

# Exhibit #1



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

## MEMORANDUM

To: Interested Parties

From: Jonathan Wayne, Executive Director

Date: January 29, 2007

Subject: Opportunity to Comment on Proposed Rule Amendments

Attachment: Maine APA Notice of Rule-making

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The Ethics Commission is soliciting comments on proposed changes to the Commission's Rules. You may view the proposed changes on the Commission's website, [www.maine.gov/ethics](http://www.maine.gov/ethics), or you may call us to obtain a printed copy by mail.

**The Commission will hold a public hearing on Wednesday, February 14, at 9:00 a.m. at which you are invited to comment on the changes to the forms or the rules.** Written and e-mailed comments are also welcome. The deadline for written and e-mailed comments is 5:00 p.m. on February 28. The Commission will make any changes at its March meeting (date to be determined).

The changes relating to the Maine Clean Election Act would be considered major substantive, and the Commission will submit any major substantive amendments to the Legislature for its consideration following the Commission's March meeting.

If you have any questions, please telephone me or Paul Lavin, Assistant Director, at 287-4179. Please send e-mail comments to [Paul.Lavin@Maine.gov](mailto:Paul.Lavin@Maine.gov). Thank you for your consideration of the proposed amendments.

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)

**NOTICE OF RULE-MAKING**

94-270 - Commission on Governmental Ethics and Election Practices **RULE TITLE OR SUBJECT:** Ch. 1, Procedures Ch. 3, Maine Clean Election Act and Related Provisions **PROPOSED RULE NUMBER:** 2007-P22, P23 **CONCISE SUMMARY:** The proposed rule amendments would: remove specific inconsistencies between the statutes and rules; remove the requirement that oral or insufficient written reports of violations be placed on the Commission's agenda; allow the staff to take testimony under oath pursuant to a subpoena issued by the Commission; clarify when a contribution is deemed to be received; specify a candidate's reporting requirements for expenditures made by consultants and for reimbursements for expenditures made with a credit card or personal funds; clarify the period of time during which the Commission is prohibited from discussing matters before it; confirm that qualifying contributions received more than five days prior to the filing of a Declaration of Intent are not valid; change the content of the receipt and acknowledgement form; clarify when proof of voter registration verification must be received by the Commission; establish the procedure by which a candidate would request certification; clarify the procedure for calculating matching funds; allow the Commission to require the return of Maine Clean Election Act funds for unsupported expenditures; establish a new procedure for vehicle travel reimbursement, including maintaining a travel log; and allow gubernatorial candidates to reserve certain amounts of Maine Clean Election Act funds to defray expenses associated with an audit by the Commission. A copy of the proposed rule amendments is available on the Ethics Commission's website - [www.maine.gov/ethics](http://www.maine.gov/ethics) or by calling (207) 287-4179. **THIS RULE WILL NOT HAVE A FISCAL IMPACT ON MUNICIPALITIES STATUTORY AUTHORITY:** 1 MRSA §1003; 21-A MRSA §1126 **PUBLIC HEARING:** Wednesday, February 14, 2007, 9:00 a.m., Ethics Commission Office, 242 State Street, Augusta, Maine 04333. **DEADLINE FOR COMMENTS:** 5:00 p.m. on Wednesday, February 28, 2007 **AGENCY CONTACT PERSON:** Jonathan Wayne, Executive Director, Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine **TELEPHONE:** (207) 287-4179



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

**MEMORANDUM**

To: Interested Persons  
From: Paul Lavin, Assistant Director  
Date: January 30, 2007  
Re: Summary of Proposed Amendments to Ethics Commission Rules

The Commission is proposing changes to Chapters 1 (Procedures) and Chapter 3 (Maine Clean Election Act) of the Commission's Rules. The public hearing on the proposed rule changes will be held on Wednesday, February 14, 2007, at 9:00 a.m. at the Commission's office at 242 State Street, Augusta. Written and e-mailed comments are also welcome. The deadline for written and e-mailed comments is 5:00 p.m. on February 28, 2007.

This memo summarizes the proposed changes. Changes which are word and structure changes are listed at the end of each section of this memo.

**I. CHANGES TO CHAPTER 1: PROCEDURES**

All proposed changes to Chapter 1 are routine technical rules with the exception of a new provision (Section 7(7)) regarding voter guides and scorecards.

**Section 3 – Meetings (page 4)**

The proposed change in subsection 1 would require that the Commission meet once a month in any year in which primary and general elections are being held and eliminates the requirement that the Commission establish a meeting schedule at the beginning of the year.

**Section 4 – Initiation of Proceedings (pages 7 – 10)**

The changes to subsection 2(A) clarify that the Commission staff will review reports filed under chapter 13 and chapter 14 of Title 21-A. The proposed change eliminates the 15 day time period for remedying errors and omissions on campaign finance reports and gives the staff and the filer the flexibility to work out a reasonable time period, which may be longer or shorter than 15 days. The proposed change would also allow the staff to extend the time period. The list of examples of nonconformance with reporting requirements is eliminated. Paragraph 5 which is a detailed description of contributions is moved to Section 6 – Contributions and Other Receipts without change.

The provision that requires the Executive Director to submit a list of matters resolved administratively to the Commission at each meeting is eliminated. Added to the list of factors that the Director considers in recommending an action or a penalty to the Commission is whether a late filed report impacts an opposing candidate's eligibility for matching funds. The proposed change also eliminates the requirement that a copy of written requests for investigation be promptly sent to the Commission Chair. These requests as well as all related responses and materials are submitted to the full Commission in advance of every meeting. The requirement that the Director list all oral or insufficient reports of violations on the agenda is eliminated.

**Section 5 – Fact Finding and Investigations (page 12)**

The proposed change would allow the Commission staff to take testimony pursuant to a subpoena issued by the Commission.

**Section 6 – Contributions and Other Receipts (pages 12 – 14)**

A new subsection 1 is added to clarify that the date of a contribution is the date it is received by the candidate, candidate's committee, party committee, political action committee, or their agents.

A new subsection 7 is added to include the provisions moved from Section 4(2). There were no other changes to this subsection.

**Section 7 – Expenditures (pages 14 – 16)**

Subsection 1 is amended to clarify that when a consultant or other employee or agent of a candidate, candidate's committee or political action committee makes a payment for goods or services out of a retainer or fee, that payment must be reported by the candidate or committee as a separate expenditure on the candidate's or the political action committee's report. The proposed change clarifies that merely reporting the retainer or fee paid to the consultant is not sufficient.

Similarly, subsection 5 clarifies that when a candidate or agent pays for campaign-related goods or services with personal funds or a credit card, the payment to the vendor or payee must be reported, not just the reimbursement to the candidate or agent.

Subsection 7 is a new provision that creates a rebuttable presumption that an organization's voter guide or legislative scorecard is made to influence an election if more than 500 copies are sent within 60 days of a general election to individuals who are not members of the organization. Factors that will be considered in rebutting the presumption would be the content of the publication, its timing, and other purposes it serves. This is a major substantive rule.

**Section 8 – Prohibited Communications (page 16)**

This proposed change clarifies that Commission members may talk with the press or interested persons after it has made its final determination after the appeal period has expired or all administrative and judicial remedies have been exhausted.

**Minor changes**

Section 5 (page 12): "Likely to be of critical importance" is changed to "necessary."

Section 6(3) (formerly subsection 2) (page 13): Name and address are included in the items to be reported. "Traditionally" is replaced with "privately." In subsection 6 (formerly subsection 5), "debtor" is replaced with "customer."

Section 9(3), "privately" replaces "traditionally."

## **II. CHANGES TO CHAPTER 3 – MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS**

### **Section 2 – Procedures for Participation (pages 1 – 6)**

The proposed changes to subsection 1 clarify that any qualifying contributions received more than 5 days before a candidate files a Declaration of Intent with the Commission will not count towards the required minimum. Under the proposed changes in subsection 2(G), the Declaration of Intent will also include an affirmation that the candidate has read and will comply with the guidelines on using public funds.

In subsection 4 (page 4), the Commission proposes changes to the content of the receipt and acknowledgement form that candidates use in collecting qualifying contributions and signatures. The contributor's phone number will be required. The form will contain a clear and conspicuous statement that the candidate is seeking public funding for his or her campaign. If anyone other than the candidate collects the contributions and signatures, that person's name, address, and telephone number will have to be on the form as well as signed affirmation that the contributions were collected by valid means. Candidates will no longer be required to sign each form, but will affirm that he or she complied with all qualifying contribution requirements on the new certification request form (see below).

The change in paragraph G (page 6) clearly states that proof of voter verification submitted after the end of a qualifying period will not be accepted by the Commission.

Paragraph H is eliminated (page 6). This provision allowed candidates to submit photocopies of receipt and acknowledgement forms to the Commission as long as the verified originals are submitted to the Commission within 10 days.

### **Section 3 (pages 7 – 8)**

The changes to this section clarify, but do not alter the procedure to request certification with the exception of creating a form for the candidate to complete requesting certification.

### **Section 5 – Distribution of Funds to Certified Candidates (pages 9 – 15)**

With one exception, the changes to subsection 3 (page 10) do not alter how matching funds are calculated. The changes specify the steps in the calculations under three scenarios:

- When all candidates in the race are certified candidates;
- When the matching fund calculation is the result of the nonparticipating candidate's financial activity, and
- When a race has certified and nonparticipating candidates but the latter's campaign totals are less than those of the certified candidate(s).

The proposed change to the matching fund calculation is that seed money and an unspent primary campaign balance will not count in calculating matching funds if only certified candidates are involved.

Subsections E through J have not been changed other than being placed after new subsection D.

**Section 7 – Record Keeping and Reporting (pages 16 – 18)**

The changes to subsection 1 would make it consistent with 2005 statutory changes which require a campaign treasurer to keep bank account records and vendor invoices. The Commission would have the ability to require the return of funds if a candidate or treasurer cannot produce supporting documentation for an expenditure or for the failure to keep records. The candidate would have an opportunity for a hearing prior to any determination requiring the return of funds.

The change to subsection 1(A) clarifies that MCEA funds can be commingled with unspent seed money and that matching funds can only be spent after the candidate receives authorization.

The Commission proposes eliminating the pro rata reimbursement for vehicle travel expenses based on actual expenses. The change would simplify travel reimbursement by requiring that all reimbursements use the standard mileage rate prescribed for employees of the State of Maine. The change also allows the Commission to disallow travel reimbursements that lack supporting documentation. Under the proposed change, candidates can choose to reimburse themselves and volunteers at a rate lower than the standard.

The Commission conducts audits of all MCEA gubernatorial candidates. The proposed change would allow primary and general election candidates to reserve \$1000 and \$2500, respectively, to defray the costs associated with an audit.

**Minor changes**

Sections 1 and 5(3)(J) (pages 1 and 14): “Traditionally” is replaced with “privately.”

Section 2(3)(F) (page 3): This change is only a rewording of the paragraph.

Sections 4(1), 5(1)(A), and 5(3)(I) (pages 8, 9, and 14): “Bureau of Accounts and Control” is changed to “Office of the Controller.”

The informational note on page 9 is deleted.

Section 5(4) (page 14): This change is only a rewording of the subsection.

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION  
PRACTICES

Chapter 1: PROCEDURES

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

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**SECTION 1. DEFINITIONS**

In addition to the definitions provided in Title 21-A, chapters 1, 13, and 14, the following definitions shall apply to the rules of the Commission, unless the context otherwise requires:

1. Act. "Act" means the Maine Clean Election Act, Title 21-A, chapter 14.
2. Association. "Association" means a group of two or more persons, who are not all members of the same immediate family, acting in concert.
3. Campaign Deficit. "Campaign deficit" means debts, liabilities, and unmet financial obligations from all previous campaigns as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§ 1017(9)].
4. Campaign Surplus. "Campaign surplus" means money, equipment, property and other items of value remaining after retiring previous campaign deficit as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§ 1017(9)].
5. Candidate. "Candidate" has the same meaning as in Title 21-A, chapter 1, subchapter I [§ 1(5)], and includes individuals running for office as a write-in candidate.

**INFORMATIONAL NOTE:** All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election, pursuant to section 4.2.A(5)(e) of this rule. A candidate who collects funds subsequent to an election for purposes other than retiring campaign debt is required to register with the Commission. Title 21-A, chapter 13, subchapter II [§ 1013-A].

6. Certified Candidate. "Certified candidate" has the same meaning as in the Act [§ 1122(1)].

7. Commission. "Commission" means the Commission on Governmental Ethics and Election Practices established by Title 5, section 12004-G, subsection 33, and 1 M.R.S.A. section 1001 et seq.
8. Contribution. "Contribution" has the same meaning as in Title 21-A, chapter 13, subchapter II [§ 1012(2)].
9. Election. "Election" means any primary, general or special election for Governor, State Senator or State Representative. The period of a primary election begins on the day a person becomes a candidate as defined in 21-A M.R.S.A. §1(5) and ends on the date of the primary election. The period of a general election begins on the day following the previous primary election and ends on the date of the general election. The period of a special election begins on the date of proclamation of the special election and ends on the date of the special election.
10. Expenditure. "Expenditure" has the same meaning as in Title 21-A, chapter 13, subchapter II [§ 1012(3)].
11. Fund. "Fund" means the Maine Clean Election Fund established by the Act [§ 1124].
12. In-Kind Contribution. "In-kind contribution" means any gift, subscription, loan, advance or deposit of anything of value other than money made for the purpose of influencing the nomination or election of any person to political office or for the initiation, support or defeat of a ballot question.
13. Member. A "member" of a membership organization includes all persons who currently satisfy the requirements for membership in the membership organization, have affirmatively accepted the membership organization's invitation to become a member, and either:
  - A. pay membership dues at least annually, of a specific amount predetermined by the membership organization; or
  - B. have some other significant financial attachment to the membership organization, such as significant investment or ownership stake in the organization; or
  - C. have a significant organizational attachment to the membership organization that includes direct participatory rights in the governance of the organization, such as the right to vote on the organization's board, budget, or policies.

Members of a local union are considered to be members of any national or international union of which the local union is a part, of any federation with

which the local, national, or international union is affiliated, and of any other unions which are members or affiliates of the federation. Other persons who have an enduring financial or organizational attachment to the membership organization are also members, including retired members or persons who pay reduced dues or other fees regularly to the membership organization.

14. Nonparticipating Candidate. "Nonparticipating candidate" has the same meaning as in the Act [§ 1122(5)].
15. Participating Candidate. "Participating candidate" has the same meaning as in the Act [§ 1122(6)].
16. Qualifying Contribution. "Qualifying Contribution" has the same meaning as in the Act [§ 1122(7)].
17. Qualifying Period. "Qualifying period" has the same meaning as in the Act, except that for special elections, vacancies, withdrawals, deaths, disqualifications or replacements of candidates, the qualifying period shall be the period designated in section 8 of this chapter [§ 1122(8)].
18. Seed Money Contribution. "Seed money contribution" has the same meaning as in the Act [§ 1122(9)].
19. Write-In Candidate. "Write-in candidate" means a person whose name does not appear on the ballot under the office designation to which a voter may wish to elect the candidate.

## SECTION 2. ORGANIZATION

1. Commission. The Commission on Governmental Ethics and Election Practices is an independent agency of the State, consisting of five (5) members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature in accordance with Title 1, section 1002, subsection 1. The Commission members will elect one member to serve as Chair. Except for the Chair, the members of the Commission have no individual authority.
2. Office.
  - A. The Commission employs such staff as may be authorized by the Legislature. A Director supervises the staff and is responsible for all day-to-day operations. In the interim between Commission meetings, the Director reports to the Chair, who acts on behalf of the Commission on certain administrative matters. The Commission's offices are located in the Public Utilities Commission Building at 242 State Street in Augusta,

where any filing or written submission may be made between the hours of 8 a.m. and 5 p.m. on any day when state government offices are open, except that filings by facsimile or electronic means, where otherwise permitted by rule, may be transmitted at any time. The office has a mailing address of 135 State House Station, Augusta, Maine 04333.

- B. All records of the Commission are maintained in these offices, where they are available for inspection or copying, except as particular records are made confidential by law. The cost of copying Commission documents is set by the Director of the Commission, subject to reasonable limitations and approval of the Commission.
- C. During any period when the position of Director is vacant, the Chair of the Commission will appoint an acting Director.

### SECTION 3. MEETINGS

1. ~~Regular Meetings. The Commission will~~shall meet at least once per month in any year in which primary and general elections are held~~four times during the course of any year in which a general election is held, and at least twice during every other year. A tentative schedule of meetings for each calendar year will be adopted at the first meeting in each year. A meeting will be held as early as possible after the appointment of (a) new commission member(s) in each even-numbered year to select a Chair.~~
2. Special Meetings. The Commission may meet at any time at the call of the Secretary of State, the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Commission, or a majority of its members. Each member of the Commission must have at least 24 hours notice of the time, place and purpose of the meeting. If written notice is not feasible, telephone notice satisfies the foregoing requirement.
3. Agenda. The Director will prepare a written agenda for each meeting of the Commission. The agenda will contain items of business to be considered, staff findings and recommendations, and will include the date, time and location of the meeting. When possible, the agenda will be mailed to each Commission member at least 7 days before the meeting.
4. Notice. In addition to the public notice required by the public meetings law, 1 M.R.S.A. Section 406, notice of Commission meetings will be given to those directly involved or affected by matters pending before the Commission, as follows:
  - A. Legislative Ethics. When a properly filed request or referral is made for an advisory opinion on a question of legislative ethics, notice that the matter

has been placed on the agenda for a Commission meeting will be given by mail to the Legislator whose circumstances or conduct is at issue, or to the Presiding Officer of either House referring the inquiry. When a complaint alleging a violation of the laws on legislative ethics is filed, the Legislator will be informed promptly of the nature of the allegations and the existence of any investigation by the Commission. Notice that the matter has been placed on the agenda for a Commission hearing will be given by certified mail to both the Legislator and the complainant not less than 10 days before the date set for a hearing.

- B. Campaign Reports and Finances Law; Lobbyist Disclosure Law. Notice of the Commission's consideration of any noncompliance with the requirements of the Campaign Reports and Finances Law or Lobbyist Disclosure Law will be provided to any person or organization alleged to have committed a violation and to any person who has officially requested a Commission investigation or determination.
- C. Other Matters.
  - (1) With respect to any other matter presented to the Commission, notice will be given to the person or organization whose conduct is at issue, and to any complainant, except as provided in Section 3, subsection 1, paragraph B of these rules.
  - (2) The notice will include the date, time, and location of the Commission meeting. If mail notice of a meeting is not feasible, the staff will make best efforts to give oral notice to Commission members or to those entitled to notice under this provision.
- 5. Public Meetings. All meetings, hearings or sessions of the Commission will be open to the general public unless, by an affirmative vote of at least 3 members, the Commission requires the exclusion of the public, pursuant to 1 M.R.S.A. Section 1005 or 1 M.R.S.A. Section 1013(3).
- 6. Quorum. Every decision of the Commission must be made at a meeting at which at least 3 members of the Commission are present and voting. When it is impossible or impractical for a member of the Commission to travel to Augusta to attend a meeting in person, the member may participate in the meeting by telephone. That member will be considered present at the meeting and part of the quorum.

At least 2 members must be present in person for the conduct of a meeting or public hearing before the Commission. If fewer than 3 members are present in person for a hearing, however, objections to rulings of the presiding officer concerning the conduct of the hearing must be preserved until a meeting of the

Commission at which a quorum is present in person. The presiding officer at a meeting or public hearing must be present in person.

7. Minutes.

- A. The Director will prepare minutes of each business meeting of the Commission. These minutes will be the official record of Commission meetings, and will accurately record all matters considered.
- B. The minutes will record any executive session of the Commission and its subject matter, but will not report the proceedings of the executive session. Likewise, minutes will not be taken of any public hearing held by the Commission, since hearings are separately recorded.

SECTION 4. INITIATION OF PROCEEDINGS

- 1. Legislative Ethics. The Commission is authorized to investigate and make advisory recommendations to either House of the Maine Legislature concerning legislative conflicts of interest or any breach of the legislative ethics set forth in 1 M.R.S.A. Sections 1001 - 1023. The Commission's opinion may be sought by three methods, or the Commission may act on its own motion.
  - A. Legislator's Own Conduct.
    - (1) A Legislator seeking an advisory opinion with respect to his or her own circumstances or conduct should make a written request for an opinion, setting forth the pertinent facts with respect to the legislative matter at issue and the circumstances of the Legislator giving rise to the inquiry.
    - (2) The request will be officially filed only when received at the offices of the Commission. The Director will promptly send a copy of the request to the Chair, and the matter will be placed on the agenda for the next Commission meeting, or if necessary, at a special meeting.
    - (3) An oral request by a Legislator for an opinion with respect to his or her own circumstances will not be considered an official request for an advisory opinion, and a Legislator making such a request will be so notified, by letter, and encouraged to file a written request.
  - B. Complaints. Any written complaint will be included in the agenda of the next Commission meeting.

- (1) Complaint by a Legislator. Copies of any sworn complaint filed by a Legislator will promptly be sent to the Legislator against whom the complaint has been lodged and to the Commission Chair, in each case identifying the Legislator making the complaint. A complaint invokes the Commission's authority only if made under oath and only if it addresses an alleged conflict of interest relating to circumstances arising during the term of the legislature then in office.
  - (2) Other Complaints.
    - (a) The Director will review each complaint to determine whether the matter relates to the Commission's statutory mandate. When a complaint is filed, the Director, in consultation with Commission Counsel, will review the matter to determine whether the complaint has sufficient merit to warrant recommending the calling of a meeting. When a meeting is called, the Commission will determine in executive session whether to hear the complaint. If the nature of the complaint clearly does not fall within the scope of the Commission's jurisdiction, the Director will so notify the complainant by letter within 14 days of receiving the complaint. In such cases, the respondent need not be notified. The Commission may reverse any administrative decision.
    - (b) An oral complaint by any person alleging a conflict of interest concerning any legislator does not constitute a complaint under 1 M.R.S.A. Section 1013(2)(B), and a person registering such a complaint will be so notified, by letter.
  - C. Referral by Presiding Officer. When a Legislator has requested an advisory opinion from the Presiding Officer of the House of which he/she is a member, and the Presiding Officer has referred the inquiry directly to the Commission, the Director will arrange a meeting of the Commission as soon as possible to consider the question.
2. Election Campaign Reporting.
- A. Report Review. The Commission staff will review all ~~filings made~~ reports filed pursuant to 21-A M.R.S.A., Sections 1001—1062 chapters 13 and 14 to ~~ascertain any apparent violations of~~ verify compliance with the filing reporting requirements set by statute or rule. Reports and registrations will be checked for violations against a standardized checklist. Notice of any

omission, error, or violation will be given by mail to the filer and a copy of the notice and any other communication made to or from the filer relating to the problem(s) will be placed in the filer's record. The Commission will establish a reasonable time period for the filer to~~The notice will include a request that the filer remedy any omission or error within 15 days of the date of the notice. If the filer fails to respond within that time frame, the Commission staff may extend the time contact the filer to establish a reasonable grace period within which the filer must comply or place~~ the matter will be placed on the agenda of the next Commission meeting, along with all documents relating to the case. Additionally, any apparent violations or occurrences of substantial nonconformance with the requirements of the law will be placed on the agenda of the next meeting, including, but not limited to, the following:

- ~~(1) — Failure to properly sign a required report,~~
- ~~(2) — Failure to file a required report or registration,~~
- ~~(3) — Late filing of a required report or registration outside the grace period,~~
- ~~(4) — Failure to disclose contributions received or expenditures made of more than \$500 in the aggregate on reports due after the 12th day before an election, or~~
- ~~(5) — Exceeding contribution limitations. For the purposes of the limitations imposed by 21 A.M.R.S.A. Section 1015(1), 21 A.M.R.S.A. Section 1015(2), 21 A.M.R.S.A. Section 1015(3), and 21 A.M.R.S.A. Section 1056, the following guidelines shall apply:~~
  - ~~(a) — All contributions made to a candidate through the day of the primary election for which the candidate seeks office are deemed to be made in the primary election.~~
  - ~~(b) — Notwithstanding division (c) below, if a candidate loses in the primary, all contributions made to that candidate for the purpose of liquidating debts and liabilities associated with the candidate's candidacy are deemed to be made in the primary election.~~
  - ~~(c) — All contributions made to a candidate from the day after the primary election through the date of the general election for which the candidate seeks office are deemed to be made in the general election.~~

- (d) ~~Notwithstanding division (e) below, all contributions made after the general election to a general election candidate for the purpose of reducing debts and liabilities associated with the candidate's candidacy are deemed to be made in the general election.~~
- (e) ~~All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election.~~
- (6) ~~Divisions (a) through (e) above shall apply to any write-in candidate who has qualified under 21-A M.R.S.A. Section 723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.~~
- B. ~~The Commission will determine whether a report substantially conforms to the requirements of the law. At each meeting, the Director will submit a summary of all cases resolved administratively. The Commission may reverse any administrative decision.~~
- 6B. Late Reports and Registrations. Where required by statute, notice of failure to file a required report will be timely sent by Commission staff. When a report or registration is filed late, the Director's recommendations will be based on the following considerations:
- (1) Lateness of report or registration,
  - (2) Reason for lateness,
  - (3) Kind of report (more stringent application for pre-election reports),
  - (4) Amount of campaign funds not properly reported,
  - (5) Previous record of the filer, and
  - (6) Good faith effort of the filer to remedy the matter; and
  - (7) Whether the late filing had an effect on a certified candidate's eligibility for matching funds.

- DC. Reports of noncompliance with the provisions of the campaign registration and reporting laws that may come to the attention of the Commission staff from any source other than review of the reports filed will be reported to the Commission Chair. Any person (as defined in 21-A M.R.S.A. Section 1001) may make an official request for a Commission investigation or determination by filing a written request at the Commission's office, setting forth such facts with sufficient details as are necessary to specify the alleged violation. Statements should be made upon personal knowledge. Statements which are not based upon personal knowledge must identify the source of the information which is the basis for the request, so that respondents and Commission staff may adequately respond to the request. A copy of any such written request will be promptly mailed to the Commission Chair as well as to the candidate or organization alleged to have violated the statutory requirements. An official request will be placed on the agenda of the next Commission meeting.
- ED. An oral report of a violation, or a written request containing insufficient detail to specify the violation charged, does not constitute an official request for a Commission determination, and a person registering such a complaint will be so notified. ~~The Director will list any oral report of a violation, or insufficient written report, on the agenda of the Commission's next meeting, but no action will be taken except upon the Commission's initiative. The person alleged to have committed a violation will be notified of the Commission meeting.~~
- FE. If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting.
- GE. The signature of a person authorized to sign a report or form constitutes certification by that person of the completeness and accuracy of the information reported. The use of a password in filing an electronic report constitutes certification of the completeness and accuracy of the report.
3. Lobbyist Disclosure Procedures.
- A. Report Review. The Commission staff will monitor all filings made pursuant to 3 M.R.S.A. Section 311 et seq. for timeliness, legibility, and completeness. The staff will send the lobbyist a notice of any apparent reporting deficiency, including failure to use prescribed forms. The notice will include a request that the deficiency be corrected within 15 business

days of the notice. If remedy is not made, it will be noted on the agenda of the next Commission meeting. The Commission may reject reports that are incomplete or illegible.

- B. **Late Registrations and Reports.** Notice will be given by mail to any lobbyist whose registration, monthly disclosure report, or annual report is delinquent. In the case of a late monthly report, the notice must be mailed within 7 business days following the filing deadline for the report. In the case of late annual reports and registrations, the notice must be mailed within 15 business days following the filing deadline. The notice must include a statement specifying the amount assessed. A penalty of \$100 will be assessed the lobbyist for every month that a monthly disclosure report is late and a penalty of \$200 will be assessed the lobbyist and employer for every month a registration or annual report is filed late. For purposes of 3 M.R.S.A. Section 319(1), the month will end on the 15th day of the month following the month in which a report was due. Any failure to submit a required report, registration, or penalty fee will be noted on the Commission agenda.
- C. **Suspensions.** The Commission may suspend any person from lobbying who fails to file a required report or pay an assessed fee. A notice of the suspension must be mailed to the lobbyist by U.S. Certified Mail within three days following the suspension. Reinstatement will occur on the date the required report or payment is received in the Commission office. A notice of the reinstatement must be mailed to the lobbyist by U.S. Certified Mail or given directly to the lobbyist within three days following receipt of the required report or payment.
- D. **Request for Penalty Waiver.** A lobbyist may request a waiver of any late penalty the lobbyist incurs. The request must be made in writing to the Commission and must state the reason for the delinquency. Any such request must be noted on the agenda of the next Commission meeting. Only the Commission may grant penalty waivers.
- E. **Request for Waiver of Nonsession Reporting Requirement.** A lobbyist may request a waiver of the monthly nonsession reporting requirement set forth in 3 M.R.S.A. Section 317(4) if the lobbyist does not expect to be engaged in lobbying when the Legislature is not in session. The Director is authorized to provisionally grant such waivers pending approval by the Commission. Provisional waivers may be granted only where a request is properly filed, the statement properly completed, and where there is no apparent reason to doubt the statement is true. During the period in which the waiver is effective, reports will not be required. If lobbying is resumed during the period for which the waiver was granted, the lobbyist must file

a monthly disclosure report for the month or months lobbying was conducted.

- F. Faxing Duly Executed Lobbyist Registration, Reports. Any registration or report required by 3 M.R.S.A. ch. 15 may be provisionally filed by transmission of a facsimile copy of the duly executed report to the Commission, provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

## SECTION 5. FACT FINDING AND INVESTIGATIONS

1. Before Commission Meeting. With respect to any inquiry, report or request for Commission action properly filed in accordance with the preceding section, the Director may conduct such preliminary fact finding as is deemed prudent and desirable. When the Director and Counsel find a basis for a preliminary investigation, they will recommend such steps to the Chair as necessary. Pursuant to reviewing reports or finding of fact, the Director, in consultation with Counsel, will prepare a summary of findings and recommendations for inclusion on the agenda. The Chair is authorized to issue subpoenas in the name of the Commission to compel the attendance of witnesses or the production of records, documents or other evidence when the Chair and the Commission's Counsel are in agreement that the testimony or evidence sought by the subpoena is ~~likely to be of critical importance~~ necessary to disposition of the matter; and to issue any subpoena in the name of the Commission on behalf of any person having a statutory right to an agency subpoena. Any oral testimony compelled by a subpoena issued by this provision will be presented ~~initially and exclusively~~ to the Commission or its staff.
2. By the Commission. Once any matter is reached on the agenda of a Commission meeting, the Commission will control any further investigation or proceedings. No hearings will be held except by direction of the Commission. On a case-by-case basis, the Commission may authorize its Chair, Director, or any ad hoc committee of its members, to conduct further investigative proceedings on behalf of the Commission between Commission meetings. Any authorization so conferred will be fully reflected in the minutes of the Commission meeting.

## SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS

1. The date of a contribution is the date it is received by a candidate, an agent of the candidate, a candidate's committee, a party committee and its agents, or a political action committee and its agents.
12. A loan is a contribution at the time it is made unless the loan was made by a financial institution in the State of Maine in the ordinary course of business. Loans continue to be contributions until they are repaid. Loans are subject to the

candidate contribution limitations, except for loans made by the candidate, the candidate's spouse, or a financial institution in the State of Maine in the ordinary course of business.

23. Candidates and political action committees must report the name, address, occupation and employer of each individual contributor who gives, in the aggregate, more than \$50 for the reporting period. The reporting is required for private contributions raised by ~~traditionally~~privately financed candidates and for seed money contributions to candidates participating in the Maine Clean Election Act. Candidates and political action committees must make a reasonable effort to obtain the employment information of the contributor. If a candidate or political action committee is unable to obtain the information from the contributor in response to a request, the candidate or committee shall indicate "information requested" in the occupation and employer sections of the campaign finance report.
34. Unless specifically exempted under Title 21-A M.R.S.A. Sections 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee.
45. An employer that has authorized an employee to provide services without charge to a candidate or political committee during the employee's paid work-time has made an in-kind contribution to the candidate or political committee. No contribution has been made if the employee is providing services as a volunteer outside of the employee's paid work-time.
56. A commercial vendor that has extended credit to a candidate or political committee has not made a contribution if the credit is extended in the ordinary course of the vendor's business and the terms are substantially similar to extensions of credit made to nonpolitical ~~debtors~~customers that are of similar risk and size of obligation.
7. For the purposes of the limitations imposed by 21-A M.R.S.A. Section 1015(1), 21-A M.R.S.A. Section 1015(2), 21-A M.R.S.A. Section 1015(3), and 21-A M.R.S.A. Section 1056, the following guidelines shall apply:
  - A. All contributions made to a candidate through the day of the primary election for which the candidate seeks office are deemed to be made in the primary election.

- B. Notwithstanding division (c) below, if a candidate loses in the primary, all contributions made to that candidate for the purpose of liquidating debts and liabilities associated with the candidate's candidacy are deemed to be made in the primary election.
- C. All contributions made to a candidate from the day after the primary election through the date of the general election for which the candidate seeks office are deemed to be made in the general election.
- D. Notwithstanding division (e) below, all contributions made after the general election to a general election candidate for the purpose of reducing debts and liabilities associated with the candidate's candidacy are deemed to be made in the general election.
- E. All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election.
- F. Subparagraphs A through E above shall apply to any write-in candidate who has qualified under 21-A M.R.S.A. Section 723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.

## SECTION 7. EXPENDITURES

1. Expenditures By Consultants, Employees, and Other Agents of a Political Campaign. ~~Each Expenditures of campaign funds made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc. employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee shall be deemed expenditures by the candidate or committee. Such expenditures must be reported separately by the candidate or committee as if made or incurred by the candidate or committee directly. The report must include the name of the third party vendor or payee to whom the payment was made, the date of the payment, and the purpose and amount of the expenditure. It is not sufficient to report only the total retainer or fee paid to the person, agency, firm, organization, etc., if that retainer or fee was used to pay third party vendors or payees for campaign-related goods and services.~~
2. Expenditures By Political Action Committees. In addition to the requirements set forth in 21-A M.R.S.A. Section 1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.

3. Timing of Reporting Expenditures.
  - A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.
  - B. Expenditures must be reported at the earliest of the following events:
    - (1) The placement of an order for a good or service;
    - (2) The signing of a contract for a good or service;
    - (3) The delivery of a good or the performance of a service by a vendor;
    - (4) A promise or an agreement (including an implied one) that a payment will be made; or
    - (5) The making of a payment for a good or service.
  - C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.
4. Advance Purchases of Goods and Services for the General Election.
  - A. Consulting services, or the design, printing or distribution of campaign literature or advertising, including the creation and broadcast of radio and television advertising, contracted or paid for prior to the primary election must be received prior to the primary election in order to be considered primary election expenditures.
  - B. If the Commission receives a complaint stating that a candidate or a committee purchased goods or services before a primary election for use in the general election, the Commission may request that the candidate or committee distinguish which of the goods and services were used in the primary election and which were used in the general election.
5. All campaign-related payments made with the personal funds or credit card of the a-candidate or by an individuals authorized by the candidate for the purpose of influencing the candidate's nomination or election must be reported as expenditures in the reporting period during which the payment to the vendor or payee is made, including payments made with the personal funds or credit card of the candidate or authorized individual. The candidate must report the name of the vendor or payee to whom the payment was made, the date of the payment, and the

purpose and amount of the expenditure. When the expenditure is reported, the candidate should indicate the person ~~making~~ who made the payment by entering "Paid by [name of candidate or supporter]" in the remarks section of the expenditure schedule. It is not sufficient to report only the name of the candidate or authorized individual to whom reimbursement was made and the total amount of the reimbursement.

6. Multiple expenditures for bank fees and for vehicle travel may be reported in an aggregate amount, provided that the candidate or committee identifies the time period of the expenditures in the remarks section of the report.

7. Printed voter guides and legislative scorecards

A. An organization's expenditures on printed voter guides, legislative scorecards, or similar publications will be presumed to be made to influence an election if more than 500 copies of the publication are distributed within 60 days of a general election to individuals who are not members of the organization.

B. If any matter is pending before the Commission regarding an organization that has incurred expenditures covered by paragraph 7(A), the organization may attempt to rebut the presumption with whatever evidence it believes is relevant, including:

1. the content of the publication;
2. the timing and mode of distribution; and
3. other purposes served by the publication, such as education or recruitment of new members.

References to the election, voting in the election, or to individuals as "candidates," will be considered as factors in favor of the presumption.

## SECTION 8. PROHIBITED COMMUNICATIONS

Commission members shall not discuss any specific case under investigation, or any case which may reasonably be expected to be the subject of investigation, as long as the matter is pending before the Commission ~~and, where applicable, until anybody to whom the Commission renders an advisory opinion has concluded its action and any appeals therefrom have been exhausted.~~ Members of the Commission may discuss its final determination regarding the matter with members of the press or other interested persons only after the appeal period has expired if no appeal is filed, or if an appeal is filed, only after the appellant has exhausted all administrative or judicial remedies.

## SECTION 9. ACCELERATED REPORTING SCHEDULE

1. **General.** In addition to other reports required by law, any candidate for Governor, State Senator or State Representative who is not certified as a Maine Clean Election Act candidate under Title 21-A, section 1121 et seq., and who has a certified candidate as an opponent in an election must comply with the following reporting requirements on forms prescribed, prepared, and provided by the Commission.

**INFORMATIONAL NOTE:** Title 21-A, section 1017 prescribes reporting requirements for candidates.

2. **101% Report.** Any candidate subject to this section, who receives, spends or obligates more than 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate opponent in the same race, must file with the Commission, within 48 hours of such receipt, expenditure, or obligation, a report detailing the candidate's total campaign contributions, receipts, expenditures and obligations to date. The Commission will notify all candidates who have an opposing certified candidate of the applicable distribution amounts and of the 101% Report requirement.
3. Any ~~traditionally~~privately funded candidate with a Maine Clean Election Act opponent shall file the following three reports detailing the candidate's total campaign contributions, obligations and expenditures to date, except that a candidate who has not received, spent, or obligated the amount sufficient to require a report under subsection 2 may file an affidavit, by the date the report is due, attesting that the candidate has not received, spent or obligated that amount:
  - A. a report filed not later than 5:00 p.m. on the 42nd day before the date on which an election is held that is complete as of the 44th day before the date of that election;
  - B. a report filed not later than 5:00 p.m. on the 21st day before the date on which an election is held that is complete as of the 23rd day before the date of that election; and
  - C. a report filed not later than 5:00 p.m. on the 12th day before the date on which an election is held that is complete as of the 14th20th day before the date of that election.
4. **24-Hour Report.** Any candidate who is required to file a 101% report must file an updated report with the Commission reporting single expenditures of \$1,000 or more by candidates for Governor, \$750 by candidates for State Senator, and \$500 by candidates for State Representative made after the 14th day before any election

and more than 24 hours before 5:00 p.m. on the date of that election. The report must be submitted to the Commission within 24 hours of those expenditures.

5. **Filing by Facsimile or Electronic Means.** For purposes of this section, reports may be filed by facsimile or by other electronic means acceptable to the Commission, and such reports will be deemed filed when received by the Commission provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

#### SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General.** Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$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 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!".
  - C. "Independent expenditure" has the same meaning as in Title 21-A, section 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 must be reported to the Commission in accordance with the following provisions:

- A. Independent expenditures aggregating in excess of \$100 per candidate per election but not in excess of \$250 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, except that expenditures made in the last 11 days before an election must be reported within 24 hours of the expenditure.
- (1) Quarterly Reports.
    - (a) A report must be filed on January 15th and be complete as of January 5th;
    - (b) A report must be filed on April 10th and be complete as of March 31st;
    - (c) A report must be filed on July 15th and be complete as of July 5th; and
    - (d) A report must be filed on October 10th and be complete as of September 30th.
  - (2) Pre-Election Report. A report must be filed on the 12th day before the election is held and be complete as of that day.

If the total of independent expenditures made to support or oppose a candidate exceed \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure. As long as the total amount spent with respect to the candidate does not exceed \$250, all reports must be filed according to the deadlines in this paragraph. If the total amount spent per candidate exceeds \$250, the reports must be filed in accordance with paragraph B.

[NOTE: FOR EXAMPLE, IF A COMMITTEE MAKES THREE \$80 EXPENDITURES IN SUPPORT OF A CANDIDATE ON SEPTEMBER 20, THE 15TH DAY BEFORE THE ELECTION AND THE 8TH DAY BEFORE THE ELECTION, THOSE THREE EXPENDITURES MUST BE REPORTED ON OCTOBER 10th, AND THE 12TH AND 7TH DAYS BEFORE THE ELECTION, RESPECTIVELY.]

- B. Independent expenditures aggregating 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 within 24 hours of those expenditures. If any additional expenditures, regardless of amount, increase the total spent per candidate above the threshold of \$250, each additional expenditure must be reported within 24 hours.

[NOTE: FOR EXAMPLE, IF A COMMITTEE HAS REPORTED INDEPENDENT EXPENDITURES TOTALING \$300 IN SUPPORT OF

A CANDIDATE, AND THE COMMITTEE MAKES AN ADDITIONAL \$50 INDEPENDENT EXPENDITURE IN SUPPORT OF THE CANDIDATE, THE ADDITIONAL \$50 EXPENDITURE MUST BE REPORTED WITHIN 24 HOURS.]

- 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. Reports filed after the eighth day before an election must include the following information:
1. the date on which the person making the expenditure placed the order with the vendor for the goods or services;
  2. the approximate date when the vendor began providing design or any other services in connection with the expenditure;
  3. the date on which the person making the expenditure first learned of the total amount of the expenditure; and
  4. a statement why the expenditure could not be reported by the eighth day before the election.
- D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.
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.]

- C. If a candidate who has received matching funds because of a multi-candidate communication believes that he or she deserves additional matching funds because the communication disproportionately concerns his or her race, the Commission may grant additional matching funds in proportion to the relative treatment of the candidates in the communication.
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 days before an 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. Section 1019-B(1)(B):
- (1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate 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 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. Independent expenditures aggregating \$100 or less per candidate per election do 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 21-day 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 11. REPORTS OF BALLOT QUESTION CAMPAIGN ACTIVITY BY PERSONS AND ORGANIZATIONS OTHER THAN POLITICAL ACTION COMMITTEES

When a person or organization is required under 21-A M.R.S.A. Section 1056-B to file reports because of contributions or expenditures of more than \$1,500 made in support of or in opposition to a ballot question, the reports must be filed according to the following schedule:

1. Quarterly Reports. Reports must be filed on the following deadlines until the date of the election on which the question is on the ballot:
  - A. A report must be filed on January 15th and be complete as of January 5th;
  - B. A report must be filed on April 10th and be complete as of March 31st;
  - C. A report must be filed on July 15th and be complete as of July 5th; and
  - D. A report must be filed on October 10th and be complete as of September 30th.
2. Pre- and Post-Election Reports. The person or organization must file the following reports:
  - A. A report must be filed on the 6th day before the election is held and be complete as of the 12th day before the election.
  - B. A report must be filed on the 42nd day after the election is held and be complete as of the 35th day after the election.

3. **24-Hour Reports.** Any contribution or expenditure in excess of \$500 made after the 12th day before the election and more than 24 hours before the election must be reported within 24 hours of that contribution or expenditure or by noon of the first business day after the contribution or expenditure, whichever is later.

## SECTION 12. CAMPAIGN CONTRIBUTIONS DURING LEGISLATIVE SESSION

1. **Seed Money Contributions.** Legislators and other individuals covered by Title 1 M.R.S.A. Section 1015(3)(B) may not intentionally solicit or accept a seed money contribution from a lobbyist or lobbyist associate during any period of time in which the Legislature is convened until final adjournment.
2. **Acceptance of Contributions Through Political Action Committees.** During a legislative session, political action committees that are closely associated with a Legislator, such as committees organized to elect a candidate or Legislator to a leadership position or committees organized to elect the candidates of a legislative caucus, may not intentionally solicit or accept a contribution from a lobbyist, lobbyist associate, or employer. During the legislative session, these political action committees may accept contributions from individuals and organizations that are not lobbyists, lobbyist associates, and their employers. Lobbyists, lobbyist associates, and employers may not contribute to political action committees closely associated with a Legislator during a legislative session, unless their contributions are segregated in a fund that is not used to influence the election or defeat of any incumbent Legislators.
3. **Making a Contribution Through a Political Action Committee.** During a legislative session, an organization that employs a lobbyist may not make a contribution through a political action committee with which the organization is affiliated or direct that the affiliated political action committee make a contribution to a Legislator.

### STATUTORY AUTHORITY:

1 M.R.S.A. § 1003(1); 21-A M.R.S.A. § 1126.

EFFECTIVE DATE: April 29, 1987

AMENDED: December 28, 1991  
December 14, 1994

REPEALED AND REPLACED: November 1, 1998; also converted to MS Word 2.0 format.

AMENDED: January 14, 2004 (date of adoption of routine technical amendments)  
April 8, 2005 (date of adoption of routine technical amendments)  
April 8, 2005 (date of provisional adoption of major substantive amendments)  
July 13, 2005 (date of final adoption of major substantive amendments)

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION  
PRACTICES

Chapter 2: HEARING PROCEDURES

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**NO PROPOSED RULE CHANGES FOR CHAPTER 2.**

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

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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 ~~traditionally~~ 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 ~~before~~ 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 has not collected any qualifying contributions collected more than five days before signing 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. ~~information identifying the candidate's treasurer, political committee, campaign finance account, social security number, and/or federal tax identification number;~~ 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) fifty thousand dollars for a gubernatorial candidate;
      - (b) one thousand five hundred dollars for a candidate for the State Senate; or
      - (c) five hundred 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. 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.

- D. **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.
- E. **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.
- F. After becoming a candidate and prior to certification, A accepting a loan from any source including a financial institution ~~prior to certification,~~ and spending money received in the form of a loan, ~~is a~~ is not a violation of the seed money restrictions of the Act.

- G. 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. Qualifying contributions collected more than five days before and only after filing a Declaration of Intent with the Commission will not be counted toward the eligibility requirement. Qualifying contributions must be acknowledged and reported on using forms provided by the Commission. The forms will include an affirmation by the contributor that the contributor received nothing of value in exchange for the signature and contribution.

The forms must include:

- (1) the name, residential address, telephone number, 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) the signature of any person, other than the candidate, who circulated the forms and collected signatures and contributions, whether the services were provided for compensation or on a volunteer basis, affirming that he or she collected the qualifying contributions, that the contributor signed the form in the circulator's presence, that to the best of the circulator's knowledge and belief each signature is the signature of the person whose name it purports to be and that the contribution came from the personal funds of the contributor, that the circulator did not give anything of value to the contributor in exchange for the contribution and signature, and that the circulator did not represent the purpose of collecting the contributions and signatures to be for any purpose other than obtaining public funds to finance the candidate's

campaign; the form must also include the residential and mailing addresses and telephone number of the circulator.

- B. **Required Number of Qualifying Contributions.** A participating candidate must obtain the number of qualifying contributions 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.

- 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) 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) 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 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. Proof of voter verification submitted after the qualifying period will not be accepted by the Commission and those qualifying contributions will not be counted toward the number required for certification.
- ~~H. Submission of Verified Qualifying Contributions. A participating candidate may submit a completed request for certification to the Commission at any time during the qualifying period. The request will be deemed complete and the candidate will be certified only if:~~
- ~~(1) the request is accompanied by the original signed qualifying contributions forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking; or~~
  - ~~(2) the candidate submits to the Commission during the qualifying period a statement that such signature forms have been submitted to the Registrar(s) for verification on a specific date and the verified signature forms will be received by the Commission within 10 business days thereafter, and submits to the Commission during the qualifying period photocopies of the signature forms.~~

### 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. After final submission of qualifying contributions, but not later than 5:00 p.m. on the last day of the relevant qualifying period, a participating candidate may request certification as a Maine Clean Election Act candidate, the original signed receipt and acknowledgement forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking;
  - B. All participating candidates must submit the qualifying contributions in alphabetical order to the Commission along with qualifying contribution attached to the corresponding receipt and acknowledgement forms and an alphabetical list of all contributors and their town or city of residence, sorted alphabetically by the contributor's last name; of qualifying contributions when applying for certification as a Maine Clean Election Act candidate. Candidates who do not submit the required number of original qualifying contributions within the qualifying period will not be certified.
  - C. The Commission will review candidate applications 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 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
  - D. 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.
2. Reporting. Together with the request for certification, a participating candidate must report all seed money contributions received, any other contributions received, and expenditures and obligations made after becoming a candidate.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. Together with the request for certification, a participating candidate must report any 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 ~~Bureau of Accounts and Control~~ 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.
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)].
4. **Distributions Not to Exceed Amount in Fund.** If the Commission determines that the revenues in the Fund are insufficient to meet distributions under this chapter, the Commission will permit certified candidates to accept and spend contributions in accordance with the Act [§ 1125(13)]. The Commission will notify participating and certified candidates in writing of any projected shortfall in the Fund and will specify timelines and procedures for compliance with this chapter in the event of any such shortfall.

## 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 ~~Bureau of Accounts and Control~~ 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 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.

### 2. Timing of Fund Distributions.

- A. **Distribution of Applicable Amounts.** The Commission will authorize the initial distribution of applicable amounts from the Fund to certified candidates in accordance with the time schedule specified in the Act [§ 1125(7)] and this Chapter ~~[see 3.4]~~.

~~INFORMATIONAL NOTE: An initial distribution from the Fund will not be made to a candidate until the Commission has certified that candidate in accordance with the provisions of the Act and this chapter. The initial distribution may be delayed if a candidate submits a list of qualifying contributors to the Registrar for verification during the last 10 business days of the qualifying period.~~

- B. **Matching Fund Allocations.** At any time after certification, revenues from the Fund may be distributed to certified candidates in accordance with subsection 3, below.
- C. **Advances.**
- (1) To facilitate administration of the Matching Fund Provision of this chapter, and to encourage participation in the Act, the Commission may authorize the advance distribution of revenues from the Fund

to certified candidates. In determining whether to authorize such advances and the amounts of any such advances, the Commission will consider the amount of revenue in the Fund, the number of certified candidates, the number of nonparticipating candidates, and information contained in campaign finance and independent expenditure reports.

- (2) A certified candidate may only draw upon, spend or otherwise use, such advance Fund distributions after receiving written notification from the Commission authorizing a Matching Fund allocation in a specified amount. Written notification by the Commission may be by letter, facsimile or electronic means.

### 3. Matching Fund Provision.

- A. General. The Commission will authorize immediately an allocation of matching funds to certified candidates in accordance with the Act when the Commission determines that the eligibility for receipt of matching funds has been triggered [§ 1125(9)].
- ~~B. Computation and Distribution. The Commission will determine a certified candidate's allocation of matching funds, if any, in the following manner:~~
  - ~~(1) The Commission first will add --~~
    - ~~(a) the sum of an opposing candidate's expenditures and obligations, or funds raised and borrowed, whichever is greater, including surplus or unspent funds carried forward from a previous primary, general, or special election to the current election; and~~
    - ~~(b) the sum of the independent expenditures made expressly advocating the defeat of the certified candidate or the election of the same opposing candidate.~~
  - ~~(2) The Commission then will subtract --~~
    - ~~(a) the sum of the independent expenditures made expressly advocating the defeat of the same opposing candidate; and~~
    - ~~(b) the sum of the independent expenditures made expressly advocating the election of the certified candidate; and~~
    - ~~(c) the sum of any matching funds already provided to the certified candidate; and~~

- (d) ~~the sum of any seed money raised in computing matching fund eligibility for a primary, general, or special election, as applicable; or any surplus or unspent funds carried forward from a previous primary election to the subsequent general election in computing matching fund eligibility for a general election.~~
- (3) ~~If the final computed amount is greater than the applicable distribution amount for the certified candidate, then the Commission will immediately authorize the distribution of a Matching Fund allocation to the certified candidate equal to that excess.~~
- (4) ~~The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.~~
- (5) ~~To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the express advocacy. For example, expenses related to a communication saying, "Vote for John Doe—he's incompetent and inexperienced," will not be considered a communication in support of John Doe in the calculation of matching funds.~~
- B. Matching Fund Computation Involving Only Certified Candidates. If all candidates in a race are certified candidates:
- (1) For each certified candidate, the Commission will
- (a) add to the initial distribution amount for that election:
- (i) the sum of any matching funds previously provided for that election, and
- (ii) the sum of independent expenditures made in support of each certified candidate; and
- (b) subtract the sum of independent expenditures made in opposition to each certified candidate.
- (2) The Commission will compare the final computed amounts and will immediately authorize a matching fund allocation equal to the difference to the certified candidate with the lesser amount.

- (3) In computations involving only certified candidates, the Commission will not use seed money raised or unspent funds remaining after a primary election in computing the amount of matching funds.

C. Matching Fund Computation Based on Nonparticipating Candidates' Receipts or Expenditures. In races in which there is at least one certified and one nonparticipating candidate, and the matching fund computation is triggered by the financial activity of nonparticipating candidate, including any independent expenditures in support of the nonparticipating candidate:

- (1) The Commission will first determine the applicable amount for the nonparticipating candidate

(a) by adding:

(i) the sum of the nonparticipating candidate's expenditures, obligations and in-kind contributions, or the sum of the nonparticipating candidate's cash and in-kind contributions and loans, including surplus or unspent funds carried forward from a previous election to the current election, whichever is greater, and

(ii) the sum of independent expenditures made in support of the same nonparticipating candidate; and

- (b) by subtracting the sum of independent expenditures made in opposition to the same nonparticipating.

- (2) The Commission then will determine the applicable amount for the certified candidate

(a) by adding:

(i) the amount of the initial distribution for that election;

(ii) the sum of independent expenditures made in support of the certified candidate;

(iii) the sum of matching fund allocations already provided to the certified candidate; and

(iv) the amount of:

a) any seed money raised by an enrolled certified candidate in a primary or special election; or

b) any unspent funds carried forward from the primary election to the subsequent general election by an enrolled certified candidate in a general election; or

c) any seed money raised and, if applicable, any other distribution received prior to the general election distribution by an unenrolled certified candidate in a general or special election; and

(b) by subtracting the sum of independent expenditures made in opposition to the same certified candidate.

(3) The Commission will compare the final computed amounts and, if the amount for the certified candidate is less than the amount for the nonparticipating candidate, will immediately authorize a matching fund allocation equal to the difference to the certified candidate.

D. Matching Fund Computation Not Involving a Nonparticipating Candidate. In races in which there are two or more certified candidates and at least one nonparticipating candidate.

(1) if the matching fund computation is triggered by an independent expenditure in support of or opposition to a certified candidate, and

(2) the campaign totals, including independent expenditures, of any nonparticipating candidate in the race are equal to or less than the campaigns totals, including independent expenditures, of at least one certified candidate in the race; then

(3) the matching fund computation must be completed according to the procedure in paragraph B of this subsection.

E. The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.

F. To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the

express advocacy. For example, expenses related to a communication saying, "Vote for John Doe -- he's incompetent and inexperienced," will not be considered a communication in support of John Doe in the calculation of matching funds.

- EG.** Matching Fund Cap. Matching funds are limited to 2 times the amount originally distributed to a certified candidate from the Fund for that election. Certified candidates are not entitled to cumulative matching funds for multiple opponents.
- DH.** Other. Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.
- EI.** Coordination with Other State Agencies. The Commission will coordinate with the ~~Bureau of Accounts and Control~~ 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.
- FJ.** Disbursements With No Campaign Value. If a ~~traditionally privately~~ financed candidate has received monetary contributions which are disbursed in ways that do not in any way influence the nomination or election of the candidate, those receipts will not be considered by the Commission in calculating matching funds for his or her opponent. Such disbursements may include repaying a loan received by the candidate, refunding a contribution to a contributor, or transferring funds to a party or political committee for purposes that do not relate to the candidate's race.
4. Advance Purchases of Goods and Services for the General Election.
- A. If, prior to the primary election, a candidate purchases or receives in-kind contributions-a preponderance of consulting services, or the design, printing, or distribution of campaign literature and advertising, including radio and television advertising, purchased prior to the primary election by an opponent of a certified Maine Clean Election Act candidate prior to the primary are used but uses or will use a preponderance of those services exclusively for the general election, then the portion used or to be used for the general election must be counted as a general election receipt or expenditure in calculating the amount of matching funds for the any certified Maine Clean Election Act candidate in the same race.
- B. If a certified candidate in a general election believes that an opponent, or person or committee making an independent expenditure, has failed to disclose an advance purchase for the general election, the certified candidate shall submit a written request for an investigation to the

Commission no later than August 30 of the election year, or within 30 days of the opponent's filing of the 42-day post-primary report, whichever is later. The request must identify the pre-primary election expenditure that is believed to be for the general election and must state a specific basis for believing that the goods and services purchased were not used for the primary election.

- C. The Commission will request a response from the opposing candidate or other respondent, and will make a determination whether the expenditure should be counted toward the certified candidate's eligibility for matching funds.

#### SECTION 6. LIMITATIONS ON CAMPAIGN EXPENSES.

A certified candidate must:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts plus any authorized ~~M~~matching fund allocations;
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.

## SECTION 7. RECORD KEEPING AND REPORTING

1. Record Keeping by Participating and Certified Candidates. Participating and certified candidates and their treasurers must comply with applicable record keeping requirements set forth in Title 21-A, chapter 13, subchapter II [§1016], and chapter 14 [§1125(12-A)]. Failure to keep or produce the records required under Title 21-A and these rules is a violation of the Act for which the Commission may impose a penalty. The Commission may also require the return of funds for expenditures lacking supporting documentation if a candidate or treasurer is found in violation of the record keeping requirements. The candidate or the treasurer shall have an opportunity to be heard prior to any Commission decision imposing a penalty or requiring the return of funds under this section. In addition to these specific actions, the Commission may also take any other action authorized under Title 21-A.
  - A. Fiduciary Responsibility for Funds. All funds provided to a certified candidate or to a candidate's authorized political committee must be segregated from, and may not be commingled with, any other funds, other than unspent seed money. Matching fund advance revenues for which no spending authorization has been issued must be deposited in a federally insured account financial institution until the candidate receives and may not be used until the candidate receives authorization to spend those funds.
  - B. Meal Expenses. A candidate or treasurer must obtain and keep a record for each meal expenditure of more than \$50. The record must include itemized bills for the meals, the names of all participants in the meals, the relationship of each participant to the campaign, and the specific, campaign-related purpose of each meal.
  - C. Vehicle Travel Expenses. A candidate or treasurer must obtain and keep a record of vehicle travel expenses for which reimbursements are made from campaign funds. Reimbursement may must be based on the standard mileage rate prescribed for employees of the State of Maine for the year in which the election occurs, using either the standard mileage rate or actual expenses. The candidate must use one method exclusively during an election campaign. For each trip for which reimbursement is made, a record must be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement. A candidate may be reimbursed for vehicle travel expenses at a rate less than the standard mileage rate. A candidate may also reimburse a volunteer for vehicle travel expenses at a rate less than the standard mileage rate as long as the difference does not exceed \$100 per volunteer per election. The Commission may disallow

any vehicle travel reimbursements for which the candidate or the treasurer cannot produce an accurate record.

- (1) ~~Standard Mileage Rate. The standard mileage rate is a set rate per mile that a candidate may use to compute reimbursable vehicle travel expenses. Reimbursement should be calculated using the standard mileage rate currently prescribed for employees of the State of Maine. For each trip for which reimbursement is made, a record should be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement.~~
- (2) ~~Actual Expenses. Actual expenses include the pro rata, campaign-related share of vehicle depreciation or lease payments, maintenance and repairs, gasoline (including gasoline taxes), oil, insurance, and vehicle registration fees, etc. For reimbursement using this method, the candidate must maintain detailed records reflecting use of the vehicle for campaign related purposes. The records must include the dates the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for campaign related purposes, the total mileage the vehicle was used for all purposes during the period for which reimbursement is made, and the percentage of total vehicle usage that the vehicle was used for campaign related purposes.~~

## 2. Reporting by Participating and Certified Candidates.

- A. General. Participating and certified candidates must comply with applicable reporting requirements set forth in Title 21-A, chapter 13, subchapter II [§ 1017].
- B. Return of Matching Fund Advances and Unspent Fund Revenues. Matching Fund advance revenues that have not been authorized for spending and unspent Fund revenues shall be returned to the Fund as follows:
  - (1) Unauthorized Matching Funds. Candidates must return all ~~M~~atching ~~F~~und advance revenues for which no spending authorization was issued prior to an election to the Commission by check or money order payable to the Fund within 2 weeks following the date of the election.
  - (2) Unspent Fund Revenues for Unsuccessful Primary Election Candidates. Upon the filing of the 42-day post-primary election

report for a primary election in which a certified candidate was defeated, that candidate must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$1,000 in order to defray expenses associated with an audit by the Commission.

- (3) Unspent Fund Revenues for All General and Special Election Candidates. Upon the filing of the 42-day post-election report for a general or special election, all candidates must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$2,500 in order to defray expenses associated with an audit by the Commission.
- C. Liquidation of Property and Equipment. Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with Maine Clean Election Act funds loses its campaign-related purpose following the election. Such property and equipment must be liquidated at its fair market value and the proceeds thereof reimbursed to the Maine Clean Election Fund as unspent fund revenues in accordance with the schedule in paragraph B above.
- (1) The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.
  - (2) Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair, economic, just, equitable, and reasonable under normal market conditions based upon the value of items of similar description, age, and condition as determined by acceptable evidence of value.

## SECTION 8. RECOUNTS, VACANCIES, WRITE-IN CANDIDATES, SPECIAL ELECTIONS

- I. Recounts. After a primary election, if there is a recount governed by Title 21- A, chapter 9, subchapter III, article III [§ 737-A], and either the leading candidate or the 2nd-place candidate is a certified candidate, the following provisions will apply:
  - A. If the margin between the leading candidate and the 2nd-place candidate is less than 1% of the total number of votes cast in that race and a recount is presumed necessary, the certified candidate immediately must halt the expenditure of revenues disbursed to the candidate from the Fund upon receiving notice of the recount until the recount is complete.

- B. If the recount results in a changed winner, the certified candidate who originally received the disbursement must return any unspent distributions from the Fund to the Commission, payable to the Fund. If the new winner is a certified candidate, the Commission will distribute the applicable disbursement amount to the candidate.
  - C. If the margin between the leading candidate and 2nd-place candidate is 1% or greater of the total number of votes cast in that race and the 2nd-place candidate requests a recount, the leading candidate, if a certified candidate, is not required to freeze expenditures of the disbursement.
  - D. If the recount results in a changed winner, the certified candidate must return any unspent distributions from the Fund to the Commission, payable to the Fund. If the new winner is a certified candidate, the Commission will distribute the applicable disbursement amount to the candidate.
2. Death, Withdrawal, or Disqualification of a Candidate During Campaign.
- A. Death, Withdrawal, or Disqualification Before Primary Election. If a candidate dies, withdraws, or is disqualified before the primary election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
  - B. Death, Withdrawal, or Disqualification After the Primary Election and before 5:00 p.m. on the 2nd Monday in July Preceding the General Election. If a candidate dies, withdraws, or is disqualified before 5:00 p.m. on the 2nd Monday in July preceding the general election, any replacement candidate will have a qualifying period from the time of the candidate's nomination until 30 days after the 4th Monday in July as a participating candidate to collect qualifying contributions and request certification.
  - C. Death, Withdrawal, or Disqualification after 5:00 p.m. on the 2nd Monday in July Preceding the General Election. If a candidate dies, withdraws, or is disqualified after 5:00 p.m. on the 2nd Monday in July preceding the general election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
  - D. Replacement Candidates Who Are Participating Candidates. Any replacement candidate choosing to become a participating candidate must otherwise comply with the requirements of this chapter and the Act including, but not limited to, seed money limits and qualifying

contribution requirements. The Commission will notify any replacement candidates of the opportunity to participate in the Act and the procedures for compliance with this chapter during a special election.

3. Write-In Candidates.
  - A. Write-in candidates are subject to the registration requirements of Title 21-A M.R.S.A. Section 1013-A and the campaign finance reporting requirements of Section 1017, as soon as they qualify as a nominee pursuant to 21-A M.R.S.A. Section 723, file a declaration of write-on candidacy with the Secretary of State pursuant to 21-A M.R.S.A. Section 722-A, or receive contributions or make expenditures with the intent of qualifying as a candidate in the primary or general election, whichever first occurs.
  - B. Write-in candidates may not participate in the Maine Clean Election Act, except as provided in paragraph C.
  - C. A write-in candidate in a primary election who becomes a party's nominee may participate in the Maine Clean Election Act for the general election. The Commission will establish a qualifying period during which the candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
  - D. A candidate who is participating in the Maine Clean Election Act and who has no opponent listed on the ballot will be presumed to be in an uncontested election even if there are one or more individuals running as write-in candidates. The participating candidate may rebut this presumption by presenting evidence to the Commission that the write-in opponent(s) received or spent substantial campaign funds. Based upon the evidence presented, the Commission may make a determination that it is a "contested election" and make a distribution of public funds to the participating candidate on that basis.
4. Special Election When One or More Candidates Desire to Become Certified Candidates. If a vacancy occurs in the office of Governor, Senator, or Representative because an incumbent dies, resigns, becomes disqualified, or changes residence to another electoral division, and a special election will be held to fill the vacant office, the following provisions apply:
  - A. The Commission, in consultation with the Secretary of State, will establish a qualifying period during which any candidate in a special election may decide to become a participating candidate, collect qualifying contributions, and apply to become a certified candidate; and

- B. Any candidate in a special election must otherwise comply with the requirements of this chapter and the Act including, but not limited to, seed money limits and qualifying contribution requirements. The Commission will notify any candidates of the opportunity to participate in the Act and the procedures for compliance with this chapter during a special election.
- 5. Return of Unspent Fund Revenues. Any time a certified candidate withdraws, is disqualified, or dies before an election, the candidate or the candidate's agent must return to the Commission all unspent amounts distributed to the candidate by check or money order payable to the fund, within 2 weeks of the termination of the candidacy.

STATUTORY AUTHORITY:

1 M.R.S.A. § 1003(1); 21-A M.R.S.A. § 1126.

EFFECTIVE DATE:

November 1, 1998

NON-SUBSTANTIVE CHANGES:

December 3, 1998 - minor spelling and formatting.

2002 MAJOR SUBSTANTIVE RULE-MAKING

AMENDMENTS PROVISIONALLY ADOPTED:

February 13, 2002

COMMISSION ADOPTION OF FINAL RULE:

May 1, 2002

EFFECTIVE DATE:

July 31, 2002

2005 MAJOR SUBSTANTIVE RULE-MAKING

DATE OF PROVISIONAL ADOPTION OF AMENDMENTS:

April 8, 2005

COMMISSION ADOPTION OF FINAL AMENDMENTS:

July 13, 2005

**Lavin, Paul**

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**From:** Lacey Sloan [sloanlaceym@hotmail.com]  
**Sent:** Wednesday, January 31, 2007 8:16 PM  
**To:** Lavin, Paul  
**Subject:** NCEA changes

Dear Mr. Lavin:

I have read the proposed changes to the Maine Clean Elections law, and I support all of the changes except those proposed to subsection 7 concerning "an organization's voter guide or legislative scorecard is made to influence an election if more than 500 copies are sent within 60 days of a general election to individuals who are not members of the organization." Since most voter guides have information on more than one candidate, it seems that these would be no different than slate ads, which do not count against candidates included in the ad. I assume that the purpose of this section is to count the guide as a cost to the candidate's campaign.

I particularly support the changes to sections 6 and 7 that require expenditures made by a candidate's committee, etc., be reported, and that they reported based on the actual expenses, not just listed as "reimbursement" or "fees to consultant."

Thank you for your efforts to keep MCEA working for us all.

Lacey Sloan  
155 Stone Hill Rd.  
Limerick, ME 04048

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Search for grocery stores. Find gratitude. Turn a simple search into something more.  
[http://click4thecause.live.com/search/charity/default.aspx?source=hmemtagline\\_gratitude&FORM=WLMTAG](http://click4thecause.live.com/search/charity/default.aspx?source=hmemtagline_gratitude&FORM=WLMTAG)

**Lavin, Paul**

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**From:** Nancy Oden [cleaneearth@tds.net]  
**Sent:** Thursday, February 01, 2007 10:26 AM  
**To:** Lavin, Paul  
**Subject:** solution

I was a state senatorial candidate last year, and have concluded that the only way to keep money out of the elections is to:

1. Require all candidates to qualify for the ballot equally (do not make independents get twice as many signatures, for example), and do not make this too difficult. The 4,000-signature requirement now in place for governor and US senate are quite sufficient to quell any but serious people.
2. Once a candidate has qualified by getting the required number of signatures verified, then that candidate and all other candidates for that office should receive the same amount of money and not be allowed to spend a penny more than their allotment.
3. Regular financial reports - more frequent than now - should be carefully monitored to ensure candidates are not spending more than their allotment.
4. No other spending should be allowed for any campaign other than the candidates' allotments.
5. Extant political parties should not be allowed loopholes to help their candidates, eg, printing campaign materials, etc.

If a truly level playing field is wanted (and it apparently is not by those already in power), then the Ethics Commission would propose legislation to make it a truly level playing field - everyone qualifies in the same way, everyone gets the same amount of money, no other monies allowed.

- Nancy Oden, Jonesboro, Maine

# Exhibit #2

Minutes of the October 13, 2006  
Special Meeting of the  
Commission on Governmental Ethics and Election Practices  
Held via conference call.

Present: Chair Jean Ginn Marvin, Hon. Vinton Cassidy, Hon. A. Mavourneen Thompson, Hon. Michael Friedman, Hon. Andrew Ketterer.

Interested Parties: Matthew Reading and Rep. Herb Adams, candidates for House District 119.

Staff: Jonathan Wayne, Executive Director, Phyllis Gardiner, Counsel.

At 1:30 P.M., Chair Ginn Marvin convened the meeting. Jonathan Wayne introduced the two items considered by the Commission:

**Issue #1: Effect of Seed Money in Matching Fund Calculations** Matthew Reading is a Green-Independent replacement candidate for the House in District 119, registered on July 24 replacing Jason Rogers. Mr. Reading collected approximately \$495 in seed money during his qualifying period. Under the Commission's rules that seed money should be counted as general election funds, being money he received and or spent in order to influence general election and should be counted in calculating matching funds. When House Democrats Campaign Committee (HDCC) spent money on Rep Adams, our view was Mr. Reading was not entitled to any matching funds because the HDCC's independent expenditure did not exceed the \$495 seed money Mr. Reading collected. His first request is he believes the \$495 should be viewed as money used for the purpose of qualifying for public funds, not towards influencing the general election.

**Issue #2: Eligibility for Matching Funds** Representative Herb Adams made an expenditure of \$462 on June 9, 2006 for primary election for postage. If Representative Adams did spend this for the general election rather than primary election, Mr. Reading may be entitled to matching funds on this basis.

Chair Ginn-Marvin asking Mr. Reading if he wanted to speak on these issues.

Mr. Reading stated that he thought that Rep. Adams spent a lot on postage immediately before the election. However, he said that he was not going to question what Rep. Adams says he did with the postage. He had not heard from any Democrats that he knew that any mailing was done prior to the primary. He said that he asked Mr. Wayne for clarification of the rule and was told that postage was not covered. He contested that interpretation and stated that he believed that postage should be included under consulting services, design, printing, and distribution of literature.

Mr. Reading said that the more complicated matter is whether seed money counts during the general election period. He said that seed money is separate from general election and primary election funds due to the fact that it is raised in the qualification period. He stated that he had a significant disadvantage as a replacement candidate trying to qualify for public funds during the general election period. He said that having professionally designed literature was important in getting his name out to voters in order to qualify for public funds and that was what the seed money was used for.

Andrew Ketterer joined the group at 1:40 p.m.

Mr. Reading said that the purpose of his expenditures from seed money was to help him qualify for public funds. However, he had to purchase more printed material than he needed for the qualifying period because he could not purchase smaller quantities that would apply to only one month period of time. He did purchase signs and materials for a campaign kick off event for volunteers who were helping him by collecting a significant number of qualifying contributions. He said that it seemed strange to him that his opponent was able to raise and spend seed money before the primary without an impact on the public funds he received in the general election. As for him, he said it created a campaign deficit as he understood it based on Mr. Wayne's explanation. He stated that his original understanding of the qualifying period and seed money purpose was validated

by the fact that when he received his general election distribution, it was not reduced by the seed money raised, but rather offset by any remaining unspent seed money at the end of the qualification period. He said that indicated to him that the qualifying period was distinct from the general election period. He said that he was taken aback when he was told that the independent expenditure was made, but that it would not trigger any matching funds on his behalf. He stated that it seemed to him that there was an independent expenditure allowance due to the fact that he had raised seed money to qualify for clean election funds. He said that, to his understanding, there is still \$192 that can be made in independent expenditures on Rep. Adams' behalf before it triggers any matching funds for his campaign which puts him at a disadvantage. In referring to the memo that Mr. Wayne prepared, Mr. Reading stated that he believes that if there is immediate matching funds available to any candidate, as required by law, there should never be an imbalance between two MCEA candidates. However, by counting a replacement candidate's seed money in calculating matching funds in the general election, the Commission created an imbalance. Mr. Reading said that the clean election law should not be allowed to create any sort of campaign imbalance.

Chair Ginn-Marvin asked whether anyone had questions for Mr. Reading and seeing none, requested Rep. Adams to speak on this issue.

Rep. Adams stated that he did buy stamps for a mailing for the primary. He said that he had many cards left from previous campaigns that were unspecific but promoted him. He bought postage and in the last weekend mailed them. He said that he had three rolls of unused 24 cent stamps.

Mr. Wayne said that there was \$72 left according to what Rep. Adams said, out of the total original purchase of \$462. Under the Commission's rule, if more than 51% of the purchase was used for general election, the purchase would be considered as a general election. But in this case, most of the stamps were used for the primary election and no portion of that would be counted as a general election expenditure.

Regarding the seed money issue, Rep. Adams said that the issue was a little more obscure. He said that he did not think that a replacement candidate was under disadvantage. It was well known that the Green-Independent candidate nominated for the primary in District 119 was a stand-in. It was understood there would be a replacement. Rep. Adams said that Mr. Reading was recruited in Auburn and came to Portland and registered to vote on the 24th of July and was nominated on the 24th by his party. He was fully aware of the circumstances, including timing, and accepted all those circumstances. Therefore, given the fact that neither of his opponents raised or spent any seed money and that he was well aware of the circumstances when he was recruited to run, Rep. Adams stated that he did not think there was a disadvantage against Mr. Reading.

Chair Ginn-Marvin asked Mr. Wayne how the Commission should proceed.

Mr. Wayne said that the staff recommendation was to treat Mr. Reading's seed money as a receipt for his general election based on the Commission's rules on when funds are received by a candidate. The staff's past practice is that, when there is a replacement candidate who collects seed money to qualify for clean election funds, it is presumed that all is being spent for the general election. Mr. Wayne suggested that it might be appropriate for Mr. Reading to comment on whether he gets no value in the general election for all that literature and postage that he bought during the qualifying period. However, the Commission staff has heard from other replacement candidates who also feel they are at a disadvantage because they are running against someone who qualified in April and was able to spend some money in the primary election period for some goods and services that are of value to them in the general. In short, some replacement candidates feel like the slate is not totally wiped clean on the day of the primary election. There are some primary campaign materials that primary candidates bring forward into the general election period. Mr. Wayne suggested that, if the Commission wanted to change the policy, it could be handled through rule making.

Ms. Thompson asked how would his seed money be treated if Mr. Reading was in the primary election and what would be his relationship financially to Rep. Adams and Mr. Lavoie.

Mr. Wayne responded that Mr. Reading could have raised up to \$500 in seed money. If Mr. Reading had been a primary candidate he would have received an additional \$512 in clean election act funds for the primary election. But the only amount that could be considered to be brought forward to the general would be any amount remaining unspent as of the day of the primary election.

Ms. Thompson asked what the other candidate who Mr. Reading replaced raised or spent.

Mr. Wayne said that the candidate's name was Jason Rogers and he raised and spent no money. If what Rep. Adams is saying is correct, he knew he wasn't going to raise or spend money.

Ms. Thompson asked whether the Commission had previously had a situation in which a candidate was not active early on, during the primary, and is then considered to have been disadvantaged because he or she had not been active early on in the primary. Mr. Wayne responded that he did not think this had been before the Commission before.

Ms. Thompson stated that when a candidate starts to run, the candidate is starting from ground zero and is not necessarily considered disadvantaged because he or she was not involved since the April date. Whereas other candidates would have been involved since April.

Mr. Wayne agreed and stated that what happens before the primary is off the books for consideration of the general election matching funds. Whatever money the candidates raise and spend prior to the primary election does not count, except as in Rep. Adams case, he had \$50 left over on the day of the primary so that counted as an amount toward the general election receipt.

Chair Ginn-Marvin asked whether there were any other questions or whether there was a motion.

Mr. Friedman stated that he was concerned that Rep. Adams did get \$512 prior to the primary election and had funds left over from that. With a replacement candidate coming in after primary, obviously they would not get credit for that previous payment. He said that he was troubled because there seems to be a bit of a disadvantage, although he would be more troubled if the Commission went against what the rule says on this point. He suggested that the Commission look at this issue in the future. Mr. Friedman made a motion that the Commission accept the staff recommendation that no further seed money is warranted. Mr. Ketterer seconded.

Ms. Gardiner asked for a clarification on whether Mr. Friedman meant to say "further matching funds" when he said "further seed money." Mr. Friedman said that he meant to say matching funds.

Ms. Gardiner further inquired whether the motion applied to both issues postage and counting of seed money. Mr. Friedman said that it did.

Ms. Thompson asked whether the Commission should add or clarify that the motion is based on these particular requests. Ms. Gardiner said that it would be implicit in the motion to accept the staff recommendation.

Chair Ginn-Marvin asked whether there was any discussion on the motion.

Ms. Thompson questioned if the Maine Clean Election Act would consider making adjustments for a candidate who in fact comes into the campaign after the primary, or if the intention of the law is to make adjustments to create a level playing field for any candidate who comes into a campaign late. Ms. Thompson said that she thought the issue was whether the Act had to take a stand on creating a level playing field for someone

who comes in after others have already been actively campaigning either in primary or general election.

Mr. Ketterer said that the philosophical goal of the Act is to level the playing field, to the extent possible, amongst all candidates. However, the Act can only level the playing field from the time the person gets in the game and that timing is up to the candidates. This candidate, for whatever reason, entered late and so is not on the same footing as a candidate who ran in the primary.

Mr. Cassidy asked whether Rep. Adams had \$120 going into general election, based on \$50 left from his primary money and \$70 left in stamps and whether that would go towards the general election. Mr. Wayne said he can use the \$50 for the general election and use the \$72 in stamps for the general.

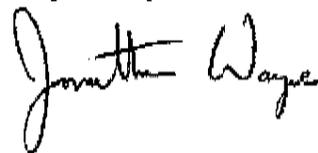
Mr. Cassidy went on to ask whether that would affect his opponent at all as far as matching funds he receives for the general.

Mr. Wayne said the \$50 would be taken into consideration, but the \$72 in stamps would not because under the Commission's rule it would be treated as a primary election expenditure.

Chair Ginn-Marvin asked whether there were any further comments. Seeing none, she called for a vote on the motion. The vote was unanimous to pass the motion and adopt the staff's recommendation.

The meeting was adjourned.

Respectfully submitted,



Jonathan Wayne  
Executive Director



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

Minutes of the October 20, 2006 Meeting of the  
Commission on Governmental Ethics and Election Practices  
Held in the Commission's Meeting Room,  
PUC Building, 242 State Street, Augusta, Maine

Present: Chair (Pro Tempore) Hon. Andrew Ketterer; Hon. Vinton E. Cassidy; Hon. Michael P. Friedman. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:05 A.M., Chair (Pro Tempore) Andrew Ketterer convened the meeting. The Commission considered the following items:

**Agenda Item #1 – Ratification of Minutes of the September 22, 2006 Meeting**

Mr. Cassidy moved, and Mr. Friedman seconded, that the Commission adopt the minutes as printed.

Ms. Gardiner said that the minutes should include a description of the discussion and motion that occurred during the transcribed portion of the meeting.

Mr. Wayne asked if the staff should amend the minutes and present them to the Commission at its next meeting.

Mr. Ketterer asked if the ratification of the minutes was necessary for an appeal to go forward. Ms. Gardiner replied that it was not.

Mr. Cassidy moved, Mr. Friedman seconded, and the Commission voted unanimously (3-0) to table Agenda Item #1.

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

**Agenda Item #2 – Request for Penalty Waiver/Edward Blais**

Mr. Wayne said that Mr. Blais was a write-in candidate in the primary election for the position of sheriff in Cumberland County. Mr. Wayne said that Mr. Blais received enough votes in the primary to become the Republican nominee in the general election. Mr. Wayne said that Mr. Blais did not file the 42-day post-primary report that was due on July 25. Mr. Wayne said that Mr. Blais had difficulty with the Secretary of State's office in determining whether or not he was a candidate in the general election. Mr. Wayne said that the Secretary of State's Director of Elections called him to say that the office was counting the votes of regular candidates before counting write-in votes. Mr. Wayne said that Mr. Blais was also confused about having to file financial reports with the Commission when the Secretary of State's office oversees elections. Mr. Wayne said that the preliminary penalty was \$115, but the staff recommended reducing it by half to \$57.50. Mr. Wayne said that this reflected the Commission's vote at its last meeting in regard to a similar situation.

Mr. Friedman moved, and Mr. Cassidy seconded, that the Commission accept the staff recommendation and reduce the penalty to \$57.50.

Mr. Ketterer said that write-in candidates had been treated differently because they were not as visible to the Commission as regular candidates.

The Commission voted unanimously (3-0) to accept the staff recommendation and reduce the penalty to \$57.50.

**Agenda Item #3 – Report on Auditing Maine Clean Election Act Candidates**

Vincent Dinan introduced himself as the Commission's auditor. Mr. Dinan said that he submitted 11 results from the latest candidate audit, with all of them resulting in no exceptions. Mr. Dinan asked if the Commission would like to see audit results containing no exceptions or if they would only like to see audits that resulted in deficiency findings. Mr. Dinan said that 14 additional audits were in progress.

Mr. Friedman said that it was important for the public to see that the majority of candidates have no issues with their campaigns.

Mr. Ketterer asked Mr. Dinan how he selected campaigns for audit. Mr. Dinan responded that the audits were randomly selected from a list of all Maine Clean Election Act candidates.

Mr. Ketterer asked if Mr. Dinan weighted the results to ensure equal representation from all political parties. Mr. Dinan said that he did not and that the selection was truly random, although statistically more Democrats ran as publicly financed candidates than Republicans. Mr. Ketterer said that the results were valuable to include in the meeting's minutes.

**Agenda Item #4 – Request for Matching Funds/Cumberland County Democratic Committee Newsletter**

Mr. Wayne said that some of the language within the Cumberland County Democratic Committee newsletter could be considered express advocacy. Mr. Wayne said that the Woodcock campaign requested a determination on whether it was entitled to receive matching funds as a result of the newsletter. Mr. Wayne said that Rep. Lawrence Bliss, treasurer of the Cumberland County Democratic Committee, told him in a letter that the cost of the newsletter was \$784. Mr. Wayne said that the amount spent to expressly advocate the election of John Baldacci was less than \$100, which was the threshold for filing an independent expenditure report. Mr. Wayne said that the staff recommendation was to pay no matching funds to Woodcock or any other gubernatorial campaign. Mr. Wayne said the committee had conducted fundraising and spending in 2006 but was unaware that it had to file regular party committee reports with the Commission. Mr. Wayne said that there was a breakdown in communication with some of the county and town party committees on filing requirements.

Mr. Ketterer said that there seemed to be a problem either with the state party committees communicating with local party committees or high turnover among local party committee

treasurers. Mr. Wayne said that there was still a legal requirement to file the reports and that the reports could effect the election.

Dan Billings, appearing on behalf of the Woodcock campaign, said that the campaign was satisfied with the staff recommendation. Mr. Billings said that while the committee claims that its newsletters were sent to members, some of them were available in public locations.

Mr. Friedman asked Mr. Billings if he was withdrawing his request for matching funds. Mr. Billings replied that he was withdrawing the request and was satisfied with the results of the Commission staff's investigation.

Mr. Friedman moved, Mr. Cassidy seconded, and the Commission voted unanimously (3-0) to accept the staff recommendation.

#### **Agenda Item #5 – Policies Regarding Legislative Mailings to Constituents**

Mr. Wayne said that the Commission staff received complaints from candidates stating that their opponents' legislative newsletters were campaign-related. Mr. Wayne said that the Commission decided to take no action on those issues, but did hold a public workshop on July 19. Mr. Wayne said that the staff recommended that the current law was adequate and no changes were needed. Mr. Wayne said that distinguishing between campaign materials and legislative newsletters was not a major problem. Mr. Wayne said that the Commission should be cautious not to impede legislators' ability to communicate with their constituents. Mr. Wayne said that one of the issues brought to the Commission involved a legislator who sent constituent mailings outside his current district. Mr. Wayne said that the Commission could decide to add language to its rules or the candidate guidebook stating that mailings outside a legislator's district could be considered campaign expenditures.

Mr. Ketterer said that the Clerk of the House and Secretary of the Senate had the ability to screen and edit constituent newsletters to avoid sending campaign materials. Mr. Ketterer said that when he served as a legislator, he did communicate with citizens outside his own district who

were affected by specific issues that came before the legislature. Mr. Ketterer said that this was different from conducting a mass mailing outside of one's district. Mr. Ketterer agreed with Mr. Wayne's suggestion that language be added to the candidate guidebook on the issue.

Mr. Friedman said that having information on constituent mailings in the guidebook will inform candidates about what practices may raise an issue with the Commission. Mr. Friedman said that it would also educate the parties. Mr. Friedman said that the problem was not significant enough to justify a change to the Commission rules.

Mr. Cassidy agreed on the need for constituent mailings information in the candidate guidebook.

Mr. Cassidy moved, Mr. Friedman seconded, and the Commission voted unanimously (3-0) to adopt the staff recommendation and include guidance on constituent mailings in the candidate guidebook.

The Commission decided to return to Agenda Item #6 later in the meeting.

#### **Agenda Item #7 – Administrative Question: Posting Statements of Sources of Income**

Mr. Wayne said that legislators are required to file a form once a year disclosing their sources of income.

Mr. Ketterer asked if the form required the reporting of specific amounts. Mr. Wayne replied that only the sources of income are reported and not amounts.

Mr. Wayne said that the sources of income forms were kept in the Commission offices, but were not posted on the Internet. Mr. Wayne said that posting the forms online would make them more accessible to the public. Mr. Wayne said that some legislators may be concerned about the availability of personal information such as the receipt of social services benefits. Mr. Wayne said that the staff was generally in favor of posting the forms online. Mr. Wayne said that the matter of posting the forms was raised by the League of Women Voters at a meeting of the

Advisory Committee on Legislative Ethics. Mr. Wayne said that the advisory committee voted unanimously in favor of recommending to the Commission that it post the sources of income forms on its Web site.

Mr. Cassidy said that the forms were already public documents and were not being kept secret.

Mr. Friedman said that the Commission should recognize that most people have access to the Internet and post the forms on the Web site.

Mr. Ketterer asked if past practice had been that legislators filed the sources of income forms with the Secretary of State. Ms. Gardiner said that executive branch employees have a form they must file with the Secretary of State, but legislators file the sources of income form with the Commission.

Mr. Ketterer said that disclosure was part of being a legislator. Mr. Ketterer said that it would go against the spirit of the statute to collect the information and never make it publicly accessible. Mr. Ketterer said that the Commission should not disregard the recommendation from the Advisory Committee.

Mr. Friedman moved, Mr. Cassidy seconded, and the Commission voted unanimously (3-0) to approve the staff recommendation that the sources of income forms be posted on the Commission Web site.

#### **Agenda Item #8 -- Sufficiency of Maine Clean Election Fund for the 2008 Elections**

Mr. Wayne said that a major source of funding for the Maine Clean Election Act has been a \$2 million transfer every year from the General Fund to the Maine Clean Election Fund. Mr. Wayne said that there was also a check-off on state income tax returns, providing additional revenue. Mr. Wayne said that in 2002 and 2003, the legislature removed \$7 million from the Maine Clean Election Fund to be used for other purposes. Mr. Wayne said that there was an understanding that the money would be returned. Mr. Wayne said that it may be necessary to

request the return of some of the funds during the next legislative session. Mr. Wayne said that the amount of the request is dependent upon the amount of funds distributed to candidates before the election. Mr. Wayne recommended that he e-mail the Commission members when he determined the proper amount to request from the legislature, if any. Mr. Wayne said that the alternative was to wait until the Commission's November meeting.

Mr. Ketterer agreed with Mr. Wayne's suggestion and said that the Commission should report its communication in the minutes of a public meeting.

#### **Agenda Item #9 – Update on LaMarche Appeal**

Ms. Gardiner said that oral argument was heard on Wednesday. Ms. Gardiner said that the judge had his own internal deadline for a decision. Ms. Gardiner said that she was unsure whether the LaMarche campaign would appeal the judge's verdict.

#### **Agenda Item #4 – Request for Matching Funds/Cumberland County Democratic Committee Newsletter (continued)**

Mr. Wayne said that Rep. Lawrence Bliss was present and may have wished to speak on Agenda Item #4.

Rep. Bliss said that he did not need to speak on the issue if it was going to be addressed at a future meeting.

Mr. Ketterer told Rep. Bliss that the Commission had already adopted the staff recommendation that the committee was not required to file an independent expenditure report. Mr. Ketterer said that other issues were raised during the discussion and will be addressed by the Commission staff. Mr. Ketterer said that there was an ongoing issue with party committees communicating about reporting requirements. Rep. Bliss said that he was aware that there was a problem that the committee will address. Mr. Ketterer said that the problem was due to a lack of

communication and ignorance of the filing requirements rather than an intent to hide information from the public.

Mr. Friedman said that the Woodcock campaign withdrew its claim that the printed materials were express advocacy. Mr. Friedman said that the only action the Commission took was to approve the staff's recommendation on the reporting issue.

Mr. Wayne said that the committee already conceded that it was late filing the July report, resulting in a penalty matter. Mr. Wayne said that he was uncertain whether the committee was required to file reports from years before 2006. Mr. Wayne said that it would be a reasonable burden on the committee to ask it to determine whether it owed reports from 2005.

Mr. Friedman said that it would be easier for the Commission staff to look at one year than to go back further. Mr. Wayne said that he was more concerned with the burden on the committee than on the staff.

Rep. Bliss said that his committee was gathering information on both 2005 and 2006.

Mr. Ketterer said that the Commission seemed to agree that it would only request reports from 2006.

The Commission decided to return to Agenda Item #11 later in the meeting.

**Agenda Item #12 – Request for Inquiry Regarding Endorsements/Reginald W. Arsenault, Jr.**

Mr. Wayne said that Ben Gilman of the State Republican Party filed a request that the Commission consider an endorsement issue regarding Reginald Arsenault. Mr. Wayne said that both candidates in the race received positive ratings from the Maine Credit Union League and the Sportsman's Alliance of Maine. Mr. Wayne said that both candidates received an "A" rating from the Sportsman's Alliance. Mr. Wayne said that Mr. Gilman's complaint referred to a press

release sent out by Reginald Arsenault claiming that he received endorsements from the Sportsman's Alliance and Maine Credit Union League. Mr. Wayne said that Randy Hotham received the endorsements and not Mr. Arsenault. Mr. Wayne said that the Arsenault campaign has publicly stated that it made an error and misinterpreted the letters it received. Mr. Wayne said that the Arsenault campaign sent a letter of apology to the local newspaper recognizing Rep. Hotham as the proper endorsee. Mr. Wayne said that it seemed that Mr. Gilman and Rep. Hotham wanted to get a correction on the record rather than a finding of violation. Mr. Wayne said that the staff recommended not finding a violation and not assessing any penalty. Mr. Wayne said that this case was similar to the issue of Michael Mowles' use of an endorsement, where Mr. Mowles challenged the constitutionality of the statute. Mr. Wayne said that given Mr. Mowles' appeal, it would be best not to take any action against Mr. Arsenault.

Mr. Friedman asked if the Republican Party made the complaint and was satisfied with no further action after hearing about Mr. Arsenault's apology. Mr. Wayne said that he heard that from the Republican candidate in the race, not from the Republican Party staff. Mr. Wayne said that he had not talked to Mr. Gilman about their current view.

Mr. Cassidy moved to accept the staff's recommendation to find no violation and impose no civil penalties.

Mr. Friedman questioned whether the Commission should pass the motion when it did not discuss the matter at length.

Mr. Wayne said that Rep. Hotham left a voicemail message stating that he would like an admonishment from the commission but did not wish a monetary penalty to be imposed on Mr. Arsenault.

Mr. Friedman seconded Mr. Cassidy's motion and the Commission voted unanimously (3-0) to accept the staff's recommendation to find no violation and impose no civil penalties.

Mr. Ketterer said that Mr. Arsenault had apologized and Rep. Hotham was being reasonable with his request.

The Commission decided to take up the following items out of order and return to Agenda Item #13.

**Agenda Item #6 – Administrative Question: Payment of Matching Funds to Gubernatorial Candidates**

Mr. Wayne said that there were two ways that the staff could pay matching funds resulting from independent expenditure reports. Mr. Wayne said that the staff could calculate matching funds once a day, which may result in some independent expenditures offsetting others. Mr. Wayne said that this method would keep all gubernatorial candidates on a level playing field while saving money.

Mr. Ketterer asked what the past practice had been. Mr. Wayne said that it was not an issue in 2002 due to only one candidate receiving matching funds. Mr. Wayne said that additional staff members were now available to make matching funds authorizations, providing the option of making several authorizations a day.

Dan Billings, speaking on behalf of the Woodcock for Governor campaign, said that the issue was a reasonable one. Mr. Billings said that the staff proposal took into consideration the Maine Clean Election Act's purpose of providing a level playing field. Mr. Billings said that the Woodcock campaign requested that matching funds calculations be done on at least a daily basis. Mr. Billings said that having a set time to calculate matching funds may allow those making independent expenditures to take advantage of the system. Mr. Billings said that overall, the campaign had no objections to the staff proposal.

Michael Saxl said that he agreed with Mr. Billings.

Mr. Ketterer said that due to the volume of independent expenditure reports, it may become problematic in the few days before the election to only authorize matching funds once a day. Mr. Wayne said that the staff would change its policy for the last three days before the election and use its discretion to decide when to authorize matching funds.

Mr. Friedman suggested that the staff consider extending the three-day policy to a longer period of time before the election. Mr. Friedman asked Ms. Gardiner if the statute referenced batch processing of matching funds authorizations. Ms. Gardiner said that it did not and that there was room for discretion.

Beryl Leach, campaign manager for Barbara Merrill, asked if subsequent independent expenditure reports would result in an adjustment to a previously made authorization.

Mr. Wayne said that the authorization amounts given to the campaigns would not change after the next matching funds calculation. Mr. Wayne said that he proposed that the staff would still have discretion over batch processing matching funds if multiple reports are received within a short span of time.

Ms. Gardiner said that an independent expenditure report offsetting another report would affect the next matching funds authorization but would not affect or revoke authorizations that have already been made.

Michael Saxl recommended batch processing matching funds at two different times each day.

Jon Bartholomew, representing Common Cause Maine and the Maine Citizens for Clean Elections Coalition, said that independent expenditure reports must be filed based on when an obligation is made. Mr. Bartholomew said because of this, the Commission may not need a different policy for authorizing matching funds four days before the election.

Mr. Ketterer said that there seemed to be a consensus in support of daily batching of matching funds authorizations.

Mr. Friedman moved, Mr. Cassidy seconded, and the Commission voted unanimously (3-0) to permit the staff to consider independent expenditure reports in batches rather than independently and to give the staff discretion to establish a time of day to consider matching funds authorizations and discretion to use alternative methods in the days before an election.

#### **Agenda Item #11 – Matching Funds Questions/Douglas Smith**

Dan Billings spoke on behalf of Douglas Smith, a Senate candidate. Mr. Billings said that Douglas Smith was in a contested primary, obligating more in expenditures than he had raised in contributions at that time. Mr. Billings said that it was not appropriate to pay \$7,000 in matching funds to Mr. Smith's general election opponent based on the money raised after the primary to pay pre-primary obligations. Mr. Billings asked that the Commission consider these to be pre-primary expenditures that are not used to calculate general election matching funds. Mr. Billings recommended separate primary election finance reports that only cover the primary election rather than the current 42-day post-primary report that includes activity from both elections.

Mr. Friedman asked if it mattered that Mr. Smith was involved in a hotly contested primary election. Mr. Billings said that the Democratic gubernatorial primary was an example of a primary that was not hotly contested. Mr. Billings said that in that case, the Baldacci campaign's expenditures were made toward the general election more so than toward the primary.

Mr. Friedman asked if the Commission should make an exception for Mr. Smith. Mr. Billings said that the Commission should consider when the expenditures were made and materials used. Mr. Billings said that Mr. Smith purchased 400 signs before the primary that were used in the general election, so that portion of the expenditure should be included in matching funds calculations made for the general election. Mr. Billings said that his request was in keeping with the statute and rules, since the issue resulted from an administrative procedure.

Mr. Wayne said that the campaign treasurer originally said that \$7,350 should be attributed to the primary election. Mr. Wayne said that this amount included a payment to Creative Printing, but 60% of that payment was used toward the general election. Mr. Billings said that the \$7,350

amount was not correct, but he did not have the correct figures available. Mr. Billings said that the Commission should deal with the policy issue rather than the specific number.

Michael Saxl said that it was possible to report loans and unpaid debts on finance reports. Mr. Saxl asked that the Commission verify that any loans were reported accurately by the campaign. Mr. Saxl said that attributing money to the primary election may have affected matching funds to Mr. Smith's primary opponent. Mr. Saxl said that separate reporting for each election was a good idea.

Mr. Friedman asked what the staff recommended.

Mr. Wayne said that Sharon Libby Jones did not contest Mr. Smith's claim that a portion of his general election fundraising was used toward the primary election. Mr. Wayne said that Ms. Libby Jones had already obligated some of the matching funds that she had been authorized. Mr. Wayne said that with the exception of those obligations, he recommended that her authorization be reduced based on Mr. Smith's general election funds used toward the primary election.

Mr. Cassidy moved, and Mr. Friedman seconded, that the Commission accept the staff recommendation.

Mr. Friedman asked what the staff recommendation would be if there was not a strongly contested primary election. Mr. Wayne said that under the current system, all activity before the primary election is presumed to be used toward that election and is not included in calculating matching funds for the general election.

Ms. Gardiner said that it would be difficult for the Commission to determine whether an expenditure was for the primary or general election using any criteria other than when the goods and services were actually used. Ms. Gardiner said that the Commission's rules allow for an expenditure made before the primary election to be considered a general election expenditure if a preponderance of the expenditure was used in the general election.

The Commission voted unanimously (3-0) to accept the staff recommendation.

**Agenda Item #13 – Request for Matching Funds/Benjamin Meiklejohn**

Jon Bartholomew said that there was no other reasonable interpretation of the mailer sent by the Democratic Party than as advocacy for the election of Anne Rand.

Mr. Ketterer asked Mr. Bartholomew what he would recommend. Mr. Bartholomew said that the Commission should consider the mailers to be express advocacy and trigger matching funds.

Michael Saxl said that the Commission decided that some of the advertisements aired in the gubernatorial election were not express advocacy. Mr. Saxl said that the party designed its mailers based on that decision.

Benjamin Meiklejohn joined the meeting by telephone.

Mr. Meiklejohn said that the mailer included the words "Anne Rand, State Representative." Mr. Meiklejohn said that considering that Anne Rand was not at the time a state representative, the mailing must have advocated for her election. Mr. Meiklejohn said that the mailer fit the "other language" provision of the statute.

Mr. Wayne said that the staff recommendation was based on the Commission's ruling on the Republican Governors Association ads. Mr. Wayne said that it was hard to consider the Democratic Party mailings express advocacy when the Commission determined that the RGA ads were not.

Mr. Meiklejohn said that based on the Commission's decisions, the parties could put up signs that do not contain express advocacy without triggering matching funds.

Mr. Ketterer said that Mr. Meiklejohn's comments were well received and there may be statute changes in the future.

Mr. Meiklejohn said that his matter was a separate issue from the ads in the gubernatorial race.

Mr. Wayne said that the Republican Governors Association ad displayed Chandler Woodcock's name and office sought at the very end. Mr. Wayne said that the Commission determined that the other language in the ad related to issues. Mr. Wayne said that a sign or bumper sticker with just the name of a candidate and the office sought could be considered to be express advocacy because it would not contain any other language.

Ms. Gardiner said that the Commission's September 22 decision should not be taken to mean that mentioning the name of the office does not make a communication express advocacy. Ms. Gardiner said that the ads were considered in context.

Mr. Cassidy asked Mr. Wayne how he determined the staff recommendation. Mr. Wayne said that both of the mailers contained enough issue content so that they were not express advocacy.

Mr. Cassidy asked if a lawn sign stating only "Anne Rand, Representative" would be considered express advocacy. Mr. Wayne said that it would be express advocacy because there would be no discussion of issues. Mr. Wayne said that the Commission's rules have specific examples of express advocacy, including signs and bumper stickers.

Mr. Cassidy moved, and Mr. Friedman seconded, that the Commission accept the staff's recommendation and pay no matching funds.

Mr. Friedman said that the mailers contained express advocacy. Mr. Friedman said that there was little discussion of issues in the mailers and they should trigger matching funds.

Mr. Cassidy said that the mailers were similar to the ads discussed at the September 22 meeting.

The Commission voted 2-1 to accept the staff recommendation. Mr. Cassidy and Mr. Ketterer voted for the motion; Mr. Friedman voted against the motion.

**Agenda Item #14 – Request for Matching Funds/W. Bruce MacDonald**

Mr. Cassidy moved, and Mr. Friedman seconded, that the Commission accept the staff recommendation and pay no matching funds.

Mr. Friedman said that unlike the mailers discussed in the previous agenda item, the materials seemed to be issue-oriented. Mr. Friedman said that they did not include the name of the office sought by the candidate.

The Commission voted unanimously (3-0) to accept the staff recommendation.

**Agenda Item #15 – Request for Matching Funds/Jayne Crosby Giles**

Jayne Crosby Giles said that she received both campaign and non-campaign mailers relating to Walter Ash on the same day. Ms. Crosby Giles said that the mailers contained overlapping themes, causing confusion among voters as to which of the mailings were advocating for Walter Ash's election.

Mr. Friedman asked if it would have made a difference if Ms. Crosby Giles had not received the mailings all at the same time. Ms. Crosby Giles said that receiving them at the same time resulted in the mailings being a different issue from her previous complaint and clearly express advocacy.

Jon Bartholomew said that he disagreed with some of the Commission's previous decisions and supported Ms. Crosby Giles' complaint. Mr. Bartholomew said that the Commission should consider the context of the mailings and not just look for the "magic words" to determine express advocacy.

Dan Billings said that Patricia LaMarche's appeal of the Commission's decision on the Republican Governors Association ads was currently before the court. Mr. Billings said that if

the court were to strike down the Commission's earlier decision, it should revisit the items discussed at the present meeting.

Mr. Ketterer asked Mr. Billings for his opinion on the issue of campaign and non-campaign mailings arriving at the same time. Mr. Billings said that it was likely a coincidence and not a coordinated act.

Mr. Cassidy said that he didn't see a connection between the mailings. Mr. Cassidy said that if they were coordinated, they probably wouldn't have been mailed at the same time.

Mr. Cassidy moved, and Mr. Friedman seconded, that the Commission accept the staff recommendation and pay no matching funds.

Mr. Friedman said that the mailing was express advocacy because despite some mention of issues, the ultimate purpose of the mailing was to advocate for Walter Ash's election.

Mr. Ketterer said that he agreed with Mr. Cassidy but the Commission should consider each case individually and in context.

The Commission voted 2-1 to accept the staff recommendation. Mr. Cassidy and Mr. Ketterer voted for the motion; Mr. Friedman voted against the motion.

**Agenda Item #16 – Request for Matching Funds/John N. Frary**

Mr. Wayne said that John Frary, chair of the Franklin County Republicans, brought the request on behalf of Republican candidate Lance Harvell. Mr. Wayne said that the literature was handed out at the University of Maine at Farmington. Mr. Wayne said that the literature contained Mr. Harvell's responses to a survey from the Maine Economic Research Institute. Mr. Wayne said that it was not clear whether the literature was intended to oppose Mr. Harvell.

Mr. Frary said that the document contained no disclosure statement. Mr. Frary said that both the College Democrats and Mr. Harvell's opponent, Janet Mills, claimed not to be responsible for the flyers.

Mr. Friedman asked how Mr. Frary obtained the flyer. Mr. Frary said it was given to him by a student at UMF. Mr. Frary said it was being handed out at the college.

Mr. Wayne asked if the flyer was distributed on or before October 18. Mr. Frary said that he obtained the flyer on October 17.

Mr. Wayne said that since the flyer was distributed before the 21-day presumption period and contained no express advocacy, it should not trigger matching funds.

Mr. Ketterer asked what the result would be if the flyers contained no disclaimer and were distributed more than 21 days before the election. Mr. Wayne said that if the flyers contained express advocacy and lacked a disclosure, there would be a violation resulting in a civil penalty.

Mr. Wayne said that the Commission could direct him to investigate further into who distributed the flyer and whether it was distributed after October 18. Mr. Wayne said that no report would be required unless the flyers cost more than \$100. Mr. Wayne said that based on what was currently known, there was no reason to award Mr. Harvell matching funds or find anyone in violation for lack of a disclosure statement.

Mr. Friedman said that college students with no connection to the Democratic Party may have created the flyers.

Mr. Friedman said that he was unable to determine whether the flyer was in support of or opposition to Mr. Harvell.

Mr. Cassidy moved, Mr. Friedman seconded, and the Commission voted unanimously (3-0) to take no further action.

**Agenda Item #17**

Mr. Wayne said that a political action committee, Alliance for Maine's Future, reported an independent expenditure on behalf of Rep. Jeremy Fischer in the amount of \$2,400. Mr. Wayne said that Rep. Fischer questioned whether \$2,400 was the true cost of the mailer. Mr. Wayne said that the address for AMF's Web site was included in the mailer, which then linked to the Web site for the Maine Economic Research Institute. Mr. Wayne said that Rep. Fischer said that MERI gave him an unfavorable rating.

Mr. Ketterer asked whether the staff notified candidates when their opponents received matching funds. Mr. Wayne said that they were copied on the authorization letter.

Paul Brunetti with the House Democratic Campaign Committee said that the \$2,400 in matching funds represented a substantial amount of money available to Rep. Fischer's opponent within 21 days of the election. Mr. Brunetti said that the mailing discussed the Maine Prosperity PAC, so not all of the value of the mailing benefited Rep. Fischer. Mr. Brunetti said that Rep. Fischer had been attacked in the media for the ranking he received from MERI.

Jon Bartholomew said that unless they were the same organization, the link to MERI from AMF's Web site was not relevant. Mr. Bartholomew said that the cost of the mailing may be worth considering.

Mr. Ketterer asked Mr. Bartholomew what action the Commission should take. Mr. Bartholomew said that it was up to the candidates' opponent to bring forward a complaint to the Commission and look at the documentation provided.

Mr. Wayne said that the staff recommended not reconsidering the awarding of matching funds.

Mr. Cassidy moved, and Mr. Friedman seconded, a motion to accept the staff recommendation.

Mr. Friedman asked if there was any mechanism for requesting documentation of an expense filed on an independent expenditure report. Mr. Wayne said that the Commission staff could ask for an explanation of the amount, but the Commission may want a more formal procedure in its rules. Mr. Wayne said that the burden is ultimately on the candidates to bring a complaint, at which time the Commission staff would investigate.

Tony Payne, executive director of the Alliance for Maine's Future, provided a copy of the check used to pay for the mailings in question.

Mr. Ketterer said that while it was understandable that the candidate was concerned over his opponent receiving matching funds, it was the nature of independent expenditures that the candidate being supported does not have the ability to approve or disapprove.

The Commission voted unanimously (3-0) to accept the staff recommendation.

#### **Agenda Item #18**

Mr. Wayne said that the issue was whether a mailer that was sent out by the Oxford County Democratic Committee was a party candidate listing or whether it was an independent expenditure. If it was a party candidate listing, it would be exempt from independent expenditure reporting. The criteria for party candidate listings has become much more rigorous than it was in the past and the statute lays out very specifically what elements can and cannot be in a party candidate listing. Upon reviewing the mailer, the staff thought that there were some elements in it that fell outside the party candidate listing. The staff communicated that to Cathy Newell from the Oxford County Democratic Committee. Mr. Wayne said that one particularly important issue was what advice the staff gave to Ms. Newell regarding this mailer. The staff suggested to Ms. Newell that she may want to consider filing an independent expenditure if there was any doubt. The committee did file an independent expenditure report. The staff did question whether the report should have been filed because the staff believes it is the responsibility of the filer to know whether it has to file an independent expenditure report. Additionally, there was enough language in the mailer that suggested that it contained express

advocacy for the named candidates. The independent expenditure triggered matching funds for Republican candidates in Oxford County, including \$2,000 each to two Senate candidates. One of those candidates had already begun to obligate some of those matching funds.

Mr. Wayne said that the Oxford County Democratic Committee objected to the characterization that the mailer constituted express advocacy. He said that there was a lot of information about the candidates, their platforms and their histories, but there were no words of express advocacy. However, there was content that suggested that the mailer was promoting the candidates. The staff does not have a strong recommendation for the Commission.

Mr. Ketterer asked whether there was anyone present who wish to speak on this agenda item. Newell Augur introduced himself as counsel for Senate candidates Bruce Bryant and Marjorie Mcdd.

Mr. Newell said that the mailer was an insert to local newspapers. He said that Ms. Newell consulted with counsel about the mailer regarding whether the mailer constituted express advocacy. After reviewing the mailer, it was decided that it did not constitute express advocacy and did not require an independent expenditure report. However, at some point in time, Ms. Newell received a call from the Commission staff saying that the committee may be in violation because of the mailer if it did not file an independent expenditure report. Mr. Newell said that it was in response to that call that Ms. Newell filed the report. The committee's interest is that the award of matching funds be reversed or, if the funds have been obligated or used, that they be used as an offset against future matching funds. Mr. Newell said that since the mailer went out prior to the 21-day rebuttable presumption period, whether the mailer constituted a party candidate listing was not even an issue. The question was whether the mailer contained words of express advocacy. He said that it did not.

Mr. Ketterer asked Mr. Newell to explain the party candidate listing. Mr. Newell said that if a communication was a true party candidate listing, it was not considered an expenditure and would not have to be reported in an independent expenditure report. But since the mailer was

distributed prior 21 days before the election, the party candidate listing was not a factor in deciding this issue.

Cathy Newell introduced herself as the chair of the Oxford County Democratic Committee and the person who prepared the mailer. She said that she consulted with counsel in September and was assured that it did not constitute express advocacy. She said that she intended to report the expenditure on the committee's regular campaign finance report. However, she did get a call from the staff which questioned whether the mailer was a party candidate listing or an independent expenditure. She said that she was told by Commission staff that if it was an independent expenditure, the report was already late. Because she was concerned about avoiding penalties for a late filed report, she filed the report the same day.

Mr. Wayne asked Ms. Newell why she did not question the staff when she was told that the mailer should have been reported as an independent expenditure since she had received a legal opinion on this matter. Ms. Newell said that she realized now that she should have contacted her attorney but she thought that there was no alternative and that the report had to be filed.

Daniel Billings, on behalf of Senator Hastings, stated that Senator Hastings had already committed some portion of the matching funds. He said that he was concerned about the larger effect of a Commission's decision to require the return of obligated or spent matching funds under circumstances such as these. He recommended that the Commission consider the alternative that Mr. Auger suggested that obligated or spent matching funds be considered an offset against future awards of matching funds.

Mr. Billing referred to a previous Commission meeting at which Ms. Ginn Marvin said that the Commission had to rely on the information that was provided in reports. He said that he was not suggesting that this be applied rigidly but that it deserved consideration in this case. He also stated that whether the content of the mailer was free from express advocacy was not as black and white an issue as had been portrayed to the Commission. He cited some examples of language, e.g., "voter guide," and other content, e.g., a table comparing Democrats and Republicans. He maintained that the mailer was not a party candidate listing. He also

questioned whether, if the mailer was an independent expenditure, it was truly independent of candidate involvement and input.

Jon Bartholomew from Common Cause and the Maine Citizens for Clean Elections said that he thought the mailer was a party candidate listing. He said that he believed that the person who filed the report did so in good faith and was trying to cover all the bases. He also stated that the mailer was sent outside the 21-day period and therefore should not result in matching funds.

Mr. Wayne recommended that the Commission adopt the suggestion that Senator Hastings be allowed to use the matching funds to pay for the obligations that he has already incurred and use that amount as an offset against future matching funds. He explained that he thought that the Commission's needed to determine whether the mailer contained express advocacy. If the Commission decided that it was not, Mr. Wayne suggested that the awards of matching funds be undone. Mr. Wayne said that it was regrettable how this matter came up. However, even though it was understandable that people generally defer to Commission staff regarding filing requirements, it was the responsibility of the filer to know which reports to file and the Oxford County Democratic Committee had the benefit of advice from counsel on whether the mailer contained express advocacy.

Mr. Ketterer said that he could understand why someone would file a report if a government official told them that penalties would be accruing if the report was not filed. Mr. Cassidy said that the county chair of a party committee was not an ordinary person and should know better. Mr. Cassidy went on to say that the content in the mailer crossed the line into express advocacy.

Ms. Gardiner cautioned against basing a determination that merely a label of "voter guide" did not necessarily mean that something was express advocacy.

Mr. Friedman asked whether the staff presumed that the mailer contained express advocacy. Mr. Wayne responded that in looking at the mailer, he thought it was a close call. But that the mailer was not a party candidate listing.

Mr. Friedman said that based on previous discussions regarding express advocacy he thought that the mailer was not express advocacy but was implied advocacy for the candidates in the mailer.

Mr. Ketterer said that it was clear that the mailer was not a party candidate listing.

Mr. Cassidy said that he thought there was enough evidence to support a finding.

Mr. Friedman moved that the Commission find that the mailer did not constitute express advocacy, that matching funds not be generated; however, if matching funds have already been obligated, the candidate be allowed to use the amount, but the staff would use that amount as an offset against future matching funds. Mr. Cassidy seconded.

Mr. Cassidy agreed with the second half of the motion but still thinks that the mailer constituted express advocacy.

Mr. Ketterer called for a vote. Mr. Ketterer and Mr. Friedman voted to adopt the motion. Mr. Cassidy voted against it. The motion carried by a vote of 2 to 1.

#### **Agenda Item #19**

In introducing the issue, Mr. Wayne said this matter only came to the Commission staff at the end of business on the day before the meeting. His oral recommendation to the Commission was that this matter be postponed to the next meeting because it deserved a response from the Maine Heritage Policy Center (MHPC) and more consideration by the Commission staff. Mr. Wayne explained the reports that are required for entities involved in supporting or opposing ballot initiatives. He said that they would either file as a PAC or, if the entity was not a PAC, on a §1056-B form. He said that the issue raised by Carl Lindemann was that the Maine Heritage Policy Center was very directly involved in actively supporting the Taxpayers' Bill of Right initiative but had not filed any reports disclosing its financial activities in that regard.

Mr. Ketterer asked Mr. Lindemann (attending via telephone) whether he wanted to address the Commission on this matter.

Mr. Lindemann said that the Maine Heritage Policy Center, a research organization, had taken on the role of advocating on behalf of and providing public relations support to the PAC which sponsored the initiative but there was no disclosure of what the MHPC was spending. He said that this introduced a new dynamic in the political process by which many expenditures can be hidden. He said that he was concerned that this dynamic could become the accepted norm.

Mr. Ketterer invited members of the public to comment.

Jon Krasnick, Executive Director of Democracy Maine, said that his organization supported Mr. Lindemann's complaint. He said that his organization contacted the Commission staff to find out what it needed to report in terms of its involvement opposing TABOR. He said that the MHPC has played an integral role in supporting TABOR for quite some time. Mr. Krasnick expressed his belief that Maine voters deserved to know where funds and resources come from that allow MHPC to do its work in support of TABOR. Mr. Krasnick offered the Commission copies of articles by MHPC that showed how involved it was.

Mr. Lindemann said that he also sent the Commission materials that would support his contention that MHPC is very involved in influence the election.

Dan Billings, counsel for the Maine Heritage Policy Center, said that it was important to address the role of MHPC. It is not acting as a PAC on behalf of TABOR. There is a separate organization which is a PAC which is working on behalf of TABOR. MHPC has not run advertisements, or solicited funds in support of TABOR. MHPC did draft the original legislation and wrote the initiative and has been vocal in support of TABOR. He said that the language in §1056-B was very broad and questioned whether it would withstand constitutional scrutiny. Mr. Billings said that with such a broad statute there should be many other entities, like the Roman Catholic Church, some municipalities, would fall within this provision but are not filing.

Jon Bartholomew said that his organization was in support of organizations disclosing any funds over \$1,500 to influence a referendum should disclose that activity.

Mr. Ketterer posed to the Commission whether this matter should be tabled in order that the issues be fully briefed by the parties and considered by the staff. Mr. Cassidy made a motion that the matter be tabled until the next meeting. Mr. Friedman seconded. The motion carried unanimously. He told the interested parties to submit in writing their arguments to the staff by 5:00 p.m. on October 31st.

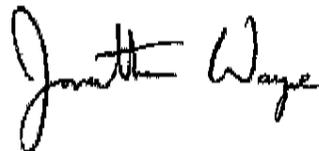
**Agenda Item #1 (continued)**

Mr. Ketterer returned to this item, the ratification of the minutes. The minutes had been amended during the meeting and were ready for re-consideration by the Commission. Mr. Cassidy moved that the minutes be ratified as amended. Mr. Friedman seconded. The motion carried unanimously.

Mr. Cassidy moved that the meeting be adjourned. Mr. Friedman seconded. The motion carried unanimously.

The meeting adjourned.

Respectfully submitted,



Jonathan Wayne  
Executive Director

Minutes of the November 2, 2006  
Special Meeting of the  
Commission on Governmental Ethics and Election Practices  
• Held via Teleconference

Present: Chair Andrew Ketterer, Hon. Jean Ginn Marvin; Hon. A. Mauvorneen Thompson, Hon. Michael Friedman

Interested Parties: Dan Billings; Esq.; Michael Mahoney, Esq.; Newell Augur, Esq.; Brian Hawkins; Gregory Olson.

Staff: Executive Director Jonathan Wayne, Counsel Phyllis Gardiner

At 9:50 A.M., Chair Andrew Ketterer convened the meeting. The Commission considered the following item:

**Complaint filed by Attorney Dan Billings o/b/o the Maine Senate Republican Victory Fund Alleging Late or Non-filed Independent Expenditure Reports by the Maine Democratic Party and/or Senate Democratic Campaign Committee**

Mr. Wayne explained the purpose of this meeting is to determine whether the Maine Democratic Party and the Senate Democratic Campaign Committee file independent expenditure reports on time. Originally the complaint was only about two reports, but late on November 1<sup>st</sup>, Attorney Billings questioned an additional two reports.

Mr. Wayne explained that independent expenditure reports must be filed within 24 hours once an expenditure has been made aggregating more than \$250 per candidate. It is therefore critical to know when that expenditure has been made. In 2004, the statutory definition of expenditure included a payment, contract, promise or agreement, expressed or implied, whether or not legally enforceable to make any expenditure. In light of late report filings in 2004, the Commission adopted rule changes in 2005 to include obligations as a form of expenditure. Regarding

independent expenditures, the date of the earliest of these events must be reported within 24 hours.

Mr. Billings explained the reason for the complaint was based on a review of the reports of the Senate Democratic Campaign Committee (SDCC) and Maine Democratic Party (MDP) which raised questions about the timing of certain independent expenditures. In addition, it appeared that the SDCC had a fairly large amount of money on hand that the Maine Republican Party (MRP) expected would be spent before the election. The initial independent expenditure report filing caused the MRP to wonder if the reports were timely filed with the Commission, and the MRP wanted to make sure all future filings were done on a timely basis. However, Mr. Billings said there were additional independent expenditure reports filed by the SDCC on November 1st, and it appears that most of the money has been spent, so his concerns about that have dissipated.

Mr. Billings suggested that it would be worthwhile to have a meeting after the election to ask questions of the people who made the expenditures. Mr. Billings referred to an e-mail by Mr. Wayne which suggested that the Commission members not make a final determination until those questions can be answered.

The first matter that raises a question for Mr. Billings is the large transfer of funds from the SDCC to Victory 2006, a sub account of the MDP. The second matter is the filing of independent expenditure reports #48 and #71 shortly after the reports were filed which gives the appearance that the transfer was made with those independent expenditure reports in mind.

Mr. Billings said that the contents of independent expenditure report #71 made it appear that some of the expenditures were made well before 10/30/06. In particular, regarding Senate District 21 the report stated that the vendor started providing services on 10/29/06, but late corrections were not approved until 10/30/06. Mr. Billings said that this caused one to conclude that services were being provided before the 10/30/06 and that the independent expenditure report was filed late. Regarding Senate District 32, the order was placed on 10/25/06, but the changes were not complete until 10/30/06.

Mr. Billings stated that the explanation for the MDP's independent expenditure report #84 being filed late was the postage amount became known on 11/1/06, but it appears some order was made before that date. Mr. Billings said that there is a big impact from large amounts of money being spent late in the race, and that late filings could delay the release of matching funds to the opponents in these races. Mr. Billings said that he would like the Commission staff to seek more information and eventually have the people who were involved in making these expenditures come forward and answer questions.

Regarding SDCC independent expenditure report #83, Mr. Billings said that it appeared to be a TV buy, and asked that Commission staff inquire about when the productions went into place. Mr. Billings said that the filing in and of itself doesn't raise the same questions as the other two. He is not making any allegations regarding independent expenditure #83, but wonders if the report should have been filed sooner.

Chair Ketterer clarified with Mr. Billings that he is not asking the Commission to make a final decision about whether these reports were filed late at this meeting. Additionally, he clarified that Mr. Billings simply questions whether the rules have been followed regarding the timing of the filing of independent expenditure reports #48 and #71. Mr. Billings said that his major point was that people to be put on notice. Although there are several factual questions that need to be addressed, Mr. Billings was agreeable to them being addressed after the election.

Mr. Billings went on to clarify his client's concern is that all of the independent expenditure reports have not been filed, and as of Monday of this week, it appeared that the SDCC was simply sitting on a large sum of money. However, since the filing of the complaint several independent expenditure reports have been filed. He cannot provide the Commission with any proof of an expenditure that has not been reported.

Mr. Mahoney, attorney for the Maine Democratic Party, was the next to speak. Regarding independent expenditure report #71, the party has kept a close eye on several close state senate races, with the general intent to spend money in support of the Democratic candidates. Those discussions were internal as late as 10/25 and 10/26. At that time there were proposed designs

and proposed mail pieces in a number of races, more than were subject of any of the pieces being discussed at this meeting. On 10/27/06, the MDP gave the approval to its mail production company, Ourso Beychok in Louisiana, for mail pieces in three Senate districts (SD 1, SD 15, and SD 19). At that time, MDP filed independent expenditure #48 on 10/28/06.

Mr. Mahoney said that there was a lot of internal discussion subsequently about where the remaining resources should be spent. He said that it was not until 10/30 that the leadership determined which races to spend its money (SD 1, SD 21, and SD 32). Of note, significant decisions were made internally on 10/30 regarding pieces in those districts, such as number of pieces to be mailed and the content of ads. In addition, the candidate was endorsed by the Kennebec Journal which lead to a redesign. These factors explain why they made a verbal agreement to the mail production company on 10/30, and why the expenditure was subsequently reported on 10/31. Mr. Mahoney was unable to speak with all of the individuals, and like Mr. Billings, would like to have the individuals involved to discuss the circumstances surrounding the situation to be questioned by the Commission at a later date.

Regarding independent expenditure #84 and the postage amount for the mail pieces, Mr. Mahoney was unable to uncover any facts regarding when communications took place, when commitments occurred, or any other information prior to the Commission meeting, but would welcome the chance to follow-up at a later date.

Mr. Friedman said, regarding independent expenditure #71, that it seemed like there was an underlying order for something that was made before the changes. Mr. Mahoney clarified that all of the decisions to target Senate districts 1, 21 and 32 were made at the leadership meeting of 10/30. He went on to state that there were several designs that were put together by an outside consultant without a decision being made as to which were going to be sent out. The party really just wanted to have options to make decisions quickly. Mr. Mahoney said that the question becomes if a piece is designed, but never sees the light of day beyond the MDP, is it still an expenditure to influence the outcome of the election? If there is a nominal amount of money spent designing a piece, should matching funds be issued to the opponent of the candidate who is featured in that piece?

Mr. Friedman said that it seems that Ourso Beychok has an expectation that he will be paid for the work done. Mr. Friedman stated that he thought that a critical point in the analysis was not whether a piece saw the light of day but whether the vendor had an expectation of payment.

Ms. Thompson asked for clarification about the terms "contract, promise or agreement" as contained in the definition of "expenditure." Specifically, Ms. Thompson asked whether those terms would apply to internal agreements within a party or whether it applies to an agreement between the party and a commercial vendor. Chair Ketterer and Mr. Wayne confirmed that it would be the latter.

Mr. Wayne asked Mr. Mahoney about the designs made as early as 10/25 and 10/26 regarding independent expenditure #71, and whether the designs related to specific candidates or were they interchangeable designs that could be used for any number of candidates. Mr. Mahoney was unsure of the exact answer, but his recollection was that those pieces were very different from one another. The pieces were prepared as options, but they weren't sure until 10/30 that they would be used, prior to that it was unknown if they would be used to influence the outcome of the election.

Mr. Wayne asked Mr. Mahoney whether the party's interpretation of the law was that although candidate-specific pieces were designed and prepared for distribution, it was not until the decision was made to use those pieces to influence an election that a reportable expenditure occurred. In other words, if the designed piece did not see the light of day, it was not intended to influence the outcome of the election and not reportable as an independent expenditure. Mr. Mahoney said that, as far as the expenditure for the design is concerned, he does not believe that an independent expenditure report is due until that piece is out influencing the outcome of the election.

Mr. Wayne stated that this interpretation may put the Commission in a difficult position by having to weigh the credibility of filers and by having to rely heavily on trust that independent spenders would report expenditures in an appropriate and timely fashion. Mr. Mahoney said that perhaps the design of pieces should be reported separately.

Chair Ketterer said that an expenditure is reportable once the group decides to do the mailing, not than when the piece is finalized. Mr. Mahoney said that the MDP was looking at nine Senate races on 10/25 and that not until 10/30 was the decision made to influence the outcome of those three Senate races.

Mr. Friedman asked Mr. Mahoney whether Mr. Beychok expects payment for the design is made or only when the design is used. Mr. Mahoney understands that Mr. Beychok was on a long term, flat-fee monthly retainer to provide consulting services and the design of pieces may have been part of that flat-fee. Mr. Mahoney was unsure if there was a broken out, separate fee for a piece chosen for dissemination.

Chair Ketterer questioned Mr. Mahoney about the group called Victory 2006, to which he responded that it is an account of the MDP which has no legal standing.

At the conclusion of the public comment, Commission Counsel Phyllis Gardner articulated the legal issue for the members. She said that the Commission is being asked to provide guidance based on its understanding of the statute regarding the obligation to report and all other matters relating to this issue can be put off until a later date.

Ms. Ginn Marvin stated her concern about people buying things ahead of time and not reporting them; however, without more information it is difficult to make any further action on the matters today. She said that if a group pays a vendor for services which never are distributed publicly that matching funds might be due because those services help you put your campaign together as Mr. Friedman suggested.

Ms. Thompson stated that she agreed with Ms. Ginn Marvin's comments.

Mr. Friedman said the Commission needs a clear and concise rule which will enable the staff to provide the best advice possible. He said that the definition of "expenditure" should be

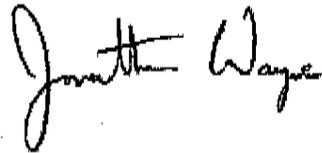
interpreted broadly, and that it would be preferable for reports earlier rather later, and that the Commission should not try and determine the thoughts of others.

Chair Ketterer echoed the sentiments of his colleagues and said that he believes in honest, candid, timely and accurate filings.

Mr. Wayne was hopeful that the late filing aspect of this matter be considered at the November meeting and that the statutory and rule changes be considered at the December meeting.

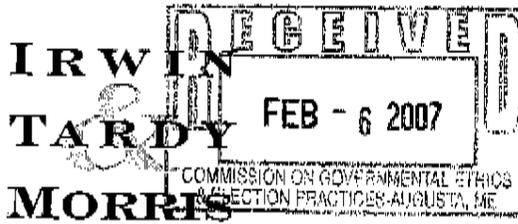
There being no further business, the Commission adjourned at 10:55 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jonathan Wayne".

Jonathan Wayne  
Executive Director

# Exhibit #3



P.O. Box 476  
 159 Main Street  
 Newport, ME 04953

207.368.2828 T  
 207.368.2822 F

Joshua A. Tardy  
 tardylaw@adelphia.net

February 5, 2007

Jonathan Wayne, Executive Director  
 State of Maine Commission on Governmental  
 Ethics and Election Practices  
 135 State House Station  
 Augusta, ME 04333-0135

Via facsimile transmission and U.S. Mail

RE: Late filing of 101% Report

Dear Jonathan:

Please accept this letter as confirmation that I do not object to either your proposed findings or the proposed civil penalty outlined in your letter dated January 22, 2007.

Very truly yours,

*Joshua A. Tardy*  
 Joshua A. Tardy

JAT/met



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

January 22, 2007

Hon. Joshua A. Tardy  
P.O. Box 381  
Newport, ME 04953

Dear Representative Tardy:

This letter is in regard to the filing of the 101% Report by your 2006 campaign. The staff of the Commission has determined preliminarily that the report was filed 18 days late. The Commission will consider this matter at its meeting on February 14<sup>th</sup>. Based on the information available to it now, the staff is recommending a penalty of \$724.71. **You are invited to respond to the recommended penalty by submitting a written response no later than Monday, February 5 and by appearing at the February 14<sup>th</sup> meeting.** In addition, if you believe that our understanding of the facts of the situation is mistaken, we urge you to contact us as soon as possible and we will consider whether to change our recommendation.

Because you were a privately financed candidate with a Maine Clean Election Act opponent you were required under 21-A M.R.S.A. §1017(3-B)(A) to file a 101% Report within 48 hours of when your cash receipts for the general election exceeded \$4,406 (101% of the general election distribution amount for House candidates). Based on the transactions included in your campaign finance reports, the Commission staff has concluded that your receipts exceeded the \$4,406 amount on September 6, 2006 and that the report was due on September 8, 2006. Instead, the report was filed eighteen days later on September 26<sup>th</sup>.

The penalty for filing an accelerated report late is set forth in 21-A M.R.S.A. §1020-A(4-A). Subsection (5-A)(E) imposes a maximum penalty of "[t]here times the unreported amount ... if the unreported amount is less than \$5,000 and the commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report."

Given the particular circumstances of the late filing, the Commission staff has determined that you have qualified for the "good faith" exception in subsection (5-A)(E). Therefore, it will recommend the assessment of a penalty of \$724.71, which is three times the amount by which your receipts in the 101% Report exceeded the initial distribution amount of \$4,362. In reaching this decision, the Commission staff acknowledges:

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

Hon. Joshua A. Tardy

- 2 -

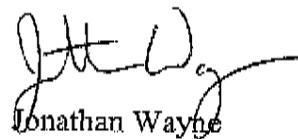
January 22, 2007

- You filed the 101% Report promptly on September 26, 2006 upon realizing that the report was overdue in the process of filing the 42-day accelerated report.
- The late filing of the 101% Report did not cause any disadvantage to your opponent, Richard Dort. Even if your 101% Report had been filed on time on September 8, Mr. Dort would not have received matching funds at that time because he had \$512 in unspent campaign funds after the June 13<sup>th</sup> primary election.
- Mr. Dort did not choose to spend any of the \$8,724 in matching funds that he was authorized to spend. He spent only \$3,546.10 for the entire campaign, which was less than the amount of the \$4,032 initial distribution.

In addition to the good faith maximum I described on the previous page, please be aware that the Commission may waive penalties for late reports where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or 4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

Please telephone me at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne  
Executive Director

cc. Mary Ellen Tardy, Deputy Treasurer  
All candidates in district

## Cash Receipts for the General Election - 2006 Tardy Campaign

date	amount received	description	total for date	
6/13/06	\$2,453.57	primary balance	\$2,453.57	
7/6/06	\$250.00	Maine Dental PAC	\$2,703.57	
7/11/06	\$250.00	Howe Management	\$2,953.57	
7/14/06	\$250.00	MIA PAC	\$3,203.57	
8/4/06	\$250.00	Maine Dental PAC	\$3,453.57	
8/9/06	\$100.00	Pharmacy Group of New England	\$3,553.57	
8/16/06	\$250.00	House Republican Fund	\$3,803.57	
8/23/06	\$250.00	Maxine D. Cox	\$4,053.57	
8/23/06	\$250.00	Robert E. Cox	\$4,303.57	
9/5/06	\$50.00	Irwin, Tardy & Morris, P.A. (in-kind)	\$4,353.57	
9/6/06	\$250.00	Maine Physicians Action Fund	\$4,603.57	exceeded 101% amount
9/13/06	\$250.00	Olympia Snowe	\$4,853.57	
9/15/06	\$250.00	NAFAPAC	\$5,103.57	
9/15/06	\$50.00	Maine Merchants Association	\$5,153.57	
9/22/06	\$100.00	Miller Brewing Company	\$5,253.57	
9/29/06			\$5,253.57	Richard Dort paid \$379.57 in matching funds (based on Tardy's 42-day accelerated report)

**COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES**  
**PENALTY MATRIX FOR LATE 101% AMOUNT & ACCELERATED REPORT**  
**FILINGS**

**BASIS FOR PENALTIES 21-A M.R.S.A. SECTION 1020-A(4)**

The penalty for late filing of an accelerated report is equivalent to but not more than 3 times the amount by which the contributions received or expenditures obligated or made, whichever is greater, exceed the applicable Maine Clean Election Fund payment per day of violation, multiplied by the number of calendar days the report is filed late.

MCEA PAYMENT	PRIMARY	GENERAL
House	\$1,504	\$4,362
Senate	\$7,746	\$20,082

A penalty begins to accrue at 5:00 p.m. on the day the report is due.

*Example:* The treasurer files the accelerated report two days late. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures (made and obligated). The MCEA amount is \$1,504. The difference between \$2,500 contributions (greater than \$1,500 in expenditures) and the MCEA payment amount is: \$996

<u>\$2,500</u>	Greater amount of the total contributions received or expenditures made during the filing period
- <u>\$1,504</u>	Applicable MCEA Payment Amount
<u>\$996</u>	Difference
<u>X 3</u>	No more than 3 times the per day
<u>\$2,988</u>	Maximum amount per day
<u>X 2</u>	Number of calendar days late
<u>\$5,976</u>	Total maximum penalty

Your penalty is calculated as follows:

Contributions/Expenditures: (Greater amount)	\$	<u>4,603.57</u>
Minus MCEA Amount:	\$	<u>4,362.00</u>
Difference:	\$	<u>241.57</u>
Multiplied by 3 =:	\$	<u>724.71</u>
Multiplied by number of days late:	\$	<u>18</u>
Total maximum penalty:	\$	<u>13,044.78</u>

Any penalty of less than \$5 is waived.

Waiver of a penalty does not nullify the finding of a violation.

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

## Title 21-A, §1017, Reports by candidates

H. Reports with respect to a candidate who seeks nomination by petition for the office of Governor must be filed on the same dates that reports must be filed with respect to a candidate who seeks that nomination by primary election. [1991, c. 839, §14 (amd); §34 (aff).]  
[2005, c. 301, §13 (amd).]

### 3. Other candidates.

[1989, c. 504, §§13, 31 (rp).]

**3-A. Other candidates.** A treasurer of a candidate for state or county office other than the office of Governor shall file reports with the commission and municipal candidates shall file reports with the municipal clerk as follows. Once the first required report has been filed, each subsequent report must cover the period from the completion date of the prior report filed.

A. In any calendar year in which an election for the candidate's particular office is not scheduled, when any candidate or candidate's political committee has received contributions in excess of \$500 or made or authorized expenditures in excess of \$500, reports must be filed no later than 5 p.m. on July 15th of that year and January 15th of the following calendar year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report. [1991, c. 839, §15 (amd); §34 (aff).]

B. Reports must be filed no later than 5 p.m. on the 6th day before the date on which an election is held and must be complete as of the 12th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the completion date. [1991, c. 839, §15 (amd); §34 (aff).]

C. Contributions aggregating \$1,000 or more from any one contributor or single expenditures of \$1,000 or more, made after the 12th day before any election and more than 24 hours before 5 p.m. on the day of any election must be reported within 24 hours of those contributions or expenditures. [2005, c. 301, §14 (amd).]

D. Reports must be filed no later than 5 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date. [1991, c. 839, §15 (amd); §34 (aff).]

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$50 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of \$50 shall file reports semiannually with the commission within 15 days following the end of the 2nd and 4th quarters of the State's fiscal year, complete as of the last day of the quarter, until the surplus is disposed of or the deficit is liquidated. The first report under this paragraph is not required until the 15th day of the period beginning at least 90 days from the date of the election. The reports may either be filed in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section. [1991, c. 839, §15 (amd); §34 (aff).]

F. Reports with respect to a candidate who seeks nomination by petition must be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election. [1991, c. 839, §15 (amd); §34 (aff).]  
[2005, c. 301, §14 (amd).]

**3-B. Accelerated reporting schedule.** Additional reports are required from nonparticipating Maine Clean Election Act candidates pursuant to this subsection.

A. In addition to other reports required by law, any candidate for Governor, State Senate or State House of Representatives who is not certified as a Maine Clean Election Act candidate under chapter 14 and who receives, spends or obligates more than 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate in the same race shall file by any means acceptable to the commission, within 48 hours of that event, a report with the commission detailing the candidate's total campaign contributions, obligations and expenditures to date. [2001, c. 470, §6 (new).]

B. A nonparticipating candidate with a Maine Clean Election Act opponent shall file the following additional reports detailing the candidate's total campaign contributions, obligations and expenditures to date, unless that candidate signs an affidavit by the date the report is due, attesting that the candidate has not received, spent or obligated an amount sufficient to require a report under paragraph A:

## Title 21-A, §1017, Reports by candidates

- (1) A report filed not later than 5 p.m. on the 42nd day before the date on which an election is held and complete as of the 44th day before that date;
- (2) A report filed no later than 5 p.m. on the 21st day before the date on which an election is held and complete as of the 23rd day before that date; and
- (3) A report filed no later than 5 p.m. on the 12th day before the date on which an election is held and complete as of the 14th day before that date.

[2001, c. 589, §1 (amd).]

C. A candidate who is required to file a report under paragraph A must file with the commission an updated report that reports single expenditures in the following amounts that are made after the 14th day before an election and more than 24 hours before 5:00 p.m. on the date of that election:

- (1) For a candidate for Governor, a single expenditure of \$1,000;
- (2) For a candidate for the state Senate, a single expenditure of \$750; and
- (3) For a candidate for the state House of Representatives, a single expenditure of \$500.

A report filed pursuant to this paragraph must be filed within 24 hours of the expenditure. [2003, c. 628, Pt. B, §3 (amd).]

The commission shall provide forms to facilitate compliance with this subsection. The commission shall notify a candidate within 48 hours if an amount reported on any report under paragraph B exceeds 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate in the same race and no report has been received under paragraph A.

[2003, c. 628, Pt. B, §3 (amd).]

**4. New candidate or nominee.** A candidate for nomination or a nominee chosen to fill a vacancy under chapter 5, subchapter III is subject to section 1013-A, subsection 1, except that the candidate shall register the name of a treasurer or political committee and all other information required in section 1013-A, subsection 1, paragraphs A and B within 7 days after the candidate's appointment or at least 6 days before the election, whichever is earlier. The person required to file a report under section 1013-A, subsection 1 shall file a campaign report under this section 15 days after the candidate's appointment or 6 days before the election, whichever is earlier. The report must include all contributions received and expenditures made through the completion date. The report must be complete as of 4 days before the report is due. Subsequent reports must be filed on the schedule set forth in this section. The commission shall send notification of this requirement and registration and report forms to the candidate and the candidate's treasurer immediately upon notice of the candidate's and treasurer's appointments.

[1991, c. 839, §16 (amd).]

**5. Content.** A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name of each payee and creditor. Total contributions with respect to an election of less than \$500 and total expenditures of less than \$500 need not be itemized. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A. Until December 31, 1992, the candidate is responsible for the timely and accurate filing of each required report. Beginning January 1, 1993, the candidate and the treasurer are jointly responsible for the timely and accurate filing of each required report.

[1991, c. 839, §17 (amd).]

**5-A. Valuation of contributions sold at auction.** Any contribution received by a candidate that is later sold at auction shall be reported in the following manner.

A. If the contribution is sold at auction before the commencement of the appropriate reporting period specified in subsections 1 to 4, or during that period, the value of the contribution is deemed to be the amount of the purchase price paid at auction. [1987, c. 725, §2. (new).]

B. If the contribution is sold after the termination of the appropriate reporting period specified in subsections 1 to 4, the value of the contribution is the difference between the value of the contribution as originally reported by the treasurer and the amount of the

## Title 21-A, §1020-A, Failure to file on time

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### §1020-A. Failure to file on time

**1. Registration.** A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

[1995, c. 483, §15 (new).]

**2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission before 5 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (amd).]

B. An error by the commission staff; [1999, c. 729, §5 (amd).]

C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (amd).]

D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service. [1999, c. 729, §5 (new).]

[2003, c. 628, Pt. A, §3 (amd).]

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

[1995, c. 625, Pt. B, §5 (amd).]

#### **4. Basis for penalties.**

[2001, c. 470, §7 (amd); T. 21-A, §1020-A, sub-§4 (rp).]

**4-A. Basis for penalties.** The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, 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%; [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

## Title 21-A, §1020-A, Failure to file on time

C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

Any penalty of less than \$5 is waived.

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

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

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

The penalty for late filing of an accelerated campaign finance report as required in section 1017, subsection 3-B may be up to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation. The commission shall make a finding of fact establishing when the report was due prior to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2.

[2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

### 5. Maximum penalties.

[2001, c. 470, §8 (amd); T. 21-A, §1020-A, sub-§5 (rp).]

#### 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 or F; section 1017, subsection 4; and section 1019-B, subsection 3; [2003, c. 448, §4 (amd).]

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E; [2003, c. 628, Pt. A, §4 (amd).]

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; [2003, c. 628, Pt. A, §4 (amd).]

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B; or [2003, c. 628, Pt. A, §4 (amd).]

E. Three times the unreported amount for reports required under section 1017, subsection 3-B, if the unreported amount is less than \$5,000 and the commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report. [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

[2003, c. 628, Pt. A, §4 (amd).]

**6. Request for a commission determination.** Within 3 days following the filing deadline, a notice must be forwarded to a candidate and treasurer whose registration or campaign finance report is not received by 5 p.m. on the deadline date, informing them of the basis for calculating penalties under subsection 4 and providing them with an opportunity to request a commission determination. The notice must be sent by certified United States mail. Any request for a determination must be made within 10 calendar days of receipt of the commission's notice. The 10-day period during which a determination may be requested begins on the day a recipient signs for the certified mail notice of the proposed penalty. If the certified letter is refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. A candidate or treasurer requesting a determination may either appear in person or designate a representative to appear on the candidate's or treasurer's behalf or submit a notarized written explanation of the mitigating circumstances for consideration by the commission.

[RR 1995, c. 2, §38 (cor).]

**7. Final notice of penalty.** After a commission meeting, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the treasurer.

If no determination is requested, the commission staff shall calculate the penalty as prescribed in subsection 4-A and shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

[RR 2003, c. 1, §14 (cor).]

## Title 21-A, §1020-A, Failure to file on time

**8. Failure to file report.** The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. If a candidate fails to file a report after 3 written communications from the commission, the commission shall send up to 2 more written communications by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the communications required by this subsection is guilty of a Class E crime.

[2003, c. 628, Pt. A, §5 (rpr).]

**8-A. Penalties for failure to file report.** The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

[2003, c. 628, Pt. A, §6 (new).]

**9. List of late-filing candidates.** The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

[1995, c. 483, §15 (new).]

**10. Enforcement.** The commission staff has the responsibility for collecting the full amount of any penalty and has all necessary powers to carry out this responsibility. Failure to pay the full amount of any penalty levied under this subchapter is a civil violation by the candidate, treasurer, political party or other person whose campaign finance activities are required by this subchapter to be reported. Thirty days after issuing the notice of penalty, the commission shall report to the Attorney General the name of any person who has failed to pay the full amount of any penalty. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the penalty. This action must be brought in the Superior Court for Kennebec County or the District Court, 7th District, Division of Southern Kennebec.

[1999, c. 426, §33 (amd).]

MRSA, §T.21A SEC.1020A/4,5 (AMD).

IB 1995, Ch. 1, §15 (AMD).

PL 1995, Ch. 483, §15 (NEW).

PL 1995, Ch. 625, §B5 (AMD).

RR 1995, Ch. 1, §10 (COR).

RR 1995, Ch. 2, §38 (COR).

PL 1999, Ch. 426, §32,33 (AMD).

PL 1999, Ch. 729, §5 (AMD).

PL 2001, Ch. 470, §11 (AFF).

PL 2001, Ch. 470, §7,8 (AMD).

PL 2001, Ch. 714, §PP1 (AMD).

PL 2001, Ch. 714, §PP2 (AFF).

PL 2003, Ch. 302, §4 (AMD).

PL 2003, Ch. 448, §4 (AMD).

PL 2003, Ch. 628, §A3-6 (AMD).

RR 2003, Ch. 1, §14 (COR).

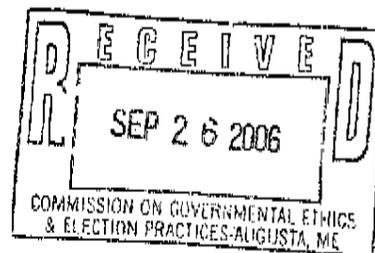
IRWIN TARDY &amp; MORRIS, PA

002

Joshua A. Tardy  
P.O. Box 381  
Newport, ME 04953-0381

September 26, 2006

State of Maine  
Commission on Governmental  
Ethics and Election Practices  
135 State House Station  
Augusta, ME 04333-0135



Hand-delivered

RE: 42-Day Report and 101% Report

Dear Sir or Madam:

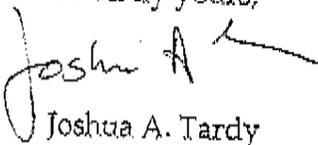
I enclose my 42-Day General Election 2006 Accelerated Report. I also enclose a 101% report, which is being filed late.

As I have discussed with Commission staff on today's date, the cash balance as of June 13, 2006 is \$500.00 less than the total reflected in previous reports. As part of my review of the finance reports and in an effort to determine why an error occurred that resulted in this late filing of the 101% report, I have discovered that two (2) \$250.00 contributions referenced in my 2004 campaign finance report were reported but never actually received. Those two contributions dated July 08, 2004 have been incorrectly reflected as received contributions, thus creating an incorrect and inflated balance. I will be providing you with the bank statements to document this error. I will further be amending all pertinent reports to reflect the correct balance.

I look forward to working with the Commission in resolving these issues.

Thank you.

Sincerely yours,

  
Joshua A. Tardy

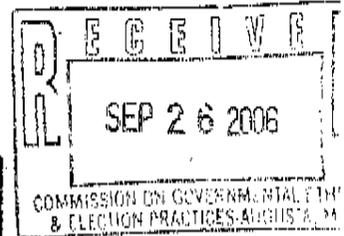
JAT/met  
Enclosures

02/08/2007 16:16 FAX 407 906 2922

IRWIN TARDY &amp; MORRIS, PA

003

STATE OF MAINE  
 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
 Mail: 135 State House Station  
 Office: 242 State Street  
 Augusta, Maine 04333-0135  
 Tel: (207) 287-4179 FAX: (207) 287-6775



GENERAL ELECTION 2006  
 ACCELERATED REPORT  
 FOR PRIVATELY FINANCED LEGISLATIVE CANDIDATES  
 WITH MCEA OPPONENTS

PLEASE INDICATE TYPE OF REPORT	
<input type="checkbox"/> 42-DAY (Due 9/26)	<input type="checkbox"/> 21-DAY (Due 10/17)
<input type="checkbox"/> 12-DAY (Due 10/26)	<input checked="" type="checkbox"/> 101% (Due: See Reverse)
CANDIDATE INFORMATION	
Name of Candidate <b>Joshua A. Tardy</b>	Telephone Number <b>(207) 368-5858</b>
Mailing Address <b>P.O. Box 381</b>	Office Sought <b>Representative</b>
City, Zip Code <b>Newport, ME 04953-0381</b>	District <b>25</b>
Name of Opposing MCEA Candidate(s) <b>Richard Ryan Dort</b>	
TOTAL RECEIPTS FOR THE GENERAL ELECTION	
Cash balance on June 13, 2006:	\$ 2,453.57
Total cash contributions received after June 13, 2006:	\$ 2,100.00
Total value of in-kind contributions received after June 13, 2006:	\$ 50.00
Total loans received after June 13, 2006:	\$ .00
Total bank interest received after June 13, 2006:	\$ .00
<b>TOTAL RECEIPTS:</b>	<b>\$ 4,603.57</b>
TOTAL EXPENDITURES FOR THE GENERAL ELECTION	
Total expenditures after June 13, 2006:	\$ 1,907.58
Total value of in-kind contributions received after June 13, 2006:	\$ 50.00
Total unpaid debts and obligations incurred after June 13, 2006:	\$ .00
<b>TOTAL EXPENDITURES:</b>	<b>\$ 1,957.58</b>

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

Joshua A. Tardy  
 Signature of Candidate

9-26-06  
 Date

Please see instructions on reverse side.

\*Through September 6, 2006

RICHARD DORT

01/22/2007

CANDIDATE'S FULL NAME

Date Submitted

**SCHEDULE F  
SUMMARY SECTION  
(MAINE CLEAN ELECTION ACT CANDIDATES)**

<b>CASH ACTIVITY</b>		
	<b>TOTAL FOR THIS PERIOD</b>	<b>TOTAL FOR CAMPAIGN</b>
1. CASH BALANCE FROM LAST REPORT (if any)	7,507.47	
2. MAINE CLEAN ELECTION ACT Payments	+ 2,544.43	13,598.00
3. SALE OF CAMPAIGN PROPERTY (Schedule E, Part II)	+ 0.00	0.00
4. OTHER CASH RECEIPTS (interest, etc.)	+ 0.00	0.00
5. <i>MINUS</i> TOTAL EXPENDITURES (total of all Schedule B pages)	- 0.00	3,546.10
6. CASH BALANCE AT CLOSE OF PERIOD (lines 1 + 2 + 3 + 4 - 5)	= 10,051.90	
7. CASH NOT AUTHORIZED TO SPEND	0.00	
8. CASH AUTHORIZED TO SPEND (line 6 - 7)	10,051.90	

<b>OTHER ACTIVITY THIS REPORTING PERIOD</b>		
9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD (total all Schedule D pages)	185.39	

# Exhibit #4



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

To: Commission Members

From: Jonathan Wayne

Date: February 7, 2006

Re: Request for Guidance from Rep. Thomas B. Saviello

---

Rep. Thomas B. Saviello has made an oral request to the Ethics Commission for an advisory opinion about whether he can vote on or otherwise influence an anticipated major substantive rule-making regarding the Regional Greenhouse Gas Initiative (RGGI) undertaken by the Maine Department of Environmental Protection (DEP). The RGGI rules are major substantive, which means that the DEP must submit the rules to the Legislature for its consideration.

In addition to the RGGI rule-making, Rep. Saviello would appreciate advice on other bills that likely will arise this session and that would affect his employer.

### **Factual Background**

I received the following factual background from Rep. Saviello, which I supplemented with a quick perusal of [www.maine.gov/dep/air/rggi.htm](http://www.maine.gov/dep/air/rggi.htm).

RGGI is a cooperative effort among northeastern and mid-Atlantic states to reduce emissions of carbon dioxide by electric power generators. If adopted by these states, the agreement would impose a cap on total carbon dioxide emissions for the region, and power plants that emitted carbon dioxide would likely be required to buy allowances on a market in order to emit carbon dioxide. The DEP has begun seeking public input on the RGGI rules.

If adopted in Maine, six power plants in the state likely would be forced to buy the allowances. Two of the six power plants are owned by Verso Paper Holdings LLC, which owns paper mills in Jay and Bucksport, Maine. Rep. Saviello is employed as the environmental manager of the Jay mill. (The International Paper company sold its coated paper division to Apollo Management L.P., which owns Verso.)

The paper mill in Jay has a power plant which creates steam used in paper production and which also produces electric power which is sold. As the environmental manager for the mill, Rep. Saviello oversees compliance of the power plant with the state's environmental laws and rules. Verso Paper engages a consulting firm to oversee the power plant.

Because Maine's RGGI program is still under development, it is difficult to know what the costs of the allowances would be to Verso Paper, but for the purposes of the advisory opinion Rep. Saviello suggested it could be in the range of \$5 million for each plant. If the Jay plant were required to buy the allowances, the allowances would be purchased by the consulting firm which manages the power plant. That firm already purchases allowances to emit a different chemical, sodium dioxide, so the purchase of the carbon dioxide allowances would be a similar contractual responsibility for the firm. If adopted in Maine, the RGGI program would not significantly affect Rep. Saviello's job responsibilities or the performance of his job. The purchases of the allowances would not affect his department's budget.

### 2006 Proceedings

In 2006, Rep. Saviello asked for advice from the Commission on whether his employment as the environmental manager of the Jay plant disqualified him from a position on the Natural Resources committee. Shortly afterward, the Conservation Law Foundation filed a complaint against Rep. Saviello which alleged, among other things, that Rep. Saviello had used his position as a Legislator to unduly influence the DEP and had influenced legislation to benefit his employer. The complaint was joined by other environmental organizations.

In response to Rep. Saviello's request, the Commission issued the attached advisory opinion stating that his employment as the environmental manager of the Jay plant did not, in itself, disqualify him from sitting on the Natural Resources committee. The opinion cautioned Rep. Saviello to consider recusing himself from matters affecting his employer which could give the appearance of a conflict of interest.

After receiving the opinion, Rep. Saviello voluntarily asked to be reassigned to a different legislative committee. Following that action, the Commission voted 2-2 not to conduct an investigation into the allegations in the complaint.

There are a few key differences between the present request for advice and the 2006 complaint:

- Rep. Saviello no longer sits on the Natural Resources committee. He is asking for advice on whether he can represent his district in the consideration of the RGGI rules as one of 186 rank-and-file members of the Maine Legislature.
- The 2006 complaint concerned Rep. Saviello's past actions on the Natural Resources committee, the current request by Rep. Saviello concerns rulemaking that has not yet been completed. While Rep. Saviello's employer might be impacted by the RGGI rules (potentially imposing a large financial cost), the potential benefit or harm to his employer is not yet known, nor is it

known what position Rep. Saviello would advance on RGGI, and how that position would relate to the views of his employer or his constituents. You may therefore conclude that it is premature to reach the conclusion that Rep. Saviello should not attempt to influence legislative action on the RGGI rules in any way because of the mere possibility that his actions could benefit his employer.

### Conflict of Interest Standards in 1 M.R.S.A. §1014(1)

The Maine legislative ethics law defines 'conflict of interest' at 1 M.R.S.A. §1014(1). Paragraphs (A) through (F) list six situations which involve a conflict of interest.

#### *Paragraph (1)(A)*

Three of these paragraphs (A, E, and F) relate to a potential conflict of interest that could result from the Legislator's employment. Of these three paragraphs, (A) seems most relevant because it describes a situation in which a Legislator might be in a conflict of interest due to legislation which affects the Legislator's *employer*.

A. Where a Legislator or a member of his immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise which would be financially benefited by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation. (underlining added)

The term "close economic association" is a defined term (see attached provisions), and it includes the employer of a Legislator. So, Rep. Saviello is in close economic association with Verso Paper.

The staff finds the language in paragraph 1(A) difficult to apply because of its awkward construction and because the provision does not seem to qualify what degree of financial benefit to (or other effect on) a Legislator's employer or business would result in a conflict of interest. Does any effect – no matter how small – on the enterprise in which a Legislator's employer's has a direct financial interest result in a conflict of interest?<sup>1</sup>

#### *Paragraphs 1(E) and (F)*

Paragraphs 1(E) and (F) also define situations that involve a conflict of interest relating to the Legislator's employment or profession. These provisions are included in the attachments for the sake of brevity.

<sup>1</sup> Late last year, the Presiding Officers' Advisory Committee on Legislative Ethics suggested some clarifications to the definition of conflict of interest. Those suggestions will be considered later this year by the Legislature, but it is not known whether the Legislature will adopt those suggestions.

Although divided into two paragraphs, the provisions actually cover a number of situations, most of which involve a personal benefit or loss to the Legislator or family member, not a benefit or loss to the Legislator's employer. It is not immediately apparent how Rep. Saviello would incur any personal gain or loss from RGGI, so in the analysis below I apply paragraph 1(A).

Paragraph 1(E) also contains the standard that a conflict of interest exists "[w]here a Legislator ... engages in employment which could impair the Legislator's judgment." The standard of impairing the Legislator's judgment is fairly subjective, however, and therefore difficult for the Commission to apply to a given factual situation. It implies that a Legislator should know that he is making judgments about how to vote on, or influence, a legislative matter based on the public interest and interests of his constituents, and not based on his employer's interests.

### **Role of the Commission**

The Legislature created the Commission on Governmental Ethics and Election Practices to be an independent source of advice on legislative ethics issues, and "to strengthen [the] faith and confidence that the election process reflects the will of the people and that each Legislator considers and casts his vote on the enactment of laws according to the best interests of the public and his constituents ...." (1 M.R.S.A. §1001) The full statement of purpose for the Commission is attached.

The role of the Commission, however, is advisory only. Legislators like Rep. Saviello may turn to the Commission for advice.

Indeed, in the statement of purpose for the legislative ethics law, the Legislature seemed to assign the primary responsibility for avoiding a conflict of interest with the individual Legislator: "The Legislature cannot legislate morals and the resolution of ethics problems must indeed rest largely in the individual conscience."

### **Considerations in Favor of Recusal**

The stated purpose of the legislative ethics law is to increase confidence that Legislators are acting in the public interest and in the interest of constituents, rather than in the interests of the Legislator or the Legislator's family, business, employer, or clients. (1 M.R.S.A. §1001)

When a member of the Maine Legislature is in a conflict of interest with respect to legislation, the legislative ethics law forbids the Legislator from voting on the legislation or otherwise seeking to influence it:

- 1. Actions precluded.** When a member of the Legislature has a conflict of interest, that member has an affirmative duty not to vote on any question in connection with the conflict in committee or in either branch

of the Legislature, and shall not attempt to influence the outcome of that question. (1 M.R.S.A. §1015(1))

In effect, the law says to the member that he or she cannot wear both "hats" at the same time. This is not to say that the member would necessarily be acting unethically if the member were to vote on or influence the legislation. The law simply prohibits the Legislator from voting on or influencing the measure in order to strengthen the public's confidence in the workings of government.

*RGGI Apparently Would Have a Significant Impact on Rep. Saviello's Employer*

The primary argument that Rep. Saviello may not vote on or influence RGGI is that his employer, Verso Paper, may be negatively affected by RGGI in a significant way if RGGI is adopted in Maine. Indeed, there's a possibility that Verso Paper will be more directly affected by RGGI than any other carbon dioxide emitter in Maine because it has two plants that would be regulated by RGGI, in Jay and Bucksport. Potentially, Verso Paper would have to buy emissions allowances for both plants. Rep. Saviello preliminarily has suggested that the allowances could cost in the range of \$5 million per plant.

The impact on Verso Paper could certainly bring Rep. Saviello within the reach of §1014(1)(A) because:

Rep. Saviello presumably receives a direct substantial financial benefit (his salary) from close economic association with a person (Verso Paper) known by Rep. Saviello to have a direct financial interest in an enterprise (the Jay plant) affected by proposed legislation.

As noted above, the staff finds §1014(1)(A) difficult to apply. In particular, it is not clear what degree of impact on Verso Paper is necessary to result in a conflict of interest.

Nevertheless, based on my limited knowledge of RGGI, it appears that RGGI would impose a significant financial impact on Verso Paper. It is also apparent that the number of similarly situated companies is quite small because only six power plants in Maine would be affected by RGGI. Therefore, there is certainly an argument that it would be a conflict of interest under §1014(1)(A) for Rep. Saviello to vote on or influence the RGGI rules.

*Rep. Saviello's Job Responsibilities Would Intersect with RGGI Compliance*

Rep. Saviello's position at the Jay plant is as the environmental manager. That means the amount of carbon dioxide emissions at the power plant comes directly within his purview. Even if Verso Paper assigned its activities in RGGI's cap-and-trade program to the consulting firm already managing the power plant, Rep. Saviello's department would presumably be responsible for compliance with the RGGI regulations. There is an argument that Rep. Saviello stands in a different position to the RGGI rules than, for

example, a line worker at the plant. Nevertheless, it is not clear that he would receive a benefit or a loss from RGGI personally.

### **Considerations against Recusal**

#### *Interests of District 90 Residents*

One primary purpose of the legislative ethics law is to increase confidence that Legislators are acting in the best interest of their constituents. Many constituents in Jay and other communities in Rep. Saviello's district depend directly or indirectly on the economic strength of the Jay plant. They have views on whether the benefits of reducing carbon dioxide emissions justify requiring Verso Paper, a major local employer, to buy emissions allowances for two of its plants (in Jay and Bucksport). Those views deserve to be considered as part of the Legislature's overall consideration of the RGGI rules. If Rep. Saviello recused himself from the RGGI issue, District 90 voters effectively would be silenced in that consideration. Some might view that as a perverse result of the conflict of interest law.

It is worth noting that Rep. Saviello's dual role as the environmental manager of the Jay plant and as a Legislator was well publicized in the spring of 2006, and his constituents re-elected him with 75% of the vote. If there was a widespread concern that he was not acting in the interests of this constituents, it was not evident from the vote totals.

#### *Expertise of Rep. Saviello*

Members of the Maine Legislature bring to the institution knowledge and expertise that benefits policy-making. Rep. Saviello has years of experience in environmental management for International Paper and now Verso Paper, a doctorate in Forest Resources from the University of Maine, and other relevant experience. Perhaps uniquely within the Legislature, his employer already participates in a cap-and-trade program for sodium dioxide emissions. If he was prohibited from influencing the RGGI rules, the Legislature would be deprived of his experience and expertise.

### **Staff Recommendation**

My recommendation to you is to advise Rep. Saviello based on your best judgment of how to strengthen the legislative process and the public's confidence in it. Keeping in mind that the role of the Commission is to be a source of advice that is independent of the Legislature, your collective advice will benefit from the personal experience four of you have from serving in the Legislature.

Certainly, some observers would say that the correct application of the conflict of interest law is quite simple: Verso Paper is one of a small number of commercial operations in Maine that would be significantly affected by RGGI, therefore Rep. Saviello should recuse himself "[i]n order to strengthen this faith and confidence that the election process reflects the will of the people and that each Legislator considers and casts his vote on the

enactment of laws according to the best interests of the public ....” Some of these observers, however, may not be giving sufficient weight to the other purpose of the legislative ethics law: seeing that the interests of constituents in Jay and other District 90 communities are represented by their elected delegate in the Maine House of Representatives.

At this time, I am not prepared to offer a recommendation on behalf of the staff, but I hope I have laid out the relevant considerations. My understanding of the RGGI program and its impact on Verso Paper is preliminary. My opportunity to discuss this with Rep. Saviello has been limited, and the Commission has not received comments from other interested persons. It is certainly possible that at the February 14<sup>th</sup> meeting Rep. Saviello or other interested individuals will correct any factual misunderstandings I have on RGGI and will present other perspectives on the correct application of the conflict of interest law.

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ETHICS COMMISSION

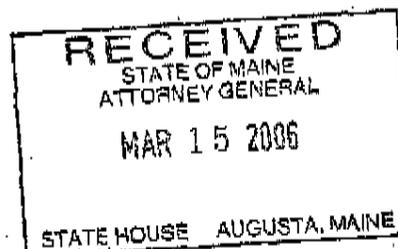
PAGE 01/03



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

March 9, 2006

The Honorable Thomas B. Saviello  
 2 State House Station  
 Augusta, Maine 04333-0002



Dear Representative Saviello:

This letter is in response to your request for an advisory opinion, pursuant to 1 M.R.S.A. §1013 (1)(A) and (2)(A), on whether your employment as the Environmental Manager for International Paper disqualifies you from serving on the Legislature's Natural Resource Committee.<sup>1</sup> At its public meeting on February 23, 2006, the Commission considered whether it should recommend to the Speaker of the House of Representatives that your employment caused such an inherent conflict of interest that you should not be allowed to sit on the Natural Resources Committee. The Commission decided unanimously that your employment status by itself should not prohibit you from serving on the Natural Resources Committee.

The Commission only considered your status without reference to your past conduct or activities regarding the Department of Environmental Protection ("DEP"), specific legislation, or other legislative efforts. Prior to and at its February meeting, the Commission was made aware of allegations with respect to your conduct as a member of the committee of jurisdiction of the DEP, which regulates your employer. The Commission did not consider the allegations at the meeting and does not address them in this opinion.<sup>2</sup> The Commission retains the option of conducting an investigation in the event that a Legislator files a complaint with the Commission or that the Commission decides, upon its own motion, to take up an investigation.

With its focus solely on your employment status, the Commission based its decision on three considerations. At the heart of the Commission's decision are respect for Maine's citizen legislature and recognition of potential tension between a Legislator's public duty and private

<sup>1</sup> In your letter, received by the Commission on January 9, 2006, you also requested that the Commission investigate certain allegations that you exchanged your vote on proposed legislation for the withdrawal of a notice of violation from the Maine Department of Environmental Protection. Subsequently, at the February 23<sup>rd</sup> meeting, you asked to withdraw this request. The Commission voted (4-0) to accept your request. This opinion does not address any allegations regarding specific conduct or activities as a Natural Resources Committee member or as a Legislator.

<sup>2</sup> The Commission voted (4-0) to not take action on the Commission's own motion to investigate your actions regarding an alleged *quid pro quo* deal with International Paper and the Department of Environmental Protection and to table further inquiry with respect to a third party complaint filed with the Commission.

employment. The "Statement of Purpose" in Maine's legislative ethics law acknowledges that the "increasing complexity of government...with broader intervention into private affairs, makes conflicts of interests almost inevitable...."<sup>3</sup> This possibility for conflicts results because "[m]ost Legislators must look to income from private sources, not their public salaries, for their sustenance and support of their families...."<sup>4</sup> However, the knowledge and expertise that Legislators bring from their private and professional lives has great value in the legislative process. To bar certain Legislators from sitting on committees with jurisdiction over their professions or employers would deprive a committee of relevant knowledge and expertise where they can be most useful. Indeed, a review of present and past committees would show that many members with specialized knowledge and experience have been assigned to committees having jurisdiction over their profession or even employers. We do not see your assignment to the Natural Resources Committee as inconsistent with the Legislature's past practice regarding committee assignment or as a *per se* conflict of interest.

The foremost obligation of a Legislator is to represent the interests of the people in his or her district. Your situation presents a case where your dual roles -- as Legislator and as Environmental Manager for International Paper -- could give rise to a question as to whom you serve in taking a position on legislation or otherwise performing your job as a Legislator. In many instances, the concerns of your constituents and of the paper industry are naturally aligned. It is not difficult to imagine situations in which you would support legislation that benefits your employer and the paper industry by improving Maine's business climate, and benefits your constituents by making their jobs more secure. In some of these situations, you may wish to consider recusing yourself to avoid any appearance of impropriety. However, in general, the mere fact that your actions may address the concerns of both your constituents and your employer is not enough on its own to present an unmistakable conflict of interest.

Finally, the Commission considered the process of legislative committee assignment and of the legislative process itself. The Speaker of the House takes many factors into account in making committee assignments. One is the expertise and knowledge of a particular Legislator that will bring a depth of understanding on the subjects of the committee's jurisdiction. Another factor is making committee assignments that will maintain a balance of interests and perspectives within the committee. A committee member can try to persuade his or her fellow committee members towards a specific outcome, but still has only one vote. In your case, twelve other Legislators sit on the Natural Resources Committee representing a variety of perspectives on environmental concerns. The structure and processes of committees and the House are designed to limit the power of any one Legislator and to promote debate and proper consideration of proposed legislation.

Though we do not address them in this opinion, the allegations against you indicate a perception, among some members of the public, that some of your legislative activities have constituted a conflict of interest. "If public confidence in government is to be maintained and enhanced, it is not enough that public officers avoid acts of misconduct. They must also scrupulously avoid acts which may create an appearance of misconduct."<sup>5</sup> The Legislature has set a high bar for itself

<sup>3</sup> 1 M.R.S.A. §1011

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

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ETHICS COMMISSION

PAGE 03/03

but a necessary one to keep the public's trust and respect. The Legislature also recognized that laws and guidelines will not dispose of every ethical dilemma facing Legislators and stated that "the resolution of ethical problems must indeed rest largely in the individual conscience."<sup>6</sup> Though we do not find an inherent conflict of interest rising from your employment status, we recommend that you carefully consider whether you should recuse yourself from voting on particular matters which affect your employer to avoid the appearance of misconduct.

Sincerely,



Jean Ginn Marvin  
Chair

cc: The Honorable John Richardson

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<sup>6</sup> *Id.*

## Title 1, §1001, Statement of purpose

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### §1001. Statement of purpose

It is essential under the American system of representative government that the people have faith and confidence in the integrity of the election process and the members of the Legislature. In order to strengthen this faith and confidence that the election process reflects the will of the people and that each Legislator considers and casts his vote on the enactment of laws according to the best interests of the public and his constituents, there is created an independent commission on governmental ethics and election practices to guard against corruption or undue influencing of the election process and against acts or the appearance of misconduct by Legislators. [1975, c. 621, § 1 (new).]

PL 1975, Ch. 621, §1 (NEW).

## Title 1, §1014, Conflict of interest

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### §1014. Conflict of interest

**1. Situations involving conflict of interest.** A conflict of interest shall include the following:

A. Where a Legislator or a member of his immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise which would be financially benefited by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation. [1975, c. 621, §1 (new).]

B. Where a Legislator or a member of his immediate family accepts gifts, other than campaign contributions duly recorded as required by law, from persons affected by legislation or who have an interest in a business affected by proposed legislation, where it is known or reasonably should be known that the purpose of the donor in making the gift is to influence the Legislator in the performance of his official duties or vote, or is intended as a reward for action on his part. [1975, c. 621, §1 (new).]

C. Receiving compensation or reimbursement not authorized by law for services, advice or assistance as a Legislator. [1975, c. 621, §1 (new).]

D. Appearing for, representing or assisting another in respect to a claim before the Legislature, unless without compensation and for the benefit of a citizen. [1975, c. 621, §1 (new).]

E. Where a Legislator or a member of his immediate family accepts or engages in employment which could impair the Legislator's judgment, or where the Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded him or a member of his immediate family with intent to influence his conduct in the performance of his official duties, or where the Legislator or a member of his immediate family stands to derive a personal private gain or loss from employment, because of legislative action, distinct from the gain or losses of other employees or the general community. [1975, c. 621, §1 (new).]

F. Where a Legislator or a member of his immediate family has an interest in legislation relating to a profession, trade, business or employment in which the Legislator or a member of his immediate family is engaged, where the benefit derived by the Legislator or a member of his immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment. [1975, c. 621, §1 (new).]  
[1975, c. 621, §1 (new).]

**2. Undue influence.** It is presumed that a conflict of interest exists where there are circumstances which involve a substantial risk of undue influence by a Legislator, including but not limited to the following cases.

A. Appearing for, representing or assisting another in a matter before a state agency or authority, unless without compensation and for the benefit of a constituent, except for attorneys or other professional persons engaged in the conduct of their professions.

(1) Even in the excepted cases, an attorney or other professional person must refrain from references to his legislative capacity, from communications on legislative stationery and from threats or implications relating to legislative action.

[1975, c. 621, §1 (new).]

## Title 1, §1014, Conflict of interest

B. Representing or assisting another in the sale of goods or services to the State, a state agency or authority, unless the transaction occurs after public notice and competitive bidding. [1975, c. 621, §1 (new).]  
[1975, c. 621, §1 (new).]

**3. Abuse of office or position.** It is presumed that a conflict of interest exists where a Legislator abuses his office or position, including but not limited to the following cases.

A. Where a Legislator or a member of his immediate family has a direct financial interest or an interest through a close economic association in a contract for goods or services with the State, a state agency or authority in a transaction not covered by public notice and competitive bidding or by uniform rates established by the State, a state agency, authority or other governmental entity or by a professional association or organization. [1975, c. 621, §1 (new).]

B. Granting or obtaining special privilege, exemption or preferential treatment to or for oneself or another, which privilege, exemption or treatment is not readily available to members of the general community or class to which the beneficiary belongs. [1975, c. 621, §1 (new).]

C. Use or disclosure of confidential information obtained because of office or position for the benefit of self or another. [1975, c. 621, §1 (new).]  
[1975, c. 621, §1 (new).]

PL 1975, Ch. 621, §1 (NEW).

## Title 1, §1015, Actions precluded; reports

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### §1015. Actions precluded; reports

**1. Actions precluded.** When a member of the Legislature has a conflict of interest, that member has an affirmative duty not to vote on any question in connection with the conflict in committee or in either branch of the Legislature, and shall not attempt to influence the outcome of that question.

[1989, c. 561, §7 (amd).]

**2. Reports.** When the commission finds that a Legislator has voted or acted in conflict of interest, the commission shall report its findings in writing to the house of which the Legislator is a member.

[1975, c. 621, §1 (new).]

**3. Campaign contributions and solicitations prohibited.** The following provisions prohibit certain campaign contributions and solicitation of campaign contributions during a legislative session.

A. As used in this subsection, the terms "employer," "lobbyist" and "lobbyist associate" have the same meanings as in Title 3, section 312-A and the term "contribution" has the same meaning as in Title 21-A, section 1012. [1997, c. 529, §1 (new).]

B. The Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer may not intentionally solicit or accept a contribution from a lobbyist, lobbyist associate or employer during any period of time in which the Legislature is convened before final adjournment, except for a qualifying contribution as defined under Title 21-A, section 1122, subsection 7. A lobbyist, lobbyist associate or employer may not intentionally give, offer or promise a contribution, other than a qualifying contribution, to the Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer during any time in which the Legislature is convened before final adjournment. These prohibitions apply to direct and indirect solicitation, acceptance, giving, offering and promising, whether through a political action committee, political committee, political party or otherwise. [2005, c. 301, §3 (amd).]

C. This subsection does not apply to:

- (1) Solicitations or contributions for bona fide social events hosted for nonpartisan, charitable purposes;
- (2) Solicitations or contributions relating to a special election to fill a vacancy from the time of announcement of the election until the election;
- (3) Solicitations or contributions after the deadline for filing as a candidate as provided in Title 21-A, section 335; and
- (4) Solicitations or contributions accepted by a member of the Legislature supporting that member's campaign for federal office.

[1999, c. 648, §1 (amd).]

C-1. This subsection does not prohibit the attendance of the Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer at fund-raising events held by a municipal, county, state or national political party organized pursuant to Title 21-A, chapter 5, nor the advertisement of the expected presence of any such official at any such event, as long as any such official has no involvement in soliciting attendance at the event and all proceeds are paid directly to the political party organization hosting the event or a nonprofit charitable organization.

[1999, c. 273, §1 (new).]

## Title 1, §1015, Actions precluded; reports

D. A person who intentionally violates this subsection is subject to a civil penalty not to exceed \$1,000, payable to the State and recoverable in a civil action. [1997, c. 529, §1 (new).]  
[2005, c. 301, §3 (amd).]

**4. Contract with state governmental agency.** A Legislator or an associated organization may not enter with a state governmental agency into any contract that is to be paid in whole or in part out of governmental funds, when such a contract is normally awarded through a process of public notice and competitive bidding, unless the contract has been awarded through a process of public notice and competitive bidding.  
[2003, c. 268, §2 (new).]

PL 1975, Ch. 621, §1 (NEW).  
PL 1989, Ch. 561, §7 (AMD).  
PL 1997, Ch. 529, §1 (AMD).  
PL 1999, Ch. 273, §1 (AMD).  
PL 1999, Ch. 648, §1 (AMD).  
PL 2003, Ch. 268, §2 (AMD).  
PL 2005, Ch. 301, §3 (AMD).

# Exhibit #5



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

To: Commission Members  
From: Jonathan Wayne  
Date: February 7, 2006  
Re: Grose and Wasserott Complaints

---

Carol Grose and Susan Wasserott ran against each other for the Maine House of Representatives in District 65. The Grose campaign filed a letter by e-mail alleging that the Wasserott campaign received unreported contributions that violated the Maine Clean Election Act: free advertising in a local newspaper, uncompensated website services, and wood from a former candidate that was used for signs. Attorney Dan Billings has responded on behalf of the Wasserott campaign.

#### **Allegations against Wasserott Campaign**

##### *Newspaper Articles*

The Commission staff easily understands why the Grose campaign might regard the Coastal Journal's publication of eight commentaries written by Susan Wasserott as an in-kind contribution to her campaign. Apparently, there was a generous amount of space devoted to explaining Ms. Wasserott's views on public policy issues, along with her picture. Newspaper space costs money. This donation of this space certainly could fall within the definition of contribution: something of value provided to Ms. Wasserott for the purpose of influencing her election. (21-A M.R.S.A. §1012(A)(1))

The Election Law contains, however, a generous exception to the definition of the term "expenditure" that applies to broadcasting stations and newspapers that are not controlled by a political party, political committee, or candidate:

The term "expenditure" ...

B. [d]oes not include:

(1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by any political party, political committee or candidate;

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

21-A M.R.S.A. §1012(3)(B)(1) This exception seems intended to provide media with a wide degree of latitude to publish news stories or editorials dealing with elections or candidates without being accused of making an expenditure to benefit a candidate.

This is the first complaint raising this issue before the Commission since my employment began. Presumably, this is because most news outlets make an effort to be balanced. The exception for newspapers and broadcasters does seem quite broad, and could allow the owner of a politically-minded newspaper or broadcast station to unfairly tilt an election in a significant way. In applying the law, I do not want to ignore the potential unfairness to candidates such as Rep. Grose. Nevertheless, it is the job of the Commission to apply the law as it is written. Because of the language in the current law, I am reluctant to recommend the view that Ms. Wasserott received a contribution.

Rep. Grose or others may wish to propose to the Legislature that this exception in the Election Law be revisited because of its potential to disadvantage candidates.

#### *Campaign Website*

The Grose campaign complained that the Wasserott campaign received a very slick, professional-looking website for little compensation. The Wasserott campaign responded that the website was designed by Mark Stephenson of Stephenson Design Group, and that the donated services fall within the volunteerism exception to the term "contribution":

The term "contribution"

B. [d]oes not include:

- (1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;

21-A M.R.S.A. §1012(2)(B)(1)

The campaign later compensated Mr. Stephenson \$250 for his services. The Commission staff regularly advises candidates that because of the volunteerism exception their supporters can donate specialized skills to a campaign (design, database, legal) without making a contribution. As long as Mr. Stephenson was donating his own labor only – and not the labor of his employees – I recommend the view that his services did not amount to a contribution to the Wasserott campaign.

### *Three Wooden Signs Contributed by Richard Tetrev*

The Grose campaign alleges that Susan Wasserott received three large wooden signs that appear to be painted-over signs from the district's previous Republican nominee, Richard Tetrev. It has been the experience of the Commission staff that when individuals give wood to candidates to use for signs, some individuals are aware that they could be making a contribution that has value, and other donors do not think of it.

To set a clearer standard, the Legislature adopted the following exception from the definition of contribution which was proposed by the Commission:

(8-A) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes ...

21-A M.R.S.A. §1012(2)(B)(8-A) Mr. Billings argues that the wood donated by Mr. Tetrev was not a contribution because Mr. Tetrev did "not originally obtain[] [the wood] for campaign purposes."

The Commission staff originally drafted this language, and our intention was that it would cover spare wood lying around a candidate or supporter's property that was obtained for some non-political purpose. We did not mean the exception to cover wood contributed by a previous candidate for political signs.

Nevertheless, what the agency staff had in mind when the law was drafted may not be particularly relevant. If the wood was, indeed, not obtained by Mr. Tetrev for campaign purposes, you may conclude that the donated wood was not a contribution.

If you determine that the wood is not covered by the exception, the staff recommends that you find the Wasserott campaign in violation of accepting a nominal contribution and assess no monetary penalty.

### **Allegations against the Grose Campaign**

Attorney Daniel I. Billings submitted a complaint alleging that the Suscom (now Comcast) cable television network in Brundwick showed advertising paid for by the Grose campaign that incorrectly stated that it was paid for by the Sagadahoc County Democratic Committee.

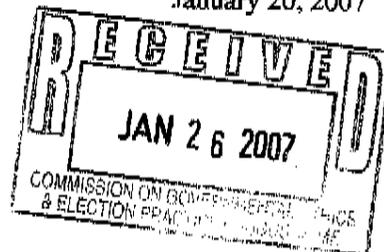
Jennifer Geiger of Briggs Advertising has submitted a letter explaining that the inaccurate "paid for" information was inadvertent and that it was quickly corrected.

Both the Grose campaign (as the party financing the ad) and the television station were under a statutory obligation to verify that the ad contained correct disclosure of what organization paid for the ad. In order to encourage accurate disclosure generally, the staff recommends that the Commission find the Grose campaign and Briggs Advertising in

violation of 21-A M.R.S.A. §1014(1) and (3), respectively, for including the wrong information in the advertisement. Because of the inadvertent nature of the violation and the prompt correction, the staff recommends against the assessment of any penalty.

Jonathan Wayne  
Executive Director  
Commission on Governmental Ethics  
And Election Practices  
135 State House Station  
Augusta, Maine 04333-0135

January 20, 2007



Dear Sir,

I am writing in response to your letter of January 18, 2007 regarding the complaint filed against Briggs Advertising and the Carol Grose campaign by Daniel Billings.

Briggs Advertising operated as the outsourced advertising sales office for the Brunswick cable television system for 19 years through December of 2006. We also have an in-house video production facility and offer production of TV spots as one of our services. With these services we provided access to affordable television advertising to local political candidates (regardless of party affiliation) for a number of election cycles.

For the 2002 Maine election, Briggs Advertising produced a :30 TV spot for Carol Grose's campaign. That ad was paid for by the Sagadahoc Democratic Committee.

For her 2004 re-election campaign, Carol Grose hired Briggs Advertising to produce a new spot, which consisted of a repetition of the beginning and ending footage from the 2002 spot, replacing only a section of the ad in which Representative Grose spoke on-camera. This spot was paid for by the Grose for Representative campaign. In production of this spot, the disclosure information was updated on the end page.

In 2006, I explored ideas with Representative Grose for creation of a new campaign commercial, and in this process we reviewed her previous ads. The most recent ad from 2004 was out-of-date, as it referred to what she had done in her "first term" in the Legislature. The original ad, however, was fairly generic, and we determined the spot could be updated without re-shooting, with a simple change of the election date in the voiceover for a retagging fee of \$65. Carol said she would prefer this option to producing a new spot for \$450 and "spending the taxpayers money".

In retagging the 2002 spot, we overlooked the fact that four years earlier the original ad had been paid for by the Sagadahoc Democratic Committee, and that the disclosure information, which had been revised for the 2004 ad, was different on the 2002 ad. It was an oversight made in the crunch of a very busy time; with only 2 salespeople and 2 cameramen/editors, in the two short weeks before the election we held creative meetings, wrote scripts, shot and edited ads, and wrote contracts for air time for more than 15 candidates, both Democrats and Republicans.

We do our best to be accurate, although we rely on our clients to give final approval to the content of their commercials. The spot aired for only a couple of days before we were contacted about our mistake, which we corrected immediately. I trust that no one was harmed by this error.

Sincerely,

Jennifer Geiger  
Account Executive  
Briggs Advertising

**Wayne, Jonathan**

---

**From:** Dib9@aol.com  
**Sent:** Wednesday, November 29, 2006 1:42 PM  
**To:** Wayne, Jonathan  
**Cc:** Lavin, Paul  
**Subject:** Re: Sag Dems/Grose TV Ad

Jonathan:

Please consider this e-mail my formal complaint concerning TV ads for Carol Grose which ran on Comcast before the election. I believe the law was violated because the ads contained a disclosure stating that they were paid for by the Sagadahoc County Democratic Committee, when Ethics Commission staff has determined that the ads were actually paid for by the Grose campaign.

While I understand that disclosure violations are common, and the mistake here unintentional and was corrected when it was brought to attention, I believe the violation is worthy of consideration by the Commission because it made it appear that there were much more serious violations of the Clean Elections Act. If the ad had actually been paid for by the Sagadahoc County Democratic Committee that would have been an unreported independent expenditure which would have denied Ms. Grose's opponent matching funds. Due to what appeared to be a serious violation, both Assistant Director Lavin and I spent time looking into this matter. As it turned out, the violation was only a disclosure violation but the violation illustrates why the disclosure requirements are important. Ultimately, I believe the campaign had a responsibility to review the final ad before it aired to ensure that the proper disclosure is made and should be held accountable for not doing so.

Thank you.

Dan Billings

**MARDEN, DUBORD,  
BERNIER & STEVENS**

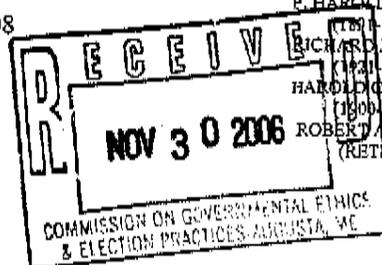
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ALBERT L. BERNIER  
(RETIRED)  
E. HAROLD DUBORD  
(1891-1964)  
RICHARD J. DUBORD  
(1931-1970)  
HAROLD C. MARDEN  
(1909-1994)  
ROBERT A. MARDEN  
(RETIRED)



November 29, 2006

Paul Lavin, Assistant Director  
State of Maine Commission on Governmental Ethics & Election Practices  
135 State House Station  
Augusta, Maine 04333-0135

**RE: Grose Complaint**

Dear Paul:

I am writing on behalf of Susan Wasserott in response to your letter of November 17<sup>th</sup>. Your letter raises three specific issues which are addressed below:

1. The website for the Wasserott campaign was initially designed by Mark Stephenson of Stephenson Design Group as a volunteer for the campaign. The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee are not contributions to a campaign as defined by 21-A M.R.S.A. §1012(2). The \$70.67 expenditure reported on the 6-day Pre-General Election Report was to cover the domain registration and hosting of the site. The 42-day Post General Election Report for the Wasserott campaign will show a payment of \$250.00 to the Stephenson Design Group for web design. Susan Wasserott talked with Sandy Thompson of the Ethics Commission staff on November 8<sup>th</sup> and was told that it would be proper to pay Mark Stephenson to partially compensate him for services that had been provided to the campaign on a volunteer basis.
2. The articles published in the Coastal Journal are not campaign expenditures under Maine law. 21-M.R.S.A. §1012(3)(B)(1) (The definition of expenditure does not include "[a]ny news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by any political party, political committee or candidate"). The Coastal Journal is a newspaper owned by Blethen Maine Newspapers, Inc. and is not controlled by any political party, political committee or candidate. Its policies regarding what articles it chooses to publish are not within the

Paul Lavin, Assistant Director  
November 28, 2006  
Page 2

jurisdiction of the Commission. It should be noted that the paper also published articles by Rep. Grose before the election.

3. The signs in question were produced with wood provided by Rick Tetrev and paint that Susan and her husband had left over from a family project. The wood and the paint are not contributions to the campaign under the provisions of 21-A M.R.S.A. §1012(2)(B)(8-B) (The term contribution does not include "[w]ood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes"). The wooden signs were produced by volunteer labor on contributed wood and paint that was not originally obtained for campaign purposes. The Pre-General Election Report filed by the Wasserott campaign includes an expenditure for the cost of the letters that were purchased for the production of the signs.

As illustrated above, the issues raised by the Grose complaint are specifically addressed by provisions of Maine law. The complaint fails to allege any facts which constitute a violation of Maine law or Commission rules. No action by the Commission is warranted.

Very truly yours,



Daniel I. Billings

e-mail: [dbillings@gwi.net](mailto:dbillings@gwi.net)

**Lavin, Paul**

---

**From:** thebus [thebus@gwi.net]  
**Sent:** Monday, November 06, 2006 9:54 AM  
**To:** Lavin, Paul  
**Subject:** Wasserott Ethic Complaint

Dear Ethics Commission:

I write you to report apparent non-compliance with provisions of campaign reporting laws by Susan Wasserott, the Republican candidate for House of Representatives District 65. Ms. Wasserott appears to have received valuable in-kind contributions which she has failed to report as required by law. In particular, she appears to have received free advertising space in The Coastal Journal on numerous occasions, she appears to have received below-cost website design services, and she appears to have received valuable wooden campaign signs from someone associated with Richard Tetrev, a Republican candidate in the past. None of these contributions appear on her financial disclosure reports.

Copies of the Coastal Journal are located on her website [www.wasserottrep65.com](http://www.wasserottrep65.com). The advertisements are in the form of "advertorials" headed by a large color picture of candidate Wasserott and including not only a statement that she is a candidate for House of Representatives District 65, and a description of the towns in District 65, but Ms. Wasserott's campaign website address, [www.wasserottrep65.com](http://www.wasserottrep65.com). This elaborate campaign website, which is incorporated by reference in Ms. Wasserott's free advertorial, explicitly asks people to vote for Ms. Wasserott. Indeed, the name of the website alone, following the description of her candidacy, appears to be an explicit appeal for votes. None of Ms. Wasserott's advertorial advertisements in The Coastal Journal include the required disclosures of candidate approval or funding.

I complained to the editor of The Coastal Journal, Fred Kahrl, about these free advertisements for Ms. Wasserott's candidacy. He reluctantly offered to publish two articles by me, to partially counterbalance the eight advertorials he published for for Ms. Wasserott. By way of background on the partisanship involved, you may want to know that Mr. Kahrl was the unsuccessful Republican candidate I defeated when I was first elected to the House of Representatives in 2002, and he recently declared his personal support of Ms. Wasserott and opposition to me in his "West of Woolwich" column in the Coastal Journal on Nov. 2 2006, [www.COASTALJOURNAL.com](http://www.COASTALJOURNAL.com). Mr. Kahrl was a MCEC and should be aware that providing free space to one candidate without offering the same to their opponent is at the very least unethical.

I have not included printouts from Ms. Wasserott's campaign website at [www.wasserottrep65.com](http://www.wasserottrep65.com), as the site is readily accessible to you through the internet, but I can print out copies if you request. It is a very slick, professional-looking website with many photos and at least 18 different interlinked web pages. Ms. Wasserott's finance reports list only one website-related expense - \$70.67 paid to Stephenson Design Group. This appears to be far less than the market-value cost of designing and implementing such an elaborate website.

Ms. Wasserott's campaign has erected three large wooden signs that appear to be painted-

11/13/2006

over signs from Richard Tetrev's campaign. I believe they were the property of Richard Tetrev and they constitute an in-kind contribution to Ms. Wasserott's campaign that does not appear in Ms. Wasserott's financial reports.

I feel that these items taken together indicate a pattern of circumvention of the MCEA regulations, and I hope you will investigate them. Please let me know if you need any more information from me in this connection.

Sincerely,

Karl D. Grose  
Treasurer, People to Elect Carol Grose.

## Title 21-A, §1014, Publication or distribution of political statements

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### §1014. Publication or distribution of political statements

**1. Authorized by candidate.** Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. The following forms of political communication do not require the name and address of the person who made or authorized the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section. [2005, c. 301, §10 (amd).]

**2. Not authorized by candidate.** If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication. If the communication is in written form, the communication must contain at the bottom of the communication in print that is no smaller in size than 10-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE." [2003, c. 510, Pt. F, §1 (amd); c. 599, §15 (aff).]

**2-A. Communication.** If a communication that names or depicts a clearly identified candidate is disseminated during the 21 days before an election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate. [2005, c. 301, §11 (new).]

**3. Broadcasting prohibited without disclosure.** No person operating a broadcasting station within this State may broadcast any communication, as described in subsections 1 and 2, without an oral or written visual announcement of the name of the person who made or financed the expenditure for the communication. [1985, c. 161, §6 (new).]

**3-A. In-kind contributions of printed materials.** A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a cause to be voted upon at referendum. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include the name or title of that candidate, political committee or political action committee as the authorizing agent for the printing and distribution of the in-kind contribution.

The use or distribution of in-kind printed materials contributed to a candidate, political committee or political action committee must be reported as an expenditure on the campaign finance report of that candidate, political committee or political action committee. [1991, c. 839, §9 (new).]

## Title 21-A, §1014, Publication or distribution of political statements

**3-B. Newspapers.** A newspaper may not publish a communication described in subsection 1 or 2 without including the disclosure required by this section. For purposes of this subsection, "newspaper" includes any printed material intended for general circulation or to be read by the general public. When necessary, a newspaper may seek the advice of the commission regarding whether or not the communication requires the disclosure.  
[2005, c. 308, §1 (new).]

**4. Enforcement.** An expenditure, communication or broadcast made within 10 days before the election to which it relates that results in a violation of this section may result in a civil fine of no more than \$200. An expenditure, communication or broadcast made more than 10 days before the election that results in a violation of this section may result in a civil fine of no more than \$100 if the violation is not corrected within 10 days after the candidate or other person who committed the violation receives notification of the violation from the commission. If the commission determines that a person violated this section with the intent to misrepresent the name or address of the person who made or financed the communication or whether the communication was or was not authorized by the candidate, the commission may impose a fine of no more than \$5,000 against the person responsible for the communication. Enforcement and collection procedures must be in accordance with section 1020-A.  
[2005, c. 542, §1 (amd).]

**5. Automated telephone calls.** Automated telephone calls that name a clearly identified candidate must clearly state the name of the person who made or financed the expenditure for the communication, except for automated telephone calls paid for by the candidate that use the candidate's voice in the telephone call.  
[2005, c. 301, §12 (new).]

PL 1985, Ch. 161, §6 (NEW).  
PL 1987, Ch. 188, §17 (AMD).  
PL 1989, Ch. 504, §§5, 6, 31 (AMD).  
PL 1991, Ch. 466, §37 (AMD).  
PL 1991, Ch. 839, §§8-10 (AMD).  
PL 1995, Ch. 483, §6 (AMD).  
PL 2003, Ch. 302, §1 (AMD).  
PL 2003, Ch. 510, §F1 (AMD).  
PL 2003, Ch. 510, §F2 (AFF).  
PL 2003, Ch. 599, §15 (AFF).  
PL 2005, Ch. 301, §§10-12 (AMD).  
PL 2005, Ch. 308, §1 (AMD).  
PL 2005, Ch. 542, §1 (AMD).

## Title 21-A, §1012, Definitions

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### §1012. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 161, §6 (new).]

**1. Clearly identified.** "Clearly identified," with respect to a candidate, means that:

- A. The name of the candidate appears; [1985, c. 161, §6 (new).]
- B. A photograph or drawing of the candidate appears; or [1985, c. 161, §6 (new).]
- C. The identity of the candidate is apparent by unambiguous reference. [1985, c. 161, §6 (new).]

**2. Contribution.** The term "contribution:"

A. Includes:

- ★ (1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office or for the purpose of liquidating any campaign deficit of a candidate, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
  - (2) A contract, promise or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;
  - (3) Funds received by a candidate or a political committee that are transferred to the candidate or committee from another political committee or other source; and
  - (4) The payment, by any person other than a candidate or a political committee, of compensation for the personal services of other persons that are provided to the candidate or political committee without charge for any such purpose; and
- [1995, c. 483, §3 (amd).]

B. Does not include:

- ★ (1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;
- (2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the individual on behalf of any candidate does not exceed \$100 with respect to any election;
- (3) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if the charge to the candidate is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed \$100 with respect to any election;
- (4) Any unreimbursed travel expenses incurred and paid for by an individual who volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election;

## Title 21-A, §1012, Definitions

- (4-A) Any unreimbursed travel expenses incurred and paid for by the candidate or the candidate's spouse;
- (5) The payment by a party's state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution of a party candidate listing;
- (6) Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this Title, lists of registered voters and voter identification information, created or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;
- (7) Compensation paid by a political party to an employee of that party for the following purposes:
  - (a) Providing advice to any one candidate for a period of no more than 20 hours in any election;
  - (b) Recruiting and overseeing volunteers for campaign activities involving 3 or more candidates; or
  - (c) Coordinating campaign events involving 3 or more candidates;
- (8) Campaign training sessions provided to 3 or more candidates;
- (8-A) Costs paid for by a party committee in connection with a campaign event at which 3 or more candidates are present;
-  (8-B) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes;
- (8-C) The use or distribution of any communication, as described in section 1014, obtained by the candidate for a previous election and fully paid for during that election;
- (9) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider; or
- (10) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate.

[2005, c. 301, §7 (amd).]

[2005, c. 301, §7 (amd).]

### 3. Expenditure. The term "expenditure:"

#### A. Includes:

- (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any person to political office, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure;
- (3) The transfer of funds by a candidate or a political committee to another candidate or political committee; and
- (4) A payment or promise of payment to a person contracted with for the purpose of supporting or opposing any candidate, campaign, political committee, political action committee, political party, referendum or initiated petition or circulating an initiated petition; and

[2005, c. 575, §2 (amd).]

#### B. Does not include:

-  (1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by any political party, political committee or candidate;
- (1-A) Any communication distributed through a public access television station if the communication complies with the laws and rules governing the station and all candidates in the race have an equal opportunity to promote their candidacies through the station;
- (2) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate;

## Title 21-A, §1012, Definitions

- (3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;
- (4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities does not exceed \$100 with respect to any election;
- (5) Any unreimbursed travel expenses incurred and paid for by an individual who volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election;
- (5-A) Any unreimbursed travel expenses incurred and paid for by the candidate or the candidate's spouse;
- (6) Any communication by any person that is not made for the purpose of influencing the nomination for election, or election, of any person to state or county office;
- (7) The payment by a party's state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution of a party candidate listing;
- (8) The use or distribution of any communication, as described in section 1014, obtained by the candidate for a previous election and fully paid for during that election campaign;
- (9) Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this Title, lists of registered voters and voter identification information, created or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;
- (10) Compensation paid by a political party to an employee of that party for the following purposes:
- (a) Providing advice to any one candidate for a period of no more than 20 hours in any election;
  - (b) Recruiting and overseeing volunteers for campaign activities involving 3 or more candidates; or
  - (c) Coordinating campaign events involving 3 or more candidates;
- (10-A) Costs paid for by a party committee in connection with a campaign event at which 3 or more candidates are present;
- (11) Campaign training sessions provided to 3 or more candidates;
- ★ (11-A) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes; or
- (12) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider.

[2005, c. 301, §8 (amd).]

[2005, c. 575, §2 (amd).]

#### 4. Exploratory committee.

[1991, c. 839, §3 (rp); §34 (aff).]

#### 5. Party candidate listing. "Party candidate listing" means any communication that meets the following criteria.

- A. The communication lists the names of at least 3 candidates for election to public office. [2005, c. 301, §9 (new).]
- B. The communication is distributed through public advertising such as broadcast stations, cable television, newspapers and similar media, and through direct mail, telephone, electronic mail, publicly accessible sites on the Internet or personal delivery. [2005, c. 301, §9 (new).]
- C. The treatment of all candidates in the communication is substantially similar. [2005, c. 301, §9 (new).]
- D. The content of the communication is limited to:
- (1) The identification of each candidate, with which pictures may be used;
  - (2) The offices sought;
  - (3) The offices currently held by the candidates;

## Title 21-A, §1012, Definitions

- (4) The party affiliation of the candidates and a brief statement about the party or the candidates' positions, philosophy, goals, accomplishments or biographies;
- (5) Encouragement to vote for the candidates identified; and
- (6) Information about voting, such as voting hours and locations.

If the communication contains language outside the categories of this paragraph, it does not qualify as a party candidate listing.

[2005, c. 301, §9 (new).]

[2005, c. 301, §9 (new).]

PL 1985, Ch. 161, §6 (NEW).  
PL 1987, Ch. 160, §1 (AMD).  
PL 1991, Ch. 839, §3 (AMD).  
PL 1991, Ch. 839, §34 (AFF).  
PL 1995, Ch. 483, §3 (AMD).  
PL 1999, Ch. 432, §1,2 (AMD).  
PL 2003, Ch. 615, §1 (AMD).  
PL 2005, Ch. 301, §7-9 (AMD).  
PL 2005, Ch. 575, §2 (AMD).

# Exhibit #6

**From:** Kim Davis [mailto:kimdavisdesign@yahoo.com]  
**Sent:** Monday, February 05, 2007 10:07 AM  
**To:** Thompson, Sandy  
**Subject:** recommended penalty

Dear Sandy -

I have reviewed the analysis of my 2006 campaign receipts and expenditures dated 1/22/07 as well as the penalty suggested by the Commission staff and am in agreement with the findings.

There was no malice or an intentional attempt on my part to file a late 101% Report. It was simply a misunderstanding as how to report my *in kind* contributions which resulted in a total sum of cash receipts below \$4406 prior to 10/12/06, and therefore did not trigger, so I thought, a 101% report.

It wasn't until reviewing additional reports with you that I realized I was in error.

I appreciate all of your help through this process and will attend the hearing on February 14Th, 2007.

Sincerely,

Kim Davis



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

January 26, 2007

Hon. Kimberly J. Davis  
28 Eastern Avenue  
Augusta, ME 04330

Dear Rep. Davis:

This is to follow up on Sandy Thompson's November 27, 2006 letter regarding the penalty for the late filing of your 101% Report. Thank you for meeting with us and clarifying the timing of your general election receipts and expenditures. The Commission will consider this matter at its meeting on February 14<sup>th</sup>. Based on the information available to it now, the Commission staff is recommending a penalty of \$67.00. **You are invited to respond to the recommended penalty by submitting a written response no later than Monday, February 5 and by appearing at the February 14<sup>th</sup> meeting.** In addition, if you believe that our understanding of the facts of the situation is mistaken, we urge you to contact us as soon as possible and we will consider whether to change our recommendation.

As was noted in the November 27 letter, because you were a privately financed candidate with a Maine Clean election Act opponent you were required under 21-A M.R.S.A. §1017(3-B)(A) to file a 101% Report within 48 hours of when your cash receipts for the general election exceeded \$4,406 (101% of the general election distribution amount for House candidates). Based on the transactions included in your campaign finance reports, the Commission staff has concluded that your receipts exceeded the \$4,406 amount on Thursday, October 12, 2006 and that the report was due on Monday, October 16, 2006. Instead, the report was filed one day late on October 17<sup>th</sup>.

The penalty for filing an accelerated report late is set forth in 21-A M.R.S.A. §1020-A(4-A) (last paragraph). The staff has determined that the maximum penalty for the violation is \$201.00. Please refer to the enclosed penalty matrix for more details on how the maximum penalty is computed.

After considering the factual circumstances of this matter, the staff of the Commission will recommend that the Commission assess a penalty of \$67.00, the amount by which your reporting exceeded the distribution amount received by your opponent. That recommendation takes into consideration:

Hon. Kimberly J. Davis

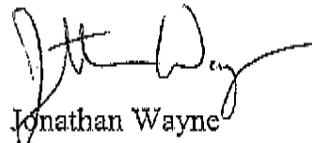
- 2 -

January 26, 2007

- that your opponent, Kimberly Silsby would not have received matching funds had you filed the 101% report on time on Monday, October 16<sup>th</sup> because of a \$379.00 independent expenditure report filed on September 22 in support of Ms. Silsby; and
- you filed the 101% Report promptly on October 17, 2006 upon realizing that the report was overdue.

Please feel free to telephone me at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne  
Executive Director

cc: Hon. Kimberly Silsby

**COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES**  
**PENALTY MATRIX FOR LATE 101% AMOUNT & ACCELERATED REPORT**  
**FILINGS**

**BASIS FOR PENALTIES 21-A M.R.S.A. SECTION 1020-A(4)**

The penalty for late filing of an accelerated report is equivalent to but not more than 3 times the amount by which the contributions received or expenditures obligated or made, whichever is greater, exceed the applicable Maine Clean Election Fund payment per day of violation, multiplied by the number of calendar days the report is filed late.

<b>MCEA PAYMENT</b>	<b>PRIMARY</b>	<b>GENERAL</b>
House	\$1,504	\$4,362
Senate	\$7,746	\$20,082

A penalty begins to accrue at 5:00 p.m. on the day the report is due.

*Example:* The treasurer files the accelerated report two days late. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures (made and obligated). The MCEA amount is \$1,504. The difference between \$2,500 contributions (greater than \$1,500 in expenditures) and the MCEA payment amount is: \$996

<u>\$2,500</u>	Greater amount of the total contributions received or expenditures made during the filing period
- <u>\$1,504</u>	Applicable MCEA Payment Amount
\$996	Difference
<u>X 3</u>	No more than 3 times the per day
<u>\$2,988</u>	Maximum amount per day
<u>X 2</u>	Number of calendar days late
\$5,976	<b>Total maximum penalty</b>

Your penalty is calculated as follows:

Contributions/Expenditures: (Greater amount)	\$ <u>4,429.00</u>
Minus MCEA Amount:	\$ <u>4,362.00</u>
Difference:	\$ <u>67.00</u>
Multiplied by 3 =:	\$ <u>201.00</u>
Multiplied by number of days late:	\$ <u>1</u>
<b>Total maximum penalty:</b>	\$ <u>201.00</u>

Any penalty of less than \$5 is waived.

Waiver of a penalty does not nullify the finding of a violation.

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



## Title 21-A, §1017, Reports by candidates

H. Reports with respect to a candidate who seeks nomination by petition for the office of Governor must be filed on the same dates that reports must be filed with respect to a candidate who seeks that nomination by primary election. [1991, c. 839, §14 (amd); §34 (aff).]

[2005, c. 301, §13 (amd).]

### 3. Other candidates.

[1989, c. 504, §§13, 31 (rp).]

**3-A. Other candidates.** A treasurer of a candidate for state or county office other than the office of Governor shall file reports with the commission and municipal candidates shall file reports with the municipal clerk as follows. Once the first required report has been filed, each subsequent report must cover the period from the completion date of the prior report filed.

A. In any calendar year in which an election for the candidate's particular office is not scheduled, when any candidate or candidate's political committee has received contributions in excess of \$500 or made or authorized expenditures in excess of \$500, reports must be filed no later than 5 p.m. on July 15th of that year and January 15th of the following calendar year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report. [1991, c. 839, §15 (amd); §34 (aff).]

B. Reports must be filed no later than 5 p.m. on the 6th day before the date on which an election is held and must be complete as of the 12th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the completion date. [1991, c. 839, §15 (amd); §34 (aff).]

C. Contributions aggregating \$1,000 or more from any one contributor or single expenditures of \$1,000 or more, made after the 12th day before any election and more than 24 hours before 5 p.m. on the day of any election must be reported within 24 hours of those contributions or expenditures. [2005, c. 301, §14 (amd).]

D. Reports must be filed no later than 5 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date. [1991, c. 839, §15 (amd); §34 (aff).]

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$50 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of \$50 shall file reports semiannually with the commission within 15 days following the end of the 2nd and 4th quarters of the State's fiscal year, complete as of the last day of the quarter, until the surplus is disposed of or the deficit is liquidated. The first report under this paragraph is not required until the 15th day of the period beginning at least 90 days from the date of the election. The reports may either be filed in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section. [1991, c. 839, §15 (amd); §34 (aff).]

F. Reports with respect to a candidate who seeks nomination by petition must be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election. [1991, c. 839, §15 (amd); §34 (aff).]

[2005, c. 301, §14 (amd).]

**3-B. Accelerated reporting schedule.** Additional reports are required from nonparticipating Maine Clean Election Act candidates pursuant to this subsection.

A. In addition to other reports required by law, any candidate for Governor, State Senate or State House of Representatives who is not certified as a Maine Clean Election Act candidate under chapter 14 and who receives, spends or obligates more than 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate in the same race shall file by any means acceptable to the commission, within 48 hours of that event, a report with the commission detailing the candidate's total campaign contributions, obligations and expenditures to date. [2001, c. 470, §6 (new).]

B. A nonparticipating candidate with a Maine Clean Election Act opponent shall file the following additional reports detailing the candidate's total campaign contributions, obligations and expenditures to date, unless that candidate signs an affidavit by the date the report is due, attesting that the candidate has not received, spent or obligated an amount sufficient to require a report under paragraph A:

## Title 21-A, §1017, Reports by candidates

- (1) A report filed not later than 5 p.m. on the 42nd day before the date on which an election is held and complete as of the 44th day before that date;
- (2) A report filed no later than 5 p.m. on the 21st day before the date on which an election is held and complete as of the 23rd day before that date; and
- (3) A report filed no later than 5 p.m. on the 12th day before the date on which an election is held and complete as of the 14th day before that date.

[2001, c. 589, §1 (amd).]

C. A candidate who is required to file a report under paragraph A must file with the commission an updated report that reports single expenditures in the following amounts that are made after the 14th day before an election and more than 24 hours before 5:00 p.m. on the date of that election:

- (1) For a candidate for Governor, a single expenditure of \$1,000;
- (2) For a candidate for the state Senate, a single expenditure of \$750; and
- (3) For a candidate for the state House of Representatives, a single expenditure of \$500.

A report filed pursuant to this paragraph must be filed within 24 hours of the expenditure. [2003, c. 628, Pt. B, §3 (amd).]

The commission shall provide forms to facilitate compliance with this subsection. The commission shall notify a candidate within 48 hours if an amount reported on any report under paragraph B exceeds 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate in the same race and no report has been received under paragraph A.

[2003, c. 628, Pt. B, §3 (amd).]

**4. New candidate or nominee.** A candidate for nomination or a nominee chosen to fill a vacancy under chapter 5, subchapter III is subject to section 1013-A, subsection 1, except that the candidate shall register the name of a treasurer or political committee and all other information required in section 1013-A, subsection 1, paragraphs A and B within 7 days after the candidate's appointment or at least 6 days before the election, whichever is earlier. The person required to file a report under section 1013-A, subsection 1 shall file a campaign report under this section 15 days after the candidate's appointment or 6 days before the election, whichever is earlier. The report must include all contributions received and expenditures made through the completion date. The report must be complete as of 4 days before the report is due. Subsequent reports must be filed on the schedule set forth in this section. The commission shall send notification of this requirement and registration and report forms to the candidate and the candidate's treasurer immediately upon notice of the candidate's and treasurer's appointments.

[1991, c. 839, §16 (amd).]

**5. Content.** A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name of each payee and creditor. Total contributions with respect to an election of less than \$500 and total expenditures of less than \$500 need not be itemized. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A. Until December 31, 1992, the candidate is responsible for the timely and accurate filing of each required report. Beginning January 1, 1993, the candidate and the treasurer are jointly responsible for the timely and accurate filing of each required report.

[1991, c. 839, §17 (amd).]

**5-A. Valuation of contributions sold at auction.** Any contribution received by a candidate that is later sold at auction shall be reported in the following manner.

A. If the contribution is sold at auction before the commencement of the appropriate reporting period specified in subsections 1 to 4, or during that period, the value of the contribution is deemed to be the amount of the purchase price paid at auction. [1987, c. 726, §2 (new).]

B. If the contribution is sold after the termination of the appropriate reporting period specified in subsections 1 to 4, the value of the contribution is the difference between the value of the contribution as originally reported by the treasurer and the amount of the

## Title 21-A, §1020-A, Failure to file on time

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### §1020-A. Failure to file on time

**1. Registration.** A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

[1995, c. 483, §15 (new).]

**2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission before 5 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (amd).]

B. An error by the commission staff; [1999, c. 729, §5 (amd).]

C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (amd).]

D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service. [1999, c. 729, §5 (new).]

[2003, c. 628, Pt. A, §3 (amd).]

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

[1995, c. 625, Pt. B, §5 (amd).]

#### **4. Basis for penalties.**

[2001, c. 470, §7 (amd); T. 21-A, §1020-A, sub-§4 (rp).]

**4-A. Basis for penalties.** The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, 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%; [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

## Title 21-A, §1020-A, Failure to file on time

C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

Any penalty of less than \$5 is waived.

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

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

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

The penalty for late filing of an accelerated campaign finance report as required in section 1017, subsection 3-B may be up to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation. The commission shall make a finding of fact establishing when the report was due prior to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2.

[2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

### 5. Maximum penalties.

[2001, c. 470, §8 (amd); T. 21-A, §1020-A, sub-§5 (rp).]

#### 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 or F; section 1017, subsection 4; and section 1019-B, subsection 3; [2003, c. 448, §4 (amd).]

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E; [2003, c. 628, Pt. A, §4 (amd).]

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; [2003, c. 628, Pt. A, §4 (amd).]

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B; or [2003, c. 628, Pt. A, §4 (amd).]

E. Three times the unreported amount for reports required under section 1017, subsection 3-B, if the unreported amount is less than \$5,000 and the commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report. [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]  
[2003, c. 628, Pt. A, §4 (amd).]

**6. Request for a commission determination.** Within 3 days following the filing deadline, a notice must be forwarded to a candidate and treasurer whose registration or campaign finance report is not received by 5 p.m. on the deadline date, informing them of the basis for calculating penalties under subsection 4 and providing them with an opportunity to request a commission determination. The notice must be sent by certified United States mail. Any request for a determination must be made within 10 calendar days of receipt of the commission's notice. The 10-day period during which a determination may be requested begins on the day a recipient signs for the certified mail notice of the proposed penalty. If the certified letter is refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. A candidate or treasurer requesting a determination may either appear in person or designate a representative to appear on the candidate's or treasurer's behalf or submit a notarized written explanation of the mitigating circumstances for consideration by the commission.

[RR 1995, c. 2, §38 (cor).]

**7. Final notice of penalty.** After a commission meeting, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the treasurer.

If no determination is requested, the commission staff shall calculate the penalty as prescribed in subsection 4-A and shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

[RR 2003, c. 1, §14 (cor).]

# Exhibit #7

**Demeritt, Martha**

---

**From:** Richard Rottkov [rrottkov@yahoo.com]  
**Sent:** Friday, December 01, 2006 4:51 PM  
**To:** Demeritt, Martha  
**Cc:** Alan Mills; John Jamieson  
**Subject:** Request for Appeal from South Portland Democratic City Committee

Martha,

As a follow up to our recent phone conversation, I'm hereby requesting that the South Portland Democratic City Committee be given another opportunity to appeal the \$500 fine. Based upon what we discussed, here is more specific information explaining why my committee feels the penalty should be overturned:

**Background:**

--We did not file a July, 2006 report because we did not raise more than a few hundred dollars between Jan. 1-July 15 2006.

-- It was only after you informed us, following the Commission's review of our banking account statements, requested after receiving our Oct. 27 report, that money collected and deposited in February 2006 from our October 2005 High School Scholarship fundraiser could be viewed as money "raised" during 2006. We had no idea that we were required to report this, even if we knew we had surpassed the \$1,500 limit prior to July.

**Reasons for Feb. 2006 Deposit for Oct. 2005 Money**

-- Our committee, led by then Chair John Jamieson, used a Pay Pal credit card payment system (used on site at a local reception room) at our Oct. 25 fundraiser for the South Portland High School Scholarship fund. John learned weeks later that transactions/payments were not processed.

-- Upon learning the auction payments were not processed, John began contacting those who purchased auction items by credit card at the event (through Pay Pal). Starting in November 2005 and continuing into January 2006 John collected checks for the various auction purchases. John informs me he encountered difficulty obtaining some "make good" checks, delaying the process of collecting money from the October auction. Upon collecting these checks, some were given to Treasurer Alan Mills for deposit in February.

**Other Mitigating Reasons for Consideration**

I succeeded John as chair of the SoPo Dems committee at our Feb. 26 caucus. There was never any communication between John and I or between Alan and I that these checks from our Oct. 2005 had been deposited in 2006. I'm also told by John and Alan that they did not communicate and were not aware that such deposits would be required for reporting 2006 money.

In closing, please be aware that we will be able to document the direct link between the Feb. 2006 deposits and the checks collected from the Oct. 2005 auction should we be given the opportunity to appeal the Commission's determination. Please advise me if any additional explanation or documentation might be needed for hearing our appeal.

Thank you.

Richard Rottkov  
Chair  
South Portland Democratic City Committee

**Demeritt, Martha**

---

**From:** Richard Rottkov [rrottkov@yahoo.com]  
**Sent:** Friday, November 17, 2006 6:16 PM  
**To:** Demeritt, Martha  
**Cc:** Alan Mills  
**Subject:** South Portland Democratic City Committee

Dear Martha,

As a follow up to our phone conversation this afternoon, I'm providing here an explanation for why the South Portland Democratic City Committee did not file the July Semi Annual Report and instead only filed our report for Oct. 27, the deadline for reporting spending of \$1,500 for the period July 1-Oct. 22. I am hopeful the Ethics commissioners and staff will consider the reasons cited below, and other information our Treasurer Alan Mill can provide at our hearing on Monday, for why we did not file a July report, and you will decide not to levy the \$500 penalty. If further details are needed during the hearing, I can be reached by phone at either: 799-5686 or 899-8686 (cell).

We did not file a July report because we did not know we had "raised" or generated monies even close to the \$1,500 required for reporting revenues for the Jan.

1-June 30 period. We did not know this until Wednesday night, in fact, when we learned the Commission had determined we were still in violation for not reporting.

The only monies we thought were raised were from donations accrued through committee member donations during our monthly meetings and our monthly documentary documentary movie series. We assumed this total would be no more than \$500-600 dollars. It was only after your determination that we became aware that a February deposit for \$1,050 was made and later learned that this deposit was from revenue we had "recollected" from an October, 2005 auction fundraiser organized primarily for our high school scholarship fund. The reason why this money was deposited in February was because the credit card system we used in October, 2005 did not process payments made at the auction. John Jamieson, our city committee chair at the time, had to "recollect" auction payments, this time personal checks for deposit into our bank account. Unknowingly, the checks deposited in February, were for auction checks just collected, revenue we assumed and considered 2005 revenue, but is being viewed as Jan. 1-June 30, 2006 revenue.

As mentioned on the phone this afternoon, John Jamieson has today been trying to track each personal check deposited and document that these payments were indeed for October, 2005 auction items. If the Commission would like us to provide documentation for the source and original dates for these payments, we anticipate we will be able to provide such documentation.

As it was our understanding we had not raised or spent monies surpassing \$1,500 prior to this July filing period, we assumed our only requirement was to file prior to Oct. 27, the deadline for reporting spending beyond the \$1,500. Again, it was only after Alan Mills provided you documentation for our banking transactions for Jan. 1-June 30 and you informed us that we were in violation for not filing in July, that we learned we had surpassed the \$1,500 "raised" total.

It is my belief that most municipal party committees are not knowledgeable of the details and required guidelines; I aver that many do not file until expenditures are made during the campaign season. I was aware that our spending report needed to be filed, but had no idea we were required to file reports outside of campaign periods. The South Portland Democratic City Committee did not attempt to circumvent election requirements and we did not file because of dereliction. Based upon what I've now learned as a first-year municipal chair, I will convey to the Maine Democratic Party that Clean Elections and Ethics requirement be the subject of workshops and training as we approach the 2008 elections, especially for those of us at the local, grassroots level.

Thank you for your willingness to consider our appeal and for allowing me to providing further explanation before making your final determination.

Sincerely,



November 6, 2006

State of Maine  
Commission on Government Ethics and Election Practices  
135 State House Station  
Augusta, Maine 04333-0135

To whom it may concern:

The South Portland Democratic Committee requests a final determination by the Commission on Governmental Ethics and Election Practices. We request that the committee waive penalties for late reports for the following mitigating circumstance: failure to receive notice of the filing deadline.

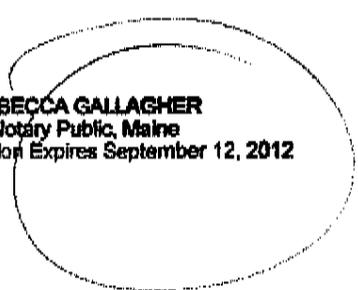
Reports were filed as soon as we were notified.

Thank you for your time and consideration.

Sincerely,

Alan Mills  
Treasurer  
South Portland Democratic Committee  
317 Preble Street #1  
South Portland, Maine 04106

REBECCA GALLAGHER  
Notary Public, Maine  
My Commission Expires September 12, 2012





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

October 27, 2006

Alan Mills, Treasurer  
South Portland Democratic Committee  
317 Preble St., #1  
South Portland, ME 04106

Dear Mr. Mills:

Our records show that your committee's July Semi Annual Report, due on 7/17/06 was filed on 10/27/06. State law [21-A M.R.S.A. §1020-A] requires that a penalty be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the party committee's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your campaign finance report would be \$500.00. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request a final determination by the Commission on Governmental Ethics and Election Practices. Any request for a Commission determination must be made within 10 calendar days of receipt of this certified U.S. mail notice, beginning on the day you sign for receipt of this notice of the proposed penalty. If this certified letter has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter.

Upon receipt of your request for a Commission determination, we will schedule you to appear at the next scheduled Commission meeting and notify you of the date and time of that meeting. You or a person you designate may then appear personally before the Commission; or, you may send a written statement for the Commission's consideration. If you elect to send a statement, it must be notarized and must contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid personal emergency of the committee treasurer, such as a personal illness or death in the immediate family; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or 4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

Sincerely,



Martha Demeritt  
Party Registrar

Encl: Penalty Matrix & Billing Statement

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS



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

October 27, 2006

Alan Mills, Treasurer  
 South Portland Democratic Committee  
 317 Preble St., #1  
 South Portland, ME 04106

The Commission on Governmental Ethics and Election Practices has made a preliminary determination that a penalty of \$500.00 applies for the late filing of your July Semiannual report. If you agree with this determination, please make your check or money order payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the **Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333** within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like to request a formal Commission determination of any penalty to be assessed in this case.

**FAILURE TO PAY THE FULL AMOUNT OF THIS PENALTY IS A CIVIL VIOLATION.**  
 Pursuant to 21-A M.R.S.A. § 1020-A(10), the Commission is required to report to the Attorney General the name of any political committee that fails to pay the full amount of any penalty.

Please direct any questions you may have about this matter to the Commission at 287-6221.

Cut Along Dotted Line

To: Commission on Governmental Ethics and Election Practices  
 135 State House Station  
 Augusta, Maine 04333

For Office Use Only
Account: CGEEP
Fund: 014
Appr: 02

From: Alan Mills, Treasurer  
 South Portland Democratic Committee

Re: Penalty for late filing of a July Semi-Annual finance report (\$500.00)

Amount Enclosed: \$ \_\_\_\_\_

Check/M.O. No.: # \_\_\_\_\_

Please Make Check/M.O. Payable to Treasurer, State of Maine

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
 WEBSITE: WWW.MAINE.GOV/ETHICS

# SOUTH FORLAND PENNAC July Semi-annual

## COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

### CONTRIBUTION/EXPENDITURE PENALTY MATRIX LATE PARTY COMMITTEE REPORTS 21-A M.R.S.A. Section 1020-A

A campaign finance report is timely filed when a properly signed copy of the report, substantially conforming to the disclosure requirements, is received by the Commission before 5 p.m. on the date it is due. A penalty begins to accrue after 5:00 p.m. on the day the report is due. Penalties are based on a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

- For the first violation, 1%
- For the second violation, 3%
- For the third and each subsequent violation, 5%

Due: 7/17/06

FILED: 10/27/06

Example: The treasurer files the committee's report two days late. The committee has not been charged with any previous violations. The treasurer reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500	Greater amount of the total contributions received or expenditures made during the filing period
X .01	Percent prescribed for first violation
\$25.00	One percent of total contributions
X 2	Number of calendar days late
\$50.00	Total penalty accrued

PARTY COMMITTEE NAME	
<u>Your penalty is calculated as follows:</u>	
Contributions/Expenditures:	\$ 1,975
Percent prescribed:	x 1%
	\$ 19.75
Number of days late:	x 102
Total penalty accrued:	\$ 2,014.50
Maximum penalty:	\$ 500.00

Any penalty of less than \$5 is waived.

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

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

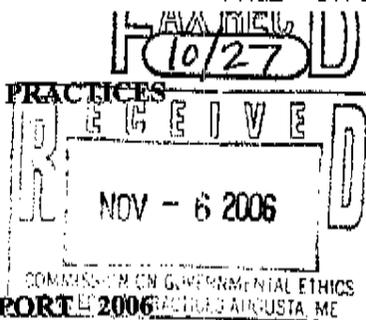
#### Maximum penalties:

State Party Committee: \$5,000 for election year reports and 48-hour reports  
 \$1,000 for non-election year semiannual reports

\* Municipal, District and County Committees: \$500 for all reports

STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station, Augusta, ME 04333  
Office: 242 State Street, Augusta, Maine  
Tel: (207) 287-4179 Fax: (207) 287-6775  
Website: www.maine.gov/ethics  
Electronic Filing: http://www.maine.campaignfinance.com



MUNICIPAL, DISTRICT & COUNTY PARTY COMMITTEE REPORT 2006

COMMITTEE IDENTIFICATION (Include full name of committee.)

Name South Portland Democratic Committee  
Street address 14 Woodbury St  
(official headquarters of committee)  
City, zip code South Portland, ME 04106 Telephone 799-5686

Check if address is different than previously reported

TREASURER IDENTIFICATION

Name of treasurer Alan Mills  
Street address 317 Preble St #1  
City, zip code South Portland, ME 04106 Telephone 799-1633  
E-mail address amills26@verizon.net

Check if address is different than previously reported

MUNICIPAL/COUNTY/DISTRICT COMMITTEE FILING PERIODS (Check applicable period below):

Due Date	Reporting Period
<input type="checkbox"/> January 17, 2006	July 1, 2005 - December 31, 2005
<input checked="" type="checkbox"/> July 15, 2006	<u>January 1, 2006 - June 30, 2006</u>
<input type="checkbox"/> October 27, 2006	July 1, 2006 - October 22, 2006
<input type="checkbox"/> January 16, 2007	October 23, 2006 - December 31, 2006

I CERTIFY THAT I HAVE EXAMINED THIS REPORT AND TO THE BEST OF MY KNOWLEDGE IT IS TRUE, CORRECT AND COMPLETE

Alan Mills  
Treasurer's Signature

10/27/06  
Date

REPORTING EXEMPTION: Any party committee receiving and expending less than \$1,500 in one calendar year is exempt from the reporting requirements for that year.



South North Democratic Committee

10/27/06

Date Submitted

Name of Party

SCHEDULE F
SUMMARY SECTION

RECEIPTS

THIS PERIOD ONLY

- 1. Contributions Received (Schedule A, Line 4)
2. Other Receipts (interest income, etc.)
3. Loans Received (Schedule D)
4. TOTAL RECEIPTS THIS PERIOD (Lines 1 + 2 + 3)

Table with 4 rows for receipt entries. Handwritten values: 1975 15/42 and 1975 15/42.

EXPENDITURES

THIS PERIOD ONLY

- 5. Contributions to or on behalf of others (Schedule B, Line 3)
6. Operating Expenses (Schedule B-1, Line 3)
7. Loan Repayments Made (Schedule D)
8. TOTAL EXPENDITURES THIS PERIOD (Lines 5 + 6 + 7)

Table with 4 rows for expenditure entries.

IN-KIND SUMMARY

Fair Market Value Totals

- Total In-Kind Contributions this period (Schedule C)
Total In-Kind Expenditures this period (Schedule C)

Table with 2 rows for in-kind summary entries.

## Title 21-A, §1017-A, Reports of contributions and expenditures by party committees

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### §1017-A. Reports of contributions and expenditures by party committees

**1. Contributions.** A party committee shall report all contributions in cash or in kind from an individual contributor that in the aggregate in a campaign total more than \$200. The party committee shall report the name, mailing address, occupation and place of business of each contributor. Contributions of \$200 or less must be reported, and these contributions may be reported as a lump sum. [1993, c. 680, Pt. C, §2 (amd).]

**2. Expenditures on behalf of candidates, others.** A party committee shall report all expenditures in cash or in kind of the committee made on behalf of a candidate, political committee, political action committee or party committee registered under this chapter. The party committee shall report:

A. The name and address of each candidate and the identity and address of a campaign or committee; [1991, c. 839, §23 (new); §33 (aff).]

B. The office sought by a candidate and the district that the candidate seeks to represent; and [1991, c. 839, §23 (new); §33 (aff).]

C. The date and amount of each expenditure. [1993, c. 715, §1 (amd).]  
[1993, c. 715, §1 (amd).]

**3. Other expenditures.** Operational expenses and other expenditures in cash or in kind of the party committee that are not made on behalf of a candidate, committee or campaign must be reported as a separate item. The party committee shall report:

A. The name and address of each recipient; [1993, c. 715, §2 (new).]

B. The reason for the expenditure; and [1993, c. 715, §2 (new).]

C. The date and amount of each expenditure. [1993, c. 715, §2 (new).]  
[1993, c. 715, §2 (amd).]

**4. Filing schedule.**

[2003, c. 302, §2 (rp).]

**4-A. Filing schedule.** A state party committee shall file its reports according to the following schedule.

A. Quarterly reports must be filed:

(1) On January 15th and must be complete up to January 5th;

(2) On April 10th and must be complete up to March 31st;

(3) On July 15th and must be complete up to July 5th; and

(4) On October 10th and must be complete up to September 30th.

[2003, c. 302, §3 (new).]

## Title 21-A, §1017-A, Reports of contributions and expenditures by party committees

B. General and primary election reports must be filed:

- (1) On the 6th day before the date on which the election is held and must be complete up to the 12th day before that date; and
- (2) On the 42nd day after the date on which the election is held and must be complete up to the 35th day after that date.

[2003, c. 302, §3 (new).]

C. Reports of spending to influence special elections, referenda, initiatives, bond issues or constitutional amendments must be filed:

- (1) On the 6th day before the date on which the election is held and must be complete up to the 12th day before that date; and
- (2) On the 42nd day after the date on which the election is held and must be complete up to the 35th day after that date.

[2003, c. 302, §3 (new).]

D. A state party committee that files an election report under paragraph B or C is not required to file a quarterly report under paragraph A when the deadline for that quarterly report falls within 10 days of the filing deadline established in paragraph B or C.

[2003, c. 302, §3 (new).]

E. A state party committee shall report any expenditure of \$500 or more, made after the 12th day before the election and more than 24 hours before 5:00 p.m. on the day of the election, within 24 hours of that expenditure. [2005, c. 301, §18 (amd).]  
[2005, c. 301, §18 (amd).]

**4-B. Filing schedule for municipal, district and county party committees.** Municipal, district and county party committees shall file reports according to the following schedule.

A. Reports filed during an election year must be filed with the commission on:

- (1) July 15th and be complete as of June 30th;
- (2) October 27th and be complete as of October 22nd; and
- (3) January 15th and be complete as of December 31st.

[2003, c. 628, Pt. A, §2 (new).]

B. Reports filed during a nonelection year must be filed on:

- (1) July 15th and be complete as of June 30th; and
- (2) January 15th and be complete as of December 31st.

[2003, c. 628, Pt. A, §2 (new).]

C. Any contribution or expenditure of \$1,000 or more made after the 12th day before any election and more than 24 hours before that election must be reported within 24 hours of that contribution or expenditure. [2005, c. 301, §19 (amd).]  
[2005, c. 301, §19 (amd).]

**4-C. Electronic filing.** Beginning January 1, 2006, state party committees shall file each report required by this section through an electronic filing system developed by the commission. The commission may make an exception to this electronic filing requirement if a party committee submits a written request that states that the party committee lacks access to the technology or the technological ability to file reports electronically. The request for an exception must be submitted by March 1st of the election year. The commission shall grant all reasonable requests for exceptions.

[2005, c. 301, §20 (new).]

**5. Penalties.** A party committee is subject to the penalties in section 1020-A, subsection 4-A.

[RR 2003, c. 1, §13 (cor).]

**6. Notice; forms.** A state party committee shall notify all county, district and municipal party committees of the same political party of the party committee reporting requirements. The party committees shall obtain the necessary forms from the commission to complete the filing requirements.

[1991, c. 839, §23 (new); §33 (aff).]

**Title 21-A, §1017-A, Reports of contributions and expenditures by party committees**

 **7. Exemption.** Any party committee receiving and expending less than \$1,500 in one calendar year is exempt from the reporting requirements of this section for that year.

[1991, c. 839, §23 (new); §33 (aff).]

**8. Municipal elections.** When a party committee makes contributions or expenditures on behalf of a candidate for municipal office subject to this subchapter, it shall file a copy of the reports required by this section with the clerk in that candidate's municipality.

[1995, c. 483, §10 (new).]

PL 1991, Ch. 839, §23 (NEW).

PL 1991, Ch. 839, §33 (AFF).

PL 1993, Ch. 228, §1 (AMD).

PL 1993, Ch. 680, §C2 (AMD).

PL 1993, Ch. 715, §1,2 (AMD).

PL 1995, Ch. 228, §1 (AMD).

PL 1995, Ch. 483, §9,10 (AMD).

RR 1995, Ch. 2, §37 (COR).

PL 2003, Ch. 302, §2,3 (AMD).

PL 2003, Ch. 628, §A2,B4 (AMD).

RR 2003, Ch. 1, §13 (COR).

PL 2005, Ch. 301, §18-20 (AMD).

## Title 21-A, §1020-A, Failure to file on time

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**PLEASE NOTE: The Revisor's Office CANNOT perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.**

### §1020-A. Failure to file on time

**1. Registration.** A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

[1995, c. 483, §15 (new) .]

**2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission before 5 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (amd) .]

B. An error by the commission staff; [1999, c. 729, §5 (amd) .]

C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (amd) .]

 D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service. [1999, c. 729, §5 (new) .]

[2003, c. 628, Pt. A, §3 (amd) .]

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

[1995, c. 625, Pt. B, §5 (amd) .]

#### **4. Basis for penalties.**

[2001, c. 470, §7 (amd); T. 21-A, §1020-A, sub-§4 (rp) .]

**4-A. Basis for penalties.** The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, 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%; [2001, c. 714, Pt. PP, §1 (new); §2 (aff) .]

B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (new); §2 (aff) .]

# Exhibit #8

November 14, 2006

State of Maine  
Commission on Governmental Ethics  
And Election Practices  
135 State House Station  
Augusta, ME 04333-0135

To Whom It May Concern:

On October 16, 2006 I received notice of a penalty filed against Opportunity Maine, for late filing of the October Quarterly PAC report. I request that the Commission make final determination of this penalty, based upon extenuating circumstances in filing this report.

On October 10, 2006, I experienced some computer problems as I attempted to file the October Quarterly report. The computer I was using at the time was an Apple, and although I was able to sign into the Maine Campaign Finance system using the Apple's web browser, I was unable to access any of the menu features or on-screen buttons. After making several attempts to file the report with the Apple computer, I went and found another computer with which I was able to access and file the report. The report was filed at 5:07 pm, 7 minutes after the deadline.

Thank you for your consideration in this matter.

Sincerely,

Jeremy J. Collette  
Treasurer  
Opportunity Maine PAC



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

October 12, 2006

Jeremy Collette, Treasurer  
Opportunity Maine  
P.O. Box 842  
Portland, ME 04104

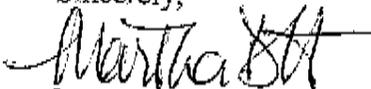
Dear Mr. Collette:

You filed the October Quarterly campaign finance report at 5:07 p.m. on 10/10/06 that was due by 5:00 p.m. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the PAC's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report is \$105.70. Please refer to the enclosed penalty matrix for more details on how the penalty is computed.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign for receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

Please note that the Commission may waive the penalty in whole or in part if it determines the failure to file a timely report was due to mitigating circumstances. "Mitigating circumstances" means 1) a valid emergency of the committee treasurer determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; or 3) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

Sincerely,

  
Martha Demeritt  
PAC Registrar

Enc.: PAC Penalty Matrix & Billing Statement

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775



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

October 12, 2006

Jeremy Collette, Treasurer  
 Opportunity Maine  
 P.O. Box 842  
 Portland, ME 04104

The Commission staff has made a preliminary determination, based upon the application of the statutory formula that a penalty of \$105.70 applies for the late filing of your October Quarterly report. If you agree with this preliminary determination, please make your check or money order in that amount payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the **Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333**, within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like the Commission to make a final determination of any penalty to be assessed in this case.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay the full amount of any penalty.

Please direct any questions you may have about this matter to the Commission at 287-4179.

Cut Along Dotted Line

To: Commission on Governmental Ethics and Election Practices  
 135 State House Station  
 Augusta, Maine 04333

For Office Use Only Account: CGEEP Fund: 010 Appr: 01
--

From: Jeremy Collette, Treasurer  
 Opportunity Maine

RE: Penalty for late filing of October Quarterly 2006 Report (\$105.70)

Amount Enclosed: \$ \_\_\_\_\_

Check/M.O. No.: # \_\_\_\_\_

PLEASE MAKE CHECK PAYABLE TO TREASURER, STATE OF MAINE.

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
 WEBSITE: WWW.MAINE.GOV/ETHICS

October Quarterly

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PENALTY MATRIX FOR LATE POLITICAL ACTION COMMITTEE REPORT FILINGS

BASIS FOR PENALTIES  
21-A M.R.S.A. Section 1062-A

The penalty for filing a required report late is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

- For the first violation, 1%
- For the second violation, 3%
- For the third and each subsequent violation, 5%

<i>Example:</i> The treasurer files the PACs report two (2) calendar days late. The PAC has not had any previous late filings in the past 2 years. The PAC reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:	
\$2,500	Greater of the amount of total contributions received or expenditures made during the filing period.
X .01	Percent prescribed for first violation
\$25.00	One percent of total contributions
x 2	Number of calendar days late
\$50.00	Total penalty Commission may assess

Your penalty is calculated as follows:	
Contributions/Expenditures	\$ 10,570.13
Percent prescribed:	x 1%
	\$ 105.70
Number of days late:	x 1
Total penalty accrued:	\$ 105.70

\* A penalty begins to accrue at 5:00 p.m. on the day the report is due.

Any penalty of less than \$5 is waived.

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

Title 21-A M.R.S.A. Section 1004-A(1) states the Commission may assess a penalty of no more than \$100 when a person files a late campaign finance report containing no contributions or expenditures.

MAXIMUM PENALTIES  
21-A M.R.S.A. Section 1062-A (4)

\$10,000 for 6-day pre-election reports, 42-day post-election reports, and 24-Hour reports;  
\$5,000 for quarterly reports.



# Welcome to the Campaign Finance Electronic Filing System Site

Menu Home Help Logout Change Password Admin Page

10/11/2006

## Home Page for Opportunity Maine

CAMPAIGN YEAR | 2006 | Refresh

REPORT TYPE	REPORTING PERIOD	DUE DATE	DATE FILED	STATUS	LAST MODIFIED
PAC Registration	1/1/2006 to 12/31/2006		10/10/2006	Filed	10/10/2006 2:40 P.M. EST
April Quarterly	1/6/2006 to 3/31/2006	4/10/2006			
6-Day Pre-Primary	4/1/2006 to 6/1/2006	6/7/2006	06/16/2006	Filed	06/16/2006 4:12 P.M. EST
42-Day Post-Primary	6/2/2006 to 7/18/2006	7/25/2006	07/25/2006	Filed	07/25/2006 2:26 P.M. EST
October Quarterly	7/19/2006 to 9/30/2006	10/10/2006	10/10/2006	Filed	10/10/2006 5:07 P.M. EST
6-Day Pre-General	10/1/2006 to 10/26/2006	11/1/2006			
42-Day Post-General	10/27/2006 to 12/12/2006	12/19/2006			
January Quarterly	12/13/2006 to 1/5/2007	1/16/2007			
PAC Termination	1/1/2006 to 12/31/2006				

Candidate PACS - 24-Hr Report of Late Contributions and Expenditures N/A MULTIPLE

Ballot PACS - 24-Hr Report of Late Contributions and Expenditures N/A MULTIPLE

OPPORTUNITY MAINE

Name of PAC

Page 1 of 1

10/11/2006

Date Submitted

**SCHEDULE F  
SUMMARY SECTION**

**RECEIPTS**

**THIS PERIOD ONLY**

- 1. Contributions Received (Schedule A, Line 4)
- 2. Other Receipts (interest income, etc.)
- 3. Loans Received (Schedule D)
- 4. TOTAL RECEIPTS THIS PERIOD (Lines 1 + 2 + 3)

	1,600.00
	0.00
	8,970.13
	10,570.13

**EXPENDITURES**

**THIS PERIOD ONLY**

- 5. Contributions to or on behalf of others (Schedule B, Line 3)
- 6. Operating Expenses (Schedule B-1, Line 3)
- 7. Loan Repayments Made (Schedule D)
- 8. TOTAL EXPENDITURES THIS PERIOD (Lines 5 + 6 + 7)

	0.00
	10,003.83
	0.00
	10,003.83

**CASH BALANCE**

- 9. Account Balance from last reporting period (Line 12 of previous report)
- 10. Plus total receipts this period (Line 4 above)
- 11. Less total expenditures this period (Line 8 above)
- 12. TOTAL funds on hand at close of reporting period  
*(This should equal your bank account balance(s) plus your petty cash balance)*

	0.00
	10,570.13
	10,003.83
	566.30

**IN-KIND SUMMARY**

**Fair Market Value Totals**

- Total In-Kind Contributions this period (Schedule C)
- Total In-Kind Expenditures this period (Schedule C)

	0.00
	0.00

## Title 21-A, §1062-A, Failure to file on time

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### §1062-A. Failure to file on time

**1. Registration.** A political action committee required to register under section 1053 that fails to do so in accordance with section 1053 or that fails to provide the information required by the commission for registration may be assessed a forfeiture of \$250. [1995, c. 483, §21 (new).]

**2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission before 5 p.m. on the date it is due. Except as provided in subsection 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive a penalty if it is disproportionate to the level of experience of the person filing the report or to the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency of the committee treasurer determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §9 (amd).]

B. An error by the commission staff; or [1999, c. 729, §9 (amd).]

 C. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service. [1999, c. 729, §9 (new).]  
[2003, c. 628, Pt. A, §7 (amd).]

**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%; [1995, c. 483, §21 (new).]

B. For the 2nd violation, 3%; and [1995, c. 483, §21 (new).]

C. For the 3rd and subsequent violations, 5%. [1995, c. 483, §21 (new).]

Any penalty of less than \$5 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. [1995, c. 483, §21 (new).]

**4. Maximum penalties.** The maximum penalties under this subchapter are \$10,000 for reports required under section 1059, subsection 2, paragraphs B, C and E and \$5,000 for reports required under section 1059, subsection 2, paragraph A.

## Title 21-A, §1062-A, Failure to file on time

[1995, c. 483, §21 (new).]

**5. Request for a commission determination.** Within 3 days following the filing deadline, a notice must be forwarded to the principal officer and treasurer of the political action committee whose report is not received by 5 p.m. on the deadline date, informing them of the basis for calculating penalties under subsection 3 and providing them with an opportunity to request a commission determination. The notice must be sent by certified United States mail. A request for determination must be made within 10 calendar days of receipt of the commission's notice. The 10-day period during which a determination may be requested begins on the day a recipient signs for the certified mail notice of the proposed penalty. If the certified letter is refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. A principal officer or treasurer requesting a determination may either appear in person or designate a representative to appear on the principal officer's or treasurer's behalf or submit a notarized written explanation of the mitigating circumstances for consideration by the commission.

[1995, c. 483, §21 (new).]

**6. Final notice of penalty.** After a commission meeting, notice of the final determination of the commission and the penalty, if any, imposed pursuant to this subchapter must be sent to the principal officer and the treasurer of the political action committee.

If no determination is requested, the commission staff shall calculate the penalty based on the provision of subsection 3 and shall mail final notice of the penalty to the principal officer and to the treasurer of the political action committee. A detailed summary of all notices must be provided to the commission.

[1999, c. 426, §34 (amd).]

**7. List of late-filing committees.** The commission shall prepare a list of the names of political action committees that are late in filing a report required under section 1059, subsection 2, paragraph B, subparagraph (1), section 1059, subsection 2, paragraph C or D or section 1059, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

[1995, c. 483, §21 (new).]

**8. Failure to file.** A person who fails to file a report as required by this subchapter within 30 days of the filing deadline is guilty of a Class E crime, except that, if a penalty pursuant to subsection 8-A is assessed and collected by the commission, the State may not prosecute a violation under this subsection.

[2003, c. 628, Pt. A, §8 (amd).]

**8-A. Penalties for failure to file report.** The maximum penalty for failure to file a report required under section 1059, subsection 2, paragraph B, C or E is \$10,000. The maximum penalty for failure to file a report required under section 1059, subsection 2, paragraph A is \$5,000.

[2003, c. 628, Pt. A, §9 (new).]

**9. Enforcement.** The commission staff has the responsibility for collecting the full amount of any penalty and has all necessary powers to carry out this responsibility. Failure to pay the full amount of any penalty levied under this subchapter is a civil violation by the political action committee and its treasurer. Thirty days after issuing the notice of penalty, the commission shall report to the Attorney General the name of any political action committee, along with the name of its treasurer, that has failed to pay the full amount of any penalty. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the penalty. This action must be brought in the Superior Court for Kennebec County or the District Court, 7th District, Division of Southern Kennebec.

[1999, c. 426, §34 (amd).]

PL 1995, Ch. 483, §21 (NEW).

PL 1999, Ch. 426, §34 (AMD).

PL 1999, Ch. 729, §9 (AMD).

PL 2003, Ch. 628, §A7-9 (AMD).

# Exhibit #9



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

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: February 8, 2007

Re: Independent Expenditure Reports #48, #71, and #84

---

On October 31, 2006, attorney Daniel I. Billings submitted an e-mail complaint against the Maine Democratic Party questioning whether it filed independent expenditure reports #48 and #71 on time. He later added report #84 to the complaint telephonically.<sup>1</sup>

Mr. Billings argues that the Maine Democratic Party did not file reports #48, #71, and #84 within 24 hours of the making of the expenditures as required by 21-A M.R.S.A. §1019-B(3)(A) and Chapter 1, Section 10(3)(B) of the Commission Rules. These issues were first discussed during a November 2, 2006 Commission meeting conducted by telephone. In that meeting, the Democratic Party was represented by attorney Michael K. Mahoney. Daniel W. Walker has replaced Mr. Mahoney as the party's counsel.

#### **What Actions Trigger the 24-Hour Reporting Requirement**

In the 2004 elections, some candidates complained that independent expenditure reports were filed late in order to delay the payment of matching funds to opposing candidates. Following the election, the Commission adopted Chapter 1, Section 7(3) of its rules to clarify what events constitute making an expenditure:

- (1) The placement of an order for a good or service;
- (2) The signing of a contract for a good or service;
- (3) The delivery of a good or the performance of a service by a vendor;
- (4) A promise or an agreement (including an implied one) that a payment will be made; or
- (5) The making of a payment for a good or service.

The rule specifies that "[e]xpenditures must be reported at the earliest of these events."

Paragraph 3(C) of the rule imposes an affirmative duty on the spender to determine costs promptly: "[a]t the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered

---

<sup>1</sup> Mr. Billings initially believed that report #83 was late as well, but has withdrawn that part of his complaint.

(preferably through a written statement from the vendor) and to report that value as the amount of the expenditure.”

### Reports #48 and #71

In his complaint, Mr. Billings observes that on October 26, 2006 the Senate Democratic Campaign Committee made a \$30,000 contribution to the Maine Democratic Party which is close to the \$28,997 total spent in independent expenditure reports #48 (filed on October 28) and #71 (filed on October 31). He argues: “This gives the appearance that the contribution was made with specific expenditures in mind. If the expenditures were planned on 10/26, they should have been reported on 10/26.”

Mr. Mahoney discussed the two reports at the November 2 telephone meeting and has filed a November 13, 2006 response. He states that as early as October 25 or 26 the Democratic Party requested that its vendor, Ourso Beychok, design mailings that could be used in a number of races:

The Party had, during the final weeks of the campaign, several mail pieces “in the can” that it would or would not print and disseminate depending on how individual races were shaping up.

My handwritten notes of the November 2 meeting indicate that Mr. Mahoney said that the Democratic Party had literature designed in about 9 Senate races, although my notes may not be accurate. He states that on October 27, the Democratic Party decided to mail literature to Districts 1, 15, 19, and on October 30 the Democratic Party made the another decision to send more mailings to Districts 1, 21, and 32. On those dates, the Democratic Party made commitments to Ourso Beychok to have the mailings printed, and the reports were filed one day later, on October 28 and October 31.

With respect to the design costs that were incurred on October 25 and 26, the Democratic Party argues that it was not obligated to report these costs until it knew that the literature would be mailed. If an organization is merely considering sending literature in support of a candidate but has not decided to send the literature, the party contends that it would be unfair to award matching funds to the candidate’s opponent.

I wish to defer making a staff recommendation on reports #48 and #71 until the December 12 meeting. I do wish to state my agreement with one policy argument made by the Maine Democratic Party: if literature is designed but not ultimately mailed to voters, it is hard to see why the candidate’s opponent should receive matching funds based on the design costs alone. That would seem to give the opponent an unfair advantage.

Also, I find it plausible that there are circumstances in which organizations such as PACs and party committees contemplate sending mailings in multiple districts and make last-minute decisions about where to spend scarce resources. The Commission may wish to be cautious in accepting these explanations at face value. I would counsel against

presuming them to be false, however, simply because they appear to be self-interested. These explanations involve making credibility determinations on a case-by-case basis.

#### **Report #84**

This report involved the payment of \$7,568 to the U.S. Post Office for postage. The Democratic Party states that it first received the amount of these costs during the late evening of October 31 when Ourso Beychok e-mailed the Democratic Party's bookkeeper. The report was filed on November 1.

On one hand, the factual circumstances could lead you to conclude that these postage expenditures were reported late because on October 27 and 30 the Democratic Party was under an obligation under Paragraph 3(C) to obtain the postage costs from Ourso Beychok and to include these amounts in reports #48 and #71. You may wish to inquire at the December 12 meeting whether this reporting would have been practical and was in fact required under the Commission's rule.

On the other hand, please note that the expenditure in report #84 was a payment from the party directly to the U.S. Post Office, not Ourso Beychok. If you accept the Democratic Party's account of events, even though it knew on October 27 and October 30 into which districts it would send mailings, it had not taken any specific actions with respect to the Post Office which are listed in Chapter 1, Section 7(3) (it had not placed any order with the Post Office, signed a contract with the Post Office to buy postage, etc.). Regardless of the purpose of the rule, you may feel constrained by the rule's language to conclude that October 31<sup>st</sup> was the date of the expenditure in report #84.

With respect to report #84 as well, I would like to hear any additional factual information and arguments of the parties' attorneys before making a recommendation.

#### **Report #83**

Mr. Billings has withdrawn his complaint with respect to report #83. Nevertheless, I have attached the November 30 letter by the Senate Democratic Campaign Committee's counsel, Newell Augur, because you may find his legal analysis helpful in applying the Commission's expenditure rule.

**Wayne, Jonathan**

---

**From:** Dib9@aol.com  
**Sent:** Tuesday, October 31, 2006 7:09 PM  
**To:** Wayne, Jonathan  
**Cc:** Lavin, Paul; Demeritt, Martha; roy@strategicadvocacy.com; andrew@mainesenategop.com  
**Subject:** Complaint against Maine Democratic Party & Senate Democratic Campaign Comm.

Jonathan:

This e-mail is a complaint against the Maine Democratic Party and the Senate Democratic Campaign Committee that I am filing on behalf of the Maine Senate Republican Victory Fund. It appears that the Maine Democratic Party has not made timely reporting of their independent expenditures for Senate candidates.

On 10/26, the Senate Democratic Campaign Committee contributed \$30,000 to Victory 2006, whose address is the same as the Maine Democratic Party. There is no PAC registered as "Victory 2006" so I believe that the contribution was to the Maine Democratic Party.

On 10/28, the Maine Democratic Party filed an Independent Expenditure report in three Senate districts. The total cost was \$10,834. This report is Independent Expenditure #48 on the Ethics Commission website.

On 10/31, the Maine Democratic Party filed an Independent Expenditure report in three Senate districts. The total cost was \$18,163. This report is Independent Expenditure #71 on the Ethics Commission website.

These expenditures add up to \$28,997. An amount very close to the contribution made by the Senate Democratic Campaign Committee on 10/26. This gives the appearance that the contribution was made with specific expenditures in mind. If the expenditures were planned on 10/26, they should have been reported on 10/26.

Even more damning is the reason given for late reporting on the 10/31 -- "late design with corrections not approved until 30th." This indicates that the expenditure was in the works before 10/30. It should have been reported when the designer was told to work on the design, not when the final approval was given.

Some of these expenditures involve candidates who are Clean Elections candidates. The Democrats' actions have had the effect of delaying the release of matching funds, which makes it more difficult for the affected candidates to spend the money effectively. It appears that this was a deliberate scheme to delay release of matching funds.

We are also concerned because the latest filing by the Senate Democratic Campaign Committee shows a balance of \$56,000. It is hard to believe that they do not have plans for this money with less than a week to go before the election. We anticipate more late independent expenditures -- expenditures that are likely already in the works.

In contrast, the Maine Republican Party filed independent expenditure reports yesterday for all expenditures planned in Senate races. We believe we are required to report any expenditures that are planned and in the works. Any additional expenditures will be the result of new money just raised this week.

I would appreciate your timely attention to this matter.

Dan Billings

12/7/2006

# PretiFlaherty

MICHAEL K. MAHONEY  
mmahoney@preti.com

November 13, 2006

## VIA ELECTRONIC MAIL & U.S. MAIL

Jonathan Wayne, Director  
Maine Ethics Commission  
135 State House Station  
Augusta, Maine 04333-0135

**RE: Maine Democratic Party's Response to Maine Senate Republican Victory Fund's Complaint Regarding Independent Expenditure Reports 48, 71 and 84**

Dear Director Wayne:

Please accept on behalf of my client, the Maine Democratic Party, the following response to a complaint filed by the Maine Senate Republican Victory Fund (hereinafter the "Senate Republicans"). As you recall, this complaint was the subject of a telephonic conference of the Commission on November 2, 2006. At that time, the Commission deferred making any final determination on this complaint until its meeting on November 20, 2006. The purpose of this written submission is to provide the Commission with more information in advance of that meeting.

The complaint filed by the Senate Republicans alleged that the Party was late in filing 24-hour independent expenditure reports for mail pieces it financed in connection with several Maine Senate races. The reports at issue are Independent Expenditure Reports No. 48, No. 71 and No. 84 (hereinafter "Report #48", "Report #71" and "Report #84"). Specifically, the complaint appears to allege that these reports should have been filed earlier because, under Maine law, the Party allegedly made the expenditures contained within those reports more than 24 hours before the date of the reports.

### Reports #48 & 71

Contrary to the Senate Republicans claims, Reports #48 and #71 were timely filed. Report #48 was filed on October 28 and Report #71 was filed on October 31. As outlined below, no commitment by the Party to pay its outside mail vendor, Ourso Beychok & Johnson, was made more than 24 hours before the filing of each report.

Report #48: Filed on October 28, 2006, this report included the design and production costs charged by Ourso Beychok for mail pieces supporting three different Democratic Senate candidates: Peter Bowman, Edward Degrosseillicrs and Arthur Mayo. As discussed during the November 2<sup>nd</sup> conference call with the Commissioners, the Party made no commitment or

PRETI FLAHERTY  
Jonathan Wayne, Director  
November 13, 2006  
Page 2

obligation to fund these mail pieces until October 27, 2006. Indeed, the Party had not even made the internal decision to direct its limited resources to these three races until that date. Attached as Exhibit A hereto are copies of invoices, each dated October 27<sup>th</sup>, that were sent electronically by Ourso Beychok to the Party for these three mail pieces. The Party has worked with Ourso Beychok during multiple election cycles, and it is Ourso's regular practice to prepare and forward invoices to the Party within hours, if not minutes, of receiving an order verbally from the Party. Hence, an October 27<sup>th</sup> invoice date is evidence that the Party committed itself to these expenditures on the same date, and not earlier.

Report #71. Filed by the Party on October 31, 2006, this report included the design and production costs for three additional mail pieces in support of three Democratic Senate candidates: Joseph Perry, Brian Rines and Peter Bowman. As discussed during the November 2<sup>nd</sup> conference call with the Commissioners, the Party made no commitment or obligation to fund these mail pieces until the Party's internal meeting on October 30, 2006. At that meeting, final decisions were made as to where the Party could most effectively direct its resources in the final days of the campaign. Prior to that date, it had given Ourso Beychok no definitive indication that it would be financing pieces in these districts. Attached as Exhibit B hereto are copies of invoices, each dated October 30<sup>th</sup>, that were sent electronically by Ourso Beychok to the Party for these three mail pieces. As stated above, Ourso's regular practice to prepare and forward invoices to the Party within hours, if not minutes, of receiving an order verbally from the Party. Hence, an October 30<sup>th</sup> invoice date for these three mail pieces is evidence that the Party committed itself to these expenditures on the same date, and not earlier.

Design Costs. An issue relating to these Reports that was discussed during the November 2<sup>nd</sup> conference call were the design expenses associated with the three mail pieces described in Report #71. Indeed, Report #71 indicates that design work began as early as October 25<sup>th</sup>. However, when the Party authorized Ourso Beychok to begin working on various designs, it did so without making any indication – one way or the other – that those designs would ultimately be printed and disseminated into Senate districts. The Party had, during the final weeks of the campaign, several mail pieces “in the can” that it would or would not print and disseminate depending on how individual races were shaping up.

It cannot be said that, standing alone, the design costs in this case constitute reportable “expenditures” under Maine law. Pursuant to 21-A M.R.S.A. § 1012(3), a payment or a promise to make a payment constitutes an “expenditure” only when it is “made for the purpose of influencing the nomination or election of any person to political office.” In the present case, because no decision had yet been made to disseminate the mail pieces to the electorate, no funds were expended “for the purpose of influencing” the Senate elections. Rather, the designs were merely an internal exercise that, at that point in time, could not possibly influence the nomination or election of a person to political office. Those costs only became “expenditures” at the moment that a decision was made to disseminate them publicly.

Interpreting the law any other way would produce an unfair, and arguably absurd, result. Specifically, if design costs are deemed to be separately reportable even in cases where the designs may not be disseminated publicly, it is very likely that an MCEA candidate would

PRETI FLAHERTY  
Jonathan Wayne, Director  
November 13, 2006  
Page 3

receive matching funds in connection with the design of a mail piece supporting his opponent that is never actually produced and thus, that could not influence the election.

Should the Commission, however, determine that design costs are separately reportable expenditures, Ourso Beychok charges a \$500.00 design fee to the Party per design. If a design is never actually disseminated, Ourso charges the Party that fee.

#### Report #84

Filed on November 1, 2006, Report #84 documents the postage costs associated with the six mail pieces whose design and production costs were reported on Reports #48 and #71. The Senate Republicans' complaint alleges that this report was untimely.

The Party's investigation has uncovered that, following the Party's orders on October 27<sup>th</sup> and 30<sup>th</sup>, the mail pieces were printed by Keystone Press in Manchester, New Hampshire and then, on October 31, 2006, forwarded to a mailhouse-vendor named Mailings Unlimited in Portland, Maine, where they were weighed and mailed. Copies of Mailings Unlimited's shipping manifest documenting its receipt of the pieces on October 31<sup>st</sup> is attached hereto as Exhibit C. Attached as Exhibit D is an email from Ourso Beychok at 10:06 P.M. on October 31<sup>st</sup> indicating that Mailings Unlimited had just provided Ourso with the postage amount owed a few minutes earlier.

The Party's investigation further revealed that, prior to the actual delivery of the mail pieces themselves, Ourso Beychok had no communication about these particular pieces with Mailings Unlimited. It was not until these pieces physically arrived at Mailings Unlimited on October 31<sup>st</sup> that that entity learned of the pieces' existence and later that evening invoiced Ourso for the postage costs associated with them.

Given that Ourso, on the Party's behalf, did not obligate funds for postage until – at the earliest – October 31<sup>st</sup> when the pieces first arrived in Portland, the Party's November 1, 2006 reporting date was timely filed under the 24-hour statutory standard.

#### Conclusion

The Party representatives familiar with this situation are looking forward to discussing these issues with you at the November 20, 2006 hearing. Should you have any questions in the meantime, please do not hesitate to contact me.

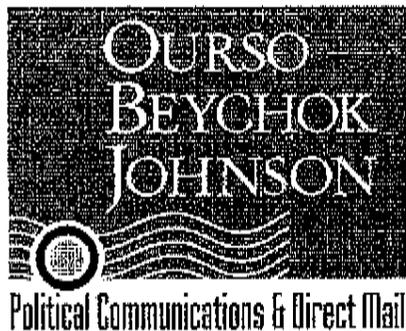
Sincerely,



Michael K. Mahoney

Enclosures

**EXHIBIT**  
**A**

**INVOICE**

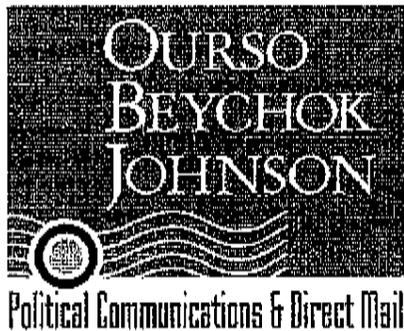
TO: Maine Democratic Party  
FR: Ourso Beychok Johnson, Inc.  
DT: October 27, 2006  
RE: direct mail

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6,351 self mailers Degrossilliers #5, 8 1/2 x 11	\$2,900.00
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Total Due	\$2,900.00
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Please send check to: Ourso Beychok Johnson, Inc.  
352 Napoleon Street  
Baton Rouge, La. 70802

**INVOICE**

TO: Maine Democratic Party  
FR: Ourso Beychok Johnson, Inc.  
DT: October 27, 2006  
RE: direct mail

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8,194 self mailers Bowman #5, 8 1/2 x 11	\$4,179.00
---	------------

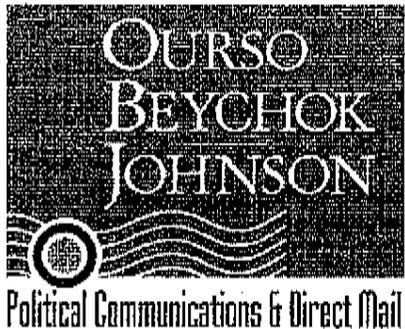
Total Due	\$4,179.00
-----------	------------

Please send check to:

Ourso Beychok Johnson, Inc.  
352 Napoleon Street  
Baton Rouge, La. 70802



**EXHIBIT  
B**

**INVOICE**

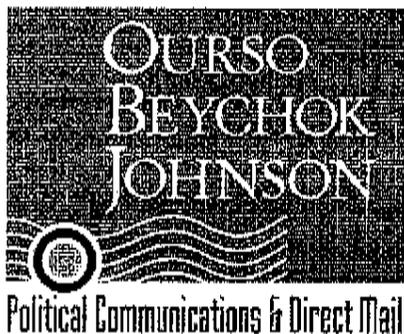
TO: Maine Democratic Party  
FR: Ourso Beychok Johnson, Inc.  
DT: October 30, 2006  
RE: direct mail

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13,675 self mailers Rines #5, 8 1/2 x 11	\$6,154.00
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Total Due	\$6,154.00
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Please send check to: Ourso Beychok Johnson, Inc.  
352 Napoleon Street  
Baton Rouge, La. 70802

**INVOICE**

TO: Maine Democratic Party  
FR: Ourso Beychok Johnson, Inc.  
DT: October 30, 2006  
RE: direct mail

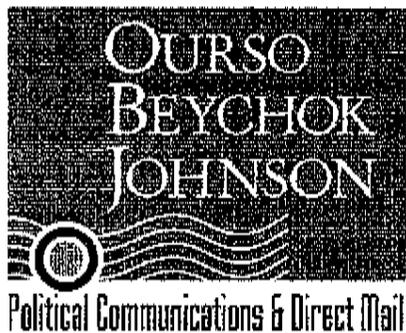
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12,761 self mailers Perry #5, 8 1/2 x11	\$5,742.00
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Total Due	\$5,742.00
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Please send check to:

Ourso Beychok Johnson, Inc.  
352 Napoleon Street  
Baton Rouge, La. 70802

**INVOICE**

TO: Maine Democratic Party  
FR: Ourso Beychok Johnson, Inc.  
DT: October 30, 2006  
RE: direct mail

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11,968 self mailers Bowman #1 (re-print), 8.5 x 11	\$5,146.00
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Total Due	\$5,146.00
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Please send check to:

Ourso Beychok Johnson, Inc.  
352 Napoleon Street  
Baton Rouge, La. 70802

**EXHIBIT**  
**C**



# 22664  
 # 22659  
 # 22707  
 # 22663  
 # 22696  
 # 22706  
 # 22686

9 Old Falls Road • Manchester, NH 03103 • Tel. (603) 622-5222 • Fax (603) 622-9432

www.keystonepress.com

**DELIVERY RECEIPT**

Ship To: OURS0 BAICHOK JOHNSON Date: 10/31/06  
c/o PORTLAND MAIL HOUSE  
PORTLAND MAINE

QUANTITY ORDERED	QUANTITY PACKED	ITEM	
9,100	9,300	MAYO #5 ✓	3 BOXES
12,100	12,300	BOWMAN #1 ✓	9 BOXES
8,100	8,500	BOWMAN #5 ✓	6 BOXES
8,300	8,800	HOBBS #2 ✓	4 BOXES
12,000	12	PERRY #5 ✓	9 BOXES
11,000		RINE #5 ✓	9 BOXES
7,000	7,000	MRE #5 ✓	5 BOXES
8,000	8,500	NOTIA #1 ✓	5 BOXES

RETURNED TO CUSTOMER

DISK(S) \_\_\_\_\_ PHOTO(S) \_\_\_\_\_  
 OTHER \_\_\_\_\_

Received by \_\_\_\_\_

**EXHIBIT  
D**

postage

Subject: postage

From: "Trey Ourso" <treyourso@bellsouth.net>

Date: Tue, 31 Oct 2006 21:06:22 -0600

To: <books@maincdems.org>

CC: <gregolsonme@yahoo.com>, "Brian Hawkins" <senate@mainedems.org>, "Michael Beychok" <mbeychok1@cox.net>

We need \$7,568.78 deposited in the non-profit meter in Portland tomorrow (Wednesday). I'm really sorry about the late notice but we just received this amount from the mailhouse a few minutes ago.

I have already spoken to Brian about this and he is aware of the time sensitivity and is prepared to work out the logistics.

Thanks,

Trey

## Title 21-A, §1019-B, Reports of independent expenditures

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### §1019-B. Reports of independent expenditures

**1. Independent expenditures; definition.** For the purposes of this section, an "independent expenditure": [2003, c. 448, §3 (new).]

A. Is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and

[2003, c. 448, §3 (new).]

B. Is presumed in races involving a candidate who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5 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 days, including election day, before a primary election; the 21 days, including election day, before a general election; or during a special election until and on election day.

[2003, c. 448, §3 (new).]

**2. Rebutting presumption.** A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of making the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and must determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

[2003, c. 448, §3 (new).]

**3. 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, a copy of the same information must be filed with the municipal clerk. [2003, c. 448, §3 (new).]

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 and matching fund provisions under chapter 14. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 448, §3 (new).]

B. A report required by this subsection must contain an itemized account of each contribution or expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each contribution or expenditure and the name of each payee or creditor. The report must state whether the contribution or 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 contribution or 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.

[2003, c. 448, §3 (new).]

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.

[2003, c. 448, §3 (new).]

PL 2003, Ch. 448, §3 (NEW).

## SECTION 7. EXPENDITURES

1. Expenditures By Consultants, Employees, and Other Agents of a Political Campaign. Expenditures made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc. employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee shall be deemed expenditures by the candidate or committee. Such expenditures must be reported by the candidate or committee as if made or incurred by the candidate or committee directly.
2. Expenditures By Political Action Committees. In addition to the requirements set forth in 21-A M.R.S.A. Section 1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.
3. Timing of Reporting Expenditures.
  - A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.
  - B. Expenditures must be reported at the earliest of the following events:
    - (1) The placement of an order for a good or service;
    - (2) The signing of a contract for a good or service;
    - (3) The delivery of a good or the performance of a service by a vendor;
    - (4) A promise or an agreement (including an implied one) that a payment will be made; or
    - (5) The making of a payment for a good or service.
  - C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.
4. Advance Purchases of Goods and Services for the General Election.
  - A. Consulting services, or the design, printing or distribution of campaign literature or advertising, including the creation and broadcast of radio and television advertising, contracted or paid for prior to the primary election must be received prior to the primary election in order to be considered primary election expenditures.

3. Any traditionally funded candidate with a Maine Clean Election Act opponent shall file the following three reports detailing the candidate's total campaign contributions, obligations and expenditures to date, except that a candidate who has not received, spent, or obligated the amount sufficient to require a report under subsection 2 may file an affidavit, by the date the report is due, attesting that the candidate has not received, spent or obligated that amount:
  - A. a report filed not later than 5 p.m. on the 42nd day before the date on which an election is held that is complete as of the 44th day before the date of that election;
  - B. a report filed not later than 5 p.m. on the 21st day before the date on which an election is held that is complete as of the 23rd day before the date of that election; and
  - C. a report filed not later than 5 p.m. on the 12th day before the date on which an election is held that is complete as of the 14th day before the date of that election.
4. 24-Hour Report. Any candidate who is required to file a 101% report must file an updated report with the Commission reporting single expenditures of \$1,000 or more by candidates for Governor, \$750 by candidates for State Senator, and \$500 by candidates for State Representative made after the 14th day before any election and more than 24 hours before 5 p.m. on the date of that election. The report must be submitted to the Commission within 24 hours of those expenditures.
5. Filing by Facsimile or Electronic Means. For purposes of this section, reports may be filed by facsimile or by other electronic means acceptable to the Commission, and such reports will be deemed filed when received by the Commission provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

#### SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. General. Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$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 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!"

- C. "Independent expenditure" has the same meaning as in Title 21-A, section 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 must be reported to the Commission in accordance with the following provisions:
- A. Independent expenditures aggregating in excess of \$100 per candidate per election but not in excess of \$250 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, except that expenditures made in the last 11 days before an election must be reported within 24 hours of the expenditure.
- (1) Quarterly Reports.
- (a) A report must be filed on January 15th and be complete as of January 5th;
- (b) A report must be filed on April 10th and be complete as of March 31st;
- (c) A report must be filed on July 15th and be complete as of July 5th; and
- (d) A report must be filed on October 10th and be complete as of September 30th.
- (2) Pre-Election Report. A report must be filed on the 12th day before the election is held and be complete as of that day.

If the total of independent expenditures made to support or oppose a candidate exceed \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure. As long as the total amount spent with respect to the candidate does not exceed \$250, all reports must be filed according to the deadlines in this paragraph. If the total amount spent per candidate exceeds \$250, the reports must be filed in accordance with paragraph B.

[NOTE: FOR EXAMPLE, IF A COMMITTEE MAKES THREE \$80 EXPENDITURES IN SUPPORT OF A CANDIDATE ON SEPTEMBER 20, THE 15TH DAY BEFORE THE ELECTION AND THE 8TH DAY BEFORE THE ELECTION, THOSE THREE EXPENDITURES MUST BE REPORTED ON OCTOBER 10th, AND THE 12TH AND 7TH DAYS BEFORE THE ELECTION, RESPECTIVELY.]

- B. Independent expenditures aggregating 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 within 24 hours of those expenditures. If any additional expenditures, regardless of amount, increase the total spent per candidate above the threshold of \$250, each additional expenditure must be reported within 24 hours.

[NOTE: FOR EXAMPLE, IF A COMMITTEE HAS REPORTED INDEPENDENT EXPENDITURES TOTALING \$300 IN SUPPORT OF A CANDIDATE, AND THE COMMITTEE MAKES AN ADDITIONAL \$50 INDEPENDENT EXPENDITURE IN SUPPORT OF THE CANDIDATE, THE ADDITIONAL \$50 EXPENDITURE MUST BE REPORTED WITHIN 24 HOURS.]

- 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. Reports filed after the eighth day before an election must include the following information:
1. the date on which the person making the expenditure placed the order with the vendor for the goods or services;
  2. the approximate date when the vendor began providing design or any other services in connection with the expenditure;
  3. the date on which the person making the expenditure first learned of the total amount of the expenditure; and
  4. a statement why the expenditure could not be reported by the eighth day before the election.
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.

Nov. 30. 2006 5:11PM

No. 1257 P. 2

**AUGUR & ASSOCIATES, P.A.**  
*Law and Lobbying Firm*  
61 Winthrop Street  
Augusta, Maine 04330  
Electronic Mail: [naugur@mainelobby.com](mailto:naugur@mainelobby.com)

Telephone  
(207) 622-2990

Fax  
(207) 622-4417

**Via Facsimile – 207-287-6775  
and regular mail**

November 30, 2006

Maine Ethics Commission  
135 State House Station  
Augusta, ME 04333

**Re: Independent Expenditure #83**

To the Members of the Maine Ethics Commission:

On behalf of the Senate Democratic Campaign Committee (SDCC), I appreciate the opportunity to provide you with additional information regarding the Complaint filed by Dan Billings on behalf of the Maine Senate Republican Victory Fund on October 31, 2006 (the "Complaint"). I understand that, upon further review, the Maine Senate Republicans have withdrawn this Complaint. I am, nonetheless, submitting this information in view of the Ethics Commission's discussion during its November 2, 2006 conference call and its November 5, 2006 written request for a response and production of documents.

**Initial Concerns Raised in the Complaint**

On or about the same time the Complaint was registered, the SDCC filed Independent Expenditure Report #83 ("IE #83") detailing a television advertisement (the "TV ad") in support of Brian Rines, Senate Candidate from District 21. The amount of IE #83 was \$32,250; \$30,000 to purchase media time and \$2,250 to design the TV ad. The cost was paid for from funds contributed after the October 26<sup>th</sup> filing made by the SDCC.

As Mr. Billings noted during the conference call on November 2, 2006, IE #83 answered his specific concern that the SDCC did not "have plans for this money with less than a week to go before the election."

Nov. 30. 2006 5:11PM

No. 1257 P. 3

### **Proper Timing of the Report**

During the conference call, there was additional discussion as to whether IE #83 was filed timely. Specifically, the Commission expressed interest as to whether the acceptance of the design of the TV ad and the resultant costs of that design merited a separate independent expenditure according to the provisions of 21-A M.R.S.A., Section 1019 and the applicable rules.

The SDCC would submit that regardless of how the Commission resolves this question, IE #83 was timely filed. Because the decision to use the design of the TV ad and the purchase of the media time for that TV ad both occurred on October 31, 2006, the SDCC's October 31<sup>st</sup> filing met the 24-hour reporting requirement.

Nonetheless, the Commission's underlying question is a valuable one as it concerns the future effective administration of the Maine Clean Election Act. In order to properly examine that question in this instance, a detailed analysis of the order of events is warranted.

### **Time Line**

On the morning of Monday, October 30<sup>th</sup>, SDCC staff contacted Ourso Beychok Johnson (Ourso Beychok) by phone and asked them to prepare a draft TV ad. (SDCC staff had had previous discussions with Ourso Beychok over the weekend about the possibility of TV ad, but had yet to make an initial determination as to whether this would be financially feasible or politically desirable.) The request for the draft TV ad did not include any spoken message from the candidate, nor any specific video nor any additional voice over. Rather, it was a collection of pictures, already available on the candidate's website, combined with articles from a newspaper that had recently endorsed Dr. Rines.

Given the limited technical challenges involved, Ourso Beychok assembled a draft TV ad and submitted it to the SDCC for review in the afternoon of Monday, October 30<sup>th</sup>. SDCC staff reviewed the draft TV ad with Democratic Party leadership on the morning of October 31<sup>st</sup>. Following that conference, the SDCC decided to use the design for a TV ad and requested \$30,000 worth of television time. That same afternoon, Ourso Beychok contacted Mundy Katowitz Media, Inc. on behalf of the SDCC to request a purchase of \$30,000 worth of television time for the TV ad. Later in the afternoon, Ourso Beychok advised the SDCC that the television time had been obligated and that the total cost for the TV ad, including both the design and the advertising time, was \$32,250. The SDCC then filed IE #83 detailing that amount.

### **Legal Analysis**

Under Chapter 1, Section 10 (3)(B) of the Commission's rules, an Independent Expenditure Report should be filed when there is:

1. The placement of an order for a good or service;
2. The signing of a contract for a good or service;
3. The delivery of a good or the performance of a service;

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4. A promise or agreement (including an implied one) that a payment will be made;  
or
5. The making of a payment for a good or service.

Because the decision to place an order of television time for the TV ad was not made until the afternoon of October 31, 2006, the SDCC was not obligated to file an independent expenditure report until the afternoon of November 1, 2006. In fact, the SDCC filed IE #83 before the close of business on October 31, 2006, immediately after the order of television time for the TV ad had been finalized. Even if an independent expenditure report were required when the design of the TV ad was accepted, the October 31<sup>st</sup> filing met that requirement.

#### **Additional Legal Analysis of the Independent Expenditure Definition**

The Commission expressed interest during the November 2<sup>nd</sup> conference call as to whether the request for the design of political material could have triggered the reporting requirements under Chapter 1, Section 7(3)(1) or (4), insofar as the request of a design constituted a placement for a good or service or an agreement that a payment would be made. In the alternative, the Commission expressed interest as to whether the delivery of a draft design for the TV ad could be considered the delivery of a good or service pursuant to Chapter 1, Section 7(3)(3).

The Commission should resist the temptation to parse out design fees from the larger production costs of a political advertisement. Such an interpretation would be wholly unworkable for all participants in the political process and could lead, ineluctably, to segregating many other costs that go into the construction of political discourse. Moreover, such an interpretation would be inconsistent with the current statute. The crux of an independent expenditure is not the design of a political advertisement. Rather, it is the communication of that advertisement.

21-A M.R.S.A., §1019-B (1) defines an independent expenditure as a "communication that expressly advocates" for or against a candidate. This definition was not satisfied until the afternoon of October 31<sup>st</sup>, when the SDCC actually ordered media time to disseminate the TV ad. The design of this TV ad cannot be an independent expenditure in its own right without the vehicle necessary to communicate it.

Even when a vendor is paid independently for design work, it is impossible to know whether that payment is made for purposes of influencing an election until after the design has been completed, the entity considering the expenditure has reviewed it and the media time has been ordered. A contrary interpretation would hamper the flexibility of political discourse since it would penalize an entity that looked into designing a political advertisement, but subsequently decided against communicating it. Further, any benefit that might be served by providing matching funds to opposing candidates and information to the public earlier than the current process requires would be marginal since the design costs of this TV ad (and generally of most political advertisements) represents less than 10% of the total cost. Moreover, this benefit would be outweighed by the increase, perhaps doubling, in the total number of independent expenditure reports filed.

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**Document Production**

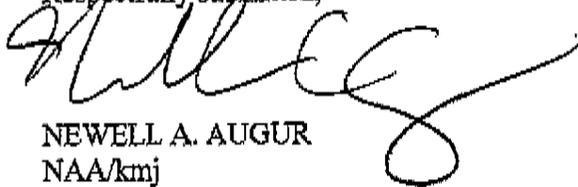
Per the Commission's request, I have included all documents currently in my client's possession regarding when the order for the TV ad was made and goods or services rendered. Specifically, there are five written communications by email between the SDCC and Ourso Beychok. To my knowledge, these emails also constitute all documents in Ourso Beychok's possession that are responsive to the Commission's request.

**Conclusion**

21-A M.R.S.A requires that an independent expenditure report be filed regarding a communication that advocates for or against a candidate, but not for the design of such a communication in advance of its actual dissemination. A contrary interpretation is inconsistent with the statute, and would be neither workable nor of any significant benefit to the public.

If you have any questions or would like any further information, please do not hesitate to contact me.

Respectfully submitted,



NEWELL A. AUGUR  
NAA/kmj  
Enclosures

Nov. 30. 2006 5:11PM

No. 1257 P. 6

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**From:** Michael Beychok [michael@objmail.com]  
**Sent:** Sunday, October 29, 2006 10:09 AM  
**To:** 'Brian Hawkins'  
**Cc:** 'Greg Olson'  
**Subject:** RE: rines endorsement

Anyway to work this in to the TV spot.

Even if it is at the end with a super "Endorsed by the Kennebec Journal" although the language of the endorsement is the strongest.

"Brian Rines makes it happen"  
"a truly outstanding candidate"  
"an exceptional mix of experience, intellect, energy and ideas"  
"Issue after issue Rines demonstrated both insight and ideas - a strong combination."

-----Original Message-----

**From:** Brian Hawkins [mailto:senate@mainedems.org]  
**Sent:** Saturday, October 28, 2006 4:52 PM  
**To:** Michael Beychok  
**Subject:** rines endorsement

<http://kennebecjournal.mainetoday.com/view/columns/3106071.shtml>

Michael, in case you want it above is the link to the KJ's fantastic endorsement of Brian Rines. Some great language in there. Maybe good to use as a contrast in the McCormick piece.

--  
Brian Hawkins  
Assistant Caucus Director  
(207) 622-6233 x111

Nov. 30. 2006 5:12PM

No. 1257 P. 7

---

**From:** Michael Beychok [michael@objmail.com]  
**Sent:** Monday, October 30, 2006 11:52 AM  
**To:** 'Greg Olson'; 'Brian Hawkins'  
**Subject:** rines tv

I'm gonna need signoff on these scripts by 1pm today. We got to move these along.

Who is paying for these ads; what is the legal description of the paid for by line in terms of how big it has to be and how long it has to be on screen.

I am assuming that Raghu's buyer is gonna buy the television.

If so, I need them to get in touch with me so I can tell my production house where to send dubs and whether we can upload to save time.

Let's move on this.

Thanks.

Nov. 30. 2006 5:12PM

No. 1257 P. 8

---

**From:** Greg Olson [gregolsonme@yahoo.com]  
**Sent:** Monday, October 30, 2006 12:08 PM  
**To:** Michael Beychok; 'Brian Hawkins'  
**Subject:** Re: rines tv

Senate Democratic Campaign Committee, 22 Smith St. Augusta, ME 04330.  
Cyndie Banks Treasurer.

You think Raghu's guy is the best way to go?

*Michael Beychok* <michael@objmail.com> wrote:

I'm gonna need signoff on these scripts by 1pm today. We got to move these along.

Who is paying for these ads; what is the legal description of the paid for by line in terms of how big it has to be and how long it has to be on screen.

I am assuming that Raghu's buyer is gonna buy the television.

If so, I need them to get in touch with me so I can tell my production house where to send dubs and whether we can upload to save time.

Let's move on this.

Thanks.

---

Do You Yahoo!?  
Tired of spam? Yahoo! Mail has the best spam protection around  
<http://mail.yahoo.com>

Nov. 30. 2006 5:12PM

No. 1257 P. 9

---

**From:** Michael Beychok [mailto:michael@objmail.com]  
**Sent:** Monday, October 30, 2006 12:10 PM  
**To:** 'Greg Olson'  
**Subject:** RE: rines tv

In terms of buying the time yes. I haven't done the research and I'm just not set up to do it.  
I'll do it though if you want.

---

**From:** Greg Olson [mailto:gregolsonme@yahoo.com]  
**Sent:** Monday, October 30, 2006 11:08 AM  
**To:** Michael Beychok; 'Brian Hawkins'  
**Subject:** Re: rines tv

Senate Democratic Campaign Committee, 22 Smith St. Augusta, ME 04330.  
Cyndie Banks Treasurer.

You think Raghu's guy is the best way to go?

*Michael Beychok <michael@objmail.com>* wrote:  
I'm gonna need signoff on these scripts by 1pm today. We got to move these along.

Who is paying for these ads; what is the legal description of the paid for by line in terms of how big it has to be and how long it has to be on screen.

I am assuming that Raghu's buyer is gonna buy the television.

If so, I need them to get in touch with me so I can tell my production house where to send dubs and whether we can upload to save time.

Let's move on this.

Thanks.

---

Do You Yahoo!?  
Tired of spam? Yahoo! Mail has the best spam protection around  
<http://mail.yahoo.com>

Nov. 30. 2006 5:12PM

No. 1257 P. 10

---

**From:** Michael Beychok [michael@objmail.com]  
**Sent:** Monday, October 30, 2006 12:20 PM  
**To:** 'Greg Olson'; 'Brian Hawkins'  
**Subject:** first cut at rines tv script



Rines TV.doc

Nov. 30. 2006 5:12PM

No. 1257 P. 11

Rines TV1/30

The independent Kennebec Journal put it best;

GRAPHIC: masthead of Kennebec Journal and tear off quote Brian Rines "makes things happen"

Brian Rines "makes things happen"

As Mayor of Gardiner for 16 years, Brian Rines lowered the tax rate by 22%; brought a new health clinic to Winthrop and created new jobs.

GRAPHIC: Lowered tax rate 22%

GRAPHIC: Created new jobs

Maybe that's why the Kennebec Journal endorsed Dr. Rines and said:

GRAPHIC: Masthead again with pic of Rines and "makes things happen"

Rines' success in Gardiner shows that he does not just talk, he makes things happen.

Dr. Brian Rines. The best choice.

GRAPHIC: LOGO and Vote for Dr. Brian Rines for Senate District 21.

Senate Democratic Campaign Committee, 22 Smith St. Augusta, ME 04330.  
Cyndie Banks Treasurer.

Nov. 30. 2006 5:12PM

No. 1257 P. 12

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**From:** mbeychok1@cox.net  
**Sent:** Tuesday, October 31, 2006 5:52 PM  
**To:** senate@mainedems.com; gregolsonme@yahoo.com  
**Subject:** Fwd: SDCC



Buy Detail  
Report.rtf

> From: "Carole Mundy" <carole@munkato.com>  
> To: "'Michael Beychok'" <mbeychok1@cox.net>  
> Subject: SDCC  
> Date: Tue, 31 Oct 2006 17:40:26 -0500  
>  
> This is similar to the approach we took with Midura...please advise.

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No. 1257 P. 13

# SDCC Est 103 Week 1

102312006

Client: Seneha Democratic Caucus Gerritides (ME)  
 Product: SDCC ME  
 Market: Portland, ME  
 Flight Dates: 10/31/06-11/7/06

Estimate: 103  
 Description: SDCC ME Week 1  
 Buyer: Randy Romano/2 Weeks, Inc.

Station	Air Day	Day	CP	Time	Program	A:30+	RTG	Dur	11/2	11/3	11/4	11/5	11/6	11/7	Total Spots	Gross Cost	CPP
WCSH-TV	M-F	EM	6:00a-7:00a	NEWS	30	8.2	1	1	0	0	0	0	0	0	3	\$880.00	\$288.00
	M-F	EM	7:00a-8:00a	NEWS	30	7.5	1	1	0	0	0	0	0	0	3	\$900.00	\$300.00
	M-F	DT	8:00a-10:00a	TODAY SHOW	30	7.5	1	1	0	0	0	0	0	0	3	\$330.00	\$110.00
	M-F	DT	10:11a-10:12a	RACHEL RAY	30	1.8	1	1	0	0	0	0	0	0	2	\$90.00	\$45.00
	M-F	DT	11:00a-12:00p	FAMILY FIELD	30	1.1	1	1	0	0	0	0	0	0	2	\$90.00	\$45.00
	M-F	DT	12:00p-12:30p	NEWS CENTER	30	4.3	1	1	0	0	0	0	0	0	2	\$90.00	\$45.00
	M-F	ES	4:00p-5:00p	JUDGE ALEX	30	1.9	1	1	0	0	0	0	0	0	2	\$90.00	\$45.00
	M-F	EN	5:00p-5:30p	NEWS	30	6.2	1	1	0	0	0	0	0	0	2	\$90.00	\$45.00
	M-F	EN	5:30p-6:00p	NEWS	30	7.4	1	1	0	0	0	0	0	0	2	\$90.00	\$45.00
	M-F	EN	5:30p-6:00p	NEWS	30	14.5	1	1	0	0	0	0	0	0	2	\$90.00	\$45.00
	M-F	PA	7:30p-8:00p	NEWS	30	2.2	1	1	0	0	0	0	0	0	2	\$90.00	\$45.00
	M-F	LN	11:00p-11:35p	NEWS	30	4.6	1	1	0	0	0	0	0	0	2	\$90.00	\$45.00
	M-F	LF	11:35p-12:35a	TONIGHT SHOW	30	2.0	1	1	0	0	0	0	0	0	2	\$90.00	\$45.00
	Sa	WK	6:00a-7:00a	NEWS	30	5.0	1	1	0	0	0	0	0	0	1	\$150.00	\$150.00
Sa	WK	12:00p-12:30p	NEWS	30	4.8	1	1	0	0	0	0	0	0	1	\$150.00	\$150.00	
Su	WK	7:00a-8:00a	NEWS	30	5.6	1	1	0	0	0	0	0	0	1	\$150.00	\$150.00	
Station Total:						143.8								27	\$73,048.00	\$145.00	
WQME-TV	M-F	EM	5:00a-6:00a	NEWS	30	1.2	1	1	0	0	0	0	0	0	3	\$175.00	\$58.33
M-F	EM	6:00a-7:00a	NEWS	30	2.1	1	1	0	0	0	0	0	0	3	\$500.00	\$166.67	
M-F	EM	7:00a-8:00a	NEWS	30	2.0	1	1	0	0	0	0	0	0	3	\$100.00	\$33.33	
M-F	DT	8:00a-12:00p	GUIDING LIGHT/JUDGE BRYAN/PERCERIGHT	30	1.2	1	1	0	0	0	0	0	0	0	3	\$100.00	\$33.33

Station	Air Day	Day	CP	Time	Program	A:30+	RTG	Dur	11/2	11/3	11/4	11/5	11/6	11/7	Total Spots	Gross Cost	CPP
WMTW-TV	M-F	DT	12:00p-12:30p	NEWS	30	3.2	0	0	0	0	0	0	0	0	1	\$250.00	\$250.00
	M-F	DT	3:00p-4:00p	JUDGE JUDY	30	2.7	0	0	0	0	0	0	0	0	1	\$450.00	\$450.00
	M-F	EF	4:00p-5:00p	OPRAH	30	4.4	0	0	0	0	0	0	0	0	1	\$900.00	\$900.00
	M-F	EN	6:00a-6:30p	NEWS	30	4.1	0	0	0	0	0	0	0	0	1	\$900.00	\$900.00
	M-F	EN	6:30p-6:00p	NEWS	30	4.7	0	0	0	0	0	0	0	0	1	\$1,000.00	\$1,000.00
	M-F	EN	6:00a-7:00p	NEWS	30	6.5	0	0	0	0	0	0	0	0	1	\$550.00	\$550.00
	Sa	EN	6:00a-6:30p	NEWS	30	4.9	0	0	0	0	0	0	0	0	1	\$550.00	\$550.00
	M-F	PA	7:00p-7:30p	ENT TONIGHT	30	3.9	0	0	0	0	0	0	0	0	1	\$550.00	\$550.00
	M-F	PA	7:30p-8:00p	INSIDER	30	3.4	0	0	0	0	0	0	0	0	1	\$550.00	\$550.00
	Sa	PA	7:00p-8:00p	NEWS	30	1.6	0	0	0	0	0	0	0	0	1	\$150.00	\$150.00
	M-F	LN	11:00p-11:35p	NEWS	30	2.4	0	0	0	0	0	0	0	0	1	\$450.00	\$450.00
	M-F	LF	11:35p-12:35a	LETTERMAN	30	1.1	0	0	0	0	0	0	0	0	1	\$450.00	\$450.00
	Su	WK	8:00a-10:30a	SUNDAY MORNING	30	2.8	0	0	0	0	0	0	0	0	1	\$9,200.00	\$9,200.00
	Station Total:						79.5								26	\$12,650.00	\$486.54
WMTW-TV	M-F	EM	6:00a-7:00a	NEWS	30	1.6	1	1	0	0	0	0	0	0	4	\$125.00	\$31.25
	M-F	EN	7:00a-8:00a	GMA	30	1.6	1	1	0	0	0	0	0	0	4	\$125.00	\$31.25
	M-F	DT	8:00a-10:00a	REGS	30	2.0	1	1	0	0	0	0	0	0	2	\$125.00	\$62.50
	M-F	DT	10:00a-11:00a	MARTHA	30	1.5	1	1	0	0	0	0	0	0	2	\$125.00	\$62.50
	M-F	DT	11:00a-12:00p	THE VIEW	30	1.5	1	1	0	0	0	0	0	0	2	\$125.00	\$62.50
	M-F	DT	12:00p-12:30p	NEWS	30	1.0	1	1	0	0	0	0	0	0	2	\$150.00	\$75.00
M-F	DT	1:00p-4:00p	SOAPS	30	1.0	1	1	0	0	0	0	0	0	2	\$150.00	\$75.00	

Nov. 30. 2006 5:12PM

No. 1257 P. 14

10312DC8

# SDCC Est 103 Week 1

Client: Senate Democratic Caucus Committee (ME)  
 Product: SDCC ME  
 Market: Portland, ME  
 Flight Dates: 10/31/06-11/08

Estimate: 103  
 Description: SDCC ME Week 1  
 Survey: May06 DMA Custom  
 Buyer: Aubrey Katorowicz Media, Inc.

Station	AIR	Day	DP	Time	Program	A 35+	RTG	Our	11/2	11/3	11/4	11/5	11/6	11/7	Total Spots	Gross Cost	CPP
		M-F	EF	4:00p-5:00p	ELLER	2.0		30	1	0	0	0	0	0	1	6250.00	\$125.00
		M-F	EN	5:00p-6:00p	DR PHIL	6.5		30	0	0	0	0	0	0	1	8800.00	\$100.00
		M-F	EN	6:00p-7:00p	NEWS	5.5		30	0	1	0	0	0	0	1	\$750.00	\$150.00
		M-F	PA	7:00p-7:30p	WHEEL	7.0		30	0	0	0	0	0	0	1	\$850.00	\$170.00
		M-F	PA	7:30p-8:00p	JEOPARDY	9.0		30	0	0	0	0	0	0	1	\$1,150.00	\$230.00
		M-F	LN	11:30p-11:35p	NEWS	9.0		30	1	0	0	0	0	0	1	\$600.00	\$120.00
		M-F	LF	11:35p-12:05a	NIGHTLINE	9.5		30	0	1	0	0	0	0	1	\$600.00	\$120.00
		Th	FT	8:00p-9:00p	UGLY BETTY	4.0		30	1	0	0	0	0	0	1	\$700.00	\$140.00
Station Total:						67.6		30	1	0	0	0	0	0	24	\$150.00	\$30.00
WPPC-TV		M-F	PA	7:00p-8:00p	SEINFELD	5.7		30	0	0	0	0	0	0	2	\$300.00	\$150.00
WPPC-TV		Sa	WK	2:00p-6:00p	MOVIE	12.4		30	0	0	1	0	0	0	1	\$10.00	\$10.00
WPPC-TV		Sa	WK	4:00p-6:30p	MOVIE	0.3		30	0	0	1	0	0	0	1	\$28.00	\$28.00
Station Total:						6.5		30	0	0	1	0	0	0	2	\$78.00	\$39.00
WVXT-TV		M-F	EN	6:00p-8:30p	RAYMOND	1.0		30	0	1	0	0	0	0	1	\$75.00	\$75.00
		M-F	EN	8:30p-7:00p	KING OF QUEENS	1.0		30	1	0	0	0	0	0	1	\$75.00	\$75.00
		M-F	PA	7:00p-7:30p	SIMPSONS	1.0		30	0	0	0	0	0	0	1	\$400.00	\$400.00
Station Total:						4.0		30	0	0	0	0	0	0	3	\$535.00	\$178.33
Spots Per Week:								24	23	743	163	165	28	2	85		
TRPs Per Week:								75.8	74.3	16.3	16.5	96.2	9.0		287.9		

SCHEDULE TOTALS:  
 TOTAL SPOTS: 85  
 TOTAL COST: \$36,005.00  
 TOTAL Adults 35+ TRPs: 287.9  
 TOTAL Adults 35+ CPP: \$104.22

10/29/2006 15:59 2072876775  
01/15/1994 06:50 207-622-2657

ETHICS COMMISSION  
ME, DEM. PARTY

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PAGE 01

IE 48

STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

FAX REC'D  
Cpm

Mail: 135 State House Station  
Office: 242 State Street  
Augusta, Maine 04333  
Tel: (207) 287-4179 Fax: (207) 287-6775  
www.maine.gov/ethics

RECEIVED  
OCT 28 2006  
COMMISSION ON GOVERNMENTAL ETHICS & ELECTION PRACTICES-AUGUSTA, ME

CAMPAIGN FINANCE REPORT  
OF 2006 INDEPENDENT EXPENDITURES

Name of Person/Committee Making Expenditure(s) MAINE DEMOCRATIC PARTY  
Mailing Address 16 WINDROP STREET  
City, Zip Code AUGUSTA 04330 Telephone 622-6233

INSTRUCTIONS

Complete the notarized affidavit and attached schedules. Please check the appropriate box for the report you are filing. Please see previous page for reporting requirements.

INDEPENDENT EXPENDITURES OF MORE THAN \$250 PER CANDIDATE

Independent expenditures of more than \$250 per candidate must be reported to the Commission within 24 hours of making the expenditure. Please be aware that under the Commission's Rules making an expenditure includes placing an order for a good or service or making a promise or agreement that a payment will be made.

Report of Independent Expenditure over \$250

INDEPENDENT EXPENDITURES OF MORE THAN \$100 AND UP TO \$250 PER CANDIDATE

Reporting Period		Filing Deadline	General Election	
Reporting Period	Filing Deadline	Reporting Period	Filing Deadline	
<input type="checkbox"/> Through June 1	June 1	<input type="checkbox"/> June 14 - July 5	July 15	
<input type="checkbox"/> After June 1	Within 24 Hours	<input type="checkbox"/> July 6 - Sept. 30	October 10	
		<input type="checkbox"/> October 1 - 26	October 26	
		<input checked="" type="checkbox"/> After October 26	Within 24 Hours	

OTHER

- Amendment to Earlier Report Dated: \_\_\_\_\_
- Other (specify): \_\_\_\_\_

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

*[Signature]*  
Signature of PAC or Party Treasurer, or  
Other Person Making Expenditure(s)

10/28/2006  
Date

**STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES**

**Mail: 135 State House Station  
Office: 242 State Street  
Augusta, Maine 04333  
Tel: (207) 287-4179 Fax: (207) 287-6775  
Web site: www.maine.gov/ethics**

**INDEPENDENT EXPENDITURES**

**AFFIDAVIT**

STATE OF MAINE  
COUNTY OF KENNEBEC

BENJAMIN DUDLEY, being duly sworn, attests that he/she made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, the candidates named in the report or the authorized committees or agents of the candidates.

Benjamin Dudley  
(Signature of Affiant)

Sworn to before me, this 28<sup>th</sup> day of October, 2006.

Timothy J. Foley Not. Com. Exp. 7-10-09  
(Notary Public, Attorney at Law)  
Timothy J. Foley



Schedule B-IE-2

PAYMENTS AND OBLIGATIONS

- Please indicate the date, payee, expenditure type, and amount of each expenditure.
- If you are reporting an agreement or obligation to make a future payment, please check (✓) the box next to the purpose of the expenditure.

Date		Payee Name and Address		Expenditure Type	✓	Amount
10/27		CURJO BEYCHOK JOHNSON	353 Napoleon St. Baton Rouge, LA 70802	LIT		4,179
10/27		"	"	LIT		2,900
10/27		"	"	LIT		3,755
A. Expenditures for this page =>						10,834
B. Total for all other Schedule B-IE-2 pages (if any) =>						
C. Total independent expenditures for this reporting period (A+B) =>						\$10,834.00

10/31/2006 18:04

2072876775

ETHICS COMMISSION

PAGE 01/07

01/18/1994 08:55

207-622-2657

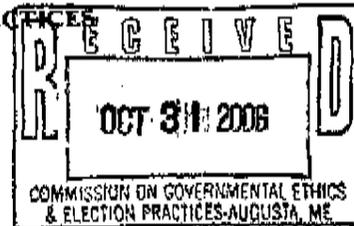
ME. DEM. PARTY

PAGE 01

1.E.# 71

STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station  
Office: 242 State Street  
Augusta, Maine 04333  
Tel: (207) 287-4179 Fax: (207) 287-6775  
www.maine.gov/ethics



CAMPAIGN FINANCE REPORT  
OF 2006 INDEPENDENT EXPENDITURES

Name of Person/Committee Making Expenditure(s) MAINE DEMOCRATIC PARTY  
Mailing Address 16 WINDREP STREET  
City, Zip Code AUGUSTA 04430 Telephone 622-6233

INSTRUCTIONS

Complete the notarized affidavit and attached schedules. Please check the appropriate box for the report you are filing. Please see previous page for reporting requirements.

INDEPENDENT EXPENDITURES OF MORE THAN \$250 PER CANDIDATE

Independent expenditures of more than \$250 per candidate must be reported to the Commission within 24 hours of making the expenditure. Please be aware that under the Commission's Rules making an expenditure includes placing an order for a good or service or making a promise or agreement that a payment will be made.

Report of Independent Expenditure over \$250

INDEPENDENT EXPENDITURES OF MORE THAN \$100 AND UP TO \$250 PER CANDIDATE

Primary Election		General Election	
Reporting Period	Filing Deadline	Reporting Period	Filing Deadline
<input type="checkbox"/> Through June 1	June 1	<input type="checkbox"/> June 14 - July 5	July 15
<input type="checkbox"/> After June 1	Within 24 Hours	<input type="checkbox"/> July 6 - Sept. 30	October 10
		<input type="checkbox"/> October 1 - 26	October 26
		<input checked="" type="checkbox"/> After October 26	Within 24 Hours

OTHER

Amendment to Earlier Report Dated: \_\_\_\_\_  
 Other(specify): \_\_\_\_\_

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

Big J. Dudley  
Signature of PAC or Party Treasurer, or  
Other Person Making Expenditure(s)  
Form 12 (Rev. 1/06)

10/31/2006  
Date

STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station  
Office: 242 State Street  
Augusta, Maine 04333  
Tel: (207) 287-4179 Fax: (207) 287-6775  
Web site: www.maine.gov/ethics

INDEPENDENT EXPENDITURES

AFFIDAVIT

STATE OF MAINE  
COUNTY OF KENNEBEC

BENJAMIN DUDLEY, being duly sworn, attests that he/she made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, the candidates named in the report or the authorized committees or agents of the candidates.

Ben Dudley  
(Signature of Affiant)

Sworn to before me, this 31<sup>st</sup> day of October 2006.

Timothy J. Feeley N.A. Com. Exp. 7-10-09  
(Notary Public, Attorney at Law)  
Timothy J. Feeley



Schedule B-IE-2

PAYMENTS AND OBLIGATIONS

- Please indicate the date, payee, expenditure type, and amount of each expenditure.
- If you are reporting an agreement or obligation to make a future payment, please check (✓) the box next to the purpose of the expenditure.

Expenditure Types				
LIT	Printed materials (including graphics)	PRT	Print media ads	
MPS	Postage (including postage meter)	RAD	Radio ads, production costs	
PHD	Telephone calls	TVN	TV or cable ads, production costs	
POL	Political survey	WEB	Internet and e-mail	
POS	Postage	OTH	Other (include description)	
Date of expenditure	Payee, address, zip code	Expenditure Type	✓	Amount
10/31	US Postmaster	POS		1121.40
10/30	CURSO, BEYCHOE JOHNSON 352 NAPOLEON ST BATON ROUGE, LA 70802	LIT		5742 <sup>00</sup>
10/30	" "	LIT		6154 <sup>00</sup>
10/30	" "	LIT		5146 <sup>00</sup>
A. Expenditures for this page =>				18,163.40
B. Total for all other Schedule B-IE-2 pages (if any) =>				
C. Total independent expenditures for this reporting period (A+B) =>				18,163.40

SS #1

Schedule B-IE-3

EXPENDITURE DETAILS

For reports filed after June 4, 2006 for the primary election, or filed after October 30, 2006 for the general election, the following information must be provided.

1. The date on which the person making the expenditure placed the order with the vendor for the goods or services	10/30
2. The approximate date when the vendor began providing design or any other services in connection with the expenditure	9/27
3. The date on which the person making the expenditure first learned of the total amount of the expenditure	10/30
4. A statement why the expenditure could not be reported by the eighth day before the election	Made decision to re-print previous piece

10/31/2006 18:04 2072876775  
01/18/1994 08:55 207-622-2657

ETHICS COMMISSION  
ME. DEM. PARTY

PAGE 06/07  
PAGE 06

Page \_\_\_ of \_\_\_  
(Schedule B-IE-3 only)

SS#21

Schedule B-IE-3

EXPENDITURE DETAILS

- For reports filed after June 5, 2006 for the primary election, or filed after October 30, 2006 for the general election, the following information must be provided.

1. The date on which the person making the expenditure placed the order with the vendor for the goods or services	10/30
2. The approximate date when the vendor began providing design or any other services in connection with the expenditure	10/29
3. The date on which the person making the expenditure first learned of the total amount of the expenditure	10/30
4. A statement why the expenditure could not be reported by the eighth day before the election	LATE DESIGN. NOT APPROVED w/corrections until 30th

10/31/2006 18:04 2072876775

ETHICS COMMISSION

PAGE 07

01/18/1994 08:55 207-522-2657

ME. DEM. PARTY

Page \_\_\_ of \_\_\_  
(Schedule B-IE-3 only)

SS# 32

Schedule B-IE-3

EXPENDITURE DETAILS

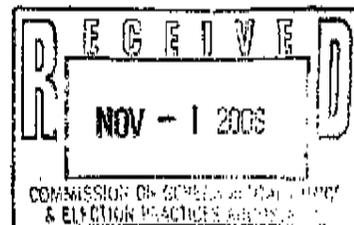
\* For reports filed after June 5, 2006 for the primary election, or filed after October 30, 2006 for the general election, the following information must be provided.

1. The date on which the person making the expenditure placed the order with the vendor for the goods or services	10/30
2. The approximate date when the vendor began providing design or any other services in connection with the expenditure	10/25
3. The date on which the person making the expenditure first learned of the total amount of the expenditure	10/30
4. A statement why the expenditure could not be reported by the eighth day before the election	Changes not complete until 10/30

1E#84

STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station  
Office: 242 State Street  
Augusta, Maine 04333  
Tel: (207) 287-4179 Fax: (207) 287-6775  
www.maine.gov/ethics



CAMPAIGN FINANCE REPORT  
OF 2006 INDEPENDENT EXPENDITURES

Name of Person/Committee Making Expenditure(s) Maine Democratic Party  
Mailing Address 16 Winthrop St.  
City, Zip Code Augusta 04330 Telephone \_\_\_\_\_

INSTRUCTIONS

Complete the notarized affidavit and attached schedules. Please check the appropriate box for the report you are filing. Please see previous page for reporting requirements.

INDEPENDENT EXPENDITURES OF MORE THAN \$250 PER CANDIDATE

Independent expenditures of more than \$250 per candidate must be reported to the Commission within 24 hours of making the expenditure. Please be aware that under the Commission's Rules making an expenditure includes placing an order for a good or service or making a promise or agreement that a payment will be made.

Report of Independent Expenditure over \$250

INDEPENDENT EXPENDITURES OF MORE THAN \$100 AND UP TO \$250 PER CANDIDATE

Primary Election		General Election	
Reporting Period	Filing Deadline	Reporting Period	Filing Deadline
<input type="checkbox"/> Through June 1	June 1	<input type="checkbox"/> June 14 - July 5	July 15
<input type="checkbox"/> After June 1	Within 24 Hours	<input type="checkbox"/> July 6 - Sept. 30	October 10
		<input type="checkbox"/> October 1 - 26	October 26
		<input checked="" type="checkbox"/> After October 26	Within 24 Hours

OTHER

- Amendment to Earlier Report Dated: \_\_\_\_\_
- Other(specify): \_\_\_\_\_

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

[Signature]  
Signature of PAC or Party Treasurer, or  
Other Person Making Expenditure(s)  
Form 17 (Rev. 7/06)

11/1/2006  
Date

STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station  
Office: 242 State Street  
Augusta, Maine 04333  
Tel: (207) 287-4179 Fax: (207) 287-6775  
Web site: www.maine.gov/ethics

INDEPENDENT EXPENDITURES

AFFIDAVIT

STATE OF Maine  
COUNTY OF Kennebec

Benjamin Dudley being duly sworn, attests that he/she made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, the candidates named in the report or the authorized committees or agents of the candidates.

Benjamin Dudley  
(Signature of Affiant)

Sworn to before me, this 1st day of November 2006.

Deborah C. Friedman  
(Notary Public/Attorney at Law)

Deborah C. Friedman  
Bar # 3353

**Schedule B-IE-2**

**PAYMENTS AND OBLIGATIONS**

- Please indicate the date, payee, expenditure type, and amount of each expenditure.
- If you are reporting an agreement or obligation to make a future payment, please check (✓) the box next to the purpose of the expenditure.

Expenditure Types			
LIT	Campaign literature (printing and graphics)	PRT	Print media ads
MHS	Mail house (all services purchased)	RAD	Radio ads, production costs
PHO	Phone banks, automated telephone calls	TVN	TV or cable ads, production costs
POL	Polling and research survey	WEB	Internet and e-mail
POS	Postage for U.S. Mail	OTH	Other (include description)

Date of expenditure	Payee, address, zip code	Expenditure Type	✓	Amount
11/1	US Postmaster Portland 04101	POS		7568.78
A. Expenditures for this page ⇒				7568.78
B. Total for all other Schedule B-IE-2 pages (if any) ⇒				
C. Total independent expenditures for this reporting period (A+B) ⇒				7568.78



Schedule B-IE-3

EXPENDITURE DETAILS

- For reports filed after June 5, 2006 for the primary election, or filed after October 30, 2006 for the general election, the following information must be provided.

1. The date on which the person making the expenditure placed the order with the vendor for the goods or services	11/1
2. The approximate date when the vendor began providing design or any other services in connection with the expenditure	11/1
3. The date on which the person making the expenditure first learned of the total amount of the expenditure	11/1
4. A statement why the expenditure could not be reported by the eighth day before the election	Postage amount became known on 11/6.

# Exhibit #10



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

To: Commission Members  
From: Jonathan Wayne, Executive Director  
Date: February 7, 2007  
Re: Staff Response to February 5 Letter by Nancy Bessey's Counsel

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The Commission received a letter dated February 5, 2007 from attorney Dan Billings relating to Nancy Bessey's late filing of her 101% Report. Under the Maine Clean Election Act (MCEA), a privately financed candidate who has a MCEA opponent is required to file a 101% Report when his receipts or expenditures for the general election exceeded \$4,406 (101% of the amount paid to the MCEA opponent). That report is necessary to determine whether the MCEA opponent is due to receive any matching funds.

In a January 22 letter to Ms. Bessey, the Commission staff found that she had filed the report eight days late on October 31<sup>st</sup>. The staff was inclined to recommend a penalty of \$4,581.18, which is 75% of the maximum penalty.

The Commission staff recognizes that the February 5 letter does raise legitimate points on behalf of the candidate which deserve your consideration. Nevertheless, we believe a significant penalty should be assessed against Ms. Bessey for the reasons listed in our January 22 letter.

Most importantly, based on the statutory reporting requirements that were clearly explained to Ms. Bessey in writing, Ms. Bessey's opponent, Timothy Carter, was delayed in receiving \$2,156.30 in matching funds. While most of this amount was delayed by only 3-5 days, the delay was significant for Mr. Carter. That makes Ms. Bessey's late filing more than a technical violation. It was a violation with an impact in a tight election race.

The closeness of the race is relevant. Mr. Carter won by a margin of only 57 votes. Mr. Billings is correct that the delay in Mr. Carter's receipt of matching funds did not cost him the election, but that is an after-the-fact justification. At the time Ms. Bessey's lateness delayed the payment of matching funds to her opponent, the outcome of the election was still very much in doubt.

**The staff recommends that you hear Ms. Bessey's testimony at the February 14<sup>th</sup> meeting and you make a judgment about what penalty amount is fair. Without the benefit of her testimony, we believe the penalty should be at least \$1,527.04 (25% of the maximum penalty).**

The Commission staff acknowledges the following points made by Ms. Bessey through her counsel:

- Mr. Billings states that if Ms. Bessey's expenditures alone triggered matching funds, she did not exceed the 101% amount (\$4,406) until October 31. That is relevant, because the goods and services purchased by Ms. Bessey did not "put her ahead" of Mr. Carter's expenditures until the last two days before the election. Nevertheless, matching funds are not based solely on what an opponent spends, but also on what the opponent receives.
- Ms. Bessey's total expenditures for the campaign were \$7,592. You may feel that the originally recommended penalty of \$4,581.18 was disproportionate to her total amount of campaign activity.
- Ms. Bessey was a first-time candidate, although in the 2006 Republican primary election she was a privately financed candidate running against a MCEA candidate. So, she should have been aware of the filing requirements.

We would urge you not to take at face value the statement that Ms. Bessey believed that the duty to file the 101% Report was triggered only by her total expenditures (and not by the contributions and loans received by the campaign). We recommend that you hear the candidate's testimony directly before accepting that statement.

Ms. Bessey saw – or had an opportunity to see – a number of written explanations that the requirement to file the 101% Report was triggered either by her receipts or her expenditures, whichever was greater (see highlighted language below):

- The Commission mailed Ms. Bessey an August 18, 2006 letter explaining the 101% Report requirement. It stated: "If you **raise**, or spend and obligate, more than 1% in excess of ...."
- Four copies of the 101% Report form were enclosed with the August 18 letter. (The same form can be used both for the 101% Report and the three required accelerated reports.) The instructions for the reporting form states: "Any privately financed candidate ... who **receives**, or spends and obligates, more than 1% in excess of ...."
- The reporting form itself clearly asks the candidate to report both "Total **Receipts** for the General Election" as well as total expenditures. Why would the form request the candidate's total receipts if the information was not relevant for the payment of matching funds?
- Ms. Bessey filed similar forms in connection with the 2006 Republican primary election because she ran against a MCEA candidate in the primary. That was an opportunity to understand the special reporting requirements for privately financed candidates with a MCEA opponent.

- On October 13<sup>th</sup>, Ms. Bessey signed an affidavit (regrettably false) stating “Nancy J. Bessey, being duly sworn, attests that his or her campaign has not **received**, and has not spent or obligated ...”
- The 2006 Candidate Guidebook states on page 73 that “The report must be filed within 48 hours of the date on which their **total receipts** for the election – or the total of their expenditures and obligations for the election – exceeded the 101% Amount.”

Candidate Registrar Sandy Thompson regularly advised privately financed candidates by telephone that the 101% Report was based on the candidate’s receipts (including in-kind contributions) or expenditures (including in-kind contributions) whichever was greater. She presumes her advice to Ms. Bessey was similar, although she does not remember her specific advice to Ms. Bessey prior to November 2 when it was discovered that Ms. Bessey was late. Also, the Maine Republican Party staff was a possible resource for Ms. Bessey.

It is difficult for the Commission staff to make a judgment about what Ms. Bessey actually understood was her reporting requirement. Nevertheless, she had ample written notice that her opponent’s matching funds were based both on her reported receipts and on her reported expenditures.

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**MARDEN, DUBORD,  
BERNIER & STEVENS**

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ATTORNEYS AT LAW

WILLIAM P. DUBORD  
ALTON C. STEVENS  
J. WILLIAM DRUARY, JR.  
ROBERT M. MARDEN  
DAVID E. BERNIER  
DANIEL I. BILLINGS  
DANIEL W. MARRA

44 ELM STREET  
P.O. BOX 708  
WATERVILLE, ME 04903-0708

(207) 873-0186  
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<http://www.maine-lawfirm.com>

ALBERT L. BERNIER  
(RETIRED)  
F. HAROLD DUBORD  
(1891-1964)  
RICHARD J. DUBORD  
(1921-1970)  
HAROLD C. MARDEN  
(1900-1994)  
ROBERT A. MARDEN  
(RETIRED)

February 5, 2007

Jonathan Wayne, Executive Director  
State of Maine Commission on Governmental Ethics & Election Practices  
135 State House Station  
Augusta, Maine 04333-0135

**RE: Nancy Bessey 101% Report**

Dear Jonathan:

I am writing on behalf of Nancy Bessey in response to your letter of January 22, 2007 concerning the late filing of her 101% Report. I have reviewed your letter and the accompanying documents with Ms. Bessey and, though we find no errors in your understanding of the facts, we do believe that there are additional facts that should be considered by the Commission and the Commission staff before a determination of an appropriate penalty is made.

**Additional Facts**

It is important to note that the late filing of the 101% report was due to the receipts received by the campaign and not due to expenditures made by the campaign. This is significant because Ms. Bessey's campaign was primarily self-funded. Of the total receipts for the general election, over 75% were from loans, cash contributions, or in-kind contributions from Ms. Bessey. Due to her self-funding of the campaign, if Ms. Bessey had a better understanding of the reporting requirements and what triggered matching funds, she could have easily delayed her loans to her campaign and avoided any late filing. This is illustrated by a review of the campaign's receipts and expenditures.

On October 6, 2006, Ms. Bessey loaned \$1500.00 to her campaign. She did this because she anticipated making expenditures later in the month and she did not want to spend money on her campaign before she had the money in her campaign account. She could have delayed making this transfer to her campaign account until she had to make payment for any campaign expenditures.

Jonathan Wayne, Executive Director  
February 5, 2007  
Page 2

On October 11, 2006, Ms. Bessey's campaign received a \$250.00 contribution and on October 21, 2006, the campaign received another \$250.00 contribution. The second contribution on October 21, 2006 put the campaign's receipts over the 101% amount which triggered the filing of the 101% report. However, at that time, the campaign had spent less than the amount which triggered reporting due to expenditures. Ms. Bessey's failure to file the 101% report was because she was focused on the amount that her campaign had spent and did not understand that reporting was also triggered by receipts, including contributions and loans from the candidate.

It was not until October 31, 2006 that the campaign spent more than 101% of the MCEA general election amount for House candidates. When the campaign exceeded the 101% amount for expenditures, the 101% report was immediately faxed to the Commission. Ms. Bessey filed the report as soon as she received a quote on a mailing that she intended to have done later in the week. As soon as she realized that the cost of the mailing would cause her expenditures to exceed 101%, she filed the report. I think the fact that Ms. Bessey immediately filed the 101% report when she first believed reporting was triggered, and did not delay it 48 hours as allowed by the law, illustrates that Ms. Bessey was acting in good faith in attempting to report properly and was not acting in a way intended to delay matching funds as long as possible.

If Ms. Bessey had consulted with me before loaning money to her campaign, I would have advised her not to loan any money to her campaign until she needed the money to pay for campaign expenditures. If she dealt with her campaign finances in that manner, she could have legally made the same campaign expenditures at the same times as she did in her campaign, but the 101% report would not have been due until November 2, 2006 and no matching funds would have been triggered until that time. This is significant because it shows that if Ms. Bessey had been trying to manipulate the Clean Elections system to delay the triggering of matching funds, she could have done so legally. Her actions were the result of a first time candidate failing to fully understand the reporting requirements and the matching fund system.

It is also a significant fact that Ms. Bessey was in contact with Commission staff regularly during the campaign to seek assistance in meeting her reporting requirements. This is further evidence of her good faith efforts to comply with the law.

#### Waiver of Penalty

21-A M.R.S.A. § 1020-A(2) allows the Commission to "waive a penalty if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure." In this case, all of the factors which justify waiver of a penalty apply.

The penalty of \$4581.18 recommended by the Commission staff is disproportionate to the size of the candidate's campaign. The proposed penalty is equally to 58% of the campaign's total receipts for the general election and is greater than general election

Jonathan Wayne, Executive Director  
February 5, 2007  
Page 3

authorization for Maine Clean Election candidates. Such a large penalty could also discourage people from running for the legislature in the future if an innocent error resulting in a reporting delay of only 8 days results in such a large fine.

The penalty is also disproportionate based on Ms. Bessey's level of experience. She was a first time candidate who was unfamiliar with the reporting requirements. As illustrated by her regular contact with Commission staff, she made a good faith effort to comply with the law and the late report was simply due to her lack of experience and her misunderstanding of the reporting requirements.

The penalty is also disproportionate because no harm was suffered by the public from the late reporting. This is illustrated by the fact, as described above, that Ms. Bessey could have legally delayed reporting simply by delaying when she loaned money to her campaign. If she acted as someone experienced and knowledgeable about the matching funds provisions of the Maine Clean Elections Act would have advised, she could have made all the same campaign expenditures without being required to file the 101% report until November 2, 2006 - two days after the date when it was actually filed. Her violation is a technical one that could have been avoided without any substantive change to the manner in which her campaign was conducted.

Furthermore, there was no harm to the public because all the campaign's contributions were disclosed as required before the election. All of the matching funds triggered were distributed to Mr. Carter before the election and he spent all the available funds. Mr. Carter was also successful in winning the election. This is not a situation where the delay in authorization of matching funds theoretically changed the outcome of the election.

I thank you for taking this information into consideration. I will be in attendance with Ms. Bessey at the Commission's February 14<sup>th</sup> meeting and we will be glad to answer any questions or provide any additional information at that time.

Very truly yours,



Daniel I. Billings  
e-mail: [dbillings@gwi.net](mailto:dbillings@gwi.net)

C.C.: Nancy Bessey



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

January 22, 2007

Ms. Nancy J. Bessey  
P.O. Box 169  
Rangeley, ME 04970

Dear Ms. Bessey:

This is to follow up on Sandy Thompson's November 27, 2006 letter regarding the penalty for the late filing of your 101% Report. The Commission will consider this matter at its meeting on February 14<sup>th</sup>. Based on the information available to it now, the Commission staff is recommending a penalty of \$4,581.18. **You are invited to respond to the recommended penalty by submitting a written response no later than Monday, February 5 and by appearing at the February 14<sup>th</sup> meeting.** In addition, if you believe that our understanding of the facts of the situation is mistaken, we urge you to contact us as soon as possible and we will consider whether to change our recommendation.

As was noted in the November 27 letter, because you were a privately financed candidate with a Maine Clean election Act opponent you were required under 21-A M.R.S.A. §1017(3-B)(A) to file a 101% Report within 48 hours of when your cash receipts for the general election exceeded \$4,406 (101% of the general election distribution amount for House candidates). Based on the transactions included in your campaign finance reports, the Commission staff has concluded that your receipts exceeded the \$4,406 amount on October 21, 2006 and that the report was due on October 23, 2006. Instead, the report was filed eight days later on October 31<sup>st</sup>.

The penalty for filing an accelerated report late is set forth in 21-A M.R.S.A. §1020-A(4-A) (last paragraph). Upon further review of that provision, the staff has determined that the maximum amount for the violation is \$6,108.24, and not \$5,052.24 as stated in our November 27 letter. We apologize for the wrong amount in our last correspondence. Please refer to the enclosed penalty matrix for more details on how the maximum penalty is computed.

After considering the factual circumstances of this matter, the staff of the Commission will recommend that the Commission assess a penalty of \$4,581.18, which is 75% of the maximum amount. That recommendation takes the following points into consideration:

- If you had filed the 101% Report on October 23<sup>rd</sup> as required by the Election Law, the Commission would have been advised of the contributions and loans your campaign received for the general election. This would have allowed the Commission to pay matching funds to your opponent, Timothy Carter, in a timely way. Instead, the Commission did not know of your receipts for the general election until October 31<sup>st</sup>.

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)

Ms. Nancy J. Bessey

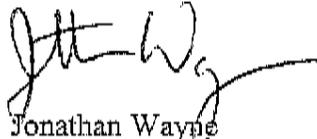
- 2 -

January 22, 2007

- The delay of the matching funds to your opponent was at a critical period before the election. If your report had been filed on time, Mr. Carter's first authorization of \$558.60 in matching funds would have been on October 24, which was two weeks before the election. Instead, his first authorization occurred on November 1, which was six days before the election.
- In total, Mr. Carter was delayed in receiving \$2,156.30 in matching funds because of your late 101% Report. This is a significant amount in a race for the Maine House of Representatives. The first authorization of \$558.60 was delayed by 7 - 8 days. He was delayed in receiving two subsequent authorizations of matching funds by 3 - 5 days: a payment of \$1,489.70 (based on an independent expenditure in support of you by the Maine Republican Party) and a payment of \$108.00 (based on the House Democratic Campaign Committee's retraction of an independent expenditure on behalf of Mr. Carter).
- Our analysis of your campaign's cash flow shows that the following contributions and loans from you were used to pay for general election expenditures: (1) the \$941.51 contribution on July 5, 2006; (2) your two loans totaling \$1,800; and (3) your \$2,000 loan on November 15, 2006, which was needed to pay for the \$2,462.33 debt (later amended to \$2,243.34) reported on October 31, 2006.
- The outcome of your election was quite close. Mr. Carter won by a margin of 57 votes.
- On October 27, 2006 you filed an affidavit stating that your campaign had not received \$4,406 or more for the general election. That affidavit does not appear to be accurate.

Please feel free to telephone me at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne  
Executive Director

cc: Daniel I. Billings, Esq.  
Timothy Carter  
Karen Olivieri, Treasurer

**COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES**  
**PENALTY MATRIX FOR LATE 101% AMOUNT & ACCELERATED REPORT**  
**FILINGS**

**BASIS FOR PENALTIES 21-A M.R.S.A. SECTION 1020-A(4)**

The penalty for late filing of an accelerated report is equivalent to but not more than 3 times the amount by which the contributions received or expenditures obligated or made, whichever is greater, exceed the applicable Maine Clean Election Fund payment per day of violation, multiplied by the number of calendar days the report is filed late.

MCEA PAYMENT	PRIMARY	GENERAL
House	\$1,504	\$4,362
Senate	\$7,746	\$20,082

A penalty begins to accrue at 5:00 p.m. on the day the report is due.

*Example:* The treasurer files the accelerated report two days late. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures (made and obligated). The MCEA amount is \$1,504. The difference between \$2,500 contributions (greater than \$1,500 in expenditures) and the MCEA payment amount is: \$996

<u>\$2,500</u>	Greater amount of the total contributions received or expenditures made during the filing period
- <u>\$1,504</u>	Applicable MCEA Payment Amount
<u>\$996</u>	Difference
<u>X 3</u>	No more than 3 times the per day
<u>\$2,988</u>	Maximum amount per day
<u>X 2</u>	Number of calendar days late
<u>\$5,976</u>	<b>Total maximum penalty</b>

Your penalty is calculated as follows:

*Bessy*

Contributions/Expenditures: (Greater amount)	\$ <u>4,616.51</u>
Minus MCEA Amount:	\$ <u>4,362.00</u>
Difference:	\$ <u>254.51</u>
Multiplied by 3 =:	\$ <u>763.53</u>
Multiplied by number of days late:	\$ <u>8</u>
<b>Total maximum penalty:</b>	\$ <u>6,108.24</u>

Any penalty of less than \$5 is waived.

Waiver of a penalty does not nullify the finding of a violation.

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

## Nancy Bessey Analysis of Receipts and Expenditures

Date: 1/18/2007

### RECEIPTS

(and In-Kind

Contributions)

		Total to Date	
Cash Balance on 6/13/2006		\$0.00	
6/14 - 7/18	\$941.51	\$941.51	
8-Aug	\$250.00	\$1,191.51	
14-Aug	\$300.00	\$1,491.51	Loan by Candidate
1-Sep	\$250.00	\$1,741.51	
6-Sep	\$150.00	\$1,891.51	
7-Sep	\$250.00	\$2,141.51	
12-Sep	\$250.00	\$2,391.51	
12-Sep	\$100.00	\$2,491.51	
6-Oct	\$125.00	\$2,616.51	
6-Oct	\$1,500.00	\$4,116.51	Loan by Candidate
11-Oct	\$250.00	\$4,366.51	
21-Oct	\$250.00	\$4,616.51	Date 101% Amount Exceeded
31-Oct	\$38.00	\$4,654.51	In-kind
1-Nov	\$99.00	\$4,753.51	In-kind
5-Nov	\$977.10	\$5,730.61	24-Hour Report filed; reported as in-kind on 11-8.
8-Nov	\$185.00	\$5,915.61	In-kind
15-Nov	\$2,000.00		Loan by Candidate
		\$7,915.61	Total for General Election

### EXPENDITURES

(and In-Kind

Contributions)

		Total to date	
6/14 - 7/18		\$0.00	\$0.00
21-Jul	\$15.75	\$15.75	
7-Aug	\$35.78	\$51.53	
7-Aug	\$307.44	\$358.97	
7-Aug	\$241.08	\$600.05	
8-Aug	\$84.00	\$684.05	
14-Aug	\$223.13	\$907.18	
12-Sep	\$235.41	\$1,142.59	
12-Sep	\$527.63	\$1,670.22	
10-Oct	\$649.44	\$2,319.66	
10-Oct	\$1,178.38	\$3,498.04	
17-Oct	\$435.75	\$3,933.79	
31-Oct	\$38.00	\$3,971.79	In-kind contribution
31-Oct	\$2,244.33	\$6,216.12	101% Report filed with reported \$2,462.33 (actual amt \$2,244.33) as a debt; reported as expenditure on 11/16. Exceeded 101% amount for expenditures.
1-Nov	\$99.00	\$6,315.12	In-kind contribution
5-Nov	\$977.10	\$7,292.22	24-Hour Report filed; reported as in-kind contribution on 11-8.
8-Nov	\$185.00	\$7,477.22	In-kind contribution
9-Nov	\$356.93		
		\$7,834.15	Total for General Election



**Nancy Bessey Cash Flow**

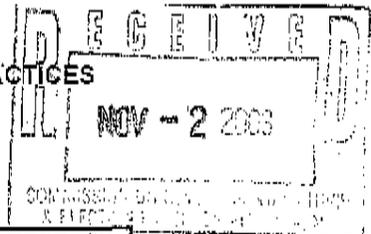
House 91

Date: 01/18/2007

	Contributions or Expenditures- Noted with (-)	Campaign Balance To Date	Notes
Cash Balance on 6/13/2006	\$0.00	\$0.00	
3-Jul	\$1,058.49	\$1,058.49	
5-Jul	\$941.51	\$2,000.00	
10-Jul	-\$1,058.49	\$941.51	For calculations of 101% amount, only \$941.51 was used because \$1,058.49 was for the primary election.
21-Jul	-\$15.75	\$925.76	Starting on July 21, 2206, the \$941.51 was used to pay expenses for the general election.
7-Aug	-\$35.78	\$889.98	
7-Aug	-\$307.44	\$582.54	
7-Aug	-\$241.08	\$341.46	
8-Aug	\$250.00	\$591.46	
8-Aug	-\$84.00	\$507.46	
14-Aug	\$300.00	\$807.46	Loan by candidate
14-Aug	-\$223.13	\$584.33	
1-Sep	\$250.00	\$834.33	
6-Sep	\$150.00	\$984.33	
7-Sep	\$250.00	\$1,234.33	
12-Sep	\$250.00	\$1,484.33	
12-Sep	\$100.00	\$1,584.33	
12-Sep	-\$235.41	\$1,348.92	
12-Sep	-\$527.63	\$821.29	
6-Oct	\$125.00	\$946.29	
6-Oct	\$1,500.00	\$2,446.29	Loan by candidate
10-Oct	-\$649.44	\$1,796.85	
10-Oct	-\$1,178.38	\$618.47	The cash balance on this date shows that \$1,181.53 of the \$1,800 loan amount was used to pay expenses.
11-Oct	\$250.00	\$868.47	
17-Oct	-\$435.75	\$432.72	
21-Oct	\$250.00	\$682.72	Date receipts exceeded 101% Amount of \$4,406.
31-Oct	\$38.00	\$682.72	In-kind contribution by candidate.
31-Oct	-\$2,462.33	\$682.72	Debt reported in 101% Report. If paid, cash balance is -\$1,779.61.
1-Nov	\$99.00	\$682.72	In-kind contribution by candidate.
5-Nov	\$977.10	\$682.72	In-kind contribution by candidate.
8-Nov	\$185.00	\$682.72	In-kind contribution by candidate.
9-Nov	-\$356.93	\$325.79	If debt on 10-31 paid, cash balance is -\$2,136.54.
15-Nov	\$2,000.00	\$2,325.79	Loan by candidate
16-Nov	-\$2,243.34	\$82.45	Debt reported in 101% Report paid.
		\$82.45	Ending Balance

STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station  
Office: 242 State Street  
Augusta, Maine 04333-0135  
Tel: (207) 287-4179 FAX: (207) 287-6775

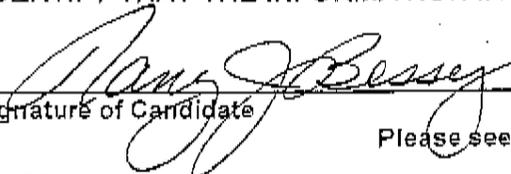


GENERAL ELECTION 2006  
ACCELERATED REPORT  
FOR PRIVATELY FINANCED LEGISLATIVE CANDIDATES  
WITH MCEA OPPONENTS

FAX REC'D  
10-31-06

PLEASE INDICATE TYPE OF REPORT	
<input type="checkbox"/> 42-DAY (Due 9/26)	<input type="checkbox"/> 21-DAY (Due 10/17)
<input type="checkbox"/> 12-DAY (Due 10/26)	<input checked="" type="checkbox"/> 101% (Due: See Reverse)
CANDIDATE INFORMATION	
Name of Candidate NANCY J. BESSEY	Telephone Number 864-9077
Mailing Address PO Box 169	Office Sought STATE REP.
City, Zip Code RANGELEY MAINE 04970	District 91
Name of Opposing MCEA Candidate(s)	
TOTAL RECEIPTS FOR THE GENERAL ELECTION	
Cash balance on June 13, 2006:	941.51
Total cash contributions received after June 13, 2006:	\$ 875.00
Total value of in-kind contributions received after June 13, 2006:	
Total loans received after June 13, 2006:	1800.00
Total bank interest received after June 13, 2006:	
TOTAL RECEIPTS:	4616.51
TOTAL EXPENDITURES FOR THE GENERAL ELECTION	
Total expenditures after June 13, 2006:	3933.79
Total value of in-kind contributions received after June 13, 2006:	
Total unpaid debts and obligations incurred after June 13, 2006:	2462.33
TOTAL EXPENDITURES:	6396.12

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

  
Signature of Candidate

10/31/06  
Date

Please see instructions on reverse side.

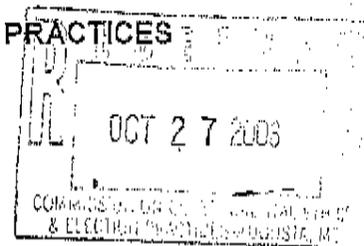
STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station

Office: 242 State Street

Augusta, Maine 04333

Tel: (207) 287-4179 Fax: (207) 287-6775



PRIVATELY FINANCED CANDIDATE ACCELERATED REPORT  
AFFIDAVIT FOR LEGISLATIVE CANDIDATES  
IN THE NOVEMBER 7, 2006 GENERAL ELECTION

FAX REC'D  
10/26/06

STATE OF MAINE

COUNTY OF FRANKLIN

NANCY J. BESSEY, being duly sworn, attests that his

or her campaign has not received, and has not spent or obligated:

Check the appropriate box for the office you are seeking.

- \$4,406 or more for the general election (House candidates only).
- \$20,083 or more for the general election (Senate candidates only).

Nancy Bessey  
(Signature of Affiant)

Sworn to before me, this 25<sup>th</sup> day of October 2006.

Deann M. Trafton  
(Notary Public/Attorney at Law)

DEANN M. TRAFTON  
Notary Public, Maine  
My Commission Expires January 6, 2013

	Republican	Democrat
FARMINGTON	1,539	1,985
INDUSTRY	209	217
<b>District 89 Total:</b>	<b>1,748</b>	<b>2,202</b>

**House District 90**

	COLLINS, MAXINE B. Wilton Democrat	SAVIELLO, THOMAS B. Wilton Independent
AVON	39	150
FREEMAN TWP.	27	140
NEW VINEYARD	65	268
PERKINS TWP.	3	15
PHILLIPS	90	338
STRONG	99	457
TEMPLE	99	184
WILTON	542	1,388
<b>District 90 Total:</b>	<b>964</b>	<b>2,940</b>

**House District 91**

	BESSEY, NANCY J. Dallas Plt. Republican	CARTER, TIMOTHY A. Bethel Democrat
ALBANY TWP.	84	122
BETHEL	519	773
COPLIN PLT.	0	0
DALLAS PLT.	123	66
EUSTIS	182	115
GILEAD	31	46
HANOVER	62	84
KINGFIELD	275	214
LINCOLN PLT.	17	6
MAGALLOWAY PLT.	8	6
MILTON TWP.	16	37
NEWRY	63	111
RANGELEY	409	165
STONEHAM	40	86
UPTON	29	16
WOODSTOCK	258	326
<b>District 91 Total:</b>	<b>2,116</b>	<b>2,173</b>

**House District 92**

	PATRICK, JOHN L. Rumford	SMITH, PAULA P. Andover
--	-----------------------------	----------------------------

## Title 21-A, §1017, Reports by candidates

H. Reports with respect to a candidate who seeks nomination by petition for the office of Governor must be filed on the same dates that reports must be filed with respect to a candidate who seeks that nomination by primary election. [1991, c. 839, §14 (amd); §34 (aff).]

[2005, c. 301, §13 (amd).]

### 3. Other candidates.

[1989, c. 504, §§13, 31 (rp).]

**3-A. Other candidates.** A treasurer of a candidate for state or county office other than the office of Governor shall file reports with the commission and municipal candidates shall file reports with the municipal clerk as follows. Once the first required report has been filed, each subsequent report must cover the period from the completion date of the prior report filed.

A. In any calendar year in which an election for the candidate's particular office is not scheduled, when any candidate or candidate's political committee has received contributions in excess of \$500 or made or authorized expenditures in excess of \$500, reports must be filed no later than 5 p.m. on July 15th of that year and January 15th of the following calendar year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report. [1991, c. 839, §15 (amd); §34 (aff).]

B. Reports must be filed no later than 5 p.m. on the 6th day before the date on which an election is held and must be complete as of the 12th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the completion date. [1991, c. 839, §15 (amd); §34 (aff).]

C. Contributions aggregating \$1,000 or more from any one contributor or single expenditures of \$1,000 or more, made after the 12th day before any election and more than 24 hours before 5 p.m. on the day of any election must be reported within 24 hours of those contributions or expenditures. [2005, c. 301, §14 (amd).]

D. Reports must be filed no later than 5 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date. [1991, c. 839, §15 (amd); §34 (aff).]

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$50 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of \$50 shall file reports semiannually with the commission within 15 days following the end of the 2nd and 4th quarters of the State's fiscal year, complete as of the last day of the quarter, until the surplus is disposed of or the deficit is liquidated. The first report under this paragraph is not required until the 15th day of the period beginning at least 90 days from the date of the election. The reports may either be filed in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section. [1991, c. 839, §15 (amd); §34 (aff).]

F. Reports with respect to a candidate who seeks nomination by petition must be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election. [1991, c. 839, §15 (amd); §34 (aff).]

[2005, c. 301, §14 (amd).]

**3-B. Accelerated reporting schedule.** Additional reports are required from nonparticipating Maine Clean Election Act candidates pursuant to this subsection.

A. In addition to other reports required by law, any candidate for Governor, State ~~Senate or State House of Representatives~~ who is not certified as a Maine Clean Election Act candidate under chapter 14 and who ~~receives, spends or obligates~~ more than 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate in the same race shall file by any means acceptable to the commission, within 48 hours of that event, a report with the commission detailing the candidate's total campaign contributions, obligations and expenditures to date. [2001, c. 470, §6 (new).]

B. A nonparticipating candidate with a Maine Clean Election Act opponent shall file the following additional reports detailing the candidate's total campaign contributions, obligations and expenditures to date, unless that candidate signs an affidavit by the date the report is due, attesting that the candidate has not received, spent or obligated an amount sufficient to require a report under paragraph A:

## Title 21-A, §1017, Reports by candidates

- (1) A report filed not later than 5 p.m. on the 42nd day before the date on which an election is held and complete as of the 44th day before that date;
- (2) A report filed no later than 5 p.m. on the 21st day before the date on which an election is held and complete as of the 23rd day before that date; and
- (3) A report filed no later than 5 p.m. on the 12th day before the date on which an election is held and complete as of the 14th day before that date.

[2001, c. 589, §1 (amd).]

C. A candidate who is required to file a report under paragraph A must file with the commission an updated report that reports single expenditures in the following amounts that are made after the 14th day before an election and more than 24 hours before 5:00 p.m. on the date of that election:

- (1) For a candidate for Governor, a single expenditure of \$1,000;
- (2) For a candidate for the state Senate, a single expenditure of \$750; and
- (3) For a candidate for the state House of Representatives, a single expenditure of \$500.

A report filed pursuant to this paragraph must be filed within 24 hours of the expenditure. [2003, c. 628, Pt. B, §3 (amd).]

The commission shall provide forms to facilitate compliance with this subsection. The commission shall notify a candidate within 48 hours if an amount reported on any report under paragraph B exceeds 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate in the same race and no report has been received under paragraph A.

[2003, c. 628, Pt. B, §3 (amd).]

**4. New candidate or nominee.** A candidate for nomination or a nominee chosen to fill a vacancy under chapter 5, subchapter III is subject to section 1013-A, subsection 1, except that the candidate shall register the name of a treasurer or political committee and all other information required in section 1013-A, subsection 1, paragraphs A and B within 7 days after the candidate's appointment or at least 6 days before the election, whichever is earlier. The person required to file a report under section 1013-A, subsection 1 shall file a campaign report under this section 15 days after the candidate's appointment or 6 days before the election, whichever is earlier. The report must include all contributions received and expenditures made through the completion date. The report must be complete as of 4 days before the report is due. Subsequent reports must be filed on the schedule set forth in this section. The commission shall send notification of this requirement and registration and report forms to the candidate and the candidate's treasurer immediately upon notice of the candidate's and treasurer's appointments.

[1991, c. 839, §16 (amd).]

**5. Content.** A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name of each payee and creditor. Total contributions with respect to an election of less than \$500 and total expenditures of less than \$500 need not be itemized. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A. Until December 31, 1992, the candidate is responsible for the timely and accurate filing of each required report. Beginning January 1, 1993, the candidate and the treasurer are jointly responsible for the timely and accurate filing of each required report.

[1991, c. 839, §17 (amd).]

**5-A. Valuation of contributions sold at auction.** Any contribution received by a candidate that is later sold at auction shall be reported in the following manner.

A. If the contribution is sold at auction before the commencement of the appropriate reporting period specified in subsections 1 to 4, or during that period, the value of the contribution is deemed to be the amount of the purchase price paid at auction. [1987, c. 726, §2 (new).]

B. If the contribution is sold after the termination of the appropriate reporting period specified in subsections 1 to 4, the value of the contribution is the difference between the value of the contribution as originally reported by the treasurer and the amount of the

## Title 21-A, §1020-A, Failure to file on time

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### §1020-A. Failure to file on time

**1. Registration.** A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

[1995, c. 483, §15 (new).]

**2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission before 5 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (amd).]

B. An error by the commission staff; [1999, c. 729, §5 (amd).]

C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (amd).]

D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service. [1999, c. 729, §5 (new).]

[2003, c. 628, Pt. A, §3 (amd).]

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

[1995, c. 625, Pt. B, §5 (amd).]

#### **4. Basis for penalties.**

[2001, c. 470, §7 (amd); T. 21-A, §1020-A, sub-§4 (rp).]

**4-A. Basis for penalties.** The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, 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%; [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

## Title 21-A, §1020-A, Failure to file on time

C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

Any penalty of less than \$5 is waived.

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

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

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

The penalty for late filing of an accelerated campaign finance report as required in section 1017, subsection 3-B may be up to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation. The commission shall make a finding of fact establishing when the report was due prior to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2.

[2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

### 5. Maximum penalties.

[2001, c. 470, §8 (amd); T. 21-A, §1020-A, sub-§5 (rp).]

#### 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 or F; section 1017, subsection 4; and section 1019-B, subsection 3; [2003, c. 448, §4 (amd).]

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E; [2003, c. 628, Pt. A, §4 (amd).]

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; [2003, c. 628, Pt. A, §4 (amd).]

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B; or [2003, c. 628, Pt. A, §4 (amd).]

E. Three times the unreported amount for reports required under section 1017, subsection 3-B, if the unreported amount is less than \$5,000 and the commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report. [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

[2003, c. 628, Pt. A, §4 (amd).]

6. **Request for a commission determination.** Within 3 days following the filing deadline, a notice must be forwarded to a candidate and treasurer whose registration or campaign finance report is not received by 5 p.m. on the deadline date, informing them of the basis for calculating penalties under subsection 4 and providing them with an opportunity to request a commission determination. The notice must be sent by certified United States mail. Any request for a determination must be made within 10 calendar days of receipt of the commission's notice. The 10-day period during which a determination may be requested begins on the day a recipient signs for the certified mail notice of the proposed penalty. If the certified letter is refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. A candidate or treasurer requesting a determination may either appear in person or designate a representative to appear on the candidate's or treasurer's behalf or submit a notarized written explanation of the mitigating circumstances for consideration by the commission.

[RR 1995, c. 2, §38 (cor).]

7. **Final notice of penalty.** After a commission meeting, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the treasurer.

If no determination is requested, the commission staff shall calculate the penalty as prescribed in subsection 4-A and shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

[RR 2003, c. 1, §14 (cor).]

## Title 21-A, §1020-A, Failure to file on time

**8. Failure to file report.** The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. If a candidate fails to file a report after 3 written communications from the commission, the commission shall send up to 2 more written communications by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the communications required by this subsection is guilty of a Class E crime.

[2003, c. 628, Pt. A, §5 (rpr).]

**§-A. Penalties for failure to file report.** The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

[2003, c. 628, Pt. A, §6 (new).]

**9. List of late-filing candidates.** The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

[1995, c. 483, §15 (new).]

**10. Enforcement.** The commission staff has the responsibility for collecting the full amount of any penalty and has all necessary powers to carry out this responsibility. Failure to pay the full amount of any penalty levied under this subchapter is a civil violation by the candidate, treasurer, political party or other person whose campaign finance activities are required by this subchapter to be reported. Thirty days after issuing the notice of penalty, the commission shall report to the Attorney General the name of any person who has failed to pay the full amount of any penalty. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the penalty. This action must be brought in the Superior Court for Kennebec County or the District Court, 7th District, Division of Southern Kennebec.

[1999, c. 426, §33 (amd).]

MRSA , §T.21A SEC.1020A/4,5 (AMD).

IB 1995, Ch. 1, §15 (AMD).

PL 1995, Ch. 483, §15 (NEW).

PL 1995, Ch. 625, §B5 (AMD).

RR 1995, Ch. 1, §10 (COR).

RR 1995, Ch. 2, §38 (COR).

PL 1999, Ch. 426, §32,33 (AMD).

PL 1999, Ch. 729, §5 (AMD).

PL 2001, Ch. 470, §11 (AFF).

PL 2001, Ch. 470, §7,8 (AMD).

PL 2001, Ch. 714, §PP1 (AMD).

PL 2001, Ch. 714, §PP2 (AFF).

PL 2003, Ch. 302, §4 (AMD).

PL 2003, Ch. 448, §4 (AMD).

PL 2003, Ch. 628, §A3-6 (AMD).

RR 2003, Ch. 1, §14 (COR).



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

November 27, 2006

Ms. Nancy J. Bessey  
P.O. Box 169  
Rangeley, ME 04970

**BY CERTIFIED MAIL**

Dear Ms. Bessey:

RE: Late 101% Campaign Finance Report Due 10/23/2006 By 5:00 p.m.

You filed a 101% campaign finance report on 10/31/2006. The Commission's analysis determined that your 101% Amount report was due no later than 5:00 p.m. on 10/23/2006. A penalty must be assessed for a late report based on the amount of financial activity greater than the 101% amount of \$4,406, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the maximum penalty amount is \$5,052.24. Please refer to the enclosed penalty matrix for more details on how the maximum penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. Tentatively, we have scheduled you to appear at the January 2007 Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

**NOTE:** The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

Sincerely,

Sandy Thompson  
Candidate Registrar

cc. Treasurer  
Timothy Carter

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS



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

Notice to Ms.  
 Bessey that  
 101% Report  
 requirement  
 depended on her  
 receipts (see  
 next 5 pages)

August 18, 2006

Ms. Nancy J. Bessey  
 P.O. Box 169  
 Rangeley, ME 04970

Dear Ms. Bessey:

I am writing to explain your reporting requirements as a privately financed candidate who has a Maine Clean Election Act opponent in the general election. In addition to the reports that all candidates must file on the 6<sup>th</sup> day before and the 42<sup>nd</sup> day after the general election, you must also file three Accelerated Reports prior to the election. You may also have to file a fourth Accelerated Report called the 101% Report (see below). Four copies of the Accelerated Report form are included with this letter.

**Reports Required 42, 21, and 12 Days Before the General Election**

You are required to file a report on September 26th, October 17th, and October 26th. Those reports must state your total contributions, and total expenditures and obligations as of two days before the report deadline. If your campaign has not raised, or spent and obligated, the 101% amounts described in the paragraph below, you may instead file a notarized affidavit by each deadline. The affidavit form is included with this letter. All reports or affidavits must be filed on time so that the Commission can determine whether your opponent is due any matching funds based on your receipts and expenditures. Civil penalties will be assessed for filing these Accelerated Reports late.

**101% Report**

If you raise, or spend and obligate, more than 1% in excess of the your MCEA opponent's initial distribution for the primary election, you must file the enclosed report within 48 hours of having received, spent, or obligated the applicable amount:

- \$4,406 for House candidates (101% of initial distribution amount of \$4,362)
- \$20,283 for Senate candidates (101% of initial distribution amount of \$20,082).

If your campaign already has exceeded the 101% limit, you must submit your 101% Report within 48 hours of receiving this letter.

If you need additional copies of the form, you may copy it or download it from the Commission's website. If you have questions regarding these requirements or the reports, please contact me by telephone me at 287-7651 or by e-mail at [Sandy.Thompson@maine.gov](mailto:Sandy.Thompson@maine.gov). Thank you.

Sincerely,

Sandy Thompson  
 Candidate Registrar

Enclosures

cc: Karen Olivieri (with enclosures)

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
 WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)



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

Bessey, Nancy

To: All Legislative Privately Financed Candidates  
 From: Nat Brown, Gavin O'Brien and Sandy Thompson, Candidate Registrars  
 Date: September 21, 2006  
 Re: **Filing Deadline for the 42-Day Pre-General Accelerated Report**  
**Due Tuesday, September 26, 2006 by 5:00 p.m.**

This is to remind you that your campaign is required to file the **42-Day Accelerated Report no later than 5:00 p.m. on Tuesday, September 26, 2006.**

If you <u>have not filed</u> the 101% Amount Report, you may either:	If you <u>have already filed</u> the 101% Amount Report, you must:
Submit a completed and signed form or Submit a signed and notarized affidavit	Submit a completed and signed form

(The 101% Amount is \$4,406 for House candidates and \$20,283 for Senate candidates.)

The report or affidavit covers all financial activity from June 14, 2006 through September 24, 2006.

The Commission must receive either the signed report or a signed and notarized affidavit by 5:00 p.m. on the filing deadline. A copy of the report or affidavit that is properly signed and notarized may be faxed by the deadline, provided that the Commission receives the original report within 5 calendar days of receiving the fax.

In August, your campaign was sent instructions, copies of the accelerated report forms (it is a one page form) and affidavits. In addition, the *2006 Candidate's Guide*, (pages 73 and 74, explain these reporting requirements and the 101% Amount. If you need additional copies of the form or affidavit, please call 207-287-4179. The report forms and *Candidate's Guide* can also be found on the Commission's website at: [www.maine.gov/ethics](http://www.maine.gov/ethics).

Penalties for the late filing of accelerated reports increase quickly. The penalty formula for accelerated reports is different from the formula used for the standard 6-Day Pre and 42-Day Post-General reports. We will be contacting you via the phone or by e-mail to give you an opportunity to ask any questions. We want all candidates to file on time.

Please disregard this reminder, if you have already filed your 42-Day Accelerated report. If you have any questions, please call (207)287-4179 and ask for a candidate registrar.

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
 WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)



**2006 Candidate's Guide**  
*Running for Office in Maine*

**State of Maine**

**Commission on Governmental Ethics and  
Election Practices**

**and**

**Secretary of State Matthew Dunlap**

### Special Reporting Requirements for Privately Financed Candidates with Maine Clean Election Act Opponents

Privately financed candidates with a Maine Clean Election Act (MCEA) opponent are required to file special reports to verify whether the MCEA opponent is entitled to receive any matching funds. An explanation of how matching funds are calculated can be found on pages 38-41.

#### *42-Day, 21-Day, and 12-Day Accelerated Reports*

All privately financed candidates with a MCEA opponent are required to file three “accelerated” reports stating the candidate’s total campaign contributions, expenditures, and obligations to date for the election. If the candidate’s receipts, or expenditures plus obligations, have not exceeded the 101% Amount (discussed below), the candidate may instead file an affidavit by each deadline attesting that the candidate has not received, spent, or obligated the 101% Amount to date for the election. The accelerated report deadlines are:

<u>Type of Report</u>	<u>Filing Deadline</u>	<u>Reporting Period</u>
42-Day Pre-Primary	May 2, 2006	Through April 30, 2006
21-Day Pre-Primary	May 23, 2006	Through May 21, 2006
12-Day Pre-Primary	June 1, 2006	Through May 30, 2006
42-Day Pre-General	September 26, 2006	Through September 24, 2006
21-Day Pre-General	October 17, 2006	Through October 15, 2006
12-Day Pre-General	October 26, 2006	Through October 24, 2006

#### *101% Report*

Legislative and gubernatorial candidates must file a 101% Report if they:

- are not participating in the Maine Clean Election Act;
- have a MCEA opponent in an election; and
- receive, or spend and obligate, more than 1% over the amount of the MCEA opponent’s initial distribution (the “101% Amount”).

The report must be filed within 48 hours of the date on which their total receipts for the election – or the total of their expenditures and obligations for the election – exceeded the 101% Amount. The reporting form is the same as the form for the accelerated reports, and states the candidate’s total receipts, total expenditures, and obligations, to date.

The table on the next page shows the 101% Amounts for the 2006 elections.

**STATE OF MAINE**  
**COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES**  
 Mail: 135 State House Station  
 Office: 242 State Street  
 Augusta, Maine 04333-0135  
 Tel: (207) 287-4179 FAX: (207) 287-6775

**GENERAL ELECTION 2006**  
**ACCELERATED REPORT**  
**FOR PRIVATELY FINANCED LEGISLATIVE CANDIDATES**  
**WITH MCEA OPPONENTS**

PLEASE INDICATE TYPE OF REPORT	
<input type="checkbox"/> <b>42-DAY</b> (Due 9/26)	<input type="checkbox"/> <b>21-DAY</b> (Due 10/17)
<input type="checkbox"/> <b>12-DAY</b> (Due 10/26)	<input type="checkbox"/> <b>101%</b> (Due: See Reverse)
CANDIDATE INFORMATION	
Name of Candidate	Telephone Number
Mailing Address	Office Sought
City, Zip Code	District
Name of Opposing MCEA Candidate(s)	
TOTAL RECEIPTS FOR THE GENERAL ELECTION	
Cash balance on June 13, 2006:	
Total cash contributions received after June 13, 2006:	
Total value of in-kind contributions received after June 13, 2006:	
Total loans received after June 13, 2006:	
Total bank interest received after June 13, 2006:	
<b>TOTAL RECEIPTS:</b>	
TOTAL EXPENDITURES FOR THE GENERAL ELECTION	
Total expenditures after June 13, 2006:	
Total value of in-kind contributions received after June 13, 2006:	
Total unpaid debts and obligations incurred after June 13, 2006:	
<b>TOTAL EXPENDITURES:</b>	

**I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.**

\_\_\_\_\_  
 Signature of Candidate

\_\_\_\_\_  
 Date

Please see instructions on reverse side.

**INSTRUCTIONS FOR FILING ACCELERATED REPORTS  
BY PRIVATELY FINANCED CANDIDATES WITH MCEA OPPONENTS**

**42-DAY, 21-DAY, and 12-DAY REPORTS**

All privately financed candidates with a Maine Clean Election Act opponent must file reports on the 42<sup>nd</sup>, 21<sup>st</sup>, and 12<sup>th</sup> days before the election stating:

- total campaign contributions, the value of all in-kind contributions, loans, and other receipts, and
- total campaign expenditures, the value in-kind contributions, and unpaid debts and obligations.

For the purpose of calculating matching funds for MCEA candidates, the value of in-kind contributions is considered as both a contribution and an expenditure. The totals must include all receipts, and expenditures and obligations from June 14, 2006 to two days before the report deadline. Please see the reporting schedule below for the deadlines and reporting periods.

**OPTIONAL AFFIDAVITS**

If you do not receive, or spend and obligate, the 101% amount, you may file the attached affidavit on the 42<sup>nd</sup>, 21<sup>st</sup>, and 12<sup>th</sup> days before the election instead of filing an accelerated report that discloses your total receipts and expenditures.

**101% REPORT**

Any privately financed candidate for ~~State Senate~~ or State House of Representatives who has a Maine Clean Election Act opponent(s), and who receives, or spends and obligates, more than 1% in excess of the general election distribution amount for a ~~Maine Clean Election Act~~ candidate in the same race shall file, within 48 hours of that event, a report detailing the candidate's total campaign contributions, obligations, and expenditures to date.

**101% AMOUNTS FOR THE GENERAL ELECTION**

- \$4,406 for House candidates (101% of initial distribution amount of \$4,362)
- \$20,283 for Senate candidates (101% of initial distribution amount of \$20,082)

**REPORTING SCHEDULE**

<u>Type of Report</u>	<u>Report Deadline</u>	<u>Period Included</u>
101% (see above)	Within 48 hours of exceeding the 101% amount for the general election	June 14, 2006 through the date of exceeding the 101% amount for the general election
<b>42-DAY REPORT</b>	5:00 p.m. on September 26, 2006	Through September 24, 2006
<b>21-DAY REPORT</b>	5:00 p.m. on October 17, 2006	Through October 15, 2006
<b>12-DAY REPORT</b>	5:00 p.m. on October 26, 2006	Through October 24, 2006

**FACSIMILE TRANSMISSION**

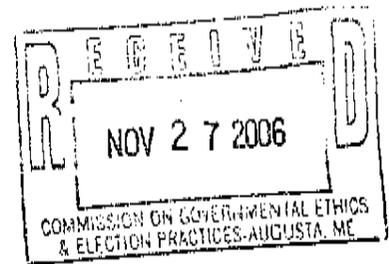
You may provisionally file the accelerated reports by faxing a copy of the signed report to the Commission by 5:00 p.m. on the deadline as long as the original of the same report is received by the Commission within 5 calendar days thereafter. The Commission's FAX number is 207-287-6775.

**IMPORTANT**

The summary information contained in this report must be included on the appropriate schedule of the next required detailed report (*i.e.*, 6-day pre-election or 42-day post-election, as appropriate).

# Exhibit #11

**Todd Brackett for Sheriff  
P.O. Box 2  
Newcastle, ME 04553-0002**



November 24, 2006

Commission on Governmental Ethics  
And Election Practices  
135 State House Station  
Augusta, Maine 04333-0135

**Re: Waiver of penalty for late 6-day pre-general report of  
Sheriff Todd B. Brackett, Penelope McCourtney Card, Treas.**

Dear Ethics Commission:

I am hereby formally requesting the Commission to waive penalty determination in the amount of \$74.60 due to mitigating circumstances.

On the evening of October 25, my husband and I were standing on the last remaining portion the construction staging outside our log cabin in Bremen. It was approximately 5:30 and nearly dusk. We wanted to finalize the dimensions of the landing outside the sliding glass door before the remainder of the staging was removed the following day. My dog Santo a 100 lb. yellow lab decided to join us on the slightly wobbly scaffolding. It was the straw that broke one ankle and crushed another.

The dog landed on top of the staging, which landed on my husband's right ankle, which landed on my right ankle. Two hours, three ambulances 22 rescue, fire, and EMT's later we arrived at Miles Hospital. A little past midnight I was moved from a long surgery to my hospital room. My husband's break did not require surgery, just a cast so he was waiting for me in a reclining hospital chair in my room. Two days later on Friday I was released from the hospital. We painfully hobbled home with eight screws, a plate and two pins in my leg. We were also equipped with walkers, crutches and a cooling machine to reduce swelling.

Saturday the rains came and the power went. Fifteen thousand of our Maine friends and neighbors were in the same boat. We didn't complain. Figuring that most power is restored within a day, my husband and I went to bed around six o'clock. Six the next morning the power finally came on, but that was about to change.

At first there wasn't much rain but a good stiff breeze started shaking the trees in the hollow. Most of the leaves were down and as the intensity grew soon they all were. The trees came next. One by one they started to fall. Soon the tip on the old majestic white pine, towering some 50 or more feet toward the sky, began to sway just a bit. A split second later came a loud cracking sound followed by a huge earth shaking as it hit the ground and broke into two large sections. One section completely covered the driveway while just the top branches of the other section leaned gently against the power line. The resulting smoke, quickly followed by the fire, knocked out our power once again.

Once more the Bremen Fire Department was able to extricate us in record time. With no heat light or water we had no other choice but to get out of town. CMP forecasted it could be Tuesday before power would be restored. It was Wednesday November 1<sup>st</sup> before we were able to return to our home.

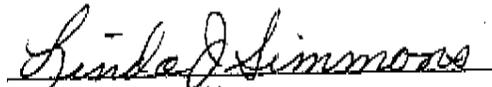
It took a full day to get acclimated to our temporarily handicapped life in our own home. The next day, November 2, I was able to once again start focusing on commitments including filings with the Commission. When I realized that I had missed a filing deadline I immediately contacted Nathaniel Brown with an explanation for the delay. A day later the report was in your office.

I apologize for the report being two days late and the need to request a waiver of the penalty due to "mitigating circumstances." Thank you for your consideration.

Sincerely,

  
Penelope McCourtney Card

Treasurer, Brackett for Sheriff

  
Notary Public

Notarized this 27<sup>th</sup> day of November, 2006

My commission expires 04/08/2010



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

November 14, 2006

Todd B. Brackett  
P.O. Box 2  
Newcastle, ME 04553

**BY CERTIFIED MAIL**

Dear Mr. Brackett:

RE: Late 6-Day Pre-General due 11/1/2006

You filed a 6-Day Pre-General report on 11/3/2006. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report would be \$74.60. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

**NOTE:** The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

The Maine Clean Election Act requires all revenues distributed to certified candidates from the fund to be used for campaign-related purposes. Commission guidelines regarding permissible campaign-related expenditures do not include the payment of a penalty as a permissible expenditure.

Sincerely,

Nathaniel Brown  
Candidate Registrar

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS



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

November 14, 2006

Todd B. Brackett  
 P.O. Box 2  
 Newcastle, ME 04553

The Commission staff has made a preliminary determination, based upon application of the statutory formula, that a penalty of \$74.60 applies for the late filing of your 6-Day Pre-General report. If you agree with this determination, please make your check or money order in that amount payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333, within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like the Commission to make a formal determination of any penalty to be assessed in this case.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay the full amount of any penalty. Please direct any questions you may have about this matter to Nathaniel Brown at 287-7652.

Cut Along Dotted Line

For Office Use Only:  
 Account: CGEEP  
 Fund: 014 Approp: 02

To Commission on Governmental Ethics and Election Practices  
 135 State House Station  
 Augusta, Maine 04333

From: Todd Brackett

RE: Penalty for late filing of 6-Day Pre-General report

Amount Enclosed: \$ \_\_\_\_\_

Check/M.O. No.: # \_\_\_\_\_

Please Make Check or Money Order Payable to Treasurer, State of Maine

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
 WEBSITE: WWW.MAINE.GOV/ETHICS

**COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES**  
**PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS**

**BASIS FOR PENALTIES**  
**21-A M.R.S.A. Section 1020-A(4)**

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%

For the second violation, 3%

For the third and each subsequent violation, 5%

A penalty begins to accrue at 5:00 p.m. on the day the report is due.

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500 Greater amount of the total contributions received or expenditures made during the filing period

X .01 Percent proscribed for first violation

\$25.00 One percent of total contributions

X 2 Number of calendar days late

\$50.00 Total penalty

Your penalty is calculated as follows:

Contributions/Expenditures: \$ 3,730.00

Percent proscribed: X .01  
 \$ 37.30

Number of days late: X 2

Total penalty accrued: \$ 74.60

Any penalty of less than \$5 is waived.

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

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

**MAXIMUM PENALTIES**  
**21-A M.R.S.A. Section 1020-A(5)**

\$5,000 for reports required to be filed 42 days before an election (gubernatorial candidate only),  
 6 days before an election, 42 days after an election, and for 48-hour reports;

\$1,000 for semiannual reports.

**FOR 6/7/06 EXPENDITURES**

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

**Todd B. Brackett**  
**P.O. Box 2**  
**Newcastle, ME 04553**

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X 

Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

Does this mailpiece require a different delivery address?  Yes  
 No



3. Service type

- Certified Mail  Express Mail
- Registered  Return Receipt for Merchandise
- Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number  
(Transfer from service label)

7005 3110 0000 2803 6228

## Title 21-A, §1020-A, Failure to file on time

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we do require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 122nd Legislature, and is current through December 31, 2006, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

**PLEASE NOTE: The Revisor's Office CANNOT perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.**

### §1020-A. Failure to file on time

**1. Registration.** A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.  
[1995, c. 483, §15 (new).]

**2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission before 5 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- ★ A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (amd).]
- B. An error by the commission staff; [1999, c. 729, §5 (amd).]
- C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (amd).]
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service. [1999, c. 729, §5 (new).]  
[2003, c. 628, Pt. A, §3 (amd).]

**3. Municipal campaign finance reports.** Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.  
[1995, c. 625, Pt. B, §5 (amd).]

**4. Basis for penalties.**  
[2001, c. 470, §7 (amd); T. 21-A, §1020-A, sub-§4 (rp).]

**4-A. Basis for penalties.** The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, 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%; [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]
- B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

# Exhibit #12

Commission on Governmental Ethics  
135 State House Station  
Augusta, ME 04333-0135

To Whom it may Concern:

On December 20<sup>th</sup>, I called to say that I was a day late in filing because I had just returned home from being with my husband because he had been taken by ambulance to the hospital in Lewiston during the night on Sunday before the filing was due. I spent all my time with him till I was able to bring him back home. The filing totally slipped my mind due to the stroke that my husband had.

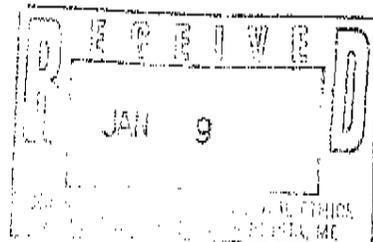
I am sending along the money but I do feel that this was definitely a "mitigating circumstance". If you agree then please either return the check or destroy it.

If it is kept, do I include it in the next filing or is it automatically done?

Sincerely yours,

*Louanne Cameron 1/6/07*

Louanne Cameron  
Treasurer  
Wainwright for Sheriff



*Original  
in file*



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

January 5, 2007

Christopher Wainwright  
94 Staples Hill Rd.  
Canton, ME 04221

**BY CERTIFIED MAIL**

Dear Mr. Wainwright:

RE: Late 42-Day Post-General due 12/19/2006

You filed a 42-Day Post-General report on 12/20/2006. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report would be \$20.18. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

**NOTE:** The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

The Maine Clean Election Act requires all revenues distributed to certified candidates from the fund to be used for campaign-related purposes. Commission guidelines regarding permissible campaign-related expenditures do not include the payment of a penalty as a permissible expenditure.

Sincerely,

Nathaniel Brown  
Candidate Registrar

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

## COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

### PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

#### BASIS FOR PENALTIES 21-A M.R.S.A. Section 1020-A(4)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%

For the second violation, 3%

For the third and each subsequent violation, 5%

A penalty begins to accrue at 5:00 p.m. on the day the report is due.

*Example:* The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500	Greater amount of the total contributions received or expenditures made during the filing period
<u>X .01</u>	Percent prescribed for first violation
\$25.00	One percent of total contributions
<u>X 2</u>	Number of calendar days late
\$50.00	Total penalty.

Your penalty is calculated as follows:

Contributions/Expenditures: \$	<u>2018.10</u>
Percent prescribed:	<u>X .01</u>
	\$ <u>20.18</u>
Number of days late:	<u>X 1</u>
Total penalty accrued:	\$ <u>20.18</u>

Any penalty of less than \$5 is waived.

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

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

#### MAXIMUM PENALTIES 21-A M.R.S.A. Section 1020-A(5)

\$5,000 for reports required to be filed 42 days before an election (gubernatorial candidate only),  
6 days before an election, 42 days after an election, and for 48-hour reports;  
\$1,000 for semiannual reports.

#### FOR 6/7/06 EXPENDITURES



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

January 5, 2007

Christopher Wainwright  
94 Staples Hill Rd.  
Canton, ME 04221

The Commission staff has made a preliminary determination, based upon application of the statutory formula, that a penalty of \$20.18 applies for the late filing of your 42-Day Post-General report. If you agree with this determination, please make your check or money order in that amount payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333, within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like the Commission to make a formal determination of any penalty to be assessed in this case.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay the full amount of any penalty. Please direct any questions you may have about this matter to Nathaniel Brown at 287-7652.

Cut Along Dotted Line

For Office Use Only:  
Account: CGEEP  
Fund: 014 Approp: 02

To Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, Maine 04333

From: Christopher Wainwright

RE: Penalty for late filing of 42-Day Post-General report

Amount Enclosed: \$ \_\_\_\_\_

Check/M.O. No.: # \_\_\_\_\_

Please Make Check or Money Order Payable to Treasurer, State of Maine

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**Christopher Wainwright**  
**94 Staples Hill Rd.**  
**Canton, ME 04221**

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

x *EWainwright*

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

- Address different from Item 1?  Yes
- Delivery address below:  No

- Certified Mail  Express Mail
- Registered  Return Receipt for Merchandise
- Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number  
(Transfer from service label)

7005 3110 0000 2803 7133

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

## Title 21-A, §1020-A, Failure to file on time

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*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 122nd Legislature, and is current through December 31, 2006, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

**PLEASE NOTE: The Revisor's Office CANNOT perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.**

### §1020-A. Failure to file on time

**1. Registration.** A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

[1995, c. 483, §15 (new).]

**2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission before 5 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (amd).]
- B. An error by the commission staff; [1999, c. 729, §5 (amd).]
- C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (amd).]
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service. [1999, c. 729, §5 (new).]

[2003, c. 628, Pt. A, §3 (amd).]

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

[1995, c. 625, Pt. B, §5 (amd).]

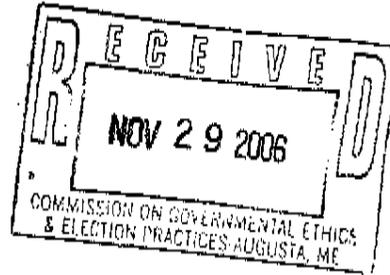
#### **4. Basis for penalties.**

[2001, c. 470, §7 (amd); T. 21-A, §1020-A, sub-§4 (rp).]

**4-A. Basis for penalties.** The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, 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%; [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]
- B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

# Exhibit #13



November 25, 2006

Ethics Commission  
135 State House Station  
Augusta, Maine 04333

Dear Sirs:

I am writing to appeal the \$59 late filing fee. The reason is that on October 31, 2006 my daughter-in-law went to the doctor for severely swollen lymph nodes. He originally said he was going to give her antibiotics thinking it might just be an infection. The next day, November 01, 2006, she called him after lunch and told him her turkey sandwich had made her nauseous. He told her to meet him at the hospital for emergency surgery and removed several lymph nodes. Needless to say, that my mind was on my daughter-in-law, my son and their two little boys. By the time I realized I had missed the deadline, it was already November 02. I apologize for missing the date and hope that you will consider these extenuating circumstances.

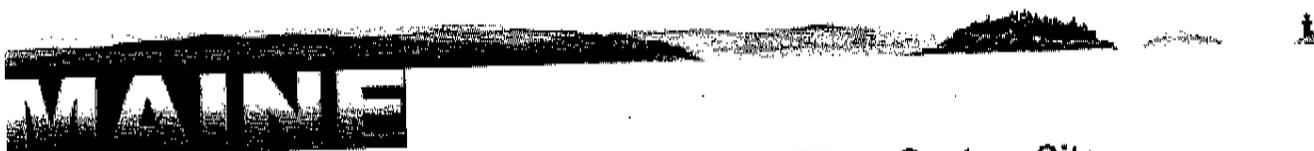
Thank you very much for your consideration

Sincerely,

A handwritten signature in cursive script that reads "Gerald York".

Gerald A. York  
Somerset County Commissioner/Candidate

Welcome to the Public Campaign Finance Page for the State of Maine



## Welcome to the Campaign Finance Electronic Filing System Site

[Menu](#) [Home](#) [Help](#) [Logout](#) [Change Password](#) [Admin Page](#)

2/2/2007

### Home Page for Gerald A. York

#### CAMPAIGN YEAR 2006

REPORT TYPE	REPORTING PERIOD	DUE DATE	DATE FILED	STATUS	LAST MODIFIED	
Candidate Registration			6/6/2006	Filed	5/12/2006	Print
6-Day Pre-Primary	11/3/2004 to 6/1/2006	6/7/2006	6/8/2006	Filed	6/8/2006	Print
42-Day Post-Primary	6/2/2006 to 7/18/2006	7/25/2006	7/24/2006	Filed	7/24/2006	Print
6-Day Pre-General	7/19/2006 to 10/26/2006	11/1/2006	11/2/2006 10:14:24 AM	Filed	11/20/2006 9:19:31 AM	Print
42-Day Post-General	10/27/2006 to 12/12/2006	12/19/2006	12/18/2006 1:36:02 PM	Filed	12/18/2006 1:36:02 PM	Print
24-Hr Report of Late Contributions and Expenditures		N/A		MULTIPLE		

Please click on the following buttons to Download schedule informations in excel format.





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

November 9, 2006

Mr. Gerald A. York  
 5 Silver Street  
 Fairfield, ME 04937

**BY CERTIFIED MAIL**

Dear Mr. York:

RE: Late 6-Day Pre-General Campaign Finance Report Due 11/1/2006 by 5:00 p.m.

You filed a 6-Day Pre-General campaign finance report on 11/2/2006. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report is \$59.80. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

**NOTE:** The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

The Maine Clean Election Act requires all revenues distributed to certified candidates from the fund to be used for campaign-related purposes. Commission guidelines regarding permissible campaign-related expenditures do not include the payment of a penalty as a permissible expenditure.

Sincerely,

Sandy Thompson  
 Candidate Registrar

cc. Treasurer

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
 WEBSITE: WWW.MAINE.GOV/ETHICS

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> <i>Gerald York</i> <input type="checkbox"/> Addressee	
1. Article Addressed to:  <p style="text-align: center;"><i>Gerald York 5 Silver St Fairfield, ME 04937 ST</i></p>	B. Received by (Printed Name)	C. Date of Delivery <i>11-16-06</i>
2. Article Number <i>(Transfer from service)</i>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
	3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number <span style="border: 1px solid black; padding: 2px;">7002 2410 0000 9315 5131</span>		
PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540		



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

November 9, 2006

Mr. Gerald A. York  
 5 Silver Street  
 Fairfield, ME 04937

The Commission staff has made a preliminary determination, based upon application of the statutory formula, that a penalty of \$59.80 applies for the late filing of your 6-Day Pre-General campaign finance report. If you agree with this determination, please make your check or money order in that amount payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333, within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like the Commission to make a formal determination of any penalty to be assessed in this case.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay the full amount of any penalty. Please direct any questions you may have about this matter to Sandy Thompson 287-7651.

Cut Along Dotted Line

For Office Use Only:  
 Account: CGEEP  
 Fund: 014 Approp: 02

To Commission on Governmental Ethics and Election Practices  
 135 State House Station  
 Augusta, Maine 04333

From: Mr. Gerald A. York

RE: Penalty for late filing of 6-Day Pre-General Campaign Finance Report

Amount Enclosed: \$ \_\_\_\_\_

Check/M.O. No.: # \_\_\_\_\_

**Please Make Check or Money Order Payable to Treasurer, State of Maine**

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
 WEBSITE: WWW.MAINE.GOV/ETHICS

**COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES**  
**PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS**

**BASIS FOR PENALTIES**  
**21-A M.R.S.A. Section 1020-A(4)**

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

- For the first violation, 1%
- For the second violation, 3%
- For the third and each subsequent violation, 5%

A penalty begins to accrue at 5:00 p.m. on the day the report is due.

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500	Greater amount of the total contributions received or expenditures made during the filing period
<u>X .01</u>	Percent prescribed for first violation
\$25.00	One percent of total contributions
<u>X 2</u>	Number of calendar days late
\$50.00	Total penalty

*YML*

Your penalty is calculated as follows:

Contributions/Expenditures:	\$ <u>1,993.48</u>
Percent prescribed:	<u>X 3%</u>
	\$ <u>59.80</u>
Number of days late:	<u>X 1</u>
Total penalty accrued:	\$ <u>59.80</u>

Any penalty of less than \$5 is waived.

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

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

**MAXIMUM PENALTIES**  
**21-A M.R.S.A. Section 1020-A(5)**

\$5,000 for reports required to be filed 42 days before an election (gubernatorial candidate only),  
6 days before an election, 42 days after an election, and for 48-hour reports;  
\$1,000 for semiannual reports.

11/2/2006

report check: Sandy

all called on 11/1

Office Sought	Last	First	Last Of Filed Date
Representative	Finch	Edward	10/27/2006 3:06:28 PM
Representative	Curtis	Philip	10/27/2006 2:12:59 PM
Senate	Mayo III	Arthur	10/27/2006 8:59:53 AM
Representative	McKeen	William	10/26/2006 12:34:15 PM
Sheriff	Corbett	David	10/25/2006 4:40:31 PM
County Commi	Chandler	Sallie	10/23/2006 9:51:40 PM
Representative	Hamper	James	10/17/2006 9:31:17 PM
County Commi	Furbish	Jeffrey	10/15/2006 8:50:33 PM
Senate	Eoley	Neilson	9/26/2006 8:29:54 PM
Representative	Mills	Janet	<del>11/1/2006 1:39:57 PM</del>
Representative	Scease	Jane	In-progress 721-8675
Representative	Soule	Laure	fax today 626-3380 (W) - "no activity"
Representative	Painter	John	(H) left message, called work & left message.
Representative	Hughes	David	ok will file filed 1 day late
Representative	Davis	Kimberly	ok will file filed meday late
Representative	Eredatta	Kevin	ok <del>Spencer</del> Spencer m @ 2:35 2 days
Representative	Fisher	Mark	ok (W) called - left message (H) left message, will fill
County Commi	York	Gerald	ok will file, 1 day late
County Treasurer	Parkman	David	ok (H) left message, filed on paper.
Representative	Craven	Margaret	ok filed today 11/2
Representative	Gotta	H. David	ok "in-progress" talked to treasurer yesterday
Representative	Bryant-Desche	Joan	ok "In progress" H - left message - filed on paper
Representative	Gerzofsky	Stanley	ok "stan couldn't get it up yesterday so no because put it in the mail - registered mail on 11/1 (day late)

ok 11/1/2006

called filed 1 day early.

~~11/1/2006~~ 11/2 left, filed 1 day late

1st file on 11/1  
:15  
2nd call

check box M

for file by brown

- was having difficulty entering, called off.

< data; I emailed her

copy of form.

half done + then got kicked off -> ~~to me~~ Copied document from message - do we need copies?

spotty since due to change our form alpha -> ?

## Title 21-A, §1020-A, Failure to file on time

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### §1020-A. Failure to file on time

**1. Registration.** A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1. [1995, c. 483, §15 (new).]

**2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission before 5 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

-  A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (amd).]
  - B. An error by the commission staff; [1999, c. 729, §5 (amd).]
  - C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (amd).]
  - D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service. [1999, c. 729, §5 (new).]
- [2003, c. 628, Pt. A, §3 (amd).]

**3. Municipal campaign finance reports.** Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty. [1995, c. 625, Pt. B, §5 (amd).]

**4. Basis for penalties.** [2001, c. 470, §7 (amd); T. 21-A, §1020-A, sub-§4 (rp).]

**4-A. Basis for penalties.** The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, 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%; [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]
- B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

# Exhibit

# #14



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

To: Jonathan Wayne

From: Gavin O'Brien, Candidate Registrar

Date: January 22, 2006

Re: Late-filing of Bernard Ayotte's 6-day pre-general report

---

Bernard Ayotte was a privately financed candidate for State Representative. He filed his 6-day pre-general report on November 4, three days after the deadline. All of Mr. Ayotte's reports were filed on paper. I am inclined to recommend not accepting his waiver request for the following reasons:

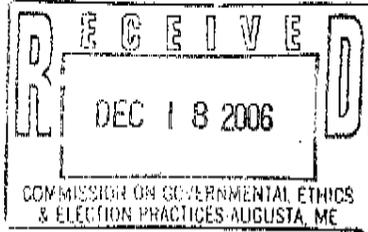
- Mr. Ayotte had previously filed regular reports in the primary election and accelerated reports in the general election, so he was aware of the proper reporting procedures and deadlines.
- This was the second instance of late reporting during the general election cycle.
- In his letter requesting a waiver, Mr. Ayotte provided no mitigating circumstances that prevented him from filing his report on time.
- I called Mr. Ayotte on November 2 and assisted him in filling out his report. He did not file the report until November 4, however.

Dec 18 06 01:00p

MILLER'S CARIBOU

207-498-6167

p.1



Caswell, Maine 04750  
December 18, 2006

Dear Gavin;

I received your final notice from the Ethics Commission concerning the penalty in regards to my late filing of the 6-day pre-general finance report. I certainly do apologize for any inconvenience this oversight may have caused but I can sincerely convey to you that my wife and I were certainly under the impression that it had been taken care of the day you helped us fill out the form over the phone. I now understand that my mistake was that I did not submit the form immediately. My wife, whom I had designated as treasurer, and myself did not fully understand how to fill out the form correctly and therefore we called you for your help. Therefore I would formally like to request a waiver of the penalty. As you are perhaps aware I purposely chose to do the traditional campaign method because I did not want my campaign effort to be a burden to the Maine taxpayer.

Sincerely

Bernard L.A. Ayotte

To: Gavin O'Brian  
Candidate Registrar

Comm. on Gov. Ethics and Election Practices  
135 State House Station  
Augusta, Maine 04333-0135

*Fax this copy  
287-6775 B.A.*



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

**FINAL NOTICE**

December 14, 2006

Mr. Bernard L. A. Ayotte  
1469 Van Buren Rd.  
Caswell, ME 04750

**BY CERTIFIED MAIL**

Dear Mr. Ayotte:

The Ethics Commission notified you on November 13, 2006 of the preliminary determination of a penalty in the amount of \$195.14 for the late filing of your 6-day pre-general campaign finance report. Our records indicate that you have not paid the penalty or requested a waiver by the Commission.

Please pay the penalty in full within 30 days of the date of this letter. If the Commission does not receive payment, the Election Law requires the Commission to refer the penalty to the Attorney General's Office for collection.

If you would like a waiver of the penalty, you may request a waiver by faxing or mailing a written request no later than January 2, 2007. The Commission will decide on the waiver request at its February meeting. The request can be in the form of a brief letter stating the reasons why the report was late and why a waiver should be granted. The letter may be faxed to 287-6775.

If you have any questions regarding this matter, please telephone me at 287-4709.  
Thank you.

Sincerely,

Gavin O'Brien  
Candidate Registrar

enc.: Original penalty notice  
cc: Treasurer

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS



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

November 13, 2006

Mr. Bernard L. A. Ayotte  
1469 Van Buren Rd.  
Caswell, ME 04750

**BY CERTIFIED MAIL**

Dear Mr. Ayotte:

RE: Late 6-Day Pre-General Campaign Finance Report Due 11/1/2006.

You filed a 6-Day Pre-General campaign finance report on 11/4/2006. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report would be \$195.14. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

**NOTE:** The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

The Maine Clean Election Act requires all revenues distributed to certified candidates from the fund to be used for campaign-related purposes. Commission guidelines regarding permissible campaign-related expenditures do not include the payment of a penalty as a permissible expenditure.

Sincerely,

Gavin O'Brien  
Candidate Registrar

cc: Treasurer

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

## COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

### PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

#### BASIS FOR PENALTIES 21-A M.R.S.A. Section 1020-A(4)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%

For the second violation, 3%

For the third and each subsequent violation, 5%

A penalty begins to accrue at 5:00 p.m. on the day the report is due.

*Example:* The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500	Greater amount of the total contributions received or expenditures made during the filing period
<u>X .01</u>	Percent prescribed for first violation
\$25.00	One percent of total contributions
<u>X 2</u>	Number of calendar days late
\$50.00	Total penalty

Your penalty is calculated as follows:

Contributions/Expenditures:	\$ <u>2,161.17</u>
Percent prescribed:	<u>X 0.03</u>
	\$ _____
Number of days late:	<u>X 3</u>
Total penalty accrued:	\$ <u>195.14</u>

Any penalty of less than \$5 is waived.

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

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

#### MAXIMUM PENALTIES 21-A M.R.S.A. Section 1020-A(5)

\$5,000 for reports required to be filed 42 days before an election (gubernatorial candidate only),  
6 days before an election, 42 days after an election, and for 48-hour reports;

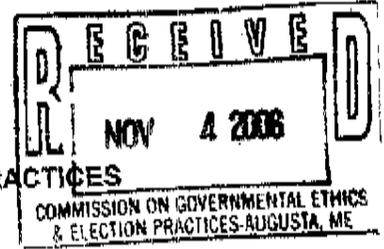
\$1,000 for semiannual reports.

For Commission use only

data entry \_\_\_\_\_

proofread \_\_\_\_\_

follow-up \_\_\_\_\_



STATE OF MAINE  
 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
 Mail: 135 State House Station, Augusta, Maine 04333-0135  
 Office: 242 State Street, Augusta, Maine  
 Tel: (207) 287-4179 Fax: (207) 287-6775  
 Website: www.maine.gov/ethics  
 Electronic Filing: www.maine.gov/campaignfinance.com

2006 CAMPAIGN FINANCE REPORT  
 PRIVATELY FINANCED CANDIDATES FOR  
 THE LEGISLATURE AND COUNTY OFFICE

(Please Complete ALL Entries)

Name of CANDIDATE BERNARD L.A. AYOTTE

Mailing address 1469 VAN BUREN Rd

City, zip code CASWELL, ME 04750

Telephone number 325-4905 Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Office Sought STATE REPRESENTATIVE District Number 3

Name of TREASURER PRISCILLA AYOTTE

Mailing address 1469 VAN BUREN Rd

City, zip code CASWELL, ME 04750

Telephone number 325-4905 Fax \_\_\_\_\_ E-mail \_\_\_\_\_

CHECK IF CHANGED  
 SINCE PREVIOUS  
 REPORT

CHECK IF CHANGED  
 SINCE PREVIOUS  
 REPORT

Type of Report	Due Date	Dates of Reporting Period
<input type="checkbox"/> January 2006 Semiannual*	January 17, 2006	Beginning of campaign - December 31, 2005
<input type="checkbox"/> 6-Day Pre-Primary	June 7, 2006	Last report (if any) - June 1, 2006
<input type="checkbox"/> 42-Day Post-Primary	July 25, 2006	June 2, 2006 - July 18, 2006
<input checked="" type="checkbox"/> 6-Day Pre-General	November 1, 2006	July 19, 2006 - October 26, 2006
<input type="checkbox"/> 42-Day Post-General	December 19, 2006	October 27, 2006 - December 12, 2006

\*The January 2006 Semiannual Report is required only for county and legislative candidates who have raised or spent more than \$500 during 2005.

- Amendment to: \_\_\_\_\_
- Other (specify): \_\_\_\_\_
- Check if campaign had no activity for the reporting period (no other pages are required)

I CERTIFY THAT I HAVE EXAMINED THIS REPORT AND TO THE BEST OF MY KNOWLEDGE IT IS TRUE, CORRECT AND COMPLETE.

Priscilla Ayotte 11/04/06  
 Treasurer's Signature Date

Bernard L.A. Ayotte 11/04/06  
 Candidate's Signature Date

(Revised 11/05) (Duplicate as needed)

## Title 21-A, §1020-A, Failure to file on time

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we do require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 122nd Legislature, and is current through December 31, 2006, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

**PLEASE NOTE: The Revisor's Office CANNOT perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.**

### §1020-A. Failure to file on time

**1. Registration.** A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1. [1995, c. 483, §15 (new).]

**2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission before 5 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (amd).]

B. An error by the commission staff; [1999, c. 729, §5 (amd).]

C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (amd).]

D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service. [1999, c. 729, §5 (new).]  
[2003, c. 628, Pt. A, §3 (amd).]

**3. Municipal campaign finance reports.** Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty. [1995, c. 625, Pt. B, §5 (amd).]

**4. Basis for penalties.**  
[2001, c. 470, §7 (amd); T. 21-A, §1020-A, sub-§4 (rp).]

**4-A. Basis for penalties.** The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, 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%; [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

# Exhibit #15

## Title 21-A, §1020-A, Failure to file on time

**8. Failure to file report.** The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. If a candidate fails to file a report after 3 written communications from the commission, the commission shall send up to 2 more written communications by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the communications required by this subsection is guilty of a Class E crime.

[2003, c. 628, Pt. A, §5 (rpr).]

**8-A. Penalties for failure to file report.** The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

[2003, c. 628, Pt. A, §6 (new).]

**9. List of late-filing candidates.** The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

[1995, c. 483, §15 (new).]

**10. Enforcement.** The commission staff has the responsibility for collecting the full amount of any penalty and has all necessary powers to carry out this responsibility. Failure to pay the full amount of any penalty levied under this subchapter is a civil violation by the candidate, treasurer, political party or other person whose campaign finance activities are required by this subchapter to be reported. Thirty days after issuing the notice of penalty, the commission shall report to the Attorney General the name of any person who has failed to pay the full amount of any penalty. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the penalty. This action must be brought in the Superior Court for Kennebec County or the District Court, 7th District, Division of Southern Kennebec.

[1999, c. 426, §33 (amd).]

MRSA , §T.21A SEC.1020A/4,5 (AMD) .

IB 1995, Ch. 1, §15 (AMD) .

PL 1995, Ch. 483, §15 (NEW) .

PL 1995, Ch. 625, §B5 (AMD) .

RR 1995, Ch. 1, §10 (COR) .

RR 1995, Ch. 2, §38 (COR) .

PL 1999, Ch. 426, §32,33 (AMD) .

PL 1999, Ch. 729, §5 (AMD) .

PL 2001, Ch. 470, §11 (AFF) .

PL 2001, Ch. 470, §7,8 (AMD) .

PL 2001, Ch. 714, §P1 (AMD) .

PL 2001, Ch. 714, §P2 (AFF) .

PL 2003, Ch. 302, §4 (AMD) .

PL 2003, Ch. 448, §4 (AMD) .

PL 2003, Ch. 628, §A3-6 (AMD) .

RR 2003, Ch. 1, §14 (COR) .



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

**FINAL NOTICE**

December 15, 2006

Mr. David Hughes  
34 Flowe Street  
Lewiston, ME 04240

**BY CERTIFIED MAIL**

Dear Mr. Hughes:

The Ethics Commission notified you on November 13, 2006 of the preliminary determination of a penalty in the amount of \$130.86 for the late filing of your 6-Day Pre-General campaign finance report. Our records indicate that you have not paid the penalty or requested a waiver by the Commission.

Please pay the penalty in full within 30 days of the date of this letter. If the Commission does not receive payment, the Election Law requires the Commission to refer the penalty to the Attorney General's Office for collection.

If you would like a waiver of the penalty, you may request a waiver by faxing a written request no later than January 2, 2007. The Commission will decide on the waiver request at its February meeting. The request can be in the form of a brief letter stating the reasons why the report was late and why a waiver should be granted. The letter may be mailed to the Commission or faxed to 287-6775.

If you have any questions regarding this matter, please telephone me at 287-7651.  
Thank you.

Sincerely,

Sandy Thompson  
Candidate Registrar

cc. Treasurer (by regular mail)  
Enc.: Original penalty notice

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

<b>SENDER: COMPLETE THIS SECTION</b>	<b>COMPLETE THIS SECTION ON DELIVERY</b>
<p>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>Article Addressed to:  <i>Mr. David Hughes</i>  <i>84 Howe Street</i>  <i>LeWiston, ME 04240</i></p>	<p>A. Signature  <i>x [Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery <i>12/23/06</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes          If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>Article Number  <i>ST</i> <input type="checkbox"/> Yes</p>	<p>Article Number <b>7005 3110 0000 2803 6402</b></p>
<p>S Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540</p>	

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Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To *David Hughes*

Street, Apt. No.,  
or PO Box No. \_\_\_\_\_

City, State, ZIP+4 \_\_\_\_\_

PS Form 3800, June 2002 See Reverse for Instructions

7005 3110 0000 2803 6402



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

November 13, 2006

Mr. David Hughes  
34 Howe Street  
Lewiston, ME 04240

**BY CERTIFIED MAIL**

Dear Mr. Hughes:

RE: Late 6-Day Pre-General Campaign Finance Report Due 11/1/2006 by 5:00 p.m.

You filed a 6-Day Pre-General campaign finance report on 11/2/2006. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report is \$130.86. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

**NOTE:** The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

The Maine Clean Election Act requires all revenues distributed to certified candidates from the fund to be used for campaign-related purposes. Commission guidelines regarding permissible campaign-related expenditures do not include the payment of a penalty as a permissible expenditure.

Sincerely,

  
Sandy Thompson  
Candidate Registrar

cc. Treasurer

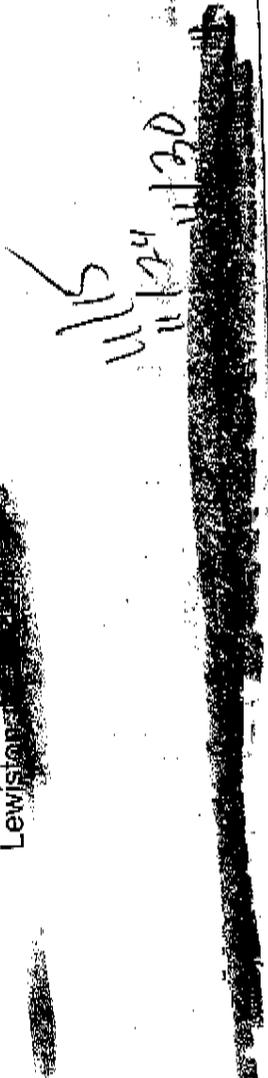
OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

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

*Mailed Regular  
Post 12/21/06*

UNCLAIMED

Mr. David Hughes  
34 Howe Street  
Lewiston



*11/15  
11/24  
11/30*

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MAILED FROM ZIP CODE 04330



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ps.com  
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mark  
Here  
for instructions



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

November 13, 2006

Mr. David Hughes  
 34 Howe Street  
 Lewiston, ME 04240

The Commission staff has made a preliminary determination, based upon application of the statutory formula, that a penalty of \$130.86 applies for the late filing of your 6-Day Pre-General campaign finance report. If you agree with this determination, please make your check or money order in that amount payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333, within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like the Commission to make a formal determination of any penalty to be assessed in this case.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay the full amount of any penalty. Please direct any questions you may have about this matter to Sandy Thompson 287-7651.

Cut Along Dotted Line

For Office Use Only:  
 Account: CGEEP  
 Fund: 014 Approp: 02

To Commission on Governmental Ethics and Election Practices  
 135 State House Station  
 Augusta, Maine 04333

From: Mr. David Hughes

RE: Penalty for late filing of 6-Day Pre-General Campaign Finance Report

Amount Enclosed: \$ \_\_\_\_\_

Check/M.O. No.: # \_\_\_\_\_

**Please Make Check or Money Order Payable to Treasurer, State of Maine**

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
 WEBSITE: WWW.MAINE.GOV/ETHICS

## COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

### PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

#### BASIS FOR PENALTIES 21-A M.R.S.A. Section 1020-A(4)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

- For the first violation, 1%
- For the second violation, 3%
- For the third and each subsequent violation, 5%

A penalty begins to accrue at 5:00 p.m. on the day the report is due.

*Example:* The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500	Greater amount of the total contributions received or expenditures made during the filing period
<u>X .01</u>	Percent prescribed for first violation
\$25.00	One percent of total contributions
<u>X 2</u>	Number of calendar days late
\$50.00	Total penalty

*Example*

Your penalty is calculated as follows:

Contributions/Expenditures: \$	<u>4,302</u>
Percent prescribed:	<u>X 3%</u>
{Pre primary } <sup>1<sup>st</sup></sup> {report late}	\$ <u>130.86</u>
Number of days late:	<u>X 1</u>
Total penalty accrued:	\$ <u>130.86</u>

Any penalty of less than \$5 is waived.

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

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

#### MAXIMUM PENALTIES 21-A M.R.S.A. Section 1020-A(5)

\$5,000 for reports required to be filed 42 days before an election (gubernatorial candidate only),  
6 days before an election, 42 days after an election, and for 48-hour reports;  
\$1,000 for semiannual reports.



## Welcome to the Campaign Finance Electronic Filing System Site

[Menu](#)
[Home](#)
[Help](#)
[Logout](#)
[Change Password](#)
[Admin Page](#)

2/2/2007

### Home Page for David Hughes

#### CAMPAIGN YEAR 2006

REPORT TYPE	REPORTING PERIOD	DUE DATE	DATE FILED	STATUS	LAST MODIFIED	
Candidate Registration			7/28/2006	Filed	8/1/2006	Print
6-Day Pre-General	7/19/2006 to 10/26/2006	11/1/2006	11/2/2006 10:18:12 AM	Filed	11/2/2006 10:18:12 AM	Print
42-Day Post-General	10/27/2006 to 12/12/2006	12/19/2006	12/19/2006 4:10:12 PM	Filed	12/19/2006 4:10:12 PM	Print
24-Hr Report of Late Contributions and Expenditures		N/A		MULTIPLE		

Please click on the following buttons to Download schedule informations in excel format.

[Download Contribution](#)
[Download Contribution A](#)
[Download Expenditure](#)

\_report check: Sandy

11/2/2006

all called on 11/1

Office Sought	Last	First	Last Of Filed Date
Representative	Finch	Edward	10/27/2006 3:06:28 PM
Representative	Curtis	Philip	10/27/2006 2:12:59 PM
Senate	Mayo III	Arthur	10/27/2006 8:59:53 AM
Representative	McKeen	William	10/26/2006 12:34:15 PM
Sheriff	Corbett	David	10/25/2006 4:40:31 PM
County Commi	Chandler	Sallie	10/23/2006 9:51:40 PM
Representative	Hamper	James	10/17/2006 9:31:17 PM
County Commi	Furbish	Jeffrey	10/15/2006 8:50:33 PM
Senate	Ealey	Nelson	9/26/2006 8:29:54 PM
Representative	Mills	Janet	8/7/2006 1:39:57 PM
Representative	Scease	Jane	
Representative	Soule	Laura	
Representative	Painter	John	
Representative	Hughes	David	
Representative	Davis	Kimberly	
Representative	Fredette	Kevin	
Representative	Fisher	Mark	
County Commi	York	Gerald	
County Treasur	Parkman	David	
Representative	Craven	Margaret	
Representative	Gotta	H. David	
Representative	Bryant-Desche	Joan	
Representative	Gerzofsky	Stanley	

did file on 11/1  
 7:15 2nd call  
 check box in

ok 11/1/2006  
 called filed 1 day early.

11/2 left, filed 1 day late  
 721-8675  
 (W) "no activity"  
 (H) left message  
 will file filed 1 day late  
 will file filed meday late  
 spouse on m @ 2:35 2 days  
 (H) left message; will file 1/1  
 (H) left message; filed on paper  
 filed today 11/2  
 "in progress" talked to treasurer yesterday  
 "In progress" H - left message - filed on paper  
 "stun couldn't get it up yesterday so no because put it in the mail - registered mail on 11/1 (day late)

for file by browser

- was having difficulty entering, let files off.  
 < data: I emailed her copy of form.  
 half done + then got kicked off ->

Copied document from message - do we need copies -?

spoty since due to change our form from alpha -> ?

Microsoft Access - [return of funds] Type a question for help

---

**Candidate Info**

Candidate ID#

Office Sought

District

Salutation

First Name

Middle Name

Last Name

Party

Registrar

Replacement

**Enter Repayments**

Date	Amount
<input type="text"/>	<input type="text" value="\$0.00"/>
Total: <input type="text"/>	

Exclude from Mailings

**Filter Options:**

Show All

Authorized Balance \$310

Unauthorized Balance

**Repayment Summary**

	Returned	Remaining
Unauthorized Amount	<input type="text" value="\$0.00"/>	<input type="text" value="\$0.00"/>
Authorized Amount	<input type="text" value="\$0.00"/>	<input type="text" value="\$140.73"/>

**Notes and Communications:**

1/9/2007	Phone	Left message that funds needed to be returned. 740-0951
1/17/2007	Phone	Spoke to David, said he would return unspent funds. I also told him that his penalty was going to
1/17/2007	Phone	the 2/14 Comm mgt for referral. He needs to pay the penalty or come to mgt.
2/2/2007		

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Record:  of 317

Form View NUM

# Exhibit #16

## Title 21-A, §1020-A, Failure to file on time

**8. Failure to file report.** The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. If a candidate fails to file a report after 3 written communications from the commission, the commission shall send up to 2 more written communications by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the communications required by this subsection is guilty of a Class E crime.

[2003, c. 628, Pt. A, §5 (rpr).]

**8-A. Penalties for failure to file report.** The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

[2003, c. 628, Pt. A, §6 (new).]

**9. List of late-filing candidates.** The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

[1995, c. 483, §15 (new).]

**10. Enforcement.** The commission staff has the responsibility for collecting the full amount of any penalty and has all necessary powers to carry out this responsibility. Failure to pay the full amount of any penalty levied under this subchapter is a civil violation by the candidate, treasurer, political party or other person whose campaign finance activities are required by this subchapter to be reported. Thirty days after issuing the notice of penalty, the commission shall report to the Attorney General the name of any person who has failed to pay the full amount of any penalty. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the penalty. This action must be brought in the Superior Court for Kennebec County or the District Court, 7th District, Division of Southern Kennebec.

[1999, c. 426, §33 (amd).]

MRSA , ST.21A SEC.1020A/4,5 (AMD) .

IB 1995, Ch. 1, §15 (AMD) .

PL 1995, Ch. 483, §15 (NEW) .

PL 1995, Ch. 625, §B5 (AMD) .

RR 1995, Ch. 1, §10 (COR) .

RR 1995, Ch. 2, §38 (COR) .

PL 1999, Ch. 426, §32,33 (AMD) .

PL 1999, Ch. 729, §5 (AMD) .

PL 2001, Ch. 470, §11 (AFF) .

PL 2001, Ch. 470, §7,8 (AMD) .

PL 2001, Ch. 714, §PP1 (AMD) .

PL 2001, Ch. 714, §PP2 (AFF) .

PL 2003, Ch. 302, §4 (AMD) .

PL 2003, Ch. 448, §4 (AMD) .

PL 2003, Ch. 628, §A3-6 (AMD) .

RR 2003, Ch. 1, §14 (COR) .



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

January 24, 2007

Mr. Arthur H. Clement  
931 Hinckley Road  
Clinton, ME 04927

**BY CERTIFIED AND REGULAR MAIL**

Dear Mr. Clement:

This is to follow up on the letters we have sent you over the past two months requesting that:

- you pay the penalty of \$51.17 for the late filing of your 6-Day Pre-General campaign finance report;
- you file your 42-Day Post General campaign finance report and;
- you return unspent MCEA funds found on line 6 of Schedule F, 42-Day Post General campaign finance report. Since the report is not filed, the unspent amount is unknown. Under the MCEA, you were required to return these funds at the time you filed your final campaign finance report that was due no later than December 19, 2006. (21-A M.R.S.A. §1125(12)).

Since the Commission did not receive payment of your penalty by January 15, 2007, it is tentatively scheduled for the February 14 meeting for referral to the Attorney General's office for collection. **If the Commission does not receive the payment of your penalty, the unspent MCEA funds and your filed campaign finance report by Monday, February 5, 2007, your name will be printed on the public agenda for the Ethics Commission's February 14, 2007 meeting for all three issues.**

Please telephone me at 287-4179 if you have any questions or I can help in any way.

Sincerely,  
*Jonathan Wayne*  
Jonathan Wayne  
Executive Director

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Postage	\$	Postmark Here  1-24-2007
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent to Mr. Arthur Clement  
Street, Apt. No.,  
or PO Box No.  
City, State, ZIP+4 Clinton, ME

D AT: 242 STATE STREET, AUGUSTA, MAINE  
ITE: WWW.MAINE.GOV/ETHICS



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

**FINAL NOTICE**

December 14, 2006

Mr. Arthur H. Clement  
931 Hinckley Road  
Clinton, ME 04927

**BY CERTIFIED MAIL**

Dear Mr. Clement:

The Ethics Commission notified you on November 13, 2006 of the preliminary determination of a penalty in the amount of \$51.17 for the late filing of your 6-day pre-general campaign finance report. Our records indicate that you have not paid the penalty or requested a waiver by the Commission.

Please pay the penalty in full within 30 days of the date of this letter. If the Commission does not receive payment, the Election Law requires the Commission to refer the penalty to the Attorney General's Office for collection.

If you would like a waiver of the penalty, you may request a waiver by faxing or mailing a written request no later than January 2, 2007. The Commission will decide on the waiver request at its February meeting. The request can be in the form of a brief letter stating the reasons why the report was late and why a waiver should be granted. The letter may be faxed to 287-6775.

If you have any questions regarding this matter, please telephone me at 287-4709. Thank you.

Sincerely,

*Gavin O'Brien*

Gavin O'Brien  
Candidate Registrar

0449 ENR2 0000 07TE 5007

<b>U.S. Postal Service™</b>		
<b>CERTIFIED MAIL™ RECEIPT</b>		
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>		
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>		
<b>OFFICIAL USE</b>		
Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	
Sent To <i>Clement</i>		
Street, Apt. No., or PO Box No.		
City, State, ZIP+4		

AT: 242 STATE STREET, AUGUSTA, MAINE  
E: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)

FAX: (207) 287-6775

**SENDER: COMPLETE THIS SECTION**

Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

Mr. Arthur H. Clement  
931 Hinckley Road  
Clinton, ME 04927

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 *Arthur H. Clement*  Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

DEC 27 2008

3. Service by USPS  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

Article Number (Transfer from service label) 7005 3110 0000 2803 6440

S Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540



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

November 13, 2006

Mr. Arthur H. Clement  
 931 Hinckley Road  
 Clinton, ME 04927

**BY CERTIFIED MAIL**

Dear Mr. Clement:

RE: Late 6-Day Pre-General Campaign Finance Report Due 11/1/2006.

You filed a 6-Day Pre-General campaign finance report on 11/13/2006. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report would be \$51.17. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

**NOTE:** The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

The Maine Clean Election Act requires all revenues distributed to certified candidates from the fund to be used for campaign-related purposes. Commission guidelines regarding permissible campaign-related expenditures do not include the payment of a penalty as a permissible expenditure.

Sincerely,

Gavin O'Brien  
 Candidate Registrar

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
 WEBSITE: WWW.MAINE.GOV/ETHICS

cc: Treasurer

November 13, 2006

Mr. Arthur H. Clement  
931 Hinckley Road  
Clinton, ME 04927

The Commission staff has made a preliminary determination, based upon application of the statutory formula, that a penalty of \$51.17 applies for the late filing of your 6-Day Pre-General campaign finance report. If you agree with this determination, please make your check or money order in that amount payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333, within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like the Commission to make a formal determination of any penalty to be assessed in this case.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay the full amount of any penalty. Please direct any questions you may have about this matter to Gavin O'Brien at 287-4709.

Cut Along Dotted Line

---

For Office Use Only:  
Account: CGEEP  
Fund: 014 Approp: 02

To Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, Maine 04333

From: Mr. Arthur H. Clement

RE: Penalty for late filing of 6-Day Pre-General Campaign Finance Report

Amount Enclosed: \$ \_\_\_\_\_

Check/M.O. No.: # \_\_\_\_\_

Please Make Check or Money Order Payable to Treasurer, State of Maine

<b>SENDER: COMPLETE THIS SECTION</b>		<b>COMPLETE THIS SECTION ON DELIVERY</b>	
<p>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature  <i>x [Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>Article Addressed to:   <b>MR. ARTHUR H. CLEMENT</b>  <b>931 HINCKLEY ROAD</b>  <b>CLINTON ME 4927</b></p>		<p>B. Received by (Printed Name) <i>Nicole Clement</i> C. Date of Delivery <i>11-21-06</i></p>	
		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No          If YES, enter delivery address below:</p>	
		<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>Article Number          (Transfer from service label)</p>		<p><b>7005 3110 0000 2803 6082</b></p>	
<p>Form 3811, August 2001</p>		<p>Domestic Return Receipt 102595-02-M-1540</p>	

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**OFFICIAL USE**

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To *Clement*

Street, Apt. No., or PO Box No.

City, State, ZIP+4

See Reverse for Instructions



Microsoft Access - [return of funds] Type a question for help

---

**Candidate Info**

Candidate ID#

Office Sought

District

Salutation

First Name

Middle Name

Last Name

Party

Registrar

Replacement

**Enter Repayments**

Date	Amount
11/27/2006	\$6,949.33
* [New]	\$0.00
<b>Total</b>	<b>\$6,949.33</b>

Exclude from Mailing

**Filter Options**

Show All

Authorized Balance > \$10

Unauthorized Balance

**Repayment Summary**

	Returned	Remaining
Unauthorized Amount	\$6,949.33	\$0.00
Authorized Amount	\$0.00	Not Filed

**Notes and Communications**

1/26/2007	Phone	He returned my call. Said he needed a payment plan because he thought payment of MF was a tax.
1/26/2007		credit payment. When the check came, he was in Virginia and told his daughter to deposit it in his
1/26/2007		account. He said that he would pay his penalty and file his last report. He said he had no activity.
* 2/2/2007		

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Record: 14 of 317 NLM

Form View

# Exhibit #17



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

To: Dean Cray  
 David Hughes ✓  
 Hon. William Walcott  
 Priscilla Jenkins  
 Paul Nixon  
 Debra Reagan

From: Jonathan Wayne, Executive Director

Date: February 1, 2007

Re: Return of Unspent Maine Clean Election Act Funds

This is to follow up on previous correspondence sent to you requesting the return of unspent Maine Clean Election Act (MCEA) funds. Your last campaign finance report showed that your campaigns had the unspent cash balances listed below. Under 21-A M.R.S.A. §1125(12), Maine Clean Election Act candidates are required to return all unspent MCEA funds with their final campaign finance report, which was due December 19, 2006.

**If you do not return these funds by Tuesday, February 6, the Ethics Commission will schedule the collection of these funds for the next public meeting of the Commission on February 14, 2007.** At that meeting, the staff of the Commission will recommend referral of the unreturned funds to the State Attorney General for collection proceedings and/or punitive action.

If you need to discuss this matter, please telephone our office at 287-4179 and ask for Nat Brown or Sandy Thompson. Thank you.

Dean Cray	\$508.68
David Hughes	\$140.73
Hon. William Walcott	\$1,940.56
Priscilla Jenkins	\$332.19
Paul Nixon	\$2,160.68
Debra Reagan	\$4,518.00

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
 WEBSITE: WWW.MAINE.GOV/ETHICS

FAX: (207) 287-6775

PHONE: (207) 287-4179



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

January 19, 2007

Mr. David Hughes  
34 Howe Street  
Lewiston, ME 04240

Dear Mr. Hughes:

Our records indicate that you have a balance of unspent Maine Clean Election Act (MCEA) funds, based on the amount of funds you received from the State of Maine and your reported expenditures. Under the MCEA, you were required to return these funds at the time you filed your final campaign finance report on December 19, 2006. (21-A M.R.S.A. §1125(12))

**This letter is to request that you return all unspent MCEA funds from your 2006 campaign no later than Friday, January 26, 2006. Please send a check or money order made payable to the Maine Clean Election Fund to the Commission at the mailing address listed above.**

Please telephone me at 287-4179 if you have any questions or I can help in any way.

Sincerely,

A handwritten signature in cursive script that reads "Sandy Thompson".

Sandy Thompson  
Candidate Registrar

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

Microsoft Access: [return of funds] Type a question for help

File Edit View Insert Format Records Tools Window Help

MS Sans Serif 8

**Candidate Info**

Candidate ID#

Office Sought

District

Salutation

First Name

Middle Name

Last Name

Party

Registrar

Replacement

**Enter Repayments**

Date	Amount
	\$0.00
Total	

Exclude From Mailings

**Filter Options**

Show All

Authorized Balance > \$10

Unauthorized Balance

**Repayment Summary**

	Returned	Remaining
Unauthorized Amount	\$0.00	\$0.00
Authorized Amount	\$0.00	\$140.73

**Notes and Communications**

1/9/2007	Phone	Left message that funds needed to be returned. 740-0951
1/17/2007	Phone	Spoke to David; said he would return unspent funds. I also told him that his penalty was going to
1/17/2007	Phone	the 2/14 Comm mgt for referral. He needs to pay the penalty or come to mgt.
* 2/2/2007		

Record: 122 of 317

Form View

NUM

For Commission use only

data entry  
proofread  
follow-up

STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
Mail: 135 State House Station, Augusta, Maine 04333-0135  
Office: 242 State Street, Augusta, Maine  
Tel: (207) 287-4179 Fax: (207) 287-6775  
Website: www.maine.gov/ethics  
Electronic Filing: www.maine campaign finance.com

2006 CAMPAIGN FINANCE REPORT  
MAINE CLEAN ELECTION ACT CANDIDATES  
FOR THE LEGISLATURE

(Please Complete ALL Entries)

Name of CANDIDATE DAVID HUGHES  
Mailing address 34 HOWE STREET  
City, Zip Code Lewiston ME 04240  
Telephone number (207)740-0951 Fax \_\_\_\_\_ E-mail dhughes@256u.net  
Office Sought REPRESENTATIVE District Number 72

CHECK IF CHANGED  
SINCE PREVIOUS  
REPORT

Name of TREASURER DAVID HUGHES  
Mailing address 34 HOWE STREET  
City, Zip Code LEWISTON ME 04240  
Telephone number (207)740-0951 Fax \_\_\_\_\_ E-mail dhughes@256u.net

CHECK IF CHANGED  
SINCE PREVIOUS  
REPORT

Type of Report 42-DAY POST-GENERAL Due Date 12/19/2006 Dates of Report Period 10/27/2006 - 12/12/2006

- Amendment to: \_\_\_\_\_
- Other (specify): \_\_\_\_\_
- Check if campaign had no activity for the reporting period (no other pages are required)

I CERTIFY THAT I HAVE EXAMINED THIS REPORT AND TO THE BEST OF MY KNOWLEDGE IT IS TRUE, CORRECT AND COMPLETE.

SIGNATURE ON FILE 12/19/2006 SIGNATURE ON FILE 12/19/2006  
Treasurer's Signature Date Candidate's Signature Date

DAVID HUGHES

02/02/2007

CANDIDATE'S FULL NAME

Date Submitted

**SCHEDULE F  
SUMMARY SECTION  
(MAINE CLEAN ELECTION ACT CANDIDATES)**

**CASH ACTIVITY**

	TOTAL FOR THIS PERIOD	TOTAL FOR CAMPAIGN
1. CASH BALANCE FROM LAST REPORT (if any)	1,596.50	
2. MAINE CLEAN ELECTION ACT Payments	+	4,362.00
3. SALE OF CAMPAIGN PROPERTY (Schedule E, Part II)	+	0.00
4. OTHER CASH RECEIPTS (interest, etc.)	+	0.00
5. MINUS TOTAL EXPENDITURES (total of all Schedule B pages)	-	4,221.27
6. CASH BALANCE AT CLOSE OF PERIOD (lines 1 + 2 + 3 + 4 - 5)	=	
	140.73	
7. CASH NOT AUTHORIZED TO SPEND	0.00	
8. CASH AUTHORIZED TO SPEND (line 6 - 7)	140.73	

**OTHER ACTIVITY THIS REPORTING PERIOD**

9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD (total all Schedule D pages)	0.00	
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Commission on Governmental Ethics and Election Practices

Questions? Call (207)287-4179

November 27, 2006

## CLOSING OUT YOUR 2006 CAMPAIGN

Find more information at  
[www.maine.gov/ethics](http://www.maine.gov/ethics)

### A MESSAGE FROM THE COMMISSION

We thank all candidates for their time and effort to comply with the requirements of the MCEA and the election law. Campaign finance reporting and disclosure are vital parts of the election process, strengthening the faith and confidence Maine's citizens have in their government.

In closing out your 2006 campaign, please follow the requirements listed here. If you have any questions, please call the Commission at:

207-287-4179.

### KEEPING YOUR CONTACT INFORMATION CURRENT

If your address, telephone or e-mail changes in the future months, please call or e-mail us with your new information.

We may need to send you reminder notices or contact you and it is important that we have the correct information. Thank you for your attention to this.

## UPCOMING REPORT DEADLINE AND RETURNING MCEA FUNDS

Your 42-Day Post-General Report is due by December 19, 2006 by 5:00 p.m. All candidates must file this report, including candidates who lost the election. This is the final report of your campaign. If you have already filed it, please ignore this reminder.

- Please remember that late contributions and expenditures reported on 24-Hour Reports filed after 10/26/2006 must be included in the 42-day post-general report.
- Prior to filing your report, pay all outstanding debts and obligations.
- Prior to filing your report, sell all equipment (cell phone, computer, etc.) purchased with MCEA funds at fair market value. On Schedule E, enter the sale proceeds for each piece of equipment.
- Return all unspent authorized MCEA funds. The amount to be returned is found on line 8 of Summary Schedule F. If you file electronically, please send a check or money order payable to "Maine Clean Election Fund" after you have filed the report. If you file on paper, please attach the payment to your paper form. Since the Commission will be entering the returned amounts into your electronic report, you do not have to enter anything. The Commission will reconcile the amount returned with your expenditures.
- Return all unauthorized MCEA funds. If you had an unauthorized amount of funds to be returned, you would have received a letter from the Commission stating the amount to be returned. Unauthorized amounts were required to be returned by 11/21/2006.

## RECORDS RETENTION: TWO YEAR REQUIREMENT

Campaign treasurers must preserve all campaign financial records for two years following the final campaign finance report for the election. For MCEA candidates in the general election, the 42-day post-general report is the final report, which means that receipts and records must be maintained through December 2008. Examples of records that must be maintained for two years include:

- All invoices and receipts for expenditures greater than \$50 or for lesser amounts if the aggregate is more than \$50 for a single payee.
- Proof of payment (cancelled check, account transaction record, etc.) for the above expenditures.
- All bank account records and other records for the campaign account.
- All documentation for vehicle travel, consulting services and salaries.
- Seed money contributors' names and addresses for contributors giving \$10 or more.

## 2006 CANDIDATE SURVEY

We have received many responses. If you haven't yet completed the survey, please do so. The information is important to us. Thank you.



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

To: Candidates and Treasurers  
From: Commission Staff  
Date: October 10, 2006  
Re: Campaign Finance Report due November 1

---

This is to remind you that your campaign is required to file a campaign finance report **no later than 5:00 p.m. on Wednesday, November 1, 2006**. The report covers all activity from the close of your last report through October 26. You will also be required to file a report 42 days after the election on December 19 regardless of the results of your election.

#### 24-Hour Reports

If a campaign makes an expenditure of \$1,000 or more after October 26, the campaign must file a 24-Hour Report within 24 hours of making the expenditure (including on a Saturday or a Sunday). Also, if a candidate or his or her spouse makes a contribution of \$1,000 or more after October 26, the campaign must file a 24-Hour Report within 24 hours of receiving the contribution.

Campaigns should file the report using the Commission's e-filing system, unless they have received a waiver of the e-filing requirement. The paper report is on the Commission's website, [www.maine.gov/ethics](http://www.maine.gov/ethics). Paper filers may fax the report and send the original within 5 days.

Privately financed candidates with a Maine Clean Election Act opponent who are required to file a 101% Report are under slightly different requirements, which are listed on the back of this page.

#### Maine Clean Election Act Candidates

Please remember that if you have received any matching funds, you will be required to return to the Commission by November 21 the amount which you have not been authorized to spend. You must also pay all outstanding debts and return all unspent Maine Clean Election Act funds upon filing the December 19 post-election report. Those amounts may be repaid to the Commission by check or money order payable to the Maine Clean Election Fund.

#### Questions

Please telephone us at 287-4179 if you have any questions.

## CHAPTER 14 - Post-Election Responsibilities for MCEA Candidates

- Address Change Notification
- Election Night Parties and Thank-You Notes
- Returning Unauthorized Matching Funds and Unspent MCEA Funds
- Sale of Campaign Property
- Commission Review of Campaign Expenditures
- Sources of Income Statement for Elected Legislators

### Notify Commission of Changes of Address and Phone Number

During and after the campaign, it is important for candidates and treasurers to notify the Commission directly when their address and/or telephone number changes. If the Commission is not notified, the candidate may miss important notices, filing deadlines, or opportunities to complete the Commission's review of the campaign.

### Election Night Parties and Post-Election Thank-You's

Candidates may spend limited amounts of MCEA funds on election night parties, thank-you notes, or advertising to thank supporters or voters:

- \$250 for State Representative candidates;
- \$500 for State Senate candidates; and
- \$2,500 for gubernatorial candidates.

Candidates may also use their personal funds for election night parties and post-election thank-you's.

### Return of "Unauthorized" Matching Funds

If a MCEA candidate has received matching funds that the candidate was not authorized to spend, the candidate must return the funds within two weeks of the candidate's last election. For candidates in the 2006 general election, this deadline will be November 21, 2006. The Commission will notify the candidate of this unauthorized amount of matching funds.

### Return of Unspent MCEA Funds

All candidates are required to return any MCEA funds that the candidate was authorized to spend but did not. These funds must be returned by the deadline for the post-election campaign finance report 42 days after the election. The Commission will verify that this amount appears to be consistent with the expenditures that have been reported by the candidate. If there is a discrepancy, the Commission will request that the candidate resolve it by amending the reported expenditures to accurately reflect actual payments of MCEA funds.

### Sale of Property that Could be Converted to Personal Use

After the election, MCEA candidates must sell any campaign property purchased with public funds that could be converted to the personal use of the candidate or campaign staff (e.g., computers, fax machines, printers, cell phones). The candidates are required to sell the goods at fair market value and return the proceeds to the Ethics

## Title 21-A, §1125, Terms of participation

**8. Amount of fund distribution.** By July 1, 1999 of the effective date of this Act, and at least every 4 years after that date, the commission shall determine the amount of funds to be distributed to participating candidates based on the type of election and office as follows.

A. For contested legislative primary elections, the amount of revenues to be distributed is the average amount of campaign expenditures made by each candidate during all contested primary election races for the immediately preceding 2 primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives. [2003, c. 453, §1 (amd).]

B. For uncontested legislative primary elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all uncontested primary election races for the immediately preceding 2 primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives. [2003, c. 453, §1 (amd).]

C. For contested legislative general elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all contested general election races for the immediately preceding 2 general elections, as reported in the initial filing period subsequent to the general election, for the respective offices of State Senate and State House of Representatives. [2003, c. 688, Pt. A, §21 (amd).]

D. For uncontested legislative general elections, the amount of revenues to be distributed from the fund is 40% of the amount distributed to a participating candidate in a contested general election. [2003, c. 453, §1 (amd).]

E. For gubernatorial primary elections, the amount of revenues distributed is \$200,000 per candidate in the primary election. [2003, c. 453, §1 (new).]

F. For gubernatorial general elections, the amount of revenues distributed is \$400,000 per candidate in the general election. [2003, c. 453, §1 (new).]

If the immediately preceding election cycles do not contain sufficient electoral data, the commission shall use information from the most recent applicable elections.

[2003, c. 688, Pt. A, §21 (amd).]

**9. Matching funds.** When any campaign, finance or election report shows that the sum of a candidate's expenditures or obligations, or funds raised or borrowed, whichever is greater, alone or in conjunction with independent expenditures reported under section 1019-B, exceeds the distribution amount under subsection 8, the commission shall issue immediately to any opposing Maine Clean Election Act candidate an additional amount equivalent to the reported excess. Matching funds are limited to 2 times the amount originally distributed under subsection 8, paragraph A, C, E or F, whichever is applicable.

[2003, c. 688, Pt. A, §22 (rpr).]

**10. Candidate not enrolled in a party.** An unenrolled candidate certified by April 15th preceding the primary election 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 and 8. For an unenrolled candidate not certified by April 15th at 5:00 p.m. the deadline for filing qualifying contributions is 5:00 p.m. on June 2nd preceding the general election. An unenrolled candidate certified after April 15th at 5:00 p.m. is eligible for revenues from the fund in the same amounts as a general election candidate, as specified in subsections 7 and 8.

[2003, c. 465, §6 (amd).]

**11. Other procedures.** The commission shall establish by rule procedures for qualification, certification, disbursement of fund revenues and return of unspent fund revenues for races involving special elections, recounts, vacancies, withdrawals or replacement candidates.

[IB 1995, c. 1, §17 (new).]

**12. Reporting; unspent revenue.** Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

[IB 1995, c. 1, §17 (new).]

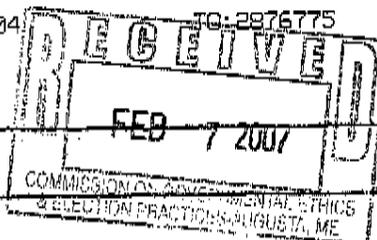
# Exhibit #18

FEB-7-2007 12:44P FROM:ERROL W CLEMENT

2076343004

TO:2876775

P.1

**A - CLEMENT CERTIFIED & STUD WELDING**

931 HINCKLEY RD  
CLINTON, ME 04927  
Phone (207) 426-9085  
Cell (207) 314-0525

To: Maine Ethics Commission,

Attn: Sandy Thompson  
Fax (287-6775)

2/7/07

I Received a check from Maine Clean Election Fund to my home. I was out of town at the time and when I inquired with my daughter, she said it was a check from the state, in which I thought it was the homeowner rebate check, I told her to put it into my business account, in which I made out checks for bills. When I returned home several weeks later, I realized the error of it being the clean elections funds check and not the rebate check. My intention was to pay the money back before it was due in December. When I realized that I couldn't, I immediately called Sandy Thompson to explain the situation. In talking to Sandy Thompson there was a misunderstanding as she thought the check was the \$8700 that was electronically put into my campaign account in which it was, but not the check we were discussing. The first check to my home was the check we were talking about.

I would like to pay a schedule of 50.00 a month, to be paid in full in one year if not sooner. It was an unfortunate error on my part and I am truly sorry and embarrassed of the situation and am looking forward to any assistance from your department on this matter.

Authorized by;

Arthur Clement

**Summary of Financial Activity  
Reported by Arthur Clement**

Seed Money Received	\$25.00
Primary Election Payment	\$487.00
Interest	\$0.60
General Election Payment	\$4,362.00
Matching Funds	\$1,774.67
Expenditures	-\$660.98
Cash Balance	\$5,988.29

ARTHUR H. CLEMENT

CANDIDATE'S FULL NAME

Date Submitted

**SCHEDULE F  
SUMMARY SECTION  
(MAINE CLEAN ELECTION ACT CANDIDATES)**

<b>CASH ACTIVITY</b>		
	<b>TOTAL FOR THIS PERIOD</b>	<b>TOTAL FOR CAMPAIGN</b>
1. CASH BALANCE FROM LAST REPORT (if any)	4,640.02	
2. MAINE CLEAN ELECTION ACT Payments	+ 1,348.27	6,648.67
3. SALE OF CAMPAIGN PROPERTY (Schedule E, Part II)	+ 0.00	0.00
4. OTHER CASH RECEIPTS (interest, etc.)	+ 0.00	0.60
5. MINUS TOTAL EXPENDITURES (total of all Schedule B pages)	- 0.00	660.98
6. CASH BALANCE AT CLOSE OF PERIOD (lines 1 + 2 + 3 + 4 - 5)	= 5,988.29	
7. CASH NOT AUTHORIZED TO SPEND	0.00	
8. CASH AUTHORIZED TO SPEND (line 6 - 7)	5,988.29	

<b>OTHER ACTIVITY THIS REPORTING PERIOD</b>		
9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD (total all Schedule D pages)	0.00	



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

January 26, 2007

Mr. Arthur H. Clement  
931 Hinckley Road  
Clinton, ME 04927

Dear Mr. Clement:

As a follow up on your conversation today with Candidate Registrar Sandy Thompson, **this is to request that by February 5 you send a written explanation of what occurred so that the Ethics Commission staff can determine how to proceed.** Sandy's notes indicate that you told her:

- that you were in Virginia at the time your campaign received our October 28, 2006 payment of \$8,724 in matching funds;
- your daughter called you from Maine and said that you got a check from the state;
- believing that it was a tax credit check, you had her cash it or deposit it into your personal account;
- you returned to Maine after two weeks in Virginia;
- you used the funds to pay a mortgage, etc. and then realized your mistake; and
- when Sandy said that you needed to return the amount shown as your campaign balance on your last report, you responded that you did not have the money.

Your last campaign finance report filed shows that you have a balance of \$4,640.02 which your campaign was authorized to spend but did not. (This is in addition to the \$6,949.33 in matching funds you returned, which your campaign was not authorized to spend.) Under 21-A M.R.S.A. §1125(12), Maine Clean Election Act (MCEA) candidates are required to return all unspent MCEA funds with their final campaign finance report, which was due December 19, 2006. Unspent MCEA funds may not be used for personal expenses.

We are having difficulty squaring your explanation to Sandy with the following facts:

- Our October 28 payment was made by electronic funds transfer, not by check. The letter we mailed clearly stated that the payment was for campaign purposes.

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

Mr. Arthur H. Clement

- 2 -

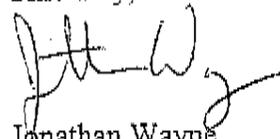
January 26, 2007

- When you signed up to receive electronic funds transfer, you indicated that payments should be made to account # 90502708 at the Gardiner Savings Institution. We presume this was your campaign account. When you returned unauthorized matching funds on October 25, 2006, however, the check was drawn on your business account at the bank (#90428157).
- Evidently, Maine Clean Election Act funds were transferred from a campaign account to your business account. Based on what you told Sandy, we are unsure who made this transfer, and why that person would believe it was appropriate to make that transfer so that the funds could be used for personal or business purposes.

The Commission staff is attempting to decide how to proceed with the collection of these funds. Our options include: requesting the full return of the funds immediately, or accepting a written plan signed by you to make specific payment amounts by specified dates. Your explanation will assist us in reaching a decision. **If we do not receive an acceptable explanation by Monday, February 5, we will put this matter on the agenda of the next public meeting of the Commission, which will take place on February 14<sup>th</sup> at 242 State Street in Augusta and we will request your attendance to explain the circumstances in person to the Commission members.**

Please understand that while we recognize that good-faith mistakes are made every day, our job is to recover these funds for the state of Maine. We look forward to receiving your written response. You may fax it to 287-6775. Please telephone Sandy Thompson at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne  
Executive Director

cc: Byron H. Brooks, Treasurer



MCEA candidates must complete this form every election cycle if they want electronic funds transfer.

RECEIVED  
APR 11 2006  
COMMISSION ON GOVERNMENTAL ETHICS & ELECTION PRACTICES, AUGUSTA, ME

### State of Maine

#### AUTHORIZATION AGREEMENT FOR DIRECT DEPOSIT SERVICES

TO: DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

ATTN LYNN WARE  
74 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0074

Phone # 207-624-7393 Fax # 207-287-4044

You are hereby authorized to electronically transfer payments to the following:

(Please submit a voided check or deposit slip from your account for verification)

Gardiner Savings Institution  
Name of Financial Institution

[REDACTED]  
Account Number

Type of Account:  Checking

Savings

Arthur Clement, Representative for Dist 29  
Name on Account

[REDACTED]  
Transit/ABA Number

[REDACTED]  
Financial Institution Address

Gardiner  
City

ME  
State

04345  
Zip Code

for deposit to my/our account and I/we authorize the Agency to initiate credit entries and debit entries (to make corrections) to my/our account at the above named financial institution. Each deposit so made (after any necessary corrections) will be full payment of the amount then due and payable to me/us. I/we agree to notify the Agency's offices immediately upon discovery of any errors resulting from transactions under this authorization and to notify the Agency's offices of any changes that may affect these instructions or the Agency's ability to rely upon them. This authorization may be canceled by me/us at any time by so notifying the Agency in writing. In authorizing the above services to be provided to me/us, I/we agree to hold the Agency and the State of Maine harmless from any and all loss, cost, damage or expenses I/we may suffer as the result of errors in deposits, credit entries or debit entries caused by persons who are not employees of the Agency or the State of Maine.

Arthur H. Clement  
Signature of Payee (Benefit Recipient)  
or Authorized Agent

4/11/06  
Date

[REDACTED]  
Social Security # of Payee  
or Firm's Tax Identification Number

931 Hinckley Rd  
Address

Clinton Maine  
City

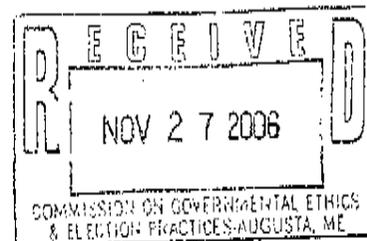
ME 04901  
State Zip Code

[REDACTED]  
Title of Authorized Agent

Contact Person: Name: ARTHUR H. CLEMENT  
Phone#: 207 426-9085



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



October 25, 2006

Mr. Arthur H. Clement  
931 Hinckley Road  
Clinton, ME 04927

Dear Mr. Clement:

This is to notify you that the Maine Clean Election Act authorizes you to spend \$426.40 in matching funds (the "authorization amount"), based on your general election opponent's fundraising and expenditures as well as independent expenditures made by others. As of the date of this letter, you have been authorized to spend a total of \$4,788.40, which includes the initial distribution and any prior matching funds authorizations. The attached chart displays your Maine Clean Election Act payments for the general election plus any balance remaining from the primary election.

The Commission has requested the State to make a payment to you of \$8,724.00, which is the maximum amount of matching funds for which you may qualify for the general election. You may only spend the authorization amount.

Please be aware that you are required to return to the Commission any matching funds which you have not been authorized to spend within 2 weeks after the general election. Also after the general election, you must pay all outstanding debts and return all unspent Maine Clean Election Act funds upon filing the 42-day post-election report. Those amounts must be repaid to the Commission by check or money order payable to the Maine Clean Election Fund.

If you have any questions, please do not hesitate to contact the Commission staff at 287-4179. Thank you.

Sincerely,

*Pauchon*

*CP*

<b>A CLEMENT CERTIFIED &amp; STUD WELDING</b>		246
931 HINCKLEY RD. CLINTON, ME 04927		52-7246/2112
Date <u>11-20-06</u>		
Pay to the Order of	<u>Maine Clean Election Commission on Governmental Ethics</u>	\$ <u>6949.33</u>
<u>Six thousand forty-nine dollars and <sup>33</sup>/<sub>100</sub> cents</u>		Dollars
Cardinal Savings Institution, FSB Cardinal, Maine 04345		
For	<u>Refund \$</u>	
	<u>ARTHUR CLEMENT DIS # 29</u>	<u>Arthur H. Clement</u>
0246		

**Thompson, Sandy**

---

**From:** Ware, Lynn  
**Sent:** Friday, January 26, 2007 10:36 AM  
**To:** Thompson, Sandy  
**Subject:** RE: Candidate Arthur Clement

Hi Sandy,  
He was issued an electronic funds payment on 10/27/06 and should have received it in his account on 10/28/06 (Saturday) or 10/30/06. The payment number was EF06102705198 for \$8,724.00.  
Lynn

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**From:** Thompson, Sandy  
**Sent:** Friday, January 26, 2007 10:29 AM  
**To:** Ware, Lynn  
**Subject:** Candidate Arthur Clement

He was authorized to spend matching funds on 10/25. You may have received voucher on that day or next. Can you let me know when a check was sent to him and an estimate on the date he would have received it? Thanks.

Sandy Thompson  
Candidate Registrar  
Maine Commission on Governmental Ethics  
and Election Practices  
Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)

## Title 21-A, §1125, Terms of participation

**8. Amount of fund distribution.** By July 1, 1999 of the effective date of this Act, and at least every 4 years after that date, the commission shall determine the amount of funds to be distributed to participating candidates based on the type of election and office as follows.

A. For contested legislative primary elections, the amount of revenues to be distributed is the average amount of campaign expenditures made by each candidate during all contested primary election races for the immediately preceding 2 primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives. [2003, c. 453, §1 (amd).]

B. For uncontested legislative primary elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all uncontested primary election races for the immediately preceding 2 primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives. [2003, c. 453, §1 (amd).]

C. For contested legislative general elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all contested general election races for the immediately preceding 2 general elections, as reported in the initial filing period subsequent to the general election, for the respective offices of State Senate and State House of Representatives. [2003, c. 688, Pt. A, §21 (amd).]

D. For uncontested legislative general elections, the amount of revenues to be distributed from the fund is 40% of the amount distributed to a participating candidate in a contested general election. [2003, c. 453, §1 (amd).]

E. For gubernatorial primary elections, the amount of revenues distributed is \$200,000 per candidate in the primary election. [2003, c. 453, §1 (new).]

F. For gubernatorial general elections, the amount of revenues distributed is \$400,000 per candidate in the general election. [2003, c. 453, §1 (new).]

If the immediately preceding election cycles do not contain sufficient electoral data, the commission shall use information from the most recent applicable elections.

[2003, c. 688, Pt. A, §21 (amd).]

**9. Matching funds.** When any campaign, finance or election report shows that the sum of a candidate's expenditures or obligations, or funds raised or borrowed, whichever is greater, alone or in conjunction with independent expenditures reported under section 1019-B, exceeds the distribution amount under subsection 8, the commission shall issue immediately to any opposing Maine Clean Election Act candidate an additional amount equivalent to the reported excess. Matching funds are limited to 2 times the amount originally distributed under subsection 8, paragraph A, C, E or F, whichever is applicable. [2003, c. 688, Pt. A, §22 (xpr).]

**10. Candidate not enrolled in a party.** An unenrolled candidate certified by April 15th preceding the primary election 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 and 8. For an unenrolled candidate not certified by April 15th at 5:00 p.m. the deadline for filing qualifying contributions is 5:00 p.m. on June 2nd preceding the general election. An unenrolled candidate certified after April 15th at 5:00 p.m. is eligible for revenues from the fund in the same amounts as a general election candidate, as specified in subsections 7 and 8. [2001, c. 465, §6 (amd).]

**11. Other procedures.** The commission shall establish by rule procedures for qualification, certification, disbursement of fund revenues and return of unspent fund revenues for races involving special elections, recounts, vacancies, withdrawals or replacement candidates. [IB 1995, c. 1, §17 (new).]

**12. Reporting; unspent revenue.** Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information. [IB 1995, c. 1, §17 (new).]



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

January 24, 2007

Mr. Arthur H. Clement  
931 Hinckley Road  
Clinton, ME 04927

**BY CERTIFIED AND REGULAR MAIL**

Dear Mr. Clement:

This is to follow up on the letters we have sent you over the past two months requesting that:

- you pay the penalty of \$51.17 for the late filing of your 6-Day Pre-General campaign finance report;
- you file your 42-Day Post General campaign finance report and;
- you return unspent MCEA funds found on line 6 of Schedule F, 42-Day Post General campaign finance report. Since the report is not filed, the unspent amount is unknown. Under the MCEA, you were required to return these funds at the time you filed your final campaign finance report that was due no later than December 19, 2006. (21-A M.R.S.A. §1125(12)).

Since the Commission did not receive payment of your penalty by January 15, 2007, it is tentatively scheduled for the February 14 meeting for referral to the Attorney General's office for collection. **If the Commission does not receive the payment of your penalty, the unspent MCEA funds and your filed campaign finance report by Monday, February 5, 2007, your name will be printed on the public agenda for the Ethics Commission's February 14, 2007 meeting for all three issues.**

Please telephone me at 287-4179 if you have any questions or I can help in any way.

Sincerely,

*Jonathan Wayne*  
Jonathan Wayne  
Executive Director

<b>U.S. Postal Service™</b>	
<b>CERTIFIED MAIL™ RECEIPT</b>	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
	Postmark Here  1-24-2007

Sent To	Mr. Arthur Clement
Street, Apt. No., or PO Box No.	
City, State, ZIP+4	Clinton, ME

D AT: 242 STATE STREET, AUGUSTA, MAINE  
ITE: WWW.MAINE.GOV/ETHICS



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

January 18, 2007

Arthur H. Clement  
931 Hinckley Road  
Clinton, ME 04927

**Re: Delinquent Campaign Finance Report – Due Dec 19, 2006**

Dear Mr. Clement:

The Ethics Commission has previously written to you regarding your failure to file a campaign finance report, as required under the Election Law. Failure to file a campaign finance report within 30 days of a filing deadline is a Class E Crime under 21-A M.R.S.A. §1020-A(8-A).

**If you do not file your report prior to the Commission's meeting on February 14, 2007, the Commission staff will recommend to the Commission members that you be referred to the Maine State Attorney General's Office for possible criminal prosecution under 21-A M.R.S.A. §1020-A(8-A).**

To stop this process, immediately submit the following reports:

- **42-Day Post-General Report**

The Commission staff will send you five notices to alert you to your possible referral to the Attorney General, and the Commission staff will also contact you by telephone. The first notice will include a blank reporting form which you can use to file the report.

Please telephone me at 287-4709 regarding this matter, and inform me whether you will be filing the report or if you believe no report is required. Thank you.

Sincerely,

Gavin O'Brien  
Candidate Registrar

T: 242 STATE STREET, AUGUSTA, MAINE  
E: WWW.MAINE.GOV/ETHICS

FAX: (207) 287-6775

7005 3110 0000 2803 2803 7355

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To Clement

Street, Apt. No.,  
or PO Box No.

City, State, ZIP+4

PS Form 3800, June 2002 See Reverse for Instructions

# Exhibit #19



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

February 8, 2007

Paul Nixon  
158 Preble Street  
South Portland, ME 04106

Dear Mr. Nixon:

This is to request again the return of Maine Clean Election Act funds which were not spent by your 2006 campaign. Your final campaign finance report shows a cash balance of \$2,160.68. This amount includes \$398.68 in matching funds which you did not receive prior to the general election. So, your reported receipts and expenditures suggest that your 2006 campaign still has \$1,762.00 in Maine Clean Election Act funds that must be returned to the Commission pursuant to 21-A M.R.S.A. §1125(12).

Please return these funds immediately. At the February 14<sup>th</sup> meeting of the Commission, the staff will recommend that the collection of these funds be turned over to the Attorney General for collection. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Wayne".

Jonathan Wayne  
Executive Director



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

To: Dean Cray  
 David Hughes  
 Hon. William Walcott  
 Priscilla Jenkins  
 Paul Nixon ✓  
 Debra Reagan

From: Jonathan Wayne, Executive Director

Date: February 1, 2007

Re: Return of Unspent Maine Clean Election Act Funds

This is to follow up on previous correspondence sent to you requesting the return of unspent Maine Clean Election Act (MCEA) funds. Your last campaign finance report showed that your campaigns had the unspent cash balances listed below. Under 21-A M.R.S.A. §1125(12), Maine Clean Election Act candidates are required to return all unspent MCEA funds with their final campaign finance report, which was due December 19, 2006.

**If you do not return these funds by Tuesday, February 6, the Ethics Commission will schedule the collection of these funds for the next public meeting of the Commission on February 14, 2007.** At that meeting, the staff of the Commission will recommend referral of the unreturned funds to the State Attorney General for collection proceedings and/or punitive action.

If you need to discuss this matter, please telephone our office at 287-4179 and ask for Nat Brown or Sandy Thompson. Thank you.

Dean Cray	\$508.68
David Hughes	\$140.73
Hon. William Walcott	\$1,940.56
Priscilla Jenkins	\$332.19
Paul Nixon	\$2,160.68
Debra Reagan	\$4,518.00

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
 WEBSITE: WWW.MAINE.GOV/ETHICS



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

January 18, 2007

Mr. Paul Nixon  
158 Preble St.  
South Portland, ME 04106

Dear Mr. Nixon:

Our records indicate that you have a balance of unspent Maine Clean Election Act (MCEA) funds, based on the amount of funds you received from the State of Maine and your reported expenditures. Under the MCEA, you were required to return these funds at the time you filed your final campaign finance report on December 19, 2006. (21-A M.R.S.A. §1125(12))

**This letter is to request that you return all unspent MCEA funds from your 2006 campaign no later than Friday, January 26, 2006.** Please send a check or money order made payable to the Maine Clean Election Fund to the Commission at the mailing address listed above.

Please telephone me at 287-4179 if you have any questions or I can help in any way.

Sincerely,

A handwritten signature in cursive script that reads 'Nathaniel Brown'.

Nathaniel Brown  
Candidate Registrar

**return of funds**

**Candidate Info**  
 Candidate ID# 147  
 Office Sought Representative  
 District 122  
 Salutation Mr.  
 First Name Paul  
 Middle Name  
 Last Name Nixon  
 Party Republican  
 Registrar Nat  
 Replacement

**Enter Repayments**  
 Date 12/4/2006 Amount \$8,724.00  
 Total \$8,724.00  
 Excused   
 Filter Options  
 Show All  
 Authorized Balance ±\$10.  
 Unauthorized Balance

**Repayment Summary**  
 Returned Remaining  
 Unauthorized Amount \$8,325.32\* \$0.00  
 Authorized Amount \$398.68\* \$1,762.00

**Notes and Communications**

1/18/2007	Phone	Left message on machine at home.
2/1/2007	Phone	Left message on machine at home.
2/2/2007	Phone	Paul Nixon called and said he was sending the money right away from Florida.
2/8/2007		*

Record: 208 of 317

\* Paul Nixon has returned no funds. These amounts represent a payment of matching funds which Mr. Nixon did not receive.



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

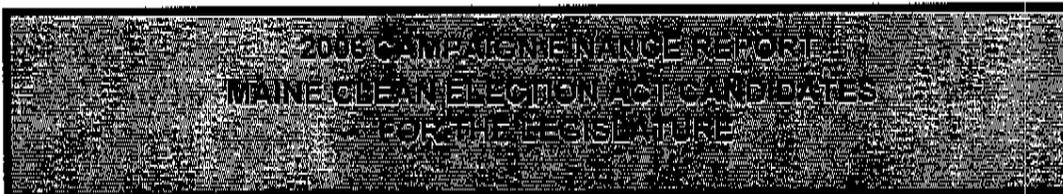
Mail: 135 State House Station, Augusta, Maine 04333-0135

Office: 242 State Street, Augusta, Maine

Tel: (207) 287-4179 Fax: (207) 287-6775

Website: www.maine.gov/ethics

Electronic Filing: www.mainecampaignfinance.com



(Please Complete ALL Entries)

Name of CANDIDATE PAUL NIXON  
Mailing address 158 PREBLE ST.  
City, Zip Code South Portland ME 04106  
Telephone number (207)799-2451 Fax E-mail paul-r-nixon@yanco.com  
Office Sought REPRESENTATIVE District Number 122

CHECK IF CHANGED  
SINCE PREVIOUS  
REPORT

Name of TREASURER PAUL NIXON  
Mailing address 158 PREBLE ST.  
City, Zip Code SOUTH PORTLAND ME 04106  
Telephone number (207)799-2451 Fax E-mail paul-r-nixon@yanco.com

CHECK IF CHANGED  
SINCE PREVIOUS  
REPORT

Type of Report 42-DAY POST-GENERAL Due Date 12/19/2006 Dates of Report Period 10/27/2006 - 12/12/2006

- Amendment to:
Other (specify):
Check if campaign had no activity for the reporting period (no other pages are required)

I CERTIFY THAT I HAVE EXAMINED THIS REPORT AND TO THE BEST OF MY KNOWLEDGE IT IS TRUE, CORRECT AND COMPLETE.

SIGNATURE ON FILE 12/18/2006 SIGNATURE ON FILE 12/18/2006
Treasurer's Signature Date Candidate's Signature Date

PAUL NIXON

02/07/2007

CANDIDATE'S FULL NAME

Date Submitted

**SCHEDULE F  
SUMMARY SECTION  
(MAINE CLEAN ELECTION ACT CANDIDATES)**

**CASH ACTIVITY**

	TOTAL FOR THIS PERIOD	TOTAL FOR CAMPAIGN
1. CASH BALANCE FROM LAST REPORT (if any)	4,581.98	
2. MAINE CLEAN ELECTION ACT Payments	+	178.70
		5,772.68
3. SALE OF CAMPAIGN PROPERTY (Schedule E, Part II)	+	0.00
		0.00
4. OTHER CASH RECEIPTS (Interest, etc.)	+	0.00
		0.00
5. MINUS TOTAL EXPENDITURES (total of all Schedule B pages)	-	2,600.00
		3,612.00
6. CASH BALANCE AT CLOSE OF PERIOD (lines 1 + 2 + 3 + 4 - 5)	= *	2,160.68
7. CASH NOT AUTHORIZED TO SPEND	0.00	
8. CASH AUTHORIZED TO SPEND (line 6 - 7)	* 2,160.68	

**OTHER ACTIVITY THIS REPORTING PERIOD**

9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD (total all Schedule D pages)	0.00	
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\* Never received matching funds Check - ending balance is  
\$ 1,762.00

Commission on Governmental Ethics and Election  
Practices

Questions? Call (207)287-4179

November 27, 2006

## CLOSING OUT YOUR 2006 CAMPAIGN

Find more information at  
[www.maine.gov/ethics](http://www.maine.gov/ethics)

### A MESSAGE FROM THE COMMISSION

We thank all candidates for their time and effort to comply with the requirements of the MCEA and the election law. Campaign finance reporting and disclosure are vital parts of the election process, strengthening the faith and confidence Maine's citizens have in their government.

In closing out your 2006 campaign, please follow the requirements listed here. If you have any questions, please call the Commission at:

207-287-4179.

### KEEPING YOUR CONTACT INFORMATION CURRENT

If your address, telephone or e-mail changes in the future months, please call or e-mail us with your new information.

We may need to send you reminder notices or contact you and it is important that we have the correct information. Thank you for your attention to this.

## UPCOMING REPORT DEADLINE AND RETURNING MCEA FUNDS

Your 42-Day Post-General Report is due by December 19, 2006 by 5:00 p.m. All candidates must file this report, including candidates who lost the election. This is the final report of your campaign. If you have already filed it, please ignore this reminder.

- Please remember that late contributions and expenditures reported on 24-Hour Reports filed after 10/26/2006 must be included in the 42-day post-general report.
- Prior to filing your report, pay all outstanding debts and obligations.
- Prior to filing your report, sell all equipment (cell phone, computer, etc.) purchased with MCEA funds at fair market value. On Schedule E, enter the sale proceeds for each piece of equipment.
- Return all unspent authorized MCEA funds. The amount to be returned is found on line 8 of Summary Schedule F. If you file electronically, please send a check or money order payable to "Maine Clean Election Fund" after you have filed the report. If you file on paper, please attach the payment to your paper form. Since the Commission will be entering the returned amounts into your electronic report, you do not have to enter anything. The Commission will reconcile the amount returned with your expenditures.
- Return all unauthorized MCEA funds. If you had an unauthorized amount of funds to be returned, you would have received a letter from the Commission stating the amount to be returned. Unauthorized amounts were required to be returned by 11/21/2006.

## RECORDS RETENTION: TWO YEAR REQUIREMENT

Campaign treasurers must preserve all campaign financial records for two years following the final campaign finance report for the election. For MCEA candidates in the general election, the 42-day post-general report is the final report, which means that receipts and records must be maintained through December 2008. Examples of records that must be maintained for two years include:

- All invoices and receipts for expenditures greater than \$50 or for lesser amounts if the aggregate is more than \$50 for a single payee.
- Proof of payment (cancelled check, account transaction record, etc.) for the above expenditures.
- All bank account records and other records for the campaign account.
- All documentation for vehicle travel, consulting services and salaries.
- Seed money contributors' names and addresses for contributors giving \$10 or more.

### 2006 CANDIDATE SURVEY

We have received many responses. If you haven't yet completed the survey, please do so. The information is important to us. Thank you.



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

To: Candidates and Treasurers  
From: Commission Staff  
Date: October 10, 2006  
Re: Campaign Finance Report due November 1

---

This is to remind you that your campaign is required to file a campaign finance report **no later than 5:00 p.m. on Wednesday, November 1, 2006**. The report covers all activity from the close of your last report through October 26. You will also be required to file a report 42 days after the election on December 19 regardless of the results of your election.

#### **24-Hour Reports**

If a campaign makes an expenditure of \$1,000 or more after October 26, the campaign must file a 24-Hour Report within 24 hours of making the expenditure (including on a Saturday or a Sunday). Also, if a candidate or his or her spouse makes a contribution of \$1,000 or more after October 26, the campaign must file a 24-Hour Report within 24 hours of receiving the contribution.

Campaigns should file the report using the Commission's e-filing system, unless they have received a waiver of the e-filing requirement. The paper report is on the Commission's website, [www.maine.gov/ethics](http://www.maine.gov/ethics). Paper filers may fax the report and send the original within 5 days.

Privately financed candidates with a Maine Clean Election Act opponent who are required to file a 101% Report are under slightly different requirements, which are listed on the back of this page.

#### **Maine Clean Election Act Candidates**

Please remember that if you have received any matching funds, you will be required to return to the Commission by November 21 the amount which you have not been authorized to spend. You must also pay all outstanding debts and return all unspent Maine Clean Election Act funds upon filing the December 19 post-election report. Those amounts may be repaid to the Commission by check or money order payable to the Maine Clean Election Fund.

#### **Questions**

Please telephone us at 287-4179 if you have any questions.

## CHAPTER 14 - Post-Election Responsibilities for MCEA Candidates

- Address Change Notification
- Election Night Parties and Thank-You Notes
- Returning Unauthorized Matching Funds and Unspent MCEA Funds
- Sale of Campaign Property
- Commission Review of Campaign Expenditures
- Sources of Income Statement for Elected Legislators

### Notify Commission of Changes of Address and Phone Number

During and after the campaign, it is important for candidates and treasurers to notify the Commission directly when their address and/or telephone number changes. If the Commission is not notified, the candidate may miss important notices, filing deadlines, or opportunities to complete the Commission's review of the campaign.

### Election Night Parties and Post-Election Thank-You's

Candidates may spend limited amounts of MCEA funds on election night parties, thank-you notes, or advertising to thank supporters or voters:

- \$250 for State Representative candidates;
- \$500 for State Senate candidates; and
- \$2,500 for gubernatorial candidates.

Candidates may also use their personal funds for election night parties and post-election thank-you's.

### Return of "Unauthorized" Matching Funds

If a MCEA candidate has received matching funds that the candidate was not authorized to spend, the candidate must return the funds within two weeks of the candidate's last election. For candidates in the 2006 general election, this deadline will be November 21, 2006. The Commission will notify the candidate of this unauthorized amount of matching funds.

### Return of Unspent MCEA Funds

All candidates are required to return any MCEA funds that the candidate was authorized to spend but did not. These funds must be returned by the deadline for the post-election campaign finance report 42 days after the election. The Commission will verify that this amount appears to be consistent with the expenditures that have been reported by the candidate. If there is a discrepancy, the Commission will request that the candidate resolve it by amending the reported expenditures to accurately reflect actual payments of MCEA funds.

### Sale of Property that Could be Converted to Personal Use

After the election, MCEA candidates must sell any campaign property purchased with public funds that could be converted to the personal use of the candidate or campaign staff (e.g., computers, fax machines, printers, cell phones). The candidates are required to sell the goods at fair market value and return the proceeds to the Ethics

## Title 21-A, §1125, Terms of participation

**8. Amount of fund distribution.** By July 1, 1999 of the effective date of this Act, and at least every 4 years after that date, the commission shall determine the amount of funds to be distributed to participating candidates based on the type of election and office as follows.

A. For contested legislative primary elections, the amount of revenues to be distributed is the average amount of campaign expenditures made by each candidate during all contested primary election races for the immediately preceding 2 primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives. [2003, c. 453, §1 (amd).]

B. For uncontested legislative primary elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all uncontested primary election races for the immediately preceding 2 primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives. [2003, c. 453, §1 (amd).]

C. For contested legislative general elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all contested general election races for the immediately preceding 2 general elections, as reported in the initial filing period subsequent to the general election, for the respective offices of State Senate and State House of Representatives. [2003, c. 688, Pt. A, §21 (amd).]

D. For uncontested legislative general elections, the amount of revenues to be distributed from the fund is 40% of the amount distributed to a participating candidate in a contested general election. [2003, c. 453, §1 (amd).]

E. For gubernatorial primary elections, the amount of revenues distributed is \$200,000 per candidate in the primary election. [2003, c. 453, §1 (new).]

F. For gubernatorial general elections, the amount of revenues distributed is \$400,000 per candidate in the general election. [2003, c. 453, §1 (new).]

If the immediately preceding election cycles do not contain sufficient electoral data, the commission shall use information from the most recent applicable elections.

[2003, c. 688, Pt. A, §21 (amd).]

**9. Matching funds.** When any campaign, finance or election report shows that the sum of a candidate's expenditures or obligations, or funds raised or borrowed, whichever is greater, alone or in conjunction with independent expenditures reported under section 1019-B, exceeds the distribution amount under subsection 8, the commission shall issue immediately to any opposing Maine Clean Election Act candidate an additional amount equivalent to the reported excess. Matching funds are limited to 2 times the amount originally distributed under subsection 8, paragraph A, C, E or F, whichever is applicable.

[2003, c. 688, Pt. A, §22 (rpr).]

**10. Candidate not enrolled in a party.** An unenrolled candidate certified by April 15th preceding the primary election 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 and 8. For an unenrolled candidate not certified by April 15th at 5:00 p.m. the deadline for filing qualifying contributions is 5:00 p.m. on June 2nd preceding the general election. An unenrolled candidate certified after April 15th at 5:00 p.m. is eligible for revenues from the fund in the same amounts as a general election candidate, as specified in subsections 7 and 8.

[2001, c. 465, §6 (amd).]

**11. Other procedures.** The commission shall establish by rule procedures for qualification, certification, disbursement of fund revenues and return of unspent fund revenues for races involving special elections, recounts, vacancies, withdrawals or replacement candidates.

[IB 1995, c. 1, §17 (new).]

**12. Reporting; unspent revenue.** Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

[IB 1995, c. 1, §17 (new).]

# Exhibit #20



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

January 18, 2007

Ms. Debra J. Reagan  
11 Bennett Street  
Sanford, ME 04073

Dear Ms. Reagan:

Our records indicate that you have a balance of unspent Maine Clean Election Act (MCEA) funds, based on the amount of funds you received from the State of Maine and your reported expenditures. Under the MCEA, you were required to return these funds at the time you filed your final campaign finance report on December 19, 2006. (21-A M.R.S.A. §1125(12))

**This letter is to request that you return all unspent MCEA funds from your 2006 campaign no later than Friday, January 26, 2006.** Please send a check or money order made payable to the Maine Clean Election Fund to the Commission at the mailing address listed above.

Please telephone me at 287-4179 if you have any questions or I can help in any way.

Sincerely,

A handwritten signature in cursive script that reads "Nathaniel Brown".

Nathaniel Brown  
Candidate Registrar

cc: Dianna Hartford



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

To: Dean Cray  
David Hughes  
Hon. William Walcott  
Priscilla Jenkins  
Paul Nixon  
Debra Reagan ✓

From: Jonathan Wayne, Executive Director

Date: February 1, 2007

Re: Return of Unspent Maine Clean Election Act Funds

---

This is to follow up on previous correspondence sent to you requesting the return of unspent Maine Clean Election Act (MCEA) funds. Your last campaign finance report showed that your campaigns had the unspent cash balances listed below. Under 21-A M.R.S.A. §1125(12), Maine Clean Election Act candidates are required to return all unspent MCEA funds with their final campaign finance report, which was due December 19, 2006.

**If you do not return these funds by Tuesday, February 6, the Ethics Commission will schedule the collection of these funds for the next public meeting of the Commission on February 14, 2007.** At that meeting, the staff of the Commission will recommend referral of the unreturned funds to the State Attorney General for collection proceedings and/or punitive action.

If you need to discuss this matter, please telephone our office at 287-4179 and ask for Nat Brown or Sandy Thompson. Thank you.

Dean Cray	\$508.68
David Hughes	\$140.73
Hon. William Walcott	\$1,940.56
Priscilla Jenkins	\$332.19
Paul Nixon	\$2,160.68
Debra Reagan	\$4,518.00

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS



DEBRA J. REAGAN

CANDIDATE'S FULL NAME

Date Submitted

**SCHEDULE F  
SUMMARY SECTION  
(MAINE CLEAN ELECTION ACT CANDIDATES)**

**CASH ACTIVITY**

	TOTAL FOR THIS PERIOD	TOTAL FOR CAMPAIGN
1. CASH BALANCE FROM LAST REPORT (If any)	4,518.00	
2. MAINE CLEAN ELECTION ACT Payments	+	0.00
3. SALE OF CAMPAIGN PROPERTY (Schedule E, Part II)	+	0.00
4. OTHER CASH RECEIPTS (interest, etc.)	+	0.00
5. MINUS TOTAL EXPENDITURES (total of all Schedule B pages)	-	0.00
6. CASH BALANCE AT CLOSE OF PERIOD (lines 1 + 2 + 3 + 4 - 5)	=	4,518.00
7. CASH NOT AUTHORIZED TO SPEND	0.00	
8. CASH AUTHORIZED TO SPEND (line 6 - 7)	4,518.00	

**OTHER ACTIVITY THIS REPORTING PERIOD**

9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD (total all Schedule D pages)

0.00

**Brown, Nathaniel T**

---

**From:** Brown, Nathaniel T  
**Sent:** Monday, November 27, 2006 3:15 PM  
**To:** 'debbyp@metrocast.net'; 'dianna-hartford@yahoo.com'; 'dianna\_hartford@yahoo.com'  
**Cc:** Lavin, Paul; 'Christie McNally'  
**Subject:** Missing 6-Day Pre-General Report

**Attachments:** 2006\_mcea\_filing\_schedule.pdf; 2006\_mcea\_cfr2.pdf

Dear Ms. Reagan,

I am writing to inform you that, as of today, your 6-Day Pre-General report has not been filed yet and is 26 days late. It is highly likely that there will be a penalty assessed. The amount of the penalty will depend on the number of days the report is late as well as the amount of financial activity that occurred within the filing period. The Ethics Commission staff has previously written you regarding your delinquent campaign finance report, which is required under the Election Law. In addition to any penalty imposed, failure to file a campaign finance report within 30 days of a filing deadline is a Class E Crime under 21-A M.R.S.A. §1020-A(8-A). If you have not filed your report by December 1, 2006, the Commission staff will recommend that you be referred to the Maine State Attorney General's Office for possible criminal prosecution under 21-A M.R.S.A. §1020-A(8-A).

I also wish to bring to your attention that there is another campaign finance report, the 42-Day Post-General report, due on December 19th. At that time, you are also required to return to us any unspent MCEA funds from your campaign. I have attached a filing schedule, as well as a copy of the relevant report, for your reference. The Ethics Commission staff has tried to contact you via phone on numerous occasions, but all three phone numbers you have provided us have been disconnected (according to UNICEL). We have also been in contact with the Maine Republican Party, and they have also been unsuccessful in contacting you. We did receive your Certified Mail receipt, dated 11/7/06, but we have received no correspondence since that time.

I have copied Paul Lavin, the Assistant Director, as well as Christie McNally, who is our contact for House candidates within the Maine Republican Party. If you have any questions regarding filing the report, the return of any unspent funds, or anything else regarding your reporting obligations, please give me a call at 287-7652. Thank you.

Nat



2006\_mcea\_filing\_s2006\_mcea\_cfr2.pdf ...  
chedule.pdf ... f (92 KB)

*Nathaniel Brown*

Candidate Registrar  
Commission on Governmental Ethics and Election Practices  
[Nathaniel.T.Brown@maine.gov](mailto:Nathaniel.T.Brown@maine.gov)  
T-(207) 287-7652

**Brown, Nathaniel T**

---

**From:** Brown, Nathaniel T  
**Sent:** Tuesday, February 06, 2007 9:41 AM  
**To:** 'debby@metrocast.net'  
**Cc:** 'J Fred Staples'  
**Subject:** Please return unspent funds to us

Hi Debby,

I am writing to request that you return to us the \$4,518 you have left in unspent funds as soon as possible. If you do not return the funds to us, your name will be brought up at the Commission meeting on February 14th as a possible candidate for referral to the Attorney General for collection of the funds. If you have any questions, please give me a call at 287-7652. Thank you.

Nat

*Nathaniel Brown*

Candidate Registrar  
Commission on Governmental Ethics and Election Practices  
[Nathaniel.T.Brown@maine.gov](mailto:Nathaniel.T.Brown@maine.gov)  
T-(207) 287-7652

return of funds

Candidate Info

Candidate ID#   
 Office Sought   
 District   
 Solution   
 First Name   
 Middle Name   
 Last Name   
 Party   
 Registrar   
 Replacement

Enter Repayments

Date  Amount   
 Total   
 Excused

Filter Options

Show All  
 Authorized Balance >\$10  
 Unauthorized Balance

Repayment Summary

Repayment	Returned	Remaining
Unauthorized Amount	\$0.00	\$0.00
Authorized Amount	\$0.00	\$4,518.00

Notes and Communications

Date	Phone	E-Mail	Notes
1/29/2007	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Left message asking for return of funds.
2/6/2007	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Left message asking for return of funds.
2/6/2007	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Sent email requesting return of funds.
2/7/2007	<input type="checkbox"/>	<input type="checkbox"/>	



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

To: Candidates and Treasurers  
From: Commission Staff  
Date: October 10, 2006  
Re: Campaign Finance Report due November 1

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This is to remind you that your campaign is required to file a campaign finance report **no later than 5:00 p.m. on Wednesday, November 1, 2006**. The report covers all activity from the close of your last report through October 26. You will also be required to file a report 42 days after the election on December 19 regardless of the results of your election.

#### 24-Hour Reports

If a campaign makes an expenditure of \$1,000 or more after October 26, the campaign must file a 24-Hour Report within 24 hours of making the expenditure (including on a Saturday or a Sunday). Also, if a candidate or his or her spouse makes a contribution of \$1,000 or more after October 26, the campaign must file a 24-Hour Report within 24 hours of receiving the contribution.

Campaigns should file the report using the Commission's e-filing system, unless they have received a waiver of the e-filing requirement. The paper report is on the Commission's website, [www.maine.gov/ethics](http://www.maine.gov/ethics). Paper filers may fax the report and send the original within 5 days.

Privately financed candidates with a Maine Clean Election Act opponent who are required to file a 101% Report are under slightly different requirements, which are listed on the back of this page.

#### Maine Clean Election Act Candidates

Please remember that if you have received any matching funds, you will be required to return to the Commission by November 21 the amount which you have not been authorized to spend. You must also pay all outstanding debts and return all unspent Maine Clean Election Act funds upon filing the December 19 post-election report. Those amounts may be repaid to the Commission by check or money order payable to the Maine Clean Election Fund.

#### Questions

Please telephone us at 287-4179 if you have any questions.

Commission on Governmental Ethics and Election  
Practices  
Questions? Call (207)287-4179

November 27, 2006

## CLOSING OUT YOUR 2006 CAMPAIGN

Find more information at  
[www.maine.gov/ethics](http://www.maine.gov/ethics)

### A MESSAGE FROM THE COMMISSION

We thank all candidates for their time and effort to comply with the requirements of the MCEA and the election law. Campaign finance reporting and disclosure are vital parts of the election process, strengthening the faith and confidence Maine's citizens have in their government.

In closing out your 2006 campaign, please follow the requirements listed here. If you have any questions, please call the Commission at:

207-287-4179.

### KEEPING YOUR CONTACT INFORMATION CURRENT

If your address, telephone or e-mail changes in the future months, please call or e-mail us with your new information.

We may need to send you reminder notices or contact you and it is important that we have the correct information. Thank you for your attention to this.

## UPCOMING REPORT DEADLINE AND RETURNING MCEA FUNDS

Your 42-Day Post-General Report is due by December 19, 2006 by 5:00 p.m. All candidates must file this report, including candidates who lost the election. This is the final report of your campaign. If you have already filed it, please ignore this reminder.

- Please remember that late contributions and expenditures reported on 24-Hour Reports filed after 10/26/2006 must be included in the 42-day post-general report.
- Prior to filing your report, pay all outstanding debts and obligations.
- Prior to filing your report, sell all equipment (cell phone, computer, etc.) purchased with MCEA funds at fair market value. On Schedule E, enter the sale proceeds for each piece of equipment.
- Return all unspent authorized MCEA funds. The amount to be returned is found on line 8 of Summary Schedule F. If you file electronically, please send a check or money order payable to "Maine Clean Election Fund" after you have filed the report. If you file on paper, please attach the payment to your paper form. Since the Commission will be entering the returned amounts into your electronic report, you do not have to enter anything. The Commission will reconcile the amount returned with your expenditures.
- Return all unauthorized MCEA funds. If you had an unauthorized amount of funds to be returned, you would have received a letter from the Commission stating the amount to be returned. Unauthorized amounts were required to be returned by 11/21/2006.

### RECORDS RETENTION: TWO YEAR REQUIREMENT

Campaign treasurers must preserve all campaign financial records for two years following the final campaign finance report for the election. For MCEA candidates in the general election, the 42-day post-general report is the final report, which means that receipts and records must be maintained through December 2008. Examples of records that must be maintained for two years include:

- All invoices and receipts for expenditures greater than \$50 or for lesser amounts if the aggregate is more than \$50 for a single payee.
- Proof of payment (cancelled check, account transaction record, etc.) for the above expenditures.
- All bank account records and other records for the campaign account.
- All documentation for vehicle travel, consulting services and salaries.
- Seed money contributors' names and addresses for contributors giving \$10 or more.

**2006 CANDIDATE SURVEY** We have received many responses. If you haven't yet completed the survey, please do so. The information is important to us. Thank you.

## CHAPTER 14 - Post-Election Responsibilities for MCEA Candidates

- Address Change Notification
- Election Night Parties and Thank-You Notes
- Returning Unauthorized Matching Funds and Unspent MCEA Funds
- Sale of Campaign Property
- Commission Review of Campaign Expenditures
- Sources of Income Statement for Elected Legislators

### Notify Commission of Changes of Address and Phone Number

During and after the campaign, it is important for candidates and treasurers to notify the Commission directly when their address and/or telephone number changes. If the Commission is not notified, the candidate may miss important notices, filing deadlines, or opportunities to complete the Commission's review of the campaign.

### Election Night Parties and Post-Election Thank-You's

Candidates may spend limited amounts of MCEA funds on election night parties, thank-you notes, or advertising to thank supporters or voters:

- \$250 for State Representative candidates;
- \$500 for State Senate candidates; and
- \$2,500 for gubernatorial candidates.

Candidates may also use their personal funds for election night parties and post-election thank-yous.

### Return of "Unauthorized" Matching Funds

If a MCEA candidate has received matching funds that the candidate was not authorized to spend, the candidate must return the funds within two weeks of the candidate's last election. For candidates in the 2006 general election, this deadline will be November 21, 2006. The Commission will notify the candidate of this unauthorized amount of matching funds.

### Return of Unspent MCEA Funds

All candidates are required to return any MCEA funds that the candidate was authorized to spend but did not. These funds must be returned by the deadline for the post-election campaign finance report 42 days after the election. The Commission will verify that this amount appears to be consistent with the expenditures that have been reported by the candidate. If there is a discrepancy, the Commission will request that the candidate resolve it by amending the reported expenditures to accurately reflect actual payments of MCEA funds.

### Sale of Property that Could be Converted to Personal Use

After the election, MCEA candidates must sell any campaign property purchased with public funds that could be converted to the personal use of the candidate or campaign staff (e.g., computers, fax machines, printers, cell phones). The candidates are required to sell the goods at fair market value and return the proceeds to the Ethics

## Title 21-A, §1125, Terms of participation

**8. Amount of fund distribution.** By July 1, 1999 of the effective date of this Act, and at least every 4 years after that date, the commission shall determine the amount of funds to be distributed to participating candidates based on the type of election and office as follows.

A. For contested legislative primary elections, the amount of revenues to be distributed is the average amount of campaign expenditures made by each candidate during all contested primary election races for the immediately preceding 2 primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives. [2003, c. 453, §1 (amd).]

B. For uncontested legislative primary elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all uncontested primary election races for the immediately preceding 2 primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives. [2003, c. 453, §1 (amd).]

C. For contested legislative general elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all contested general election races for the immediately preceding 2 general elections, as reported in the initial filing period subsequent to the general election, for the respective offices of State Senate and State House of Representatives. [2003, c. 688, Pt. A, §21 (amd).]

D. For uncontested legislative general elections, the amount of revenues to be distributed from the fund is 40% of the amount distributed to a participating candidate in a contested general election. [2003, c. 453, §1 (amd).]

E. For gubernatorial primary elections, the amount of revenues distributed is \$200,000 per candidate in the primary election. [2003, c. 453, §1 (new).]

F. For gubernatorial general elections, the amount of revenues distributed is \$400,000 per candidate in the general election. [2003, c. 453, §1 (new).]

If the immediately preceding election cycles do not contain sufficient electoral data, the commission shall use information from the most recent applicable elections.

[2003, c. 688, Pt. A, §21 (amd).]

**9. Matching funds.** When any campaign, finance or election report shows that the sum of a candidate's expenditures or obligations, or funds raised or borrowed, whichever is greater, alone or in conjunction with independent expenditures reported under section 1019-B, exceeds the distribution amount under subsection 8, the commission shall issue immediately to any opposing Maine Clean Election Act candidate an additional amount equivalent to the reported excess. Matching funds are limited to 2 times the amount originally distributed under subsection 8, paragraph A, C, E or F, whichever is applicable.

[2003, c. 688, Pt. A, §22 (rpr).]

**10. Candidate not enrolled in a party.** An unenrolled candidate certified by April 15th preceding the primary election 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 and 8. For an unenrolled candidate not certified by April 15th at 5:00 p.m. the deadline for filing qualifying contributions is 5:00 p.m. on June 2nd preceding the general election. An unenrolled candidate certified after April 15th at 5:00 p.m. is eligible for revenues from the fund in the same amounts as a general election candidate, as specified in subsections 7 and 8.

[2001, c. 465, §6 (amd).]

**11. Other procedures.** The commission shall establish by rule procedures for qualification, certification, disbursement of fund revenues and return of unspent fund revenues for races involving special elections, recounts, vacancies, withdrawals or replacement candidates.

[IB 1995, c. 1, §17 (new).]

**12. Reporting; unspent revenue.** Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

[IB 1995, c. 1, §17 (new).]

# Exhibit #21



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135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

**To:** Commission Members

**From:** Vincent W. Dinan, Staff Auditor

**Date:** February 8, 2007

**Subject:** February, 2007 Candidate Audit Report Submittals

Materials submitted with the February, 2007 Commission packet include the five candidate audit reports listed below.

<b>Candidate Name</b>	<b>District</b>	<b>Disposition</b>
Brian Rines	Senate 21	CAR
Daniel J. Philbrick	House 26	No Exceptions Noted
Sen. Philip L Bartlett, II	Senate 6	No Exceptions Noted
Sen. Jonathan T. Courtney	Senate 3	No Exceptions Noted
Rep. Anne C. Perry	House 31	No Exceptions Noted

“Audit Findings – CAR” indicates that the report contains findings to be addressed by the Commission (Commission Action Required). Findings of “no exceptions” are submitted for information and file, and no additional action is required by the Commission.



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December 5, 2006

Audit Report No. 2006-SEN002

Candidate: Brian Rines  
Senate District 21

Background

Brian Rines was a candidate for the Maine State Senate, District 21. Mr. Rines was certified by the Commission as an MCEA candidate on April 19, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

Examination of selected candidate expenditure transactions occurring between April 19 – June 1, 2006 (Six Day Pre-Primary Report), and June 2 – July 18, 2006 (42 Day Post-Primary Report), as recorded in the candidate's accounting records, and as reported to the Commission, to determine if the identified transactions (1) were properly approved by the candidate or his authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

The auditors examined documentation supporting 54 percent of the expenditures reported on Mr. Rines' "Six Day" report, and 55 percent of the expenditures listed on his "42 Day" report.

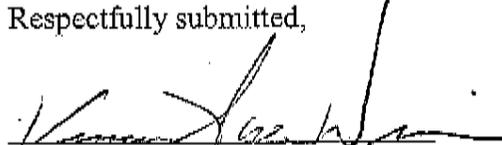
Audit Findings and Recommendations

Mr. Rines submitted duplicate reports of a single expenditure for postage. In addition, the amount submitted was incorrect. The claimed amount was \$312.00; the correct amount was \$294.60. The total adjustment required is \$329.40. Mr. Rines' campaign treasurer has amended his 42 Day Post-Primary report to correct the deficiency. The MCEA requires participating candidates to report campaign expenditures according to procedures developed by the Commission. (21-A M.R.S.A. §1125(12)). The MCEA also permits the Commission to assess a penalty of up to \$10,000 for any violation of the MCEA. *Recommendation:* the Commission find Mr. Rines in violation of 21-A M.R.S.A. §1125(12) for failing to report his expenditures accurately, and assess no penalty.

Candidate's Comments

The comments of Rebecca Colwell, Mr. Rines' Campaign Treasurer, are attached.

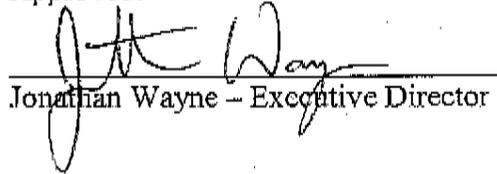
Respectfully submitted,



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Vincent W. Dinan - Staff Auditor

Approved:



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Jonathan Wayne - Executive Director

**ATTACHMENT  
Audit Response  
Brian Rines Campaign**

State of Maine  
Commission on Governmental Ethics  
Vincent W. Dinan  
Commission Auditor

November 21, 2006

Dear Mr. Dinan,

This letter is in response to the draft audit report for the Brian Rines campaign.

We are in agreement with finding #1, which was the result of our error. With respect to item 2, we would like to provide some further clarification. The food purchased was actually not for personal consumption, but was meals paid by the candidate on several occasions for meetings with individual volunteers. In discussing this with both the candidate and Mr. Dinan, I unfortunately misunderstood what both were telling me. It may be that some or all of the items would qualify as expenditures, however, at this point we are not interested in pursuing the issue.

I would like to express our appreciation for the audit process. The auditors were thorough, fair, and exceedingly patient.

Sincerely,



Rebecca K. Colwell  
Treasurer, Rines for Senate



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December 18, 2006

Audit Report No. 2006-HR012

Candidate: Daniel J. Philbrick  
House District 26

Background

Daniel J. Philbrick was a candidate for the Maine House of Representatives, District 26. Mr. Philbrick was certified by the Commission as an MCEA candidate on April 21, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

Examination of selected candidate expenditure transactions occurring in between April 21 – June 1, 2006 (Six Day Pre-Primary Report), and June 2 – July 18, 2006 (42 Day Post-Primary Report), as recorded in the candidate's accounting records, and as reported to the Commission, to determine if the identified transactions (1) were properly approved by the candidate or his authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

The auditors examined documentation supporting 87 percent of the expenditures listed on Mr. Philbrick's "42 Day" report. There were no expenditures reported for the Six Day Pre-Primary period.

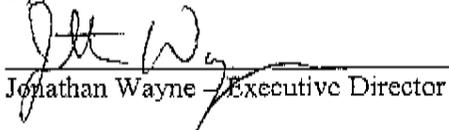
Audit Findings and Recommendations

No Exceptions were noted.

Respectfully submitted for information and file,

  
Vincent W. Dinan - Staff Auditor

Approved:

  
Jonathan Wayne - Executive Director

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS



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December 19, 2006

Audit Report No. 2006-SEN008

**Candidate: Senator Philip L. Bartlett, II**  
**Senate District 6**

Background

Senator Philip L. Bartlett, II was a candidate for re-election to the Maine State Senate, District 6, and was successful in retaining his seat. Sen. Bartlett was certified by the Commission as an MCEA candidate on April 19, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

Examination of selected candidate contribution and expenditure transactions occurring in the qualifying period, and between April 19 – June 1, 2006 (Six Day Pre-Primary Report), and June 2 – July 18, 2006 (42 Day Post-Primary Report), as recorded in the candidate's accounting records, and as reported to the Commission, to determine if the identified transactions (1) were properly approved by the candidate or his authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

The auditors examined documentation supporting 20 percent of contributions, and 84 percent of expenditures reported on Sen. Bartlett's "Seed Money" report; 59 percent of expenditures on his "Six Day" report; and 100 percent of the expenditures listed on his "42 Day" report.

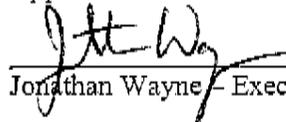
Audit Findings and Recommendations

No exceptions were noted.

Respectfully submitted for information and file,

  
Vincent W. Dinan - Staff Auditor

Approved:

  
Jonathan Wayne - Executive Director

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January 30, 2007

Audit Report No. 2006-SEN009

**Candidate: Senator Jonathan T. Courtney  
Senate District 3**

Background

Senator Jonathan T. Courtney was a candidate for re-election to the Maine State Senate, District 3, and successfully retained his seat. Sen. Courtney was certified by the Commission as an MCEA candidate on April 12, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

Examination of selected candidate contribution and expenditure transactions occurring during the following campaign reporting periods:

- Seed Money
- Six Day Pre-Primary
- 42 Day Post-Primary
- Six Day Pre-General
- 42 Day Post-General

Transactions subject to review were those recorded in the candidate's accounting records and reported to the Commission. The audit's purpose was to determine if the identified receipts and payments (1) were properly approved by the candidate or his authorized representative(s); (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

The auditors examined documentation supporting Sen. Courtney's campaign finance transactions in the following percentages:

- Seed Money: contributions -- 20 percent; expenditures -- 84 percent
- Six Day Pre-Primary: expenditures -- 81 percent
- 42 Day Post-Primary: expenditures -- 63 percent

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- Six Day Pre-General: expenditures – 67 percent
- 42 Day Post-General: expenditures – 50 percent

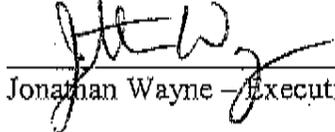
Audit Findings and Recommendations

**No exceptions were noted.**

Respectfully submitted,

  
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Vincent W. Dinan - Staff Auditor

Approved:

  
\_\_\_\_\_  
Jonathan Wayne - Executive Director



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January 30, 2007

**Audit Report No. 2006-HR020**

**Candidate: Representative Anne C. Perry  
House District 31**

Background

Representative Anne C. Perry was a candidate for re-election to the Maine House of Representatives, District 31, and successfully retained her seat. Rep. Perry was certified by the Commission as an MCEA candidate on April 13, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

Examination of selected candidate contribution and expenditure transactions occurring during the following campaign reporting periods:

- Seed Money
- Six Day Pre-Primary
- 42 Day Post-Primary
- Six Day Pre-General
- 42 Day Post-General

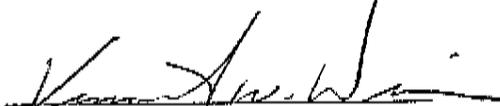
Transactions subject to review were those recorded in the candidate's accounting records and reported to the Commission. The audit's purpose was to determine if the identified receipts and payments (1) were properly approved by the candidate or her authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

The auditors examined documentation supporting 97 percent of expenditures on Rep. Perry's Six Day Pre-General report, and 91 percent of the expenditures listed on her 42 Day Post-General report. Rep. Perry did not list any receipts or expenditures for any of the other reporting periods.

Audit Findings and Recommendations

No exceptions were noted.

Respectfully submitted for information and file,

  
Vincent W. Dinan - Staff Auditor

Approved:

  
Jonathan Wayne - Executive Director