



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

Commission Meeting 01/27/2016
Agenda Item #3

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: January 20, 2016
Re: Rule-Making Materials for Your Consideration

I have enclosed the materials for your consideration in connection with the rule-making which you initiated at your November 2015 meeting. Technically, the Commission is engaging in two rule-makings:

- *Changes to Chapter 3 of the Rules* (relating to the administration of the Maine Clean Election Act), which are considered “major substantive.” These amendments are reviewed by the Legislature. We recommend completing these changes at your January 27 meeting.
- *Changes to Chapter 1 of the Rules.* Chapter 1 relates to the Commission’s procedures and the financial disclosures made by candidates, political parties, and others. Changes to these Rules are considered “routine technical.” They are not reviewed by the Legislature, and there is less urgency to complete them.

Rationale for the Rule-Making

- On November 3, 2015, Maine voters approved a citizen initiative promoted by a private advocacy organization, the Maine Citizens for Clean Elections. (The initiated bill is enclosed for your reference after the “FYI” tab.) The initiative proposed an expansion of the Maine Clean Election Act program. The new law also made other changes to Maine’s political transparency laws, including a move into a new form of disclosure: organizations making “independent expenditures” on communications to voters advocating for or against candidates must now disclose the organization’s top three funders in each communication.

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- The Commission receives financial reports of independent expenditures. In the 2015 session, the Maine Legislature raised the threshold of financial activity that requires the filing of an independent expenditure report (from spending \$100 per candidate to \$250 per candidate). (P.L. 2015, Chapter 350, enclosed for your reference)
- The Commission staff proposes updates to Chapter 3 of the Commission Rules to reflect current practices in administering the Maine Clean Election Act program.

Chronology

- 11/18/2015 Commission voted to undertake rule-making
- 11/25/2015 Invitation for public comment sent by mail to the Governor, Legislative leaders, members of oversight committee, political parties, and other interested persons
- 12/16/2015 Public hearing – oral comments received from the Maine Citizens for Clean Elections
- 12/18/2015 Second invitation to public comment (relating to Ch. 3, Sec. 6 – proposed procedures for candidates to submit additional qualifying contributions)
- 1/4/2016 Comments submitted by attorney Robert W. Weaver on behalf of the Maine Senate Republican Caucus
- 1/4/2016 Proposed language changes submitted by the Maine Citizens for Clean Elections
- 1/4/2016 Deadline for public comment

Roles of the Commission Staff and Members

In recent years, the Commission staff has been active in proposing amendments to the Commission’s Rules to address changes in statute or issues that have arisen in our day-to-day administration of the law. The staff generally has proposed Rule changes around the end of each calendar year. The staff always appreciates that you are the appointed members of the Commission who make the final decisions with respect to public policy. If you believe that some aspects of the Rule amendments need additional work or are not ready for

adoption, please let us know and we will do whatever is necessary to make sure that you are comfortable with the amendment finally adopted.

Rules to Focus On

In the opinion of the Commission staff, many of the proposed Rule changes are fairly minor.

The two topics most deserving of your attention are:

- *Chapter 1, Section 7(12) - Disclosure of top funders in paid communications*
Due to the 11/3/2015 citizen initiative, organizations making independent expenditures on communications to voters advocating for or against candidates are now required to list their top three funders in the communications.
- *Chapter 3, Section 2(4)(I),(J) & (K) - Non-Compliant or Fraudulent Qualifying Contributions*
The Commission received concerns that the proposed rule would unduly burden a candidate, in the event that non-compliant or fraudulent qualifying contributions were collected by someone other than the candidate and submitted to the Commission.

We would also appreciate your attention to two other changes:

- *Chapter 3, Section 2(4)(H) – Online Qualifying Contribution Service*
The Commission has established a website for Maine residents to give \$5 qualifying contributions to candidates seeking Maine Clean Election Act funding. The policy question has arisen whether candidates or their supporters may enter information on the website to assist donors who need help in making qualifying contributions.
- *Chapter 3, Section 4(4)(B) & (F) - Authorizing Contributions Due to Shortfall in the Fund*
The Commission proposes changes to the procedures for Maine Clean Election Act candidates to collect traditional campaign contributions, which is permitted by

statute if there were a shortfall in the Maine Clean Election Fund.

Comments Received

On December 16, 2015, the Commission received oral and written comments (attached) from John Brautigam, on behalf of the Maine Citizens for Clean Elections. On the comment deadline of January 4, 2016, the Commission received written comments from attorney Robert W. Weaver on behalf of the Maine Senate Republican Caucus. The Commission also received proposed alternative language for some of the Rule amendments from the Maine Citizens for Clean Elections.

Attached Materials

- Memo from Commission staff summarizing basis for each proposed amendment and comments received (15 pages)
- Changes to Chapter 1 of Commission Rules recommended by Commission staff (6 pages)
- Changes to Chapter 3 of Commission Rules recommended by Commission staff (12 pages)
- December 16, 2015 written comments by John Brautigam, on behalf of the Maine Citizens for Clean Elections (4 pages)
- Comments by attorney Robert W. Weaver, on behalf of the Maine Senate Republican Caucus (2 pages)
- Alternative language (shown in blue) submitted by the Maine Citizens for Clean Elections (19 pages, including cover email)
- Initiated bill 1, the citizen initiative enacted by Maine voters on Nov. 3, 2015 (14 pages)
- P.L. 2015, Chapter 350 (adjusting the threshold for independent expenditure reports) (3 pages)

Thank you for your consideration of these proposed Rule changes.



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To: Commissioners
From: Jonathan Wayne, Executive Director
Date: January 20, 2016
Re: Rule Amendments Recommended for Adoption

In this memo, the Commission staff describes:

- the factual and policy basis for each Rule amendment proposed by Commission staff at your November 18, 2015 meeting,
- a summary of comments received concerning the proposed amendments, and
- the amendments that the Commission staff currently recommends, which in some cases have been modified in response to the comments received.

Chapter 1, Section 7(12) - Disclosure of top funders in paid communications

Factual and policy basis: The citizen initiative approved by voters on November 3, 2015 expanded the “disclaimer statement” required for paid communications to voters advocating for or against candidates. These “independent expenditures” are most often made by party committees and political action committees (PACs). These communications are now required to include the top three funders of the organization making the independent expenditure since the last general election, for example:

Paid for by the Maine Democratic Party. The top three funders of the Maine Democratic Party are USW Works, the House Democratic Campaign Committee and the Senate Democratic Campaign Committee. Not authorized by any candidate.

Several states and cities have started requiring the disclosure of the top-three or top-five donors as a way to inform voters who is influencing them at the polls and who may be exerting influence over state and local government. The disclosure is included in the communications received by voters, which some view as a more accessible format than examining financial reports on the website of a government agency such as the Commission.

The initiative specifies that the "statement is required only for communications made through broadcast or cable television, broadcast radio, internet audio programming, direct mail or newspaper or other periodical publications." Accordingly, the statement is not required for electronic advertisements on the internet, electronic mail, social media messages, or campaign signs.

The statute directs the Commission to adopt Rules on a few topics, such as the duration of the statement in video communications and the text size or screen size of the statement. The Commission staff recommends a 12-point font size, which is already a requirement in the disclaimer statute for communications not authorized by a candidate. For duration and screen size, the proposed Rule relies on current requirements in federal communications law. We also propose that the statement of funders be conditioned on paying more than \$250 to support or oppose a candidate, which is the spending threshold for when an independent expenditure report must be filed with the Commission.

This new form of disclosure – displaying political funders in a communication to voters – raises some of the same practical questions that arise in the State’s current system of requiring PACs to disclose their contributors in campaign finance reports. In the proposed Rules, the Commission staff sought to clarify what funders must be disclosed by a PAC that is simply a separate fund established by a nonprofit corporation, labor or other organization, or by a PAC that is controlled and funded by another legal entity. For example:

- national party-based organizations dedicated to influencing state elections, such as the Democratic Governors Association, or the Republican State Leadership Committee, or
- non-profit organizations that are primarily engaged in non-electoral activities, such as lobbying, providing services to members, or charitable programs.

Comments: At a public hearing on December 16, 2015, the Commission received written and oral comments from John Brautigam on behalf of the Maine Citizens for Clean Elections (attached for your consideration). On January 4, 2016, Mr. Brautigam submitted some alternative language for this amendment.

Recommendation by Commission staff: The Commission staff agrees with the minor language changes proposed by the Maine Citizens for Clean Elections in subsection 7(12)(A) relating to the size of the text of the disclosure statement.

The Maine Citizens for Clean Elections submitted a re-write of Section 7(12)(C):

- C. For a political action committee consisting of a separate or segregated fund (as defined in Title 21-A, section 1052, subsection (5)(A)(1)), the top three funders are the top three funders of the corporation, membership organization, cooperative or labor or other association that established the fund.

The Commission staff believes this formulation would work well when the PAC is a separate bank account set up by an existing non-profit corporation, and we recommend that language over our original proposal.

Additionally, in order to address some of the written comments of the Maine Citizens for Clean Elections dated December 16, 2015, we have drafted for your consideration a paragraph 7(12)(D). This is intended to address the situation when a founding organization or parent entity has formed *a separate legal entity* in Maine for purposes of political activity (which registers as a PAC) and the parent entity provides all of the funding for the PAC, for example:

Founding organization or Parent Entity (fictional examples)	Maine corporation or LLC	PAC Name
Elect Republican Women (based in Washington, DC.)	ERW, LLC	ERW Maine PAC
Maine Conservation Alliance (a tax-exempt 501(c)(3)) organization based in Maine)	Maine Conservation Action, Inc. (a tax- exempt 501(c)(4)) organization based in Maine)	Maine Conservation Action PAC

In our proposed paragraph 7(12)(D), the communication would need to show the top three funders of the parent entity – rather than the Maine PAC.

Chapter 1, Section 10 – Independent Expenditure Reports

Factual and policy basis: Independent expenditures are paid communications which expressly advocate for or against a candidate's election. They are usually made by PACs and party committees.

In 2015, the Legislature enacted Chapter 350 of the Public Laws of 2015. Section 6 of the chapter law increased the spending threshold for when an independent expenditure report must be filed. The new threshold is making an expenditure greater than \$250 for a paid communication to support or oppose a candidate (increased from \$100). The \$250 threshold applies to each expenditure separately. This reduces the administrative burden on filers, because the spenders do not need to aggregate smaller expenditures per candidate to determine if they exceed \$250.

In the proposed Rule, the new schedule for independent expenditure reports would be:

If the expenditure is made	The report is due
through the 61 st day before an election	the 60 th day before an election
during the 60 th – 14 th day before an election	within 2 days of the expenditure
after the 14 th day before an election	within 1 day of the expenditure

The proposed Rule eliminates an 11-day report due for expenditures between \$100 and \$250 per candidate and (consistent with Chapter 350) eliminates the aggregating of expenditures per candidate.

The Election Law establishes a broader definition of independent expenditure in the final weeks leading up to a primary or general election. During these periods, communications to voters naming or depicting a clearly identified candidate are presumed to be an independent expenditure – even if the communication does not explicitly advocate for or against the

candidate. (21-A M.R.S.A. § 1019-B(1)(B)) The November 3, 2015 citizen initiative (Sec. 5) extended these presumption periods as shown on this table:

	Former Law	After Citizen Initiative
Primary Election	21 days before the election	28 days before the election
General Election	35 days before the election	After Labor Day

The Commission staff proposed analogous changes to the Rules.

Comments: The Commission did not receive comments concerning the proposed amendment.

Recommendation by Commission staff: The staff recommends adopting the Rule amendment as proposed.

Chapter 3, Section 2(3) - Seed Money Collected by Maine Clean Election Act Candidates

Factual and Policy Basis: To be consistent with changes to the Maine Clean Election Act (MCEA) in the November 3, 2015 citizen initiative, the Commission proposes updating the Rule that covers seed money contributions. These are contributions of up to \$100 from individuals that candidates may solicit and spend to start their campaigns while they are qualifying for MCEA funds. The citizen initiative doubled the total amount of seed money that legislative candidates may collect.

In addition, the citizen initiative eliminated the requirement for gubernatorial candidates to collect \$40,000 in seed money. This was an eligibility requirement that was in effect during the 2010 gubernatorial elections.

Comments: The Commission did not receive comments concerning the proposed amendment.

Recommendation by Commission staff: The staff recommends adopting the Rule amendment as proposed.

Chapter 3, Sections 2(4)(A) - (G) – Extending the Period of Time for Collecting Qualifying Contributions

Factual and Policy Basis: To be eligible for MCEA funding, candidates must collect a minimum number of qualifying contributions during a qualifying period, which ends on April 20 for legislative candidates. The qualifying contributions are intended to be an indication of personal support of the candidate by the registered voter making the contribution. The donor is required to affirm, through a signature, that he or she made the contribution from personal funds in support of the candidate and did not receive anything in return for making the contribution.

Under the citizen initiative, after qualifying for MCEA funding ("certification"), candidates may continue to collect additional qualifying contributions in order to receive up to eight supplemental payments of MCEA funds. Candidates may collect these additional contributions until three weeks before the general election. The Commission proposes Rule amendments in Section 2(4) to reflect that candidates may collect qualifying contributions after certification. These amendments include changing the phrase "participating candidate" to "candidate," because the term "participating candidate" refers to a candidate who is seeking to qualify for MCEA funding (*i.e.*, prior to certification).

Comments: The Maine Citizens for Clean Elections proposed a minor rephrasing in Section 2(4)(A) from “toward the eligibility requirements” to “for any purpose.”

Recommendation by Commission staff: The staff recommends adopting the Rule amendment with the rephrasing proposed by the Maine Citizens for Clean Elections.

Chapter 3, Section 2(4)(E) – Signatures by Family Members on Commission Forms

The Commission has an existing Rule setting out conditions under which family members and others living in a single household may make qualifying contributions in the form of a single check or money order. The Commission proposes an amendment clarifying that each individual must affirm they have made a qualifying contribution from their personal funds in support of the candidate. We seek to formalize existing policy that a qualifying

contribution is not valid if the person purportedly making the contribution has not made the written acknowledgement required by statute.

Comments: The Commission did not receive comments concerning the proposed amendment.

Recommendation by Commission staff: The staff recommends adopting the Rule amendment as proposed.

Chapter 3, Section 2(4)(H) - Online Qualifying Contribution Service

The Commission has established an online qualifying contribution service for members of the public to use a credit card to make qualifying contributions (www.maine.gov/cleanelections). This service can reduce the administrative burden for candidates, because candidates do not need to submit any paperwork to the Commission for these contributions. (The service attempts to verify through data from the Central Voter Registry that the donor is registered to vote in the legislative district of the candidate.) The Commission proposes a Rule to acknowledge this service, which has been in operation since 2008.

The website requires the donor to enter information and make selections through a series of online forms:

1. select the contributor's municipality and enter the contributor's street address and name,
2. select the candidate(s) to be supported through checking an online box,
3. type the amount(s) of the qualifying contribution(s) (\$5 is the default),
4. affirm through checking a box that the donor made a contribution from their personal funds in support of the candidate and did not receive anything in exchange for the contribution,
5. enter the contributor's credit card number, name of account holder, and billing address, and
6. submit the payment.

If the website cannot verify the donor's registration status on the first try, the website offers the donor a second opportunity to type his or her name.

The website is designed for *use by the donor* who is making the contribution. The Commission staff believes that, in the past, some candidates, supporters or political party volunteers may have assisted donors in entering information in the online forms.

The Commission staff proposed a Rule amendment which specifies that the donor may receive assistance in entering information in the online forms, but the donor must personally make the affirmation and submit the payment (steps 4 and 6 above). This proposal is intended to strengthen confidence that the donor personally supports the candidate and has elected to use personal funds to make a qualifying contribution. The proposed Rule prohibits collecting the information by phone and entering the contribution on behalf of the donor.

Comments: The Maine Citizens for Clean Elections (MCCE) proposed language prohibiting the candidate and his or her supporters from entering any information on behalf of the contributor.

Recommendation by Commission staff: The MCCE proposes that contributors would have to enter information in the online system themselves and could not rely on others. If the Commissioners prefer this procedure, we see no problem with it. We had proposed allowing some limited assistance to contributors because we are aware that some donors, who do not have computers, have limited experience using online forms.

Chapter 3, Section 2(4)(I), (J) & (K) - Non-Compliant or Fraudulent Qualifying Contributions; Additional Compliance Procedures for Gubernatorial Candidates

The overwhelming majority of candidates follow the correct procedures in collecting qualifying contributions. In the experience of the Commission staff, it is very rare that candidates submit forms falsely claiming the collection of qualifying contributions. Most contributions are made by check, which confirms that the donor has made the contribution from his or her personal funds.

On occasions when the Commission staff has detected that a candidate or volunteer has falsely claimed to have collected qualifying contributions *by cash* from donors, the Commission staff has invalidated the contributions attributed to that candidate or volunteer. This has generally resulted in the denial of MCEA funds to the candidate. In some cases the Commission, or its staff, has referred these matters to the Attorney General's office for criminal prosecution. In Section 2(4)(I), the staff proposed a Rule describing these existing procedures.

In the past several elections, the Commission staff has denied MCEA funding to four legislative candidates who falsely claimed the collection of qualifying contributions. None of them appealed the staff's decision to the Commission. Also, the Commission staff has denied MCEA funding to two candidates for Governor because some of their volunteers falsely claimed qualifying contributions. One of the two candidates filed an appeal and later withdrew the appeal.

The staff expects the rate of fraud in candidates' collection of qualifying contributions will continue to be low. Nevertheless, there could be an increased risk of fraud because of the greater amount of campaign funds available to candidates and because candidates receive additional campaign funds for every qualifying contribution collected.

In Section 2(4)(J), the Commission staff proposes a Rule setting out policies for when a candidate may be held responsible for submitting non-compliant or fraudulent qualifying contributions to the Commission. The final Rule should set high but fair standards for candidates, and should be appropriate both for legislative and gubernatorial campaigns.

In the version of the Rule the staff currently recommends, if the candidate authorizes other individuals to collect qualifying contributions, the candidate is responsible for ensuring that the individuals receive adequate training in how to collect the qualifying contributions. The candidate must exercise due diligence in ensuring that these individuals have followed correct procedures.

The Rule states the Commission will presume the candidate has confirmed that all the individuals collecting the qualifying contributions actually have received the required

contribution from the contributors. If non-compliant contributions are submitted to the Commission, the candidate may rebut the presumption by showing that the candidate exercised due diligence in the collection and submission of qualifying contributions, and had no knowledge of or participation in the noncompliant contributions.

Due to the very large amount of funds potentially available to gubernatorial candidates under the citizen initiative, in Section 2(4)(K) the Commission staff proposed additional procedures for candidates for governor seeking MCEA funding. Within three weeks of declaring an intention to qualify, the candidate would need to appoint a compliance officer and submit a compliance plan addressing topics set out in the Rule.

Comments: The Commission received comments from the Maine Citizens for Clean Elections approving of the Rule amendment with minor changes.

The Senate Republican Caucus expressed concerns about the burden of presuming the candidate personally verified the validity of qualifying contributions that were collected by other persons and holding the candidate strictly responsible for noncompliant contributions. One of the particular concerns of the caucus is that candidates will be unfairly held responsible for the actions of a rogue volunteer or supporter. The caucus suggests that the Commission's existing procedures are adequate without the presumption.

Recommendation by Commission staff: The staff appreciates the time taken by the Senate Republican Caucus staff and counsel in formulating the comments. In considering the comments, the Commission staff met twice, consulted with Commission Counsel, and debated dropping the presumption and rebuttal provision from the recommended Rule. We are grateful for your attention to this issue and will be comfortable implementing whatever Rule change you decide upon.

We note that, if candidates collect qualifying contributions by check or credit card (through the Commission's online service), the potential for fraudulent contributions goes down significantly. It is the receipt of cash contributions that raises the concern that the contribution is coming from sources other than the contributor's personal funds.

The Commission staff continues to recommend including some form of presumption and rebuttal mechanism in the Commission's Rule. (The recommended amendment contains some language that is slightly modified from the original proposal we presented in November 2015.) We believe it is reasonable to assign candidates the managerial responsibility to make sure that people collecting qualifying contributions on their behalf are doing it the right way. Practically speaking, this would mean:

- instructing volunteers on how to interact with potential contributors and how to complete the receipt and acknowledgement forms,
- insisting that volunteers accept the cash only from the contributors *and not from any other source* (not a difficult message), and
- at the time that the candidate receives the contributions from the volunteers, the candidate can confirm that the volunteer actually received cash from the contributors.

Chapter 3, Sections 2(4)(L), (M), (N) – Volunteer and Paid Services Received by Candidates

Factual and policy basis: Generally, under the definition of “contribution” in the Election Law, if an organization is compensating someone to provide services to a candidate, those paid services amount to contribution to the candidate. (21-A M.R.S.A. § 1012(2)(A)(4)) Services provided by volunteers to candidates are exempt from the definition of contribution. (21-A M.R.S.A. § 1012(2)(B)(1))

The definition also contains an exception for up to 40 hours of paid staff time provided by employees of a state political party to a candidate in any election. (21-A M.R.S.A. § 1012(2)(B)(7)(A)) Typically, the Democratic and Republican parties are able to provide some paid staff time to legislative candidates to assist them with campaign tasks such as distributing literature, qualifying for the ballot or for MCEA funds, designing literature, etc.

Maine Clean Election Act candidates are forbidden from accepting any contributions after the candidate has qualified for public campaign funding. Thus, under current law, MCEA candidates may not accept paid assistance, other than the 40 hours of paid staff time per

election from their state political party.

The Commission staff proposed two Rules 2(4)(L) & (M) to clarify that these same policies would apply if individuals were compensated to assist candidates in collecting qualifying contributions.

Comments: The Maine Citizens for Clean Elections proposed alternative language clarifying that no person other than the candidate may compensate individuals to collect qualifying contributions, except for the limited exception for state political parties, and that MCEA candidates may accept volunteer assistance. The Maine Citizens for Clean Elections also proposed language confirming that MCEA candidates may use currently available campaign funds to compensate people for collecting qualifying contributions, but may not promise to compensate individuals from future MCEA funding yet to be received.

Recommendation by Commission staff: The Commission staff recommends adopting the language proposed by the Maine Citizens for Clean Elections.

Chapter 3, Section 3(1)(C) - Requirement for Gubernatorial Candidates to Obtain Special Documentation of Required Seed Money Contributions

As a result of the citizen initiative, candidates for Governor are no longer required to collect \$40,000 in seed money to qualify for public campaign funds. This was an eligibility requirement the Legislature enacted and was in effect for the 2010 elections. Consequently, the Commission staff believes there is no need for the candidates to obtain signed acknowledgement forms from their seed money contributors confirming their contributions. The Commission staff proposes deleting this section of the Rule.

Comments: The Commission did not receive comments concerning the proposed amendment.

Recommendation by Commission staff: The staff recommends adopting the Rule amendment as proposed.

Chapter 3, Section 4(2) & (3) - Financial Projections, Adjusting Payment Amounts for Inflation

The Commission proposes Rule changes reflecting the new requirements in the citizen initiative to provide four-year financial projections to the Legislature and Governor and to adjust the payment amounts to candidates every two years based on inflation.

Comments: The Commission did not receive comments concerning the proposed amendment.

Recommendation by Commission staff: The staff recommends adopting the Rule amendment as proposed.

Chapter 3, Section 4(4)(B) & (F) - Authorizing Contributions Due to Shortfall in the Fund

This subsection authorizes candidates to collect traditional campaign contributions if there is insufficient money in the Maine Clean Election Fund to make payments of public funds to candidates. These contributions would be capped by the same maximum that applies to traditionally financed candidates. Since these maximums are re-adjusted every two years for inflation, the Commission staff proposed deleting the specific dollar amounts in the Rule. The Commission staff also proposed deleting a clause from paragraph F which refers to the deposit of matching funds in a separate bank account, since matching funds are no longer a component of the program.

Comments: The Maine Citizens for Clean Elections submitted a language change on another aspect of this Rule. Under the new design of the Maine Clean Election Act program, candidates qualify for supplemental payments of public campaign funds by collecting additional qualifying contributions. For example, after receiving a basic payment of \$5,000 for the general election, a House candidate could receive up to eight supplemental payments of \$1,250 for every 15 qualifying contributions collected by the candidate. The Maine Citizens for Clean Elections proposes candidates may accept traditional campaign contributions only as a substitute for Maine Clean Election Act funding for which the candidate has qualified, but has not received due to the shortfall.

Recommendation by Commission staff: To illustrate this policy issue, please consider the hypothetical example of a House candidate who anticipates being in a very competitive general election with high spending. The candidate has received the initial payment of \$5,000 for the general election and has received another \$6,250 in supplemental payments.

The candidate wishes to spend an additional \$3,750 in campaign funds (the maximum allowed by law), but the Maine Clean Election Fund has run out of cash. Accordingly, the candidate wishes to collect the remaining \$3,750 in traditional campaign contributions. Under the proposal of the Maine Citizens for Clean Elections, the candidate could collect the \$3,750 only if the candidate received another 45 qualifying contributions.

The Commission staff is not persuaded that this is a necessary requirement. In the past, we have understood the burden of collecting qualifying contributions as a demonstration of public support within a legislative district to justify the receipt of scarce public funds. In the event of a shortfall in the Maine Clean Election Fund (which we hope to avoid), we do not understand why collecting qualifying contributions should be a pre-requisite for collecting traditional campaign contributions. Presently, we recommend against accepting this change proposed by the Maine Citizens for Clean Elections

Chapter 3, Section 6 – Distribution of Supplemental Funds

Factual and policy basis: On December 18, 2015, the Commission distributed a second invitation to comment on an additional amendment which would specify procedures for candidates submitting additional qualifying contributions to receive supplemental payments of Maine Clean Election Act funds. These procedures are generally similar to the existing procedures for legislative candidates to submit qualifying contributions by April 20 of the election year to qualify for Maine Clean Election Act funding. Because the amount of the public campaign funding available to candidates is directly proportional to the number of valid qualifying contributions, the Commission staff proposed that candidates be required to submit a list of qualifying contributions in an electronic format such as Microsoft Word or Excel. This will greatly facilitate the staff's timely evaluation of the qualifying contributions and ensure payment of public funds in the correct amount.

In order to position this proposed Rule in the most appropriate location within Chapter 3, the staff proposed this Rule would be numbered Section 6, and that the existing Sections 6, 7, and 8 be renumbered to 7, 8, and 9.

Comments: The Commission did not receive comments concerning the proposed amendment.

Recommendation by Commission staff: The staff recommends adopting the Rule amendment as proposed.

Chapter 3, Section 7 - Prohibiting Large Payments of Maine Clean Election Act funds in Cash [renumbered from Section 6]

Factual and policy basis: The Commission staff proposed that candidates be prohibited from spending more than \$50 of Maine Clean Election Act funds in cash. Under this proposal, expenditures of more than \$50 would be paid by check, debit or credit card, or wire transfer only. This would create a more reliable audit trail, in order to ensure the accountability of MCEA funds. The Commission conducts post-election audits of 20% of legislative candidates (randomly selected).

Comments: The Commission did not receive comments concerning the proposed amendment.

Recommendation from Commission staff: The staff recommends adopting the Rule amendment as proposed, except that this section would be renumbered from Section 6 to Section 7.

Thank you for your consideration of these proposed Rule changes.

Chapter 1: PROCEDURES

SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission’s actions will be governed.

SECTION 7. EXPENDITURES

...

12. Disclosure of top funders in paid communications. If an entity makes an independent expenditure in excess of \$250 to influence a candidate’s election, the communication is required to contain the entity’s top three funders under Title 21-A, section 1014, subsection 2-B.

A. The disclosure included in a cable television or broadcast television communication must conform with those portions of federal regulations 47 CFR § 73.1212(a)(2)(ii) and 47 CFR § 76.1615(a) which regulate text size and duration of sponsorship information. Specifically

- 1. the font size must be equal to or greater than four percent of the vertical picture height, and
- 2. the text must appear for not less than four seconds.

B. For communications listed in Title 21-A, section 1014, subsection 2-B with a visual aspect other than television or video communications, the statement of funders must appear in a font size that is 12-point or larger.



C. If an organization that has a major purpose other than influencing an election in Maine has established a PAC, the communication must contain the applicable number of funders of the organization that established the PAC.



C. If the communication is funded by a political action committee that is a separate or segregated fund as defined in Title 21-A, section 1052, subsection (5)(A)(1), but not a separate legal entity, the top three funders to be listed are the top three funders of the legal entity (corporation, membership organization, cooperative or labor or other organization) that established the fund.

D. If the communication is funded by a political action committee that is fully funded or controlled by another political action committee or legal entity, the top three funders to be listed are the top three funders of that parent entity.

E. For any other political action committee that does not have a parent entity, the top three funders are the contributors who have given the top three aggregate contributions, as defined in Title 21-A, section 1052(3), during the time period specified in Title 21-A, section 1014, subsection 2-B, paragraph A.



Original Proposal

Currently recommended by staff: (variation on MCCE Proposal)

Communications for which including the statement required by Title 21-A, section 1014, subsection 2-B would be impossible or impose an unusual hardship due to their format or medium are exempt from the requirements of that section.

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General.** Any person, party committee, political committee or political action committee that makes ~~an~~any independent expenditure ~~aggregating~~ in excess of ~~\$250~~ \$100 per candidate in an election must file a report with the Commission according to this section.
2. **Definitions.** For purposes of this section, the following phrases are defined as follows:
 - A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
 - B. "Expressly advocate" means any communication that
 - (1) uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"; or
 - (2) is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.
 - C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
3. **Reporting Schedules.** Independent expenditures in excess of \$250 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following ~~provisions~~ schedule:
 - A. ~~Independent expenditures aggregating in excess of \$100 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the~~

following reporting schedule, unless required to be reported according to the schedule in paragraph B.

(1) ~~Quarterly Reports. [Repealed]~~

(1 A) ~~60-Day Pre-Election Report.~~ A report must be filed by 11:59 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.

(1 B) ~~11-Day Pre-Election Report.~~ A report must be filed by 11:59 p.m. on the 11th day before the election is held and be complete as of the 14th day before the election.

If the total of independent expenditures made to support or oppose a candidate exceeds \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure according to the schedule in this paragraph or paragraph B.

- B. ~~Independent expenditures aggregating in excess of \$250 per candidate made during the sixty days before an election must be reported within two calendar days of those expenditures.~~

~~[NOTE: WHEN THE CUMULATIVE AMOUNT OF EXPENDITURES TO SUPPORT OR OPPOSE A CANDIDATE EXCEEDS \$250, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED WITH THE COMMISSION WITHIN TWO DAYS OF GOING OVER THE \$250 THRESHOLD.]~~

~~FOR EXAMPLE, IF AN INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES THREE EXPENDITURES OF \$100 IN SUPPORT OF A CANDIDATE ON SEPTEMBER 8TH, SEPTEMBER 13TH, AND SEPTEMBER 29TH, FOR AN ELECTION ON NOVEMBER 6, 2012, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 1ST. THE THIRD EXPENDITURE OF \$100 MADE THE CUMULATIVE TOTAL OF EXPENDITURES EXCEED \$250 AND THE TWO-DAY REPORTING REQUIREMENT WAS TRIGGERED ON SEPTEMBER 29TH. THE REPORT MUST INCLUDE ALL THREE EXPENDITURES.~~

~~AFTER SEPTEMBER 29TH, IF THAT INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES ADDITIONAL EXPENDITURES TO SUPPORT THAT CANDIDATE, THE REQUIREMENT TO FILE AN INDEPENDENT EXPENDITURE REPORT WITHIN TWO DAYS WILL APPLY ONLY IF THE CUMULATIVE TOTAL SPENT AFTER SEPTEMBER 29TH EXCEEDS \$250. FOR EXAMPLE, IF THE INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES TWO PAYMENTS OF \$200 TO PROMOTE THE CANDIDATE ON OCTOBER 8TH AND OCTOBER 13TH, ANOTHER INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 15TH DISCLOSING THOSE TWO EXPENDITURES.]~~

~~Independent expenditures aggregating in excess of \$100 per candidate made after the 14th day before an election must be reported within one calendar day of those expenditures.~~

- (1) **60-Day Pre-Election Report.** A report must be filed by 11:59 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.
- (2) **Two-Day Report.** From the 60th day through the 14th day before an election, a report must be filed within two calendar days of the expenditure.
- (3) **One-Day Report.** After the 14th day before an election, a report must be filed within one calendar day of the expenditure.

For purposes of the filing deadlines in this paragraph, if the expenditure relates to a legislative or gubernatorial election and the filing deadline occurs on a weekend, holiday, or state government shutdown day, the report must be filed on the deadline. If the expenditure relates to a county or municipal election, the report may be filed on the next regular business day.

- C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate.
 - D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.
 - E. An independent expenditure report may be provisionally filed by facsimile or by electronic mail to an address designated by the Commission, as long as the facsimile or electronic copy is filed by the applicable deadline and an original of the same report is received by the Commission within five calendar days thereafter.
4. **Multi-Candidate Expenditures.** When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.
- A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

[NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT,

THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS:
50% FOR X, 20% FOR Y, and 30% FOR Z.]

- B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]

5. **Rebuttable Presumption.** Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate ~~in a race involving a Maine Clean Election Act candidate~~ and that is disseminated during the ~~24~~ 28 days before a primary election ~~and, the 35~~ days before a ~~general~~ special election ~~or from Labor Day to the general election~~ will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

- A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) Printed advertisements in newspapers and other media;
- (2) Television and radio advertisements;
- (3) Printed literature;
- (4) Recorded telephone messages;
- (5) Scripted telephone messages by live callers; and
- (6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.

- B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate, the candidate's immediate family, or a political committee;

- (2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;
 - (3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
 - (4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
 - (5) other communications and activities that are excluded from the legal definition of “expenditure” in the Election Law.
- C. If an expenditure is covered by the presumption and is greater, ~~in the aggregate, than \$100~~\$250 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. ~~Any independent expenditures aggregating of \$100~~\$250 or less per candidate per election does not require the filing of an independent expenditure report or a rebuttal statement.
- D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the applicable ~~21-day or 35-day~~ presumption period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.
- E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.
- F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.
- G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

SECTION 1. APPLICABILITY

This chapter applies to candidates running for Governor, State Senator and State Representative who choose the alternative campaign financing option established by the Maine Clean Election Act for elections to be held beginning in the year 2000. Candidates participating in the Maine Clean Election Act must comply with these rules and all other applicable election and campaign laws and regulations. Some sections in this chapter also apply to and impose obligations on privately financed candidates and political committees that raise contributions and make expenditures in races involving Maine Clean Election Act candidates.

SECTION 2. PROCEDURES FOR PARTICIPATION

1. **Declaration of Intent.** A participating candidate must file a Declaration of Intent within five days of collecting qualifying contributions. The Commission will provide a form for this purpose.
2. **Content.** The Declaration of Intent must include the following information:
 - A. an affirmation that the candidate is seeking certification as a Maine Clean Election Act candidate;
 - B. an affirmation that the candidate understands that any qualifying contributions collected more than five days before filing the Declaration of Intent will not be counted toward the eligibility requirement;
 - C. an affirmation that the candidate has not accepted any contributions, except for seed money contributions, after becoming a candidate;
 - D. an affirmation that the candidate has disposed of any campaign surplus before becoming a candidate for the new election, as required by paragraph 3.C [Campaign Surplus] of this section;
 - E. an affirmation that if the candidate has any campaign deficit, that the candidate will not accept contributions to repay that deficit as a participating candidate or certified candidate, except that the candidate may forgive any campaign loans to himself or herself made during any previous campaigns;
 - F. an affirmation that the candidate will continue to comply with applicable seed money restrictions and other requirements of the Act including, but not limited to, procedures for collecting qualifying contributions;
 - G. an affirmation that the candidate has read and will comply with the Commission's guidelines on permissible expenditures; and

- H. authorization by the candidate for the Commission, its agents or representatives to conduct financial audits of the candidate's campaign financial records and account(s).

3. Seed Money Restrictions

- A. **General.** After becoming a candidate and before certification, a participating candidate may collect and spend only seed money contributions. The restrictions on seed money contributions apply to both cash and in-kind contributions.
- B. **Total Amount**
- (1) A participating candidate must limit the candidate's total seed money contributions to the following amounts:
 - (a) two hundred thousand dollars for a gubernatorial candidate;
 - (b) ~~one thousand five hundred~~ three thousand dollars for a candidate for the State Senate; or
 - (c) ~~five hundred~~ one thousand dollars for a candidate for the State House of Representatives.
 - (2) Notwithstanding any other provision of this chapter, a candidate may carry forward to a new candidacy of that candidate campaign equipment or property, subject to the reporting requirements of Title 21-A, chapter 13 [Campaign Reports and Finances].
 - (3) The Commission periodically will review these limitations and, through rulemaking, revise these amounts to ensure effective implementation of the Act.
- C. ~~**Required seed money for gubernatorial candidates.** In addition to the other requirements for certification, a candidate for Governor seeking to qualify for Maine Clean Election Act funding shall collect at least \$40,000 in seed money contributions from registered voters in Maine. Only cash seed money contributions count toward the \$40,000 requirement. The candidate shall obtain documentation of the contributions as required by the Act [§1125(2-B)].~~
- D. **Campaign surplus.** A candidate who has carried forward campaign surplus according to Title 21-A, chapter 13, subchapter II [§1017(8) and §1017(9)], and who intends to become a participating candidate, must dispose of campaign surplus in accordance with the requirements of Title 21-A, chapter 13, subchapter II [§1017(8)]; provided, however, that a candidate may carry forward only those portions of campaign surplus that comply with the provisions of this Act regarding seed money contributions [§§ 1122(9) and 1125(2)]. Any campaign surplus (excluding campaign equipment or property) carried forward under this provision will be counted toward that candidate's total seed money limit.

INFORMATIONAL NOTE: The Commission will provide educational materials to all former candidates who have a campaign surplus describing the requirement that individuals must dispose of campaign surplus to remain eligible for participation as a Maine Clean Election Act candidate.

- E. **Return of Contributions Not in Compliance with Seed Money Restrictions.** A participating candidate who receives a contribution exceeding the seed money per donor restriction or the total amount restriction must immediately return the contribution and may not cash, deposit, or otherwise use the contribution.
- F. **Case-by-Case Exception.** A participating candidate who has accepted contributions or made expenditures that do not comply with seed money restrictions may petition the Commission to remain eligible for certification as a Maine Clean Election Act candidate. The Commission may approve the petition and restore a candidate's eligibility for certification if the candidate successfully establishes all of the following criteria:
- (1) the failure to comply was the result of an unintentional error;
 - (2) the candidate immediately returned all contributions that did not comply with seed money restrictions or paid for goods or services contributed that did not comply with seed money restrictions;
 - (3) the candidate petitioned the Commission promptly upon becoming aware of the unintentional error; and
 - (4) the failure to comply did not involve expenditures by the participating candidate significantly in excess of seed money total amount restrictions or otherwise constitute systematic or significant infractions of seed money restrictions.
- G. After becoming a candidate and prior to certification, accepting a loan from any source including a financial institution and spending money received in the form of a loan, are violations of the seed money restrictions of the Act.
- H. **Other.** A seed money contributor may also make a qualifying contribution to the same participating candidate provided that the contributor otherwise meets the requirements for making a qualifying contribution.

4. **Qualifying Contributions**

- A. **General.** A ~~participating~~ candidate may collect qualifying contributions only during the relevant qualifying period for certification and the relevant period for additional qualifying contributions [§§ 1122(8) and 1125(8-E)]. Qualifying contributions collected more than five days before filing a Declaration of Intent with the Commission will not be counted ~~toward the eligibility requirement for~~ any purpose. Qualifying contributions must be acknowledged by the person making the contribution and reported on forms provided by the Commission.

The forms must include:

- (1) the name, residential address and signature of the contributor;
- (2) an affirmation by the contributor that the contribution was made with his or her personal funds, in support of the candidate and that the contributor did not receive anything of value in exchange for his or her signature and contribution;
- (3) a clear and conspicuous statement that the candidate is collecting signatures and qualifying contributions in order to obtain public funding to finance the candidate's campaign;
- (4) the signature of the municipal registrar or his or her designee verifying the voter registration of the contributors listed on the form; and
- (5) an affirmation by the person who circulated the form that the circulator collected the contribution, that to the best of the circulator's knowledge and belief the contribution came from the personal funds of the contributor, that nothing was provided to the contributor in exchange for the contribution, and any additional information required by the Commission in order to protect the reliability of the qualification process. Contributions made through the Commission's online qualifying contribution service do not require a circulator's affirmation.

B. Required Number of Qualifying Contributions. A participating candidate must obtain the number of qualifying contributions for certification during the qualifying period as required by the Act [§1122(7); §1122(8); §1125(3)].

C. Exchanges for Qualifying Contributions Prohibited

- (1) A ~~participating~~ candidate or an agent of that candidate may not give or offer to give a payment, gift, or anything of value in exchange for a qualifying contribution.
- (2) This provision does not prohibit a ~~participating~~ candidate or that candidate's agent from collecting qualifying contributions at events where food or beverages are served, or where campaign promotional materials are distributed, provided that the food, beverage, and campaign materials are offered to all persons attending the event regardless of whether or not particular persons make a qualifying contribution to the ~~participating~~ candidate.
- (3) This provision does not prohibit a candidate from using seed money to pay the fee for a money order provided the qualifying contributor pays the \$5 amount reflected on the money order as permitted by 21-A M.R.S.A. §1125(3).

D. Checks Drawn on Business Accounts. Qualifying contributions must be made with the personal funds of the contributor. The Commission will not count a check drawn from an account with a business name toward the eligibility requirements, unless the name of the contributor is included in the name of the

account or the candidate submits a written statement from the contributor indicating that he or she uses the business account for personal expenses.

- E. **Family Members.** Family members, domestic partners, and live-in caregivers who reside in a single household may make qualifying contributions in the form of a single check or money order of more than \$5 provided that:

- (1) all contributors sign the receipt and acknowledgement form;
- (2) all contributors are registered to vote at the address of the household; and
- (3) all contributions are made with the personal funds of the contributors.

For a qualifying contribution to be considered valid, the contributor must affirm that the contribution was made with his or her personal funds, in support of the candidate and that the contributor did not receive anything of value in exchange for his or her signature and contribution. The affirmation may not be made by a family member, domestic partner or live-in caregiver, unless the contributor is unable to sign the form due to a physical impairment.

- F. **Verification of Registered Voters**

- (1) Before submitting qualifying contributions to the Commission, a ~~participating~~ candidate must establish that contributors who made qualifying contributions to that candidate are registered voters.
- (2) For qualifying contributions made by check or by money order, a ~~participating~~ candidate must obtain written verification from the Registrar of the number of persons providing qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.
- (3) For qualifying contributions made over the Internet, the Commission may establish an automated system by which the contributor can verify his or her voter registration based on data derived from the Central Voter Registration System. If the contributor is unable to verify the voter registration, the ~~participating~~ candidate must obtain written verification from the Registrar.
- (4) Upon request of a ~~participating~~ candidate, and within 10 business days after the date of the request, the Registrar must verify the names of contributors of qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.

- G. **Timing of Verification.** For purposes of this chapter, the Commission will deem verification of registered voters by the Registrar at any time during the qualifying period for certification or the relevant period for additional qualifying contributions [§§ 1122(8) and 1125(8-E)] to be an accurate verification of voter registration even if the registration status of a particular voter may have changed at the time the Commission determines certification of the participating candidate or before the additional qualifying contribution is submitted to the Commission.

Proof of voter verification submitted after the qualifying period for certification will not be accepted by the Commission and those qualifying contributions will not be counted toward the number required for certification.

- H. Online Qualifying Contribution Service.** The Commission may establish an online service for members of the public to make qualifying contributions in support of candidates seeking Maine Clean Election Act funding. To make an online qualifying contribution, the contributor must use the Commission's procedures to affirm that the contributor made a contribution from their personal funds in support of the candidate and that the contributor did not receive anything of value in exchange for his or her contribution. The affirmation and the payment must be made and submitted by the contributor and not by any other person. Assistance may be provided to a contributor in using the online service, as long as the assistance is provided in person and the contributor personally makes the affirmation and submits the online payment. A candidate and any person collecting qualifying contributions on behalf of a candidate may not collect the required information from the contributor by phone or any other means, other than in-person contact, and enter it into the online service on behalf of the contributor.
- I. Fraudulent qualifying contributions.** If the Commission staff reasonably believes that fraudulent qualifying contributions have been submitted to the Commission, the staff shall undertake an investigation to determine whether the qualifying contributions are fraudulent. The Commission staff may request investigative assistance from the Office of the Maine Attorney General or refer the matter for possible criminal prosecution. For purposes of this chapter, "fraudulent qualifying contributions" includes, but is not limited to, asking an individual to sign a Receipt and Acknowledgement form as a contributor when the individual did not make a qualifying contribution, giving money or something of value to someone in exchange for making a qualifying contribution, making false statements in the circulator section of a Receipt and Acknowledgement form, or signing the name of another person in the contributor section of the Receipt and Acknowledgment form unless the person signing the form does so on behalf of a family member who authorizes the signature but is unable to sign due to a physical impairment.
- J. Compliance; oversight.** If a candidate has authorized other individuals to collect qualifying contributions on the candidate's behalf, the candidate is responsible for ensuring that these individuals receive adequate training in the procedures for collecting qualifying contributions. The candidate must exercise due diligence to ensure that all qualifying contributions collected by these individuals and submitted to the Commission on the candidate's behalf comply with requirements of the Act and the Commission's rules. A candidate is presumed to have confirmed that the individuals collecting qualifying contributions actually received the required contributions from the personal funds of the contributors. A candidate may rebut the presumption if the Commission determines by a preponderance of evidence that the candidate exercised due diligence as described above, and had no knowledge of and did not participate in the collection of the noncompliant qualifying contributions. For the purpose of rebutting the presumption, the term "candidate" includes an agent of the candidate or the candidate's committee, including a gubernatorial candidate's compliance officer.

K. Compliance by gubernatorial candidates. Within three weeks of declaring an intention to qualify for Maine Clean Election Act funding, candidates for Governor must appoint one or more compliance officers who will oversee the collection of qualifying contributions and must submit a compliance plan for training and oversight of persons collecting qualifying contributions. The compliance plan must describe the procedures for

- (1) training the circulators who will be collecting qualifying contributions,
- (2) minimizing the risk of error or fraud by communicating with circulators during the collection process to verify that each contributor listed in qualifying papers provided personal funds, nothing of value was provided to the contributor, and every contributor personally made the required acknowledgment by signing a paper form or completing the online procedure for making a qualifying contribution,
- (3) the compliance officer's personal verification with each circulator that he or she complied with required procedures before the campaign's acceptance of qualifying contributions from that circulator, and
- (4) responding appropriately when receipt and acknowledgement forms have been completed erroneously or fraudulent qualifying contributions have been collected through investigating the extent of the error or fraud and taking remedial action to avoid risk of future error or fraud.

L. Collection of qualifying contributions by paid staff. No person other than the candidate may compensate others for collecting qualifying contributions, except that paid staff of a party committee may provide limited assistance to a candidate pursuant to the exemption under Title 21-A M.R.S.A. § 1012(2)(B)(7)(A).

M. Only currently available funds. If a candidate compensates any person or entity for collecting qualifying contributions, the compensation must be from funds currently available to the candidate's campaign. A candidate may not agree to make payment for collection of qualifying contributions from funds not currently available but anticipated to become available upon submission of the qualifying contributions collected.

N. Volunteer assistance with collecting qualifying contributions. A candidate may receive volunteer assistance with the collection of qualifying contributions provided that any person organizing the volunteers is also a volunteer or is entitled to the political party staff exemption in Title 21-A M.R.S.A. § 1012(2)(B)(7)(A).

SECTION 3. CERTIFICATION OF PARTICIPATING CANDIDATES

1. **Request for Certification.** A participating candidate may submit a completed request for certification to the Commission at any time during the qualifying period but not later than 5:00 p.m. on the last day of the relevant qualifying period. The request will be deemed complete and considered for certification only when the candidate has submitted to the Commission:

- A. the qualifying contributions attached to the corresponding original receipt and acknowledgement forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking;
 - B. a list of all individuals making qualifying contributions and their town or city of residence, sorted alphabetically by the contributor's last name;
 - ~~C. for gubernatorial candidates, the following documentation for required seed money contributions as required by the Act ([1125(2-B)]): the acknowledgement forms signed by the contributors of seed money, list of seed money contributions, photocopies of checks or money orders received from seed money contributors, and bank or merchant account statements which list contributions made by credit or debit card;~~
 - D. a seed money report of contributions, expenditures, and obligations made or incurred after becoming a candidate, including a report of any unspent seed money; and
 - E. a signed request for certification on a form provided by the Commission which contains an affirmation by the candidate that he or she has complied with all seed money and qualifying contribution requirements, has established a separate federally-insured bank account for campaign purposes and, if applicable, that any person who circulated receipt and acknowledgement forms and collected qualifying contributions acted with the candidate's knowledge and consent, and any other information relevant to the certification process.
 - F. A candidate may request an extension of time to comply with paragraphs B, D, and E. The Commission staff shall grant all reasonable requests or state in writing the reasons for denying the request. The Commission and the Commission staff may not grant an extension of time to comply with paragraph A or C.
2. **Order of Review.** The Commission will review candidate requests for certification in the order in which they are received, except that it will give priority to those candidates who are in a contested primary election.
 3. **Unspent Seed Money.** In order to distribute funds expeditiously, the Commission will deduct from the initial distribution from the Fund to a certified candidate an amount equal to the amount of unspent seed money reported by that candidate.
 4. **Certification.** The Commission will certify a candidate as a Maine Clean Election Act candidate upon the participating candidate's satisfaction of the requirements of the Act [§1125] and this chapter.
 5. **Appeals.** Any appeals challenging a certification decision by the Commission must be in accordance with the Act [§1125(14)].

SECTION 4. FUND ADMINISTRATION

1. **Coordination with State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to ensure the use of timely and accurate information regarding the status of the Fund.

2. **Publication of Fund Revenue Estimates.** ~~By September 1st preceding each election year, the Commission will publish an estimate of revenue in the Fund available for distribution to certified candidates during the upcoming year's election. The Commission will update the estimate of available revenue in the Fund after April 15th of an election year and again within 30 days after the primary election in an election year. The Commission will provide the Legislature and Governor with financial projections required under the Act [§1124(4)] and may submit legislation to request additional revenues to the Fund if the Commission determines that projected revenue will not be sufficient to meet demands.~~
3. **Computation of Disbursement Amounts.** ~~By July 1, 1999, and at least every 4 years after that date, the Commission will determine the amount of revenue to be distributed to certified candidates based on the type of election and office in accordance with the Act [§1125(8)]. Every two years, the Commission shall adjust the amounts of distributions made to candidates in accordance with the Act [§§ 1125(8-B) - (8-F)].~~
4. **Authorizing Contributions due to Shortfall in the Fund.**
 - A. **Authorization by Commission to accept contributions.** If the Commission determines that the revenues in the Fund may be insufficient to make payments under section 1125 of the Act, the Commission may reduce payments of public campaign funds to certified candidates and permit them to accept and spend contributions in accordance with the Act [§1125(13)].
 - B. **Limitations on permitted contributions.** If permitted to accept contributions, a certified candidate may not accept a contribution in cash or in-kind from any contributor, including the candidate and the candidate's spouse or domestic partner, that exceeds \$750 per election for gubernatorial candidates and \$350 per election for State Senate and State House candidates ~~the applicable statutory contribution limit as adjusted for inflation.~~ [§§ 1015(1) & (2)]. A candidate may not solicit or receive any funds in the form of a loan with a promise or expectation that the funds will be repaid to the contributor. If a contributor made a seed money contribution to a candidate, the amount of the seed money contribution shall count toward the contribution limit for the primary election. For a replacement candidate or candidate in a special election, a seed money contribution shall count toward the contribution limit for the election in which the candidate is running.
 - C. **Apportioning reductions in public funds payments.** Upon determining the amount of the projected shortfall, the Commission shall then determine the amount and apportionment of the reductions in payments to certified candidates.
 - D. **Campaign contributions to replace matching funds.** *[Repealed]*
 - E. **Written notice to candidates.** The Commission shall notify participating and certified candidates in writing of any projected shortfall in the Fund and specify timelines and procedures for compliance with this subsection in the event of a shortfall.
 - F. **Procedures for candidates.** The candidate shall deposit any authorized contributions into the campaign account into which Maine Clean Election Act funds have been deposited, ~~except funds which must be deposited in a separate account under paragraph D.~~ The candidate shall disclose all contributions

received in regular campaign finance reports. The Commission's expenditure guidelines for Maine Clean Election Act funds apply to the spending of the contributions authorized under this subsection.

- G. **Disposing of surplus campaign funds.** After the election, the candidate must return any surplus campaign funds which the candidate was authorized to spend to the Commission upon the filing of the 42-day post-election report except for any money retained for purposes of an audit by the Commission pursuant to section 7, subsection 2(B). If the candidate has collected campaign contributions which the candidate was not authorized to spend, the candidate may dispose of those funds within 60 days after the election by returning them to the contributors, donating them to the Maine Clean Election Fund, or by making an unrestricted gift to the State. All expenditures of surplus campaign funds must be disclosed in campaign finance reports in accordance with 21-A M.R.S.A. § 1017.
- H. **Effect of fundraising on matching funds calculation.** *[Repealed]*

SECTION 5. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES

1. Fund Distribution

- A. **Establishment of Account.** Upon the certification of a participating candidate, the Commission will establish an account with the Office of the Controller, or such other State agency as appropriate, for that certified candidate. The account will contain sufficient information to enable the distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund.
- B. **Manner of Distribution of Fund.** The Commission will authorize distribution of revenues from the Fund to certified candidates in accordance with the time schedule specified in the Act [§§1125(7), (7)(B) & (8-B) - (8-F)] by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund. Such means may include, but are not limited to:
- (1) checks payable to the certified candidate or the certified candidate's political committee; or
 - (2) electronic fund transfers to the certified candidate's or the certified candidate's political committee's campaign finance account.
- C. **Coordination with Other State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.

SECTION 6. DISTRIBUTION OF SUPPLEMENTAL FUNDS

A certified candidate may be eligible to receive payments of supplemental funds in the amounts established in 21-A M.R.S.A. §§ 1125(8-C) – (8-D) and at the times established in 21-A M.R.S.A. §§ 1125(7-B) & (8-E). To receive a distribution of supplemental funds, a certified candidate must submit to the Commission additional qualifying contributions in compliance with the requirements of 21-A M.R.S.A. § 1125(8-E) and this section.

1. **Additional Qualifying Contributions.** Each submission of additional qualifying contributions must include the following documents:
 - A. the additional qualifying contributions attached to the corresponding original receipt and acknowledgement forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking and the receipt and acknowledgement forms for any additional qualifying contributions collected on the Commission's online qualifying contribution service;
 - B. a list of the first and last names of all individuals making additional qualifying contributions, the individual's town or city, the date of the submission of the additional qualifying contribution to the Commission, and a notation indicating all additional qualifying contributions collected on the Commission's online qualifying contribution service.
 - (1) The list must include all additional qualifying contributions being submitted and all qualifying contributions previously submitted and must be sorted alphabetically by last name.
 - (2) The list must be provided to the Commission in an electronic spreadsheet or table format. Acceptable formats are Microsoft Excel or Microsoft Word. Other formats that can be converted to a spreadsheet format (Excel or .csv) may be acceptable. Handwritten or scanned lists are not acceptable; and
 - C. a completed and signed submission form provided by the Commission.

A submission of additional qualifying contributions will not be considered complete and will not be reviewed by the Commission unless the submission includes all the required documents.

2. **Payment of Supplemental Funds.** Within three business days of certifying that a certified candidate has submitted the required number of valid additional qualifying contributions to be eligible to receive a payment of supplemental funds under the Act [§§ 1125(8-C) – (8-D)], the Commission will authorize a payment of supplemental funds in an amount based on number of valid additional qualifying contributions.

SECTION 67. LIMITATIONS ON CAMPAIGN EXPENSES

A certified candidate ~~must~~ shall:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts;
2. not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§1125(2) and §1125(13)];
3. use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use;
4. not use revenues distributed from the Fund to purchase goods to sell for profit;
5. not spend more than the following amounts of Fund revenues on post-election parties, thank you notes, or advertising to thank supporters or voters:
 - A. \$250 for a candidate for the State House of Representatives;
 - B. \$750 for a candidate for the State Senate; and
 - C. \$2,500 by a gubernatorial candidate.

The candidate may also use his or her personal funds for these purposes; ~~and~~

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission; and
7. not make any payment of more than \$50 in cash. Payments of more than \$50 in Maine Clean Election Act funds must be made by check, debit or credit card or wire transfer.

[Sections 7 and 8 would be renumbered to 8 and 9]

**John Brautigam
for Maine Citizens for Clean Elections**

**Rulemaking Public Hearing
Maine Commission on Governmental Ethics and Election Practices
December 16, 2015**

I am pleased to present these brief comments on behalf of Maine Citizens for Clean Elections.

Maine Citizens for Clean Elections is a 501(c)3 nonprofit organization dedicated to educating and engaging the public on matters of money in politics and campaign finance law, and to encouraging citizens to participate in our electoral system and in government to make ours a more politically responsive democracy.

As you probably know, MCCE wrote and sponsored the legislation enacted by voter initiative last month. In fact, the organization and many of its members, including myself, were deeply involved in the original rulemaking by the Commission following the 1996 enactment of the Maine Clean Election Act.

* * *

With the enactment of this second citizen initiative, a new chapter in the history of the Maine Clean Election Act is now beginning. Although Clean Elections enjoyed an historic and highly successful start, the program was diminished by an unfortunate court decision, as well as policy-makers' decisions to re-purpose some of the funds intended for the program. MCCE undertook a two-year process to review the law and develop options to address these concerns, and then drafted the initiative that appeared as Question 1 on the ballot last month.

We were very gratified that voters adopted the measure by a double-digit margin – approximately the same approval level achieved in 1996 when the original bill was passed by the voters. There is now a strong public mandate for a robust but accountable public funding system for Maine legislative and gubernatorial candidates.

The new bill also strengthens disclosure, gives the Commission greater latitude in imposing fines and penalties, and brings transparency to the fundraising activities conducted by newly elected gubernatorial administrations.

All of these changes will add to the legacy of Maine as a laboratory of democracy, and give continued hope to those who want to ensure that government of, by and for the people is still possible.

* * *

Our general view on Commission rulemaking is that the rules should give full effect to the voters' intention in enacting this measure without departing from the statutory language.

The rules should also be clear and accessible so that no confusion arises among the public, candidates, and other stakeholders who will be referring to the rules in the coming years. Clear rules mean high compliance and reduced burden on Commission staff, as well as campaign staff who are often volunteers.

The rules should also anticipate, to the greatest extent possible, that political actors may seek to exploit any crack or crevice in order to obtain an electoral advantage. We hope the rules will be clear and comprehensive, and not easily be thwarted by such tactics.

We believe the proposed rules meet most of these goals. And we commend Jonathan Wayne and Paul Lavin, along with other Commission staff, for their work on this in a relatively short time frame.

* * *

Now I'd like to comment on a couple of specific portions of the proposed rules.

I. Chapter 1, Section 7(12) - Disclosure of top funders in paid communications

This proposed rule will govern the disclosure of top three funders of independent expenditures. This is probably the most crucial provision in the proposed rules. We expect that the great majority of the entities that will need to understand this rule will be PACs and the political party committees.

As applied to a political party committee, this top funder requirement seems quite clear. There are no limits on the size of contributions to the parties, and they typically receive large contributions each election cycle. If the party makes an independent expenditure that triggers the top three funders provision, it is not difficult to identify those funders simply using the information already routinely disclosed and reported.

A political action committee making independent expenditures, however, requires a somewhat different analysis. There are a variety of different situations that trigger the PAC requirement in Maine law. For at least some of these situations, it is best to think of the PAC as a reporting requirement for an existing entity, and *not* only or always a requirement to form a separate entity.

There are at least three situations that illustrate the ambiguity in existing law about what exactly is the "entity" that is making the independent expenditure. The Commission should consider these examples when deciding how to craft a strong final rule – one that can withstand any possible attempt to minimize or nullify the effect of the law:

- First, the rules should encompass the situation where a bogus entity is created exclusively for the purpose of concealing the true funder from the disclosure requirement. We would like to see the rules disregard the artificial entity – or any chain of them – for purposes of

identifying and disclosing the actual funder behind an independent expenditure communication.

- Second, where a PAC is a separate *fund* within an entity, and otherwise has *no separate formal legal existence*, the PAC should not be allowed to claim that the *entity* is its funder, and especially not its sole or dominant funder. Instead, the disclosure requirement should be satisfied only by listing contributors to the entity itself.
- Third, where one entity is a legal subsidiary of another or is wholly controlled by another entity, and receives all or the great majority of its funding from the other entity, it should not be treated as a separate entity for purposes of determining the top three funders.

There may be other circumstances which could be exploited by someone determined to evade disclosure, but these three examples illustrate why this rule needs to be as strong as possible so that the voters' intention in enacting this disclosure regime is not thwarted or circumvented.

We are more than happy to work with the Commission and staff to address these examples with regulatory language.

II. Chapter 3, Section 2(4)(I), (J) and (K) - Non-Compliant or Fraudulent Qualifying Contributions; Additional Compliance Procedures for Gubernatorial Candidates

This portion of the rule will enhance stakeholder understanding and compliance. It provides appropriate guidance for instances where a candidate claims to receive a qualifying contribution in cash, but the Commission has reason to suspect that the contributor did not in fact provide the cash. It holds campaigns to a high standard, yet allows the flexibility to ensure that a candidate who exercises due diligence is not unfairly penalized for the behavior of staff or volunteers. Finally, gubernatorial candidates are required to appoint a compliance officer and submit a staff training and compliance plan addressing topics set out by the Commission.

These measures deter fraud and abuse while strengthening the Commission's ability to investigate and remedy misconduct. We support them as an appropriate means of protecting the public trust that is placed in the Clean Election system.

III. Chapter 3, Sections 2(4)(L) & (M) - Paid Staff Time and Other Assistance Provided to Candidates

Under current law, a paid employee of a political party may work for a candidate for up to 40 hours in an election without the work being considered a contribution to that candidate. Employees of PACs or other entities are not given this exemption.

In the rules proposed by the Commission, paid staff time (or other expenses) for collecting qualifying contributions is considered an in-kind contribution to the candidate unless it is paid for by directly by the candidate committee. Since an in-kind contribution from a PAC is prohibited for Clean Elections candidates, and a contribution of staff time from a party is addressed elsewhere, there may be some confusion here, and an opportunity for clarification.

In providing that clarification, this rule should be guided by the following principles:

- Volunteer political activity is very important in a democracy and in the Clean Election system. Bona fide unpaid efforts should not be restricted in any way, but should be encouraged.
- Paid employees generally cannot assist a candidate in collecting qualifying contributions, or in overseeing others who collect qualifying contributions, except for the 40-hour political party exception described above.
- A candidate should not be able to pledge unearned future MCEA payments to pay for his/her own employees (or those of another entity) to collect qualifying contributions. Paying a person to collect qualifying contributions is within the letter of the law, but only if the money is already in hand.

Conclusion

Thank you for undertaking this rulemaking and for listening to our comments. We will share additional thoughts shortly, and MCCE will submit written comments by the deadline of January 4, 2016, including a few suggestions for revising the language circulated by Commission staff.

**IRWIN
&
TARDY
MORRIS**

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January 4, 2016

Via Email Only: Jonathan.Wayne@maine.gov

Jonathan Wayne, Executive Director
Commission On Governmental Ethics
And Election Practices
135 State House Station
Augusta, ME 04333

RE: *Comment on Proposed Rule Amendments*

Dear Mr. Wayne:

I am writing on behalf of the Maine Senate Republican Caucus and ask that you please accept this letter as the Caucus's comments on the Ethics Commission's proposed amendments to the Commission's Rules. Specifically, the Caucus would like to provide comment on proposed rule Section 2(4)(J), concerning the responsibility of candidates for submitting non-compliant or fraudulent qualifying contributions to the Commission.

First and foremost, the Senate Republican Caucus wholeheartedly agrees that it is important to protect the integrity of taxpayer dollars by ensuring that candidates for public office are legitimately collecting the qualifying contributions required to be eligible for Maine Clean Election funds. However, the proposed rule change places an excessive burden on candidates by creating a presumption that the candidate personally verified the validity of all qualifying contributions and holding the candidate strictly responsible for noncompliant contributions. Although the proposed rule makes the presumption of responsibility for noncompliant contributions rebuttable, it nevertheless places the burden on the candidate to establish evidence to prove to the Commission that: (1) the candidate exercised due diligence in the collection and submission of the qualifying contributions; (2) had no involvement in the collection of the noncompliant contribution; and, (3) had no knowledge of the circumstances under which the noncompliant contribution was made. The proposed rule is silent on what constitutes "due diligence" by a candidate.

The Maine Legislature is a citizens' legislature that requires lawmakers to sacrifice a great deal of personal time to serve the people of the State of Maine. The same is true for candidates running for state office. One of the purposes of the Maine Clean Election Act (MCEA) was to attract a broader field of candidates for public office by reducing the burden of fundraising for a campaign by providing public funding for qualifying candidates. The section 2(4)(J) amendment, as proposed,

does the opposite and adds additional burdens on candidates who are attempting to utilize MCEA funds by collecting qualifying contributions. The proposed amendment holds candidates ultimately responsible for all noncompliant qualifying contributions collected on the candidate's behalf. Moreover, the candidate is also held individually responsible for ensuring that all individuals collecting qualifying contributions receive adequate training in the procedures for collecting those contributions. Because collecting qualifying contributions is both time consuming and challenging, as it should be, candidates often must rely on volunteers and supporters to help gather the requisite qualifying contributions necessary to qualify for MCEA funds. By creating a presumption that the candidate is responsible for the actions of a rogue volunteer or supporter, the Commission is creating an additional burden on candidates that is impracticable and unnecessary.

As pointed out by the Commission in its request for comments on these proposed rule changes, the overwhelming majority of candidates and volunteers follow the correct procedures for collecting qualifying contributions. Over the past several elections, it was rare for the Commission to see that individuals were submitting falsified qualifying contributions. In those instances, the Commission was able to investigate the matter and impose a strict penalty—denial of MCEA funds to the candidate. The Commission can also refer these cases to the Attorney General's office for criminal prosecution. Given that the submission of fraudulent qualifying contributions is rare, and that the Commission can already investigate candidates and volunteers if they suspect someone is engaging in the submission of noncompliant contributions, placing additional burdens on candidates as proposed by the section 2(4)(J) amendment is unwarranted.

Thank you for your time and consideration in considering these comments regarding the Commission's proposed rule changes.

Sincerely,

/s/ Robert W. Weaver

Robert W. Weaver, Esq.

From: John Brautigam [mailto:jblaw@maine.rr.com]
Sent: Monday, January 4, 2016 3:33 PM
To: Wayne, Jonathan
Subject: Rulemaking Comments

Good afternoon, Jonathan.

I'm writing in regard to the rulemaking underway for disclosure and other changes to Chapter 1 and Chapter 3 of the Commission's rules.

Attached please find some suggested language for the Commission's consideration. This is to supplement the written comments we provided at the Commission meeting last month.

In addition to this written submission, we are ready and available to talk further with you at any time as you work to finalize the rules, if that would be helpful.

Also, if possible, we'd be interested to see any comments filed by other persons as well.

Many thanks.

Cordially yours,

John

John Brautigam
1 Knight Hill Road
Falmouth, ME 04105
207-671-6700
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On behalf of Maine Citizens for Clean Elections

Chapter 1: PROCEDURES

SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

SECTION 7. EXPENDITURES

...

12. Disclosure of top funders in paid communications. If an organization makes an independent expenditure in excess of \$250 to influence a candidate's election, the communication is required to contain the organization's top three funders under Title 21-A, section 1014, subsection 2-B.

- A. The disclosure included in a cable television or broadcast television communication must conform with those portions of federal regulations 47 CFR § 73.1212(a)(2)(ii) and 47 CFR § 76.1615(a) which regulate text size and duration of sponsorship information. Specifically, the text must
1. the font size must be equal to or greater than four percent of the vertical picture height, and
 2. the text must appear for not less than four seconds.
- B. For communications listed in Title 21-A, section 1014, subsection 2-B with a visual aspect other than television or video communications, the statement of funders must appear in a font size that is 12-point or larger.
- C. For a political action committee consisting of a separate or segregated fund (as defined in Title 21-A, section 1052, subsection (5)(A)(1)) an organization that has a major purpose other than influencing an election in Maine has established a PAC, the communication must contain the top three applicable number of funders are the top three funders of the corporation, membership organization, cooperative or labor or other organization that established the fund organization that established the PAC.
- D. For any other political action committee, the top three funders are the contributors who have given the top three aggregate contributions, as defined in Title 21-A, section 1052(3).
- D. An entity making an independent expenditure may disregard any funds that the entity can show were used for purposes unrelated to the candidate mentioned in the communication on the basis that the funds were either spent in the order received or were strictly segregated in other accounts.

Communications for which including the statement required by Title 21-A, section 1014, subsection 2-B would be impossible or impose an unusual hardship due to their format or medium are exempt from the requirements of that section.

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General.** Any person, party committee, political committee or political action committee that makes ~~an any~~ independent expenditure ~~aggregating~~ in excess of ~~\$250~~ ~~\$100~~ per candidate in an election must file a report with the Commission according to this section.
2. **Definitions.** For purposes of this section, the following phrases are defined as follows:
 - A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
 - B. "Expressly advocate" means any communication that
 - (1) uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"; or
 - (2) is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.
 - C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
3. **Reporting Schedules.** Independent expenditures in excess of \$250 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following ~~provisions~~ schedule:
 - A. ~~Independent expenditures aggregating in excess of \$100 \$per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, unless required to be reported according to the schedule in paragraph B.~~
 - (1) ~~Quarterly Reports. [Repealed]~~
 - (1-A) ~~60-Day Pre-Election Report. A report must be filed by 11:59 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.~~

~~(1 B) **11 Day Pre Election Report.** A report must be filed by 11:59 p.m. on the 11th day before the election is held and be complete as of the 14th day before the election.~~

~~If the total of independent expenditures made to support or oppose a candidate exceeds \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure according to the schedule in this paragraph or paragraph B.~~

B. ~~Independent expenditures aggregating in excess of \$250 per candidate made during the sixty days before an election must be reported within two calendar days of those expenditures.~~

~~[NOTE: WHEN THE CUMULATIVE AMOUNT OF EXPENDITURES TO SUPPORT OR OPPOSE A CANDIDATE EXCEEDS \$250, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED WITH THE COMMISSION WITHIN TWO DAYS OF GOING OVER THE \$250 THRESHOLD.~~

~~FOR EXAMPLE, IF AN INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES THREE EXPENDITURES OF \$100 IN SUPPORT OF A CANDIDATE ON SEPTEMBER 8TH, SEPTEMBER 13TH, AND SEPTEMBER 29TH, FOR AN ELECTION ON NOVEMBER 6, 2012, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 1ST. THE THIRD EXPENDITURE OF \$100 MADE THE CUMULATIVE TOTAL OF EXPENDITURES EXCEED \$250 AND THE TWO DAY REPORTING REQUIREMENT WAS TRIGGERED ON SEPTEMBER 29TH. THE REPORT MUST INCLUDE ALL THREE EXPENDITURES.~~

~~AFTER SEPTEMBER 29TH, IF THAT INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES ADDITIONAL EXPENDITURES TO SUPPORT THAT CANDIDATE, THE REQUIREMENT TO FILE AN INDEPENDENT EXPENDITURE REPORT WITHIN TWO DAYS WILL APPLY ONLY IF THE CUMULATIVE TOTAL SPENT AFTER SEPTEMBER 29TH EXCEEDS \$250. FOR EXAMPLE, IF THE INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES TWO PAYMENTS OF \$200 TO PROMOTE THE CANDIDATE ON OCTOBER 8TH AND OCTOBER 13TH, ANOTHER INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 15TH DISCLOSING THOSE TWO EXPENDITURES.]~~

~~Independent expenditures aggregating in excess of \$100 per candidate made after the 14th day before an election must be reported within one calendar day of those expenditures.~~

(1) **60-Day Pre-Election Report.** A report must be filed by 11:59 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.

(2) **Two-Day Report.** From the 60th day through the 14th day before an election, a report must be filed within two calendar days of the expenditure.

(3) **One-Day Report.** After the 14th day before an election, a report must be filed within one calendar day of the expenditure.

For purposes of the filing deadlines in this paragraph, if the expenditure relates to a legislative or gubernatorial election and the filing deadline occurs on a weekend, holiday, or state government shutdown day, the report must be filed on the deadline. If the expenditure relates to a county or municipal election, the report may be filed on the next regular business day.

- C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate.
 - D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.
 - E. An independent expenditure report may be provisionally filed by facsimile or by electronic mail to an address designated by the Commission, as long as the facsimile or electronic copy is filed by the applicable deadline and an original of the same report is received by the Commission within five calendar days thereafter.
4. **Multi-Candidate Expenditures.** When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.
- A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.
- [NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]
- B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]

5. **Rebuttable Presumption.** Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate ~~in a race involving a Maine Clean Election Act candidate~~ and that is disseminated during the ~~21~~ 28 days before a primary election ~~and~~, the 35 days before a ~~general~~ special election or from Labor Day to the general election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

- A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) Printed advertisements in newspapers and other media;
- (2) Television and radio advertisements;
- (3) Printed literature;
- (4) Recorded telephone messages;
- (5) Scripted telephone messages by live callers; and
- (6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.

- B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate, the candidate's immediate family, or a political committee;
- (2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;
- (3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;

-
- (4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
- (5) other communications and activities that are excluded from the legal definition of “expenditure” in the Election Law.
- C. If an expenditure is covered by the presumption and is greater, ~~in the aggregate,~~ than ~~\$100~~\$250 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. ~~Any independent expenditures aggregating of \$100~~\$250 or less per candidate per election ~~does~~ not require the filing of an independent expenditure report or a rebuttal statement.
- D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the applicable ~~21-day or 35-day presumption~~ period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.
- E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.
- F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.
- G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

SECTION 1. APPLICABILITY

This chapter applies to candidates running for Governor, State Senator and State Representative who choose the alternative campaign financing option established by the Maine Clean Election Act for elections to be held beginning in the year 2000. Candidates participating in the Maine Clean Election Act must comply with these rules and all other applicable election and campaign laws and regulations. Some sections in this chapter also apply to and impose obligations on privately financed candidates and political committees that raise contributions and make expenditures in races involving Maine Clean Election Act candidates.

SECTION 2. PROCEDURES FOR PARTICIPATION

1. **Declaration of Intent.** A participating candidate must file a Declaration of Intent within five days of collecting qualifying contributions. The Commission will provide a form for this purpose.
2. **Content.** The Declaration of Intent must include the following information:
 - A. an affirmation that the candidate is seeking certification as a Maine Clean Election Act candidate;
 - B. an affirmation that the candidate understands that any qualifying contributions collected more than five days before filing the Declaration of Intent will not be counted toward the eligibility requirement;
 - C. an affirmation that the candidate has not accepted any contributions, except for seed money contributions, after becoming a candidate;
 - D. an affirmation that the candidate has disposed of any campaign surplus before becoming a candidate for the new election, as required by paragraph 3.C [Campaign Surplus] of this section;
 - E. an affirmation that if the candidate has any campaign deficit, that the candidate will not accept contributions to repay that deficit as a participating candidate or certified candidate, except that the candidate may forgive any campaign loans to himself or herself made during any previous campaigns;
 - F. an affirmation that the candidate will continue to comply with applicable seed money restrictions and other requirements of the Act including, but not limited to, procedures for collecting qualifying contributions;
 - G. an affirmation that the candidate has read and will comply with the Commission's guidelines on permissible expenditures; and

- H. authorization by the candidate for the Commission, its agents or representatives to conduct financial audits of the candidate's campaign financial records and account(s).

3. **Seed Money Restrictions**

- A. **General.** After becoming a candidate and before certification, a participating candidate may collect and spend only seed money contributions. The restrictions on seed money contributions apply to both cash and in-kind contributions.
- B. **Total Amount**
- (1) A participating candidate must limit the candidate's total seed money contributions to the following amounts:
 - (a) two hundred thousand dollars for a gubernatorial candidate;
 - (b) ~~one thousand five hundred~~ three thousand dollars for a candidate for the State Senate; or
 - (c) ~~five hundred~~ one thousand dollars for a candidate for the State House of Representatives.
 - (2) Notwithstanding any other provision of this chapter, a candidate may carry forward to a new candidacy of that candidate campaign equipment or property, subject to the reporting requirements of Title 21-A, chapter 13 [Campaign Reports and Finances].
 - (3) The Commission periodically will review these limitations and, through rulemaking, revise these amounts to ensure effective implementation of the Act.
- C. ~~**Required seed money for gubernatorial candidates.** In addition to the other requirements for certification, a candidate for Governor seeking to qualify for Maine Clean Election Act funding shall collect at least \$40,000 in seed money contributions from registered voters in Maine. Only cash seed money contributions count toward the \$40,000 requirement. The candidate shall obtain documentation of the contributions as required by the Act [§1125(2-B)].~~
- D. **Campaign surplus.** A candidate who has carried forward campaign surplus according to Title 21-A, chapter 13, subchapter II [§1017(8) and §1017(9)], and who intends to become a participating candidate, must dispose of campaign surplus in accordance with the requirements of Title 21-A, chapter 13, subchapter II [§1017(8)]; provided, however, that a candidate may carry forward only those portions of campaign surplus that comply with the provisions of this Act regarding seed money contributions [§§ 1122(9) and 1125(2)]. Any campaign surplus (excluding campaign equipment or property) carried forward under this provision will be counted toward that candidate's total seed money limit.

INFORMATIONAL NOTE: The Commission will provide educational materials to all former candidates who have a campaign surplus describing the requirement that individuals must dispose of campaign surplus to remain eligible for participation as a Maine Clean Election Act candidate.

- E. **Return of Contributions Not in Compliance with Seed Money Restrictions.** A participating candidate who receives a contribution exceeding the seed money per donor restriction or the total amount restriction must immediately return the contribution and may not cash, deposit, or otherwise use the contribution.
- F. **Case-by-Case Exception.** A participating candidate who has accepted contributions or made expenditures that do not comply with seed money restrictions may petition the Commission to remain eligible for certification as a Maine Clean Election Act candidate. The Commission may approve the petition and restore a candidate's eligibility for certification if the candidate successfully establishes all of the following criteria:
- (1) the failure to comply was the result of an unintentional error;
 - (2) the candidate immediately returned all contributions that did not comply with seed money restrictions or paid for goods or services contributed that did not comply with seed money restrictions;
 - (3) the candidate petitioned the Commission promptly upon becoming aware of the unintentional error; and
 - (4) the failure to comply did not involve expenditures by the participating candidate significantly in excess of seed money total amount restrictions or otherwise constitute systematic or significant infractions of seed money restrictions.
- G. After becoming a candidate and prior to certification, accepting a loan from any source including a financial institution and spending money received in the form of a loan, are violations of the seed money restrictions of the Act.
- H. **Other.** A seed money contributor may also make a qualifying contribution to the same participating candidate provided that the contributor otherwise meets the requirements for making a qualifying contribution.

4. **Qualifying Contributions**

- A. **General.** A participating candidate may collect qualifying contributions only during the relevant qualifying period for certification and the relevant period for additional qualifying contributions [§§ 1122(8) and 1125(8-E)]. Qualifying contributions collected more than five days before filing a Declaration of Intent with the Commission will not be counted toward the eligibility requirement for any purpose. Qualifying contributions must be acknowledged by the person making the contribution and reported on forms provided by the Commission.

The forms must include:

- (1) the name, residential address and signature of the contributor;
- (2) an affirmation by the contributor that the contribution was made with his or her personal funds, in support of the candidate and that the contributor did not receive anything of value in exchange for his or her signature and contribution;
- (3) a clear and conspicuous statement that the candidate is collecting signatures and qualifying contributions in order to obtain public funding to finance the candidate's campaign;
- (4) the signature of the municipal registrar or his or her designee verifying the voter registration of the contributors listed on the form; and
- (5) an affirmation by the person who circulated the form that the circulator collected the contribution, that to the best of the circulator's knowledge and belief the contribution came from the personal funds of the contributor, that nothing was provided to the contributor in exchange for the contribution, and any additional information required by the Commission in order to protect the reliability of the qualification process. Contributions made through the Commission's online qualifying contribution service do not require a circulator's affirmation.

B. **Required Number of Qualifying Contributions.** A participating candidate must obtain the number of qualifying contributions for certification during the qualifying period as required by the Act [§1122(7); §1122(8); §1125(3)].

C. **Exchanges for Qualifying Contributions Prohibited**

- (1) A ~~participating~~ candidate or an agent of that candidate may not give or offer to give a payment, gift, or anything of value in exchange for a qualifying contribution.
- (2) This provision does not prohibit a ~~participating~~ candidate or that candidate's agent from collecting qualifying contributions at events where food or beverages are served, or where campaign promotional materials are distributed, provided that the food, beverage, and campaign materials are offered to all persons attending the event regardless of whether or not particular persons make a qualifying contribution to the ~~participating~~ candidate.
- (3) This provision does not prohibit a candidate from using seed money to pay the fee for a money order provided the qualifying contributor pays the \$5 amount reflected on the money order as permitted by 21-A M.R.S.A. §1125(3).

D. **Checks Drawn on Business Accounts.** Qualifying contributions must be made with the personal funds of the contributor. The Commission will not count a check drawn from an account with a business name toward the eligibility requirements, unless the name of the contributor is included in the name of the

account or the candidate submits a written statement from the contributor indicating that he or she uses the business account for personal expenses.

- E. **Family Members.** Family members, domestic partners, and live-in caregivers who reside in a single household may make qualifying contributions in the form of a single check or money order of more than \$5 provided that:

- (1) all contributors sign the receipt and acknowledgement form;
- (2) all contributors are registered to vote at the address of the household; and
- (3) all contributions are made with the personal funds of the contributors.

For a qualifying contribution to be considered valid, the contributor must affirm that the contribution was made with his or her personal funds, in support of the candidate and that the contributor did not receive anything of value in exchange for his or her signature and contribution. The affirmation may not be made by a family member, domestic partner or live-in caregiver, unless the contributor is unable to sign the form due to a physical impairment.

- F. **Verification of Registered Voters**

- (1) Before submitting qualifying contributions to the Commission, a ~~participating~~ candidate must establish that contributors who made qualifying contributions to that candidate are registered voters.
- (2) For qualifying contributions made by check or by money order, a ~~participating~~ candidate must obtain written verification from the Registrar of the number of persons providing qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.
- (3) For qualifying contributions made over the Internet, the Commission may establish an automated system by which the contributor can verify his or her voter registration based on data derived from the Central Voter Registration System. If the contributor is unable to verify the voter registration, the ~~participating~~ candidate must obtain written verification from the Registrar.
- (4) Upon request of a ~~participating~~ candidate, and within 10 business days after the date of the request, the Registrar must verify the names of contributors of qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.

- G. **Timing of Verification.** For purposes of this chapter, the Commission will deem verification of registered voters by the Registrar at any time during the qualifying period for certification or the relevant period for additional qualifying contributions [§§ 1122(8) and 1125(8-E)] to be an accurate verification of voter registration even if the registration status of a particular voter may have changed at the time the Commission determines certification of the participating candidate or before the additional qualifying contribution is submitted to the Commission.

Proof of voter verification submitted after the qualifying period for certification will not be accepted by the Commission and those qualifying contributions will not be counted toward the number required for certification.

- H. Online Qualifying Contribution Service.** The Commission may establish an online service for members of the public to make qualifying contributions in support of candidates seeking Maine Clean Election Act funding. To make an online qualifying contribution, the contributor must use the Commission's procedures to affirm that the contributor made a contribution from their personal funds in support of the candidate and that the contributor did not receive anything of value in exchange for his or her contribution. The affirmation and the payment must be made and submitted by the contributor and not by any other person. Assistance may be provided to a contributor in using the online service, as long as the assistance is provided in person and the contributor personally makes the affirmation and submits the online payment. A candidate and or any person collecting qualifying contributions on behalf of a candidate may not collect the required information from the contributor by phone or any other means, other than in person contact, and enter it the contributor's information into the online service on behalf of the contributor.
- I. Fraudulent qualifying contributions.** If the Commission staff reasonably believes that fraudulent qualifying contributions have been submitted to the Commission, the staff shall undertake an investigation to determine whether the qualifying contributions are fraudulent. The Commission staff may request investigative assistance from the Office of the Maine Attorney General or refer the matter for possible criminal prosecution. For purposes of this chapter, "fraudulent qualifying contributions" includes, but is not limited to, asking an individual to sign a Receipt and Acknowledgement form as a contributor when the individual did not make a qualifying contribution, giving money or something of value to someone in exchange for making a qualifying contribution, making false statements in the circulator section of a Receipt and Acknowledgement form, or signing the name of another person in the contributor section of the Receipt and Acknowledgement form unless the person signing the form does so on behalf of a family member who authorizes the signature but is unable to sign due to a physical impairment.
- J. Compliance; oversight.** If a candidate has other individuals collect qualifying contributions on the candidate's behalf, the candidate is responsible for ensuring that these individuals receive adequate training in the procedures for collecting qualifying contributions. The candidate must exercise due diligence to ensure that all qualifying contributions submitted to the Commission on the candidate's behalf comply with requirements of the Act and the Commission's rules. A candidate is presumed to have verified the validity of all qualifying contributions submitted to the Commission on the candidate's behalf and to be responsible for noncompliant qualifying contributions. A candidate may rebut the presumption if the Commission determines by a preponderance of evidence that the candidate had exercised due diligence (including appropriate training and instruction for staff and volunteers) in the collection and submission of qualifying contributions, had no involvement with the collection of the noncompliant qualifying contribution, and had no knowledge of the circumstances under which the noncompliant qualifying contribution was made. For the purpose of rebutting the presumption, the term "candidate" includes an agent of the candidate or the candidate's committee, including a gubernatorial candidate's compliance officer.

K. Compliance by gubernatorial candidates. Within three weeks of declaring an intention to qualify for Maine Clean Election Act funding, candidates for Governor must appoint one or more compliance officers who will oversee the collection of qualifying contributions and must submit a compliance plan for training and oversight of persons collecting qualifying contributions. The compliance plan must describe the procedures for

- (1) training the circulators who will be collecting qualifying contributions,
- (2) minimizing the risk of error or fraud by communicating with circulators during the collection process to verify that ~~the circulator received personal funds from each contributor listed in qualifying papers provided personal funds,~~ nothing of value was provided to the contributor, and every contributor personally made the required acknowledgment by signing a paper form or completing the online procedure for making a qualifying contribution,
- (3) the compliance officer's personal verification with each circulator that he or she complied with required procedures before the campaign's acceptance of qualifying contributions from that circulator, and
- (4) responding appropriately when receipt and acknowledgement forms have been completed erroneously or fraudulent qualifying contributions have been collected through investigating the extent of the error or fraud and taking remedial action to avoid risk of future error or fraud, and in the case of suspected criminal activity, reporting to the appropriate law enforcement authority.

L. Collection of qualifying contributions by paid staff. ~~If a~~ No person other than the candidate party committee or other person may compensate others for collecting qualifying contributions on behalf of a candidate, the paid staff time constitutes an in-kind contribution to the candidate, except that paid staff of a party committee may provide limited assistance to a candidate pursuant to ~~unless specifically the~~ exemption under Title 21-A M.R.S.A. §§ 1012(2)(B)(7)(A) and 1052. ~~s~~

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M. Only currently available funds. If a candidate compensates any person or entity for collecting qualifying contributions, the compensation must be from funds currently available to the candidate's campaign. A candidate may not agree to make payment for collection of qualifying contributions from funds not currently available but anticipated to become available upon submission of the qualifying contributions collected.

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NM. Volunteer assistance with collecting qualifying contributions, from political party committees and political action committees.

A candidate may receive volunteer assistance with the collection of qualifying contributions provided that any person organizing the volunteers is also a volunteer or is entitled to the political party staff exemption in Title 21-A M.R.S.A. § 1012(2)(B)(7)(A), assistance from a political party committee or a political action committee to collect qualifying contributions provided that political party committee or political action committee incurs no expense for providing the assistance or any cost associated with the assistance is excepted from the

~~definitions of contribution and expenditure in 21-A M.R.S.A. §§ 1012 and 1052. Otherwise, the candidate must reimburse the committee for the cost of the assistance provided.~~

SECTION 3. CERTIFICATION OF PARTICIPATING CANDIDATES

1. **Request for Certification.** A participating candidate may submit a completed request for certification to the Commission at any time during the qualifying period but not later than 5:00 p.m. on the last day of the relevant qualifying period. The request will be deemed complete and considered for certification only when the candidate has submitted to the Commission:
 - A. the qualifying contributions attached to the corresponding original receipt and acknowledgement forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking;

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- B. a list of all individuals making qualifying contributions and their town or city of residence, sorted alphabetically by the contributor's last name;
 - ~~C. for gubernatorial candidates, the following documentation for required seed money contributions as required by the Act (§1125(2-B)): the acknowledgement forms signed by the contributors of seed money, list of seed money contributions, photocopies of checks or money orders received from seed money contributors, and bank or merchant account statements which list contributions made by credit or debit card;~~
 - D. a seed money report of contributions, expenditures, and obligations made or incurred after becoming a candidate, including a report of any unspent seed money; and
 - E. a signed request for certification on a form provided by the Commission which contains an affirmation by the candidate that he or she has complied with all seed money and qualifying contribution requirements, has established a separate federally-insured bank account for campaign purposes and, if applicable, that any person who circulated receipt and acknowledgement forms and collected qualifying contributions acted with the candidate's knowledge and consent, and any other information relevant to the certification process.
 - F. A candidate may request an extension of time to comply with paragraphs B, D, and E. The Commission staff shall grant all reasonable requests or state in writing the reasons for denying the request. The Commission and the Commission staff may not grant an extension of time to comply with paragraph A ~~or C.~~

- 2. **Order of Review.** The Commission will review candidate requests for certification in the order in which they are received, except that it will give priority to those candidates who are in a contested primary election.
- 3. **Unspent Seed Money.** In order to distribute funds expeditiously, the Commission will deduct from the initial distribution from the Fund to a certified candidate an amount equal to the amount of unspent seed money reported by that candidate.
- 4. **Certification.** The Commission will certify a candidate as a Maine Clean Election Act candidate upon the ~~participating~~ candidate's satisfaction of the requirements of the Act [§1125] and this chapter.
- 5. **Appeals.** Any appeals challenging a certification decision by the Commission must be in accordance with the Act [§1125(14)].

SECTION 4. FUND ADMINISTRATION

- 1. **Coordination with State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to ensure the use of timely and accurate information regarding the status of the Fund.
- 2. **Publication of Fund Revenue Estimates.** ~~By September 1st preceding each election year, the Commission will publish an estimate of revenue in the Fund available for distribution to certified candidates during the upcoming year's election. The Commission~~

will update the estimate of available revenue in the Fund after April 15th of an election year and again within 30 days after the primary election in an election year. The Commission will provide the Legislature and Governor with financial projections required under the Act [§1124(4)] and may submit legislation to request additional revenues to the Fund if the Commission determines that projected revenue will not be sufficient to meet demands.

3. **Computation of Disbursement Amounts.** ~~By July 1, 1999, and at least every 4 years after that date, the Commission will determine the amount of revenue to be distributed to certified candidates based on the type of election and office in accordance with the Act [§1125(8)]. Every two years, the Commission shall adjust the amounts of distributions made to candidates in accordance with the Act [§§ 1125(8-B) - (8-F)].~~
4. **Authorizing Contributions due to Shortfall in the Fund.**
 - A. **Authorization by Commission to accept contributions.** If the Commission determines that the revenues in the Fund may be insufficient to make payments under section 1125 of the Act, the Commission may reduce payments of public campaign funds to certified candidates and permit them to accept and spend contributions in accordance with the Act [§1125(13)] **limited to the shortfall between the amount paid that candidate and the amount for which that candidate has qualified.**
 - B. **Limitations on permitted contributions.** If permitted to accept contributions, a certified candidate may not accept a contribution in cash or in-kind from any contributor, including the candidate and the candidate's spouse or domestic partner, that exceeds \$750 per election for gubernatorial candidates and \$350 per election for State Senate and State House candidates ~~the applicable statutory contribution limit as adjusted for inflation. [§§ 1015(1) & (2)].~~ A candidate may not solicit or receive any funds in the form of a loan with a promise or expectation that the funds will be repaid to the contributor. If a contributor made a seed money contribution to a candidate, the amount of the seed money contribution shall count toward the contribution limit for the primary election. For a replacement candidate or candidate in a special election, a seed money contribution shall count toward the contribution limit for the election in which the candidate is running.
 - C. **Apportioning reductions in public funds payments.** Upon determining the amount of the projected shortfall, the Commission shall then determine the amount and apportionment of the reductions in payments to certified candidates.
 - D. **Campaign contributions to replace matching funds.** *[Repealed]*
 - E. **Written notice to candidates.** The Commission shall notify participating and certified candidates in writing of any projected shortfall in the Fund and specify timelines and procedures for compliance with this subsection in the event of a shortfall.
 - F. **Procedures for candidates.** The candidate shall deposit any authorized contributions into the campaign account into which Maine Clean Election Act funds have been deposited, ~~except funds which must be deposited in a separate account under paragraph D.~~ The candidate shall disclose all contributions received in regular campaign finance reports. The Commission's expenditure guidelines for Maine Clean Election Act funds apply to the spending of the contributions authorized under this subsection.

- G. **Disposing of surplus campaign funds.** After the election, the candidate must return any surplus campaign funds which the candidate was authorized to spend to the Commission upon the filing of the 42-day post-election report except for any money retained for purposes of an audit by the Commission pursuant to section 7, subsection 2(B). If the candidate has collected campaign contributions which the candidate was not authorized to spend, the candidate may dispose of those funds within 60 days after the election by returning them to the contributors, donating them to the Maine Clean Election Fund, or by making an unrestricted gift to the State. All expenditures of surplus campaign funds must be disclosed in campaign finance reports in accordance with 21-A M.R.S.A. § 1017.
- H. **Effect of fundraising on matching funds calculation.** *[Repealed]*

SECTION 5. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES

1. Fund Distribution

- A. **Establishment of Account.** Upon the certification of a participating candidate, the Commission will establish an account with the Office of the Controller, or such other State agency as appropriate, for that certified candidate. The account will contain sufficient information to enable the distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund.
- B. **Manner of Distribution of Fund.** The Commission will authorize distribution of revenues from the Fund to certified candidates in accordance with the time schedule specified in the Act [§§1125(7), (7)(B) & (8-B) - (8-F)] by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund. Such means may include, but are not limited to:
- (1) checks payable to the certified candidate or the certified candidate's political committee; or
 - (2) electronic fund transfers to the certified candidate's or the certified candidate's political committee's campaign finance account.
- C. **Coordination with Other State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.

2. **Timing of Fund Distributions** *[repealed]*

SECTION 6. LIMITATIONS ON CAMPAIGN EXPENSES

A certified candidate ~~must~~ shall:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts;
2. not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§1125(2) and §1125(13)];

3. use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use;
4. not use revenues distributed from the Fund to purchase goods to sell for profit;
5. not spend more than the following amounts of Fund revenues on post-election parties, thank you notes, or advertising to thank supporters or voters:
 - A. \$250 for a candidate for the State House of Representatives;
 - B. \$750 for a candidate for the State Senate; and
 - C. \$2,500 by a gubernatorial candidate.

The candidate may also use his or her personal funds for these purposes; ~~and~~

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission; ~~and~~
7. not make any payment of more than \$50 in cash. Payments of more than \$50 in Maine Clean Election Act funds must be made by check, debit or credit card, or wire transfer.

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

I.B. 1 - L.D. 806

**An Act To Strengthen the Maine Clean Election Act, Improve Disclosure and
Make Other Changes to the Campaign Finance Laws**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA c. 25, sub-c. 3 is enacted to read:

SUBCHAPTER 3

GUBERNATORIAL TRANSITION

§1051. Gubernatorial transition committee

1. Definitions. As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Commission" means the Commission on Governmental Ethics and Election Practices.

B. "Election cycle" means the period beginning on the day after the general election for any state, county or municipal office and ending on the day of the next general election for that office.

2. Transition and inaugural activities; funding. A person may solicit and accept donations for the purpose of financing costs related to the transition to office and inauguration of a new Governor. A person who accepts donations for these purposes must establish a committee and appoint a treasurer who is responsible for keeping records of donations and for filing a financial disclosure statement required by this section. All donations received must be deposited in a separate and segregated account and may not be commingled with any contributions received by any candidate or political committee or any personal or business funds of any person. An individual who has served as a treasurer of any candidate committee or political action committee in the same election cycle may not serve as treasurer of a gubernatorial transition committee.

3. Registration with the commission and financial disclosure statement. A committee established pursuant to this section shall register and file a financial disclosure statement with the commission as required by this subsection.

A. The committee shall register with the commission within 10 days after appointment of a treasurer. The registration must include the name and mailing addresses of the members of the committee, its treasurer and all individuals who are raising funds for the committee.

B. The financial disclosure statement must contain the names, addresses, occupations and employers of all donors who have given money or anything of value in a total amount exceeding \$50 to the committee, including in-kind donations of goods or services, along with the amounts and dates of the donations. Donors who have given donations with a total value of \$50 or less may be disclosed in the aggregate without itemization or other identification.

C. Any outstanding loan, debt or other obligation of the committee must be disclosed as a donation.

D. The financial disclosure statement must identify the amounts, dates, payees and purposes of all payments made by the committee.

E. An interim financial disclosure statement must be filed by 5:00 p.m. on January 1st following the gubernatorial election and must be complete as of 10 days prior to that date. The final financial disclosure statement must be filed by 5:00 p.m. on February 15th following the gubernatorial election and must be complete as of that date.

4. Limitation on fund-raising activity. A committee established pursuant to this section may accept donations until January 31st of the year following the gubernatorial election.

5. Prohibited donations during a legislative session. A committee established pursuant to this section may not directly or indirectly solicit or accept a donation from a lobbyist, lobbyist associate or employer during any period of time in which the Legislature is convened before final adjournment. A lobbyist, lobbyist associate or employer may not directly or indirectly give, offer or promise a donation to a committee established pursuant to this section during any period of time in which the Legislature is convened before final adjournment.

6. Anonymous donations. A committee established pursuant to this section may not accept an anonymous donation in excess of \$50.

7. Disposing of surplus funds. Prior to the filing of the final financial disclosure statement under subsection 3, paragraph E, any surplus funds remaining in the committee's account must be refunded to one or more donors, donated to a charitable organization that qualifies as a tax-exempt organization under 26 United States Code, Section 501(c)(3) or remitted to the State Treasurer.

8. Rulemaking. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, forms and procedures for ensuring compliance with this section.

9. Enforcement and penalty. The commission shall administer and enforce this subchapter. A person who violates this subchapter is subject to a civil penalty not to exceed \$10,000, payable to the State and recoverable in a civil action.

Sec. 2. 21-A MRSA §1004-C is enacted to read:

§1004-C. Enhanced penalties for violations with aggravating circumstances

Notwithstanding any maximum penalty otherwise set forth in this chapter, when assessing a penalty or monetary sanction, the commission may double the authorized penalty or monetary sanction for a violation occurring less than 28 days prior to an election day and may triple the authorized penalty or monetary sanction for a violation occurring less than 14 days prior to an election day.

Sec. 3. 21-A MRSA §1014, sub-§2-B is enacted to read:

2-B. Top 3 funders; independent expenditures. A communication that is funded by an entity making an independent expenditure as defined in section 1019-B, subsection 1 must conspicuously include the following statement:

"The top 3 funders of (name of entity that made the independent expenditure) are (names of top 3 funders)."

The information required by this subsection may appear simultaneously with any statement required by subsection 2 or 2-A. A communication that contains a visual aspect must include the statement in written text. A communication that does not contain a visual aspect must include an audible statement. This statement is required only for communications made through broadcast or cable television, broadcast radio, Internet audio programming, direct mail or newspaper or other periodical publications.

A cable television or broadcast television communication must include both an audible and a written statement. For a cable television or broadcast television communication 30 seconds or less in duration, the audible statement may be modified to include only the single top funder.

The top funders named in the required statement consist of the funders providing the highest dollar amount of funding to the entity making the independent expenditure since the day following the most recent general election day.

A. For purposes of this subsection, "funder" includes:

(1) Any entity that has made a contribution as defined in section 1052, subsection 3 to the entity making the independent expenditure since the day following the most recent general election day; and

(2) Any entity that has given a gift, subscription, loan, advance or deposit of money or anything of value, including a promise or agreement to provide money or anything of value whether or not legally enforceable, except for transactions in

which a fair value is given in return, since the day following the most recent general election day.

B. If funders have given equal amounts, creating a tie in the ranking of the top 3 funders, the tie must be broken by naming the tying funders in chronological order of the receipt of funding until 3 funders are included in the statement. If the chronological order cannot be discerned, the entity making the independent expenditure may choose which of the tying funders to include in the statement. In no case may a communication be required to include the names of more than 3 funders.

C. The statement required under this subsection is not required to include the name of any funder who has provided less than \$1,000 to the entity making the independent expenditure since the day following the most recent general election day.

D. If only one or 2 funders must be included pursuant to this subsection, the communication must identify the number of funders as "top funder" or "top 2 funders" as appropriate. If there are no funders required to be included under this subsection, no statement is required.

E. When compiling the list of top funders, an entity making an independent expenditure may disregard any funds that the entity can show were used for purposes unrelated to the candidate mentioned in the communication on the basis that funds were either spent in the order received or were strictly segregated in other accounts.

F. In any communication consisting of an audio broadcast of 30 seconds or less or a print communication of 20 square inches or less, the requirements of this subsection are satisfied by including the name of the single highest funder only.

G. If the list of funders changes during the period in which a recurring communication is aired or published, the statement appearing in the communication must be updated at the time that any additional payments are made for that communication.

H. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, forms and procedures for ensuring compliance with this subsection. Rules adopted pursuant to this paragraph must ensure that the information required by this subsection is effectively conveyed for a sufficient duration and in a sufficient font size or screen size where applicable without undue burden on the ability of the entity to make the communication. The rules must also provide an exemption for types of communications for which the required statement would be impossible or impose an unusual hardship due to the unique format or medium of the communication.

Sec. 4. 21-A MRSA §1014, sub-§4, as amended by PL 2011, c. 389, §12, is further amended to read:

4. Enforcement. A violation of this section may result in a civil penalty of no more than ~~\$5,000~~ 100% of the amount of the expenditure in violation, except that an expenditure for yard signs lacking the required information may result in a maximum civil penalty of \$200. In assessing a civil penalty, the commission shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other

paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it. If the person who financed the communication or who committed the violation corrects the violation within 10 days after receiving notification of the violation from the commission by adding the missing information to the communication, the commission may decide to assess no civil penalty.

Sec. 5. 21-A MRSA §1019-B, sub-§1, ¶B, as amended by PL 2013, c. 334, §15, is further amended to read:

B. Is presumed to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the ~~21~~ 28 days, including election day, before a primary election; ~~or during the 35 days, including election day, before a general or special election; or from Labor Day to a general election day.~~

Sec. 6. 21-A MRSA §1019-B, sub-§4, as amended by PL 2013, c. 334, §16, is further amended to read:

4. Report required; content; rules. A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election, the report must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

B. A report required by this subsection must contain an itemized account of each expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each expenditure and the name of each payee or creditor. The report must state whether the expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. The commission may adopt procedures requiring the electronic filing of an independent expenditure report, as long as the commission receives the statement made under oath or affirmation set out in paragraph B by the filing deadline and the commission adopts an exception for persons who lack access to the required technology or the technological ability to file reports electronically. The commission may adopt procedures allowing for the signed statement to be provisionally filed by facsimile or electronic mail, as long as the report is not considered complete without the filing of the original signed statement.

~~This subsection takes effect August 1, 2011.~~

Sec. 7. 21-A MRSA §1020-A, sub-§4-A, ¶¶A to C, as enacted by PL 2001, c. 714, Pt. PP, §1 and affected by §2, are amended to read:

- A. For the first violation, ~~1%~~ 2%;
- B. For the 2nd violation, ~~3%~~ 4%; and
- C. For the 3rd and subsequent violations, ~~5%~~ 6%.

Sec. 8. 21-A MRSA §1020-A, sub-§5-A, as amended by PL 2011, c. 558, §§4 and 5, is further amended to read:

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 financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late;

A-1. Five thousand dollars for reports required under section 1019-B, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is ~~1/5~~ 100% of the amount reported late;

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 financial activity reported late exceeds \$50,000, the maximum penalty is ~~1/5~~ 100% of the amount reported late;

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.

Sec. 9. 21-A MRSA §1062-A, sub-§3, as amended by PL 2007, c. 443, Pt. A, §39, is further amended to read:

3. 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, ~~1%~~ 2%;
- B. For the 2nd violation, ~~3%~~ 4%; and
- C. For the 3rd and subsequent violations, ~~5%~~ 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 calendar 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 required report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as an original of the same report is received by the commission within 5 calendar days thereafter.

Sec. 10. 21-A MRSA §1062-A, sub-§4, as amended by PL 2011, c. 389, §49, is further amended to read:

4. Maximum penalties. The maximum penalty under this subchapter is \$10,000 for reports required under section 1056-B or section 1059, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is ~~1/5~~ 100% of the amount reported late.

Sec. 11. 21-A MRSA §1062-A, sub-§8-A, as amended by PL 2009, c. 190, Pt. A, §31, is further amended to read:

8-A. Penalties for failure to file report. The commission may assess a civil penalty for failure to file a report required by this subchapter. The maximum penalty for failure to file a report required under section 1056-B or section 1059 is \$10,000 or the amount of financial activity not reported, whichever is greater.

Sec. 12. 21-A MRSA §1062-B, as enacted by PL 2013, c. 334, §32, is amended to read:

§1062-B. Failure to keep records

A committee that fails to keep records required by this chapter may be assessed a fine of up to ~~\$2,500~~ \$10,000 or the amount of financial activity for which no records were kept, whichever is greater. In assessing a fine, the commission shall consider, among other things, whether the violation was intentional, whether the violation occurred as the result of an error by someone outside the control of the committee, whether the committee intended to conceal its financial activity, the amount of financial activity that was not documented and the level of experience of the committee's volunteers and staff.

Sec. 13. 21-A MRSA §1122, sub-§3-A is enacted to read:

3-A. Election cycle. "Election cycle" means the period beginning on the day after the general election for any state, county or municipal office and ending on the day of the next general election for that office.

Sec. 14. 21-A MRSA §1124, as amended by PL 2011, c. 389, §50, is further amended to read:

§1124. The Maine Clean Election Fund established; sources of funding

1. Established. The Maine Clean Election Fund is established to finance the election campaigns of certified Maine Clean Election Act candidates running for

Governor, State Senator and State Representative and to pay administrative and enforcement costs of the commission related to this Act. The fund is a special, dedicated, nonlapsing fund and any interest generated by the fund is credited to the fund. The commission shall administer the fund.

2. Sources of funding. The following must be deposited in the fund:

A. The qualifying contributions and additional qualifying contributions required under section 1125 when those contributions are submitted to the commission;

B. ~~Two~~ Three million dollars of the revenues from the taxes imposed under Title 36, Parts 3 and 8 and credited to the General Fund, transferred to the fund by the State Controller on or before January 1st of each year, beginning January 1, 1999. These revenues must be offset in an equitable manner by an equivalent reduction ~~within the administrative divisions of the legislative branch and executive branch agencies in tax expenditures as defined in Title 36, section 199-A, subsection 2.~~ This section may not affect the funds distributed to the Local Government Fund under Title 30-A, section 5681.

C. Revenue from a tax checkoff program allowing a resident of the State who files a tax return with the State Tax Assessor to designate that \$3 be paid into the fund. ~~If a husband and wife file~~ In the case of a joint return, each spouse may designate that \$3 be paid. The State Tax Assessor shall report annually the amounts designated for the fund to the State Controller, who shall transfer that amount to the fund;

D. Seed money contributions remaining unspent after a candidate has been certified as a Maine Clean Election Act candidate;

E. Fund revenues that were distributed to a Maine Clean Election Act candidate and that remain unspent after the candidate has lost a primary election or after all general elections;

F. Other unspent fund revenues distributed to any Maine Clean Election Act candidate who does not remain a candidate throughout a primary or general election cycle;

G. Voluntary donations made directly to the fund; and

H. Fines collected under section 1020-A, subsection 4-A and section 1127.

~~**3. Determination of fund amount.** If the commission determines that the fund will not have sufficient revenues to cover the likely demand for funds from the Maine Clean Election Fund in an upcoming election, by January 1st the commission shall provide a report of its projections of the balances in the Maine Clean Election Fund to the Legislature and the Governor. The commission may submit legislation to request additional funding or an advance on revenues to be transferred pursuant to subsection 2, paragraph B.~~

4. Report on fund amount; operating margin. By January 1st of each year the commission shall provide to the Legislature and the Governor a report of its projection of the revenues and expenditures of the Maine Clean Election Fund for the subsequent 4-year period. The commission shall include in the report an operating margin of 20% to

ensure sufficient funds in the event of higher-than-expected participation in the Maine Clean Election Act. If any such report shows that the projected revenue for the subsequent 4-year period exceeds the projected expenses for that 4-year period plus the 20% operating margin, the commission shall notify the Legislature and the Governor and request that the amount of expected funding that exceeds the expected demand on the fund plus the operating margin be transferred to the General Fund. The Department of Administrative and Financial Services, Bureau of Revenue Services shall assist the commission with revenue projections required by this subsection. If at any time the commission determines that projected revenue is not sufficient to cover the projected demand for funds in the 4-year period plus the operating margin, the commission may submit legislation to request additional funding.

Sec. 15. 21-A MRSA §1125, sub-§2, ¶¶B and C, as enacted by IB 1995, c. 1, §17, are amended to read:

B. ~~One thousand five hundred~~ Three thousand dollars for a candidate for the State Senate; or

C. ~~Five hundred~~ One thousand dollars for a candidate for the State House of Representatives.

Sec. 16. 21-A MRSA §1125, sub-§2-A, ¶C, as amended by PL 2009, c. 302, §11 and affected by §24, is further amended to read:

C. Upon requesting certification, a participating candidate shall file a report of all seed money contributions and expenditures. If the candidate is certified, any unspent seed money will be deducted from the amount distributed to the candidate as provided in subsection ~~8-A~~ 8-F.

Sec. 17. 21-A MRSA §1125, sub-§2-B, as amended by PL 2009, c. 524, §14, is repealed.

Sec. 18. 21-A MRSA §1125, sub-§3, ¶A, as amended by PL 2007, c. 240, Pt. F, §1 and c. 443, Pt. B, §6, is further amended to read:

A. For a gubernatorial candidate, at least ~~3,250~~ 3,200 verified registered voters of this State must support the candidacy by providing a qualifying contribution to that candidate;

Sec. 19. 21-A MRSA §1125, sub-§3-A is enacted to read:

3-A. Additional qualifying contributions. Participating candidates may collect and submit to the commission additional qualifying contributions at the times specified in subsection 8-E. The commission shall credit a candidate with either one qualifying contribution or one additional qualifying contribution, but not both, from any one contributor during the same election cycle. If any candidate collects and submits to the commission qualifying contributions or additional qualifying contributions that cannot be credited pursuant to this subsection, those qualifying contributions or additional qualifying contributions may be refunded to the contributor or deposited into the Maine Clean Election Fund at the discretion of the candidate.

Sec. 20. 21-A MRSA §1125, sub-§5, ¶C-1, as enacted by PL 2009, c. 363, §5, is repealed.

Sec. 21. 21-A MRSA §1125, sub-§6-A, as amended by PL 2009, c. 302, §12 and affected by §24, is further amended to read:

6-A. Assisting a person to become an opponent. A candidate or a person who later becomes a candidate and who is seeking certification under subsection 5, or an agent of that candidate, may not assist another person in qualifying as a candidate for the same office if such a candidacy would result in the distribution of revenues under subsections 7 and ~~8-A~~ 8-F for certified candidates in a contested election.

Sec. 22. 21-A MRSA §1125, sub-§7, as amended by PL 2009, c. 302, §15 and affected by §24 and amended by c. 363, §7, is further amended to read:

7. Timing of initial fund distribution. The commission shall distribute to certified candidates revenues from the fund in amounts determined under ~~subsection 8-A~~ subsections 8-B to 8-D in the following manner.

A. Within 3 days after certification, for candidates certified prior to March 15th of the election year, revenues from the fund must be distributed as if the candidates are in an uncontested primary election.

B. Within 3 days after certification, for all candidates certified between March 15th and the end of the qualifying period of the election year, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested primary election.

B-1. For candidates in contested primary elections receiving a distribution under paragraph A, additional revenues from the fund must be distributed within 3 days of March 15th of the election year.

C. No later than 3 days after the primary election results are certified, for general election certified candidates, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested general election.

Funds may be distributed to certified candidates under this section by any mechanism that is expeditious, ensures accountability and safeguards the integrity of the fund.

Sec. 23. 21-A MRSA §1125, sub-§7-B is enacted to read:

7-B. Timing of supplemental fund distribution. The following provisions govern the timing of supplemental fund distributions.

A. For gubernatorial candidates, any supplemental primary or general election distributions made pursuant to subsection 8-B must be made within 3 business days of certification by the commission of the required number of additional qualifying contributions.

B. For legislative candidates, any supplemental general election distributions made pursuant to subsections 8-C and 8-D must be made within 3 business days of

certification by the commission of the required number of additional qualifying contributions.

Sec. 24. 21-A MRSA §1125, sub-§8-A, as amended by PL 2011, c. 558, §§6 and 7, is repealed.

Sec. 25. 21-A MRSA §1125, sub-§§8-B to 8-F are enacted to read:

8-B. Distributions to participating gubernatorial candidates. Distributions from the fund to participating gubernatorial candidates must be made as follows.

A. For an uncontested primary election, the total distribution of revenues is \$200,000 per candidate.

B. For a contested primary election, the amount of revenues distributed is as follows:

(1) The initial distribution of revenues is \$400,000 per candidate;

(2) For each increment of 800 additional qualifying contributions a candidate collects and submits pursuant to subsection 8-E, not to exceed a total of 3,200 additional qualifying contributions, the supplemental distribution of revenues to that candidate is \$150,000; and

(3) The total amount of revenues distributed for a contested primary election may not exceed \$1,000,000 per candidate.

C. For an uncontested general election, the total distribution of revenues is \$600,000 per candidate.

D. For a contested general election, the amount of revenues distributed is as follows:

(1) The initial distribution of revenues is \$600,000 per candidate;

(2) For each increment of 1,200 additional qualifying contributions a candidate collects and submits pursuant to subsection 8-E, not to exceed a total of 9,600 additional qualifying contributions, the supplemental distribution of revenues to that candidate is \$175,000; and

(3) The total amount of revenues distributed for a contested general election may not exceed \$2,000,000 per candidate.

8-C. Distributions to participating candidates for State Senate. Distributions from the fund to participating candidates for the State Senate must be made as follows.

A. For an uncontested primary election, the total distribution of revenues is \$2,000 per candidate.

B. For a contested primary election, the total distribution of revenues is \$10,000 per candidate.

C. For an uncontested general election, the total distribution of revenues is \$6,000 per candidate.

D. For a contested general election, the amount of revenues distributed is as follows:

(1) The initial distribution of revenues is \$20,000 per candidate;

(2) For each increment of 45 additional qualifying contributions a candidate collects and submits pursuant to subsection 8-E, not to exceed a total of 360 additional qualifying contributions, the supplemental distribution of revenues to that candidate is \$5,000; and

(3) The total amount of revenues distributed for a contested general election may not exceed \$60,000 per candidate.

8-D. Distributions to participating candidates for State House of Representatives. Distributions from the fund to participating candidates for the State House of Representatives must be made as follows.

A. For an uncontested primary election, the total distribution of revenues is \$500 per candidate.

B. For a contested primary election, the total distribution of revenues is \$2,500 per candidate.

C. For an uncontested general election, the total distribution of revenues is \$1,500 per candidate.

D. For a contested general election, the amount of revenues distributed is as follows:

(1) The initial distribution of revenues is \$5,000 per candidate;

(2) For each increment of 15 additional qualifying contributions a candidate collects and submits pursuant to subsection 8-E, not to exceed a total of 120 additional qualifying contributions, the supplemental distribution of revenues to that candidate is \$1,250; and

(3) The total amount of revenues distributed for a contested general election may not exceed \$15,000 per candidate.

8-E. Collection and submission of additional qualifying contributions. Participating candidates may collect and submit additional qualifying contributions in accordance with subsection 3-A to the commission as follows:

A. For gubernatorial candidates, no earlier than October 15th of the year before the year of the election and no later than 3 weeks before election day; and

B. For legislative candidates, no earlier than January 1st of the election year and no later than 3 weeks before election day.

Additional qualifying contributions may be submitted to the commission at any time in any amounts in accordance with the schedules in this subsection. The commission shall make supplemental distributions to candidates in the amounts and in accordance with the increments specified in subsections 8-B to 8-D. If a candidate submits additional qualifying contributions prior to a primary election in excess of the number of qualifying contributions for which a candidate may receive a distribution, the excess qualifying contributions must be counted as general election additional qualifying contributions if the candidate has a contested general election, but supplemental distributions based on these excess qualifying contributions may not be distributed until after the primary election.

8-F. Amount of distributions. On December 1st of each even-numbered year the commission shall review and adjust the distribution amounts in subsections 8-B to 8-D based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics. If an adjustment is warranted by the Consumer Price Index, the distribution amounts must be adjusted, rounded to the nearest amount divisible by \$25. When making adjustments under this subsection, the commission may not change the number of qualifying contributions or additional qualifying contributions required to trigger an initial distribution or an increment of supplemental distribution. The commission shall post information about the distribution amounts including the date of any adjustment on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

Sec. 26. 21-A MRS §1125, sub-§10, as amended by PL 2011, c. 389, §56 and affected by §62, is further amended to read:

10. Candidate not enrolled in a party. An unenrolled candidate for the Legislature who submits the required number of qualifying contributions and other required documents under subsection 4 by 5:00 p.m. on April 20th preceding the primary election and who is certified is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election candidate and a general election candidate as specified in subsections 7, ~~8-C~~ and ~~8-A 8-D~~. Revenues for the general election must be distributed to the candidate ~~no later than 3 days after certification~~ as specified in subsection 7. An unenrolled candidate for Governor who submits the required number of qualifying contributions and other required documents under ~~subsections 2-B and~~ subsection 4 by 5:00 p.m. on April 1st preceding the primary election and who is certified is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election gubernatorial candidate and a general election gubernatorial candidate as specified in subsections 7 and ~~8-A 8-B~~. Revenues for the general election must be distributed to the candidate for Governor ~~no later than 3 days after the primary election results are certified~~ as specified in subsection 7.

Sec. 27. 21-A MRS §1125, sub-§13-A, as amended by PL 2011, c. 558, §9, is further amended to read:

13-A. Distributions not to exceed amount in fund. The commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund as set forth in section 1124. Notwithstanding any other provisions of this chapter, if the commission determines that the revenues in the fund are insufficient to meet distributions under subsection ~~8-A 8-E~~, the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than the applicable contribution limits established by the commission pursuant to section 1015, up to the applicable amounts set forth in subsection ~~8-A 8-F~~ according to rules adopted by the commission.

~~This subsection takes effect September 1, 2011.~~

Sec. 28. 36 MRS §199-E is enacted to read:

§199-E. Elimination of certain tax expenditures

No later than 45 days after the effective date of this section the committee shall report out to the Legislature legislation to permanently eliminate corporate tax expenditures totaling \$6,000,000 per biennium, prioritizing for elimination low-performing, unaccountable tax expenditures with little or no demonstrated economic development benefit as determined by the Office of Program Evaluation and Government Accountability established in Title 3, section 991.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

—
S.P. 552 - L.D. 1449

An Act To Amend the State Election Laws

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 21-A MRSA §783, sub-§5, as enacted by PL 2009, c. 563, §9, is amended to read:

5. Electronic receipt of absentee ballots. Authorizing the electronic receipt of ~~an image of~~ voted absentee ballots ~~transmitted by e-mail or fax~~ from uniformed service voters or overseas voters by a method authorized by the Secretary of State.

Sec. 2. 21-A MRSA §809-A, sub-§1-A, as amended by PL 2007, c. 455, §50, is further amended to read:

1-A. Prohibition not applicable. For the purpose of providing a voting system equipped for individuals with disabilities as required by section 812-A, subsection 1 and the federal Help America Vote Act of 2002, Public Law 107-252, the prohibition in subsection 1 does not apply to the connection of individual voting devices to a central server ~~using a wired, point to point telephone connection that is not Internet enabled~~ when the central server is operated or managed by the Secretary of State.

Sec. 3. 21-A MRSA §809-A, sub-§3, as enacted by PL 2003, c. 651, §4, is amended to read:

3. Internet voting. Use of the Internet for the casting of votes ~~on-line~~ online is prohibited. This subsection does not apply to a ballot-marking system or software that is used for voters with disabilities, uniformed service voters or overseas voters to mark a ballot online and securely transmit the marked ballot to a central server operated or managed by the Secretary of State, as long as the system does not tabulate the votes marked on those ballots.

Sec. 4. 21-A MRSA §1013-A, sub-§1, ¶C, as amended by PL 2007, c. 443, Pt. A, §7, is further amended to read:

C. No later than 10 days after becoming a candidate, as defined in section 1, subsection 5, a candidate for the office of State House of Representatives or Senate ~~shall~~ may file in writing a statement declaring that the candidate agrees to accept voluntary limits on political expenditures or that the candidate does not agree to accept voluntary limits on political expenditures, as specified in section 1015, subsections 7 to 9. A candidate who has filed a declaration of intent to become certified as a candidate under the Maine Clean Election Act is not required to file the written statement ~~required by~~ described in this paragraph.

The statement filed by a candidate who voluntarily agrees to limit spending must state that the candidate knows the voluntary expenditure limitations as set out in section 1015, subsection 8 and that the candidate is voluntarily agreeing to limit the candidate's political expenditures and those made on behalf of the candidate by the candidate's political committee or committees, the candidate's party and the candidate's immediate family to the amount set by law. The statement must further state that the candidate does not condone and will not solicit any independent expenditures made on behalf of the candidate.

The statement filed by a candidate who does not agree to voluntarily limit political expenditures must state that the candidate does not accept the voluntary expenditure limits as set out in section 1015, subsection 8.

Sec. 5. 21-A MRS §1017, sub-§7-A, as amended by PL 2009, c. 138, §1, is further amended to read:

7-A. Reporting exemption. A candidate seeking election to a county or municipal office or a legislative candidate seeking the nomination of a party in an uncontested primary election is exempt from reporting as provided by this subsection.

A. A candidate seeking election to a county or municipal office may, at the time the candidate registers under section 1013-A, notify the commission that the candidate and the candidate's agents, if any, will not personally accept contributions, make expenditures or incur obligations associated with that candidate's candidacy. The notification must be sworn and notarized. A candidate who provides this notice to the commission is not required to appoint a treasurer and is not subject to the filing requirements of this subchapter if the statement is true.

A-1. A legislative candidate seeking the nomination of a party in an uncontested primary election may, at the time the candidate registers under section 1013-A, notify the commission that the candidate and the candidate's agents, if any, will not personally accept contributions, make expenditures or incur obligations associated with that candidate's candidacy through the 35th day after the primary election. The notification must be sworn and notarized. A candidate who provides this notice to the commission is not required to appoint a treasurer or to file the campaign finance reports under subsection 3-A, paragraphs B and D with respect to the primary election.

B. The notice provided to the commission under paragraph A or A-1 may be revoked. Prior to revocation, the candidate must appoint a treasurer. The candidate may not accept contributions, make expenditures or incur obligations before the appointment of a treasurer and the filing of a revocation notice are accomplished. A

revocation notice must be in the form of an amended registration, which must be filed with the commission no later than 10 days after the appointment of a treasurer. The candidate and the candidate's treasurer, as of the date the revocation notice is filed with the commission, may accept contributions, make expenditures and incur obligations associated with the candidate's candidacy. Any candidate who fails to file a timely revocation notice is subject to the penalties prescribed in section 1020-A, subsection 4-A, up to a maximum of \$5,000. Lateness is calculated from the day a contribution is received, an expenditure is made or an obligation is incurred, whichever is earliest.

Sec. 6. 21-A MRS §1019-B, sub-§4, as amended by PL 2013, c. 334, §16, is further amended to read:

4. Report required; content; rules. A person, party committee, political committee or political action committee that makes any independent ~~expenditures aggregating~~ expenditure in excess of ~~\$100~~ \$250 during any one candidate's election shall file a report with the commission. In the case of a municipal election, the report must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

B. A report required by this subsection must contain an itemized account of each expenditure ~~aggregating~~ in excess of ~~\$100~~ \$250 in any one candidate's election, the date and purpose of each expenditure and the name of each payee or creditor. The report must state whether the expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. The commission may adopt procedures requiring the electronic filing of an independent expenditure report, as long as the commission receives the statement made under oath or affirmation set out in paragraph B by the filing deadline and the commission adopts an exception for persons who lack access to the required technology or the technological ability to file reports electronically. The commission may adopt procedures allowing for the signed statement to be provisionally filed by facsimile or electronic mail, as long as the report is not considered complete without the filing of the original signed statement.

This subsection takes effect August 1, 2011.