



Minutes of the October 16, 2020, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William A. Lee III, Esq., Chair; David R. Hastings, Esq.; Meri N. Lowry; Dennis R. Marble; and William J. Schneider, Esq.

Staff: Jonathan Wayne, Executive Director, and Phyllis Gardiner, Assistant Attorney General
Commissioner Lee convened the meeting at 9:00 a.m. The meeting was conducted by Zoom videoconferencing and livestreamed via YouTube.

The Commission considered the following items:

1. Request for Waiver of Late-Filing Penalty – Lobbyist Jonathan Courtney

Mr. Wayne said Jonathan Courtney was a registered lobbyist with two clients. Mr. Courtney was required to file a monthly lobbyist report on August 17 for both clients but failed to do so. Mr. Courtney filed the reports one day late, the preliminary penalty was \$100.00 Mr. Courtney was requesting a waiver of the penalty because he believed he had filed a non-session waiver in July and thought he was done filing reports.

Mr. Lee asked if lobbyists filed individual reports for each client or one report for all clients. Mr. Wayne said they filed individual reports. Mr. Lee asked if the system was working correctly at the time Mr. Courtney tried to file his non-session waiver. Mr. Wayne said the Commission staff believe it was; they had not received any calls from other lobbyists about the system not functioning.

Jonathan Courtney appeared before the Commission. Mr. Courtney said he had changed his email address and had stopped having emails forwarded to his new email address, which was how he must have missed the report reminder emails. Mr. Lee asked how long Mr. Courtney had been a lobbyist. Mr. Courtney said he had been a lobbyist since 2013. Mr. Lee asked if he had updated his email with the Commission. Mr. Courtney said he thought he had but he was not sure.

Mr. Lee made a motion to accept the staff recommendation to reduce the statutorily calculated penalty of \$100 to \$50. Ms. Lowry seconded the motion. Motion passed 5-0.

2. Request for Waiver of Late-Filing Penalty – Lobbyist Kerri Bickford

Mr. Wayne said Kerri Bickford was a registered lobbyist who was required to file a monthly lobbyist report on September 15. Ms. Bickford thought she had filed a non-session waiver in June and did not realize she had a report due. The preliminary penalty was \$50. Ms. Bickford was requesting a waiver due to financial hardship.

Mr. Lee asked if lobbyists received any confirmation of the non-session waiver filing. Mr. Wayne said a confirmation email was sent and there was an on-screen message when the waiver was successfully filed.

Kerri Bickford appeared before the Commission. Ms. Bickford said she had been a lobbyist since 2015. She said she had always filed her reports on time and had filed the non-session waiver in the past. She said, due to COVID-19, her contract had ended in March, but she had kept filing no activity reports until June, when she filed the non-session waiver. She said she did see the reminder email but thought it had been sent in error until she received the late filing notice. She said she filed the report immediately and believed there was no harm to the public because the report, which was filed five hours late, was a no activity report. Ms. Bickford said she was requesting a waiver because her family was experiencing financial hardship due to COVID-19.

Mr. Lee asked how many clients Ms. Bickford had. Ms. Bickford said Pathways was her only regular client; she had, intermittently, had several additional clients in the past. Mr. Lee asked if Ms. Bickford had filed a non-session waiver in the past. Ms. Bickford said she had and was not sure what went wrong this year.

Mr. Lee asked Mr. Wayne if the Commission accepted payment plans, without interest. Mr. Wayne said it did. Mr. Lee explained the Commission precedent on penalty reductions and said he could not recommend waiving a penalty that was already at the lowest level for this type of violation. Mr. Hastings said there were remarkable similarities between the first two cases today. He said it would not honor the statute if the penalty were completely waived.

Mr. Lee made a motion to accept the staff recommendation to not reduce the statutorily calculated penalty of \$50. Mr. Marble seconded the motion. Motion passed 5-0.

3. Request for Waiver of Late-Filing Penalty – Maine Truck PAC

Mr. Wayne said the Maine Truck PAC was required to file a 24-Hour Report for a \$2,686 expenditure made on July 1 for the purchase of golf balls for a future fundraiser. The PAC was not aware of the filing requirement until it filed the 42-Day Post-Primary Report in August. The 24-Hour Report was filed 41 days late and the preliminary penalty was \$2,203. Mr. Wayne said the Commission staff was recommending a reduction to \$500 because this matter was similar to the 2018 Maine Health Care Association PAC matter in which the Commission found the expenditures were not related to the election and reduced the penalty to \$500. He said the PAC was requesting a waiver because the golf balls were ordered in April, but the bill was not paid until July 1, which because the primary election had been moved, fell within the 24-hour reporting period.

Mr. Marble asked for clarification on the exemption of administrative expenses mentioned in the staff memo. Ms. Gardiner explained that an insurance policy for a specific event would more likely fall into the category of a variable expense tied to that particular event. Insurance or utilities for office space would be expenses that would be more typically considered overhead expenses. She said that would be a judgment call based on the facts of the particular situation. She said she could not recall the Commission ever having to parse what was an overhead expense versus a different type of expenditure. Mr. Wayne said he could not recall any question like that coming before the Commission. He said the way the exception was written in the statute was that the PAC treasurer was not required to report in a 24-Hour Report expenditures for “overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, ‘overhead expenses’ includes, but was not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses.” The purchase of golf balls seemed different from the examples listed in the statute.

Brian Parke, treasurer for Maine Truck PAC, appeared before the Commission. Mr. Parke said he did not dispute the late filing and took responsibility for it. He said the PAC believed the penalty was disproportionate to the harm suffered to the public for the lack of disclosure of this expenditure because it was not related to any political activity; it was a purchase of golf balls for a fundraiser.

Ms. Lowry said that under this set of circumstances, a reduction of the preliminary penalty below the standard penalty of \$750 for a late-filed PAC report was appropriate.

Mr. Lee made a motion to accept the staff recommendation to reduce the statutorily calculated penalty of \$2,203 to \$500. Ms. Lowry seconded the motion. Motion passed 5-0.

4. Request for Waiver of Late-Filing Penalty – Hon. Mark Lawrence

Mr. Wayne said Senator Lawrence was running for re-election in Senate District 35. He was required to file the 42-Day Post-Primary Report on August 25 but filed the report on August 26, one day late. The campaign requested a waiver because Abby Kemble, the campaign manager, was busy preparing her children to return to school and lost track of the filing deadline. Mr. Wayne said the Commission staff was recommending the preliminary penalty of \$529.50 be reduced to \$350, which was in the middle of the range of past reductions.

Emma Burke, Candidate Registrar, said multiple reminders had been sent to the candidate and treasurer; both system generated emails and emails from the Commission staff. She said Ms. Kemble would not have received the reminder emails because she was an authorized agent for the campaign, not the treasurer or deputy treasurer. She said this was an experienced campaign, so she was unsure why this late filing had happened.

Senator Mark Lawrence and Abby Kemble appeared before the Commission. Senator Lawrence said the late filing happened because Ms. Kemble, who had entered all of the campaign transactions, forgot to let James Mundy, the campaign treasurer, know the report was ready to be filed. He said the report was filed shortly after they discovered their oversight.

Mr. Lee asked Ms. Kemble how long she had been involved in the political process. Ms. Kemble said she has over two decades of political experience. Senator Lawrence clarified that this was the first time she worked on a legislative campaign and a Maine Clean Election Act (MCEA) campaign. Ms. Kemble said she had mistakenly filed a prior campaign finance report and wanted to get this one right, but she forgot to tell Mr. Mundy the report was ready to be filed.

In response to a question from Mr. Hastings, Ms. Burke confirmed the treasurer would have received the reminder email.

Mr. Hastings made a motion to adopt the staff recommendation that a penalty of \$350 be imposed. Mr. Lee seconded the motion. Motion passed 5-0.

5. Request for Waiver of Late-Filing Penalty – Brian Redmond

Mr. Wayne said Brian Redmond was running for House District 148. He said Mr. Redmond would not participate in the meeting due to work obligations. He was required to file the 42-Day Post-Primary Report on August 25, but he was on vacation without internet access on the deadline. Mr. Redmond had intended to complete the report before going on vacation, but time got away from him. He filed the report on September 1st, seven days late. The preliminary penalty was \$84. The Commission staff was not recommending any waiver due to the small amount of the penalty.

Mr. Lee asked how many reminders were sent to candidates about the upcoming reporting deadline. Mr. Wayne said there were three system-generated emails and the Commission staff had also sent several emails.

Mr. Schneider made a motion to assess a penalty of \$84. Mr. Lee seconded the motion. Motion passed 5-0.

6. Request for Waiver of Late-Filing Penalty – Mark André

Mr. Lee said he was recusing himself from participation in this matter because he was representing a municipal client in matters involving Mr. André.

Mr. Schneider moved to elect Ms. Lowry as Chair for this matter. Mr. Hastings seconded the motion. Motion passed 3-0; Ms. Lowry abstained from voting.

Ms. Lowry said it was their understanding that Mr. André would not participate in the meeting. Mr. Wayne said that was correct.

Mr. Wayne said Mark André was running as an MCEA candidate for House District 110; this was his fifth time as a candidate. Mr. André was required to file the 42-Day Post-Primary Report on August 25, but due to an unexpected change to his treasurer's work schedule, the report was not filed until August 26, one day late. The preliminary penalty was \$132. The Commission staff was not recommending any waiver due to the small amount of the penalty.

Mr. Hastings asked if the campaign funds could be used to pay these penalties. Mr. Wayne said a traditionally financed candidate could use campaign funds but an MCEA candidate cannot use MCEA funds to pay a penalty.

Mr. Schneider made a motion to assess a \$132 penalty. Mr. Marble seconded the motion. Motion passed 4-0; Mr. Lee had recused himself from consideration of this matter.

7. Update – Surveys in Maine Senate District 13

Mr. Wayne said the Commission, at its September 30th meeting had authorized an investigation related to a complaint filed by the Lincoln County Democratic Committee about telephone survey calls received by voters in Senate District 13 that portrayed Rep. Chloe Maxmin, the Democrat candidate in this race, in a negative light and Senator Dow, the incumbent running for re-election, in a positive light. He said as a first step, the Commission staff had contacted people connected with the Republican committees. Joshua Tardy, Esq., and Shawn Roderick talked with the Commission staff via Zoom. Mr. Tardy informed the Commission staff that the survey was paid for by two PACs associated with the Senate Republican caucus and it was organized/conducted by Red Maverick Media. Mr. Tardy said this was traditional polling research that was conducted by PACs and party organizations with interest in candidate elections, in an attempt to measure the strength of candidates and how they perform with specific voter affiliations. Mr. Wayne said the disclosure laws contained exceptions for telephone polling research that were not conducted for the purpose of influencing the voting position of call recipients. This type of polling call did not have to disclose who paid for it and did not have to be reported as independent expenditures.

Mr. Wayne said he had subsequently received several emails from both the Maxmin campaign and the Lincoln County Democratic Committee with additional information about the survey calls. They had also raised another compliance issue: Senator Dow was the principal officer for the Maine Senate Republican Majority PAC, which was one of the PACs that had paid for the telephone survey. Under campaign finance law, the principal officer of a PAC was deemed to have participated in the PAC's decisions to spend money.

Michael Dunn, Political Committee and Lobbyist Registrar, said Senator Dow was in a breakout room waiting to participate in the next matter if they would like him to join in this matter. Mr. Lee asked Mr. Tardy if he would like Senator Dow invited to participate in this matter. Mr. Tardy said he would leave that up to the Commission. It was agreed to ask Senator Dow to join this matter. Mr. Hastings expressed concern that Senator Dow should be told that he was not the subject of this complaint or under investigation.

Senator Dana Dow appeared before the Commission. Mr. Lee explained he was being asked to join the meeting because his name had been mentioned in connection with this matter, but he was not the subject of the investigation and he did not need to respond or take part in the matter. Senator

Dow said he would listen but not participate unless something was said that portrayed him in a bad light.

Mr. Wayne said one of the options the Commission could take was to invite the Senate Republican PACs to respond to the complaint and explain the poll, so the Commission could understand the purpose of the poll in order to determine whether it fit within the exemption. He said the other option was to have the Commission staff continue its investigation, which would involve seeking additional information from the two PACs and Red Maverick Media. Mr. Lee asked if it would be relevant to look at the survey results to determine what had transpired here. Mr. Wayne said he believed it was and that the Commission would keep the information confidential unless it became relevant at a later time for a determination by the Commission. Mr. Hastings said the Senate Republican PACs should be given an opportunity to respond before the Commission made any further determination. Mr. Schneider, Ms. Lowry, and Mr. Marble agreed.

Joshua Tardy, Esq., appeared before the Commission on behalf of the Maine Senate Republican Majority PAC and the Maine Prosperity Alliance PAC. He said they had received 13 pages of data from the survey that they would prefer to keep confidential to protect the proprietary data. Ms. Gardiner said this did fall into the category of information of revealing sensitive political or campaign information belonging to a PAC, which was one of the categories of confidential information under the statute that the Commission could keep confidential. She said what sometimes gave people who own this kind of information pause, was the last part of that provision of law in §1003 (3-A), which talks about how the Commission may disclose investigative working papers or discuss them at a public meeting except for information or records subject to a privilege against discovery or used as evidence. She said she did not know that this information would fit in a privilege category but she thought the Commission could, since it was a “may” not a “must,” agree that the contents of the survey would not be disclosed but would only be used by the staff for analysis relevant to the issues to be determined in the investigation. She said that may be what Mr. Tardy was alluding to when he suggested they should work out some details and put that kind of understanding in a written form. She said she believed there was a mechanism under the statute that gave them the legal authority to protect this information for the duration.

Mr. Schneider expressed concern about being put in a position of reviewing confidential material but making a public decision about something that was not publicly released. He suggested the Republican PACs could provide the information in a manner that would allow it to be viewed by the

public. Mr. Wayne said he understood Mr. Schneider's concern but said, as a part-time investigator, he preferred more information than less and was used to maintaining information that may never be disclosed. He said the Commission could request an interim response from the respondents and, if that were not sufficient, they could go further. Mr. Lee suggested the Commission staff could pose questions to Mr. Tardy, who could provide the information he was comfortable publicly providing. Mr. Wayne said they could but that could result in the Commission asking for more information.

Mr. Johnson said he believed if the polling data were not released to the Commission staff, it would be more challenging for them to ask the right questions to decide whether the poll met the statutory requirements. Mr. Woodward said he believed the poll results would be useful with regard to the push poll violation but there were multiple other statute violations to be considered. He said it had just come to light that Senator Dow was the Principal Officer of one of the PACs that had spent over \$50,000 on these activities, which were clearly expenditures designed to support his campaign.

Mr. Lee clarified they were not adjudicating anything today; they were meeting to provide the Commission staff with additional direction. He asked Mr. Wayne what he would like them to authorize based on the information received and the arguments made. Mr. Wayne said it depended on whether they wanted to adopt Mr. Schneider's suggestion to focus on information that could be publicly released. He said the Commission staff could send a questionnaire or ask for an opportunity to interview Mr. Roderick and others involved; ask some factual questions; ask for the polling results; and make an assessment whether there was enough information to determine if the poll were within generally accepted standards of polling research or if it was conducted for the purpose of influencing the voting position of the call recipient. He said the other option would be to allow the Commission staff to go where the facts lead, which could lead to information that would not be publicly disclosed.

Mr. Lee said he was comfortable with a step-by-step basis to avoid wasting the Commission staff's time. Ms. Lowry disagreed and said they had dealt with other matters that involved confidential information. She believed it was better to allow the Commission staff the discretion to obtain the information necessary to make a recommendation to the Commission and not require them to keep asking for further direction from the Commission. Mr. Schneider said he had no doubt about the Commission staff's ability to maintain confidentiality but believed it compromised the

Commission's ability to maintain transparency with the public if they made a decision that was based on confidential information.

Ms. Gardiner suggested the way they could consider proceeding was to give the staff the broader range of discretion that Ms. Lowry suggested, but with the caution that Mr. Schneider had offered: that the staff, in determining how to proceed, make every effort to come to a recommendation based on information that was only public. As Mr. Schneider said, the Commission preferred to be able to make decisions on the basis of information that was all disclosable. However, she believed they could trust the staff to exercise its discretion and make every effort, as it proceeded with the inquiry, to avoid reliance on the confidential information, if they could. She said that would be a different approach than constraining the reach of the staff investigation by authorizing them to gather only information that would be public and come back to the Commission if they needed to discover any more information that may be confidential. Mr. Schneider said he believed that would work if the confidential information was not shared with the Commissioners. Mr. Lee said he believed something like that had been done in the past and he was comfortable that happening again.

Ms. Gardiner said she wondered if they should separate the investigation related to the polling from what Mr. Woodward described as a separate independent expenditure violation. She said if that issue was the subject of a second complaint, the respondents had not had an opportunity to respond.

Mr. Wayne said the concern that came in yesterday, in response to the revelation that the poll was paid for by the Senate Republican Majority PAC, was that Senator Dow should be deemed to have received a contribution, which he was not allowed under the Maine Clean Election Act, because he was the principal officer of a PAC that made an expenditure to promote or support him. He said that was different than the disclosure violation raised in the initial complaint and suggested that issue could be scheduled for the October 30 meeting to allow the PAC and Senator Dow an opportunity to respond.

In response to a question from Mr. Lee regarding whether Mr. Woodward's concern was raised in a properly filed complaint, Mr. Wayne said complaints should have a signature and that it would be appropriate to view this as an additional request for investigation that should be resubmitted with a signature. Mr. Lee asked if the new complaint was integrally related to the existing complaint and therefore, it was not necessary for a new complaint to be filed. Mr. Wayne said he believed the facts were connected but expressed a concern for fairness because Senator Dow and the PACs had not been given an opportunity to respond to the allegations in the new complaint. This would give

the Commission staff time to conduct a preliminary review to determine whether there was sufficient evidence to believe a violation may have occurred.

Mr. Lee made a motion that the Ethics Commission staff proceed with the investigation of the complaint that was made and that they had had a preliminary hearing on two weeks ago, as they deem fit, with the ability to ask for further guidance from the Commission, as may be necessary. Mr. Schneider seconded the motion but asked if he could offer a friendly amendment. Mr. Schneider recommended that any confidential information gathered not be shared with the Commission. Mr. Lee restated his motion to add that, preliminarily, confidential information obtained not be shared with the Commission itself. Mr. Marble asked if the motion included the information that had come in within the last 24 hours. Mr. Lee said that would be included in a separate motion.

Ms. Gardiner asked whether the friendly amendment proposed by Mr. Schneider would extend to a confidential staff memo on its analysis of the investigation in which the staff may discuss confidential raw data but not actually convey it to the Commission. She asked if the Commissioners were comfortable with that level of confidential communication, provided the actual polling data, for example, which was clearly confidential, was not given to them. She said they may want to hear from Mr. Wayne as to whether he could imagine conveying information to them in a memo, without touching on anything that might be confidential. Mr. Wayne said he believed it would be possible. Mr. Lee said this had been done in the past, it had worked well and suggested they could have a high level of trust here. Mr. Schneider said he trusted everyone involved would be able to keep the information confidential. However, for the purpose of making a decision the public could trust, he would prefer to make a decision on information that was available to the public. He said if they had to refer to the confidential information to make a decision, he was willing to do that. Mr. Lee withdrew his prior motion.

Mr. Lee made a motion to authorize the Commission staff to proceed with the investigation based on the complaint made that had been preliminarily reviewed at its meeting two weeks ago and not to reveal confidential information that was obtained as a result of this investigation to the Commission without further direction from the Commission. Mr. Schneider seconded the motion. Motion passed 5-0.

Ms. Lowry asked for clarification about whether the motion included the expansion the Commission staff was seeking. Mr. Lee asked Mr. Wayne if the pending motion provided

sufficient direction for the Commission staff to proceed with the investigation. Mr. Wayne said he believed he had adequate direction for the disclosure and disclaimer violations, but the phrasing of the motion did not appear to include the newly raised issues. Mr. Lee said that was correct.

Mr. Lee said he did not believe the new issues raised in the communication that came to the Commission staff yesterday were in a properly filed complaint and asked if they should handle this in a motion. Ms. Gardiner said she did not believe it was necessary because they had already considered that this was not properly before the Commission and were just giving staff direction to handle it in the way they normally would. She noted that they were within the 28-day period and if the complaint did come in, as Mr. Wayne indicated, they had an obligation to act within two business days although there was usually room for the parties to agree to a reasonable and workable schedule.

8. Complaint – Facebook Ad by Maine Prosperity Alliance PAC

Mr. Wayne said this complaint was filed by the Lincoln County Democratic Committee and was related to a Facebook ad done by the Maine Prosperity Alliance PAC (MPA PAC) supporting Senator Dow's re-election. He said it appeared that a number of Senate Republican candidates had hired a firm for video production and photography services. Those videos and images had been uploaded to Flickr and subsequently accessed by MPA PAC to create this ad. The Lincoln County Democratic Committee was alleging that, because Senator Dow, who was an MCEA candidate, paid for the video that was ultimately uploaded to Flickr, the ad was an illegal contribution to his campaign.

Chris Johnson, Chair of the Lincoln County Democratic Committee, appeared before the Commission. He said Mr. Woodward had brought this issue to his attention and he had filed the complaint. He said there were videos and photos of multiple candidates on Flickr that were similar to the ads paid for by the candidates. He said, in this case, a snippet of a video that was used in an ad by Senator Dow's campaign had been edited, reformatted and uploaded to the MaineSenateGOP Media account on Flickr on August 25. He said it would be clear to anyone looking at the material on Flickr that it was to be used for advertising. He said this raised questions of who edited and reformatted the original video for upload to Flickr; who uploaded the material to the MaineSenateGOP Flickr page; who provided that person with access to the Flickr account; when was that person given access to the Flickr account; and what was the purpose of uploading the material to Flickr. He said he believed the only reason for this to have been done was to provide the

PACs access for advertising purposes. He said providing materials paid for by the Dow campaign to another party who used that material for advertising, gave the appearance of this having been a coordinated expenditure.

Ms. Lowry wondered if snippets were taken from other videos. Michael Dunn, Political Committee Registrar, said he had reviewed the Flickr page. He said there were multiple candidates featured in different videos and pictures. He said the videos were treated substantially the same: small snippets, the sound removed even when a candidate was clearly speaking, and the video frames were slowed down in each upload.

Mr. Hastings asked if Mr. Johnson was suggesting that any candidate who posted photos or videos of that candidate in a public domain but had no other involvement with the use of those photos by someone else, that that constituted coordination. Mr. Johnson said he was not. He said the images were not posted to a public account for Senator Dow or his campaign but to the MaineSenateGOP Media account on Flickr. Mr. Hastings asked if Mr. Johnson was suggesting that Senator Dow coordinated the content of the ad with the PAC. Mr. Johnson said he was because of the editing and reformatting of the original video for upload to Flickr.

Ms. Lowry asked if it was known who uploaded the video to Flickr. Senator Dow said he paid Anania Media, Inc. for the video but did not know how the video got uploaded to Flickr.

Mr. Johnson said that again raised the question of who provided the video to the MaineSenateGOP Media page on Flickr. He said a person had to have been given permission to upload the video.

Ms. Lowry asked if it was the same video maker in each instance. Mr. Johnson said he did not know. Mr. Wayne said after he learned which vendor Senator Dow had used, he had done a transaction search and found that the other five candidates listed in the Independent Expenditure Report filed by MPA PAC had also used Anania Media.

Mr. Lee asked if, Maine Prosperity Alliance took the video and republished it, without any direct or indirect coordination with Senator Dow, that would qualify as an independent expenditure, but there would not be a violation. Mr. Johnson said he believed that was correct under the statute; if there were no coordination between the spender and the candidate and no relationship that, by statute, creates a presumption of knowledge and coordination.

Joshua Tardy, Esq., appeared before the Commission on behalf of the Maine Prosperity Alliance PAC. He said the first thing he wanted to make clear was that there was absolutely no coordination with Senator Dow and his campaign. He said the Facebook ad was run by Maine Prosperity Alliance and the images were taken from a public domain. He said anyone could use those images without Senator Dow's permission.

Mr. Lee asked why Maine Prosperity Alliance had not run ads on all the GOP candidates and not just these few. Mr. Tardy said this Senate race was one of the races the PAC was trying to influence. He said Senator Dow was the principal officer for the Maine Senate Republican Majority PAC, which has made expenditures in races all around the State. In response to a question from Mr. Lee, Mr. Tardy said there was nothing unusual going on and said he could provide multiple examples of this happening. Mr. Lee asked Mr. Wayne if he was aware of this practice. Mr. Wayne said he was unclear what candidates may or may not be aware of, but it was known that if candidates post materials on Facebook or a campaign website, there was a possibility that PACs and party committees may obtain those materials to use in their own campaign communications without any coordination with the candidate.

Mr. Johnson said he did consider this beyond the norm because an effort was made to edit and reformat the original material in order for it to be uploaded to Flickr. He said he did do a search on Flickr and ultimately found the MaineSenateGOP Media page, but it was not easily found. Mr. Lee asked what evidence there was of Senator Dow's involvement. Mr. Johnson said the answer to that was in the question of who edited and uploaded the video to Flickr. Mr. Lee said if Senator Dow had an ad posted, anyone could take that ad and repurpose it. Mr. Dunn said the video snippets were uploaded to Flickr first but were not publicly available before then. He said Senator Dow's campaign video came out later and was posted to Facebook. He said, as far as he could tell, the video snippets were on the Flickr account in mid-to-late August, which was before Senator Dow's ad was public. Mr. Johnson said he believed Senator Dow's ad used a longer video than what was in the Flickr video. Mr. Dunn said that was possible, but he would not rule out time manipulation.

Mr. Hastings asked whether the fact that someone downloaded video off the internet that the candidate publicly posted and re-used that video constituted coordination. Mr. Wayne said, as a general rule, if a candidate posted something on a public site and someone else reused in a campaign communication, the Commission staff would not necessarily view that as coordination.

Ms. Lowry said the presumption regarding the republication of a candidate's campaign materials applied in this situation. She said it was significant that the MPA PAC's Facebook ad was posted before Senator Dow's Facebook ad was posted because, absent coordination, how would the MPA PAC know about Senator Dow's video which had not been publicly released yet.

In response to a question from Mr. Lee regarding the presumption that referred to the republication of a candidate's campaign materials, Mr. Wayne said the analysis of whether the presumption can be rebutted was very fact specific. He said it was a widespread practice for PACs and the parties to replicate or reproduce publicly available campaign materials created by a candidate. That did not necessarily indicate there had been coordination.

Mr. Hastings said he believed the spoken messages in the two ads were different. He said he was not sure the presumption was applicable if the only evidence was the photos or videos. Mr. Hastings said he believed the material was uploaded with the hope that someone would use them, but he did not believe that was coordination.

Ms. Lowry said the facts that the same video producer was used by several candidates and that all the videos were uploaded to Flickr before the candidates used the material in their own Facebook ads were significant and pointed to a well-coordinated effort. She said Flickr was not a place that was easily searched or used that often these days to post materials publicly.

Mr. Marble said he believed there had to have been some coordination based on what he was hearing, and that Ms. Lowry's concerns should be explored further. He said he respectfully disagreed with Mr. Hastings point of view that this was simply a matter of someone grabbing something from a publicly available site and reusing it.

Mr. Lee asked Mr. Wayne what he would expect to uncover if the Commission authorized an investigation. Mr. Wayne said he would call Shawn Roderick, to ask who selected Anania Media and if Anania Media was responsible for uploading or formatting the video differently. He would ask Senator Dow if he knew the video would be used this way and if that was part of what he paid for.

Mr. Tardy said Anania Media was a suggested vendor for Senate Republican candidates. He said he believed it was more relevant to know when Senator Dow obligated and paid for the service rather than when he used the footage. He said the PAC filed an Independent Expenditure Report, which addressed the presumption issue in the affidavit that was part of the report. In that affidavit,

the PAC was affirming that there was no coordination with the candidate. He said the facts that something was not easily discoverable or that Flickr may be an outdated public domain, were not legal standards. Mr. Lee asked who edited and uploaded the video. Mr. Tardy said neither the PAC nor Senator Dow edited or uploaded the video, so by inference, it had to have been Anania Media who uploaded the video to a public domain.

Shawn Roderick, principal officer for Maine Prosperity Alliance PAC, appeared before the Commission. He said the Maine Republicans had hired Red Maverick for numerous projects, all of which had been reported.

Mr. Johnson said he believed none of this proved or disproved there was coordination. Mr. Lee asked if the affidavit resolved that issue. Mr. Johnson again questioned why Anania Media would have edited and posted the video to a public domain without some direction from the person who paid for the video. What occurred in this matter was not the same as someone taking publicly accessible material from the candidate's own webpage.

Senator Dow said there had not been any coordination. He said he had initially reported this expenditure as TV ad expenses but did not actually do a television ad. In response to a question from Mr. Lee, Senator Dow said he paid for the video on August 31st with the intent to use it for a television ad. Mr. Lee asked if Senator Dow had contacted the media company. Senator Dow said his office made the arrangements. Mr. Lee asked Senator Dow if the video was sent to him. Senator Dow said he had seen it, but he let others handle the posting to Facebook and other internet arrangements because he was not media savvy. Mr. Lee asked if Senator Dow knew about the Maine Prosperity Alliance PAC. Senator Dow said he did; that he knew of several PACs related to Senate Republicans.

Ms. Lowry asked Senator Dow if Shawn Roderick was the person, he referred to about making the Facebook arrangements. Senator Dow said it was and that he had contacted Mr. Roderick because he was the campaign head for the Senate Republicans. He said he would contact, or have his chief of staff contact, Mr. Roderick to make arrangements for lawn signs or fliers and other campaign materials.

Mr. Johnson said he would like to understand what role Mr. Roderick had in Senator Dow's campaign because Mr. Roderick was the principal officer for Maine Prosperity Alliance, the PAC that used the edited video footage. Since Mr. Roderick is the principal officer of the PAC and

working on Senator Dow's campaign, he found it difficult to understand how they could claim there was no coordination. Mr. Tardy said Mr. Roderick was a coordinator for all of the Senate Republican candidates' campaigns. He said the key question was whether this expenditure was made independently of Senator Dow's campaign. He said common vendors were frequently used and points of contact facilitate the use of these vendors.

Mr. Lee made a motion that further investigation of this complaint be conducted by Commission staff. Ms. Lowry seconded the motion.

Mr. Schneider said he did not see any evidence of coordination in this matter. The MPA PAC and Senator Dow had given evidence that they did not coordinate with each other regarding this expenditure. Mr. Hastings agreed and said the only suggestion of coordination seemed to be that the Dow campaign posted pictures in a public domain that were later used. He said that fact alone was not sufficient to meet the definition of coordination. There was no suggestion that Senator Dow had any input into the ad in question, other than placing the video in the public domain. He did not participate in decisions regarding the content, timing, mode, or intended audience. He did not believe the case had been made that there should be an investigation. Mr. Lee said that after listening to the parties in this matter, he did not see evidence that Senator Dow engaged in a coordinated effort with the MPA PAC.

Motion failed 1-4; Mr. Marble in favor; Mr. Lee, Ms. Lowry, Mr. Hastings, and Mr. Schneider opposed.

Adjournment

Mr. Schneider made a motion, seconded by Mr. Lee, to adjourn. The motion passed. The meeting adjourned at 1:32 p.m.

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