

Agenda

Item #6



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

Minutes of the October 31, 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 Jean Ginn Marvin; Hon. Michael P. Friedman; Hon. Andrew Ketterer; Hon. A. Mavourneen Thompson. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:00 A.M., Chair Ginn Marvin convened the meeting.

Ms. Ginn Marvin moved, Mr. Friedman seconded, and the Commission voted unanimously (4-0) to name Mr. Ketterer the new chair of the Commission effective immediately.

The Commission considered the following items:

Agenda Item #1 – Missing “Paid for” Disclosure in Automated Telephone Calls/John Eder

Mr. Wayne said that the complaint was filed by the House Democratic Campaign Committee on behalf of Jon Hinck. Mr. Wayne said that John Eder contacted the National Organization for Women in Maine and asked them to record an automated telephone call. Mr. Wayne said that Rep. Eder paid for the call. Mr. Wayne said that the statutes required the call to mention who paid for it. Mr. Wayne said that the staff recommended that Rep. Eder's campaign be found in violation the statute and assessed a penalty of \$100.

Ms. Ginn Marvin moved, Mr. Friedman seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation and assess a \$100 civil penalty.

Agenda Item #2 – Request for Matching Funds/Marge Medd

Mr. Wayne said that the Commission had authorized Marge Medd's opponent, Sen. David Hastings, to spend \$1,786 in matching funds. Mr. Wayne said that the Commission determined at its last meeting that the newsletter that triggered the matching funds did not contain express advocacy for Ms. Medd. Mr. Wayne said that Sen. Hastings had obligated or spent the entire amount of matching funds. Mr. Wayne said that Ms. Medd requested a payment of matching funds to compensate for the authorization made to Sen. Hastings. Mr. Wayne said that the

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amount of the independent expenditure was only about \$200, but Sen. Hastings received a larger authorization due to the fact that Ms. Medd had about \$1,600 remaining from the primary election. Mr. Wayne said that the staff agreed with Ms. Medd's position, but the amount authorized should be different from her original request due to the filing of additional independent expenditure reports in the race. Mr. Wayne said that \$6,335 had been spent in support of Sen. Hastings. Adding the amount previously authorized to Sen. Hastings in error, Mr. Wayne said that Ms. Medd should be authorized to spend \$6,544 in matching funds.

Mr. Ketterer asked if the Commission had the statutory authority to authorize matching funds in that case.

Ms. Gardiner said that while there was nothing explicitly in the statute that would apply to the situation, the Commission likely had inherent authority to authorize matching funds in order to bring both candidates in the race to the appropriate level of funding had the independent expenditure report been filed, and matching funds authorized, correctly.

Ms. Thompson asked what Ms. Medd would have been authorized in matching funds had the Commission not made its decision at the October 20 meetings. Mr. Wayne said that the Commission was required under its rules to pay \$6,335 to Ms. Medd, but the Commission had the option to pay another \$200 to bring her to an equal position with Sen. Hastings due to the amount authorized to him in error.

Dan Billings, appearing on behalf of Sen. Hastings, said that he did not have any objection to the staff recommendation. Mr. Billings said that the situation should be considered differently if it is determined that the independent expenditure was done in coordination with the candidates.

Mr. Friedman moved, Ms. Ginn Marvin seconded, and the Commission voted unanimously (4-0) to accept the staff recommendation to award \$6,544.50 to Marge Medd's campaign.

Agenda Item #3 – Complaint by Rep. Ian Emery against Harold Prescott

Mr. Wayne said that Rep. Ian Emery filed a complaint by e-mail against his opponent, Harold Prescott. Mr. Wayne questioned whether the complaint contained anything the Commission could act on.

Dan Billings said that the use of different committee names was confusing and a violation of the statute. Mr. Billings said that the committee names used by Mr. Prescott differed from the one listed on his candidate registration form. Mr. Billings said that the use of these names could make it seem like some of the advertisements were paid for by some independent group rather than the candidate.

Mr. Wayne said that a finding of violation would be appropriate in regard to the use of committee names.

Mr. Friedman asked how the situation differed from the one discussed in Agenda Item #1. Mr. Wayne said that the voice recording was more likely to generate confusion.

Ms. Thompson asked if it would be appropriate to wait until the next meeting to assess a penalty. Mr. Wayne said that Harold Prescott was not aware that there would be a monetary penalty and may wish to have an opportunity to respond.

Mr. Friedman said that Mr. Billings was not arguing for a monetary penalty and it was not necessary to put off the matter until another meeting.

Ms. Thompson asked why Mr. Prescott was not present. Mr. Wayne said that the complaint was received on Friday and Mr. Prescott was busy campaigning. Mr. Wayne said that Mr. Prescott was aware of the staff recommendation that no penalty should be assessed. Mr. Wayne said that the staff and Mr. Prescott were not aware that the complaint was centered on the inaccurate “paid for” information.

Ms. Thompson moved that the matter be postponed until the next meeting. There was no second to the motion.

Mr. Friedman moved, and Ms. Ginn Marvin seconded, that the Commission find Mr. Prescott in violation but assess no penalty.

Mr. Ketterer said that “Citizens for Prescott,” one of the committee names used by Mr. Prescott, sounded like a member organization rather than a campaign committee. Mr. Ketterer said that findings of violation did have an impact even if no penalties were assessed.

The Commission voted unanimously (4-0) to find Mr. Prescott in violation but assess no penalty.

Agenda Item #4 – Request for Waiver of Late Filing Penalty/Kennebec County Democratic Committee

Mr. Wayne said that the Kennebec County Democratic Committee was almost three months late in filing a report. Mr. Wayne said that the preliminary penalty was \$500, the maximum amount. Mr. Wayne said that the committee treasurer, Linda McKee, requested a waiver of the penalty. Mr. Wayne said that the staff was convinced that Ms. McKee acted in good faith once she was aware of the requirement to file a report. Mr. Wayne said that a waiver may be appropriate considering the circumstances.

Mr. Friedman asked if the staff was recommending a waiver of the entire penalty. Mr. Wayne responded that the recommendation was for a partial waiver.

Ms. Thompson asked if the staff had previous experience with reports filed three or more months late. Mr. Wayne said that it was uncommon, but there were instances where the committee was not aware of the requirement and the staff did not know that the committee had met the requirement to file.

Ms. Ginn Marvin asked what notification the committee received regarding its requirement to file a report. Martha Demeritt said that the staff was not always aware of when a local party committee met the \$1,500 filing threshold. Ms. Demeritt said that the state party committees had the statutory responsibility to inform local party committees of the filing requirements. Ms. Demeritt said that in 2006, the Commission staff sent mail to all local party committees regarding the filing requirements. Ms. Demeritt said that once a committee files its initial report, she then knows that it is required to file the subsequent reports for that year. Ms. Demeritt said that she also encourages the state party committees to contact their local committees.

Linda McKee said that she did not receive a reminder from the state party committee about filing. Ms. McKee said that the committee had not spent any money on candidate advocacy, but did have some operating expenses. Ms. McKee said that she was not aware of a penalty for late filing. Ms. McKee said that there should be greater efforts to inform local party committees of the filing requirements and the penalties for late filing.

Ms. Ginn Marvin asked Ms. McKee who should be responsible for educating the local party committees. Ms. McKee said that it should be the responsibility of the state parties and not the Commission.

Mr. Friedman said that Ms. McKee learned of the oversight in mid-August, but the report was not filed until October 10. Ms. McKee said that she had not filed the report earlier due to health reasons.

Mr. Friedman asked if Ms. McKee had anyone else helping her. Ms. McKee said that the committee had just named a new assistant treasurer, but she did not receive any help in filing the report. Ms. McKee said that the assistant treasurer was named about two weeks ago. Ms. McKee said that she was not aware that she would have to do fundraising when she accepted the role of treasurer. Ms. McKee said that she spent a considerable amount of time in June fundraising and preparing for the convention.

Mr. Wayne said that a 1/3 reduction of the penalty could be in order if the Commission wished to take Ms. McKee's health issues into account. Mr. Wayne said that the 1/3 reduction was based on the fact that the report was due in mid-July but Ms. McKee was not aware of the filing requirement until mid-August.

Ms. Thompson moved, and Mr. Friedman seconded, that the Commission assess a penalty of \$100.

Ms. Thompson said that there were mitigating circumstances that warranted a reduction of the penalty.

Ms. Ginn Marvin said that the Commission should go by the rules and assess the standard penalty of \$500. Ms. Ginn Marvin said that she was not convinced that there were mitigating circumstances that prevented the report from being filed. Ms. Ginn Marvin said that it was not a difficult or time-consuming form to fill out.

Mr. Friedman said that mitigating circumstances were outlined in the statute and that Ms. McKee's letter described such circumstances. Mr. Friedman said that a \$300 penalty was more appropriate.

Mr. Ketterer said that many officers in local party committees were unaware of the \$1,500 filing requirement. Mr. Ketterer said that he was more likely to support a \$300 than a \$100 penalty.

The Commission voted 1-3 to assess a penalty of \$100. Ms. Thompson voted for the motion. Mr. Friedman, Mr. Ketterer, and Ms. Ginn Marvin voted against the motion.

Mr. Friedman moved, Ms. Thompson seconded, and the Commission voted 3-1 to find that there was a violation and reduce the \$500 penalty to \$300 due to mitigating circumstances. Mr. Friedman, Mr. Ketterer, and Ms. Thompson voted for the motion. Ms. Ginn Marvin voted against the motion.

Agenda Item #5 – Complaint/Democratic Governors Association and Baldacci Campaign

Mr. Wayne gave an overview of the law that was relevant to this complaint. He said that anyone could do volunteer work for a campaign, even if the volunteer possessed skills in campaign management or other relevant areas. Mr. Wayne said that the law excluded such volunteer work from being a contribution to the campaign. Mr. Wayne said that if someone were paying an individual to work on the campaign, it would be considered a contribution to the campaign. Mr. Wayne said that the complaint filed by the Merrill campaign arose due to an article written by Lance Tapley in the *Portland Phoenix*.

Ms. Thompson asked what the Commission's most difficult decision would be. Mr. Wayne said that the Commission should listen to each party and decide whether Ms. Eltman had a formal role in the Baldacci campaign and whether she was paid by the Democratic Governors Association for her work on the campaign. Mr. Wayne said that the Commission should also

consider whether there was coordination between the Baldacci campaign and either the Democratic Party or the Democratic Governors Association.

Ms. Thompson asked if the staff determined that there were factual errors in the *Portland Phoenix* article. Mr. Wayne said that the Commission should hear from Pat Eltman before making that determination. Mr. Wayne said that there were some inconsistencies, such as Pat Eltman telling the *Phoenix* that her DGA work consisted of consulting services for gubernatorial candidates. Mr. Wayne said that the Commission should investigate whether Ms. Eltman was providing services to the DGA or to the candidate. Mr. Wayne said that the DGA and the Public Affairs Group (PAG), which employs Ms. Eltman, stated that she was not paid for consulting services to the candidate.

Joe Mackey joined the meeting by telephone. Mr. Wayne explained that Mr. Mackey was a business partner of Ms. Eltman.

Jim Bowers introduced himself as the treasurer for the Merrill campaign. Mr. Bowers said that he agreed with Mr. Wayne's explanation and would reserve comments until later. Mr. Bowers said that the responses from the other parties supported the arguments made by the Merrill campaign.

Mr. Friedman asked if the entire complaint was based upon the *Phoenix* article. Mr. Bowers replied that the article triggered the complaint. Mr. Bowers said that he looked at the reports filed by the Democratic State Committee and the Baldacci campaign and was surprised that there were no media buys listed on the last Baldacci report.

Mr. Friedman asked why Mr. Bowers thought there were no media buys. Mr. Bowers responded that the Baldacci campaign was being aided by the Democratic Governors Association through the Democratic State Committee.

Mr. Friedman asked if Mr. Bowers' experience in Maine politics led him to believe that this coordination was taking place. Mr. Bowers said that a lot had changed since he resigned as state party committee treasurer four years ago. Mr. Bowers said that there were times when people at campaign committee meetings discussed what was happening off the record.

Ms. Thompson requested that Mr. Bowers discuss the details of his complaint.

Mr. Bowers said that Ms. Eltman was either providing services to gubernatorial campaigns or to the Democratic Governors Association. Mr. Bowers said that it seemed from the article that she was providing services to the campaigns. Mr. Bowers said that from discussions with the manager of the Baldacci campaign, it was clear that Ms. Eltman was providing services to the campaign. Mr. Bowers said that the Democratic Governors Association presented a different explanation. Mr. Bowers said that if this was the case, Ms. Eltman was making an in-kind

contribution to the campaign that should have been reported. Mr. Bowers said that there appeared to be coordination with the campaign that should be considered independent expenditures. Mr. Bowers said that this would be the case if someone working for the Democratic Governors Association was also advising campaigns. Mr. Bowers said that there were \$50,000 contributions from the Democratic Governors Association to the Democratic State Committee that could only be seen as being intended for advertising and candidate advocacy.

Beryl Leach introduced herself as the campaign manager of the Merrill for Governor campaign. Ms. Leach said that she had not received any materials from the Maine Democratic Party. Mr. Wayne said that he had not requested a written response, but representatives from the party were present at the meeting.

Ms. Leach said that the Democratic Governors Association letter stated that the organization was paying Ms. Eltman to be its eyes and ears on the ground in Maine. Ms. Leach said that Ms. Eltman was providing the DGA with an independent analysis of the candidates, races, and local political climate. Ms. Leach said that this information was used to develop media messages. Ms. Leach said that Mr. Mackey's letter indicates that PAG provided paid services to the Baldacci campaign. Ms. Leach said that advice has value and that Ms. Eltman earns her living as a paid consultant. Ms. Leach said that even if Ms. Eltman just provided advice to the Baldacci campaign, it should be considered as an in-kind contribution.

Gerald Petrucelli, representing Ms. Eltman, said that Ms. Eltman was not paid to provide services to the Baldacci campaign, either by the campaign or by the Democratic Governors Association.

Jesse Connolly, campaign manager for the Baldacci campaign, said that he had known Ms. Eltman for 10 years. Mr. Connolly said that he had had both personal and professional conversations with Ms. Eltman. Mr. Connolly said that they had general discussions relating to her experiences with candidates and management of staff. Mr. Connolly said that they had never discussed expenditures made by the Baldacci campaign that would be considered coordination. Mr. Connolly said that they did not discuss television advertising. Mr. Connolly said that the Baldacci campaign had spent several hundred thousand dollars on advertising that was included on previous campaign finance reports. Mr. Connolly said that he and Ms. Eltman did not coordinate the Baldacci campaign's advertising with the Democratic Governors Association or the State Democratic Party.

Mr. Friedman asked about Mr. Connolly's quotation in the *Phoenix* article, which stated that Ms. Eltman was involved with fundraising for the Baldacci campaign. Mr. Connolly said that he previously spoke with the article's author, Lance Tapley, for a different article, at which point he mentioned Ms. Eltman as being one of Gov. Baldacci's closest advisers. Mr. Connolly said that Ms. Eltman had not helped the campaign raise any money. Mr. Connolly said that parts of his conversation with Mr. Tapley were taken out of context.

Mr. Friedman asked how many times in the last four months Ms. Eltman had been to Mr. Connolly's office. Mr. Connolly said it was probably five or six times. Mr. Friedman asked what the purpose of those visits was. Mr. Connolly said Ms. Eltman wanted to see how the campaign was doing and how Mr. Connolly was doing personally.

Mr. Friedman asked if Mr. Connolly discussed the Baldacci campaign with Ms. Eltman. Mr. Connolly replied that he had general discussions about the campaign and Baldacci's opponents.

Mr. Friedman asked if Mr. Connolly had asked Ms. Eltman for her advice. Mr. Connolly said that he asked her about her experience in past campaigns. Mr. Connolly said that they discussed the management of staff, keeping up morale, and managing the campaign of an incumbent governor.

Mr. Friedman asked if Ms. Eltman had met with Gov. Baldacci. Mr. Connolly replied that she had. Mr. Friedman asked if Mr. Connolly had been present at any of those meetings. Mr. Connolly replied that he had. Mr. Connolly said that he did not recall the content of the conversations at the meetings and did not recall any request for advice.

Ms. Thompson asked what the major weakness was in the Merrill campaign's arguments. Mr. Connolly said that there was no coordination of advertisements between the Democratic Governors Association, Ms. Eltman, and the Baldacci campaign.

Ms. Thompson asked how the law constrained Mr. Connolly's activities as campaign manager. Mr. Connolly said that given Gov. Baldacci was the only privately financed candidate in the race, the campaign paid close attention to contribution limits, matching funds, and the provisions of the Maine Clean Election Act in order to avoid financially disadvantaging the other candidates. Mr. Connolly said that staff members were careful not to discuss the campaign's plans for specific expenditures with Ms. Eltman.

Ms. Ginn Marvin asked Mr. Connolly about the information provided by the Merrill campaign, which stated that Ms. Eltman's job was to provide consulting services to gubernatorial candidates. Mr. Connolly said that his conversations with Ms. Eltman were conversations between a friend and mentor. Mr. Connolly said that Ms. Eltman's work for the campaign did not result from her being paid by the Democratic Governors Association and that she would have still done the same work even if she was not a paid consultant. Mr. Connolly said that the campaign had general conversations with Ms. Eltman but never discussed expenditures.

Ms. Ginn Marvin asked if the conversations with Ms. Eltman included any discussion of the points that the campaign wished to emphasize in advertisements. Mr. Connolly said that such discussions were done independently from the conversations with Ms. Eltman. Mr. Connolly said that Ms. Eltman did not serve to convey campaign strategies to the Democratic Governors Association.

Mr. Friedman asked if Ms. Eltman had done any fundraising for the Baldacci campaign. Mr. Connolly said that she had not. Mr. Friedman asked if Ms. Eltman had been present at any fundraising events. Mr. Connolly replied that she probably had been but did not actively fundraise.

Mr. Wayne said that the concern was not that Ms. Eltman discussed the Baldacci campaign's advertisements but whether she coordinated expenditures with the Maine Democratic Party. Mr. Connolly replied that she did not. Mr. Connolly said that he was not involved with the Maine Democratic Party's advertisements.

Mr. Wayne asked if any of the analysis done for the Democratic Governors Association was provided to the Baldacci campaign. Mr. Connolly said that, to his knowledge, it was not.

Jim Lamb introduced himself as counsel for the Democratic Governors Association. Mr. Lamb said that the DGA paid Ms. Eltman to provide services to the DGA. Mr. Lamb said that there were 36 gubernatorial races in the 2006 elections and that DGA was a national organization. Mr. Lamb said that the DGA did not have a field organization in the state. Mr. Lamb said that the DGA hired people to provide information on each state's gubernatorial race. Mr. Lamb said that the DGA used that information to determine where to make contributions. Mr. Lamb said that the DGA had not been in consultation with the Maine Democratic Party about the content of its ads or when the ads should run. Mr. Lamb said that he was not sure that the Maine Democratic Party used the DGA's contributions for television ads.

Mr. Friedman asked if the DGA paid PAG or Ms. Eltman directly. Mr. Lamb replied that the DGA paid PAG. Mr. Lamb said that the DGA had a written contract with PAG.

Mr. Friedman said that Mr. Lamb's letter stated that PAG was responsible for seven states, but Mr. Mackey's letter stated that PAG was responsible for eight states. Mr. Lamb said that he thought it was only seven states.

Mr. Friedman asked if PAG had to submit a schedule of its activities to the DGA. Mr. Lamb said he was not aware of any hourly billing information.

Mr. Friedman asked if Ms. Eltman spent more time working in Maine than the other six states. Mr. Lamb said no. Mr. Lamb said that Ms. Eltman established for herself how much time she spends on each state.

Mr. Friedman asked if Ms. Eltman had to demonstrate that she spent a certain amount of time in each state. Mr. Lamb said that he was unaware of anyone asking those types of questions. Mr. Lamb said that it would have been clear in Ms. Eltman's reports if she had not spent a sufficient amount of time in a particular state.

Mr. Friedman asked if there was any program used to ensure that people like Ms. Eltman did not coordinate with the campaign. Mr. Lamb said that Ms. Eltman was aware of the Maine campaign laws and assisted the DGA in understanding them. Mr. Lamb said that the DGA told its consultants not to participate in anything that would be considered coordination with the campaigns.

Mr. Friedman asked if there was a restriction in Ms. Eltman providing advice to the campaign. Mr. Lamb said no.

Mr. Friedman asked if the DGA encouraged its consultants to provide advice to the campaigns. Mr. Lamb said that the DGA would not pay Ms. Eltman to raise money for a campaign or engage in similar activities. Mr. Lamb said that Ms. Eltman was there to collect information about the campaign that the DGA would not otherwise have access to.

Ms. Thompson asked how the DGA complied with the reporting requirements and Clean Election laws of other states. Mr. Lamb said that some members of the DGA staff were sent to states specifically to work on campaigns, with their salaries being considered in-kind contributions to the campaigns. Mr. Lamb said that the DGA was aware of contribution limits in the states and refrains from exceeding those limits. Mr. Lamb said that the DGA did not consider Ms. Eltman to be one of its staff members paid to work on a campaign.

Ms. Ginn Marvin asked if Mr. Lamb considered it coordination if there was overlap between Ms. Eltman's communications with the DGA and with the Baldacci campaign. Mr. Lamb said no. Mr. Lamb said that it would be coordination if the Baldacci campaign gave information directly to the state party or vice versa. Mr. Lamb said that the information that Ms. Eltman provided to the DGA did not include the campaign's needs or wants relating to the timing of ads. Mr. Lamb said that Ms. Eltman did not receive information on the campaign's needs or wants and so there could have been no coordination. Mr. Lamb said that Jesse Connolly did not provide that information to Ms. Eltman and it was not likely that she would have obtained it from another source. Mr. Lamb said that the money provided by the DGA to the Maine Democratic Party was not earmarked for TV ads or other specific expenditures.

Mr. Lamb said that the complaint asserted that the DGA ran TV ads, but this was not correct. Mr. Lamb said that the DGA makes non-earmarked contributions to state political parties. Mr. Lamb said that the parties are not told what to spend the money on.

Ms. Ginn Marvin asked if the party coordinated with Ms. Eltman to run the ads. Mr. Lamb said that there was no information indicating that Ms. Eltman was telling the Maine Democratic Party how to spend its money.

Ms. Ginn Marvin asked why Mr. Tapley wrote the article. Mr. Lamb said that he had no idea.

Mike Mahoney said that he was appearing on behalf of the Maine Democratic Party. Mr. Mahoney said that there was no evidence of coordination between the Maine Democratic Party and the Baldacci campaign. Mr. Mahoney said that the Merrill complaint assumes that coordination must have happened and that the Commission must investigate it, without actually presenting any evidence. Mr. Mahoney said that that was an abuse of the Commission's role. Mr. Mahoney said that the state party did take the inquiry seriously and conducted an investigation. Mr. Mahoney said that Ms. Eltman had no input or opportunity to provide input on any Maine Democratic Party expenditures. Mr. Mahoney said that Ms. Eltman communicated no information to the Maine Democratic Party about the Baldacci campaign's activities or what the Baldacci campaign wanted the Maine Democratic Party to do.

Mr. Friedman asked if Mr. Mahoney conducted the investigation personally. Mr. Mahoney replied that he did. Mr. Mahoney said that he interviewed party leadership, including the party chairman and the director of the coordinated campaign. Mr. Mahoney said that those two individuals were solely responsible for the content and timing of expenditures by the party during the election cycle. Mr. Mahoney said that he did not interview Ms. Eltman and that she was not part of the Maine Democratic Party.

Mr. Friedman asked if Mr. Mahoney thought it would be important to get Ms. Eltman's view of her role in the Baldacci campaign. Mr. Mahoney said that under the law he and party leadership should not have knowledge of the activities of the Baldacci campaign.

Mr. Wayne asked whether the research conducted by Ms. Eltman had any influence on the party's advertising. Mr. Mahoney said that there had been no communications regarding content of advertising between the DGA and the Maine Democratic Party.

Mr. Petrucelli said that Ms. Eltman furnished to the DGA information on seven different states, one of which was Maine. Mr. Petrucelli said that Ms. Eltman had many other clients when she was not working for the DGA. Mr. Petrucelli said that Ms. Eltman was not a staffer of the DGA. Mr. Petrucelli said that Ms. Eltman had the right as a citizen to participate in political campaigns. Mr. Petrucelli said that the DGA did not pay Ms. Eltman to work on the Baldacci campaign. Mr. Petrucelli said that there was no restriction on Ms. Eltman providing volunteer services to campaigns.

Ms. Ginn Marvin said that it was important for the Commission to consider any questions brought to its attention. Mr. Petrucelli responded that the statute provided a framework for the questions that were legally available to the Commission. Mr. Petrucelli said that many of the issues raised by the complaint were related to policy changes rather than violations of the existing statutes.

Mr. Friedman asked Ms. Eltman if Mr. Connolly or Gov. Baldacci specifically asked her about particular strategies that should be done by the campaign. Ms. Eltman said no, that she was asked about staffing, her past experiences, and similar subjects.

Mr. Friedman asked if Ms. Eltman committed more time to Maine than the other states. Ms. Eltman said no, that she had seven other states and also other clients she had to serve.

Mr. Friedman asked how Ms. Eltman communicated with the DGA. Ms. Eltman said she participated in conference calls and submitted a weekly media report.

Mr. Friedman asked if her reports were provided to the campaign before they were sent to the DGA. Ms. Eltman said no.

Ms. Eltman said that she worked for Public Affairs Group. Ms. Eltman said that the DGA had a contract with PAG. Ms. Eltman said that Democratic governors ran the DGA.

Ms. Ginn Marvin asked Ms. Eltman how she reacted to the statement that she was in a position to know what the Baldacci campaign wanted to emphasize in the Democratic Party ads. Ms. Eltman said that she knew Gov. Baldacci since 1982 and that she was a friend of his family. Ms. Eltman said that the alleged coordination did not take place.

Ms. Eltman said that she did not do any fundraising for Gov. Baldacci's reelection effort. Ms. Eltman said that she was never paid for any work done for the Baldacci campaign.

Ms. Ginn Marvin asked Mr. Mackey about the statements he made in the *Phoenix* article. Mr. Mackey said that Ms. Eltman was known as a friend of Gov. Baldacci and provided him with advice. Mr. Mackey said that it was not what the DGA and PAG paid Ms. Eltman to do.

Mr. Wayne said that it was appropriate for the Commission to consider the complaint. Mr. Wayne said that there were statements made that Ms. Eltman was providing consulting services to gubernatorial candidates. Mr. Wayne said that from the testimony presented, it seemed that no contribution was made to the Baldacci campaign. Mr. Wayne said that he did not see evidence of coordinated expenditures. Mr. Wayne said that he did not see strong evidence that Ms. Eltman received compensation for her volunteer work on the Baldacci campaign. Mr. Wayne said that PAG did receive \$140,000 from the DGA, but that money did not provide any benefit to the Baldacci campaign.

Ms. Thompson moved, and Ms. Ginn Marvin seconded, that the Commission find no violation by the Democratic Governors Association and the Baldacci campaign.

Ms. Thompson said that Ms. Eltman had exercised her rights to free speech and to volunteer for the campaign. Ms. Thompson said that the Commission had been presented with no evidence that there was a violation of the law by any party.

Mr. Friedman said that the Commission was required to act on complaints quickly. Mr. Friedman said that the Maine Clean Election Act had public support and its purposes were well-known: to provide a level playing field, to encourage people to seek public funding. Mr. Friedman said it was also the right of PACs and other groups to engage in political activity. Mr. Friedman said that the Merrill campaign had the right to file a complaint. Mr. Friedman said that the Merrill complaint initially presented an argument that the Commission had the jurisdiction to consider. Mr. Friedman said that the burden was then on the DGA and the Baldacci campaign to persuade the Commission members that there was no violation. Mr. Friedman said that the evidence that was presented could be relied upon. Mr. Friedman said that the Commission needed more than supposition in order to interfere in political expression. Mr. Friedman said that there was no violation evident.

Mr. Ketterer said that Ms. Eltman had the right to volunteer for the Baldacci campaign as she had done in the past. Mr. Ketterer said that contracts similar to the one between the DGA and PAG generally did not include hourly billing that would demonstrate how much time Ms. Eltman spent in Maine that was paid for by the DGA. Mr. Ketterer said that the evidence supports Ms. Eltman's claim that she volunteered her time on the Baldacci campaign and was not compensated for it. Mr. Ketterer said that it was important for the issues raised by the Merrill campaign to be heard during a campaign cycle.

The Commission voted unanimously (4-0) to find no violation by the Democratic Governors Association and the Baldacci campaign.

Agenda Item #6 – Request for Waiver of Late Filing Penalty/Maine College Republicans PAC

Mr. Wayne said that the Maine College Republicans PAC was formed in August. Mr. Wayne said that the PAC's first report was due on October 12. Mr. Wayne said that the PAC attempted to file late on that day and had technical difficulties, so the report was filed two days late. Mr. Wayne said that the staff recommended not granting a waiver of the \$721 penalty. Mr. Wayne said that the PAC contacted the staff on the day of the deadline to get its username and password. Mr. Wayne said that the PAC tried to upload the data from its own Excel file, which could be difficult.

Mr. Friedman asked if the technical difficulties were the PAC's or the Commission staff's. Mr. Wayne said that the system required PACs to use a specific Excel template in order to upload data.

Dan Riley introduced himself as counsel for the Maine Republican Party. Nathaniel Walton introduced himself as state chairman of the College Republicans.

Mr. Riley said that Mr. Walton was overconfident in his ability to use the electronic filing system. Mr. Riley said that Mr. Walton had all of the data assembled at 3 p.m. on the day of the filing deadline and only encountered a problem when he attempted to input that data into the system. Mr. Riley said that the statutory formula was disproportionate in that case.

Mr. Friedman asked what problems Mr. Walton experienced. Mr. Walton said that his Web browser was not compatible with the electronic filing system and that he had not used the proper template to upload the PAC's data. Mr. Walton said that he was able to file the subsequent report without any problems.

Ms. Ginn Marvin asked Mr. Wayne if other people experienced problems filing reports. Mr. Wayne said that the majority of filers enter the data into the system themselves, but they also had the option of using the new upload feature rather than retyping data. Mr. Wayne said that he did not know how the staff could make the upload easier to use.

Ms. Ginn Marvin asked Mr. Walton if the spreadsheet he submitted was the extent of his report. Mr. Walton replied that it was not, and that he submitted it so that the Commission could see the format he used to enter information for the October report. Mr. Walton said that when he filed the PAC registration on August 1, the PAC registrar requested a list of donations received by the PAC up to that point. Mr. Walton submitted the list in that format and thought it would be an acceptable format for uploading into the finance report.

Mr. Friedman asked if the technical difficulties could be considered mitigating circumstances. Mr. Wayne said that it appeared that Mr. Walton made a good-faith effort to file on time. Mr. Wayne said that the staff had sent Mr. Walton a username, password, and written instructions on how to use the electronic filing system as soon as he registered the PAC in August. Mr. Wayne said that the staff offered training sessions and advice to filers.

Mr. Friedman said that it did not appear that any of the difficulties met the definition of a mitigating circumstance.

Mr. Walton said that there was a period of time in August and September when he was not receiving the mailings sent by the Commission due to a wrong address. Mr. Walton said that he listed a Bates College address, but the mail was not delivered because it was not addressed to him personally.

Mr. Riley said that the rules did allow for some discretion in deviating from the statutory penalty. Mr. Riley said that Mr. Walton had compiled the data on his computer and thought it would be simple to move it over onto the Commission's electronic filing system.

Mr. Friedman asked what penalty Mr. Riley thought would be fair. Mr. Riley said that the lesson had been learned and that a financial penalty was not necessary. Mr. Riley said that Mr. Walton did not make the same mistake when he filed the subsequent report.

Mr. Friedman asked if the penalty would be against Mr. Walton personally. Mr. Wayne responded that the penalty would be assessed against the PAC.

Ms. Ginn Marvin said that there was a bona fide effort to file the report and this was demonstrated by the fact that Mr. Walton came to the Commission offices on two separate occasions to get help in filing.

Ms. Thompson moved, and Ms. Ginn Marvin seconded, that the Commission waive the penalty against the Maine College Republicans PAC.

Ms. Thompson said that Mr. Walton had collected the necessary information to file the report and expected to be able to file on time. Ms. Thompson said that a finding of no penalty does not reflect on the staff in any way.

The Commission voted unanimously (4-0) to waive the penalty against the Maine College Republicans PAC.

Mr. Ketterer said that it was difficult to get people interested in politics and that it was good for groups like Mr. Walton's to encourage people to be politically active.

Agenda Item #7 – Request for Investigation/Maine State College Republican Organization PAC

This item was withdrawn from the agenda.

Agenda Item #8 – Request for Investigation/Maine College Democrats

Mr. Wayne recommended postponing this item, as the Maine College Democrats did not receive the e-mail notification.

Ms. Ginn Marvin moved, Mr. Friedman seconded, and the Commission voted unanimously (4-0) to table Item #8 until the next meeting.

Agenda Item #9 – Meeting Dates

The Commission decided to meet on November 20 and December 12, with the option to skip the November 20 meeting if there were few items to be considered.

Agenda Item #10 – Request for Investigation/Maine Heritage Policy Center

Ms. Ginn Marvin recused herself and was not present for this agenda item.

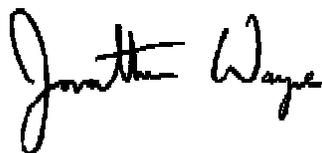
Carl Lindemann argued that the Maine Heritage Policy Center should be required to register as a political action committee and disclose financial activity related to the Taxpayer Bill of Rights ballot initiative. The complainants requested that the Commission conduct a full investigation into the contributions received by the Maine Heritage Policy Center to determine whether any were solicited or received for the purposes of influencing the ballot initiative.

William Becker and his counsel, Daniel Billings, responded that the Maine Heritage Policy Center did not receive contributions that were used to advocate for the passing of the Taxpayer Bill of Rights and did not exist solely to support the initiative. They stated that the Maine Heritage Policy Center should not be required to file a §1056(b) form (21-A M.R.S.A. §1056-B) or register as a political action committee as the organization did not engage in activities expressly advocating for the Taxpayer Bill of Rights.

Ms. Thompson made a motion to accept the staff recommendation to ask that counsel and staff be given additional opportunity to research the issue, receive input from organizations that could be affected by a Commission ruling interpreting §1056(b), and to propose formal interpretation through rulemaking or other means. Mr. Friedman seconded the motion. The motion was approved unanimously by a vote of three in favor and none opposed. Mr. Ketterer, Mr. Friedman, and Ms. Thompson voted in favor of the motion.

[A transcript of this item has been made available to the Commission members for their review. The transcript is available to the public on the Commission’s website or upon request.]

Respectfully submitted,

A handwritten signature in black ink that reads "Jonathan Wayne". The signature is written in a cursive, flowing style.

Jonathan Wayne
Executive Director