



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

Minutes of the March 9, 2007 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: Hon. Jean Ginn Marvin, Acting Chair; Hon. Vinton Cassidy; Hon. Mavourneen Thompson; Michael Friedman, Esq.; Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:13 a.m., Jean Ginn Marvin convened the meeting. The Commission considered the following items:

**Agenda Item #1 – Public Hearing on Proposed Rule Changes**

Mr. Wayne reviewed the procedures reminding the Commission that comments are welcome until March 19 and final review of rule changes will take place at the April 5 meeting.

Daniel Walker, Esq., representing the Maine Democratic Party, addressed the Commission. -Mr. Walker commented on the amendment to Chapter 1, Section 7, §1 (expenditures). He felt this change would create an unnecessary burden on the candidate and committees and would require vendors to keep track of all expenditures, which would double the tracking of expenditures. He stated that the MCEA is to level the playing field for funding purposes, not strategy. He said that this would slow process down.

Regarding the elimination of 15 day time period to correct errors and omissions in campaign finance reports as contained in Chapter 1, Section 4, §2, he believes the intent of this amendment is good; however, it removes incentive to make sure that report is correct. Flexibility is often good but hard lines are easier to follow.

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Regarding the requirement to keep travel logs, Mr. Walker believes this is a really important piece of the reporting process and is in favor of it.

Mr. Friedman asked Mr. Walker how good the parties are at advising their candidates.

Mr. Walker admitted that the parties would need to get better at training, etc.

Daniel Billings, Esq., addressed the Commission. He said that he was not representing any candidate or party but was speaking from his experience. He felt overall the rule changes were very good and addressed issues that have come up in the past. In particular, Mr. Billings felt the changes in Chapter 3 regarding qualifying contributions forms were extremely important. Having the collector sign the form and verify contributions is a major improvement.

Mr. Billings also concurred with Mr. Walker's comments regarding tracking expenditures made by consultants. Mr. Billings felt some detail was necessary to account for the public funds, but he felt that there needs to be a middle ground so as not to become too cumbersome for parties and candidates.

Senator Debra Plowman addressed the Commission regarding 24-Hour Reports. Her concern was whether MCEA candidates were required to file the 24-Hour Report. Sen. Plowman's opinion is that all candidates should file this report, not only the privately financed candidates.

Mr. Wayne addressed this concern. He advised the Commission that its bill which will be before the LVA Committee will clarify the requirement. Mr. Wayne did confirm that the MCEA candidates are currently required to file 24-Hour Reports. The bill will make the threshold the same for all candidates, private or MCEA.

**Agenda Item #2 – Complaints/Carol Grose and Susan Wasserott Campaigns (postponed until May 14)**

**Agenda Item #3 – Complaint/Late Filing of Independent Expenditures**

Mr. Wayne reviewed the background of the law that applies. In 2004 elections, the Commission received several complaints from candidates that PACs and parties were not filing independent expenditure reports promptly. As a result, in 2005, the statute and rules were amended to improve the expenditure definition and reporting requirements. Mr. Wayne shared a calendar which indicates the timeline for reporting expenditures.

Mr. Billings addressed the Commission. He said that the complaints were filed because questions were raised by specific expenditure dates reported in several independent expenditure reports filed by the Maine Democratic Party (MDP). He said that the dates raised questions as to whether the reports should have been filed earlier and whether they were filed later in order to delay matching funds to the Democratic candidates' opponents. He said the MDP's IE report #84 illustrated these problems. The report submitted by MDP showed a specific date indicating start of the design process and a later date for actual mailing. The MDP defended its report by saying that it reported the expenditure after it found out how much the mailing cost would be. Mr. Billings questioned whether the date of the actual expenditure was when the order for the mail piece was placed or when the final postage cost was known. Mr. Billings said that he has advised his clients to get a full estimate of the cost – from design to postage – and report the amount of the estimate. Mail house expenditure dates vary since designing, printing and mailing date are all different dates but it is possible to get an estimate. The approved practice is once order is placed with vendor, and then expenditure is recorded.

Mr. Friedman asked what changes Mr. Billings would like to see happen.

Mr. Billings stated that he felt the Commission has to consider whether design services are a separate expenditure when ordered and/or only when the decision has been made to disseminate the communication to the public. That is a policy interpretation for the Commission to make. He said the date of placing the design order was perhaps too premature to trigger a report because it is not truly known whether the piece will be disseminated to the public. But he felt that the placement of a print order was a good indication that the piece would be distributed and the expenditure should be reported then. He said that it was also possible to get an estimate at the design stage for postage, file a report, and then amend the report after getting the actual amount from vendor.

Ms. Ginn Marvin recalled facing this issue before and the Commission had decided that the reporting had to take place when the vendor was asked to print. Ms. Ginn Marvin was under the impression that the printing and mailing costs had to be reported.

Mr. Wayne stated that the mail house should have a figure for printing and mailing when the order is placed.

Daniel Walker, Esq., addressed the Commission on behalf of the Maine Democratic Party. Mr. Walker stated that, in his opinion, an order to design a piece is not influencing an election, and, therefore, should not need to be reported or trigger any matching funds.

Ms. Ginn Marvin read the section of the rule that states, "... expenditures must be reported at the earliest of these events ... placement of an order for a good or service." She understood that to mean that when you place the order, the expense would need to be reported.

Mr. Walker felt that the statute definition of expenditure reads, "..... made for the purpose of influencing the election ...." He said that he did not believe that anything had influenced the election at the design stage.

Ms. Ginn Marvin stated that it would be highly unlikely to print information and then not mail it out. Once vendors design something, then the expenditure is made in her opinion.

Mr. Wayne did inform the Commission that some parties did have designs done for several candidates and then fewer of the mailers were disseminated than were designed. If these mailers are reported as expenditures, matching funds go out, and then the report is amended to delete some of those expenditures because they were not mailed out. This then puts the Commission in a tough spot because matching funds were paid out based on the original number of mailers. The Commission then has to go to the candidate who received the matching funds and ask whether the money has been spent. This is the difficulty in reporting design costs at the outset. Mr. Wayne felt that if the mailer has not been printed, then they should not report it until it is. This would save

amending reports and matching fund payments. Mr. Wayne's opinion was that once the step is taken to print, then it should be reported.

Ms. Ginn Marvin felt the design service date would be one charge to report and then, once the materials are printed, another report would be due.

Discussion took place regarding design cost, printing costs and mailing costs time line for reporting.

Mr. Friedman noted that the postage fee should be separate from the design fee; however, the postage costs are a promise to pay.

Ms. Thompson asked whether a House candidate making expenditures from their own pocket would be less likely to cancel a project, whereas parties are more apt to cancel and if so, should they be treated differently.

Ms. Ginn Marvin asked Mr. Walker for clarification on when the expenditure should be reported.

Mr. Walker feels that the expenditure should not be reported until it has been mailed. If they do not use the piece, it should not have to be reported. He believes if the decision is made to use it, then the design and printing should be reported at the same time.

Ms. Ginn Marvin asked about the postage.

Mr. Walker stated that the postage should be separate because it is a separate vendor, the US Postal Service. The check is separate from the vendor who created the flyer.

Mr. Friedman pointed out that when the vendor is told to proceed, the number of pieces is known, so the postage fee should be known at that point also. Mr. Friedman stated that, if the print order is given to the vendor, then the commitment is made for postage at that time also and should be reported.

Mr. Cassidy stated the timing is a factor as the election day draws near. In fairness, an opponent would need time to respond to any mailer in an equal manner. To level the playing field, that has to be considered when making the rule.

Newell Auger addressed the Commission in order to receive any questions regarding IE #83. No questions were raised.

Mr. Wayne recommended that the Commission find the MDP in violation for late reporting of postage on IE #84. He would encourage all parties to be more forthcoming with getting the postage costs reported in a timely fashion. Regarding when an independent expenditure has to be reported, Mr. Wayne stated that the reporting requirement is for communications. The statute is not specific about actual and intended communications. The issue is to decide at what point a communication actually becomes an expenditure, and what constitutes a communication. Mr. Wayne feels that a design is not really a communication; when the mailer is printed, then it becomes a communication.

Mr. Wayne further stated that he did not think it was fair to request reports for design services only because the design had not influenced voters. If the literature is not printed and sent out yet matching funds have already been distributed to the opponent, that will give the opponent an unfair advantage because the literature did not influence the voters.

Mr. Wayne advised that for the sake of clarity, the requirement should be that once a communication is printed, the report should include design, printing and postage. No report is necessary at the design stage.

Mr. Friedman asked whether that would be the case if the communication is not mailed out after printing. Mr. Wayne stated that, in almost all cases, if the literature was designed and printed, the literature would be sent.

Mr. Cassidy noted that this would prevent parties from holding onto literature until the last minute and preventing response from opponent.

Mr. Friedman stated that the intent to communicate and influence voters happens when the vendor is called and told to print the literature. You can estimate the postage because you know how many pieces you have and you know the amount of postage; therefore the postage should be reported at that time.

Mr. Walker disagreed. He believes there are two separate items and two separate vendors.

Mr. Cassidy agreed that the postage should be a given at the point of printing.

Mr. Augur noted that some orders to mailhouses are bulk orders – an order for three candidates at once. However, there may only be a definite decision to send out a mailing for one candidate. He said that the expenses for the other two communications should not have to be reported at the same time as the communication that was definitely going out. The parties needed to have the flexibility to make a decision about any changes to the other mailings.

Ms. Thompson felt the vote should be handled separately for each IE.

Mr. Friedman made a motion that IE reports #48 and #71 were timely filed; IE report #84 was not timely filed and the Commission needs further information to assess a penalty on IE Report #84. Seconded by Mr. Cassidy. The motion passed (4-0).

**Agenda Item #4 – Assessment of Civil Penalty for Late Filing/Nancy Bessey**

Mr. Wayne explained that this was brought up by the Commission staff and Ms. Bessey is currently in Florida so would be participating via phone.

Mr. Wayne explained that Ms. Bessey ran as a privately funded candidate against an MCEA candidate. She was required to file a 101% Report. Her receipts went over that amount on October 21, so she was required to file on October 23. She filed eight days late on October 31. The maximum penalty would be \$6,108. Her opponent would have received matching funds earlier if she had submitted her report on time; therefore, he was at a disadvantage due to the delay. Mr. Wayne handed out a calendar with the dates and amount of matching funds which should have been disbursed to her opponent had her 101% Report been filed on the required date. The staff believes a

substantial penalty is required since her MCEA opponent did not receive the matching funds he was entitled to until six days before the election instead of ten days before the election. The potential that this may have influenced the campaign was great. This was a very close race and her opponent won by a very small margin. She also received several notices from the staff regarding the reporting requirements.

Daniel Billings, Esq., approached the Commission, representing Nancy Bessey. He stressed that Ms. Bessey self-funded her campaign and did not understand how to manage her account balances in her favor with regard to receipt amounts. There is a violation; however it was unintentional on the part of a first time candidate.

Ms. Bessey also added that she received two unexpected contributions within the month of October which put her over the 101% amount in receipts. She was not clear on how or when to repay the loan she had taken for campaign expenses, so her receipts got higher and expenses remained the same. She did not realize money she donated to herself counted as receipts.

Mr. Billings also noted that most candidates are not clear that they have to look at both the receipts and expenditures. He did not agree that the closeness of the election should be a factor in deciding the penalty.

Mr. Friedman made motion to adopt the Commission staff's recommendation to assess a penalty of \$1,527.04 which represents 25% of the maximum penalty allowed. This was seconded by Ms. Thompson. The motion passed (4-0).

**Agenda Item #5 - Request for Reconsideration of Late Filing Penalty/South Portland Democratic City Committee**

Mr. Wayne explained that the Chair of the South Portland Democratic City Committee, Richard Rottcov, was present to address the Commission for reconsideration of a penalty that was issued at a prior meeting which Mr. Rottcov could not attend. Local party committees who raise or spend more than \$1,500 are required to file three reports during an election year. This committee had a fund raiser in October 2005 to fund scholarships. There was a problem collecting the credit card

payments electronically, so the receipts were not collected as expected in 2005 but had to be recollected from the contributors in 2006.

Mr. Friedman asked if reconsideration was a practice the Commission usually upheld.

Mr. Wayne explained that there is no rule regarding reconsideration. Requests are considered on a case by case basis.

Mr. Friedman asked if the facts had changed or new evidence had been provided and Mr. Wayne believed there may be new information that was not available previously.

Mr. Wayne briefly reviewed the past decision of the Commission to assess a penalty of \$500. It was decided that the Commission first needed to establish if there was enough new evidence to warrant reconsideration; therefore, Mr. Rottcov was allowed to speak to the new evidence.

Mr. Richard Rottcov addressed the Commission. His reason for seeking reconsideration of this penalty was to address the fact that this fundraising event was for high school scholarships and was not intended for political use. After the event, they realized that the Pay Pal system to deposit contributions was not functioning correctly and the money was not deposited into the scholarship account. The committee tried for several months to collect the pledge money. Mr. Rottcov produced a bank statement showing deposits that were recorded in 2006 but which represented contributions which should have been received in 2005. When he became chair in 2006, he was not aware of any fundraising in 2005. This bank statement was new evidence.

Ms. Thompson moved that the Commission reconsider its earlier decision, seconded by Mr. Cassidy. The motion passed (4-0).

Mr. Rottcov explained further that the money the committee received in 2006 was actually supposed to be received through the Pay Pal system and it was strictly for scholarship funding only. He reviewed the financial sheet which showed the activity for 2005 and 2006, indicating that the 2006 deposits were the 2005 scholarship fundraiser.

Mr. Rottcov admitted that as the new chair of the committee he should have been paying closer attention to the bank statements and asked more questions of the treasurer.

Mr. Wayne made a staff recommendation to reduce the penalty by 50% as a result of the new evidence provided by Mr. Rottcov.

Mr. Cassidy moved to accept the staff recommendation to reduce the penalty to \$250; Ms. Thompson seconded. The motion passed. (4-0)

### **NEW BUSINESS**

#### **Agenda Item #6 - Ratification of Minutes of October 31, 2006**

Mr. Friedman moved, Mr. Cassidy seconded and the Commission unanimously voted to ratify the minutes of October 31, 2006.

#### **Agenda Item #7 - Request for Waiver of Late Filing Penalty/Newell Augur**

Mr. Wayne informed the Commission that two monthly lobbyist reports were filed late by Mr. Augur on behalf of Maine Beverage Association and Bangor Hydro. Once a lobbyist registers they are responsible to file monthly reports. The preliminary penalty would be \$100 for each report. Mr. Augur would like a waiver. Mr. Wayne did state that the staff understands Mr. Augur claims he did not reach the eight hours per month threshold.

Mr. Newell Augur addressed the Commission. He explained that he had a third client he was lobbying for and was confused as to the timing. He also lost his secretary who had been doing the filing for him.

Ms. Thompson asked if he received notice from the Commission, and he confirmed that he did receive a notice by way of e-mail but was not in the office the day the e-mail was sent.

Mr. Wayne advised the Commission the staff recommendation would be to assess a penalty in order to enforce the timely filing of reports.

Ms. Thompson moved to assess penalty of \$200 for late filing; and the motion was seconded by Mr. Friedman.

Ms. Thompson explained that the full penalty is necessary since consistency is very important and supporting the staff who enforce these rules is also critical. The motion passed (4-0) .

**Agenda Item #8 - Request for Waiver of Late Filing Penalty/MaineCasinoNow.com**

Mr. Wayne explained that the report was two days late. The treasurer, Seth Carey, sent a letter in defense which stated that a volunteer who normally handled the report was hospitalized during the reporting time. The recommendation is to assess a penalty of \$18.24.

Mr. Cassidy moved to assess the penalty of \$18.24, seconded by Mr. Friedman. The motion passed (4-0).

**Agenda Item #9 - Request for Waiver of Late Filing Penalty/Hancock County Democratic Committee**

Mr. Wayne explained to the Commission that because the Committee raised more than \$1,500 last year, it was required to file a report. Due to computer problems, the report was a few hours late beyond the 5:00 p.m. deadline. The Committee can file paper reports. It is not required to e-file reports. The staff recommendation is to assess a penalty.

Sally Crowley, the Committee's treasurer, addressed the Commission. Ms. Crowley described how far out in the country she lives. Her internet connection kept going out off and on all afternoon. At that point, she could not mail it. After the wind stopped, she was able to get the report filed electronically. She is requesting that the penalty be dropped or reduced substantially since it was the weather than kept her from timely filing.

Mr. Cassidy asked whether she could have faxed her report, and she replied that she was not aware she could do this, but had no means of doing so anyway.

Ms. Crowley stated that she has been Treasurer for approximately nine months and has not been late before. In the past, she has filed at her office in Ellsworth so the internet connection has not been an issue.

Mr. Friedman, recognizing the Commission's role, asked what Ms. Crowley felt was a fair penalty. Ms. Crowley responded that since she did get the report into the system only a few hours late, she felt that \$25 for a two hour late report was more than sufficient.

Mr. Wayne stated that a 50% reduction in the penalty would be appropriate.

Mr. Cassidy made a motion that the penalty be assessed at one-half of \$176.77 or \$88.38. This was seconded by Ms. Thompson. The motion passed (4-0).

**Agenda Item #10 - Request for Waiver of Late Filing Penalty/Maine Taxpayer Action Network PAC**

Mr. Wayne explained the Treasurer of this PAC, Carol Palesky, is incarcerated at the Women's Center at the Maine Correctional Center in Windham. Her husband has asked for a waiver on her behalf. The PAC has not had any activity during the report period – no contributions, no expenditures. However, the policy of the Commission is to assess a penalty of \$50 for perennial late filers, even when inactive since the staff still uses administrative time. Mr. Wayne pointed out that the PAC could appoint Mr. Palesky as treasurer and reminder notices are sent out prior to filing deadlines.

Mr. Cassidy moved and Mr. Friedman seconded to assess a \$50 penalty. The motion passed (4-0).

**Agenda Item #11 - Request for Waiver of Late Filing Penalty/David F. Kirkpatrick**

Mr. Wayne explained that Mr. Kirkpatrick did not file his post election report on time. He mailed his report from Freeport one day prior to the deadline. The statute states that the penalty is based on when the reports are received, not on the mailed date. The exception is when a candidate mails the report by registered mail and it is postmarked two days before the deadline. The staff recommends imposing the full penalty.

Mr. Friedman stated concern over the fact that the US Postal Service cannot get mail from Augusta to Freeport within a day. He moved to waive the penalty, since blame rests with Post Office. There was no second.

Mr. Wayne further explained mitigating factors within the rules that would reduce a penalty, one being “unexplained delays in postal service.”

Ms. Thompson asked why the penalty amount was low. Mr. Wayne explained the formula used to calculate the penalty. Ms. Thompson expressed concern that the penalty did not indicate the seriousness of filing on time. Other candidates could file the reports in the mail the day before, and hope that the report arrives on time. She felt the Commission should not be ‘easy’ on this issue; she would not have supported Mr. Friedman’s motion to waive the penalty.

Mr. Cassidy asked for clarification on faxing reports. Mr. Wayne explained that it was permissible to fax a report as long as it was received by 5:00 p.m. on the due date and the original was received by the Commission within 5 days.

Ms. Thompson moved to accept staff recommendation and assess the statutory penalty of \$14.79. Mr. Cassidy seconded. The motion passed (3-1), Mr. Friedman opposing.

**Agenda Item #12 - Waiver of Late Filing Penalty/Richard Dort (postponed until May 14)**

**Agenda Item #13 - PAC Reporting Requirement/Democracy Maine**

Mr. Wayne advised the Commission that this was a request for an investigation filed by Roy Lenardson against Democracy Maine, which is a non-profit organization that opposed TABOR in 2006. The staff advised Democracy Maine to file a 1056-B Report since it did not qualify as a PAC, but was spending funds in regard to this ballot issue. Two reports were filed, showing expenditures of \$58,689 against TABOR, and also contributions. Mr. Lenardson’s complaint is that Democracy Maine should have filed as a PAC and been filing regular reports.

Ms. Thompson asked for a review of previous discussions on PAC filing requirements.

Mr. Wayne explained that a few months ago, a complaint had been filed against the Maine Heritage Policy Center (MHPC) by Carl Lindemann. The Commission at that time considered whether the MHPC should file a 1056-B report or whether it was a PAC. The Commission decided at the December meeting that MHPC did not qualify as a PAC since its major purpose was not influencing the TABOR ballot question. The purpose of the organization is the determining factor as to whether it would be considered as a PAC. The Commission required MHPC to file a 1056-B report if it raised or spent more than \$1,500 to influence the TABOR election. MHPC did file this report. Since then, Carl Lindemann and Democracy Maine have filed an appeal from the Commission's determination with Superior Court.

Mr. Wayne stated that using that same standard, it would appear that the major purpose of Democracy Maine is not to influence TABOR.

Mr. Roy Lenardson addressed the Commission regarding the three complaints he filed. He did note that his complaint was filed prior to the Commission's determination regarding proposed rule changes regarding PACs and 1056-B reporting. His major concern is creating a situation where active campaigning by a political committee is being confused with a 1056-B filer who is only 'weighing in' on an issue, not campaigning for that issue. Currently, an organization may spend \$300,000 on a campaign for a political issue and not be considered a PAC. Mr. Lenardson thought that the definition of what qualifies an organization to be PAC needs to be clearer. The loophole exists when an organization files as a PAC only when it is advantageous for that organization. Mr. Lenardson passed out an example of this type of flyer. He stressed that he is not interested in correcting past issues, only in moving forward for 2008 elections.

Mr. Friedman stated that this should be brought before the Legislature. Mr. Lenardson agreed and said he will be doing so. Mr. Friedman noted that the Commission is constrained to follow the existing statute.

Ms. Thompson asked whether an organization can switch back and forth as a PAC.

In response, Mr. Lenardson expressed his concern over the clarity of defining a PAC in order to prevent the cloudiness there is now between 1056-B filers and PACs. There is a difference between

think tanks and PACs. He feels the 527 organizations, 501(c)(4) organizations and other national organizations that are not as restricted by federal law as 501(c)(3) organizations could see this loophole and take advantage on any issue they wish. He feels that running TV ads and mailers, saying “vote for” is influencing votes and therefore, creates a PAC. Mr. Lenardson wants the Commission to make a distinction between studies done on an issue versus running ad campaigns when defining a PAC. Any organization can spend big bucks on an issue and say “it is not our primary purpose.” Mr. Lenardson believes the rule needs to change, going forward, to keep these two entities separate.

Ms. Gardiner questioned where the line should be drawn, based on the nature of the activity or communication and how it relates to the “major purpose” referred to in the statute.

Mr. Lenardson feels the “major purpose” relates to that moment, to the communication, or to each issue, not the organization’s original purpose. He said any large organization could be involved in ballot issues in Maine and not be considered a PAC. He does not believe that is the way the statute was intended to be interpreted.

Mr. Cassidy asked if there were any pending legislation regarding this issue. Mr. Wayne pointed out that Item #16 on the Agenda speaks to this exact issue of a PAC definition. Mr. Wayne said that the staff does concur with Mr. Lenardson that it is preferable to bring organizations into the PAC law in order to get the disclosure out to the public.

Mr. Lenardson reiterated that he does not want to look backward nor seek penalties for past circumstances. He only wants to look ahead for 2008.

Mr. Friedman stated he understood Mr. Lenardson’s view. He did say changes to a statute need to go before the Legislature.

There was a discussion as to how to proceed with Agenda Items #13, 14 and 15 given that Mr. Lenardson said that he was not interested in seeing penalties assessed but was more interested in the Commission developing a better policy for 2008. Mr. Lenardson filed the inquiries on these items because he wanted to come before the Commission and get the issue out in the open; he wishes to

keep the complaints active. It was decided to continue hearing from the parties involved in these complaints.

Jonathan Crasnick, Executive Director of Democracy Maine, addressed the Commission along with counsel, Russ Pierce, Esq. Mr. Crasnick stated that he believes MHPC and MCEP had a greater impact on TABOR than Democracy Maine had. Democracy Maine is a 501(c)(4) organization. He feels Mr. Lenardson is inconsistent with his accusation that Democracy Maine is a PAC. Mr. Crasnick also stated that Mr. Lenardson's position that a 501(c)(3) organization (such as MHPC and the Maine Center for Economic Policy) should not have to file as a PAC because it only does studies yet a 501(c)(4) should have to file is inconsistent. Mr. Crasnick believes the Commission made the right decision in requiring MHPC to file a 1056-B report. Mr. Crasnick filed a 1056-B report after consulting with staff. He was told that if a non-profit organization was not created to support or oppose a referendum, specifically, then it did not meet the definition of PAC and did not have to file as a PAC. Martha Demeritt, the PAC Registrar, did state that Democracy Maine would need to file a 1056-B Report and report only those funds that went specifically to influence TABOR, which it did.

Mr. Crasnick told the Commission that in a letter from Mr. Wayne, Mr. Crasnick was advised that if Democracy Maine did receive contributions to its general activities fund from a founder and that founder was a board member who was able to vote on issues Democracy Maine became involved with, then they had to list those funds on the report. If these funds were not listed, then they would be shielding the source of those funds.

Mr. Crasnick stated that Mr. Wayne's questions in the letter show how weak the reporting laws are. He went on to say the report shows how much is spent, but not where the funds come from. PACs do have to report the sources. These loopholes are being taken advantage of by several organizations. They can spend much more money than is raised and the sources are hidden by claiming the money came from a general activities fund, which is not required to be disclosed. Democracy Maine believes any time an organization spends or raises money to influence an election, it should be required to report these activities as a registered PAC. The general activities fund should be part of the reporting. Mr. Crasnick demonstrated with a sample PAC finance report by Democracy Maine for 2006. The report showed that Democracy Maine spent just over \$66,000

but raised only \$1,700 from solicitations specific to TABOR. Mr. Crasnick stated that Democracy Maine has decided to lead by example and fully disclose the sources behind the money it spent during the last election. He stated that the report discloses the original sources of the funds in the general activities account. Mr. Crasnick said that the bottom line is that more disclosure is required. He challenged MHPC and all Maine organizations to do the same.

Mr. Wayne asked if Democracy Maine wished to change its status to a PAC. Mr. Crasnick responded that the way the current law is written, Democracy Maine does not meet the requirements. The exhibit is an example of what they feel should be required by all.

Mr. Pierce also noted that the 1056-B filings report expenditures that exceed contributions.

Daniel Billings, Esq., representing the Maine Heritage Policy Center, addressed the Commission. Mr. Billings stated that he does not feel Democracy Maine is a PAC under current law. However, he does think the Commission should table the matter and postpone action on the issue until after the appeal filed by Democracy Maine to Superior Court is resolved. He feels if MHPC is to be considered a PAC as Mr. Crasnick contends, then Democracy Maine also should be. Democracy Maine certainly advocated for the defeat of TABOR

Carl Lindemann addressed the Commission, indicating that he was neither for nor against the parties to these complaints. Mr. Lindemann restated that the lines are very blurry with regard to PAC definitions. The fact that reports indicate discrepancies between contributions and expenditures is very concerning.

Mr. Lindemann brought up the question as to whether Ms. Ginn Marvin should be involved in hearing Mr. Lenardson's complaint in light of the connection they have through involvement with MHPC. The Ethics Commission needs to be perceived by all to be above reproach, in his opinion.

Ms. Ginn Marvin asked for a vote on Item #13. Mr. Wayne stated that Mr. Lenardson does want to proceed with his complaint; however, the Commission may want to table the complaint.

Ms. Thompson expressed her desire again to hear from Mr. Wayne regarding staff's research on Item #16, Changes for the Definition of Political Action Committee, and §1056-B Reporting since it relates to Items #13, 14 and 15.

Mr. Friedman stated that Items #13, 14 and 15 are dependent upon the Legislature and Superior Court in his view. The comments today have not altered his opinion. Mr. Lenardson is looking for changes in laws. He agrees with Mr. Billings's suggestion to wait until direction from the Legislature.

Mr. Friedman moved to table Items #13, 14 and 15, with Mr. Lenardson's approval, for discussion at a future time after the Legislature has provided the Commission with statutory guidance or the court has provided a judicial interpretation of the statutes already existing.

Mr. Lenardson stated the issue with Item #15 would need to be resolved in his opinion. Item #13 and 14 are identical.

Mr. Friedman then altered his motion to table only Items #13 and 14; Mr. Cassidy seconded. The motion passed (3-1). Ms. Thompson opposed.

Mr. Cassidy asked when we would hear from the court. Ms. Gardiner stated that this was very hard to predict. It could be a year or six months, but four months, minimum. She said it is up to the court to schedule oral argument and, after that, up to the Judge to determine when to render a decision.

**Agenda Item #15 - Section 1056-B Reporting Requirement/The Katahdin Institute**

Mr. Wayne pointed out for the Commission that the Katahdin Institute received a \$10,000 grant to conduct workshops regarding communications about taxation and government spending issues. The Executive Director of the Katahdin Institute spoke to Mr. Wayne and explained that part of the workshop related to TABOR. The grant proposal does seem to refer to the TABOR issue.

Mr. Lenardson addressed the Commission. He expressed his frustration with the current law. The Legislature, he feels, is waiting for the Commission to react to this issue since they have tabled bills.

Mr. Lavin stated that the Legislature would like to consider all bills of this nature at the same time. He believes the Legislature does realize its role in determining policy.

Mr. Lenardson restated his concern regarding consistency and clarity – knowing what the rules are and being sure every one is playing by these same rules.

Mr. Lenardson raised the Katahdin Institute issue because of the grant of \$10,000 for workshops appears actually to be focused on TABOR. He believes the Katahdin Institute should be brought into compliance as the other groups discussed today – Democracy Maine, MHPC, etc.

Anna Marie Klein, Director of the Katahdin Institute, and Thomas Foley, staff writer for the Katahdin Institute, addressed the Commission. Ms. Klein said the grant was shared with Community Leadership Network, \$5,000 each. Since the workshops were dealing with several issues, they believed they were in compliance. She said clarification would benefit all organizations. She passed out examples of handbooks that were used at the workshops.

Ms. Klein reviewed the books and the philosophy of the Katahdin Institute and told how they used TABOR as a useful tool. The Katahdin Institute took no actual position on TABOR.

Mr. Foley stated that there was not an inordinate amount of time spent on TABOR; therefore filing did not seem necessary. He said they were more than willing to file, if that needs to happen.

Mr. Friedman asked how much was spent. Ms. Klein thought perhaps \$2,500. She explained how their workshops are conducted. She said the workshops were intended to get participants the tools they needed to address issues but did not tell people what to do regarding any specific issue.

Mr. Cassidy asked if the \$2,500 included staff time; Ms. Klein confirmed that it did.

Mr. Cassidy further asked what the annual budget was. Ms. Klein responded somewhere around \$70,000 and \$75,000. She noted that this is not directly campaign-related; work is more related to government education, and not that many participants, maximum of 20 people. She clarified that of the \$5,000 grant, \$2,500 went to TABOR-related activities and that was for staff time.

Ms. Ginn Marvin noted that there were several knowledgeable people on the board that were aware of the rules and could have advised better.

Ms. Klein acknowledged that their board's input would have been very helpful.

Mr. Wayne advised that the Commission write a letter to Ms. Klein asking what Katahdin Institute's financial expenditures and contributions regarding TABOR were and suggesting that they file a 1056-B Report, which may include mail costs, workshop expenses, other such costs relating to TABOR.

Mr. Wayne said that under § 1056-B, "an organization is required to report contributions or expenditures made for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question." He noted that one purpose of these workshops was to provide people with ways to talk about TABOR, and sample editorials were provided in the workshop that urged defeat of TABOR. Mr. Wayne said that if the purpose of that expense was in fact to defeat TABOR, it should be included on a 1056-B report.

Dan Billings, Esq., representing the Maine Heritage Policy Center, addressed the Commission. He said that Ms. Klein has appeared regularly on a radio program (WLOB) and often spoke against TABOR. In addition to staff time, he was aware of a couple of press releases by the Katahdin Institute urging defeat of TABOR; therefore, they should be required to file, since they went over the \$1,500 threshold. He went on to say this is why the 1056-B statute is too broad in his view and threshold is too low. Organizations involved in a small amount of activity as part of their overall mission, get brought within the scope of this filing requirement unnecessarily, in his view.

Carl Lindemann addressed the Commission. He spoke to the freedom of speech issue as it relates to 1056-B disclosure.

Ms. Ginn Marvin noted that both sides want the same thing: clear directions to follow.

Mr. Friedman made a motion that the Commission direct the staff to communicate to the Katahdin Institute information regarding the filing of a 1056-B report, given that the facts show spending of more than \$1,500 on TABOR. Mr. Cassidy seconded, suggesting a time limit for reporting be imposed, as it was with MHPC the last time.

Mr. Friedman amended his motion to include a time frame of 30 days for the Katahdin Institute to file its 1056-B report after the staff's communication.

The motion passed (4-0).

**Agenda Item #16 - Recommended Statutory Changes for the Definition of PAC, and §1056-B**

Mr. Wayne reviewed the staff recommendation for changes to the PAC definition from the January meeting. The proposed definition would replace the § 1056-B requirement. The staff is now seeking the Commission's approval of a new proposal. The current bill at the Legislature may be revised before the public hearing scheduled for the bill.

Mr. Wayne reported that organizations are influencing either candidate elections or ballot question elections as PACs and are reporting as PACs, which is the way it should be. PACs are required to register and identify primary decision makers and fund raisers, which is helpful for public disclosure. PACs report through the Commission's e-filing system. The 1056-B Report is different because those reports are filed in hard copy, made into PDFs and posted under other disclosures on our website. Mr. Wayne noted the public thinks of disclosures by parties, PACs or candidates, and the staff prefers this financial activity be reported as a PAC. The old definition (current law) refers to a PAC as any person who serves as a "funding and transfer mechanism and spends money ...." Mr. Wayne stated that the staff believes this is confusing and ambiguous. The staff recommends deleting that provision. The newly proposed definition for a candidate PAC reads "any organization that raises or spends more than \$5,000 to influence a candidate election," even if organization does not have as its major purpose influencing elections, would be required to form a PAC. Mr. Wayne noted the possibility of constitutional issues with this definition.

Mr. Cassidy asked how this would apply to an organization like the Maine Educational Association. It has a PAC that supports candidates and also has a dues paying organization that supports educational issues.

Mr. Wayne confirmed that they funnel their political activity through the PAC, so the union itself would not have to register.

Mr. Wayne went on to explain the constitutional issues. Under federal law, an organization is a political committee if the major purpose is political activity and would be subject to strict federal regulation. The Maine law is much less burdensome. It requires only disclosure. PACs are free to raise money from whomever – labor unions, corporations – without any contribution limits. Mr. Wayne said that even under the proposed law, he believes an organization’s First Amendment rights remain intact.

Mr. Wayne stated that the parts of the proposed law regarding ballot question elections still refer to “the major purpose” of organizations. If political issue is not the major purpose, the organizations should be allowed to file a 1056-B Report instead of forming a PAC. Because, even though the Commission prefers that these organizations form a PAC, if challenged, courts may find it to be burdensome on these organizations and individuals to do so. Mr. Wayne explained that the 501(c)(3) organizations, as the staff understands it, are not allowed to form PACs because of their tax exempt status. This would prohibit them from getting involved in ballot question elections, which is not the intent of the Commission. Mr. Wayne suggested, at this point, to keep the 1056-B requirement for “non major purpose” organizations, but make the following improvements to this requirement: clarify that all expenditures made to influence the election need to be reported, not just ones over \$100; clarify which contributions need to be reported; clarify which contributors need to be reported and what is the purpose of the contributor in giving the funds. If an organization does not have as its major purpose influencing ballot question elections under this requirement, then it would not have to report money given to support its general activities. The State has an interest in having non-profit organizations disclose their financial activity for the purpose of influencing elections. However, Mr. Wayne feels the State cannot ask non-profit organizations to disclose all financial information related to their general purpose simply because a “non-major purpose”

organization has decided to engage in electoral issues. The staff also proposed a record keeping requirement which would have organizations keep their records for two years after the election.

Mr. Cassidy noted the reporting amount requirement has increased from \$1,500 to \$5,000.

Mr. Friedman asked who has to report contributors. Mr. Wayne said it would be the filer. Mr. Friedman asked about a situation where an individual donates \$5,000 towards organization and 85% of the work done by organization is for one ballot issue. The contributor gave the money, telling the organization to use it however it liked but knew that 85% of that donation will go towards that issue. Mr. Friedman asked whether that contribution would be reported.

Mr. Wayne explained that the contributions that would be reported are those that were donated specifically for that purpose; those that were given in response to a specific solicitation which would lead the contributor to believe that the funds would be used for that purpose; and contributions that could be reasonably determined to be provided for the purpose of influencing a ballot question when viewed in the context in which they were given. Mr. Wayne said that the last option would likely pertain to Mr. Friedman's example.

Ms. Thompson asked how these recommendations proposed today would change the decisions that have been made in the last few months regarding PACs and 1056-B filers.

Mr. Wayne stated that the four organizations that have come before the Commission – MHPC, Democracy Maine, AARP, and Katahdin Institute – would only be required to file 1056-B Reports since their major purpose is not to influence political activity. If the organizations spent more than \$5,000 in candidate elections, they would be required to register and file as PACs. There are other elements that could be explored in crafting the proposed law; for example, defining “a major purpose” to be when organizations spend more than \$10,000 or 200 hours of staff time on communications to influence elections. Mr. Wayne pointed out that if the Commission is still unsure whether some of these previous organizations are 1056-B filers or PACs, then the Commission could ask the staff to begin thinking about these factors to determine the status of the different organizations.

Ms. Thompson asked what kind of burden would be experienced by “small actors.”

Mr. Wayne explained that the spending threshold would make a difference. If the threshold is \$5,000, an organization that wants to send out mailers, etc., regarding an issue, but spends less than \$5,000, would not have to file a PAC report. Mr. Wayne said the Legislators seem to want a lower threshold.

Ms. Thompson stated that raising the threshold does help the “small actors.” Mr. Wayne agreed; however, it does decrease disclosures.

Daniel Billings, Esq., addressed the Commission, saying he agrees with this direction. It will be clearer where the lines are; he believes the current definition is not clear at all. The proposal does seem to dodge the issue of what type of activity would trigger a reporting requirement. There are many “small actors” that are spending small amounts and have not filed. There are many small organizations wanting to speak out on ballot issues. The current threshold is too low.

Jonathan Crasnick addressed the Commission saying he feels any group that takes part in a ballot question should disclose whether there is express advocacy or not, should include all areas of money spent, including staff time. Most organizations spend more than they raise in his opinion. Also, he believes the report has to show where the money comes from, the original source, and who is funding a PAC or funding an issue.

Mr. Friedman asked whether Mr. Crasnick agreed with the staff recommendation, and he said he did.

Ms. Gardiner asked if the \$5,000 threshold was sufficient. Mr. Crasnick stated he has no strong opinion. He believes the dollar amount should not be a factor.

Mr. Wayne questioned how a non-profit organization would choose as to which general activity donation went to a political issue and what if a donor wishes to remain anonymous.

Mr. Crasnick acknowledged that this is a challenge, but that it needs to be addressed nevertheless, especially if the contribution comes from an out-of-state donor.

Mr. Friedman noted that there are donors that do not want to be identified and so will stop giving.

Mr. Crasnick said it may change past practice; however, PACs have to do this now. Non-profits have not been required to do this; this would be a positive change. Currently, any group can start a non-profit, get unlimited amounts of money from out-of-state or in-state, and put it towards a referendum and not have to disclose it.

Carl Lindemann addressed the Commission. He feels the 501(c)(3) organizations want you to give to the general fund and do not want earmarked contributions. Mr. Lindemann said the need to get to the sources for these specific ballot issues is important.

Roy Lenardson addressed the Commission. Mr. Lenardson believes the \$5,000 is reasonable. He believes the “major purpose” definition could be a checklist of three or four specific activities, which if met, would trigger an obligation to register as a PAC. If non-profits want to play in politics, they would have to form a PAC. He feels that between this proposal and the \$5,000 the Commission could eliminate 1056-B reporting in Maine.

Mr. Wayne stated he would like to investigate specific triggers for PAC registration.

Ms. Ginn Marvin asked when proposals need to be submitted to the Legislature. Mr. Wayne said that it would be by end of March or sooner.

Mr. Friedman acknowledged that there are First Amendment considerations. However, he feels that if an organization chooses to become involved in the political process, then it has to accept publicity.

#### **Agenda Item #17 - Presentation of Audit Reports**

Mr. Friedman moved to accept the audit reports presented; and Ms. Ginn Marvin seconded. The motion passed (3-0).

**Agenda Item #18 - Request for Further Advice by Rep. Thomas B. Saviello**

Mr. Wayne did inform the Commission that there is a bill before the Legislature that would affect Verso Paper, Rep. Saviello's employer.

Rep. Saviello, District 90, addressed the Commission. He stated that the bill (L.D. 437) regarding oil spill reporting in Maine was sponsored by other Representatives, and he has not been to hearings or meetings regarding this bill. He also stated that this bill affects the entire industry, not just Verso Paper. This is an example of what he would be contacting the Commission staff for guidance on in the future.

Michael Herz addressed the Commission on behalf of Maine Rivers as board member. He has worked with Rep. Saviello on a Legislative task force in the past and respects his ability. Mr. Herz believes that the conflict of interest issue which was brought up last month regarding RGGI presents a similar conflict of interest issue but he believes that L.D. 437 presents an even clearer conflict. He believes Rep. Saviello will derive a benefit from this bill. Rep. Saviello's reputation in his company and his industry will be directly affected as will his employer's financial benefits in Mr. Herz opinion, and therefore Rep. Saviello should recuse himself in regards to L.D. 437.

Mr. Cassidy asked whether oil spills had to be reported to DEP. Mr. Herz said it would depend on the size; if the spill was less than a certain threshold level, it would not have to be reported. This will affect companies' bottom line because they will not have to do as much reporting as they do now, if the bill passes. Mr. Cassidy stated the intent of these kinds of bills is to protect the environment; therefore, we all benefit from these types of bills. Mr. Cassidy asked Mr. Herz if the entire Legislature has a conflict if we all benefit. Mr. Herz said that this bill would create a special benefit to a restricted class of people, i.e., the mill's employees.

Ms. Ginn Marvin explained that in the past the Commission determined that Rep. Saviello derives no special financial benefit as a result of the bills. Mr. Herz said that he thought that this specific bill will affect a small set of employers.

Rep. Saviello stated that the bill exempts those mills within the State that fall within the 50 gallon reporting threshold, but they would still have to file a log, they would have to have a HAZMAT team on-site, an on-site waste treatment facility, etc., so these costs incurred by the industry are not a benefit to the industry at all. In fact, this bill will increase the costs to the industry.

Mr. Cassidy asked for clarification as to the intent to protect all citizens of the State of Maine. Rep. Saviello confirmed that this was the intent of the bill, keeping track and cleaning up any oil spills on their facility. Everyone is affected by this.

Mr. Wayne stated that Rep. Saviello wants to be sure he can vote on this bill. The amount of spills by IP (Verso Paper) last year was 20%, which is still not enough impact to constitute a conflict of interest since there are hundreds of facilities in Maine. However, with RGGI, there was a clearer impact because Rep. Saviello's employer was one in five or six companies that would have to buy carbon dioxide allowances.

Mr. Friedman stated that there needs to be proof that the Legislator acquires a direct, substantial personal financial interest. In his opinion, it is very difficult to disqualify someone from voting on a bill because it disenfranchises voters in his district, unless that individual has a "direct, personal, substantial financial interest."

Mr. Cassidy agreed.

Ms. Ginn Marvin stated that Rep. Saviello was only one out of 151 Representatives.

Mr. Saviello wants to be able to work with Mr. Wayne in the future and not have to come before the Commission.

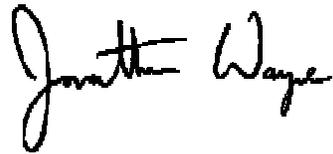
Mr. Friedman made a motion to issue an advisory opinion to Rep. Saviello which suggests that there is not a conflict of interest for his participation in debate and voting on L.D. 437 and that future questions of this nature be taken up with Executive Director, Jonathan Wayne.

Mr. Cassidy seconded. The vote was unanimous.

There being no further business, Mr. Friedman motioned to adjourn, and Mr. Cassidy seconded.

The motion passed (3-0).

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