



To: Commission  
From: Jonathan Wayne, Executive Director  
Date: October 12, 2020  
Re: Update on Investigation of Survey in State Senate District #13

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### **New Information on Telephone and Online Surveys**

At your meeting on September 30, 2020, the Commission considered a complaint from the Lincoln County Democratic Committee. Some voters in State Senate District #13 had reported receiving phone calls about the election for State Senate. One question contained a positive characterization of Sen. Dana Dow, and one question contained negative characterization of his challenger, State Rep. Chloe Maxmin. In addition, some voters received a text message linking to an online survey conducted through the SurveyMonkey.com containing similar questions. The Lincoln County Democratic Committee requested that the Commission investigate whether the calls violated three disclosure requirements in Maine Election Law:

- Were the phone calls or SurveyMonkey.com survey required to contain a “disclaimer statement” identifying who paid for the calls? 21-A M.R.S. § 1014.
- Was the spender required to file an independent expenditure report relating to the survey? 21-A M.R.S. § 1019-B.
- Was the telephone survey a push poll which would require callers to make specific disclosures within each call and the filing of a registration statement with the Commission. 21-A M.R.S. § 1014-B(1).

On October 8, 2020, I met with attorney Joshua A. Tardy and Shawn Roderick, who coordinates political campaigns of Republican nominees for the Maine Senate. They explained that the telephone and online surveys were part of polling research conducted by political consulting firms on behalf of political action committees (PACs) promoting Republican nominees for the State Senate. They described the surveys as consistent with polling regularly conducted to gain information about candidates for state office in

Maine, including by PACs associated with the Democratic Party. I believe Mr. Tardy reported receiving 13 pages of tabulated polling results. They said that, among other things, the survey measured how specific candidates are performing with voters of different political affiliations and testing whether voters of different political affiliations would be affected by specific campaign messages.

They explained that the research was funded through two payments by PACs associated with the Senate Republican caucus:

Date	Payor	Payee	Amount	Expenditure Type	Statement of Purpose
9/16/2020	Maine Senate Republican Majority PAC	Red Maverick Media, LLC	\$50,750.00	Polling and Survey Research	Research
9/17/2020	Maine Prosperity Alliance	Red Maverick Media	\$2,500.00	Polling and Survey Research	Research

Red Maverick Media is a political consulting firm co-founded by a former Executive Director of the Maine Republican Party who has worked on political campaigns in other states and for national Republican campaign organizations. Our guess is that some of the services were provided by subcontractors engaged by Red Maverick Media.

During the conversation Mr. Tardy expressed that this polling research received by the Senate Republican PACs contains sensitive campaign and strategic information. He said this polling activity is in line with polling conducted by Democratic PACs. He expressed that it would be unfair for his clients to turn over sensitive research to the Commission, when Democratic sources were engaging in similar activities. He hinted that this could result in a complaint being filed concerning polling by Democratic sources.

## **Exceptions for Polling Research in Maine Campaign Finance Laws**

Some of Maine's political disclosure laws contain exceptions for telephone polling research that is not conducted for the purpose of influencing the voting position of call recipients. These polling calls do not have to state who paid for them, and they do not have to be reported as independent expenditures.

Disclaimer requirements for telephone calls. Generally, prerecorded automated phone calls and scripted live telephone communications made after Labor Day that name a clearly identified candidate must identify the persons who made or financed the expenditure for the phone calls. 21-A M.R.S. § 1014(5). The requirement contains the following exception: "Telephone surveys that meet generally accepted standards for polling research and that are not conducted for the purpose of influencing the voting position of call recipients are not required to include the disclosure."

Independent expenditure reports. Generally, when a PAC, party committee or other source pays more than \$250 for a communication that expressly advocates for or against a candidate's election, the spender must file an independent expenditure report (if the communication was not coordinated with any candidate in the race). The same requirement applies to paid communications that name or depict a candidate after Labor Day. The reporting statute contains an exclusion for: "A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting ...." 21-A M.R.S. § 1019-B(5)(B).

Disclosure as a push poll. Maine's push poll disclosure statute is narrowly drafted to exclude traditional polling research. 21-A M.R.S. § 1014-B(1). For example, any survey that collects or tabulates results is not a push poll, as defined in the statute.

## **Next Steps in Investigation**

Under the Commission's rules, the members of the Commission control any investigation. 94-270 C.M.R. Ch. 1, § 5(2). The staff would welcome your guidance on

how to proceed. Your decision to investigate at the September 30, 2020 meeting was informed by the perspective of the Lincoln County Democratic Committee and not by the Senate Republican PACs that financed and ordered the survey. Due to time pressure and lack of any other sources of information, the Commission staff did not present to you the exclusions for polling research.

One option, which would be less intrusive and expensive, would be to request an interim response from Senate Republican PACs concerning whether the surveys comply with the disclosure statutes, including whether the surveys meet generally accepted standards for polling research and were not intended to influence the voting position of call recipients. This is the Commission's typical first step after a request for investigation is received.

Another option would be to direct the staff to engage in a full investigation that would allow you to make a determination whether the surveys meet these two standards:

- the survey was within generally accepted standards for polling research
- the survey was not conducted for the purpose influencing the voting position of call recipients.

This would include requests for detailed information from the Senate Republican PACs and Red Maverick Media which they may find intrusive:

- specifics of which subcontractors provided services, and the costs,
- business documents such as contracts, invoices, purchase orders, etc., and/or
- the survey results referred to by Mr. Tardy.

The Commission is allowed to keep "investigative working papers" confidential, which includes sensitive political and campaign information belonging to PACs and financial information not normally available to the public. 21-A M.R.S. § 1003(3-A). We would also try to receive from polling experts an analysis of generally accepted polling standards which the Commission could apply to this particular survey. Thank you.