



Minutes of the September 28, 2022 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William J. Schneider, Esq., Chair; David R. Hastings, Esq.; Sarah E. LeClaire, Esq.;
Dennis R. Marble; and Stacey D. Neumann, Esq.

Staff: Jonathan Wayne, Executive Director; and Jonathan R. Bolton, Assistant Attorney General

Commissioner Schneider convened the meeting at 9:02 a.m., which was livestreamed on YouTube.

The Commission considered the following items:

1. Ratification of the Minutes of the July 27, 2022 Meeting

Mr. Marble moved ratification of the July 27, 2022 minutes. Ms. Neumann seconded the motion.
Motion passed 5-0.

2. Request for Independent Expenditure Determination – Bruce Poliquin for Congress

Mr. Wayne said the Bruce Poliquin for Congress committee requested a determination it is not required to make an Independent Expenditure (IE) report in connection with two television ads and one radio ad. The ads contain short references to former Governor Paul LePage and images of Mr. LePage and Mr. Poliquin together. Because the advertisements were broadcast after Labor Day, the Poliquin Committee requests a determination the advertising costs were not IEs in support of Mr. LePage's 2022 candidacy for Governor.

Mr. Joshua Tardy, Esq. appeared on behalf of Mr. Poliquin's campaign and agreed with the staff recommendation.

Mr. Schneider moved the television ad that starts "my heart is breaking" was not an IE. Ms. LeClaire seconded the motion.

During discussion of the motion, Mr. Marble said the ad referred to "Governor LePage," which suggested advocacy for Paul LePage. Ms. LeClaire asked if Mr. LePage was entitled to use the term Governor, having held that office. Mr. Bolton indicated that officials are sometimes referred to by their former title. Mr. Hastings viewed the advertisements as Mr. Poliquin riding on the coattails of another person but not an expenditure to promote Mr. LePage's candidacy. Therefore, he did not view it as an IE. Ms. LeClaire agreed with Mr. Marble, but did not feel it crossed the line to qualify as an IE. The motion passed 5-0.

Mr. Schneider moved the radio ad that starts “born and raised in central Maine” was not an IE. Mr. Marble seconded the motion. The motion passed 5-0.

Mr. Schneider moved the television ad that starts “Mainers work hard” was not an IE. Ms. Neumann seconded the motion. The motion passed 5-0.

3. Request for Independent Expenditure Determination – Maine First Project

Mr. Wayne said that the nonprofit corporation, Maine First Project, was requesting a determination that the cost of a mailing to South Portland residents was not an IE. The mailing criticized state and local immigration policy, Governor Janet Mills, Democratic Party officials generally, and the city government of Portland. It did not refer to Governor Mills as a candidate. The Commission staff recommended a determination that the mailer was not an IE.

Mr. Larry Lockman, representing Maine First Project, asked the Commission to adopt the staff recommendation.

During deliberations, Ms. Neumann said the mailing mentioned many officials and entities, was not targeted against Governor Mills, and was not an IE. Mr. Schneider stated there is a difference between criticizing current officials who are doing their jobs as public servants and criticizing candidates. He said the mailing falls on the side of criticizing current public servants.

Mr. Schneider moved the mailing from Maine First Project was determined not to be an IE. Ms. Neumann seconded the motion. The motion passed 3-2 (Mr. Marble and Ms. LeClaire opposed).

4. Request for Waiver of Late Filing Penalty – John V. Chambers (David C. Burns, Treasurer)

Mr. Wayne said Mr. David Burns, treasurer for House candidate, John Chambers, is requesting a waiver for a late filing penalty of \$34.90. Mr. Burns made a good-faith attempt at filing a campaign finance report due July 26, 2022 and believed he had successfully filed it one day before the deadline. Mr. Wayne stated the Commission’s eFiling website offers several opportunities to confirm reports have been filed. The staff recommended no reduction in the \$34.90 penalty.

Mr. Burns said that filing a campaign finance report on the Commission’s eFiling website is a difficult process. He filed an appeal of his preliminary penalty because one criterion of requesting a waiver is making a bona fide effort to file, which he felt he had done. After confirming his username and password, he entered the financial information in the report, pushed the file button, and assumed he had completed the process. On July 27, he received a notification the report was a day late. He

acknowledged that he is technologically challenged and finds the filing process challenging, but he made a bona fide effort to file the report.

In response to a question from Mr. Hastings, Mr. Wayne replied that if a report is not filed by 11:59 p.m. on the deadline, an email is sent to notify the campaign of the late filing after midnight and a penalty would be assessed. Mr. Burns confirmed he received that email.

Ms. Neumann said that Mr. Burns felt he had made a bona fide effort, and the Commission needed to think about how that standard should be applied in this case. Mr. Marble stated he does not question the effort made by Mr. Burns, yet the Commission has dealt with many similar issues. To enforce prior precedents, he believed some penalty was warranted in this matter. Completing the report ahead of time and checking is the only way to make sure the report is right.

Mr. Bolton indicated the statute gives the Commission discretion in terms of what is and is not a bona fide effort. The Commission may determine that there was a bona fide effort and still find that a full or partial penalty is warranted.

Ms. LeClaire stated she interprets bona fide effort as something out of the filer's control, such as an internet outage or car accident. She added the Commission has too many filers to manage to start going down the rabbit hole of considering bona fide efforts based on skill or effort.

Mr. Schneider moved to not waive the fine for late filing. Mr. Marble seconded the motion. The motion passed 5-0.

5. Request for Waiver of Late Filing Penalty – Benjamin J. Meiklejohn

Mr. Wayne stated Mr. Meiklejohn is a candidate for State Senate who filed the report due July 26, 2022 report one day late. Mr. Meiklejohn began filing the report after 11 p.m. on the deadline. He was using his phone to file the report and was having difficulty using the eFiling site. He relied on another computer and filed the report at about 1:30 a.m. on July 27. The preliminary penalty is \$18.03. The Commission's eFiling system is designed to be compatible with Safari, Google Chrome, Microsoft Edge and Mozilla Firefox, and was designed for desktop computers. The system will work with mobile browsers but is more challenging due to the small size of telephone screens and because some webpages contain sections that need to be minimized. The Commission staff recommended no waiver of the penalty.

Ms. LeClaire asked about the reporting window before the deadline. Mr. Wayne replied this report had a seven-day gap between the period end date and the reporting deadline. Political Committee and Lobbyist Registrar Emma Burke stated data can be entered on an ongoing basis. The Commission

discussed the provision allowing for fax submittal of paper reports and the staff's policy of not accepting excel spreadsheets of financial information. Mr. Hastings said that under section 1020-A(2) a campaign finance report is not timely filed unless the Commission receives a properly signed or electronic report that substantially conforms to the disclosure requirements. He did not feel an email qualifies, even if it listed all the expenditures and receipts.

Mr. Schneider moved to not waive the fine for late filing, Mr. Marble seconded the motion. The motion passed 5-0.

6. Request for Waiver of Late Filing Penalty – Waldo County Democratic Committee

The Waldo County Democratic Committee (WCDC) was required to file a semiannual report on July 15, 2022. The report was filed three days late, resulting in a \$181.21 penalty for which committee treasurer, Ms. Pamela Chase, has requested a waiver. Mr. Wayne stated Ms. Chase interacted with staff and believed she filed the report on time. The eFiling system did not record the report as filed. The following business day, staff discovered the report was not filed and filed it for the committee in order to stop the penalty from increasing. The system has a pop-up feature that appears when a report is filed, an email is sent automatically, and there are lists of filed and unfiled reports on the eFiling website that can be used to verify that a report has been filed. The Commission staff did not recommend a reduction of the \$181.21 penalty.

Ms. Sara Salley, Chair of the WCDC, confirmed that Ms. Chase was elected as treasurer in November 2021 and that the July report was her second filing with the Commission. Ms. Chase started early in filing and had been communicating with the Commission staff wishing to verify she had entered things accurately and had been told that could be addressed on Monday, but then received notification of a late filing. Ms. Salley asked the penalty to be reduced to \$100 due to the inexperience of the filer.

Ms. Neumann asked if there was an internet outage that caused Ms. Chase to be unable to file. Ms. Salley was not aware of an outage. Mr. Hastings said he would be willing to reduce the penalty to \$100 because of the level of experience of the treasurer.

Ms. Neumann moved to reduce the penalty to \$60.40 for, Mr. Marble seconded the motion. The motion passed 5-0.

7. Request for Waiver of Late Filing Penalty – Lincoln County Republican Committee

Mr. Wayne described a request from Mr. Ronald Cohen, the treasurer for the Lincoln County Republican Committee, for a waiver of the \$500 preliminary penalty for the late filing of the July

2022 semiannual report. The Commission staff recommended a reduction to \$100 due to the obstacles outside of Mr. Cohen's control.

Mr. Cohen said the entire executive committee resigned at the first meeting he attended, and he was elected treasurer. He was not able to access the bank records until July 15. He started entering transactions into the Commission's eFiling website and at 11:55 p.m. finished entering transactions only to realize there was no button to press to submit the report. Ms. Burke explained most local and county committees do not have to file until they reach a \$1,500 threshold. Committees then must notify Ms. Burke so she can manually add the report to their reporting schedule. Mr. Cohen was unaware of the need to communicate this to Ms. Burke, so it had not been added to the committee's schedule.

Mr. Schneider moved to reduce the penalty to \$100. Mr. Hastings seconded the motion. Mr. Hasting stated this fine was against the committee and not Mr. Cohen. The motion passed 5-0.

8. Investigation of Software Provided by the American Legislative Exchange Council

Mr. Wayne presented alternative draft motions prepared by Commissioners LeClaire and Schneider to conclude the investigation of the American Legislative Exchange Council. He described the educational mailing sent to candidates to alert them that receiving software to promote their election campaigns is an in-kind contribution unless the candidate has paid fair market value to the source of the software. Receipt of an in-kind contribution could violate the contribution limits or restrictions on Maine Clean Election Act candidates. He advised that the staff would be adding a section on this to future editions of the candidate guidebook.

Mr. Schneider moved to accept his draft of the motion. He wanted to close the investigation and educate candidates and not make a statement. Ms. LeClaire explained the rationale for her draft motion. Ms. Neumann moved to adopt Ms. LeClaire's motion with suggested language changes to paragraph seven. As amended, that paragraph would read:

The Commission cannot determine whether ALEC's purpose in providing the CARE software to its legislative members was campaign related and therefore directs the Commission to cease investigating this matter without prejudice.

Mr. Hastings seconded the motion. Ms. LeClaire said the proposed changes imply that the Commission could not make a determination after a full investigation. She believed it was important to establish that the investigation was suspended or ceased without prejudice because the

Commission made a value determination that its resources could be better spent elsewhere and the solution of educating candidates would respond to the Commission's concerns.

Ms. LeClaire proposed to amend Ms. Neumann's amendment back to the original language. Mr. Marble seconded the motion. After further discussion, Ms. LeClaire withdrew her motion.

Ms. Neumann then proposed language changes that would cause paragraph seven and the next paragraph to read:

7. The Commission cannot determine without further investigation, which is not feasible due to scarce staff resources, whether ALEC's purpose in providing the CARE software to its legislative members was campaign related.

I move that the Commission cease without prejudice the investigation into the provision of software by the American Legislative Exchange Council to its Maine members ... (no changes to the remaining portion of the paragraph).

Mr. Marble seconded Ms. Neumann's amendment to her earlier motion.

The Commission voted on Ms. Neumann's first motion to adopt the Ms. LeClaire's draft with changes to paragraph seven. The motion passed 4-1, with Mr. Schneider dissenting.

The Commission voted on Ms. Neumann's second motion to adopt further changes to Ms. LeClaire's draft. The motion passed 4-1, with Mr. Schneider dissenting.

9. Failure to File Statements of Sources of Income by Legislative Candidates

Mr. Wayne said that three candidates, Timothy Keenan, Daniel Merrill, and Nancy Piche, had not filed a Statement of Sources of Income (SOSOI) by the August 15, 2022 deadline in spite of several emails and letters advising them of the requirement. Mr. Merrill had withdrawn as a candidate after the August 15 deadline. The Commission staff recommended to find these candidates in violation of 1 M.R.S. §1016(C) and refer the matter to the Office of the Attorney General (OAG) for enforcement of a penalty of up to \$100.

Mr. Hastings stated he would recommend finding a violation for all three candidates but only refer Mr. Keenan and Ms. Piche to the OAG.

Ms. Neumann moved to find all three candidates in violation of the statutory requirement to file a SOSOI, and to refer Mr. Keenan and Ms. Piche to the OAG for enforcement of a penalty of up to \$100. Mr. Schneider seconded the motion. The motion passed (5-0).

Adjournment

Mr. Hastings made a motion, seconded by Mr. Marble, to adjourn. The motion passed 5-0. The meeting adjourned at 11:07 a.m.

Respectfully submitted,
/s/ Jonathan Wayne
Jonathan Wayne, Executive Director