

Agenda

Item #5



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

To: Ethics Commission Members
From: Jonathan Wayne, Executive Director
Date: May 9, 2007
Re: Second Request for Investigation by Carl Lindemann

On March 5, 2007, Carl Lindemann filed with the Ethics Commission a second request for an investigation regarding the financial activities of the Maine Heritage Policy Center (MHPC) in support of the Taxpayer Bill of Rights (TABOR) citizen initiative. His first complaint, filed on October 19, 2006, alleged that the MHPC's activities in support of TABOR qualified it as a political action committee (PAC) under Maine Election Law.

At its meeting on December 20, 2006, the Commission determined that the MHPC was not a PAC but was required to file a financial report of its contributions and expenditures relating to TABOR under 21-A M.R.S.A. §1056-B. Mr. Lindemann has appealed the determination to the Maine Superior Court. On January 22, 2007, the MHPC filed a §1056-B report showing four contributions totaling \$975.00 and \$30,962.19 in expenditures. These were the same four contributions that the MHPC identified in a December 4, 2006 letter to the Commission as the only contributions it received in 2006 that included a reference to TABOR on the contribution checks or in correspondence that accompanied the checks.

Carl Lindemann's Second Request for an Investigation

Mr. Lindemann's second request for an investigation is attached for your consideration. His request includes a number of contentions regarding why the MHPC's §1056-B report is not complete and accurate. For the purposes of this memo, I have summarized what I regard as his two major arguments. First, he argues that the MHPC sent fundraising letters in 2006 that heavily mentioned TABOR, so it is highly unlikely that the MHPC received only four contributions to promote TABOR. Second, he argues that the MHPC has under-reported the amount of staff time which the organization dedicated to supporting TABOR.

Response by the MHPC

Attorney Daniel Billings submitted a short response on behalf of the MHPC in a letter dated March 30, 2007. He states that the MHPC's §1056-B report is complete and accurate, and that the MHPC worked diligently to apply the guidelines provided by the Commission staff. He argues that Mr. Lindemann's points have been heard by the Commission before, are not supported by new evidence, and so are not worthy of consideration. He requests that if the Commission decides to consider them, the matter should be deferred until the Maine Superior Court has reached a decision on Mr. Lindemann's first request for an investigation. Mr. Billings states that the MHPC has spent a great deal of time and resources responding to Mr. Lindemann's allegations and it would be an unfair burden on the MHPC to require the organization to respond to Mr. Lindemann's new complaint at the same time it is participating in Mr. Lindemann's appeal in the Superior Court.

Reply by Carl Lindemann

In reply to Mr. Billings' March 30 letter, Carl Lindemann asks the Commission to consider his second request for an investigation. He argues that by not appealing the Commission's determination that the MHPC was required to file a §1056-B report, the organization has waived its right to object to a request for an investigation. Also, he points out that "whatever judgment is rendered as the result of the pending Petition for Review will, at a minimum, require MHPC to disclose information typically encompassed by Section 1056-B, which imposes less comprehensive disclosure requirements than the statutes governing political action committees."

Staff Recommendation on Deferring the Second Complaint

At the outset on May 14th, you may wish to consider the MHPC's request to delay your consideration of Mr. Lindemann's request until after the Maine Superior Court makes a ruling. If you are concerned that the MHPC has under-reported, I do not quite understand the MHPC's contention that you should defer your consideration until after the Superior Court has reached a decision. Regardless whether the MHPC reports as a PAC or as a §1056-B filer, it is required to disclose the contributions it has received for the purpose of supporting TABOR and the expenditures it made to support TABOR. I will consult further with the Commission's counsel prior to the May 14th meeting, but at this point I recommend taking the complainant's view on this procedural question. On the other hand, if you are comfortable with the MHPC's §1056-B reporting, I recommend voting on May 14th to take no action on Mr. Lindemann's second request.

Duty to Report Contributions under 21-A M.R.S.A. §1056-B

On December 20, 2006, the Commission determined that the MHPC was required to file a report under 21-A M.R.S.A. §1056-B. This section was inserted in the PAC law in 2000 to cover organizations that do not qualify as a PAC but which raise or spend more than \$1,500 to influence a ballot question. Section 1056-B provides in full:

Any person not defined as a political committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the clerk of that municipality. [underlining added]

1. Filing requirements. A report required by this section must be filed with the commission according to a reporting schedule that the commission shall establish that takes into consideration existing campaign finance reporting schedule requirements in section 1059.

2. Content. A report must contain an itemized account of each contribution received and expenditure made aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name of each contributor, payee or creditor. Total contributions or expenditures of less than \$500 in any election need not be itemized. The report must state whether the purpose for receiving contributions and making expenditures is in support of or in opposition to the ballot question. [underlining added]

3. Forms. A report required by this section must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

On December 27, 2006 the Commission staff distributed the attached memo in response to a request for guidance from the MHPC about what activity to include in its §1056-B report. The memo was also distributed to previous §1056-B filers to encourage consistent reporting by all filers. With regard to reporting contributions, the staff offered the following guidance:

Section 1056-B covers “contributions ... made for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question” We propose that this would include the following:

- funds which the contributor specified were given in connection with a ballot question (*i.e.*, for the purpose of promoting or opposing a ballot question);
- funds provided in response to a solicitation which would lead the contributor to believe that the funds would be used specifically for the purpose of promoting or opposing a ballot question; and
- funds which can reasonably be determined to have been provided by the contributor for the purpose of promoting or opposing a ballot question when viewed in the context of the contribution and the recipient’s activities regarding a ballot question.

Funds provided in response to a solicitation which would lead the contributor to believe that the funds would be for an organization’s general activities would not be covered by Section 1056-B.

This advice was not approved by you in advance of its distribution, but the staff mailed it during the week after the Christmas holiday in order to provide timely guidance to the MHPC about how to complete its §1056-B report. At your March 9, 2007 meeting, you approved including the bullet-point language within legislation intended to improve PAC and §1056-B reporting. In his most recent request, Mr. Lindemann argues that the MHPC has not complied with the second bullet point by failing to report “funds provided in response to a solicitation which would lead the contributor to believe that the funds would be used specifically for the purpose of promoting or opposing a ballot question.”

MHPC’s Reporting of Contributions to Influence TABOR

In its §1056-B report, the MHPC reported four contributions totaling \$975.00. In its December 4, 2006 letter to the Commission, the MHPC stated that it completed a review of all of its 2006 contributions. It could find only these four contributions which

included a reference to TABOR either on the contribution check or in correspondence accompanying the check.

Mr. Lindemann notes that the two 2006 MHPC fundraising letters received by the Commission cited the MHPC's work on TABOR at length. In particular, he argues that two thirds of the text of the fundraising letter dated August 2, 2006 concerned the MHPC's efforts to promote TABOR. He argues that the MHPC's §1056-B report should include all of the contributions received by the MHPC in response to the August 2, 2006 fundraising letter because they were all contributions made to influence TABOR.

Background on MHPC Fundraising Concerning TABOR

In his first presentation to the Commission on behalf of the MHPC, Dan Billings stated orally to the Commission that the MHPC had not solicited funds in support of TABOR. In his October 26, 2006 letter, Mr. Billings responded to the issue more fully:

[The MHPC] has not solicited or received any contributions to influence the outcome of a referendum campaign. ... While MHPC's activities may influence the referendum on the Maine Taxpayer Bill of Rights, [MHPC] has not solicited or accepted contributions or made expenditures for the purpose of initiating, promoting, defeating, or influencing in any way the outcome of the referendum. MHPC's purpose in speaking about the Maine Taxpayer Bill of Rights is to further the Center's mission to analyze and promote conservative and free market public policy solutions that will benefit the people of Maine. (underlining in original)

On November 27, 2006, Carl Lindemann submitted to the Commission a check dated November 1, 2006 to the MHPC which he had asked a friend of his, David Briney, to make to the organization. In response the MHPC sent a thank you letter to Mr. Briney dated November 6, 2006. The letter states: "We are very grateful for this donation, and

will use it to advance our mission of promoting The Taxpayer Bill Of Rights, a solution that will benefit all people of Maine.” (underlining added.) I interpreted this letter as a form letter sent to thank contributors who had made a donation for the purpose of supporting TABOR. Because the existence of an apparent form letter seemed at odds with the statements by Mr. Billings in his October 26th letter, I requested more information from the MHPC in the form of four questions numbered (1) - (4).

On December 4, 2006, Dan Billings responded in writing. In response to Question (1) (*“Has the MPHC received any funds from any source specifically to promote, initiate, or influence the TABOR initiative?”*), Mr. Billings responded:

MHPC has not received any funds from any sources specifically to promote, initiate, or influence the TABOR initiative. All contributions received are used to support the overall operations and general mission of MHPC. No funds were specifically segregated or dedicated to activities related to the Maine Taxpayers Bill of Rights. No activities undertaken by MHPC related to the Maine Taxpayers Bill of Rights were contingent upon or the result of any funds received from any source.

As a result of this question, MHPC staff has reviewed all contributions received by the Center this year. Four contributions, including the contribution from Mr. Briney, were made along with correspondence or references on checks mentioning TABOR or MHPC’s work related to TABOR. ...

In response to Question (2) (*“Has the MPHC solicited any contributions or other funds in connection with the TABOR initiative?”*), Mr. Billings stated:

No. However, MHPC has mentioned its TABOR related work in its general fundraising activities. For example, the enclosed fundraising letter, marked as Exhibit A, mentions MHPC’s work related to TABOR. It should be noted that though the letter is dated October 18th, it did not go out until after November 7th and no contributions were received as a result of the letter before November 7th. Also, the letter was only sent to existing MHPC members.

In response to Question (3) (*"Is the November 6 letter from Bill Becker a form letter used by the MHPC to thank donors for contributions or other funds given to promote TABOR?"*), Dan Billings responded

No. Enclosed, marked as Exhibit B, is a copy of the form letter used by the MHPC to thank contributors. As you can see, changes were made to the regular form letter to recognize Mr. Briney's expressed interest in MHPC's work related to TABOR. It is MHPC's practice to alter the general form letter as a result of areas of interest mentioned by the donor.

At the December 20, 2006 meeting, Dan Billings and William Becker provided further testimony regarding the MHPC's fundraising, and I have attached the relevant pages of the transcript for that meeting. Mr. Becker testified that he believed contributors to the MHPC were supporting "our overall mission" and "our ongoing work on spending limits" – not TABOR specifically. (Transcript, at 108.) He repeated that "we did not solicit any contributions to support activities related to TABOR, [] we did not segregate funds for TABOR related activities and none of the activities were tied to or dependent upon receiving contributions." (Transcript, at 110.)

MHPC's August 2, 2006 and October 18, 2006 Fundraising Letters

In its consideration of Mr. Lindemann's previous complaint, the Commission received two of the MHPC's 2006 fundraising solicitations. Both make significant mention of the MHPC's work in support of TABOR, which is not surprising. Other 2006 fundraising letters may have mentioned TABOR as well.

In the MHPC's December 4, 2006 submission, it included a MHPC fundraising letter dated October 18, 2006 as Exhibit A. Mr. Billings refers to it as an example of "general fundraising activities," although five of the seven paragraphs in the letter

mention TABOR or the MHPC's work on TABOR. In their testimony on December 20, Mr. Billings and Mr. Becker explained that the letter was intended to be mailed before the November 7, 2006 general election but because of a problem with a printer or mailhouse it was not distributed until after the election. (Transcript, at 159-60.)

On December 21, 2006 (the day after the Commission reached its determination that the MHPC was not a PAC), the Commission staff received another MHPC fundraising solicitation dated August 2, 2006. It was submitted to the Commission by Christopher St. John of the Maine Center for Economic Policy.

The August 2, 2006 solicitation was an e-mail which describes TABOR as a reasonable and effective way for Maine to begin repairing its lagging economy and as one of the MHPC's top priorities. It certainly includes language that could lead some recipients to believe that their contribution would be used by the MHPC conduct public relations efforts in support of TABOR in the coming three months before the election:

The Taxpayer Bill of Rights is a reasonable and effective way for Maine to begin repairing its lagging economy. It paves the way for lower taxes and a more favorable business climate, attracting new jobs, strengthening the economy and increasing incomes.

The net result will be to expand the economic pie – securing existing jobs, while keeping young people, families, and retirees in Maine. It will also create an environment where fewer people will need to rely on government assistance programs, thus relieving at least some of the pressure on state and local government. It is, in short, smart growth for our public and private sectors.

Now more than ever, your support is needed to help us educate Maine people about the opportunity that could be found through a reasonable and effective measure. [emphasis added] Unfortunately, there are those who are actively misleading the public and distorting the facts.

However, thanks to your support and generosity, we will continue to provide truthful and credible analysis, information, and commentary about

Maine's competitive position and how we can improve it. It's great when the facts are on our side!

Please consider a gift today to support the important work of The Maine Heritage Policy Center.

On the other hand, the e-mail also contains some indications that the funds raised would be used for the general work of the MHPC. The e-mail asks: "Will you please consider a gift to our Summary Annual Fund Drive today?" and "Please consider a gift today to support the important work of the Maine Heritage Policy Center." It also states "we will continue to provide truthful and credible analysis, information, and commentary about Maine's competitive position and how we can improve it," which may imply continued communication efforts beyond TABOR.

Staff Recommendation on Reporting of Contributions

I believe Carl Lindemann has raised a valid argument about the MHPC's reporting of its contributions. It is distinctly possible that individuals who received the August 2, 2006 or other fundraising communications made contributions to the MHPC for the purpose of promoting the TABOR ballot question. Even if these funds were in fact used for general purposes, it is not an unreasonable interpretation of 21-A M.R.S.A. §1056-B to conclude that those contributions must be included in a §1056-B report.

Part of the dispute between the complainant and the MHPC seems to rest on whether the reporting obligation in §1056-B is tied to the contributor's purpose in making the contribution or to the recipient's (*i.e.*, MHPC's) purpose in soliciting and receiving the contributions. Relying on the guidance of the Commission staff in its December 27 memo (not binding on you), Mr. Lindemann asks the Commission to consider the

contributor's purpose, and urges the Commission to conclude that all contributions made in response to the August 2, 2006 solicitation and similar communications should be considered made to influence TABOR.

The Commission has not received a full response from the MHPC to the substantive points in Mr. Lindemann's second complaint. Based on its 2006 submissions, however, it seems likely that the MHPC would argue that it complied with the §1056-B requirement because the organization's purpose in soliciting and receiving contributions was to use the income for the organization's overall operations – not specifically to influence TABOR.

Two other arguments potentially are available to the MHPC. First, it might argue that it has no way of knowing whether a 2006 contributor made a donation to support TABOR or to support the MHPC's general advocacy for limited government, other than by looking for some objective notation on each contribution it received. Also, many non-profit organizations raise funds with the expectation that their contributors will be kept private. Presumably, the MHPC would object to being compelled to disclose contributors who had not intention of influencing an election.

The MHPC's reliance on its purpose in receiving the contributions and its actual use of the funds for general operations is reasonable, but it could lead to less disclosure of money contributed to influence elections. To illustrate this, I have attached two fundraising e-mails of Democracy Maine supplied to the Commission as part of a complaint that Democracy Maine was a PAC. The first (dated September 28, 2006) asks for an on-line contribution to "help Democracy Maine spread the truth about TABOR" while the second (dated October 3, 2006) explicitly states that funds raised would be used

to pay for newspaper advertising against TABOR. On the MHPC's view, would Democracy Maine be entitled not to disclose the contributors who responded to the September 28, 2006 solicitation if Democracy Maine used those revenues for its general operations?

Both interpretations of §1056-B have some basis in the Election Law. The definition of a "contribution" to a candidate seems to refer to the contributor's purpose in giving something of value to candidates. ("A gift ... of anything of value made for the purpose of influencing the nomination or election of any person to ... office") (21-A M.R.S.A. §1012(2)(A)(1)) Subsection (2) of §1056-B refers to the filer's purpose in receiving contributions or making expenditures ("The report must state whether the purpose for receiving contributions and making expenditures is in support of or in opposition to the ballot question.")

I recommend that you consider the disclosure purposes of the campaign finance law and the language in §1056-B, and consider whether you are comfortable with the MHPC reporting only those contributions that explicitly mentioned TABOR. If you have doubts about whether this reporting complies with the requirements of §1056-B, the staff recommends that you schedule this matter for the June meeting and request any additional information you require. For example, you might be interested in topics or question such as:

- A description (or copies) of all 2006 MHPC fundraising communications that highlight in a significant way the MHPC's work in support of TABOR
- An explanation why the MHPC believes that it is required under §1056-B to report only those contributions that specifically mentioned TABOR
- An explanation whether the MHPC sent to its members who responded to the August 2, 2006 fundraising e-mail the TABOR-specific thank you letter received

by Mr. Briney or the “general” thank you letter attached as Exhibit B to Mr. Billings’ December 4, 2006 letter. The MHPC’s choice of thank-you letter could be an objective indication whether the MHPC believed that contributions received in response to the August 2, 2006 e-mail were made to promote TABOR or were made to promote the organization’s overall mission.

- If a contributor uses the MHPC’s on-line donation form on the organization’s website, the only opportunity for a contributor to cite TABOR as the purpose of the contribution is to type a comment in the “Comments” box. In that context, is it reasonable to conclude that the only contributions made to support TABOR in response to the August 2, 2006 e-mail were those that specifically mentioned TABOR on a check or in correspondence that accompanied a contribution?

If, on the other hand, you believe the MHPC has adequately explained its reporting of contributions, the staff recommends voting to taking no action with respect to this issue.

Mr. Lindemann’s Second Argument: Under-Reporting of Staff Time

Because of time constraints, I will summarize the other major contention in Mr. Lindemann’s request for an investigation: the MHPC has under-reported the amount of staff time it dedicated to supporting TABOR in 2006. Mr. Lindemann focuses on the six-month period of May 5 – November 7, 2006. He observes that 18 of the MHPC’s press releases (60% for that period) relate to TABOR, but that the MHPC reported only 35 hours of labor by Jason Fortin, the MHPC’s Director of Communications. According to Mr. Lindemann, this represents only 4% of Mr. Fortin’s work time for the six-month period leading up to the general election.

Mr. Lindemann has calculated that during the six-month period, each employee was available to work for 984 hours. The MHPC reported that William Becker, the MHPC’s Executive Director, spent 190 hours in support of TABOR in speaking engagements, research, and travel. Mr. Lindemann believes that this amount is less than 20% of his work time for the period. He finds this implausible, but he has not cited

specific reasons. For example, is the amount of 190 hours inconsistent with the volume of TABOR-related activities which Mr. Becker engaged in (public forums, comments to the press, etc.)? Perhaps Mr. Lindemann believes the reason is obvious based upon his monitoring of the MHPC, but his reasoning is not clear from the March 5 request.

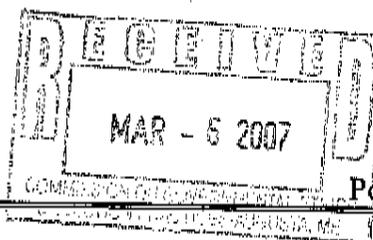
Mr. Lindemann argues that the MHPC's total TABOR-related expenditures of \$30,962 account for only 12.4% (about one-eighth) of MHPC's "projected budget" for the late part of 2006.¹ Apparently, he believes this total is incredible, but he does not explain why the Commission must conclude that the MHPC's total TABOR expenditures were in fact higher.

My recommendation would be to ask Mr. Lindemann at the May 14th meeting for a further explanation why he believes that these reported expenditures on staff time are not credible. After listening to his explanation, if you have significant doubts about whether the reporting is accurate, I would recommend that you schedule this matter for the June meeting of the Commission. You may wish to ask the MHPC to describe some of its other significant projects during the six months leading up to the November 7, 2006 general election to obtain a sense of context for evaluating whether the staff time reported is reasonable.

Thank you for your consideration of this memorandum.

¹ He has extrapolated that the MHPC's six-month budget was \$250,000 based on a comment Mr. Becker made to the Forecaster newspaper about the MHPC having a projected annual budget of \$500,000.

Carl Lindemann



P.O. Box 171
Portland, Maine 04112

Phone 207-774-1936

Email Carl@cyberscene.com

March 5, 2007

BY ELECTRONIC AND OVERNIGHT MAIL

Jonathan Wayne, Executive Director

Maine Commission on Governmental Ethics & Election Practices

135 State House Station

Augusta, Maine 04333

Dear Executive Director Wayne:

Pursuant to 21-A M.R.S.A. § 1003(2), I hereby request an immediate investigation by the Maine Commission on Governmental Ethics & Election Practices into whether the §1056-B filing made by Maine Heritage Policy Center ("MHPC") on January 22 is accurate and complete. Based on all the evidence available to those outside the organization itself, the disclosure of staff time, contributions, and in-kind donations contained in this filing is factually inaccurate and incomplete. The evidence upon which this complaint is based consists not only of MHPC's active promotion of TABOR in the period before the 2006 TABOR election, but MHPC's utter lack of credibility as demonstrated by the material false statements made to the Commission and its staff in the last three months of 2006. Complicating this matter is Commissioner Jean Ginn Marvin's role as treasurer for MHPC. The treasurer has a fiduciary responsibility to see to it that the organization's §1056-B filing is "true, correct and complete". As such, the review necessary to fulfill the Commission's statutory duty is, of necessity, a review of her conduct.

This matter should be of special interest given the extraordinary measure taken by Executive Director Wayne in his March 1 memo *RE: Complaint Against Democracy Maine*. On his own initiative, he raises questions about whether Democracy Maine's §1056-B is complete and his action is separate from any formal complaint made against that organization. He is prompted to do this because of the "recent attention over the sufficiency of §1056-B reporting". He states the need for this special examination because that organization reported spending more funds on a ballot initiative than it received. Here, MHPC's reported expenditures on the same ballot initiative exceed reported contributions by over a factor of thirty. Also, there is a similar preponderance of evidence pointing to likely funders who would have an interest in avoiding disclosure. If Executive Director Wayne is appropriate raising such a matter on his own initiative, then bringing this parallel case forward here through standard procedures is not only appropriate but also necessary.

There are additional motives for MHPC's incomplete filing. Because this is a highly visible case where these disclosures would likely undergo close scrutiny, it is improbable that this inaccurate and incomplete filing is the result of carelessness or misunderstanding. Concealing contributors, as mentioned above, is one very plausible motive of concern to the Commission. But there is another compelling motivation for MHPC to understate expenditures. Unlike Democracy Maine, MHPC is a 501(c)(3) public charity. Maintaining tax-deductible status for contributions requires stringent limits on such expenditures. A fully accurate and complete §1056-B filing would likely

reveal that it had exceeded those limits. If so, the orchestrated efforts to avoid disclosure followed by this wholly incomplete and inaccurate filing could constitute a conspiracy to commit tax fraud. Addressing such an offense is far beyond the scope of the Commission, but does show motive for the matters of concern here. I have attached hereto for your review the Maine Association of Nonprofits flyer *Federal Lobbying Rules and Regulations for 501(c)(3) Organizations*. Please note that MHPC has never filed an IRS Form 5768 for 501(h) status election, and so is subject to the "insubstantial part test".

I have also attached a detailed analysis of the MHPC's activities in 2006 based upon that organization's public postings on such media as the Internet. Of particular interest is how the MHPC's disclosure of TABOR-related staff time on its 1056-B report is at variance with readily available evidence, as well as the Commission staff's own assessment of the organization level of involvement with the TABOR campaign. In the Commission staff's first memo of October 30, the value of a §1056-B disclosure for MHPC was questioned (*italics added*):

Since the MHPC has claimed that it "has not solicited or received any contributions to influence the outcome of a referendum campaign," it would presumably report no contributions if required to file a §1056-B report. The only reporting by the MHPC in a §1056-B report would then relate to expenditures, presumably mostly for staff time. *Many people who are concerned with the campaign finances of the TABOR initiative are likely already aware that the MHPC is spending a significant amount of staff time on TABOR.* The Commission may conclude that there is little additional public benefit to be gained by requiring disclosure of the monetary value of that staff time.

In retrospect, the staff's expectations take on special significance. First, MHPC's written and oral testimony to the Commission that it "has not solicited or received any contributions to influence the outcome of a referendum campaign" has since been shown to be demonstrably false. Second, the staff's acknowledgement "that the MHPC is spending a significant amount of staff time on TABOR" seems at odds with a self-disclosure that claims only 8% of its staff time was devoted to such efforts.

In addition, the reporting of contributions appears to run counter to the guidelines provided for MHPC. These are specific about what contributions should and should not be reported:

Funds provided in response to a solicitation which would lead the contributor to believe that the funds would be used specifically for the purpose of promoting or opposing a ballot question...

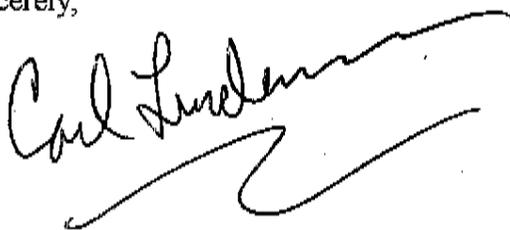
MHPC's written testimony dated December 4 included a single solicitation letter that, it was claimed, did not go out till after voting had taken place despite the document's October 18 date. After the December 20 Commission meeting, an additional fundraising letter dated August 2 surfaced and was distributed by Executive Director Wayne (see attached). While this references MHPC's "Summer Annual Fund Drive", nearly two-thirds of the text refers specifically to the organizations efforts to promote the passage of TABOR. Under the staff guidelines, this would require that every response to this be included in the §1056-B report. In fact, two of the four donations reported were received in August following this solicitation. Were these the only

responses to MHPC's "Summer Annual Fund Drive" solicitation? That assertion is highly unlikely and so is sufficient to warrant further investigation.

Moreover, Assistant Attorney General Gardiner's questioning of MHPC President Bill Becker on December 20 revealed that there may be additional solicitations for TABOR that are, as yet, undisclosed, along with the contributions they elicited. MHPC attorney Daniel Billings stated in his December 4 written testimony that there were no such solicitations whatsoever. That one has surfaced since and others may exist is troubling and points to another anomaly - the exceptionally small disclosure of contributions. As that attached analysis indicates, the \$975 in total contributions MHPC reported represents 0.0077% of a projected budget increase of \$124,000 over the previous year. There is little doubt that this 33% growth was fueled by donations resulting from the visibility enjoyed by MHPC for its prominent role in the TABOR campaign. Despite its high visibility in promoting the passage of TABOR, it is simply not credible that this highly publicized work earned the negligible public support in terms of contributions reported by MHPC in its most recent filing.

These questions and others raised by them, taken in the context of previous doubts about the veracity of MHPC's statements, should be sufficient to trigger a full, proper investigation to gather the information needed to verify that MHPC's §1056-B filing is accurate and complete. If it should be found to be inaccurate and/or incomplete as the result of the willful or knowing actions or omissions of MHPC or any of its officers, then appropriate sanctions should be assessed against MHPC.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl Lindeman", with a long, sweeping underline.

cc: w/encl. P. Lavin
M. Demeritt
P. Gardiner

Carl Lindemann

P.O. Box 171
Portland, Maine 04112

Phone 207-318-7093

Email Carl@cyberscene.com

ANALYSIS OF MAINE HERITAGE POLICY CENTER'S 1056B REPORT Press Releases, Time Study Indicates Underreporting and Omissions

On January 22, 2007, Maine Heritage Policy Center (MHPC) released a Form §1056-B campaign report on activities related to promoting the passage of the ballot issue known as the Taxpayer Bill of Rights (TABOR) as ordered by the Maine Commission on Governmental Ethics and Election Practices on December 22, 2006. An analysis of the group's self-report includes these major findings:

- Despite being MHPC's major purpose in the 2006 political cycle, reported TABOR efforts account for only 8% of total staff/contracted time*.
- TABOR-related expenditures disclosed accounted for only 12.4% of MHPC's projected budget.
- Reported donations relating to TABOR account for less than 1% of a projected 33% budget growth in 2006.
- The Executive Director invested less than 20% of his time promoting TABOR
- The Director of Communications spent less than 4% of his time on TABOR while 60% of the press releases he wrote related to the ballot initiative.
- The Health Reform Initiatives Director* reassigned to the TABOR campaign spent only 4% of his time on it while press releases for health-related activities dropped over 75%.

Methodology Accepted by Commission & MHPC

This analysis of MHPC's form §1056-B report is based on the same methodology used in the December 20, 2006 presentation to the Commission demonstrating that MHPC'S TABOR campaign constituted the organization's major purpose during the 2006 election cycle. It relies on MHPC's published press releases and other public information including testimony made to the Commission by MHPC. When this previous study was presented, neither MHPC nor the Commissioners or staff questioned either the method or the findings.

MHPC Media Output May-November, 2006

The new analysis examines the thirty press releases published over the reporting period from May 5 through November 7, 2006. These address MHPC's week-to-week interests and so provide an indication as to the relative output of the organization's efforts in its different areas of interest. This same kind of media analysis technique is typically used to determine the "mix" of content in broadcast programming or print media, and readily adapts to reveal the level of MHPC's engagement in promoting the passage of TABOR.

*Tarren Bragdon is listed as a staff member on MHPC's Web site, but is reported as being a contract employee in the Form 1056B report.

MHPC's mission statement indicates that the organization's efforts are divided between three primary areas of concern: economy/taxation, education and health care. Sorting the releases into these basic categories, education was non-existent during the TABOR campaign. Administrative and organizational announcements (eg. new hires, speakers for fundraiser events, etc.) make up "Other". TABOR releases are broken down into two categories – those that mention the initiative explicitly by name, and those that provided talking points for pro-TABOR presentations and appearances (eg. "Report: Maine and Louisiana the Only States to see 2005 Economic Decline").

Healthcare:	3 = 10%
Other:	4 = 13.3%
Economy/Taxation:	5 = 16.7%
TABOR Related:	7 = 23.3%
TABOR Explicit:	11=36.7%
TOTAL TABOR:	18=60%

It is notable that over the same time frame in 2005, healthcare accounted for nine of 21 releases - 43% of the total output.

Time Factor Added to Analysis of MHPC Self-Report

The available staff time was computed over the report period with 10 workdays subtracted for vacations to arrive at a total of 123 workdays. With six MHPC staff members listed on the organization's Web site, this adds up to 738 workdays. Figuring an eight-hour workday yields a possible 5,904 total hours available in the report period. MHPC reported 435 hours of staff time plus 40 hours of contract time spent for promoting the passage of TABOR – only 8% of the total.

The total TABOR expenditures reported came to \$30,962.19. This is out of a total projected annual budget of \$500,000.00* that is then pro rated to \$250,000 for the six-month report period. This accounts for just 12.4% despite the fact that this budget projection represents a 33% increase over the \$375,965.00 in expenditures reported in MHPC's 2005 Form 990 Tax Return.

MHPC Director of Communications Jason Fortin claims only 35 hours were devoted to TABOR "press activities" though fully 60% of the press releases he wrote in this time frame were TABOR-related.

Director of Health Reform Initiatives Tarren Bragdon only claims 40 hours at speaking events (no travel time to and from events is reported as with Becker and staff economist Scott Moody), just 4% of full-time work. At the same time, healthcare-related press release output dropped drastically. Over the same period in 2005, healthcare accounted for the greatest number of releases, some nine out of 21 or 43%. Healthcare releases were literally decimated apparently as the organization's assets – including Bragdon – were reallocated and reassigned to the TABOR effort. In the report's time frame, only three healthcare releases were issued – just 10% of the total. Still, MHPC's self-report shows only a minor involvement by Bragdon "spent at public speaking events".

* As reported in Marian McCue's 10/26/06 report published in *The Forecaster*.

Added Information on Funding Raises Questions

Beyond the underreporting of staff/contract time spent on promoting the passage of the ballot initiative, funding disclosures, too, are implausible. MHPC reported the same four contributions previously admitted in testimony to the Commission. The \$975 in total contributions represents 0.0077% of a projected budget increase of \$124,000 over 2005*. Though this 33% growth was likely fueled by donations resulting from the visibility enjoyed by MHPC for its TABOR promotions, there is no indication of that. Despite its high visibility for promoting the passage of TABOR, this signature work earned negligible financial support according to this disclosure.

This self-disclosure is also problematic in that it supposedly is made in accordance with the Commission staff's §1056-B guidelines of December 27, 2006 created for MHPC. The guidelines are specific in what contributions should and should not be reported. Of particular interest here is:

Funds provided in response to a solicitation which would lead the contributor to believe that the funds would be used specifically for the purpose of promoting or opposing a ballot question...

MHPC's written testimony dated December 4, 2006 included a single solicitation letter that, it was claimed, did not go out till after voting had taken place despite the document's October 18 date. After the December 20 Commission meeting, an additional fundraising letter dated August 2 surfaced and was distributed by Executive Director Wayne on December 21. While this references MHPC's "Summer Annual Fund Drive", nearly 2/3rds of the text refers specifically to the organization's efforts to promote the passage of TABOR. Under the staff guidelines, this would require that every response to this be included in the §1056-B report. In fact, two of the four donations reported were received in August following this solicitation. It seems unlikely, however, that these were the only responses to it. Also, Assistant Attorney General Gardiner's questioning of Bill Becker on December 20 revealed that there may be additional solicitations for TABOR that are, as yet, undisclosed along with the funds generated from them.

No In-Kind Contributions/Expenditures

Perhaps the most glaring omission of MHPC's underreport is the complete absence of any in-kind contributions and/or expenditures whatsoever. The legal proponent Political Action Committee for the ballot initiative is not listed as receiving any item or service valued at over \$100 despite being the direct beneficiary of MHPC's full-service public relations campaign. The report does not reflect the hand-in-glove relationship that existed. Roy Lenardson simultaneously held leadership roles in both organizations. But according to this self-report, there was no significant overlap or contribution made despite a sharing the same major purpose.

Dates Connect the Dots

The dates assigned to contributions in the §1056-B filing further demonstrate that MHPC made material false statements to the Commission about accepting TABOR donations. MHPC had accepted money earmarked for TABOR both before it specifically and emphatically denied that it had done so in its testimony to the Commission on October 31. Then, only days after the

Commission clearly and specifically defined the acceptable boundaries, it accepted at least one other TABOR donation.

Pinning down the dates of the contributions also establishes a chronology for the composition of the "thank you" form letter. MHPC attorney Dan Billings testified in his December 4 response to direct written questions from the Commission staff that what appears to be a "thank you" form letter sent on November 6 was not a form letter at all. But MHPC Executive Director Bill Becker testified on December 20th that "three (of the other TABOR donors) got the same letter". Apparently, the form letter had been composed at least as far back as mid-August, presumably in anticipation of significant TABOR donations in response to the "Summer Annual Fund Drive" solicitation. Also, a later fund raising solicitation dated October 18 appears to have been based on this form letter. Given this chronology, Billings' testimony on December 20 that this document is the result of "the danger of 'cut & paste' in the computer age" is not credible.

Conclusion:

MHPC's Bill Becker signed off in lieu of MHPC Treasurer Jean Ginn Marvin on the January 22 filing to certify that "the information in this report is true, correct and complete". However, the information does not match the organization's prominence in promoting the passage of TABOR in the report period. In the Commission staff's first memo of October 30, the value of a §1056-B disclosure for MHPC was questioned (*italics added*):

Since the MHPC has claimed that it "has not solicited or received any contributions to influence the outcome of a referendum campaign," it would presumably report no contributions if required to file a §1056-B report. The only reporting by the MHPC in a §1056-B report would then relate to expenditures, presumably mostly for staff time. *Many people who are concerned with the campaign finances of the TABOR initiative are likely already aware that the MHPC is spending a significant amount of staff time on TABOR.* The Commission may conclude that there is little additional public benefit to be gained by requiring disclosure of the monetary value of that staff time.

In retrospect, the staff's expectations take on special significance. First, MHPC's written and oral testimony to the Commission that it "has not solicited or received any contributions to influence the outcome of a referendum campaign" has since been shown to be demonstrably false. Second, the staff's acknowledgement "that the MHPC is spending a significant amount of staff time on TABOR" seems at odds with this self-disclosure that claims only 8% of its staff time was devoted to such efforts.

MHPC's 1056B filing demonstrates the inadequacy of taking the organization at its word in the wake of the material false statements already made in testimony to the Commission. It is appropriate that a full, formal investigation should be conducted to ascertain "true, correct and complete" information on MHPC's TABOR activities.

-END-

* Based on Marian McCue's 10/26/06 report published in *The Forecaster* and MHPC's 2005 Form 990.

Wayne, Jonathan, 03:59 PM 12/21/2006, For Your Information - MHPC Fundraising Letter Page 1 of 3

Subject: For Your Information - MHPC Fundraising Letter
 Date: Thu, 21 Dec 2006 15:59:43 -0500
 X-MS-Has-Attach: yes
 X-MS-TNEF-Correlator:
 Thread-Topic: For Your Information - MHPC Fundraising Letter
 Thread-Index: Aca2cuLemv9wfnAMQASTEJjeCz9wJxusSeCwAAeWMDA=
 From: "Wayne, Jonathan" <Jonathan.Wayne@maine.gov>
 To: <Dib9@aol.com>
 Cc: "John Branson" <jbranson@bransonlawoffice.com>,
 "John Branson" <jbranson@bransonlawoffice.com>,
 "Carl Lindemann" <carl@cyberscene.com>,
 <jcrasnick@democracymaine.org>,
 <mecep@mecep.org>,
 "Lavin, Paul" <Paul.Lavin@maine.gov>,
 "Gardiner, Phyllis" <Phyllis.Gardiner@maine.gov>
 X-OriginalArrivalTime: 21 Dec 2006 20:59:44.0313 (UTC) FILETIME=[F0E7A290:01C72542]
 X-Nospam: Whitelist
 X-NAS-Language: English
 X-NAS-Bayes: #0: 0; #1: 1
 X-NAS-Classification: 0
 X-NAS-MessageID: 12
 X-NAS-Validation: {05CC28F7-969D-4640-898B-33B21AA18D71}

From: Kit St John [mailto:mecep@mecep.org]
Sent: Thursday, December 21, 2006 2:40 PM
To: Lavin, Paul; Wayne, Jonathan
Subject: RE: Give a Gift to MHPC Today

Dear Paul and Jonathan,

At yesterday's hearing Dan Billings offered a copy of a MECEP solicitation that explicitly asked for support of our work against TABOR. (I naturally don't know exactly what he was referring to, since he did not provide me with a copy of the letter he offered, but I attach a copy of the only one we sent of this nature.) We have tracked and reported the contributions we received as a result of that mailing on our 1056B reports. I attach our internal spreadsheet which backs up our 1056B. Dan Billings' summary appeared to have different numbers than we reported.

In furtherance of our interest that there be a set of clear standards applied to all engaged in the effort to pass or defeat a ballot initiative, we submit the following email (below) I received from Bill Becker in August soliciting from us support in which five out of ten paragraphs describe their "top priority" to "help us educate Maine people about the opportunity that could be found through a reasonable and effective measure," following their description of TABOR.

I would expect that MHPC should likewise track and report on contributions they received as a result of this mailing. I wonder how many other mailings or emailings they sent out, since they testified that they had not solicited at all specifically regarding their work on TABOR. The words of this email as an example certainly would be the sort of wording that we have assumed required reporting of resulting contributions. We look forward to further guidance from the Commission regarding what constitutes contributions "for the purpose of ... influencing " a ballot initiative. If the Commission were persuaded that there was some meaningful distinction that would require reporting of contributions resulting from our letter and not those resulting from theirs, we naturally would like to be informed of what that distinction is.

Thanks for your ongoing attention to these issues. Best wishes, Kit
 Christopher St. John
 Executive Director

Wayne, Jonathan, 03:59 PM 12/21/2006, For Your Information - MHPC Fundraising Letter Page 2 of 3

Maine Center for Economic Policy
124 Sewall St.
PO Box 437
Augusta ME 04332
207 622-7381, fax 622-0239, cell 441-2694
www.mecap.org

1994-2006 Celebrating twelve years of advancing policy solutions for shared prosperity.

From: wbecker@mainepolicy.org [mailto:wbecker@mainepolicy.org]
Sent: Wednesday, August 02, 2006 3:33 PM
To: Kit St John
Subject: Give a Gift to MHPC Today

We the people of Maine...
THE MAINE HERITAGE POLICY CENTER

August 2, 2006

Dear Friend,

What an exciting and busy time for our State. 2006 promises to be an important transitional year for the state's economy, and The Maine Heritage Policy Center (MHPC) is working every day throughout the summer to ensure future economic hope and opportunity for all Maine people.

For nearly four years, MHPC has been able to provide research and analysis on fiscal, health care, and education issues - thanks to the support of so many Maine people.

Your ongoing support has been tremendously beneficial, and is needed today more than ever as we move forward. Will you please consider a gift to our Summer Annual Fund Drive today?

This year, the Taxpayer Bill of Rights is obviously one of our top priorities. MHPC wrote the language for this bill nearly two years ago, and we have spent the last 18 months informing Maine people about the need for such a responsible and effective measure.

The Taxpayer Bill of Rights:

- Establishes annual growth targets for state and local government spending, tied to the growth in the economy
- Allows for majority voter approval for exceeding those growth targets
- Allows for majority voter approval for most tax or fee increases
- Encourages government to lower tax rates in order to match tax revenue with government spending
- Rebates money to taxpayers if government revenue exceeds voter-approved spending
- Creates budget stabilization funds at both the state and local level

Wayne, Jonathan, 03:59 PM 12/21/2006, For Your Information - MHPC Fundraising Letter Page 3 of 3

The Taxpayer Bill of Rights is a reasonable and effective way for Maine to begin repairing its lagging economy. It paves the way for lower taxes and a more favorable business climate, attracting new jobs, strengthening the economy and increasing incomes.

The net result will be to expand the economic pie - securing existing jobs, while keeping young people, families, and retirees in Maine. It will also create an environment where fewer people will need to rely on government assistance programs, thus relieving at least some of the pressure on state and local government. It is, in short, smart growth for our public and private sectors.

Now more than ever, your support is needed to help us educate Maine people about the opportunity that could be found through a reasonable and effective measure. Unfortunately, there are those who are actively misleading the public and distorting the facts.

However, thanks to your support and generosity, we will continue to provide truthful and credible analysis, information, and commentary about Maine's competitive position and how we can improve it. It's great when the facts are on our side!

Please consider a gift today to support the important work of The Maine Heritage Policy Center.

[You can give a gift in support of MHPC today by clicking here to make a secure donation online through our website.](#)

Or, mail your contribution to: The Maine Heritage Policy Center; P.O. Box 7829; Portland, Maine 04112.

Thank you. We are truly grateful for your consideration and for your ongoing support.

Sincerely,



Bill Becker
President & CEO
The Maine Heritage Policy Center



[06 TABOR revenue.xls](#)



[TABOR ask.doc](#)



advancing the nonprofit sector

Federal Lobbying Rules and Regulations for 501(c)(3) Organizations

Part of a series of MANP documents created to enhance understanding of the rules and regulations governing Maine's nonprofit organizations.

Purpose

- To provide a summary of the federal laws that define and regulate nonprofit advocacy efforts
- To explain prohibited electioneering activities
- To encourage nonprofits to legally and effectively advocate for their missions

Lobbying

With the 1976 Lobby Law and the IRS Regulations set forth in 1990, Congress made it clear that influencing legislation is an appropriate and legitimate activity for charitable organizations.

Your organization must choose one of two standards by which your compliance with the Internal Revenue Code will be measured. These standards apply to lobbying activities with federal officials. You should also consult your state's laws.

Standard One - Insubstantial Part Test

Organizations that choose not to file Section 501 (h) of the IRS Code are still subject to the IRS guidelines set forth in 1934. Known as the "insubstantial part test," these guidelines require that "no substantial part of a charity's activities consist of carrying on propaganda or otherwise attempting to influence legislation." "Substantial" has never been fully defined. However, the courts have made clear that the definition of lobbying under the "insubstantial part test" is not only related to an expenditure of money. For example, activities conducted by volunteers to influence legislation must be considered lobbying.

Standard Two - Expenditure Test

Those charitable organizations that choose the Section 501(h) election must apply the "expenditure test." Under this standard, lobbying only occurs when there is an expenditure of money. It sets forth specific dollar limits, calculated as a percentage of a charity's total exempt purpose expenditures.

These limits are:

- 20% of the first \$500,000 of exempt purpose expenditures, plus
- 15% of the next \$500,000 of exempt purpose expenditures, plus
- 10% of the next \$500,000 of exempt purpose expenditures, plus
- 5% of the remaining exempt purposes expenditures, up to a total cap of \$1 million.

The organization's grassroots lobbying efforts (described in greater detail below) are limited to 25% of the organization's total lobbying activities as calculated using the formula above. Even if the organization chooses to spend very little on direct lobbying efforts, it may still spend up to 25% of the total limit under the law on grassroots lobbying.

Maine Association of Nonprofits
Page 2

Example:

A nonprofit with a \$100,000 budget, that has chosen the 501(h) election, may spend up to \$20,000 on direct and grassroots lobbying combined. Of this \$20,000, no more than \$5,000 can be spent on grassroots lobbying.

It should be noted - churches and their affiliates are not allowed to elect 501(h) status, although they may lobby under the "insubstantial part test".

Direct vs. Grassroots Lobbying

Examples of Direct Lobbying

- Communicating your organization's views on a specific legislative proposal to a legislator, a staff member, or any government employee who may help develop legislation
- Asking a legislator or related staff member to take action that would require legislation
- Asking your organization's members (those who contribute more than a nominal amount of money or time) to lobby for a particular bill
- Attempting to influence the opinion of the general public on referenda or ballot initiatives

Examples of Grassroots Lobbying

- Urging the general public to express a particular view to their legislators about a specific legislative proposal, including simply posting legislators' contact information
- Identifying legislators who are opposed to or undecided on a particular piece of legislation, identifying the audience's legislators, or naming the members on a committee that will vote on a piece of legislation

Is it Advocacy or Lobbying?

The following examples are activities that are NOT considered lobbying by the IRS:

- An effort to influence an administrative agency (such as, federal and state agencies and local school and zoning boards) to change its policies, rules or regulations
- A general policy position (such as "government has a role in low-income housing"), given that the position does not speak to specific legislation
- Testimony before a legislative committee when your organization has received a written request from the committee to appear
- Nonpartisan analyses, which need not be neutral or objective, that present facts fully and fairly, are widely available and do not include a call to action (such as, request the reader contact their legislator)

Note: If these materials are used later in a lobbying effort, the cost of preparing these materials must be counted as a lobbying expense.

- Responses to written requests for information or technical assistance from legislators
- Discussion with government officials concerning legislation that directly impacts the organizations (such as its existence, powers, duties, tax-exempt status, or right to receive

Maine Association of Nonprofits
Page 3

tax-deductible contributions). However, calling for programs or policies in your organization's field (such as the environment or healthcare, etc.) is considered lobbying.

501(h) Status Election

To elect 501(h) status, your organization will need to file a single page form: IRS Form 5768 "Election/Revocation of Election by an Eligible 501(c)(3) Organization to Make Expenditures to Influence Legislation". It requires only the organization's name, address, and the first tax year to which the election will apply.

Keep Track of Lobbying Activities

It is essential to keep track of your lobbying, whether you elect 501(h) status or not, in order to calculate your total exempt purpose expenditures. Your bookkeeping system should include line items for total lobbying expenses as well as grassroots expenses. Since a large portion of your lobbying efforts will be staff oriented, your timesheets should have a method of tracking both direct and grassroots lobbying efforts. It is highly recommended that one employee be designated as the authority on the organization's lobbying efforts. A bookkeeping method is necessary to track all postage, copying, faxing and printed materials used in association with any lobbying efforts.

Sanctions for Violation of 501(h) Standards

Under the 1976 Lobby Law, an organization that either exceeds their overall expenditure limit OR the 25% grassroots-lobbying limit in any year will be assessed a 25% excise tax on its excess lobbying expenses.

501(h) Election, Worry Free Lobbying

The 501(h) expenditure election provides significant benefits over the "insubstantial part test," including:

- No limit on lobbying activities that do not require expenditures
- Clear definitions of various kinds of lobbying communications, which allows your organization to more easily determine whether or not it is engaging in lobbying activities
- Higher lobbying limits and fewer items that count toward the exhaustion of those limits
- Your organization is less likely to lose its exemption status, since the IRS may only revoke exempt status from electing organizations that exceed their lobbying limits by at least 50% averaged over a 4-year period (a non-electing organization may lose its status for a single year's excessive lobbying activities)
- No personal penalties assessed for individual organization managers whose organization exceeds its lobbying expenditures limits

Maine Association of Nonprofits
Page 4

Special Circumstances

Foundations

- Under the 1976 Lobby Law, a foundation may make (without tax liability) a general-purpose grant to a nonprofit that lobbies, whether or not the nonprofit chooses the 501(h) election; however, a foundation cannot earmark funds for lobbying.
- A private foundation may also make a grant to support a specific project that includes lobbying, as long as the amount of the grant is less than the amount budgeted for the non-lobbying portion of the project. The fact that another private foundation may have provided grant funds to the same project need not be a consideration.
- A foundation may not supply grant funds that support research in an area where that foundation has a primary lobbying interest.
- Grants by community foundations are subject to the same laws as grants by private foundations. They may also make a grant that directly funds lobbying; however, it will have to treat the grant as a lobbying expenditure of its own, with the same system of limits that apply to 501(c)(3) organizations.

Federal Grants

- Nonprofits that receive federal grants, contracts or cooperative agreements cannot use any portion of their federal funds to lobby. The Office of Management and Budget (OMB) Circular A-122 issues cost principals covering most nonprofits on the prohibition of lobbying with federal grants. (For more info please go to <http://www.whitehouse.gov/omb/circulars/a122/a122.html>)
- Often it is unavoidable for organizations that contract with the federal government to use federal funds to lobby at the local level; therefore it is not prohibited.
- Grantees are subject to audits to verify that grant funds have not been used either directly or indirectly for any unallowable expenses.
- The following activities are not considered lobbying activities (according to the OMB Circular A-122):
 - Providing technical and factual information in response to a documented request.
 - Lobbying at the state level in order to directly reduce the costs or avoid material impairment of the organization's authority to perform the grant, contract or agreement. However, lobbying for the purposes of improving performance is not exempt.
 - Anything specifically authorized by statute to be undertaken with funds from the grant, contract or agreement.

Using the Internet

This is an area of increasing scrutiny. The IRS is interested and involved in the issues surrounding lobbying and charitable giving using the Internet, listservs and websites. Please review our document titled "Using the Internet For Lobbying". It is available on our website at <http://www.nonprofitmaine.org/advocacy.asp>.

Maine Association of Nonprofits
Page 5

Activities Surrounding Elections

Your organization can do nothing to influence a federal, state or local election; it is cause for losing your tax-exempt status!

The following activities are acceptable surrounding elections:

Voter Education and Registration

- Your organization may participate in voter education and registration activities provided that your activities are nonpartisan.
- Your organization cannot endorse any candidate or support them (for example, by letting them use your office space).
- A nonprofit may sell, trade or rent its member list to candidates as long as the organization is paid fair value for its use.
- If your organization registers voters, you cannot ask them for whom they plan to vote.
- When conducting voter education, you cannot target a particular population group that may affect the outcome of the election. However, it is acceptable to focus on certain blocks of the community, such as minority groups, students, recent immigrants, etc., as long as the targeted groups are defined in terms of historical deprivation or discrimination, or as those groups who broadly share specific problems or have a community of interests.

Candidate Forums and Appearances

- Your organization may organize candidate forums, yet all candidates must be treated fairly and impartially and the forum must address a broad range of issues. It can focus on one general topic, such as economic policy, but not on one specific issue, such as the minimum wage. It must have a nonpartisan person as the moderator.
- Candidate visits to your organization's events are risky. Candidates can appear at your organization's event, as long as they do so in a non-candidate capacity (for example, as an elected official). There can be no reference to their candidacy.

Publishing Voting Records

- You may communicate how legislators actually vote on issues of concern to your organization.
- You must avoid the appearance of endorsing or opposing candidates based on their votes. Publishing voting records, in the midst of an election campaign, could cross the line into "electioneering", especially if your organization does not regularly publish voting records.

Candidate Questionnaires and Public Opinion Polls

- Your organization may inform candidates of your position on particular issues and urge them to pledge their support on record. Candidates may distribute their responses, but your organization cannot. This also holds true for statements made by the candidate to the media. Your organization can distribute such statements following the election.

Maine Association of Nonprofits
Page 6

- The key to protecting your organization is to question all candidates, frame questions without a bias and cover a wide range of issues. You can include their responses in "voter's guides", as long as there is no evaluation of their responses.
- A public opinion poll can be an effective tool to convince candidates and elected officials to take your organization's issues seriously. Since the poll uses scientific techniques and questions do not directly or indirectly concern the records/positions of particular candidates/parties, your organization can do this during an election cycle. You should not release polls to the press during an election (especially if you do not have a history of conducting polls). If it appears that your organization is trying to influence the public on issues central to the campaign, your nonprofit status could be at stake.

Lobbying as a 501(c)(4)

If your organization plans to do a substantial amount of lobbying, consider establishing a 501(c)(4) organization. Under IRS rules, a 501(c)(4) organization may use dues and contributions for independent political spending, which must be reported to the Federal Elections Commission. However, 501(c)(4) organizations cannot make campaign contributions to federal candidates and they cannot receive union or business money.

Organizations that are tax-exempt under section 501(c)(4) do not have limitations on lobbying on behalf of their exempt purpose. Charitable contributions to 501(c)(4) organizations are not tax exempt. According to a 1983 U.S. Supreme Court decision, the first amendment requires that a 501(c)(3) organization be permitted to lobby indirectly through a 501(c)(4). However, the 501(c)(4) organization must be run as a separate legal entity and must pay all its costs with nondeductible funds. The IRS monitors this very closely! Again, it is very important to keep clear records.

Political Action Committees

Organizations that are tax-exempt under 501(c)(3) of the Internal Revenue Code are not permitted to establish political action committees. There is nothing in the law to prohibit 501(c)(4) organizations from setting up Political Action Committees (PAC). These entities are permitted to raise and disburse money in a federal election campaign.

03/01/2007 17:55 2072876775

ETHICS COMMISSION

PAGE 02/23



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

To: Commission Members and Counsel
From: Jonathan Wayne, Executive Director
Date: March 1, 2007
Re: Complaint against Democracy Maine

In 2006, Democracy Maine filed two financial reports under 21-A M.R.S.A. §1056-B stating that the organization had received contributions, and made expenditures totaling \$58,689.14, to oppose the Taxpayers Bill of Rights (TABOR) citizen initiative. Political consultant Roy Lenardson has filed a request that the Commission consider whether the organization should have, instead, registered and filed financial reports as a political action committee (PAC).

The Commission staff is preparing its meeting materials in an abbreviated manner because tomorrow's snow storm could interrupt state government and timely operations of the U.S. Post Office. Rather than a full memo with recommendations, we offer these preliminary thoughts.

Good Faith of Democracy Maine in Filing §1056-B Reports

Jonathan Crasnick is the Executive Director of Democracy Maine. As he explains in his February 6 response on behalf of Democracy Maine, he indeed consulted with PAC/Party/Lobbyist Registrar Martha Demeritt about how to report financial activity in

opposition to TABOR. Martha advised him that the organization should disclose its financial activities through §1056-B reports. We believe Mr. Crasnick was operating in good faith. Even if you determine that Democracy Maine was in error by not filing as a PAC, the staff preliminarily recommends that no civil penalty should be assessed because the organization's director sought out advice from the Commission staff in advance.

Democracy Maine does not appear to be a PAC

We recommend that the question of whether Democracy Maine is a PAC be analyzed under Paragraphs (3) and (4) of 21-A M.R.S.A. §1052(A)(5)(A). Both of these paragraphs require that – to qualify as a PAC – an organization must have as its “major purpose” advocating the passage or defeat of a ballot question.

5. Political action committee. The term "political action committee:"

A. Includes:

- (1) Any separate or segregated fund established by any corporation, membership organization, cooperative or labor organization whose purpose is to influence the outcome of an election, including a candidate or question;
- (2) Any person who serves as a funding and transfer mechanism and spends money to initiate, advance, promote, defeat or influence in any way a candidate, campaign, political party, referendum or initiated petition in this State;
- (3) Any organization, including any corporation or association, that has as its major purpose advocating the passage or defeat of a ballot question and that makes expenditures other than by contribution to a political action committee, for the purpose of the initiation, promotion or defeat of any question; and
- (4) Any organization, including any corporation or association, that has as its major purpose advocating the passage or defeat of a ballot question and that solicits funds from members or nonmembers and spends more than \$1,500 in a calendar year to initiate, advance, promote, defeat or influence in any way a candidate, campaign, political party, referendum or initiated petition, including the collection of signatures for a direct initiative, in this State; and

03/01/2007 17:55 2072876775

ETHICS COMMISSION

PAGE 04/23

Based on the information provided to date, the Commission staff is inclined to conclude that Democracy Maine does not have as its major purpose advocating the defeat of TABOR. Although press releases and statements to the media alone may not provide a full picture of an organization's activities, the materials provided do not appear to suggest that opposing TABOR was Democracy Maine's major purpose. Also relevant is the timing of the founding of the organization in May 2005. While opposing TABOR may have been a significant project for Mr. Crasnick in 2006, the Commission staff is not ready to conclude that opposing TABOR was the major purpose of the organization.

Completeness of §1056-B Reporting

The staff wishes to raise for your consideration another issue: whether Democracy Maine's §1056-B reporting of contributions is complete. In its two §1056-B reports, the organization reported total expenditures of \$58,689.14, but its contributions totaled only \$1,705.00. Mr. Crasnick responds that the balance "came from Democracy Maine's funds for general activities."

In the recent attention over the sufficiency of §1056-B reporting, some have raised the general concern that if a §1056-B filer claims that it used its general funds to support or oppose a ballot question, there remains a possibility that the filer could be shielding the original source of those funds who provided them for the purpose of influencing an election. Indeed, this concern one of the central contentions of the complainant against the Maine Heritage Policy Center.

In the case of Democracy Maine, its website explains that it was founded by real estate developer and businessman Robert C.S. Monks. Democracy Maine's office is located at Mr. Monk's office on the fourth floor of City Center in Portland. Mr. Monks remains a one of its three board members. During the Commission's consideration of the complaint against the Maine Heritage Policy Center, I was asked informally by the press why the Commission was not considering why Mr. Monks was not included as a contributor on Democracy Maine's §1056-B reports, since – it was presumed – that Mr. Monks was the sole funder of the organization. In 2004, Mr. Monks was the sole contributor to a PAC, the Citizenship Fund, and he provided \$29,000 to the organization, which was largely spent in six highly contested State Senate races.¹

In order to perform the Commission's statutory duty to verify that §1056-B reporting is complete, you may conclude that the question is worth pursuing even though it was not included in Mr. Lenardson's complaint and was first raised with me informally by the press based on inferences about Democracy Maine's funders. Since Mr. Monks was part of the organization's board of directors which officially voted in early September 2006 to oppose TABOR, it may be worth asking whether he provided funds to the organization *knowing* that they would be used to oppose TABOR. If that did occur, he should be listed as a contributor in Democracy Maine's §1056-B reports. Please be mindful, however, that Democracy Maine like any nonprofit organization is not generally required to disclose its funders and may be reluctant to disclose this information.

¹ The PAC reported its first contribution from Mr. Monks on November 1, 2004, which in retrospect seems improbable because that was one day before the November 2 general election.

01/22/2007 18:00 2072876775

ETHICS COMMISSION

PAGE 01/07

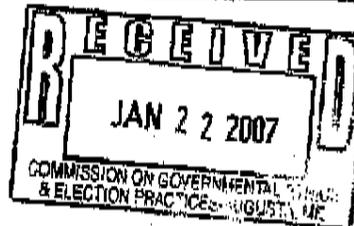
FROM : MAINE HERITAGE POLICY CENTER

FAX NO. : 2077734385

Jan. 22 2007 05:56PM P1

Post Office Box 7829
Portland, Maine 04112
Phone: 207-321-2550
Fax: 207-773-4385

**The Maine Heritage
Policy Center**



Fax

To: Jonathan Wayne	From: Bill Becker
Fax: 207-287-6775	Pages: 7
Phone: 207-287-6221	Date: 1/22/2007
Re: The Maine Heritage Policy Center	cc:

Dear Jonathon,

The requested 1050-B report is attached per your letter of December 22, 2006.

Sincerely,

Bill Becker

01/22/2007 18:00 2072876775

ETHICS COMMISSION

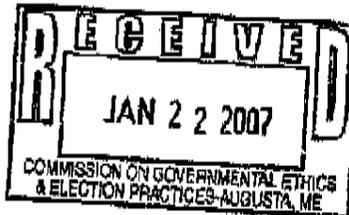
PAGE 02/07

FROM : MAINE HERITAGE POLICY CENTER FAX NO. : 2077734385

Jan. 22 2007 05:56PM P2

We the people of Maine...

THE MAINE HERITAGE POLICY CENTER



www.maineheritagepolicy.org

P.O. Box 7829
Portland, Maine 04112

Tel: 207.321.2550
Fax: 207.773.4385

January 22, 2007

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

RE: Response to Final Agency Determination dated December 22, 2006

Dear Jonathan:

Please find attached the requested report of The Maine Heritage Policy Center. The report filed is under 21-A M.R.S.A. §1056-B as determined by the Maine Commission on Governmental Ethics and Election Practices at its meeting on December 20, 2006 and directed by your letter of December 22, 2006.

This report is being sent via facsimile as well as U. S. Postal Service.

Sincerely,

Bill Becker
President and Chief Executive Officer

Attachment: Report (5 pages)

01/22/2007 18:00

2072876775

ETHICS COMMISSION

PAGE 03/07

FROM : MAINE HERITAGE POLICY CENTER

FAX NO. : 2077734385

Jan. 22 2007 05:56PM P3

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station, Augusta, Maine 04333-0135
Tel: (207)287-6221 FAX: (207)287-6775 Website: /www.maine.gov/ethics

REPORTS OF CONTRIBUTIONS AND EXPENDITURES
BY PERSONS OTHER THAN
POLITICAL ACTION COMMITTEES
(21-A M.R.S.A. § 1056-B)

RECEIVED
JAN 22 2007
COMMISSION ON GOVERNMENTAL ETHICS
& ELECTION PRACTICES-AUGUSTA, ME

Any person who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the Commission.

NAME OF PERSON The Maine Heritage Policy Center
(Person means an individual, committee, firm, partnership, corporation, association, group or organization)

Mailing address P.O. Box 9829

City, zip code Portland ME 04112

Telephone number 207-321-2550 Fax 207-7734385 E-mail info@mainepolicy.org

NAME OF TREASURER Bill Becker, Pres/CEO
(or other officer or employee authorized to file this report, if person reporting is other than an individual)

Mailing address Dame

City, zip code _____

Telephone number _____ Fax _____ E-mail _____

The purpose for receiving contributions and making expenditures is (check one):
to SUPPORT or OPPOSE ballot question number (if known) _____ or the ballot question regarding THE TAXPAYER BILL OF RIGHTS

TYPE OF REPORT AND FILING PERIOD (check one)

- | | | |
|--|-------------------|---------------------------------------|
| Type of report: | Due date: | Filing period: |
| <input type="checkbox"/> 6-day pre-primary | June 7, 2006 | January 1, 2006 to June 1, 2006 |
| <input type="checkbox"/> 42-day post-primary | July 25, 2006 | June 2, 2006 to July 18, 2006 |
| <input type="checkbox"/> 6-day pre-general | November 1, 2006 | July 19, 2006 to October 26, 2006 |
| <input type="checkbox"/> 42-day post-general | December 19, 2006 | October 27, 2006 to December 12, 2006 |
| <input checked="" type="checkbox"/> Other (specify): <u>Per December 22, 2006 Determination Letter</u> | | |
| <input type="checkbox"/> Amendment to: _____ | | |

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

Person's/Authorized Official's signature
CGEP Form 1056-B (Rev. 5/06)

01/22/2007
Date

The Maine Heritage Policy Center
Name of PERSON

Page 1 of 2
(Schedule B only)

**SCHEDULE B
EXPENDITURES**

Enter expenditures made aggregating in excess of \$100 in this election. Do not include in-kind expenditures on this schedule.

Date of Expenditure	Name of Payee or Creditor and Purpose of Expenditure	Amount
MAY - November	STAFF Time Allocated for Research - J. Scott Moody - 140 HRS.	\$7,000.00
MAY - November	STAFF Time Allocated to Public Speaking Events - J. Scott Moody 22 HRS.	\$1,100.00
MAY - November	STAFF Time Allocated for Travel - J. Scott Moody - 48 HRS.	\$2,400.00
MAY - November	Travel Reimbursement - J. Scott Moody	\$624.00
MAY - November	STAFF Time Allocated to Research - Bill Becker - 50 HRS.	\$2,650.00
MAY - November	STAFF Time Allocated to Public Speaking Events - Bill Becker - 85 HRS.	\$4,505.00
MAY - November	STAFF Time Allocated for Travel - Bill Becker - 55 HRS.	\$2,915.00
MAY - November	Travel Reimbursement - Bill Becker	\$536.00
1. Total ^{Expenditures} cash contributions this page only		\$21,750.00
2. Total from attached Schedule B pages <i>Complete lines 2-4 on last page of Schedule B only:</i>		
3. Aggregate of ^{Expenditures} cash contributions of \$100 or less not itemized		
4. Total ^{Expenditures} cash contributions this reporting period (Add lines 1, 2 & 3)		

FROM : MAINE HERITAGE POLICY CENTER

FAX NO. : 2077734385

Jan. 22 2007 05:57PM P6

The Maine Heritage Policy Center
Name of PERSON

Page 2 of 2
(Schedule B only)

**SCHEDULE B
EXPENDITURES**

Enter expenditures made aggregating in excess of \$100 in this election. Do not include in-kind expenditures on this schedule.

Date of Expenditure	Name of Payee or Creditor and Purpose of Expenditure	Amount
MAY - November	STAFF Time Allocated To Press Activities - JASON FORTIN - 35 HRS.	\$1,050.00
MAY - November	Contracted Time Spent AT Public Speaking Events - JAYEN BRADY - 40 HRS.	\$1,600.00
5/24/06	Full Court Press - Printing of Maine View #4-5	\$888.22
10/27/06	Full Court Press - Printing of Maine View #4-8	\$184.68
9/20/06	Hon. John Andrews - Travel Expenses to Maine	\$731.00
MAY - November	Kinko's - Copies for handouts at public speaking events	\$1,153.00
08/05/06	CRITICAL Insights - 2 questions on "Mindin' Maine's Business Survey"	\$3,000.00
9/12/06	Travel Reimbursement for Paul Bachman, Beacon Hill Institute	\$125.29
8/29/06	Maine Secretary of State - Voter Guide	\$500.00
1. Total ^{expenditures} cash contributions - this page only		\$9232.19
2. Total from attached Schedule B pages <i>Complete lines 2-4 on last page of Schedule B only:</i>		\$21,730.00
3. Aggregate of cash contributions of \$100 or less not itemized expenditures		- 0 -
4. Total ^{expenditures} cash contributions this reporting period (Add lines 1, 2 & 3)		\$30,962.19



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

March 6, 2007

By E-Mail and Regular Mail

Daniel I. Billings
Marden, Dubord, Bernier & Stevens
PO Box 708
Waterville, ME 04901-0708

Dear Mr. Billings:

Yesterday, Carl Lindemann filed the attached request under 21-A M.R.S.A. §1003(2) that the Ethics Commission consider whether the §1056-B report filed by the Maine Heritage Policy Center (MHPC) was accurate and complete. Section 1003(2) provides:

A person may apply in writing to the commission requesting an investigation concerning ... contributions by or to and expenditures by a person, candidate, treasurer, political committee or political action committee. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation has occurred.

This is to request that the MHPC submit a response to the Commission that is sufficient for it to make a determination on Mr. Lindemann's request at a single meeting, keeping in mind the Commission's responsibility to ensure that all financial reporting required by the Election Law is accurate and complete.

Mr. Lindemann's request contains a number of detailed arguments. I believe it is necessary to schedule this matter for the Commission's May meeting so that there is adequate time for interested parties to make submissions and for the Commission and staff to consider the submissions. The date of the May meeting has not been determined. As director of the Commission staff, I request the following:

- The MHPC will submit a written response no later than Friday, March 30;
- Mr. Lindemann will submit all reply materials no later than Friday, April 13;
- In keeping with its customary practice, the Commission staff will request any additional information from the parties and will draft a memo for the Commission no later than one week before the May Commission meeting.

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

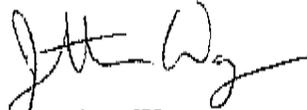
Daniel I. Billings

- 2 -

March 6, 2007

If you or Mr. Lindemann disagree with the proposed schedule, please submit your objections in writing and I will bring them up to the Commission under the heading of other business at the end of the Commission meeting on Friday, March 9. Thank you.

Sincerely,



Jonathan Wayne
Executive Director

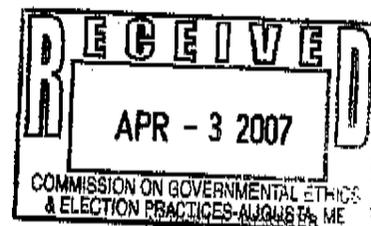
cc: **By e-mail without attachments**
Carl Lindemann
John H. Branson
Phyllis Gardiner

**MARDEN, DUBORD,
BERNIER & STEVENS**

ATTORNEYS AT LAW

44 ELM STREET
P.O. BOX 708
WATERVILLE, ME 04903-0708

(207) 873-0186
FAX (207) 873-2245
E-MAIL: mdbs@gwi.net
<http://www.mainelawfirm.com>



(RETIRED)
F. HAROLD DUBORD
(1891-1964)
RICHARD J. DUBORD
(1921-1970)
HAROLD C. MARDEN
(1900-1994)
ROBERT A. MARDEN
(RETIRED)

WILLIAM P. DUBORD
ALTON C. STEVENS
J. WILLIAM DRUARY, JR.
ROBERT M. MARDEN
DAVID E. BERNIER
DANIEL I. BILLINGS
DANIEL W. MARRA

March 30, 2007

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

RE: Carl Lindemann's March 5, 2007 Complaint

Dear Jonathan:

I am writing on behalf of the Maine Heritage Policy Center ("MHPC") in response to your request for a response to Carl Lindemann's complaint dated March 5, 2007.

MHPC's §1056(B) submission is complete and accurate. MHPC staff worked diligently to apply the guidelines prepared by the Commission's staff to MHPC's activities. When there was any question as to whether an expenditure should or should not be included in the §1056(B) filing, MHPC erred on the side of including the expenditure in the report.

The arguments made by Mr. Lindemann in his March 5, 2007 complaint are fundamentally the same as those he made in support of his earlier complaint against MHPC. He has offered no evidence to support his claim that MHPC's §1056(B) filing is incomplete. His complaint is based on his allegations concerning the veracity of statements by representatives of MHPC, his analysis of press releases, and his complaints about Commissioners and Commission staff. The Commission has heard all these arguments before. The arguments are not worthy of further consideration.

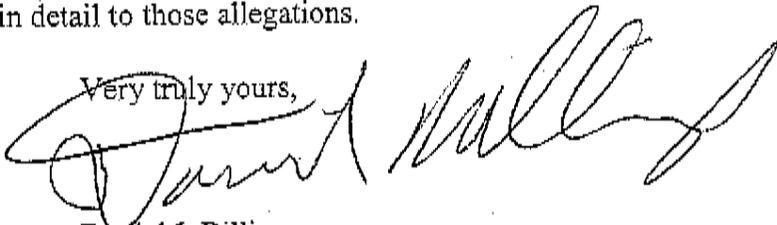
If the Commission decides that Mr. Lindemann's theories are worthy of consideration, I request that any action concerning Mr. Lindemann's new complaint be deferred until the court has completed its consideration Mr. Lindemann's appeal of the Commission's ruling on his earlier complaint. If Mr. Lindemann's appeal is successful, MHPC will likely be required to make new submissions to the Commission and any questions about the completeness of MHPC's §1056(B) filing will be moot.

Jonathan Wayne, Executive Director
March 30, 2007
Page 2

To date, MHPC has expended a great deal of time and resources responding to Mr. Lindemann's allegations. It would be an unfair burden on MHPC to require the organization to respond to Mr. Lindemann's new complaint at the same time it is participating in the court's consideration of his appeal.

I request that the Commission first determine whether this matter is worthy of consideration. If the Commission is going to take up the matter now, I request guidance regarding which of Mr. Lindemann's many allegations it considers worthy of consideration and additional time to respond in detail to those allegations.

Very truly yours,



Daniel I. Billings
e-mail: dbillings@gwi.net

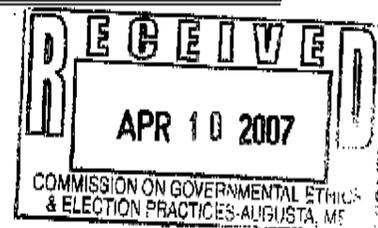
Carl Lindemann

P.O. Box 171
Portland, Maine 04112

Phone 207-774-1936

Email Carl@cyberscene.com

April 3, 2007



BY ELECTRONIC AND USPS MAIL

Jonathan Wayne, Executive Director

Maine Commission on Governmental Ethics & Election Practices

135 State House Station

Augusta, Maine 04333

Dear Executive Director Wayne:

If Maine Heritage Policy Center (MHPC) had concerns of the nature raised in Mr. Billings' letter of March 30, it seems to me these should have brought to the Commission's attention earlier, perhaps when you offered to discuss your proposed deadlines. Instead, MHPC apparently accepted the deadline proposed by the Commission, and now requests what amounts to an extension to those deadlines. Also, please note that I was not copied on this document and only received it because you kindly forwarded it to me. Please inform Mr. Billings to copy me on such communications regarding this case in the future.

Moreover, it should be noted that MHPC did not file a cross-appeal of the Commission's ruling that it file a report under 21-A M.R.S.A. § 1056-B. For this reason, it is disingenuous for MHPC to request a delay in consideration of my complaint on the ground that the Superior Court may find that disclosures under Section 1056-B were not required. Furthermore at the time that MHPC filed its 1056-B report to the Commission, I had already filed court petition for review of the Commission's ruling. At that juncture, MHPC could have sought from the Commission a stay of the ruling requiring MHPC to make disclosures under Section 1056-B. In deciding not to seek such a stay, and instead proceeding with its filing under 1056-B, MHPC arguably has waived any right to delay the Commission's discharge of its statutory responsibilities with regard to that filing, including any complaints challenging the accuracy and/or completeness of said filing.

Finally, whatever judgment is rendered as the result of the pending Petition for Review will, at a minimum, require MHPC to disclose information typically encompassed by Section 1056-B, which imposes less comprehensive disclosure requirements than the statutes governing political action committees. The public has been denied much substantive information about MHPC's actual involvement in the TABOR campaign for long enough. Also, should the courts properly determine that MHPC operated as a PAC with regard to TABOR and compel additional disclosures, such an outcome would not deprive the Commission of the authority to impose sanctions upon MHPC for making inaccurate representations in their 1056-B filing.

Additionally, I do wish to make a few brief observations responding to the many distortions contained in Mr. Billings' letter. His inappropriate *ad hominem* attacks and gross misrepresentations of the sum and substance of my complaint show bad faith through and through. I will respond to those at another time (see below). For now, it is worth noting that he

only mentions MHPC's purported efforts to validate expenditures in the 1056-B filing. This focus underscores my point that MHPC is greatly concerned about the IRS regulation that "no substantial part of a charity's activities consist of carrying on propaganda or otherwise attempting to influence legislation." Of course, as you consider how to respond to Mr. Billings' request, you may prefer to evaluate the glaring inconsistencies in the reported contributions that he omits any reference to whatsoever. Taken together, the real possibility emerges that MHPC had accepted the deadlines to respond to these charges and then discovered it did not really have any plausible response to make. In that light, you may judge that his request is merely a delaying tactic and should be treated as such.

Given this likely possibility and to avoid the kind of administrative inefficiencies and wasted time which were generated last fall due solely to misrepresentations and/or omissions in the initial response to the Commission made by Mr. Billings, I would respectfully request that the Commission require that any response now filed with the Commission on behalf of MHPC, to the second complaint, be by sworn affidavit.

By way of example, the Commission can merely demand of Mr. Billings that the narrative statements made in his March 30 letter be incorporated in such an affidavit. This will maximize administrative economy in the further processing of the pending complaint.

Once such a sworn statement is generated by the Respondent, I will generate a substantive response to the allegations therein.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl J. ...", with a long horizontal flourish extending to the right.

cc:

D. Billings
P. Gardiner

Wayne, Jonathan

From: Carl Lindemann [carl@cyberscene.com]
Sent: Wednesday, May 09, 2007 2:03 AM
To: Wayne, Jonathan
Cc: Dib9@aol.com; Lavin, Paul; Gardiner, Phyllis
Subject: FOR INCLUSION IN: Packet for May 14th Meeting
Importance: High
Attachments: Becker give a yes on 1 - WGAN.mp3; Lindemann - add'l docs - MHPC 1056-B 5-9-07.pdf

Dear Jonathan,

It's been over a month since I sent what I thought I had been clear was a PRELIMINARY reply to Mr. Billings. I am sorry that, somehow, this was not adequately communicated. This is the first I've heard from you since, now with less than a week till the scheduled session and on the eve of you issuing a memo based on this preliminary, incomplete information.

As I had indicated in my communication of April 3, I had expected to provide a substantive response to Mr. Billing's allegations. Also, there is additional documentary evidence that is crucial for both the staff and Commission's consideration to put MHPC's 1056-B filing in an appropriate context.

I am on the road now and traveling through the day today (Wednesday) with limited phone and e-mail access but will arrive back in Portland tonight. I am scrambling, but I have attached some additional documents that are pertinent. I hope I will be able to provide a fuller, detailed narrative on Thursday to tie these together and then to address Mr. Billing's allegations made in his 3-30-2007 written statement.

For the time being, let me offer this. In brief, MHPC's 1056-B filing has been understood, till now, in the context of an organization that DID NOT expressly advocate for the ballot measure. As the following documents demonstrate, that is no longer viable. Since MHPC engaged in expressed advocacy by promoting the campaign slogan for taxpayerbillofrights.com, a broader range of its activities should be included in its 1056-B report than, one might argue, would be necessary if it had not expressly advocated.

Please note especially that, counter to Mr. Billing's claims, this is not an attempt to cover the same ground addressed earlier. These materials simply provide a more accurate framework for interpreting the subsequent 1056-B filing made by MHPC on January 22, 2007 (not March 6 as stated in the agenda).

Please review the attached .PDF file. I should hope that, despite the late date, this will inform the staff report as well as be included in the Commission packet. Here is a precis of its contents that, along with this e-mail, I request be included in the packet sent to the Commissioners:

Pgs. 1-2: Ancillary e-mails between Paul Lavin and Dan Billings regarding the clarification of the staff guidelines for 1056-B reporting. Mr. Billings has not (as yet) offered any explanation as to why public perception and the Commission staff's experience of MHPC's high visibility in the TABOR campaign could result in such an apparent underreport. However, it is reasonable to say that his constitutional concerns reflected in these e-mails point to a possible explanation he might offer - since MHPC had purportedly NOT engaged in expressed advocacy, a portion of its TABOR activities might not require reporting under 1056-B.

Pg. 3: The definition of "expressly advocate" from the Commission rules. See section 2-B:
The communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"

5/9/2007

Pg. 4: Slide from MHPC's TABOR presentation. Note the "REASONABLE. EFFECTIVE" slogan. If you like, I can also send along the full presentation should you or the Commissioners wish to view this slide in context.

Pgs 5-6: taxpayerbillofrights.com flyers/posters. Note the "REASONABLE. EFFECTIVE" campaign slogan. This was also featured on all the yard signs instead of the typical "magic words" (Vote Yes on 1).

P. 7 transcript of Bill Becker/Dennis Bailer debate on WGAN-AM on 10-30-2006. Note Becker statement: "The Taxpayer Bill of Rights is Reasonable and Effective". Also, see attached sound clip to verify accuracy. This is also available independently on the WGAN.com Web site.

P. 8-9 transcript of Becker's Commission testimony of 10/31/06 where he provides an alternate account of above debate denying any expressed advocacy.

ANCILLARY MATERIAL:

P. 10 transcript of Becker testimony on 12-20-2006 discussing the opportunity for fundraising that the TABOR campaign offered.

P. 11 MHPC press release of 9-15-2006 announcing hiring of Development Director. Ms. Noyes is not listed in MHPC's 1056-B report. It is simply not credible that she did not invest any time whatsoever pursuing the fundraising opportunities Becker mentions above.

Pgs 12-23: MHPC's IRS Form 1023 filing. This substantiates my previous statements over MHPC's awareness of the "insubstantial part test" to maintain its public charity status. See esp. pg 22: "The organization's activities and products will not be substantially directed toward the enactment of particular legislation...". See also page 15, item #13: "Does or will the organization attempt to influence legislation?"

Again, it is regrettable that I did not have more advanced notice to provide a fully explication. I trust that you'll appreciate the importance of seeing MHPC's filing as that of an organization engaged in expressed advocacy as well as the identification of an MHPC staff member that likely engaged in fundraising activities for the organization's TABOR efforts.

Sincerely,

-CL

At 03:38 PM 5/8/2007, Wayne, Jonathan wrote:

The Commission member's packet for the May 14th meeting will be completed tomorrow morning. It will be posted on the internet by 12:00 noon. I will e-mail you a copy of the staff memo regarding Mr. Lindemann's second complaint.

Carl Lindemann
P.O. Box 171
Portland, ME 04112
<http://www.cyberscene.com>
(207) 774-1936

"Who seeks gold
digs much earth
and finds little"

-Heracleitus

5/9/2007

Unknown

From: Dib9@aol.com
Sent: Monday, January 08, 2007 11:40 AM
To: Lavin, Paul
Cc: Wayne, Jonathan; Demeritt, Martha
Subject: Re: Section 1056-B Report Guidance

Thanks. That is what I figured would be your take,

Dan

Unknown

From: Dib9@aol.com
Sent: Monday, January 08, 2007 12:22 PM
To: Lavin, Paul
Subject: Re: Section 1056-B Report Guidance

In a message dated 1/8/2007 12:46:15 P.M. Eastern Standard Time, Paul.Lavin@maine.gov writes:

And can I interpret that to mean, "I figured that would be your take because it is so reasonable." Or, "I figured that would be your take because you are the Enemy of Free Speech."

Well, if you put the First Amendment aside and apply the overbroad and vague statute as written, your interpretation is a good one.

;-)

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

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

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

The Taxpayer Bill of Rights – Reasonable. Effective.

Reasonable

Provide reasonable growth of government at all levels

- Growth rate- inflation plus population growth

Allow additional spending increases with voter approval

Effective

Make it tougher to raise taxes

- Require voter approval of all tax and fee increases

Provide a Rainy Day Fund for emergencies

Return surplus taxes to taxpayer

Needed

Maine is

#1 in tax burden (with highest property tax burden)

#39 in income

#45 in small-business climate

July 26, 2006



Reasonable. Effective.

TAXPAYER BILL OF RIGHTS

Feeling taxed to death?

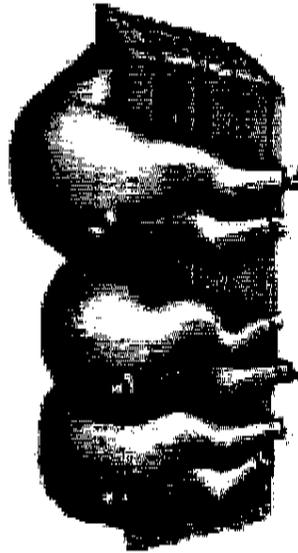
**Are Maine's high taxes hurting
you and your family?**

**Let's cut property taxes and
take control!**

Spread the word

**Vote YES on #1 on
November 7th.**

**Pay no mind to our opposition.
They have other concerns.**



**Find out what the Maine Taxpayer
Bill of Rights is really about at
www.TaxpayerBillofRights.com**

**Help out in your town. Call 207-924-3835 or sign up
at www.TaxpayerBillofRights.com**

Reasonable. Effective.

TAXPAYER BILL OF RIGHTS

WHO'S SPEAKING FOR YOUR TOWN?

The Maine Municipal Association would like you to believe they speak for all Maine cities and towns.

THEY DON'T.

Mayor LePage in Waterville doesn't think so either. The Mayor supports the Taxpayer Bill of Rights. In fact, more than 50 municipal officials across Maine have already come out in support of the Taxpayer Bill of Rights.

WHY?

Maine has the **highest property taxes** in the country as a percent of our incomes!

The Taxpayer Bill of Rights will get spending under control and **LOWER YOUR PROPERTY TAXES.**

LEARN MORE AND GET INVOLVED!

Visit us on the web at
www.TaxpayerBillOfRights.com

Paid for by the TaxpayerBillOfRights.com PAC



CITY OF WATERVILLE
OFFICE OF THE MAYOR

Mr. Geoff Herman
Maine Municipal Association
60 Community Drive
Augusta, ME 04330-9486

Re: TABOR

Dear Mr. Herman,

As an elected official of the City of Waterville, I have seen little benefit over the years in being a paying member of MMA. Your invitation for the October 4, 2006 informational meeting concerning TABOR is one-sided and self-indulgent. Not all elected officials take such a dim view of our hardworking taxpayers in Maine.

Your sarcastic comment referencing the so-called "Taxpayer Bill of Rights" was offensive and unnecessary. As a special interest organization that depends on community dues paid by property taxpayers, I would expect a bit more moderation. You should inform taxpayers of both sides of the issue or none at all. Further, some of us in the public arena have deep concern for those elderly on fixed incomes who struggle to keep their homes due to high property tax rates, or the young couples who struggle to earn a decent living and create homes to raise families while faced with agonizing energy costs, high taxes, and unbearable health insurance costs.

It would seem to me that you should be helping communities in governing more efficiently, and in being fiscally responsible to constituents and refrain from expending taxpayer dollars for your own personal survival. In addition, negative letters from your organization and board members to others organization such as the Maine Oil Dealers Association are despicable.

Until this point, I have been relatively quiet on the TABOR subject, but now I feel compelled to defend Maine taxpayers against such irresponsible and deceitful organizations. To me any community operating efficiently, while being fiscally responsible to its taxpayers, would have little or no difficulty in asking to exceed the TABOR cap during times of need. Using emotional scare tactics, distortions, and lack of trust in our democratic society is contemptible.

Community referendums and town meetings are the purest form of democracy. We are still a society "of the people, for the people, by the people," not solely a society of special interest groups feeding off society. When government fails its constituent, citizens need to take action. While I would prefer having fiscally responsible elected officials, however, short of having that we must resort to referendums. I would agree that L.D.1, Patesky or TABOR may not be perfect, but the same old -same-old tax and spend mentality is far worse for Maine people.

I can assure you that at budget time this year, I will carefully review how much money our City spends on supporting special interest groups.

Sincerely,

Paul R. LePage, Mayor

WGAN-AM 10/30/2006 Close of Debate

Mike Violette: Dennis Bailey, Bill Becker – gentlemen, thanks. I think we lived up to the expectation...

Dennis Bailey: And – no on 1.

MV: Thank you. You want to give a “Yes on 1” before we go Bill?

Bill Becker: The Taxpayer Bill of Rights is reasonable and effective.

DB: He can't say “yes”.

MV: Thank you fellas.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

53

JONATHAN WAYNE: So would you mind if I

HON. KETTERER: Yes, just let me see if any Commission members have questions. No further questions, okay Jonathan go ahead.

JONATHAN WAYNE: I wanted to ask, how can you be so sure that you haven't engaged in express advocacy and I just wondered about Mr. Lindemann's example when Mike Violette turns to you and said, give us a yes on you know, one statement and then you replied - sounds like you didn't say no we're are a tax-exempt organization and we are not really urging you one way or the other but here's our analysis.

MR. BECKER: I can tell you exactly what I said because -

JONATHAN WAYNE: (Interposing) Well just in general you know, in the context of what the spirit of the law is trying to do and what people take away from your presentation in the media, how can you be so sure you haven't expressly advocated in support of TABOR.

1

PROCEEDINGS

54

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. BECKER: Because I haven't expressly advocated. As a matter of fact what Dennis Bailey said at the end of that interview yesterday was, could Becker keep his - I said specifically I said, Maine voters would be wise to look at this issue I said, and if they like the current status quo then they should vote against it. If they think that we need a new direction and a new opportunity then there is much about the Taxpayer Bill of Rights that they might want to study.

Dennis Bailey said then, to my left, he said because he can't specifically say vote yes on one vote no on one, I vote no on one and he said that is right. Because I can't and I won't, I cannot put out stuff like that and I would not put out stuff like that which specifically says, here Dan Tabor wipes out real tax relief vote no and that is express advocacy. My organization has policy restriction. Their organization is doing political advocacy. There is a difference between policy and politics.

Ethics Commission Testimony: 12-20-06; pgs 156-157
(emphasis added)

MR. BECKER: Yeah. Yeah I would, um... I would say this. First of all that went to our members. It was not a general—it—we may have misstated when we said it's a general fund raising letter, a general fund raising letter to our own members, uh, which I think clears—makes a distinction in the law as opposed to sending it out to a broader direct mail list. Uh, second of all, uh, nowhere in there, though we're mentioning it, obviously, I mean, again, we were out there talking about it because we thought it was a good idea then. We think it's a good idea now. Um, a lot of our supporters, a lot of our members agreed with us and... **what a better time to raise money** than when you're, uh, in the—talking about it publicly. Obviously we are out there invited to many forums, many speeches that we were giving and—and—and wanted to do that. Uh, it's not unique. Uh, I have in front of me a nice letter from the Maine Center for Economic Policy, May 30th, 2006, uh, in which, uh, it's more expressly advocating a—a-a—uh, donation to support their efforts regarding the Taxpayer Bill of Rights. They may have only sent that to their members as well. Um, but again, organizations are out there talking about. The difference is of course, we weren't expressly advocating our position. Even in that letter.

We the people of Maine...

THE MAINE HERITAGE POLICY CENTER

Home Events Issues Links Press Room Publications Contribute

You are here >> Press Room > Press Releases

Register | Login

▶ Media Kit
 ▶ MHPC in the
 News
 ▶ [Press Releases](#)
 ▶ Thinking Out
 Loud
 ▶ Weekly Policy
 Brief

Press Releases

[Back to Complete Listing](#)

9/15/08: Heather Noyes Joins MHPC as Director of Development

PRESS RELEASE

The Maine Heritage Policy Center

FOR IMMEDIATE RELEASE
SEPTEMBER 15, 2008

CONTACT: JASON FORTIN
(207) 321-2550

Heather Noyes Joins MHPC as Director of Development

The addition of Ms. Noyes positions the think tank for future growth.

PORTLAND, ME – The Maine Heritage Policy Center (MHPC) today announced the appointment of Heather Noyes as Director of Development. In her role, Ms. Noyes will coordinate all of MHPC's ongoing development work, while also managing special events. Ms. Noyes brings to MHPC ten years of outside sales and management experience from her time with The Protocol School of Washington and C.B. Sullivan Company.

"The Maine Heritage Policy Center welcomes the skill set and experience that Heather brings to the organization," said Bill Becker, president and CEO of The Maine Heritage Policy Center. "MHPC is continually working to educate the Maine media, business leaders, and policymakers about public policy solutions that would lead to fiscal responsibility and a prosperous economy. We are confident that the addition of Heather will help MHPC secure the resources necessary to expand those efforts."

Ms. Noyes resides in Falmouth with her husband Tom and daughter Althea.

The Maine Heritage Policy Center is a 501 (c) 3 nonprofit, nonpartisan research and educational organization based in Portland, Maine. The Center formulates and promotes free market, conservative public policies in the areas of economic growth, fiscal matters, health care, and education – providing solutions that will benefit all the people of Maine. Contributions to MHPC are tax deductible to the extent allowed by law.

*Material from this document may be copied and distributed with proper citation.
© 2006 The Maine Heritage Policy Center*

P. O. Box 7829
 Portland, ME 04112
<http://www.maineconomy.org>
<http://blog.maineconomy.org>

Contacts:
Jason Fortin
Maine Heritage Policy Center
207-321-2550
jfortin@maineconomy.org

Form **1023**
(Rev. September 1998)
Department of the Treasury
Internal Revenue Service

Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code

OMB No. 1545-0058
Note: If exempt status is approved, this application will be open for public inspection.

Read the instructions for each Part carefully.
A User Fee must be attached to this application.
If the required information and appropriate documents are not submitted along with Form 8718 (with payment of the appropriate user fee), the application may be returned to you.
Complete the Procedural Checklist on page 8 of the instructions.

Part I Identification of Applicant

1a Full name of organization (as shown in organizing document) The Maine Heritage Policy Center		2 Employer identification number (EIN) (If none, see page 3 of the Specific Instructions.) 22 3888250
1b c/o Name (if applicable)		3 Name and telephone number of person to be contacted if additional information is needed (207) 831-4674, William Becker
1c Address (number and street) P.O. Box 7829	Room/Suite	4 Month the annual accounting period ends December
1d City, town, or post office, state, and ZIP + 4. If you have a foreign address, see Specific Instructions for Part I, page 3. Portland, ME 04112		
1e Web site address		5 Date incorporated or formed December 20, 2002
7 Did the organization previously apply for recognition of exemption under this Code section or under any other section of the Code? If "Yes," attach an explanation.		6 Check here if applying under section: a <input type="checkbox"/> 501(e) b <input type="checkbox"/> 501(f) c <input type="checkbox"/> 501(k) d <input type="checkbox"/> 501(n)
8 Is the organization required to file Form 990 (or Form 990-EZ)? If "No," attach an explanation (see page 3 of the Specific Instructions).		<input type="checkbox"/> N/A <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
9 Has the organization filed Federal income tax returns or exempt organization information returns? If "Yes," state the form numbers, years filed, and Internal Revenue office where filed.		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

10 Check the box for the type of organization. ATTACH A CONFORMED COPY OF THE CORRESPONDING ORGANIZING DOCUMENTS TO THE APPLICATION BEFORE MAILING. (See **Specific Instructions** for Part I, Line 10, on page 3.) See also Pub. 557 for examples of organizational documents.)

- a **Corporation**—Attach a copy of the Articles of Incorporation (including amendments and restatements) showing approval by the appropriate state official; also include a copy of the bylaws.
- b **Trust**— Attach a copy of the Trust Indenture or Agreement, including all appropriate signatures and dates.
- c **Association**—Attach a copy of the Articles of Association, Constitution, or other creating document, with a declaration (see instructions) or other evidence the organization was formed by adoption of the document by more than one person; also include a copy of the bylaws.

If the organization is a corporation or an unincorporated association that has not yet adopted bylaws, check here

I declare under the penalties of perjury that I am authorized to sign this application on behalf of the above organization and that I have examined this application, including the accompanying schedules and attachments, and to the best of my knowledge it is true, correct, and complete.

Please Sign Here

Ronald L. Trowbridge
(Signature)

Ronald Trowbridge, President
(Type or print name and title or authority of signer)

1-20-03
(Date)

Part III **Activities and Operational Information**

- 1 Provide a detailed narrative description of all the activities of the organization—past, present, and planned. **Do not merely refer to or repeat the language in the organizational document.** List each activity separately in the order of importance based on the relative time and other resources devoted to the activity. Indicate the percentage of time for each activity. Each description should include, as a minimum, the following: (a) a detailed description of the activity, including its purpose, and how each activity furthers your exempt purpose; (b) when the activity was or will be initiated; and (c) where and by whom the activity will be conducted.

See Attachment #1

- 2 What are or will be the organization's sources of financial support? List in order of size.

The Center will be seeking contributions from grant-making foundations, individuals and corporations with public policy interests similar to the Institute.

- 3 Describe the organization's fundraising program, both actual and planned, and explain to what extent it has been put into effect. Include details of fundraising activities such as selective mailings, formation of fundraising committees, use of volunteers or professional fundraisers, etc. Attach representative copies of solicitations for financial support.

See Attachment #2

Part III Activities and Operational Information (Continued)

4 Give the following information about the organization's governing body:

a. Names, addresses, and titles of officers, directors, trustees, etc.	b. Annual compensation
Richard Jackson, Chairman of the Board, 55 Burbank Lane, Yarmouth, ME 04096	0
Ronald Trowbridge, President, 30 Colonial Drive, Durham, ME 04222	0
Thomas Mead, Treasurer, 5 Ledgewater Drive, Kennebunk, Maine 04043	0
William Becker, Executive Director and Secretary, ADDRESS TK	\$65,000

c Do any of the above persons serve as members of the governing body by reason of being public officials or being appointed by public officials? Yes No
If "Yes," name those persons and explain the basis of their selection or appointment.

d Are any members of the organization's governing body "disqualified persons" with respect to the organization (other than by reason of being a member of the governing body) or do any of the members have either a business or family relationship with "disqualified persons"? (See Specific Instructions for Part II, Line 4d, on page 3.) Yes No
If "Yes," explain.

5 Does the organization control or is it controlled by any other organization? Yes No
Is the organization the outgrowth of (or successor to) another organization, or does it have a special relationship with another organization by reason of interlocking directorates or other factors? Yes No
If either of these questions is answered "Yes," explain.

6 Does or will the organization directly or indirectly engage in any of the following transactions with any political organization or other exempt organization (other than a 501(c)(3) organization): (a) grants; (b) purchases or sales of assets; (c) rental of facilities or equipment; (d) loans or loan guarantees; (e) reimbursement arrangements; (f) performance of services, membership, or fundraising solicitations; or (g) sharing of facilities, equipment, mailing lists or other assets, or paid employees? Yes No
If "Yes," explain fully and identify the other organizations involved.

7 Is the organization financially accountable to any other organization? Yes No
If "Yes," explain and identify the other organization. Include details concerning accountability or attach copies of reports if any have been submitted.

Part III Activities and Operational Information (Continued)

8 What assets does the organization have that are used in the performance of its exempt function? (Do not include property producing investment income.) If any assets are not fully operational, explain their status, what additional steps remain to be completed, and when such final steps will be taken. If none, indicate "N/A."

Not fully operational; fundraising dependent on being granted 501(c)3 exemption status.

9 Will the organization be the beneficiary of tax-exempt bond financing within the next 2 years? Yes No

10a Will any of the organization's facilities or operations be managed by another organization or individual under a contractual agreement? Yes No

b Is the organization a party to any leases? Yes No
If either of these questions is answered "Yes," attach a copy of the contracts and explain the relationship between the applicant and the other parties.

11 Is the organization a membership organization? Yes No
If "Yes," complete the following:

a Describe the organization's membership requirements and attach a schedule of membership fees and dues.

b Describe the organization's present and proposed efforts to attract members and attach a copy of any descriptive literature or promotional material used for this purpose.

c What benefits do (or will) the members receive in exchange for their payment of dues?

12a If the organization provides benefits, services, or products, are the recipients required, or will they be required, to pay for them? N/A Yes No
If "Yes," explain how the charges are determined and attach a copy of the current fee schedule.

b Does or will the organization limit its benefits, services, or products to specific individuals or classes of individuals? N/A Yes No
If "Yes," explain how the recipients or beneficiaries are or will be selected.

13 Does or will the organization attempt to influence legislation? Yes No
If "Yes," explain. Also, give an estimate of the percentage of the organization's time and funds that it devotes or plans to devote to this activity.

14 Does or will the organization intervene in any way in political campaigns, including the publication or distribution of statements? Yes No
If "Yes," explain fully.

Part III Technical Requirements

1 Are you filing Form 1023 within 15 months from the end of the month in which your organization was created or formed? Yes No
If you answer "Yes," do not answer questions on lines 2 through 6 below.

2 If one of the exceptions to the 15-month filing requirement shown below applies, check the appropriate box and proceed to question 7.

Exceptions—You are not required to file an exemption application within 15 months if the organization:

- a Is a church, interchurch organization of local units of a church, a convention or association of churches, or an integrated auxillary of a church. See **Specific Instructions**, Line 2a, on page 4;
- b Is not a private foundation and normally has gross receipts of not more than \$5,000 in each tax year; or
- c Is a subordinate organization covered by a group exemption letter, but only if the parent or supervisory organization timely submitted a notice covering the subordinate.

3 If the organization does not meet any of the exceptions on line 2 above, are you filing Form 1023 within 27 months from the end of the month in which the organization was created or formed? Yes No

If "Yes," your organization qualifies under Regulation section 301.9100-2, for an automatic 12-month extension of the 15-month filing requirement. Do not answer questions 4 through 6.

If "No," answer question 4.

4 If you answer "No" to question 3, does the organization wish to request an extension of time to apply under the "reasonable action and good faith" and the "no prejudice to the interest of the government" requirements of Regulations section 301.9100-3? Yes No

If "Yes," give the reasons for not filing this application within the 27-month period described in question 3. See **Specific Instructions**, Part III, Line 4, before completing this item. Do not answer questions 5 and 6.

If "No," answer questions 5 and 6.

5 If you answer "No" to question 4, your organization's qualification as a section 501(c)(3) organization can be recognized only from the date this application is filed. Therefore, do you want us to consider the application as a request for recognition of exemption as a section 501(c)(3) organization from the date the application is received and not retroactively to the date the organization was created or formed? Yes No

6 If you answer "Yes" to question 5 above and wish to request recognition of section 501(c)(4) status for the period beginning with the date the organization was formed and ending with the date the Form 1023 application was received (the effective date of the organization's section 501(c)(3) status), check here and attach a completed page 1 of Form 1024 to this application.

Part III Technical Requirements (Continued)

- 7 Is the organization a private foundation?
- Yes (Answer question 8.)
- No (Answer question 9 and proceed as instructed.)

- 8 If you answer "Yes" to question 7, does the organization claim to be a private operating foundation?
- Yes (Complete Schedule E.)
- No

After answering question 8 on this line, go to line 14 on page 7.

- 9 If you answer "No" to question 7, indicate the public charity classification the organization is requesting by checking the box below that most appropriately applies:

THE ORGANIZATION IS NOT A PRIVATE FOUNDATION BECAUSE IT QUALIFIES:

- | | | |
|---|--|--|
| a | <input type="checkbox"/> As a church or a convention or association of churches
(CHURCHES MUST COMPLETE SCHEDULE A.) | Sections 509(a)(1)
and 170(b)(1)(A)(i) |
| b | <input type="checkbox"/> As a school (MUST COMPLETE SCHEDULE B.) | Sections 509(a)(1)
and 170(b)(1)(A)(ii) |
| c | <input type="checkbox"/> As a hospital or a cooperative hospital service organization, or a medical research organization operated in conjunction with a hospital (These organizations, except for hospital service organizations, MUST COMPLETE SCHEDULE C.) | Sections 509(a)(1)
and 170(b)(1)(A)(iii) |
| d | <input type="checkbox"/> As a governmental unit described in section 170(c)(1). | Sections 509(a)(1)
and 170(b)(1)(A)(v) |
| e | <input type="checkbox"/> As being operated solely for the benefit of, or in connection with, one or more of the organizations described in a through d, g, h, or i (MUST COMPLETE SCHEDULE D.) | Section 509(a)(3) |
| f | <input type="checkbox"/> As being organized and operated exclusively for testing for public safety. | Section 509(a)(4) |
| g | <input type="checkbox"/> As being operated for the benefit of a college or university that is owned or operated by a governmental unit. | Sections 509(a)(1)
and 170(b)(1)(A)(iv) |
| h | <input type="checkbox"/> As receiving a substantial part of its support in the form of contributions from publicly supported organizations, from a governmental unit, or from the general public. | Sections 509(a)(1)
and 170(b)(1)(A)(vi) |
| i | <input type="checkbox"/> As normally receiving not more than one-third of its support from gross investment income and more than one-third of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions (subject to certain exceptions). | Section 509(a)(2) |
| j | <input checked="" type="checkbox"/> The organization is a publicly supported organization but is not sure whether it meets the public support test of h or i. The organization would like the IRS to decide the proper classification. | Sections 509(a)(1)
and 170(b)(1)(A)(vi)
or Section 509(a)(2) |

If you checked one of the boxes a through i in question 9, go to question 14. If you checked box g in question 9, go to questions 11 and 12. If you checked box h, i, or j, in question 9, go to question 10.

Part III Technical Requirements (Continued)

- 10** If you checked box **h**, **i**, or **j** in question 9, has the organization completed a tax year of at least 8 months?
- Yes**—Indicate whether you are requesting:
 - A definitive ruling. (Answer questions 11 through 14.)
 - An advance ruling. (Answer questions 11 and 14 and attach two Forms 872-C completed and signed.)
 - No**—You must request an advance ruling by completing and signing two Forms 872-C and attaching them to the Form 1023.

- 11** If the organization received any unusual grants during any of the tax years shown in Part IV-A, **Statement of Revenue and Expenses**, attach a list for each year showing the name of the contributor; the date and the amount of the grant; and a brief description of the nature of the grant.

No unusual grants received.

- 12** If you are requesting a definitive ruling under section 170(b)(1)(A)(iv) or (vi), check here and:

- a** Enter 2% of line 8, column (e), Total, of Part IV-A
- b** Attach a list showing the name and amount contributed by each person (other than a governmental unit or "publicly supported" organization) whose total gifts, grants, contributions, etc., were more than the amount entered on line 12a above.

- 13** If you are requesting a definitive ruling under section 509(a)(2), check here and:

- a** For each of the years included on lines 1, 2, and 9 of Part IV-A, attach a list showing the name of and amount received from each "disqualified person." (For a definition of "disqualified person," see **Specific Instructions**, Part II, Line 4d, on page 3.)
- b** For each of the years included on line 9 of Part IV-A, attach a list showing the name of and amount received from each payer (other than a "disqualified person") whose payments to the organization were more than \$5,000. For this purpose, "payer" includes, but is not limited to, any organization described in sections 170(b)(1)(A)(i) through (vi) and any governmental agency or bureau.

14 Indicate if your organization is one of the following. If so, complete the required schedule. (Submit only those schedules that apply to your organization. Do not submit blank schedules.)	Yes	No	If "Yes," complete Schedule:
Is the organization a church?		✓	A
Is the organization, or any part of it, a school?		✓	B
Is the organization, or any part of it, a hospital or medical research organization?		✓	C
Is the organization a section 509(a)(3) supporting organization?		✓	D
Is the organization a private operating foundation?		✓	E
Is the organization, or any part of it, a home for the aged or handicapped?		✓	F
Is the organization, or any part of it, a child care organization?		✓	G
Does the organization provide or administer any scholarship benefits, student aid, etc.?		✓	H
Has the organization taken over, or will it take over, the facilities of a "for profit" institution?		✓	I

Part III Financial Data

Complete the financial statements for the current year and for each of the 3 years immediately before it. If in existence less than 4 years, complete the statements for each year in existence. If in existence less than 1 year, also provide proposed budgets for the 2 years following the current year.

A. Statement of Revenue and Expenses

	Current tax year	3 prior tax years or proposed budget for 2 years			(e) TOTAL
	(a) From 12-02 to 12-02	(b) 01-03 to 12-03	(c) 01-04 to 12-04	(d)	
Revenue					
1 Gifts, grants, and contributions received (not including unusual grants—see page 6 of the instructions).	20,000	262,920	399,130		
2 Membership fees received	0	0	0		
3 Gross investment income (see instructions for definition)	0	0	0		
4 Net income from organization's unrelated business activities not included on line 3	0	0	0		
5 Tax revenues levied for and either paid to or spent on behalf of the organization	0	0	0		
6 Value of services or facilities furnished by a governmental unit to the organization without charge (not including the value of services or facilities generally furnished the public without charge)	0	0	0		
7 Other income (not including gain or loss from sale of capital assets) (attach schedule)	0	0	0		
8 Total (add lines 1 through 7)	20,000	262,920	399,130		
9 Gross receipts from admissions, sales of merchandise or services, or furnishing of facilities in any activity that is not an unrelated business within the meaning of section 513. Include related cost of sales on line 22	0	0	0		
10 Total (add lines 8 and 9)	20,000	262,920	399,130		
11 Gain or loss from sale of capital assets (attach schedule)	0	0	0		
12 Unusual grants	0	0	0		
13 Total revenue (add lines 10 through 12)	20,000	262,920	399,130		
Expenses					
14 Fundraising expenses	0	10,000	10,000		
15 Contributions, gifts, grants, and similar amounts paid (attach schedule)	0	0	0		
16 Disbursements to or for benefit of members (attach schedule)	0	0	0		
17 Compensation of officers, directors, and trustees (attach schedule)	5,416	65,000	75,000		
18 Other salaries and wages	0	57,500	104,000		
19 Interest	0	0	0		
20 Occupancy (rent, utilities, etc.)	0	28,500	34,500		
21 Depreciation and depletion	0	0	0		
22 Other (attach schedule)	1,879	124,625	185,630		
23 Total expenses (add lines 14 through 22)	7,295	275,625	399,130		
24 Excess of revenue over expenses (line 13 minus line 23)	12,705	(12,705)	0		

Form 1023 (Rev. 9-98)

Page 9

Part 7**Financial Data (Continued)**

B. Balance Sheet (at the end of the period shown)		Current tax year 2002
Assets		
1	Cash	12,705
2	Accounts receivable, net	0
3	Inventories	0
4	Bonds and notes receivable (attach schedule)	0
5	Corporate stocks (attach schedule)	0
6	Mortgage loans (attach schedule)	0
7	Other investments (attach schedule)	0
8	Depreciable and depletable assets (attach schedule)	0
9	Land	0
10	Other assets (attach schedule)	0
11	Total assets (add lines 1 through 10)	12,705
Liabilities		
12	Accounts payable	0
13	Contributions, gifts, grants, etc., payable	0
14	Mortgages and notes payable (attach schedule)	0
15	Other liabilities (attach schedule)	0
16	Total liabilities (add lines 12 through 15)	0
Fund Balances or Net Assets		
17	Total fund balances or net assets	12,705
18	Total liabilities and fund balances or net assets (add line 16 and line 17)	12,705
If there has been any substantial change in any aspect of the organization's financial activities since the end of the period shown above, check the box and attach a detailed explanation. <input type="checkbox"/>		

Form **872-C**

Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the Internal Revenue Code

OMB No. 1545-0050

(Rev. September 1998)

Department of the Treasury
Internal Revenue Service

(See instructions on reverse side.)

To be used with
Form 1023. Submit
in duplicate.

Under section 6501(c)(4) of the Internal Revenue Code, and as part of a request filed with Form 1023 that the organization named below be treated as a publicly supported organization under section 170(b)(1)(A)(v) or section 509(a)(2) during an advance ruling period.

The Maine Heritage Policy Center

(Exact legal name of organization as shown in organizing document)

P.O. Box 7829, Portland, ME 04112

(Number, street, city or town, state, and ZIP code)

} and the
District Director of
Internal Revenue, or
Assistant
Commissioner
(Employee Plans and
Exempt Organizations)

consent and agree that the period for assessing tax (imposed under section 4940 of the Code) for any of the 5 tax years in the advance ruling period will extend 8 years, 4 months, and 15 days beyond the end of the first tax year.

However, if a notice of deficiency in tax for any of these years is sent to the organization before the period expires, the time for making an assessment will be further extended by the number of days the assessment is prohibited, plus 60 days.

Ending date of first tax year 12/31/02
(Month, day, and year)

Name of organization (as shown in organizing document)	Date
The Maine Heritage Policy Center	1-20-03
Officer or trustee having authority to sign	Type or print name and title
Signature ▶ <i>Ronald L. Trowbridge</i>	Ronald Trowbridge, President
For IRS use only	
District Director or Assistant Commissioner (Employee Plans and Exempt Organizations)	Date

By ▶

ATTACHMENT #1

IRS FORM 1023
Part II, Question 1

ACTIVITIES AND OPERATIONAL INFORMATION

The Maine Heritage Policy Center will engage in broad educational activities subject to the constraints of the regulations regarding 501(c)3 exempt organizations. The Center was formed to broaden the public policy debate in Maine by studying, researching and assembling materials and presenting an objective analysis to those interested in a wide range of public policy issues, including the general public; and the Center's activities, as outlined in this 1023 application, are designed as such. The organization's activities and products will not be substantially directed toward the enactment of particular legislation as defined by the courts and the Internal Revenue Code.

The Maine Heritage Policy Center shall provide a forum for the exchange of ideas be it through the written word or by means of meetings and conferences. The Center shall provide the general public with up-to-date research on important issues of the day and publish these findings in a variety of formats for the benefit of decision makers, the media, the business community and the public at large.

Research results will generally be published in such form as to be available to the interested public. The Center will publish hard copies of its products that it will make publicly available, will produce e-mail copies as appropriate, and will publish its products on the Institute's web site whenever possible. No research has been published to date.

Subject to the constraints of its tax-exempt status, the Center shall provide educational material to the public, with an over-all view to increasing its awareness regarding the benefits of increased reliance upon the private and nonprofit sectors for the delivery of public services.

The Center shall provide a resource bank of public policy experts available for legislative or executive committee testimony and shall be available to organize briefings for decision makers. The Center shall strive to keep the relevant elements of the business and nonprofit communities abreast of all educational and legislative developments which may benefit them.

The Center shall make all its studies available to all members of the Maine legislature regardless of party affiliation. In addition, the Center shall publish and/or disseminate the following, on a regular basis:

1. A series of periodic, in-depth analyses of public policy issues. Each report shall be accompanied by an executive summary and, when appropriate, press releases. Authorship shall generally be by outside contractors, who are experts in their various fields of study and/or experience.
2. A regularly issued newsletter mailed to all supporters of the Center and any/all other interested persons or organizations. This newsletter will be used for the purpose of informing the above-mentioned interested supporters/organizations about developments at the Center and will be written primarily by Center staff.

Additionally, the Center shall from time to time bring together local, state and national opinion leaders and policy makers to discuss issues and ideas in various settings, which may include, but not be limited to, the following:

- Issues conferences
 - Single or multi-day conferences convening local, state and national leaders to address specific issues.
- Breakfast or luncheon seminars throughout the state.
 - These brief (one and one-half to three hours in length) meetings might feature lectures by national, state or local experts in a given field; audience participants might be Center supporters, donors, media, and policymakers; these seminars might be combined with fundraising efforts.

Where appropriate, text from visiting speakers' lectures shall be published by the Center and distributed/disseminated in the manner of the Center's other publications.

Subject matter for these various activities, broadly speaking, will include, but not limited to local, state and possibly national public policy issues focusing primarily on the promotion of free-market economic policy, reforming public-sector service delivery systems, researching market-driven approaches to health care reform, and developing ways to overhaul public education.

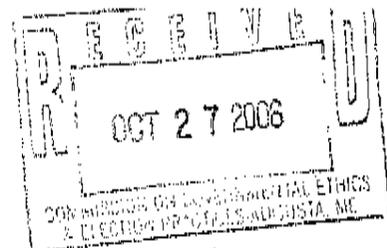
Maine Heritage Policy Center

**MARDEN, DUBORD,
BERNIER & STEVENS**

ATTORNEYS AT LAW

44 ELM STREET
P.O. BOX 708
WATERVILLE, ME 04903-0708

(207) 873-0186
FAX (207) 873-2245
E-MAIL: mdbs@gwi.net
<http://www.mainelawfirm.com>



WILLIAM P. DUBORD
ALTON C. STEVENS
J. WILLIAM DRUARY, JR.
ROBERT M. MARDEN
DAVID E. BERNIER
DANIEL I. BILLINGS
DANIEL W. MARRA

ALBERT L. BERNIER
(RETIRED)
F. HAROLD DUBORD
(1891-1964)
RICHARD J. DUBORD
(1921-1970)
HAROLD C. MARDEN
(1900-1994)
ROBERT A. MARDEN
(RETIRED)

October 26, 2006

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

RE: Maine Heritage Policy Center

Dear Jonathan:

I am responding on behalf of the Maine Heritage Policy Center ("MHPC") to your letter of October 24th concerning the complaint by Carl Lindemann. The complaint raises significant and complicated issues and we are happy to cooperate with the Commission's inquiry. Before responding to the specific issues raised by the complaint, I would like to provide an overview of MHPC and its activities to provide some context to their activities related to the Maine Taxpayer Bill of Rights.

Maine Heritage Policy Center's Activities

The Maine Heritage Policy Center is a nonprofit, nonpartisan research and educational organization whose purpose is to analyze and promote conservative and free market public policy solutions that will benefit the people of Maine. MHPC's work is primarily focused on fiscal, health care, and education issues – as well as data collection and publications.

In 2003, MHPC authored its first-ever policy report on tax-and-expenditure limits (TELS). MHPC identified TELS as a potential solution to Maine's high tax ranking, researching the make-up of the 25+ states that had some form of TELS. MHPC has continued to promote TELS as a policy solution since that first report.

In 2004, MHPC hosted the "Emergency Tax Summit" in Portland, bringing together respected economists and policy experts from Maine and around the nation to address Maine's continued high tax burden. Two respected economists from Colorado spoke about the Colorado TEL, instituted in 1992, that served to lower taxes and strengthen the economy.

Jonathan Wayne, Executive Director
October 26, 2006
Page 2

Following that conference, MHPC set about the task of drafting model legislation for a TEL in Maine. In consultation with Maine legislators, national economists and policy experts, MHPC worked to design a TEL that would work within Maine's unique dynamics and laws. That work was completed in the summer of 2004.

Following the completion of the model TEL, it was advanced in two separate directions. Mary Adams became interested in using the model TEL as a citizen's initiative, and took the necessary steps to begin that process, including the creation of a political action committee "TaxpayerBillOfRights.com". Additionally, Senator Mary Andrews took the model TEL and submitted it in the Legislature as a legislative bill. That bill eventually was voted down in the Legislature.

In October of 2004, Mary Adams received approval to circulate petitions for what was to be known as the Maine Taxpayer Bill of Rights. Signatures were gathered through October of 2005, when the petitions were submitted to the Secretary of State. In February of 2006, the Secretary of State certified the petitions. Soon thereafter, Kathleen McGee filed a suit in Superior Court challenging the Secretary of State's decision. The Superior Court found in McGee's favor, and Mary Adams appealed to the Law Court.

In the Law Court case, Democracy Maine filed an amicus brief, siding with Ms. McGee's defense of the Superior Court decision. Michael Duddy, Esquire was retained by Mary Adams for the appeal, and Assistant Attorney General Phyllis Gardner also argued against the Superior Court decision on behalf of the Secretary of State. In May of 2006, the Law Court unanimously found in Adams' favor, ordered that the petitions be ruled valid, and thus placed the citizen's initiative on the November 2006 ballot.

Over the past two years, MHPC has conducted additional research and analysis on Maine's proposed TEL. MHPC researchers have studied the impact of TELs on other states, notably Colorado, as well as the other states that now have a TEL and the positive correlation between lower taxes and economic vitality. MHPC has used comprehensive computer equilibrium modeling to estimate the job creation and increase of personal income that would result from Maine's proposal. MHPC has further delved into Maine's struggling economy and continued to encourage restrained government growth as a way to reduce Maine's tax burden.

The staff at MHPC has been invited numerous times to speak about the Maine Taxpayer Bill of Rights. Most often, MHPC has been asked to educate audiences about what the bill says, why it was designed the way it was and in what context it was seen as a solution. MHPC is the author of the model legislation that since became a citizen's initiative. The staff of MHPC is seen as experts on the initiative, and as such, has been asked to testify at the Legislature and at the municipal level, and also to speak at debates and service organizations regarding the research and analysis MHPC has conducted. Often, MHPC is contacted by the media to answer technical questions about the bill or to answer charges from those opposed to the Taxpayer Bill of Rights initiative.

Jonathan Wayne, Executive Director

October 26, 2006

Page 3

As the drafters who developed the initial model legislation, MHPC is in the best position to provide information on what the initiative says and what the analysis shows will be the initiative's impact. That is the nature of MHPC's work as a public policy research and educational organization – to research and analyze public policies and educate people regarding the findings.

The Maine Heritage Policy Center has not distributed or produced political literature that specifically advocates a "Yes on 1" or "Vote Yes on TABOR" position. In their remarks, MHPC's staff does not tell people to vote one way or the other. The materials submitted by Mr. Lindemann and Democracy Maine show this to be the case. MHPC has not purchased television, radio, or newspaper advertisements to influence the outcome of the referendum. MHPC has not purchased nor distributed lawn signs, bumper stickers, or other types of campaign material. The Maine Heritage Policy Center does not solicit or receive funds that are predicated on the Center's taking a position on any issue. All donations received are used to support the overall operations and general mission of the Center.

In short, the Maine Heritage Policy Center is engaged in policy research and analysis, and not political campaigning. The Center's staff serves as policy experts in key areas, including Tax and Expenditure Limits. As such, MHPC is called to provide analysis in those areas.

With this letter, copies of recent publications produced by MHPC are being provided to give the Commission a clear picture of the Center's activities.

Responses to Questions in October 24th letter

It is important to begin this discussion by noting that the United States Supreme Court has held that advocacy concerning referendum-type elections involves "core political speech," and state regulation of election advocacy accordingly requires "exacting scrutiny" to ensure that the regulation is "narrowly tailored" to an "overriding state interest." McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 347, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995). The Court has reminded us that the premise of the First Amendment is that voters are presumed to be able to assess the persuasiveness of a message and vote a ballot issue up or down on its merits. See Id. at 348-49, 115 S.Ct. 1511. Though the wording of the Maine statutes in this area are quite broad, the Commission should keep in mind that core political speech is at issue and the statutes should, as a result, be read and applied narrowly.

In applying the statutes to MHPC's activities, it is my conclusion that neither registration with nor financial reporting to the Commission is required.

MHPC is not a political action committee ("PAC") as defined by 21-A M.R.S.A. §1052. MHPC is not a segregated fund, established with the purpose of influencing an election. MHPC is not a funding or transfer mechanism for a campaign. Its major purpose is not advocating the passage of a ballot question. It has not solicited or received any contributions to influence the outcome of a referendum campaign. It should be noted that other similar organizations, such as the Maine Center for Economic Policy, have not

Jonathan Wayne, Executive Director
October 26, 2006
Page 4

registered as a PAC, though they are involved in the campaign to defeat the Maine Taxpayer Bill of Rights.

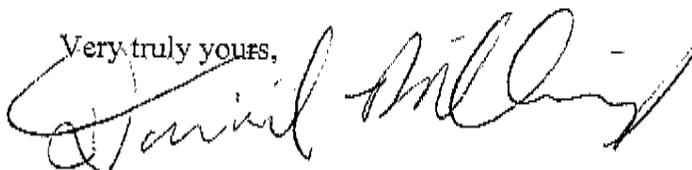
MHPC should also not be required to file financial reports under 21-A M.R.S.A. §1056-B. While MHPC's activities may influence the referendum on the Maine Taxpayer Bill of Rights, MHPC's has not solicited or accepted contributions or made expenditures for the purpose of initiating, promoting, defeating, or influencing in any way the outcome of the referendum. MHPC's purpose in speaking about the Maine Taxpayer Bill of Rights is to further the Center's mission to analyze and promote conservative and free market public policy solutions that will benefit the people of Maine. MHPC is engaging in the same types of activities today as it did before the referendum was placed on the ballot and it will be engaging in the same types of activities after November 7th. The purpose of MHPC's activities is not to influence the outcome of the referendum, therefore, its activities do not trigger reporting under 21-A M.R.S.A. §1056-B.

As I noted in my brief presentation to the Commission last week, if the Commission decides that the time spent by MHPC staff speaking about the Maine Taxpayer Bill of Rights triggers reporting, there are dozens of other organizations that should also report. Many municipalities have spent considerable staff time on the referendum and some have spent money getting information about the municipality's view on the initiative to citizens. Other organizations such, as the Maine Chamber of Commerce, several local chambers of commerce, and even the Roman Catholic Diocese of Portland, have spent considerable time and effort studying the Maine Taxpayer Bill of Rights and communicating their views to the public. I do not believe that the Legislature intended reporting to be triggered simply by the study of an issue and public statements concerning an issue. Even if that was intended, I do not believe that such a broad regulation of core political speech would withstand constitutional scrutiny.

I will be in attendance at the Commission's meeting on October 31st, along with Bill Becker, President & Chief Executive Officer of MHPC. Bill has a pre-existing commitment on the morning of October 31st and will not likely be able to get to the meeting before 10:30 a.m. I request that this matter be scheduled after other matters on the agenda so Bill can participate in the discussion. Though I will certainly be prepared to discuss the issue, Bill is in the best position to answer any questions that Commission members may have about MHPC and its activities.

If you believe any further information would be of assistance to the Commission, please let me know.

Very truly yours,



Daniel I. Billings
e-mail: dbillings@ewi.net

We the people of Maine...

THE MAINE HERITAGE POLICY CENTER

November 6, 2006

www.mainepolicy.org

Mr. David A. Briney

REDACTED
Denver, Colorado

P.O. Box 7829
Portland, Maine 04112

Tel: 207.321.2550
Fax: 207.773.4385

Dear Mr. Briney,

On behalf of the Board of Directors, please accept my sincere thanks for your generous contribution of \$125.00 to The Maine Heritage Policy Center. We are very grateful for this donation, and will use it to advance our mission of promoting The Taxpayer Bill Of Rights, a solution that will benefit all people of Maine.

Board of Directors

As the author of The Taxpayer Bill Of Rights, we believe that this initiative provides a road map to jump-start Maine's economy. With only a few weeks until the election, we are in a fight for Maine's economic life. As you are aware, Maine has the highest property taxes and the highest state and local tax burden in the country. Our economy continues to struggle. In 2005, Maine was just one of two states to see a decline in economic activity, as reported by the Federal Reserve Bank of Boston. Louisiana, which was ravaged by hurricane Katrina, was the only other state to see a decline. It is more important than ever to educate Maine citizens about the challenges we currently face.

Mr. John Austin
Mr. William G. Becker, III
Chief Executive Officer
Hon. Richard A. Bennett
Michael A. Duddy, Esq.
Mr. Neal B. Freeman
Hon. Jean Ginn-Marvin
Mr. W.R. Jackson, Jr.
Chairman of the Board
Mr. Thomas W. Mead
Treasurer

We understand that the economic pie is shrinking. A large part of the problem has been Maine's highest-in-the-nation tax burden, driven by out-of-control government spending. One way to address that problem is through an effective "Tax-and-Expenditure Limit" such as Maine's proposed The Taxpayer Bill Of Rights. Such responsible public policy encourages Maine businesses to remain in the state and grow, thus creating more Maine jobs and higher incomes for Maine workers. With Maine's per capita tax burden growing 50% faster than the rate of inflation, we must act now and work to stop Maine's spending frenzy. Since January 2003, government jobs are growing at more than twice the rate of private sector jobs. This is not an investment in Maine's future. We are digging out the facts everyday and working hard to promote this race based on facts and evidence, not emotions.

The Taxpayer Bill Of Rights is the only public policy in front of Maine voters or our legislators that is guaranteed to reduce Maine's tax burden and ensure that government does not grow faster than the people's ability to pay. It is a reasonable solution for Maine citizens and I thank you for being part of the solution in helping to solve Maine's economic challenges and for investing in Maine's future.

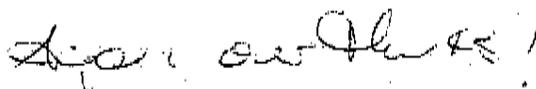
Thank you for joining this effort to help our leaders understand the need for genuine reforms in the way Maine operates - and for providing them with viable and proven policy solutions that will change Maine's future to one of opportunity and promise.

Please do not hesitate to contact me at 207-321-2550 with any questions or suggestions. Thank you again for your support - I look forward to seeing you at a Maine Heritage event very soon.

Yours truly,


Bill Becker

President and Chief Executive Officer



**MARDEN, DUBORD,
BERNIER & STEVENS**

ATTORNEYS AT LAW

WILLIAM P. DUBORD
ALTON C. STEVENS
J. WILLIAM DRUARY, JR.
ROBERT M. MARDEN
DAVID E. BERNIER
DANIEL J. BILLINGS
DANIEL W. MARRA

44 ELM STREET
P.O. BOX 708
WATERVILLE, ME 04903-0708

(207) 873-0186
FAX (207) 873-2245
E-MAIL: mdbs@gwi.net
<http://www.maine-lawfirm.com>

ALBERT L. BERNIER
(RETIRED)
F. HAROLD DUBORD
(1891-1964)
RICHARD J. DUBORD
(1921-1970)
HAROLD C. MARDEN
(1900-1994)
ROBERT A. MARDEN
(RETIRED)

December 4, 2006

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

RE: Maine Heritage Policy Center

Dear Jonathan:

I am writing in response to your November 28th letter seeking more information from the Maine Heritage Policy Center ("MHPC") due to new allegations raised by Carl Lindemann. While I am happy to answer the questions raised in your letter, I need to first address the legal standard that the Commission must apply when considering the questions that have been raised concerning MHPC's activities related to the Maine Taxpayer Bill of Rights. Much of the difficulty in assessing the concerns that have been raised about MHPC has been the uncertainty that has resulted from the broad language contained in 21-A M.R.S.A. §1056-B and the court decisions indicating only a much narrower approach to regulation of speech regarding ballot measures can sustain constitutional scrutiny. Before considering the complaint against MHPC, the Commission should first decide how it will apply Maine law to all persons and entities engaging in speech regarding ballot measures in light of the court decisions in this area.

Constitutional Standards

21-A M.R.S.A. §1056-B requires that "[a]ny person not defined as a political committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the commission." The statute further requires that the report filed "contain an itemized account of each contribution received and expenditure made aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name of each contributor, payee or creditor." The statute includes very broad language, which if not applied narrowly, would, for the reasons explained below, not withstand a constitutional challenge.

Jonathan Wayne, Executive Director
December 4, 2006
Page 2

In Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), the Supreme Court considered wide-ranging challenges to the Federal Election Campaigns Act ("FECA"). The Court described "[d]iscussion of public issues and debate on the qualifications of candidates [as] integral to the operation of the system of government established by our Constitution [to which] [t]he First Amendment affords the broadest protection." Id. at 14, 96 S.Ct. 612. The Court then recognized a "distinction between discussion of issues and candidates and advocacy of election or defeat of candidates." Id. at 42, 96 S.Ct. 612. To avoid problems of vagueness and overbreadth that would otherwise be presented by certain of FECA's provisions, the Court construed them to reach only communications "that expressly advocate the election or defeat of a clearly defined candidate." Id. at 80, 96 S.Ct. 612; See also Id. at 43-44, 96 S.Ct. 612. The Court restricted express advocacy, in turn, to communications utilizing imperative terms such as "vote for [or against]," "support," "defeat" or "reject." Id. at 44 n. 52, 96 S.Ct. 612.

While Buckley dealt with candidate elections, only in later cases did the Supreme Court deal with ballot measures that did not involve candidates for office. An examination of the Supreme Court's jurisprudence in the area is useful to the issues currently before the Commission.

In First National Bank of Boston v. Bellotti, 435 U.S. 765, 790, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978), the Supreme Court recognized that votes on ballot measures involve less risk of corruption than do candidate elections where there is concern to avoid a quid pro quo arrangement between a candidate and the contributor. "Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue." Id. at 790, 98 S.Ct. 1407 (citations and footnote omitted).

In Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, 102 S.Ct. 434, 70 L.Ed.2d 492 (1981), the Supreme Court struck down state limitations on money contributions to political committees supporting or opposing a ballot measure. In doing so, the Court observed that "[t]he integrity of the political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed." Id. at 299-300, 102 S.Ct. 434.

In McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 347, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995), the Supreme Court held that "the principles enunciated in Buckley extend equally to issues-based elections" and made clear that exacting scrutiny applies to any state regulation of advocacy in noncandidate elections like referenda.

The Supreme Court's most recent pronouncement in this area of noncandidate elections is Buckley v. American Constitutional Law Foundation, 525 U.S. 182, 119 S.Ct. 636, 142 L.Ed.2d 599 (1999) ("Buckley II"). That decision struck down a number of Colorado regulations concerning the state's petition process. In doing so, however, the Supreme Court said that it was legitimate for a state to require sponsors of ballot initiatives to disclose to the State the names of proponents of the petition and the amount being spent. Id. at 647-48. The Court approvingly identified that requirement as a way to inform voters of

Jonathan Wayne, Executive Director
December 4, 2006
Page 3

"the source and amount of money spent by proponents to get a measure on the ballot." *Id.* at 647.

Though the Supreme Court cases in this area do not directly address whether a state can constitutionally require disclosure of contributions and expenditures that are spent on speech that does not expressly advocate the passage or defeat of a referendum question, the lower courts that have considered the issue have concluded that state regulation must be limited to express advocacy. In *Richey v. Tyson*, 120 F. Supp. 2d 1298, 1319 (D. Alabama 2000), the District Court held that the U.S. Constitution required that Alabama's Fair Campaign Practices Act, which contained broad language such as is contained in Maine law, must be read narrowly to confine the scope of its disclosure requirements to contributions and expenditures for the purpose of expressly advocating the passage or defeat of a referendum question. In *California Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1098-99 (9th Cir. 2003), the Court of Appeals held that a state court ruling limiting state regulation of candidate related ads to those containing express advocacy also applied to speech related to referendum questions.

A review of these cases leads to the conclusion that state regulation of speech regarding referendum questions is only constitutional if the regulation is limited to speech which expressly advocates the passage or defeat of a referendum question. With these cases in mind, the Commission should read Maine law narrowly as to only require reporting of contributions and expenditures which are used for speech which directly advocates the passage or defeat of a referendum question. Any other reading would impermissibly interfere with speech which is entitled to the broadest First Amendment protection.

It should also be noted that none of the policy concerns that continue to be debated regarding what expenditures should trigger matching funds to candidate under Maine's Clean Elections Act are relevant to this issue. There are no matching funds at stake that can be triggered in referendum campaigns and there are no contribution limits which are applicable to such campaigns.

If Maine law is read narrowly, as required by the U.S. Constitution, no reporting of any kind should be required by MHPC. A great deal of material concerning MHPC has been submitted to the Commission. To date, I have seen nothing which would indicate that MHPC spent any funds to expressly advocate the passage of the Maine Taxpayer Bill of Rights.

Responses to Questions in November 28th letter

In your letter, you asked four questions. Each question is addressed below:

- (1) *Has the MHPC received any funds from any source specifically to promote, initiate, or influence the TABOR initiative? If so, please state the total amount received. If an exact amount is not available by December 4, please provide an estimated amount for the time being.*

MHPC has not received any funds from any source specifically to promote, initiate, or influence the TABOR initiative. All contributions received are used to support the overall

Jonathan Wayne, Executive Director
December 4, 2006
Page 4

operations and general mission of MHPC. No funds were specifically segregated or dedicated to activities related to the Maine Taxpayers Bill of Rights. No activities undertaken by MHPC related to the Maine Taxpayer Bill of Rights were contingent upon or the result of any funds received from any source.

As a result of this question, MHPC staff has reviewed all contributions received by the Center this year. Four contributions, including the contribution from Mr. Briney, were made along with correspondence or references on checks mentioning TABOR or MHPC's work related to TABOR. These four contributions total \$975, less than the \$1500 threshold requiring reporting under Maine law. It should be noted that these contributions were not treated any differently than any other contributions to MHPC and the funds were not dedicated to any activities related to the Maine Taxpayers Bill of Rights. It should be no surprise that some contributors may mention MHPC's TABOR related work, based on MHPC's activities as detailed in my letter of October 26th.

There were also two other contributions received where TABOR was referenced along with the contributions. In both cases, MHPC staff spoke to the donor and made sure the donor understood that contributions to MHPC would not be used as part of the campaign to pass TABOR and that all contributions received are used to support the overall operations and general mission of MHPC.

In October, MHPC received a \$3,000 contribution with "TABOR" in the memo. MHPC staff knew the donor personally, and communicated with the donor regarding the donor's intent. MHPC staff explained to the donor that MHPC's role was limited to research and education and that a separate, independent organization was running the initiative campaign and purchasing media, etc. Based on these discussions, the contributor asked that \$2500 be refunded, with \$500 retained by MHPC for their general operating research and analysis work. MHPC complied with the request.

Additionally, one other \$1,000 unsolicited donation was received in 2006 with a personal check that did not reference TABOR. However, on the inside of the donation envelope, a note "For TABOR!" was handwritten. MHPC staff called the donor and spoke with the donor about the nature of MHPC's work. It is the MHPC staff's belief that the donor was aware that the organization's work was not political, nor engaged in express advocacy – but rather that the donor's contribution was for general support of MHPC's role in strictly research and education efforts

(2) *Has the MHPC solicited any contributions or other funds in connection with the TABOR initiative?*

No. However, MHPC has mentioned its TABOR related work in its general fundraising activities. For example, the enclosed fundraising letter, marked as Exhibit A, mentions MHPC's work related to TABOR. It should be noted that though the letter is dated October 18th, it did not go out until after November 7th and no contributions were received as a result of the letter before November 7th. Also, the letter was only sent to existing MHPC members.

Jonathan Wayne, Executive Director
December 4, 2006
Page 5

- (3) *Is the November 6 letter from Bill Becker a form letter used by the MHPC to thank donors for contributions or other funds given to promote TABOR?*

No. Enclosed, marked as Exhibit B, is a copy of the form letter used by MHPC to thank contributors. As you can see, changes were made to the regular form letter to recognize Mr. Briney's expressed interest in MHPC's work related to TABOR. It is MHPC's practice to alter the general form letter as a result of areas of interest mentioned by the donor.

- (4) *Was part of MHPC's mission in 2006 to promote TABOR, as stated in Mr. Becker's November 6 letter?*

The language contained in the November 6 letter was a result of changing the usual form letter which states "we will use [your donation] to advance our mission of promoting free markets and conservative public policy solutions that will benefit all people of Maine."

MHPC's mission, as stated on its application for 501(c)(3) status is:

The Maine Heritage Policy Center is a research and educational organization whose mission is to formulate and promote conservative public policies based on the principles of free enterprise; limited, constitutional government; individual freedom; and traditional American values--all for the purpose of providing public policy solutions that benefit the people of Maine.

MHPC's staff pursues this mission by undertaking accurate and timely research and marketing these findings to its primary audience: the Maine Legislature, nonpartisan Legislative staff, the executive branch, the state's media, and the broad policy community. MHPC's products include publications, articles, conferences, and policy briefings.

The Maine Heritage Policy Center researches and formulates innovative and proven conservative public policy solutions for Maine in three general areas:

*Economy/Taxation
Education
Health Care*

Governed by an independent Board of Directors, The Maine Heritage Policy Center is a nonprofit, nonpartisan, tax-exempt organization. MHPC relies on the generous support from individuals, corporations, and foundations, and does not accept government funds or perform contract work.

A more abbreviated version of MHPC's mission appears on its publications:

The Maine Heritage Policy Center is a 501 (c) 3 nonprofit, nonpartisan research and educational organization based in Portland, Maine. The Center formulates and promotes free market, conservative public policies in the areas

Jonathan Wayne, Executive Director
December 4, 2006
Page 6

of economic growth, fiscal matters, health care, and education -- providing solutions that will benefit all the people of Maine. Contributions to MHPC are tax deductible to the extent allowed by law.

MHPC believes that its work related to the Maine Taxpayer Bill of Rights, which was detailed in my October 26th letter and in testimony to the Commission, is in keeping with this mission.

Allegations contained in Carl Lindemann's November 27th letter

Mr. Lindemann's allegations of "criminality," "willful deceit," and "material false statements" are not worthy of a response. The alleged "new evidence" provided by Mr. Lindemann is dated after my letter of October 26th and after the October 31st Commission Meeting. Therefore, nothing contained in the documents is relevant to the facts as they existed on October 26th or October 31st. More importantly, for the reasons stated above, the documents do not substantively contradict the position previously advanced by MHPC.

Mr. Lindemann's complaints to the Commission are just one part of his long running campaign against MHPC. Previously, he has filed complaints against MHPC with the Internal Revenue Service which were dismissed. His more recent actions, which include what appears to be an attempt to entrap MHPC into accepting what he believes is an illegal contribution and written attacks against me, Bill Becker, Commission staff, and members of the Commission, go well beyond what should be considered acceptable behavior by someone appearing before the Commission. A good faith disagreement on the meaning of the law should not result in such personal attacks as part of a proceeding before a regulatory board. The Commission should also consider what could result if it takes action based on one party's apparent attempt to lure an opposing party into what the first party sees as a campaign finance violation.

I will be in attendance at the Commission's December 12th meeting, along with MHPC President and Chief Executive Officer Bill Becker. If I can be of assistance by providing additional information or answering additional questions before the meeting, please let me know.

Very truly yours,



Daniel I. Billings
e-mail: dbillings@gwi.net



October 18, 2006

Dear :

The Maine Heritage Policy Center continues to educate Maine people on the value of a strong economy and the need for fundamental reforms in the way we operate our state. In addition to authoring THE TAXPAYER BILL OF RIGHTS, we've completed our latest publication, the *Maine Economic Atlas*. This comprehensive book provides an objective look at Maine at the municipal level, providing lawmakers, schools and the media with a tool with which to make informed policy decisions. The Atlas provides statistics on demographics, education, economics, health care and taxation and it's available for purchase by calling our office at 207-321-2550 or on our Web site at www.mainepolicy.org.

As the author of THE TAXPAYER BILL OF RIGHTS, we believe that this initiative provides a road map to jump-start Maine's economy. With only a few weeks until the election, we are in a fight for Maine's economic life. As you are aware, Maine has the highest property taxes and the highest state and local tax burden in the country. Our economy continues to struggle. In 2005, Maine was just one of two states to see a decline in economic activity, as reported by the Federal Reserve Bank of Boston. Louisiana, which was ravaged by hurricane Katrina, was the only other state to see a decline. It is more important than ever to educate Maine citizens about the challenges we currently face.

We understand that the economic pie is shrinking. A large part of the problem has been Maine's highest-in-the-nation tax burden, driven by out-of-control government spending. One way to address that problem is through an effective "Tax-and-Expenditure Limit" such as Maine's proposed TAXPAYER BILL OF RIGHTS. Such responsible public policy encourages Maine businesses to remain in the state and grow, thus creating more Maine jobs and higher incomes for Maine workers. With Maine's per capita tax burden growing 50% faster than the rate of inflation, we must act now and work to stop Maine's

spending frenzy. Since January 2003, government jobs have grow at more than twice the rate of private sector jobs. This is not an investment in Maine's future. MHPC is digging out the facts every day and working hard to promote responsible public policies based on facts and evidence, not emotions, and we need your support.

Maine has seen a decline of forty thousand school children in forty years – this is an alarming and startling figure. THE TAXPAYER BILL OF RIGHTS addresses this with reasonable increases in local education spending. By creating more jobs and attracting people to the state, we can change the fact that we have the second-lowest birth rate in the country. This will reverse the decline of school enrollment, thus strengthening our schools.

In order to be successful, we are asking for your financial investment. Your tax-deductible contribution can be made by returning the enclosed donor envelope with a check or credit card information. Or, simply go online to our Web site at www.mainepolicy.org and click on "Donate Online" to make a secure donation via credit card. Please consider a gift to MHPC today!

THE TAXPAYER BILL OF RIGHTS is the only public policy in front of Maine voters or our legislators that is guaranteed to reduce Maine's tax burden and ensure that government does not grow faster than the peoples' ability to pay. It is a reasonable solution for Maine citizens and I thank you for being part of the solution in helping to solve Maine's economic challenges and for your ongoing investment in Maine's future.

Please find enclosed two new Maine Heritage Policy Center publications and an editorial on how the media has grasped the *Maine Economic Atlas*. I hope that you enjoy reading this material and I welcome your feedback at wbecker@mainepolicy.org. Thank you again.

Sincerely,

Bill Becker

President and Chief Executive Officer

FROM : MAINE HERITAGE POLICY CENTER

FAX NO. : 2077734385

Nov. 29 2006 04:59PM P2



November 29, 2006

Name
Address
City, State Zip

Dear Name,

On behalf of the Board of Directors, please accept my sincere thanks for your very generous contribution of \$0.00 to The Maine Heritage Policy Center. We are extremely grateful for this donation, and will use it to advance our mission of promoting free market and conservative public policy solutions that will benefit all people of Maine.

Maine remains in a precarious position today. The state continues to run significant budget shortfalls resulting in well-publicized debates on what program or service must be cut. Our state and local tax burden is the highest in the nation. Our highest marginal income tax rate remains one of the highest in the nation with one of the lowest thresholds. Our Medicaid program is one of the largest, fastest growing, and most costly Medicaid programs in the nation. Our business-friendliness is ranked near the bottom of all states, and our economic freedom index is similarly poor. All this is additionally burdened by the Governor's questionable and unsustainable Dirigo Health initiative.

Yet, there is another way for Maine. Our vision at The Maine Heritage Policy Center is that Maine becomes a state that embraces the free markets by implementing public policies that help, rather than hinder, job creation and retention. Lowering the overwhelming state tax burden, putting a spending cap on all levels of government spending, promoting competition in the health insurance market, and putting the patient, rather than the government, back in charge of their health care choices – these are each examples of the policies that The Maine Heritage Policy Center researches, analyzes, and promotes.

Our long-term goal is to dramatically alter Maine's future through a paradigm shift that will move the State away from its 30-year drift toward a culture of dependence. Our efforts are to redirect Maine's public policies to create a culture of entrepreneurship and economic growth. Immediately lowering Maine's overall tax burden and excessive health insurance premiums are both immediate goals of the Center. Until we are seen as an equal to other states, Maine will never be able to attract real and sustained business development and economic growth.

Thank you for joining this effort to help our leaders understand the need for genuine reforms in the way Maine operates – and for providing them with viable and proven policy solutions that will change Maine's future to one of opportunity and promise.

Please do not hesitate to contact me at 207-321-2550 with any questions or suggestions. Thank you again for your support – I look forward to seeing you at a Maine Heritage event very soon.

Yours truly,

Bill Becker
President and Chief Executive Officer

PROCEEDINGS

Dec. 20, 2006
Transcript

1
2 Policy which both were engaged in express
3 advocacy against the Taxpayer Bill of Rights,
4 unlike the Maine Heritage Policy Center. Let
5 me address the recent allegation of MHPC's
6 accepting TABOR contributions specifically.
7 MHPC accepts donations that support our
8 overall mission, to research, analyze and
9 promote conservative and free-market public
10 policy solutions that will benefit the people
11 of Maine. We do not have segregated funds
12 for any public policy about which we are
13 researching. As an educational and research
14 organization we have donors who on their own
15 free will, will support different aspects of
16 our work. Some support our healthcare
17 analysis. Some support our data collection.
18 Some will come to support our education
19 reform efforts. This is very similar to a
20 school that accepts money from a donor that
21 sends it in and says please use this to
22 support your music program, or your athletic
23 program, or your science program. That's a
24 similar situation at MHPC. We have donors
25 who support different aspects of our work.

1

PROCEEDINGS

108

2 When we were first asked about our
3 contributors, we answered quickly and
4 accurately that we do not take any
5 contributions that are contingent upon any
6 action on the Taxpayer's Bill of Rights. I
7 did not, nor do I believe that any of the
8 donors who referenced TABOR in their donation
9 or notes, thought that they were getting a
10 lawn sign, a bumper sticker, or a political
11 ad. They were not getting express advocacy.
12 Instead they were supporting our ongoing work
13 on spending limits including research,
14 analysis and speaking publicly about Maine's
15 economy and the positive role that TABOR
16 could play. In fact, and not surprisingly,
17 there were a number of donors who knowingly
18 support MHPC's overall mission and who at the
19 same time made separate political
20 contributions to the Taxpayer Bill of Rights
21 campaign. We have never claimed that we do
22 not talk about TABOR. Of course we do. We
23 wrote the model legislation. We believe that
24 it would be a good policy solution for Maine.
25 We were in the media in 2004 talking about

1

PROCEEDINGS

109

2 this model legislation about the same time
3 that other organizations were expressly
4 advocating a known position on the tax gap,
5 otherwise known as the Pulaski [phonetic]
6 position, without filing the necessary
7 1056(b) forms. So even if four donors
8 referenced TABOR on their donations, they
9 were not supporting the initiative campaign,
10 nor the express advocacy of it. There was a
11 separate PAC organization, organized to
12 advocate the passage of the TABOR referendum.
13 Donors to MHPC were supporting our research,
14 our analysis and yes our educational efforts
15 regarding this specific spending reform
16 proposal. We just received a publication
17 from, uh, an organization that was writing
18 about the Maine Heritage Policy Center and
19 I'll just read this sentence to you. It says
20 MHPC, and this was a few months ago, is the
21 principal author and information source for a
22 pending citizen's initiative referendum that
23 would create a statutory Taxpayer's Bill of
24 Rights for Maine. And I think that's a fair,
25 accurate representation. We wrote it. We

1

PROCEEDINGS

110

2

were considered to be the experts on it. It

3

was a clear delineation when the press

4

called, if they called me, they knew--or any

5

of my staff, they knew that they were asking

6

a policy question about the impacts of a

7

specific section of the law, or what our

8

analysis was going to show. I remember a

9

case where a news anchor actually called me

10

and I can't remember if I was in the airport

11

or if she was in an airport, but we were

12

talking about a very specific section within

13

the law. It had nothing to do with the

14

campaign and the advocacy there, it was

15

talking about the law and what it meant. We

16

had a very limited time to respond to the

17

Ethic Commission request for information in

18

October. We answered the questions based on

19

what we knew about our operations. That we

20

did not solicit any contributions to support

21

activities related to TABOR, that we did not

22

segregate funds for TABOR related activities

23

and none of the activities were tied to or

24

dependant upon receiving contributions. We

25

never considered at that time that the

1

PROCEEDINGS

111

2

comment sent with checks would be considered

3

information of importance to the Commission

4

when such comments do not control how the

5

funds were used. When the further additional

6

issue was raised, we did review our

7

contributions in 2006, and have since

8

provided the information requested based on

9

our more substantial analysis. I would point

10

out that at this point no other organization

11

that either did file a 1056 or did not file a

12

1056(b) has been asked to engage in such a

13

review of their contributions. I'd be happy

14

to answer any questions you might have.

15

HON. KETTERER: Uh, thank you. Uh,

16

questions by Commission members, uh, do you

17

have any?

18

MS. THOMPSON: Uh.

19

HON. KETTERER: How about you?

20

MS. THOMPSON: None [unintelligible].

21

HON. KETTERER: Okay. Uh, Vin?

22

MR. CASSIDY: I'm going to save

23

[unintelligible].

24

HON. KETTERER: Okay. Mike?

25

MR. FRIEDMAN: Yeah I have some. Uh,

1

PROCEEDINGS

120

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Moody for MHPC. That happened in regards to Maine Taxpayer Bill of Rights and in other issues. I'm sure it will happen in the next few months as things get going on the legislature. Um, you know, those are organizations with a point of view that are involved in a number of different issues. Um... and I don't think just because they get involved in speaking out on a referendum, I don't think that transforms the organization into a PAC.

MR. FRIEDMAN: Mr. Becker, um, we had some discussion this morning about Mr. Briney's check. I'm sure you recognize that name by now. And I think you just indicated that we shouldn't be... uh, I guess overwhelmed by the fact that you responded because the letter contains no comment as to how the funds are going to be used. That means you wanted to give us the impression that these contributions are now made, go into a general fund and you spend them in accordance with, uh, the purposes that you deem important to the entity, is that right?

1

PROCEEDINGS

121

2

MR. BECKER: That's correct.

3

MR. FRIEDMAN: You do acknowledge receiving that \$125 check.

4

5

MR. BECKER: I do.

6

MR. FRIEDMAN: Did you receive any others in addition to that one that you recall? Any other checks from other individuals?

7

8

9

10

MR. BECKER: During—we have hundreds of donors.

11

12

MR. FRIEDMAN: Okay. Were any--

13

14

MR. BECKER: [i] But if there were any that specifically referenced TABOR, as we filed before, uh, we found, uh, four checks that specifically referenced TABOR. With whom, I did not have a conversation with the contributor directly. Two additional checks with whom I did have contribution, uh, conversations with the donor directly under—and very well understood—they understood that our role was not as an express advocacy organization, uh. One donor said well I want to support some of your work, so keep \$500 of it, send \$2,500 back to the original donor.

15

16

17

18

19

20

21

22

23

24

25

1

PROCEEDINGS

122

2

Uh, and the other donor understood

3

completely. So four specifically was that

4

with whom I did not have a conversation with,

5

totaling \$975.

6

MR. FRIEDMAN: And did they all get the

7

same kind of letter in return as Mr. Briney

8

did?

9

MR. BECKER: Three got that letter and

10

two got a different letter with a hand

11

written note at the bottom of me—uh, from me.

12

MR. FRIEDMAN: Let me just read to you

13

one thing and I'd like your comment on it.

14

Well let—let me read the first paragraph. On

15

behalf of the Board of Directors, please

16

accept my sincere thanks for your generous

17

contribution of \$125 to the Maine Heritage

18

Policy Center. We are grateful for this

19

donation and will use it to advance our

20

mission of promoting the Taxpayer Bill of

21

Rights a solution that will benefit all

22

people of Maine. Was there any particular

23

need... to use the word promote? Uh, what—what

24

went into the—into framing the sentence in

25

that way. Because it looks to me like you

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

123

planned to spend that \$125 in promoting
TABOR.

MR. BECKER: Uh, the quick answer to
your question is regarding, um... uh, an
acknowledgement letter, whether it be any
organization, you try to acknowledge that the
donor has indicated a specific level of
interest. And ours, uh—it's let it—uh,
indicated a specific interest in our work on
the Taxpayer Bill of Rights. Uh, that letter
was then tailored and conformed to that
donor's specific, uh, message. I did not
know that the word promote was going to
become such a—such a word that we needed to,
uh, to look at so closely. Uh, but I would
say that the mission of the organization is
to formulate and promote... free-market
conservative public policies that will
provide benefit to all the people of Maine.
So promote was not a word that we had shied
away from, ever before uh, in terms of our—in
terms of our, uh, our work.

MR. BILLINGS: And—I think if you look
at Exhibit that was provided in Mr.

1

PROCEEDINGS

124

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Briney's—I mean Mr. Lindemann provided again this morning, the—the—the general fundraising letter, um, uses in the first paragraph, the second sentence, we are extremely grateful for this donation. We will use it to advance our mission of promoting free-market and conservative public policy solutions that will benefit all people of Maine. I think what we have here is, the danger of cut and paste in the computer age. Um, it appears to me and that what happened here is a couple of letters that were, uh, available digitally, they were [Coughing] and pasted together to come up with this fund raising letter without a whole lot of thought about how somebody might look at it in a proceeding like this. And uh, I think most attorneys have run into this, so, cut and paste problem with using a, uh, pleadings that you make, you grab something from another pleading and cause you problems. And I think that promoting word is in the general fund raising letter and what happened here is that a change was made to recognize the area of interest that the

1

PROCEEDINGS

125

2

contributor mentioned with the contribution.

3

MR. FRIEDMAN: So, you are in agreement with me though, that if you had the

4

5

opportunity--

6

MR. BILLINGS: [Interposing] Oh.

7

MR. FRIEDMAN: --to review the letter of Mr. Briney you would have changed that first paragraph.

8

9

10

MR. BILLINGS: Absolutely. And I'd recog-and I said that to members of the press when this-this matter was first taken-uh, brought to my attention. Um, and I think, uh, this also supports or contradicts the idea that somehow this-our response is in, in and the way we've provided information to the Commission has been some sort of a clever, calculated, uh, strategy put together by me, um, I was so clever and calculated I think I would have dealt with this differently. I think frankly, I wasn't concerned about their fund raising letters, you know, this came to our attention, um, when it was brought to the attention of the Commission by others. And again, I wouldn't have sent the letter, um,

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

PROCEEDINGS

126

2

actually even-though I'm not sure if I'd

3

looked at in August before anyone had raised

4

this issue about, um, maybe MHFC was a PAC if

5

it would have set off bells and whistles in

6

my head. Um... but certainly once the issue

7

came before the Commission and the

8

allegations were being made, if I'd looked at

9

it, the letter wouldn't have gone out. But,

10

you know, they're not running fund raising

11

letters or thank you letters by their

12

attorney but I don't think they really need

13

to. But certainly-it certainly gives an

14

impression that, um... I wouldn't want to give

15

and I don't think fairly represents what the

16

organization has been doing.

17

MR. FRIEDMAN: Are you familiar with

18

the, uh... the works of the Maine Economic

19

Research Institute?

20

MR. BILLINGS: Uh, generally.

21

MR. FRIEDMAN: Okay. Are you familiar

22

enough with what they do in comparing it to

23

this organization, to indicate to us whether

24

there are any differences, at least with

25

regard to 1056(b) filing?

1

PROCEEDINGS

151

2

what are the kind of communication and

3

activities that the--an organization is

4,

related to. And you've had all sorts of

5

evidence, um, before you related to MHPC.

6

Um, and I think the staff has looked at--at

7

information and applied the--the definition in

8

Maine law, um, to reach the recommendation

9

that MHPC is not a PAC. Um, and... I think

10

that's--that's the kind of analysis you need

11

to--to do and um, but sort of theoretically

12

could you start out as not being a PAC and

13

become a PAC, certainly.

14

[Off mic]

15

HON. KETTERER: Any follow-up questions?

16

MR. FRIEDMAN: No.

17

HON. KETTERER: Okay. Vin?

18

JONATHAN WAYNE: I have one follow-up

19

question.

20

HON. KETTERER: Sure.

21

JONATHAN WAYNE: [Skip in audio] Sorry.

22

for grilling you but I just wanted to go back

23

to the explanation you had about Dan

24

Billing's letter on October 26th, when he was

25

pretty categorical in his statement that, um...

1

PROCEEDINGS

152

2

that the Center hadn't received any

3

contributions to influence, um, a referendum

4

campaign. Let me just read this sentences

5

again. The Maine Heri-The Maine Heritage

6

Policy Center does not solicit or receive

7

funds that are predicated on the Center's

8

taking a position on any issue and it has not

9

received, solicited, or received

10

contributions--any contributions to influence

11

the outcome of a ref-referendum campaign.

12

And that was following--that was in response

13

to a letter that I sent where--where I said

14

please clarify whether the Center has

15

received any funds from any source

16

specifically in connection with the TABOR

17

initiative. So, I mean, if you're aware, as

18

you said, that donors give contributions to

19

support different aspects of your work, why

20

be--I'm just want to see that the Commission--

21

you--you undertake to file a 1056 report, um,

22

I just want the Commission and--and the public

23

to know that you've shown the proper care in

24

submitting accurate information to the

25

Commission. So, um, why would you--I just

1

PROCEEDINGS

153

2

don't understand, um, why it would never

3

occur to you that when people say... great work

4

on TABOR, or mention TABOR in any way, isn't

5

that a contribution that's being given to

6

your organization well to--in connection with

7

TABOR-- ?

8

MR. BILLINGS: [i] Well.

9

JONATHAN WAYNE: --Well why wouldn't you

10

just be a little bit more--you haven't done a

11

necessary investigation or... almost

12

[Coughing], I mean I just don't understand.

13

MR. BILLINGS: Well--well first I wrote

14

the letter and--and influencing the outcome of

15

a referendum to me has--has meaning that may

16

not have the same meaning to you. But the

17

kind of questions that I asked, in preparing

18

that letter, was what did you do. What have

19

you been involved in, uh, related to TABOR?

20

Uh, and the kind of things that Bill

21

described to me... in my opinion didn't meet

22

the definition of trying to influence the

23

outcome of an election. Because I--I take the

24

view and... and that--that was telling people

25

how to vote, and um, specifically trying to

1

PROCEEDINGS

154

2 influence the vote. Um, and I did
3 specifically ask at the time, um, have you
4 done, uh, you know, fund raising specifically
5 to support your TABOR activities? Do you
6 have a segregated fund to promote TABOR. Um,
7 then this issue of the Briney contribution
8 came up, I said okay. Hold on. You know, we
9 weren't looking at it the same way that
10 others were apparently looking at. Um, you
11 know, why don't you go back through all your
12 records and see if anybody else's donations
13 were kind of promised. And that's what we've
14 done. Um, but again, I... looking at some of
15 the other organizations and how they filed, I
16 wonder, you know, if AARP has ever gone
17 through and say, you know, geeze, has anybody
18 ever sent them a check saying I'm glad you're
19 fighting against the Taxpayer's Bill of
20 Rights. Maybe not, but-but I don't think
21 anybody's asked them that questions. They
22 filed a report saying that they received no
23 contributions. Um, I suspect that they look
24 at it the same way we do. That they don't,
25 uh, they don't have a segregated fund, uh,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

155

taking contributions specifically for
[unintelligible] activity.

MR. CASSIDY: Uh, the other question I
had was on this, uh... fund raising letter
that's dated October 18th, but which you said
wasn't sent out until after—I'm sorry did you
want to add something?

MALE VOICE: I was just whispering.

MR. CASSIDY: If you know, you described
it in your letter as a general fund raising
letter, but I noticed that the Taxpayer Bill
of Rights is mentioned in it in every single
paragraph. So I'm wondering... to the extent
you're willing to answer this, uh, did you
send out similar general fund raising letters
prior to the election, and—which have TABOR,
TABOR, TABOR mentioned, and if you got
contributions in response to these letters,
would it be fair for someone to think those
were contributions made to promote your TABOR
work, or... or would those be categorized as
general fund type of contributions.

MR. BILLINGS: Well I'll let Bill answer
the factual question about previous fund

1

PROCEEDINGS

156

2

raising letters. Uh... as far as the-but I do

3

think it's important that-to recognize that

4

that letter was-was sent to existing members,

5

um, I do think that, um, that's an important

6

contact that the law does, um, look at them

7

and communications in a slightly different

8

way, and [unintelligible] to the Center, sort

9

of a [unintelligible] of fund raising

10

activities. As far as other letters..

11

MR. BECKER: Yeah. Yeah I would, um.. I

12

would say this. First of all that went to

13

our members. It was not a general-it-we

14

understand when the State says general fund

15

raising letter, a general fund raising letter

16

to our own members, uh, which I think clears-

17

makes a distinction in the law as opposed to

18

sending it out to a broader direct mail list.

19

Uh, second of all, uh, nowhere in there,

20

though we're mentioning it, obviously, I

21

mean, again, we were out there talking about

22

it because we thought it was a good idea

23

then. We think it's a good idea now. Um, a

24

lot of our supporters, a lot of our members

25

agreed with us and.. what a better time to

1

PROCEEDINGS

157

2

raise money than when you're, uh, in the-

3

talking about it publicly. Obviously we are

4

out there invited to many forums, many

5

speeches that we were giving and-and-and

6

wanted to do that. Uh, it's not unique. Uh,

7

I have in front of me a nice letter from the

8

Maine Center for Economic Policy, May 30th,

9

2006, uh, in which, uh, it's more expressly

10

advocating a-a-a-uh, donation to support

11

their efforts regarding the Taxpayer Bill of

12

Rights. They may have only sent that to

13

their members as well. Um, but again,

14

organizations are out there talking about.

15

The difference is of course, we weren't

16

expressly advocating our position. Even in

17

that letter.

18

JONATHAN WAYNE: That's all

19

[unintelligible].

20

HON. KETTERER: Phyllis do you have a

21

question?

22

MS. GARDINER: I do [unintelligible].

23

HON. KETTERER: Well why don't you ask

24

and then help the Commission in its work

25

instead of...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

158

MS. GARDINER: [unintelligible] Well it's not helpful [unintelligible]. You mentioned, um, Bill, that you have hundreds of contributors, [unintelligible] what I'm trying to get at is what effort did you actually undertake to review [unintelligible] contributions received [unintelligible] whether, um, Bill [unintelligible] to targeted [unintelligible].

MR. BECKER: The arrival of the Briney information brought by our friends, uh, in the media, um, that morning a few weeks ago. Um, we undertook to review all contributions. Uh, and go back and check checks and not only just checks, um, but also go find the actual donation envelopes and find if someone actually--what someone said on the actual donation envelope. That's the review that we've undertaken.

MR. BILLINGS: And you're also--I believe you're reviewed--

MR. BECKER: [i] Every thank you letter that went out. As well. Right [Coughing] I mean they're all on individual donors.

1

PROCEEDINGS

159

2

[Coughing]

3

MR. BILLINGS: I'm not sure how we got either the four or the six that we talked about, um.

6

MS. GARDINER: And did you, um, when did the October 18th, letter go to the members for fund raising.

7

8

9

10

11

12

13

14

15

16

17

MR. BECKER: It appears to have gone after the election. Um, the only reason I know that is because mine arrived after the election. Um, there was a problem with the mail house. Apparently there was lots of mail going out, um, right before the election and... every reg--everybody that we talked to, uh, has said, hey did you know we got a letter after November 7th.

18

19

20

MS. GARDINER: Uh, your intention was to get it out before--

21

22

MR. BECKER: [i] Sure.

MS. GARDINER: --did you get it to a mail house?

23

24

25

MR. BECKER: To our--to our, um, we got it to the printer. And then they were moving along the process.

1

PROCEEDINGS

160

2

MS. GARDINER: Do you know when you got it to the printer?

3

4

MR. BECKER: Um, October 21st.

5

6

MR. BILLINGS: The intent obviously was to get it out before the election.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MS. GARDINER: And did you--have you given the Commission copies of all of the fund raising letters you've given to other folks. Uh, if you haven't, that [unintelligible] the Commission members would be, information would be, or [unintelligible].

MR. BECKER: I believe we have. I'd have to back and see what sort of fund raising letter--I mean you're talking about direct mail to our members within--

MS. GARDINER: [i] Any--to any audience. And then--

MR. BECKER: --I'd have to go back and look, again. I don't have--

MS. GARDINER: [i] So to this point you haven't--

MR. BECKER: --made [unintelligible].

MS. GARDINER: You just submitted that

1

PROCEEDINGS

161

2

category.

3

MR. BECKER: If we were asked, we would be happy to go back, uh.

4

5

MS. GARDINER: Um, in-so I take it from your review of the contributions, were there any contributions you received that you turned over to the PAC, contributions of any sort?

6

7

8

9

10

MR. BECKER: No.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. BILLINGS: And I think that's an important distinction that maybe there's a misunderstanding about my place in that. Frankly, if MHPC did get contributions and pass them on to that, that would be an issue. What happened in the case of, uh, the one donor, is Bill knew that donor and was concerned that the [Skip in audio] donor might be, um, confused about the different roles. So Bill called the donor, explained there's a separate organization that's running the campaign, this is what we do. Um, and the donor said oh, well send a-you can keep \$500 to support that work, send me back the \$2,500. I mean we assume that he

1

PROCEEDINGS

162

2

may have made a donation to the--to the PAC,

3

but we haven't done [unintelligible]

4

researched it and Bill didn't pass along the

5

money, it went back to the donor. Once it

6

goes back to the donor, the donor's money,

7

they can do what they like with it. I don't

8

think that, um, makes, uh, MHPC a transfer

9

mechanism that was suggested this morning.

10

And frankly I think it shows that a non-

11

profit is concerned about, um, making sure

12

that the donations that it accepts, um, were

13

intended for that organization.

14

MS. GARDINER: And is that the only

15

instance you came across in your review of

16

the records?

17

MR. BECKER: It was in addition--there

18

was one other, uh, donation in which, uh, I

19

had--actually called the donor, um, given the

20

size--it was a \$1,000 donation. Called the

21

donor, uh, had a conversation with the donor

22

about our role and the donor fully understood

23

what our role was as opposed to a PAC's role.

24

MS. GARDINER: [Inaudible, background

25

noise]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

163

MR. BECKER: They supported our research work and then [Skip in audio] work.

HON. KETTERER: The MHPC work.

MS. GARDINER: So you kept the donation.

MR. BECKER: Yes. Correct.

MR. BILLINGS: And—and that's also is discussed in my December 4th letter. It's not a new contribution that we haven't provided before.

MS. GARDINER: Okay. And [unintelligible]. Um...setting aside your arguments about express advocacy, for the moment [unintelligible]. Express advocacy is not relevant to the determination of the allegation initially reported [unintelligible] subpoena. Um, do you acknowledge that MHPC made expenditures in 2006 to promote or to influence TABOR, as a ballot question?

MR. BECKER: I guess my questions would be to define an expenditure. Would be—what is the definition of expenditure. Looking at the 1056 (b) reports that were filed, it—and understanding that certain organizations

1

PROCEEDINGS

164

2

[Coughing] leaving one of them that were

3

holding forums, I was debating them. They

4

were attending events and forums. So we

5

didn't spend any money. I-I had nothing to

6

point to.

7

MS. GARDINER: I'm not asking you to-I-

8

I'd like you to-prior to answering my

9

question, to know what other organizations

10

did. They may or may not have reported

11

appropriately. Um, but I'm just asking

12

whether if you-if you leave the express

13

advocacy test out of it... um, and you go with

14

the language of 10565(b), expenditures for

15

the purpose of promoting or influencing in

16

any way a ballot question.

17

MR. BILLINGS: Then you also have to

18

look at 1052--

19

MS. GARDINER: [i] I understand-I did--

20

MR. BILLINGS: --at the definition

21

that's--

22

[Crosstalk]

23

MS. GARDINER: Yes. I'm-I'm--

24

MR. BILLINGS: [i] It's basically asking

25

that--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

165

MS. GARDINER: --I'm just--

MR. BILLINGS: --a layman can't make a legal conclusion.

MS. GARDINER: I'm only asking--actually what I was asking you simply whether [Sneeze] the organization, um... represented by--and Bill, either one of you can answer, acknowledges that, under expenditures to, even if you didn't expressly advocate, if you made expenditures to promote or influence TABOR. I'm simply trying to understand if we have a dispute about this. It could be a factual dispute. It could be a legal dispute. I'm [inaudible] simply acknowledge there's something to dispute.

MR. BILLINGS: Well my problem is I don't know [Coughing] where to draw that line. Um, I do think someone could--I mean we've been forthcoming about what MHPC has done. And I think it--it, I mean--I think someone could look at that and--and reach that conclusion. Um, that's not the conclusion that we reach because MHPC sees all--all its activities in 2006 for the purpose of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

166

advancing its, um, overall mission. Um... but I think that's-um, somebody else could, um... look at those activities and reach a different conclusion. But it wasn't the purpose of MHPC activities to try to influence the way people voted on the referendum.

MS. GARDINER: Is your position is very different from how people who are donors [unintelligible]?

MR. BILLINGS: Obvious-obviously Bill said that he thought was a good idea. They continue to think it's a good idea but they stopped short of telling people how to vote.

MS. GARDINER: So your [unintelligible] express it, your position.

MR. BILLINGS: Well. I-I think if you look at 1052, it talks about, um... it talks about promoting the passage or defeat of a referendum question in the expenditure definition and I think that-uh, and the exact same language is express advocacy, but it certainly implied that you're telling people how to vote. It's taking a-you're taking a

Title 21-A, §1056-B, Reports of contributions and expenditures by persons

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we do require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 122nd Legislature, and is current through December 31, 2006, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office CANNOT perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

§1056-B. Reports of contributions and expenditures by persons

Any person not defined as a political committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the clerk of that municipality. [1999, c. 729, §8 (new).]

1. Filing requirements. A report required by this section must be filed with the commission according to a reporting schedule that the commission shall establish that takes into consideration existing campaign finance reporting schedule requirements in section 1059. [1999, c. 729, §8 (new).]

2. Content. A report must contain an itemized account of each contribution received and expenditure made aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name of each contributor, payee or creditor. Total contributions or expenditures of less than \$500 in any election need not be itemized. The report must state whether the purpose for receiving contributions and making expenditures is in support of or in opposition to the ballot question. [1999, c. 729, §8 (new).]

3. Forms. A report required by this section must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. [1999, c. 729, §8 (new).]

PL 1999, Ch. 729, §8 (NEW).

Candidate
Law**Title 21-A, §1012, Definitions**

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we do require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 122nd Legislature, and is current through December 31, 2006, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office CANNOT perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

§1012. Definitions

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

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

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

2. Contribution. The term "contribution:"

A. Includes:

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

[1995, c. 483, §3 (amd).]

B. Does not include:

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

PAC Law

Title 21-A, §1052, Definitions

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we do require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 122nd Legislature, and is current through December 31, 2006, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office CANNOT perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

§1052. Definitions

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

1. Campaign. "Campaign" means any course of activities for a specific purpose such as the initiation, promotion or defeat of a candidate or question, including:

A. The referendum procedure under the Constitution of Maine, Article IV, Part Third, Section 17; [1985, c. 161, §6 (new).]

B. The initiative procedure under the Constitution of Maine, Article IV, Part Third, Section 18; [1985, c. 161, §6 (new).]

C. An amendment to the Constitution of Maine under Article X, Section 4; [1985, c. 161, §6 (new).]

D. Legislation expressly conditioned upon ratification by a referendum vote under the Constitution of Maine, Article IV, Part Third, Section 19; [1989, c. 504, §§21, 31 (amd).]

E. The ratification of the issue of bonds by the State or any agency thereof; and [1989, c. 504, §§21, 31 (amd).]

F. Any county or municipal referendum. [1995, c. 483, §17 (amd).]
[1995, c. 483, §17 (amd).]

2. Committee. "Committee" means any political action committee, as defined in this subchapter, and includes any agent of a political committee.

[1985, c. 161, §6 (new).]

3. Contribution. "Contribution" includes:

 A. A gift, subscription, loan, advance or deposit of money or anything of value made to a political action committee, except that a loan of money by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included; [1985, c. 161, §6 (new).]

B. A contract, promise or agreement, expressed or implied whether or not legally enforceable, to make a contribution to a political action committee; [1985, c. 161, §6 (new).]

C. Any funds received by a political action committee that are to be transferred to any candidate, committee, campaign or organization for the purpose of promoting, defeating or initiating a candidate, referendum, political party or initiative, including the collection of signatures for a direct initiative, in this State; or [2005, c. 575, §3 (amd).]

D. The payment, by any person or organization, of compensation for the personal services of other persons provided to a political action committee which is used by the political action committee to promote, defeat or initiate a candidate, campaign political party, referendum or initiated petition in this State. [1985, c. 161, §6 (new).]
[2005, c. 575, §3 (amd).]

FROM :

FAX NO. :

Dec. 20 2006 01:50PM P1

From: "Democracy Maine" <info@democracymaine.org>
 Reply-To: info@democracymaine.org
 To: [REDACTED]@hotmail.com
 Subject: TABOR Forecast: A FRAUD on Maine
 Date: Tue, 03 Oct 2006 14:35:07 -0400

<http://www.democracymaine.org/Portals/0/Skins/Blue_H-Menu_NB/people.jpg>

<[http://www.democracymaine.org/Portals/0/images/DemMaine_logo_\(cmyk\)\(contribution\).jpg](http://www.democracymaine.org/Portals/0/images/DemMaine_logo_(cmyk)(contribution).jpg)>

Dear Fellow Citizens,

Last week we learned the truth; TABOR is from out of state and harmful to Maine.

This week, Democracy Maine began its campaign against TABOR by running ads in Maine's major newspapers that expose TABOR for what it truly is - A FRAUD. TABOR will not do what it's supporters say it will. In-fact, TABOR will make tax cuts virtually impossible by allowing a small, one-third minority of lawmakers to prevent necessary reforms. Click on the image below to see Democracy Maine's ad against TABOR.

<[http://www.democracymaine.org/Portals/0/docs/DemMaine_TABOR\(PPH\).pdf](http://www.democracymaine.org/Portals/0/docs/DemMaine_TABOR(PPH).pdf)>

visit <http://www.stophurricanetabor.com/> to learn why TABOR is a fraud and dangerous for Maine

Democracy Maine needs your help to keep this ad in Maine newspapers. Help Democracy Maine
 <<http://www.democracymaine.org/>> defeat TABOR by donating \$100
 <<http://www.democracymaine.org/Default.aspx?tabid=57>> , \$50
 <<http://www.democracymaine.org/Default.aspx?tabid=57>> , or \$25
 <<http://www.democracymaine.org/Default.aspx?tabid=57>> , Click here to make a secure Online Contribution
 <<http://www.democracymaine.org/Default.aspx?tabid=57>> .

Thank you,

Jon Crasnick

Democracy Maine

Democracy Maine
 One City Center
 Portland, ME 04101

<<http://images.myngp.com/NGPClientData6---/img3534444.gif>>

Forward this message to a friend

<<https://www.myngp.com/ngpweb/app/tools/broadcast/broadcastforward.aspx?value1=3534444&value2=1319&value3=8031>>

To unsubscribe from this mailing list, click here

<<http://images.myngp.com/unsubscribe.html?mailid=NGPClientData6---3534444>>

Powered by NGP Software, Inc.

FROM :

FAX NO. :

Nov. 30 2006 09:06AM P2

----- Forwarded Message

From: Democracy Maine <info@democracymaine.org>
Reply-To: <info@democracymaine.org>
Date: Thu, 28 Sep 2006 16:14:30 -0400
Subject: TABOR: Not From Maine - PBS Special

Dear Fellow Citizens,

While supporters of TABOR claim that it is a "homegrown" Maine initiative, in reality, TABOR is political extremism from outside of Maine. TABOR is part of a national conservative movement supported by and secretly funded by far right extremists like Grover Norquist and Howard Rich.

This week, a PBS episode of NOW, investigates how organizations associated with New York billionaire Howard Rich and Americans for Tax Reform Director Grover Norquist are secretly providing major funding for TABOR-like ballot initiatives all across the United States. NOW also investigates the questionable tactics that have been used to get these initiatives on the ballot.

This special report strongly counters TABOR proponents' arguments that TABOR is a homegrown solution for Maine. Please view this investigation online at:

<http://www.pbs.org/now/shows/238/index.html> <<http://www.pbs.org/now/shows/238/index.html>>

Learn why TABOR is a national strategy being pushed in Maine by far right extremists who are not concerned with the interests of Maine citizens.

TABOR is a fraud and another incompetent solution from the far right.

Click here <<http://www.democracymaine.org/Default.aspx?tabid=57>> to make an online contribution of \$25 <<http://www.democracymaine.org/Default.aspx?tabid=57>> and help Democracy Maine <<http://www.democracymaine.org/Default.aspx?tabid=85>> spread the truth about TABOR.

Thank you,

Jon Crasnick

Democracy Maine

Democracy Maine
One City Center, 4th Floor
Portland, ME 04101

<<https://www.myngp.com/ngpweb/app/tools/broadcast/broadcastforward.aspx?value1=3461492&value2=1319&value3=8031>>

To unsubscribe from this mailing list, click here

<<http://images.myngp.com/unsubscribe.html?mailid=NGPClientData6--3461492>>

Powered by NGP Software, Inc.

<<http://www.ngpsoftware.com>>

----- End of Forwarded Message