

ALL VOICES: [No response heard.]

HONORABLE ANDREW KETTERER: Seeing none . . . how about if we just table some resolution of it and ask staff to I am gong to talk to my Commissioners now to scope this matter out for us and to do whatever follow-up depending on what answers you get. Is that too much to ask you guys-

MALE VOICE: [Interposing] No, what happened-

HONORABLE ANDREW KETTERER:
[Interposing] - at this point in time? I mean it seems like an important issue and an important time, and there has been a lot of public debate about this Referendum No. 1 question, and . . . yes, so I mean-

MR. WAYNE: [Interposing] The one thing I would say-

HONORABLE ANDREW KETTERER:
[Interposing] Yes.

1
2 MR. WAYNE: - sometimes parties don't
3 appreciate that this has to be an orderly
4 process for you the Commission member-

5 HONORABLE ANDREW KETTERER:

6 [Interposing] Yes.

7 MR. WAYNE: [Interposing] - and also
8 for the Respondents. So I would like to
9 . . . since Mr. Lindemann waited until two
10 and a half weeks before the election to file
11 this and he is getting materials here today
12 by e-mail, I would like to recommend that
13 anything that Mr. Crasnick or Mr. Lindemann,
14 or Mr. Bartholomew's group wants to comment
15 on-

16 MALE VOICE: [Interposing]

17 [Unintelligible].

18 MR. BILLINGS: - be in by Monday. That
19 would all be turned over along with staff
20 questions to the Respondent policy center.
21 Then they would have a certain amount of time
22 to respond. Then staff would have, you know,
23 a couple of days reviewing [phonetic] the
24 matter and then, only then would you discuss
25 it if that is all right.

1
2 HONORABLE ANDREW KETTERER: Yes, that is
3 fine. Yes, why don't we say . . . you need a
4 time of day so you can get it out the same
5 day. I mean it's going to be like you say by
6 three o'clock, and so in other words you have
7 got to have time to turn it over-

8 MR. WAYNE: No, we'll have it by 5:00.

9 HONORABLE ANDREW KETTERER: Okay.

10 MR. WAYNE: RI think we could . . . on
11 Monday we could . . . yes.

12 HONORABLE ANDREW KETTERER: All right,
13 so why don't we say that if there is going to
14 be written submissions to Commission staff on
15 this agenda item, then if people care to do
16 that would they please do so either
17 electronically, by fax, hand delivered,
18 whatever they want to do by five o'clock on
19 Monday. What is Monday's date?

20 MALE VOICE: The 23rd.

21 HONORABLE ANDREW KETTERER: October 23rd.
22 And then in the ordinary flow of things you
23 could . . . if you could supply that to the
24 Respondent who can then give us a full
25 response, I hope, with the [unintelligible].

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

And we will just . . . I think we can just consider the matter tabled. Do we need a formal motion on that?

MS. GARDINER: Yes, you do.

MALE VOICE: [Interposing]
[Unintelligible].

HONORABLE ANDREW KETTERER: We had a motion to table that to the next meeting date. Well we table . . . are we tabling it to next meeting or are we tabling it to what?

[CROSS TALK]

HONORABLE ANDREW KETTERER: We may have a telephone meeting on Monday for all I know.

MS. GARDINER: Then we will table it to the next meeting and then—

HONORABLE ANDREW KETTERER:
[Interposing] Tabling in.

MS. GARDINER: - you might have a clear enough discussion [unintelligible].

HONORABLE ANDREW KETTERER: Okay. All right, so why don't we . . . do we have a motion to just table it until the next meeting; and if it is not right at that point we will . . . we will prepare going over this

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

stuff [unintelligible].

MR. CASSIDY: So moved.

MR. FRIEDMAN: Seconded.

HONORABLE ANDREW KETTERER: Those in favor of adopting the current tabling motion, it goes three to zero. The motion is tabled to . . . thank you Mr. Lindemann. You may want to stay in contact with staff about what else you want to furnish. We have some materials that you furnished, but if there is anything else, there is a Monday deadline on that.

MR. LINDEMANN: Will do. Also if I can have some sense of when the next meeting is so I can arrange my schedule appropriately.

HONORABLE ANDREW KETTERER: Okay, if you want to stay on the line . . . we don't have any other substantive matters do we Jonathan?

[OFF THE RECORD]

[END TAPE 1, SIDE A]

C E R T I F I C A T E

I, LaVALLE CLAPP, certify that the foregoing transcript of proceedings in the MAINE ETHICS COMMISSION, MAINE HERITAGE POLICY CENTER was prepared using standard electronic transcription equipment and is a true and accurate record of the proceedings.

Counter #(s): N/A

Signature LaValle Clapp / Edited SP _____

Date February 26, 2007 / March 1, 2007

ERRATA SHEET FOR TRANSCRIPT OF _____

RE: _____ DATE TAKEN: _____

PAGE	LINE #	CORRECTION	REASON
------	--------	------------	--------

WITNESS' NAME

SUBSCRIBED AND SWORN TO THIS

_____ DAY OF _____, 200_____
