



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

Commission Meeting 06/22/2022
Agenda Item #2

To: Commission
From: Erin Gordon, Candidate Registrar
Date: June 10, 2022
Re: Paul LePage - Request for Waiver of Late-Filing Penalty for 42-Day Pre-Primary Report

Paul LePage is a candidate for Governor in 2022 seeking a waiver of a preliminary late-filing penalty for the 42-Day Pre-Primary Report. He is an experienced candidate who has previously served two terms as governor. The campaign finance reports are filed by paid campaign staff member, Joe Turcotte, who is an Authorized Agent on the eFiling account.

Gubernatorial candidates were required to file the 42-Day Pre-Primary Report by 11:59 p.m. on May 3, 2022. The LePage campaign successfully uploaded a bulk file of their transactions for the reporting period on May 1, 2022, but did not file it until May 4, 2022, one day late. The preliminary penalty for the report, which is not subject to any statutory maximums due to the high dollar value of the campaign activity, is \$9,091.83.

LEGAL REQUIREMENTS

Gubernatorial candidates are required to file the 42-Day Pre-Primary Report no later than 11:59 p.m. on the 42nd day before the date of an election and must be complete for the filing period as of the 49th day before that date. 21-A M.R.S. § 1017(2)(B). When a candidate is late in filing a campaign finance report, the Commission staff calculates a preliminary penalty that is determined by a statutory formula which takes into consideration a percentage of the total contributions or expenditures, whichever is greater, the number of prior violations within a two-year period, and the number of days the report is late. 21-A M.R.S. § 1020-A(4-A).

DISCUSSION

There is a function of the eFiling site that allows candidates to upload their transactions for a reporting period. The LePage campaign successfully and consistently uses this function to upload its financial activity. On May 1, 2022, the campaign uploaded their transactions for the 42-Day Pre-Primary Report. Joe Turcotte contacted Candidate Registrar Erin Gordon on May 1 and May 3 with questions as he prepared the report. The campaign missed the 11:59 p.m. filing deadline on May 3 and the report was not filed until early on May 4, 2022.

Based on the statutory formula for calculating late-filing penalties, the preliminary penalty amount is \$9,091.83, calculated as follows:

Report	Deadline	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
42-Day Pre-Primary Report	05/03/2022	\$454,591.32	2%	1	\$9,091.83

In a letter from Joshua Tardy, Esq., the LePage campaign requests a full waiver of the preliminary penalty, which included a memorandum from Mr. Turcotte detailing the bona fide efforts of the campaign to comply with finance reporting requirements. Mr. Tardy states that the campaign took all reasonable measures to file the report on time, but Mr. Turcotte, who was responsible for filing the report, missed the deadline due to illness and exhaustion. Mr. Tardy goes on to say that the campaign submitted its fundraising totals to the press on the afternoon of May 3, which were identical to the totals filed in the 42-Day Pre-Primary Report, therefore mitigating any harm to the public.

STAFF RECOMMENDATION

The LePage campaign is asking for a complete waiver of the penalty, arguing mitigating circumstances in that a bona fide effort was made to file the report on time. They state the report was proofed and complete as of 4:17 p.m. when they released totals to the press, and that it was barely more than four hours late when Mr. Turcotte realized his oversight and filed the report. The campaign proposes that the release of fundraising totals on the afternoon of May 3, 2022 to the press avoids any harm to the public by the late disclosure. However, the law requires more than just summary totals of a campaign's activity and does not recognize disclosure by means

other than to the Ethics Commission as sufficient reporting. The Legislature established the statutes requiring detailed disclosure of transactions because it believed the public has a right to know where campaigns are getting their money and exactly how they are spending it. Indeed, the legislature has signaled it is especially crucial for high dollar campaigns to disclose this by removing the maximum penalty for reports with more than \$50,000 of activity. In this case, the campaign had \$207,179.83 in expenditures and \$454,591.32 in contributions during this reporting period.

Commission staff is sympathetic to the circumstances of Mr. Turcotte's illness that caused him to miss the deadline. His memo states that the campaign was finished preparing the report at 4:17 p.m. and released the fundraising totals to the press at that time. Mr. Turcotte was logged in to the campaign's eFiling account at 4:20 p.m. on May 3, 2022 and could have filed the report then. Mr. Turcotte explains that the campaign intended to file the report "in the early evening," but he "fell asleep from exhaustion and went to bed and did not hit the submit button." Ultimately, it is the statutory responsibility of the candidate and the treasurer or deputy treasurer to ensure timely and accurate filing of campaign finance reports. The treasurer is a former State Senator who is authorized to file campaign finance reports in the Commission's eFiling system.

The Commission staff recommends granting the campaign a partial waiver, based on several factors. The following factors argue for a higher penalty:

- In April 2018, the Commission directed its staff to recommend higher penalties to reflect that Maine voters approved a 2015 citizen initiative that doubled the rate of penalties for late campaign finance reports.
- Since April 2018, the Commission has been assessing penalties in the \$300-\$400 range for legislative candidates. The position of Governor is Maine's only state-wide elected office. The amounts spent by serious gubernatorial campaigns in 2014 and 2018 were more than 50-100 times greater than most legislative campaigns.
- The campaigns of both major party nominees for Governor in 2022 should be held to the highest standards. Their staffs have experience with the Commission's eFiling system from previous elections. They are sophisticated operations with campaign infrastructures. If Mr. Turcotte was ill or exhausted, someone else could have filed the report or verified

that the report had been filed before the deadline. Maine Election Law states that “[t]he treasurer shall file complete and accurate campaign finance reports The treasurer may delegate the filing of the reports to the deputy treasurer.” 21-A M.R.S. § 1016-A(2). Mr. Turcotte is the manager of the LePage campaign. He is not the treasurer, and no one has been appointed as the deputy treasurer.

- In assessing late-filing penalties, the Legislature has directed the Commission to consider the amount of financial activity that was reported late. This is reflected in the formula that determines the preliminary penalty, which in this case is \$9,091.83. The May 3rd report filed one day late by the LePage campaign contained a large amount of financial activity (\$454,591.32 in contributions and \$207,179.83 in expenditures). A nominal penalty will not give proper weight to this factor.
- The Commission always needs to be concerned with precedent. A penalty that is too low may restrict the Commission’s ability to assess higher penalties in the future against gubernatorial or large ballot question campaigns.
- Mr. Turcotte could have filed the report earlier in the day on May 3, 2022, for example in the 4:00 p.m. hour when the campaign provided totals to the press. The campaign chose to wait to file the report.

The following factors argue for a lower penalty:

- The campaign performed the laborious work of recording all the campaign’s contributions and expenditures and uploading them into the Commission’s eFiling system. All that needed to be done was clicking the file button. This demonstrates an intent to file the report on time. Although the event may have involved some degree of fault, the violation was not intentional.
- The report was due at 11:59 p.m. and the post-deadline four-hour time period when the report details were unavailable occurred when most people were asleep.
- It is true that the Commission, in reaching penalty determinations that are fair, has occasionally reduced penalties by 75% or more. For example, if a candidate or committee does not realize that a 24-Hour Report is overdue by weeks, the preliminary penalty can sometimes be quite large and needs to be significantly reduced. Penalty waivers in these large proportions will not be appropriate in all situations, however.

Weighing all these factors, the Commission staff would recommend a penalty of at least \$3,000 which would represent an approximate 2/3 reduction from the preliminary penalty. You may wish to consider assessing a higher penalty because of the scrutiny on campaign finance reports filed by general election candidates for Governor, the imperative that these reports be filed on time, the fact that this is a third-time gubernatorial campaign, and that Mr. Turcotte filed the 2022 January Semiannual Report and is familiar with the Commission's eFiling system.

For your reference, there were two gubernatorial candidates in 2018 who were penalized for late-filed reports. Both were unsuccessful candidates in the Democratic primary election that had neither the campaign infrastructure nor the gubernatorial campaign experience of Mr. LePage.

- James Boyle was assigned a \$1,000.00 preliminary penalty for a late-filed 2018 January Semiannual Report; that penalty was reduced to \$500.00.
- Mark Eves was assigned a \$1,378.70 preliminary penalty for two late-filed 24-Hour Reports; that penalty was reduced to \$500.00.

Thank you for your consideration of this memo.

May 17, 2022

Ms. Erin Gordon
Erin.Gordon@maine.gov

RE: Notice of Late-Filed 42-Day Pre-Primary Report

Dear Ms. Gordon-

We represent the Committee to Elect Governor Paul LePage and are in receipt of your Notice of Violation dated May 4, 2022. In accordance with 21-A M.R.S §1020-A (2), our client respectfully requests that the Commission waive the entire preliminary penalty for the late filing of the Pre-Primary Report. We have attached a memorandum prepared by Joe Turcotte that sets forth the facts demonstrating the campaign's bona fide effort to comply and further explains the circumstances that contributed to the inadvertent late filing.

We are asking you to consider that the LePage campaign implemented reasonable measures to timely file the preprimary report, but was unaware of Mr. Turcotte's illness and subsequent failure to electronically submit a report. The report was submitted within approximately 4 hours of the deadline, and totals reported were consistent (identical) with the fundraising totals submitted by the campaign to the press, avoiding any harm to the public from the late disclosure. We believe that these mitigating circumstances support the waiver of the penalty in accordance with 21-A M.R.S §1020-A (2), and we would ask that the Commission waive the penalty in its entirety.

The campaign takes its compliance obligations seriously and will be prepared to respond to any questions you may have.

Regards,



Joshua A. Tardy, Esq.
Michael A. Hockenbury
JAT/ MAHO/rmk

Enclosure

From: Joe Turcotte

Date: May 12, 2022

- The Committee to Elect Governor Paul LePage prepared and proofed our 2022 42 Day Pre-Primary report with the intent to submit on May 3rd by the midnight deadline.
- Our campaign treasurer reviewed and approved the report.
- The report successfully was uploaded into the Maine Ethics Commission's online portal by noontime that day.
- On May 3rd at 4:17 PM, the campaign released the totals to the press and intended to file the report in the early evening on the 3rd.
- I was responsible for submitting the report. I had come down with a bad case of bronchitis and been dealing with it along with exhaustion coming off our party's convention. All I had to do was hit the submit button.
- I fell asleep from exhaustion and went to bed and failed to click the submit button.
- I woke up in a panic at 4:00 AM the next morning realizing that I did not submit the report and I clicked the submit button and the report was filed.
- That morning, I contacted the Maine Ethics Commission right away when office opened and spoke with Erin Gordon and explained the situation. I alerted our campaign attorney and staff immediately afterwards.

May 4, 2022
Paul LePage
758 Boothbay Road
Edgecomb, Maine 04556

Re: Notice of Violation and Penalty for Late-Filed 42-Day Pre-Primary Report

Dear Mr. LePage:

You were required to file the 42-Day Pre-Primary Report on May 3, 2022 by 11:59 p.m. (21-A M.R.S. § 1017 (2)(B)), but the report was not filed until May 4, 2022. Under the Commission's statutes, the late filing of a report triggers an enforcement process (21-A M.R.S. § 1020-A(4-A)). The Commission staff has made a preliminary finding of violation and determined the preliminary penalty for filing the report late is **\$9,091.83**. Please see the next page for the penalty calculation.

You may request the Commission waive the penalty in whole or in part or find there was no violation. *The request must be made within 14 calendar days of your receipt of this notice.* The request must be in writing and contain a full explanation of the reasons the report was filed late. Upon receiving your request, the Commission staff will schedule your request to be heard at an upcoming Commission meeting. You or your designee will have an opportunity to be heard at the meeting or you may submit a sworn statement to the Commission explaining the mitigating circumstances for its consideration.

The Commission may waive or reduce the penalty or find there was no violation if it determines the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; or (3) relevant evidence that a bona fide effort was made to file the report on time. (21-A M.R.S. § 1020-A(2)) The Commission may also consider whether the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff, or the harm to the public caused by the late disclosure.

The staff requests you pay the preliminary penalty within 14 days of the date of your receipt of this notice if you do not intend to request a waiver. Please use the payment statement on the next page when paying by mail. You may also make a payment online at www.maine.gov/ethics by clicking the "Penalty Payment" link. Please contact me at (207) 287-3651 or erin.gordon@maine.gov if you have any questions.

Sincerely,

Erin Gordon
Candidate Registrar

Penalty Calculation

The penalty for filing a campaign finance report late is based on a percentage of the total contributions or expenditures for the reporting period, whichever is greater, multiplied by the number of days late. The percentage is based on your history of past violations: 2% for the first violation, 4% for the second violation, and 6% for the third and each subsequent violation. Violations for late-filed reports accumulate in the two-year period beginning on January 1st of each even-numbered year. A penalty accrues daily beginning on the day following the filing due date. Any penalty of less than \$10 is automatically waived.

How Your Penalty Was Calculated

Filer: Paul LePage			
Late-Filed Report: 42-Day Pre-Primary Report			
Contributions	\$454,591.32	Penalty Base Amount	\$454,591.32
Expenditures	\$207,179.83	Percentage	2%
Due Date	05/03/2022	Daily Accrual Rate	\$9,091.83
Date Filed	05/04/2022	Days Late	1
Previous Violations	0	Your Total Penalty	\$9,091.83

Payment Statement and Payment Options

From: Paul LePage

Penalty Amount: \$9,091.83

Amount Enclosed: _____

Check/M.O. #: _____

BY MAIL: Enclose this payment statement with your payment.

Please make check or money order payable to: Treasurer, State of Maine

Mail to: Maine Ethics Commission
135 State House Station
Augusta, Maine 04333-0135

ONLINE: Go to www.maine.gov/online/ethics/penalties.



Commission on Governmental Ethics and Election Practices
 Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine
 Website: www.maine.gov/ethics
 Phone: 207-287-4179
 Fax: 207-287-6775

2022 CAMPAIGN FINANCE REPORT

FOR PRIVATELY FINANCED CANDIDATES

COMMITTEE		TREASURER	
Hon. Paul R LePage 758 Boothbay Rd Edgecomb, ME 04556 PHONE:(207) 387-0318 EMAIL: paul@govlepage.com		Hon. Rodney L Whittemore PO Box 96 Skowhegan, ME 04976 PHONE: EMAIL: treasurer@govlepage.com	
REPORT	DUE DATE	REPORTING PERIOD	
42-Day Pre-Primary Report	05/03/2022	01/01/2022 - 04/26/2022	

FINANCIAL ACTIVITY SUMMARY

RECEIPTS	TOTAL FOR THIS PERIOD	TOTAL FOR CAMPAIGN
1. CASH CONTRIBUTIONS FOR THE PRIMARY ELECTION (SCHEDULE A)	\$364,674.06	\$1,100,653.80
1A. CASH CONTRIBUTIONS FOR THE GENERAL ELECTION(SCHEDULE A) <i>For party candidates, general election contributions will only appear on this line after the primary.</i>		
1B. CASH CONTRIBUTIONS FOR THE GENERAL ELECTION RAISED PRIOR TO PRIMARY (Not shown on Schedule A of this report)		
2. OTHER CASH RECEIPTS (INTEREST, ETC)	\$0.00	\$0.00
3. LOANS (SCHEDULE C)	\$0.00	\$0.00
4. TOTAL RECEIPTS	\$364,674.06	\$1,100,653.80
EXPENDITURES		
5. EXPENDITURES (SCHEDULE B)	\$207,179.83	\$485,159.52
6. LOAN REPAYMENTS (SCHEDULE C)	\$0.00	\$0.00
7. TOTAL PAYMENTS	\$207,179.83	\$485,159.52
CASH SUMMARY		
8. CASH BALANCE AT BEGINNING OF PERIOD	\$458,000.05	
9. PLUS TOTAL RECEIPTS THIS PERIOD (LINE 4)	\$364,674.06	
10. MINUS TOTAL PAYMENTS THIS PERIOD (LINE 7)	\$207,179.83	
11. CASH BALANCE AT END OF PERIOD	\$615,494.28	
OTHER ACTIVITY		
12. IN-KIND CONTRIBUTIONS (SCHEDULE A-1)	\$0.00	\$10,430.69
13. TOTAL LOAN BALANCE AT END OF PERIOD (SCHEDULE C)	\$0.00	
14. TOTAL UNPAID DEBTS AT END OF PERIOD (SCHEDULE D)	\$0.00	
FOR PARTY CANDIDATES ONLY: CASH CONTRIBUTIONS FOR THE GENERAL ELECTION RAISED PRIOR TO PRIMARY ELECTION (INCLUDED IN LINE 1A AFTER PRIMARY ELECTION)	\$89,917.26	\$239,163.28

I, Joe Turcotte, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: Joe Turcotte
 REPORT FILED ON: 5/4/2022 4:50:24 AM
 LAST MODIFIED: 6/3/2022 10:03:26 AM
 COMMITTEE ID: 396137

§ 1017. Reports by candidates

1. Federal candidates. [Repealed]

2. Gubernatorial candidates. A treasurer of a candidate for the office of Governor shall file reports with the commission as follows. Once the first required report has been filed, each subsequent report must cover the period from the end date of the prior report filed.

A. In any calendar year, other than a gubernatorial election year, in which the candidate or the candidate's political committee has received contributions in excess of \$1,000 or made or authorized expenditures in excess of \$1,000, reports must be filed no later than 11:59 p.m. on July 15th of that year and January 15th of the following calendar year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the candidate's treasurer as of the end of the preceding month, except those covered by a previous report.

B. Reports must be filed no later than 11:59 p.m. on the 42nd day before the date on which an election is held and must be complete as of the 49th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the 49th day before the election.

C. Reports must be filed no later than 11:59 p.m. on the 11th day before the date on which an election is held and must be complete as of the 14th day before that date.

D. If the candidate has an opponent who is on the ballot or who is a declared write-in candidate, any single contribution of \$1,000 or more received or any single expenditure of \$1,000 or more made after the 14th day before the election and more than 24 hours before 11:59 p.m. on the day of the election must be reported within 24 hours of that contribution or expenditure. The candidate or treasurer is not required to include in this 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 is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses.

E. Reports must be filed no later than 11:59 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date.

§ 1020-A. Failure to file on time

1. Registration. A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$100. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.


2. Campaign finance reports. A campaign finance report is not 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 by 11:59 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;
- B. An error by the commission staff;
- C. Failure to receive notice of the filing deadline; or
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service.

3. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

4. [Repealed]

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

- 
- A. For the first violation, 2%;
 - B. For the 2nd violation, 4%; and
 - C. For the 3rd and subsequent violations, 6%.

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as the facsimile copy is filed by the applicable deadline and an original of the same report is received by the commission within 5 calendar days thereafter.

5. [Repealed]

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed:

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; and section 1017, subsection 4, except that if the dollar amount of the financial activity that was not timely filed or did not substantially conform to the reporting requirements of this subchapter exceeds \$50,000, the maximum penalty is 100% of the dollar amount of that financial activity;

A-1. Five thousand dollars for reports required under section 1019-B, subsection 4, except that if the dollar amount of the financial activity that was not timely filed or did not substantially conform to the reporting requirements of this subchapter exceeds \$50,000, the maximum penalty is 100% of the dollar amount of that financial activity;

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E, except that if the dollar amount of the financial activity that was not timely filed or did not substantially conform to the reporting requirements of this subchapter exceeds \$50,000, the maximum penalty is 100% of the dollar amount of that financial activity;

C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; or

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B.