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

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: October 7, 2013

Re: Reply Memorandum by Commission Staff concerning Lewiston Casino PACs

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Introduction

This memo outlines the Commission staff's analysis and recommendations in response to the September 23 and 24 submissions from counsel for Stavros Mendros and Peter Robinson.

In the weeks before the November 2011 election, the Maine public received false information concerning who was funding the political campaign to bring a casino to Lewiston. The false information was included in a pattern of statements made to the news media and in campaign finance reports filed by the PACs. There is no question that the PACs submitted three campaign finance reports which misreported their contributions and, thus, did not substantially conform to disclosure requirements. Based on Maine statute, the Commission must consider these reports to be late. The burden is on the PACs to justify a waiver of the preliminary penalties. These preliminary penalties are quite large, because of the large amounts of contributions that were misreported.

Campaign manager Stavros Mendros and PAC treasurer Peter Robinson have defended themselves in this enforcement matter by claiming that they relied on incorrect statements received from the out-of-state casino developers. They argue that any penalty for late filing should be waived because they made "a bona fide effort to file the report in accordance with statutory requirements." (21-A M.R.S. § 1062-A(2)(C))

The out-of-state developers, however, *deny* ever providing incorrect information to Mr. Mendros and Mr. Robinson, which creates a "they said-they said" dispute that complicates assessing responsibility for the misreporting. Because the Commission staff is receiving conflicting information from the parties involved, at the present time it is difficult to discern who (if anyone) is being forthright. We therefore withdraw the specific penalty recommendations set forth in our July 1 memo.

As argued below, based on Mr. Mendros' central role in the initiative, the Commission staff recommends starting with the reasonable premise that Mr. Mendros knew much more about the out-of-state developers who invested in the project than PAC treasurer Peter Robinson. We are not in a position to know whether Mr. Mendros or Mr. Robinson knowingly allowed false information to be entered into their PAC reports, or whether the false entries were the result of lack of poor communication, not asking the right questions, and not obtaining the financial records necessary to file accurate reports. Regardless, this is a serious violation that prevented disclosure of important information to the public in advance of the election.

Legal Duties of PACs

Essentially, PACs have three legal duties: registering, reporting, and record-keeping. (Title 21-A, §§ 1053, 1060, and 1057, respectively)

Financial reporting. PACs are required to report the amount and date of each contribution greater than $50, along with the donor's name, address, occupation and place of business. (21-A M.R.S.A. § 1060(6)) They are required to itemize every expenditure that they have made to influence a ballot question campaign. (§ 1060(4)) This information is entered electronically on the Commission's e-filing website. Once the data is complete, the PAC presses the "file report" button, and the information is available to the public and the press.

In 2011, Maine campaign finance law did *not* require the PAC's treasurer to file the reports. The legal responsibility belonged to the PAC as a whole. The PAC could authorize anyone associated with the PAC to enter the information and to file the reports.[1]

As a practical matter, the individual filing the PAC reports must be informed of all of the contributions and expenditures that the PAC is required to report. Otherwise, if the PAC's managers have not set up effective procedures to obtain and keep the details of the financial transactions, the PACs run the risk of providing wrong or incomplete information to the public, as occurred in this case.

Record-keeping. PACs are required by statute to keep

- a record of all contributions greater than $50 to the PAC, including the name and address of each donor, and the amount and date of the contribution; and
- detailed records of expenditures, and a receipt for each expenditure over $50.

(21-A M.R.S.A. § 1057) In addition to being a legal requirement, keeping good records is instrumental to accurate reporting, so that PACs have the financial information that they are required to disclose publicly. When good record-keeping procedures are not followed, the PACs risk erroneous reporting.

Responses by Stavros Mendros and Peter Robinson

Stavros Mendros. Attorney Mark L. Walker submitted a letter-response dated September 24, 2013 on behalf of Stavros Mendros and the PACs (referred to below as the "Mendros Response"). Mr. Mendros states that he "relied on statements made by two parties (Scott Nash and [Dwayne] Graham) that GT Source and/or [Dwayne] Graham was the source of the funding." (Mendros Response, at 1) Mr. Mendros and the PACs claim that they had "no statutory duty to investigate beyond what they were told, repeatedly, by Nash and Graham." (*Id.*) Mr. Mendros provides *no specifics* concerning the statements which he

[1] Under a statutory amendment proposed by the Commission that takes effect on October 9, 2013, the treasurer and principal officer of a PAC will be jointly responsible for the PAC's legal compliance. The treasurer shall ensure that the PAC files required reports, but may delegate tasks to other individuals. (P.L. 2013, Ch. 334) PACs will specifically be required to keep bank account statements for four years.

claims to have personally received (*i.e.*, the context, timing, or location of these statements).[2]

Mr. Mendros denies knowing that "the source of funding was other than GT Source." (*Id.* at 2) His attorney states emphatically "There is NO additional statutory burden for Mr. Mendros, Mr. Robinson or the PACs to research and verify the funding was not from GT Source[.]" (*Id.*) Mr. Mendros states that he "dealt directly with Scott Nash, had conversations and meetings with [Dwayne] Graham, but never was told about a Chase Burns. Again, there is no statutory requirement that Mr. Mendros MUST investigate and verify that the people they are dealing [with] are who they say they are." (*Id.* at 3)

Mr. Mendros thus comes close to saying that the out-of-state developers misstated to him the sources of the political funding. He provides no explanation, however, for why they would make such misstatements. Indeed, other than the two statements referenced in footnote 2 of this memo, Mr. Mendros does not refer to any *specific* statements.

Mr. Mendros' counsel suggests that the Commission should investigate how Dennis Bailey obtained the draft contract that was attached to Mr. Bailey's complaint. He implies that "there may have been a subsequent contract with different terms, that may have led to the belief that GT source was the appropriate party up until the date of the passage of the referendum[.]" (*Id.* at 5) However, Mr. Mendros has submitted no such contract.[3]

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[2] In his response, Mr. Mendros specifically cites only two statements, but it is unclear whether he was present for either statement. On page 2 of his response, Mr. Mendros mentions a statement by Dwayne Graham made to a Lewiston Sun Journal reporter. (Attachment 9 to the July 1 staff memo) On page 2, Mr. Mendros also refers to a conversation between Scott Nash and Peter Robinson, although Mr. Mendros does not disclose whether he was present for this conversation. The Commission has received two different dates for this alleged conversation. Mr. Mendros apparently believes it occurred in October 2011, but Mr. Robinson says it occurred on 9/22/2011 (Robinson Memo, at 6-7). As described below in this memo (p. 11), Scott Nash denies that the conversation, as described by Mr. Robinson, took place.

[3] If Mr. Mendros is claiming that a contract is what led him to believe that GT Source Corporation funded the political campaign, one would expect him to submit that contract to the Commission. On October 2, 2013, the Commission staff requested that Mr. Mendros produce any such contract that may exist, for your consideration.

Peter Robinson. Peter Robinson recently obtained new legal counsel, Elizabeth A. Germani (having previously been represented by Mark Walker). On September 23, 2013, Ms. Germani submitted a 21-page legal memorandum (referred to below as the "Robinson Memo"). The memo argues that Peter Robinson acted in good faith and reasonably relied on the information provided to him by Scott Nash concerning the sources and amounts of contributions. (Robinson Memo, at 5 and 13) She argues that there is no evidence that Mr. Robinson knowingly misrepresented the source of contributions to the PACs. (*Id.* at 1) Her client denies that information in the reports was materially false. (*Id.* at 15)

Concerning the monetary penalties proposed by Commission staff on July 1, Mr. Robinson's counsel argues that the imposition of "any penalty" is disproportionate to the experience of Mr. Robinson in reporting campaign finances and the harm suffered by the public. (*Id.* at 17). She asserts that the misidentification of the donors as GT Source did not harm the public. (*Id.* at 20) She argues that Mr. Robinson had no intent to mislead (*Id.* at 20-21) and that the Commission should not assess penalties because the Commission staff did not provide a notice to the PACs that their reports were considered late. (*Id.* at 15)

With his response, Peter Robinson submitted three e-mails dated Oct. 28, 2011, purporting to be statements by Scott Nash to Peter Robinson that GT Source had made three payments earlier in the month. Also, on pages 6-7 of his memo, Mr. Robinson describes a specific conversation with Scott Nash in which Mr. Nash allegedly said that money for a $121,000 wire transfer came from GT Source Corporation (GT Source). Although these are the communications on which Mr. Robinson claims to have relied, he did not submit them previously in the investigation.

Commission Staff Analysis and Response

Contributions Listed in Three PAC Reports were Objectively False

Green Jobs for ME and People of Lewiston Auburn Committee (PLAC) filed three campaign finance reports – on October 5 and 28, and December 20, 2011. They reported receiving roughly $412,000 from a single, out-of-state donor, GT Source. The Georgia firm is a supplier of slot machines to the gambling industry. Its Chief Executive Officer is Dwayne Graham, who is believed to be a part owner of the company.

The PACs reported receiving seven contributions from GT Source:

Contributions Reported by PACs from Out-of-State Donors					
#	Reported Date	Reported Donor Name	Reported Amount	PAC which filed the Report	Report (filed date)
#1	8/12/2011	GT Source	$5,000.00	Green Jobs for ME	October Quarterly(10/5/2011)
#2	9/1/2011	GT Source	$2,200.00	Green Jobs for ME	October Quarterly (10/5/2011)
#3	9/22/2011	GT Source	$26,000.00	Green Jobs for ME	October Quarterly (10/5/2011)
#4	10/13/2011	GT Source	$25,000.00	PLAC	11-Day Pre-General (10/28/2011)
#5	10/13/2011	GT Source	$140,000.00	PLAC	11-Day Pre-General (10/28/2011)
#6	10/18/2011	GT Source	$160,000.00	PLAC	11-Day Pre-General (10/28/2011)
#7	10/26/2011	GT Source	$53,419.73	PLAC	42-Day Post-General (12/20/2011)
		Total	**$411,619.73**		

These entries are completely wrong, based on the bank records obtained by the Commission staff. They are not simply inaccurate as to dates or amounts. The bank records show that *GT Source, in actuality, provided no money for the political campaign.*

The actual donors were:

- Wild West Gaming and IncentOvation, which were two companies owned by Maryland business partners Scott Nash and Ryan Hill. These two firms provided

roughly 2/3 of the funding for the political campaign. According to Mr. Nash and Mr. Hill, in 2011 these were going concerns that received income from gambling operations in Maryland.

- Another 1/3 of the revenue ($150,000) came from Oklahoma businessman Chase Burns, and was received six days before the 11/8/2011 election.

Although these donors (Wild West Gaming, IncentOvation, and Chase Burns) provided more than $400,000 in funds for the political campaign, their names *never appeared* in the campaign finance reports filed by the two PACs.

Most of this funding flowed through M Five, Inc., which was a Maine corporation formed in late September 2011 by Scott Nash, Ryan Hill, and Dwayne Graham.[4] Bank records for Dome Messaging, M Five and others were provided to Mark Walker on July 1, 2013 (as the attorney for all respondents), and they were annotated by the Commission staff to provide a chart of the money trail. These records demonstrate conclusively that the PACs' reporting of contributions was false.

Given this documentary proof, one might have expected Mr. Robinson and Mr. Mendros to respond to our July 1 memo with surprise or chagrin that their reports were wrong. On the contrary, Mr. Mendros's September 24 submission shows no concern that his PACs submitted reports to the State containing false information. Mr. Robinson even claims that the reports "substantially complied" with legal requirements (Robinson Memo, at 11) and denies "that the information in the initial reports was materially false ...." (*Id.* at 15)

It is worth noting that Mr. Robinson's response provides no explanation or support for a number of contributions he entered into the PAC reports. There is no explanation for his belief that GT Source paid $5,000 or $2,200 to anyone on the dates listed. He has not explained why he reported a 10/26/2011 contribution of $53,419.73, after allegedly being told by Scott Nash in a 10/28/2011 e-mail that GT Source contributed $90,000 on that date.

[4] According to Ryan Hill, Mr. Graham was appointed President of M Five because he had a longer background in the gambling industry and knew more people within the industry who could potentially invest in the project. Although Mr. Graham was an officer in the company, he and his firm did not contribute any money. Nash and Hill opened the bank account for M Five at a Maryland bank and controlled its finances.

Harm to Maine Voters in 2011

Peter Robinson also disputes that the public was harmed by the PACs' misreporting. (Robinson Memo, at 20) The disclosure of campaign donors is essential to voters' understanding of who is trying to influence the electorate. Every election, voters are barraged with campaign messages from PACs with appealing-sounding names (*e.g.*, Green Jobs for ME or Citizens for a Better Maine) that provide voters with very little information about the campaign organizations. Disclosure of the PACs' donors informs the public *who is really behind the campaign message* (*e.g.*, a labor or trade association, or policy or commercial organization). Knowing who is behind the message assists the public in evaluating the message's reliability. This informational interest was found to be "compelling" by both the U.S. District Court and U.S. Court of Appeals for the First Circuit in recent decisions upholding Maine's donor disclosure laws:

> No less than in candidate elections, citizens evaluating ballot questions must "rely ever more on a message's source as a proxy for reliability and a barometer of political spin." [citations omitted] see, also, e.g., Cal Pro-Life Council v. Getman, 328 F.3d 1088, 1105-06 (9th Cir. 2003) ("Even more than candidate elections, initiative campaigns have become a money game, were average citizens are subjected to advertising blitzes of distortion and half-truths and are left to figure for themselves which interest groups post the greatest threats to their self-interest." [citations omitted]) The disclosure of information about the sources of political-advocacy funds thus "enables the electorate to make informed decisions." NOM I, 649 F.2d at 57 ((quoting Citizens United v. FEC, 130 S. Ct. 876, 916, 175 L. Ed. 2d (2010)).

National Organization for Marriage v. McKee, 669 F.3d 34, 39 (1st Cir. 2012).

In this case, the campaign was paid for by two companies associated with Scott Nash and Ryan Hill of Maryland, and Chase Burns of Oklahoma. All three businessmen have backgrounds, which if they were disclosed to the Maine public in 2011, could have raised public relations issues in the context of a statewide debate whether to approve a casino in Lewiston:

- Scott Nash and Ryan Hill, along with a former business partner Christopher Russell, have been involved in nonprofit programs to provide down payment assistance to home-owners that earned large fees and that were the subject of negative news stories in the banking and business press during 2004 - 2008. Some of these news articles contained headlines connoting questionable business practices or dishonesty.[5] These headlines would not have been helpful to the pro-casino advocates in the context of the 2011 election.

- The third investor, Chase Burns, has been under criminal investigation since 2009, and was charged earlier this year by Florida state prosecutors with running an operation of 49 illegal gambling centers under the guise of internet cafes. [6]

Fair or not, contemporary politics often includes an examination of the ethics and motives of the people who are trying to influence Maine voters. Had the companies of Scott Nash and Ryan Hill been disclosed in 2011 campaign finance reports, their past business practices would likely have been the subject of public scrutiny. Instead, that public discussion never happened, because Dwayne Graham and GT Source were put forward (both to the news reporters and in campaign finance reports) as the "public face" of the out-of-state casino developers.

The Commission staff does not know how much of this information was known by the PACs, Scott Nash, or Ryan Hill in 2009. Regardless of their actual knowledge, this case illustrates how vital it is for the Maine public to know who is funding ballot question

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[5] Kenneth Harney, *Gaithersburg Firm Suspends Shady Down Payment Loans*, Baltimore Sun, Nov. 7, 2004; Holden Lewis, *Don't Lie About Your Down Payment's Source*," Bankrate.com, Nov. 18, 2004; Asher Hawkins, *Going Tribal*, Forbes Magazine, Aug. 7, 2008.
In 2011, these news articles would have been easily available on the internet to any enterprising journalist or opposition researcher – had the donors' names been publicly disclosed.

[6] This was a multi-state investigation which involved federal authorities and resulted in charges against 57 people. Prosecutors identified Mr. Burns as one of four key defendants for having provided software to the illegal centers, earning his company large fees. The official press release from the Florida Department of Law is no longer easily accessible on the internet, but the matter has earned ample news attention, for example: http://articles.latimes.com/2013/mar/13/nation/la-na-nn-florida-lt-gov-quits-57-charged-2013-0313.

campaigns in Maine. It is simply not acceptable for the pro-casino PACs to have knowingly or carelessly misstated their funders.

The PACs were not cooperative in this Investigation

The Commission staff must disagree with Mr. Mendros' contention on page 2 of his letter that he cooperated with this investigation. (Mendros Response, at 2) Most people responding to complaints, audits, or investigations by this Commission recognize that the Commission has a legitimate role as referee in campaign finance matters and feel a sense of duty (or at least recognize that it is in their self-interest) to provide information requested by the Commission. That baseline of cooperation typically allows this Commission to conduct investigations efficiently with a small staff and with minimal need for legal process such as subpoenas. That is not how Mr. Mendros responded to this investigation:

- The Commission staff requested bank records from the PACs *five times* to verify the dates, amounts, and donor name reported by the PACs. If Mr. Mendros actually believed that the PACs' reporting was correct, why did he not simply reach out and obtain the records from his own political consultant (Dome Messaging) and from business partners (Hill and Nash), who ultimately did provide the records to the Commission voluntarily? Even a spreadsheet or Quickbooks report with accurate amounts and dates would have been helpful. Instead, the PACs effectively sat back and made the Commission prove or disprove the accuracy of their reporting.
- During 2012, the Commission staff waited weeks or months to receive information from the PACs, usually receiving no response or nothing of value.[7]

[7] Consider, for example, the four requests in Attachment 20 to our July 1 memo. After making our 3/30/2012 request to Mr. Walker for bank records and communications with Dome Messaging, we received nothing **after 1 ½ months**. So, the Commission staff sent a smaller request on 5/10/2012. Another three weeks passed, and no response. So, we sent a letter on 5/31/2012 indicating that we would be seeking issuance of a subpoena, and received no response after two weeks. On 6/14/2012, we again sent a letter requesting bank documents. Finally, three weeks later on 7/5/2012, we received from Mr. Walker a 1 ½ page letter containing no new information and no bank documents.

Mr. Robinson's Reliance Defense is Disputed by Scott Nash and Ryan Hill

Peter Robinson submitted three e-mails dated Oct. 28, 2011, purporting to be statements by Scott Nash to Peter Robinson that GT Source had made three payments earlier in the month. Upon receiving this new evidence, the staff contacted Mr. Nash, through his attorney, to find out if he had any record of or recalled these e-mails. He did not.

Indeed, both Scott Nash and Ryan Hill *deny* that they told Mr. Mendros and Mr. Robinson that GT Source provided the funding for the political campaign. Scott Nash and Ryan Hill have shown a high degree cooperation with this investigation, after finding out that the Commission staff was making an application to the Maryland courts for their bank records. They hired Maine attorney Kate R. Knox to facilitate their responses. They have shown no hesitation to discuss their involvement in the casino campaign. In fact, they *voluntarily* provided bank account statements for M Five prior to our receipt of documents from their bank. Both Nash and Hill consented to two interviews each, on May 8 and October 1-2, 2013, and patiently answered our questions.

In these interviews, they denied having any reason to stay hidden from the view of Maine voters in 2011. Scott Nash stated on May 8 that he does not think that he, at any time, told Peter Robinson that GT Source provided funding for the campaign. In an interview on October 1, Mr. Nash said that he does not believe that he sent the e-mails submitted by Mr. Robinson (although he clearly does not want to accuse Mr. Robinson of manufacturing them). He does not believe he would have undertaken to provide Peter Robinson with specific dates and amounts.[8] He also denies that the Sept. 22, 2011 conversation described at the bottom of page 6 of the Robinson Memo took place.

Thus, in making a recommendation to you, the Commission staff is hampered by a "they said-they said" dispute concerning whether Scott Nash told Mr. Mendros and Mr.

[8] Not only are these e-mails inaccurate because they state that GT Source paid Dome Messaging, the amounts of $140,000, $160,000, and $90,000 greatly overstate the actual amounts Dome Messaging received during this period from M Five. In his September 23 response, Mr. Robinson offers no explanation or theory for why Mr. Nash would falsely indicate that GT Source made the payments or would pass on specific payment amounts that are wrong to such a large extent.

Robinson that GT Source provided the funding for the political campaign. In drafting the recommendations in the July 1 memo, we gave weight to Mr. Nash's comments to us that he did not tell Peter Robinson that GT Source provided money for the political campaign. Now, the Commission staff is unsure whether either side is being completely forthright. It is ultimately up to the Commission to make that credibility determination.

The staff suggests receiving testimony from Mr. Nash and Mr. Hill before accepting Mr. Robinson and Mr. Mendros' reliance arguments. To facilitate this, the Commission staff has e-mailed Ms. Knox requesting that both Mr. Nash and Mr. Hill be available to answer your questions during your October 16 meeting. Because Mr. Hill and Mr. Nash are traveling that day, the staff is still working on the logistics, which may prove challenging.

It is Doubtful that Mr. Mendros can Justifiably Make the Same Reliance Argument as Mr. Robinson

It is plausible that Mr. Robinson was on the outside of financial arrangements (possibly intentionally) and that his reporting was dependent on what he heard from others.

Mr. Mendros was in a much different position in the campaign, however, and there are reasons to expect that he would know more about the sources of out-of-state funding than Peter Robinson. For one thing, Mr. Mendros was the business manager for the Lewiston-Auburn investors and negotiated the sale of the real estate option to M Five, Inc. Mr. Mendros also was the campaign manager and would have wanted to know the level of funding available for the campaign and the reliability of promised funds. For example, when Chase Burns provided $150,000 to M Five six days before the election (increasing the campaign spending budget by roughly 50%), one would expect Mr. Mendros to inquire about this last-minute funding.

Mr. Mendros was in charge of the public relations effort, and would have needed to think through how to present the out-of-state developers to various Maine constituencies (voters,

the press, *etc.*). For this reason, too, he would presumably want to know the investors in M Five.

Therefore, the Commission staff recommends starting with the reasonable premise that Mr. Mendros knew *much more* about who was involved in M Five than Peter Robinson. The totality of information available to Mr. Mendros concerning M Five certainly exceeded the three October 28 e-mails from Scott Nash to Peter Robinson, which arrived relatively late in the campaign. In order to test the credibility of his reliance defense, you may wish to probe Mr. Mendros for more specifics than are provided in his September 24 response.

Staff Recommendations

Late-Filing Violations

Recommended findings of violation. Under 21-A M.R.S.A. § 1062-A(2), "[a] campaign finance report is not considered timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the Commission ...." Thus, a finding of late filing is the recourse that the Maine Legislature has directed the Commission to use when a PAC files a campaign finance report that is substantially incorrect. In at least two recent cases, the Commission has applied this Subsection of statute to make findings of late reporting when campaign finance reports were filed on time but were substantially incomplete.[9]

The language of § 1062-A(2) does not require the Commission to find that the PAC acted knowingly or intentionally, or that it was careless, reckless, or negligent. If a PAC's

[9] On April 28, 2006, the Commission found that three reports filed by 2002 gubernatorial candidate Peter Cianchette were late, because they did not include large in-kind contributions from Cianbro that exceeded the $500 contribution limit. At that meeting, the Commission assessed penalties totaling $12,000 for the late-filed reports. On April 26, 2011, the Commission found that State Senate candidate Joseph Palmieri was late in filing his 11-day pre-election report because the report did not include large expenditures his campaign made to promote his election. The late-filing penalties were partially waived. Documents and meeting minutes relating to these matters are available at www.maine.gov/ethics/meetings, and upon request.

reports fail to conform substantially to disclosure requirements, the reports are late – regardless of the degree of care shown by the PACs.

The Commission staff continues to recommend that you find the following three violations:

Violation #1 find that Green Jobs for ME filed its October 2011 quarterly campaign finance report late, because it failed to report contributions as required by 21-A M.R.S.A. § 1060(6);

Violation #2 find that People of Lewiston and Auburn Committee filed its 11-day pre-election report late, because it failed to report contributions as required by 21-A M.R.S.A. § 1060(6); and

Violation #3 find that People of Lewiston and Auburn Committee filed its 42-day post-election report late, because it failed to report contributions as required by 21-A M.R.S.A. § 1060(6).

There is no question that the three campaign finance reports did not substantially conform to the disclosure requirements of 21-A M.R.S.A. § 1060(6), because the reports did not identify the names and addresses of the contributors who gave more than $50 to the committees. In addition, the reports do not contain most of the actual dates and amounts of the contributions. Therefore, these reports must be considered late.

Amount of preliminary penalties

Under 21-A M.R.S.A. § 1062-A(3), when a report is filed late, the Commission calculates a preliminary penalty based on the total contributions or expenditures for the filing period, multiplied by the number of days late, and a percentage based on the number of violations. In the context of a substantially non-conforming report, it is logical to apply the number of days in which the report contains substantially erroneous information or was incomplete. This interpretation encourages PACs who have submitted erroneous or incomplete reports to promptly remedy the deficiencies by amending the reports.[10]

[10] Mr. Robinson's counsel states that Mr. Robinson has not amended the PACs' reports because "Robinson and the PACs deny that the information in the initial reports was materially false." (Robinson Memo, at 15)

In this matter, the preliminary penalty for each late report is quite large and has reached statutory maximum amounts, because of the large amount of financial activity that was misreported. Based on these maximums, the total of the preliminary penalties for the three late reports is $85,834. In the July 1 memo, we included the following table which we continue to believe (after consultation with counsel) is the appropriate calculation of the preliminary penalties pursuant to the statutory formula in 21-A M.R.S.A. § 1062(3).

Report Name	Green Jobs for ME October Quarterly 7/1/11 - 9/30/11	People for Lewiston and Auburn Committee 11-Day Pre-General 10/1/11 - 10/25/11	 42-Day Post-General 10/26/11 - 12/13/11
Penalty Basis*	$31,403.90	$180,765.43	$198,404.59
Penalty Percentage	1%	1%	3%
Daily Penalty	$314.04	$1,807.65	$5,952.14
Number of Days Late**	635	612	559
Basis x Percentage x Days Late	$199,414.77	$1,106,284.43	$3,327,244.97
Maximum Penalty***	$10,000.00	20% of penalty basis	20% of penalty basis
Preliminary Penalty Amount	$10,000.00	$36,153.09	$39,680.92
PRELIMINARY PENALTY TOTAL = $85,834.00			

* 21-A M.R.S.A. § 1062-A(3).

** Days between the report due date and July 1, 2013.

*** 21-A M.R.S.A. § 1062-A(4).

Preliminary Penalties Not Impacted by Length of Investigation

The staff is *not* claiming that the preliminary late filing penalties have increased on a daily basis for the year and a half that it needed to conclude this investigation. (Robinson Memo, at 16) Rather, the amount of the three preliminary penalties ($10,000, $36,153.09, and $39,680.92) are the maximum amounts permitted by law. These maximum amounts were reached in November and December 2011, as shown on this chart:

	Daily Penalty (based on percentage of contributions for period)	Maximum Penalty	# of days after deadline when daily penalty reached maximum penalty	Report Deadline	Date on which daily penalty reached maximum penalty
October Quarterly	$314.04	$10,000.00	32	10/05/2011	11/06/2011
11-Day Pre-General	$1,807.65	$36,153.09	20	10/28/2011	11/17/2011
42-Day Post General	$5,952.14	$39,680.92	7	12/20/2011	12/27/2011

The preliminary penalties are quite large because of the large amount of contributions that were misreported – not the length of the investigation.

Waiver of Penalties

In the view of the Commission staff, the burden is *on the PACs* to justify a waiver of the preliminary penalties, based on arguments that the PACs made a bona fide effort to file compliant reports, inexperience, or little harm to the public. Determining the appropriate penalty amount may also depend partly on whether you believe evidence has been presented that both Stavros Mendros and Peter Robinson reasonably relied on representations by others in filing these erroneous reports. Stavros Mendros has presented virtually no evidence concerning the statements that he personally received. He was in a position to know much more than Peter Robinson concerning who were the out-of-state funders of M Five. As noted above, the Commission staff withdraws the specific monetary penalties we recommended in our July 1, 2013 memo.

Monetary Penalties are Appropriate Even if You Do Not Find Intentional Misreporting

The Commission staff recommends that you do not fully waive the penalty, even if you find that the misreporting was unintentional. Since the PACs undertook to perform the financial reporting for out-of-state actors who provided and solicited funds for political purposes, it was the PACs' responsibility to establish clear expectations that Mr. Nash, Mr. Hill, and Dome Messaging would transmit accurate and complete contribution information to Peter Robinson for reporting purposes. Accepting a lower standard of conduct could be a poor precedent for future political campaigns involving out-of-state actors.

Moreover, the PACs had a legal responsibility to obtain a record for each and every transaction that they were required to report. (21-A M.R.S.A. § 1057) On the contribution side of their reporting, the evidence that the PAC took this record-keeping obligation seriously is not strong. We have requested these records since the beginning of this investigation, and received little to nothing. With regard to the Oct. 28 report, the PAC apparently relied on e-mail communications when the filing was due, and these contained inaccurate information. No records have been produced to support the amounts or donor names for contributions #1, #2, and #7 as shown on the chart at page 6 above.

Thus, we urge you to consider not just Mr. Robinson's good faith but the PACs' overall responsibility to establish reliable procedures to:

- obtain complete, accurate financial information from its out-of-state partners,
- obtain adequate back-up documentation of dates, amounts, and donor names (preferably, accounting or bank records), and
- faithfully enter that information into financial reports submitted to the State of Maine for the public's benefit.

Notice Argument by Peter Robinson

Mr. Robinson's attorney argues that the Commission should not assess a civil penalty in this matter because the Commission staff did not comply with notice provisions in 21-A M.R.S.A. § 1062-A(5). (Robinson Memo, at 14-17) Respectfully, the Commission staff believes that she has misconstrued this subsection of the statute.

The first sentence of § 1062-A(5) requires that Commission staff send a 3-day notice if a PAC has not filed a required campaign finance report by a statutory deadline. This sentence is clearly intended to apply if the PAC has "failed to file a report." The Commission staff regularly performs this responsibility within three days of a filing deadline when a PAC, party committee, or candidate has not filed a regularly scheduled report.

This 3-day notice is inapplicable to this case, however, in which the PACs *did* file three reports by the deadlines. It would have been inaccurate and contrary to statute for the Commission staff to mail a notice to Mr. Robinson or Mr. Welch "informing [them] that a report was not received." We did receive the PACs' reports.

The remaining sentences of Subsection 5 set out a procedure by which a PAC may either pay a preliminary penalty (calculated under Subsection 3) or request a waiver of the preliminary penalty from the Commissioners. You are familiar with these waiver requests from Commission meetings. The typical context is that a candidate, PAC, or party committee has missed a filing deadline. This procedure is not intended as an opportunity for the PAC to cure any errors or omissions in the report, but rather to arrive at a fair penalty when a report has been received after the deadline.

When a complaint is filed alleging that a PAC's filed reports are not correct, the PAC should receive notice and an opportunity to be heard on two questions:

- whether or not the report should be considered late because of non-compliance;
- whether a waiver should be granted for the late filing.

Mr. Robinson has had ample opportunity to be heard on both topics. Through prior counsel, Mr. Robinson received notice on July 1, 2013 (more than three months ago) that the staff viewed the PACs' reports as substantially non-compliant and, therefore, late. Although Ms. Germani arrived in this matter relatively recently, she has done an effective job in arguing that the report was compliant, should not be considered late and, if the report is considered late, that penalties should be waived for mitigating reasons set out in statute. Thus, Mr. Robinson has not been harmed by the way this enforcement matter has developed and there is no bar to considering whether the report must be considered late and what penalty (if any) is appropriate.

Material False Statements

The Commission staff withdraws our earlier recommendation to find violations of 21-A M.R.S.A. § 1004-A(5) for making false statements in documents required to be submitted to the Commission. We do believe that material false statements were made. The personal responsibility of the individuals involved is less certain, however, due to the e-mails provided by Mr. Robinson. If, after hearing presentations on Oct. 16, you find evidence sufficient to support this finding, you may do so because the respondents have received notice of this potential finding and have had an opportunity to respond.

Thank you for your consideration of this memorandum.