

Agenda

Item #1



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

Minutes of the January 25, 2008, Meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Michael Friedman, Esq., Chair; Hon. David Shiah; Hon. Francis C. Marsano; Hon. Edward M. Youngblood, Hon. Mavourneen Thompson by telephone. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:03 A.M., Chair Michael Friedman convened the meeting.

The Commission considered the following items:

Agenda Item #1 Ratification of Minutes: December 7, 2007 Meeting

Phyllis Gardiner, counsel, reviewed a few word changes to Item #2. On motion by Mr. Marsano and seconded by Mr. Youngblood, the minutes as amended were adopted unanimously.

Agenda Item #2 Request for Waiver of Late-Filing Penalty/Gary C. Wood

Gary C. Wood withdrew his request for waiver.

The following agenda item was taken out of order, as Mr. Hughes had not yet arrived:

Agenda Item #4 Results of Staff Investigation/Lobbying for Maine Community Cultural Alliance

Mr. Wayne explained that in October the State Controller completed an audit of four state agencies that deal with arts and cultural matters. The controller was concerned that the Maine Community Cultural Alliance (MCCA) had hired a lobbyist and used public funds to do so and that a non-profit organization was formed to pay for the lobbyist fees. Mr. Wayne reminded the Commission that at the last meeting they had supported the staff looking into the matter, since there may have been lobbying performed which would require them to register with the Ethics Commission. Mr. Wayne further explained that the staff sent a letter to the lobbyists, Michael Saxl and James Cohen of Verrill Dana, LLP, outlining the staff's concerns

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and questions. They replied very thoroughly and willingly to the letter and provided exhibits of time summaries showing both lobbying services and non-lobbying services for MCCA. Mr. Wayne said they did provide some lobbying services, but a small portion. Mr. Wayne said the law only requires a lobbyist to register if the lobbyist has engaged in lobbying for more than 8 hours in a calendar month and has been compensated for that work. He also said lobbying means direct communication with a governmental official to influence legislation. Mr. Saxl and Mr. Cohen maintained that the amount of lobbying did not go over the eight hour threshold within a month. Mr. Wayne said that he and Mr. Lavin, Assistant Director, did go over to Verrill Dana and were given permission to look over the time records for Verrill Dana's work for MCCA. The records were kept in great detail and evidenced that Mr. Saxl and Mr. Cohen had a good understanding of what kinds of activities constitute lobbying. After reviewing the records for the busiest eight-month period, the staff felt confident that their records were accurate and that they were not required to register as lobbyists. Mr. Wayne said the staff believes that no further action is necessary. He also stated that the lobbyists were very cooperative and provided all information voluntarily.

Mr. Friedman restated the staff's recommendation that no further action by the Commission is required.

Ms. Thompson stated appreciation for staff's work and also the willing cooperation of Verrill Dana. She said that she thought the Commission should adopt the staff's recommendation. She questioned the current definition of lobbying, saying perhaps this area needs to be addressed. She expressed concern over an individual registering as a lobbyist, under the definition for eight hours; however, over a six month period that individual could lobby for seven hours and 59 minutes each month and not be considered 'lobbying' under our definition. She said her concern is there is nothing in the rules that says 'up to a number of minutes per legislative session.'

Mr. Wayne said the Legislature's intent was to have a threshold for when an individual has to register as a lobbyist. He said the intent was if lobbying did not reach eight hours in a month, then no disclosure or registration is necessary and that is how the law reads.

Ms. Thompson said this eight hour statute is concerning and needs to be looked at closer in her opinion.

Mr. Wayne said different points of view exist on the eight-hour threshold. Some lobbyists feel this is a loop hole and others are very diligent about not going over the threshold so clients do not have to pay the

\$200 registration fee. Mr. Wayne further stated that if the Commission thinks changes need to be looked at, it would be appropriate to solicit comments from lobbyists.

Mr. Youngblood said the same argument would take place no matter where the threshold was set. He said unless a particular individual is really abusing the statute, emergency legislation would not be possible.

Ms. Thompson would like to have further discussion at a future meeting. Mr. Wayne stated he could invite the lobbyists to comment and be present at that meeting.

Mr. Marsano said realistically, any legislation would not be submitted until 2010. He stated he agrees with Mr. Youngblood's statement regarding changing the threshold.

Mr. Friedman questioned whether a vote was necessary regarding the MCCA issue. It was decided that since no further action was necessary, no vote was needed.

Agenda Item #3 Failure to File Report and Return Unspent Campaign Funds/David Hughes

Mr. Wayne explained that Mr. Hughes was a special election candidate for House District 72 last November. He received \$4,287 in MCEA funds. He was required to file his campaign report 42 days after the election in November and he was required to return his MCEA funds not spent for his campaign. He did not file nor return the funds within the time required. Mr. Wayne said several calls were made and letters were sent with no response from Mr. Hughes. The lack of response to repeated attempts by the Commission staff was a concern. Mr. Wayne told the Commission members that Mr. Hughes came in to the Commission office yesterday and filed his report along with a check for unspent funds to the Maine Clean Election Act. Mr. Hughes also provided his bank statements showing payments made from his campaign account, invoices for services and examples of services that he had paid for. Mr. Wayne said his documentation helped to assure his public money was spent for campaign services. Mr. Wayne further stated that the staff will conduct a full audit of Mr. Hughes' campaign in order to be assured that everything is in order. He said the penalty for late filing (37 days late) and failure to return Clean Election Act funds could be as high as \$1,500; however, Mr. Hughes could request a waiver of all or part of the \$1,500 penalty amount. Mr. Wayne also explained that Mr. Hughes did have a personal tragic situation happen during the reporting period, which could have been a factor in why Mr. Hughes was late in filing and not returning the funds.

Mr. Hughes said that he first wanted to apologize to the people of Maine. He said the clean election process is for candidates like himself who cannot afford to run without this public money. When candidates participate in the program, they should do everything they can to reinforce the public trust and he did not do that. He apologized for his actions and wanted to be held accountable. He said he had not dealt with a personal situation like this before. It was a reporter knocking at his door that made him realize what was happening. He said he did not want to discuss the personal matter in a public forum.

Mr. Friedman asked Mr. Hughes if he understood the audit procedures and what was needed from him.

Mr. Hughes confirmed that he understood the process and that there would be penalties assessed.

Agenda Item #5 Adoption of Rule Amendments

Mr. Friedman reminded the Commission that at the October meeting, the public was invited to comment on rule changes. At the December meeting, comments were received and the comment period was extended for another ten days after the December meeting. Mr. Friedman acknowledged additional comments from Carl Lindemann. He said that Mr. Lindemann requested today's meeting be set at a later date so that he could be present to comment further. Mr. Friedman said that after discussion with Mr. Wayne, he denied the request to extend the date again. The procedure for rulemaking states that the time for public comment be set and this was done. Mr. Lindemann has submitted several written documents in the past. Mr. Friedman stated that the time for public comment has ended; therefore, it would not be appropriate to allow Mr. Lindemann to comment further by phone.

Ms. Gardiner said everyone has the same opportunity to submit comments by a deadline and the deadline has come and gone. In order to be fair to everyone, the time has ended for everyone.

Ms. Thompson agreed that the process has been followed and in fairness to all, the comment period is over. She expressed concern regarding Mr. Lindemann's continued questions over the jurisdictional issue. She would like to have this matter cleared up once and for all. She said she believes passing judgment on another Commission member is not within the members' jurisdiction.

Mr. Friedman said rehashing the same issue is not productive. He feels getting guidance from the Legislature is the next step and that should be forthcoming in the future.

Ms. Gardiner said there needs to be a formal adoption for the final rule changes as they have been presented in the packet of material today.

Mr. Shiah moved to adopt the proposed rule changes as drafted by staff; seconded by Mr. Marsano. Motion passed unanimously. (5-0)

Agenda Item #6 Proposed Advice to Section 1056-B Filers

This agenda item was withdrawn in light of pending legislative action which may provide guidance.

Mr. Marsano asked for clarification on the withdrawal of Item #2. Mr. Wayne said that Mr. Wood contacted the Commission by phone and said he wished to withdraw his request for a waiver.

Other Business

Kate Smith, MCEA Special Election Candidate

Mr. Wayne explained that Ms. Smith was in the special election in November and ran as an MCEA candidate. He reported that the staff was having difficulty getting her to return her Clean Election Act funds. When she finally sent her repayment in, the check was returned for insufficient funds. Mr. Wayne said the staff has requested Ms. Smith provide her bank statements, since her check was returned. Mr. Wayne said that if she does not willingly provide the bank statements as requested, the staff would like the Commission's authorization to perform an investigation which would include a subpoena of her bank statements for inspection.

Mr. Marsano asked why a complete audit would not be done first.

Mr. Wayne said a full audit can be done; however, if everything checks out on the bank statement, then a full audit would not be necessary. Mr. Wayne said this effort would be a 'middle-ground' approach instead of conducting a full audit.

Mr. Marsano stated that he felt a full audit under these circumstances is necessary. He said a bounced check would seem like a reason to conduct an audit, especially since she has not contacted the Commission after a letter was sent to her notifying her of the returned check.

Discussion took place regarding subpoena power and audit procedures and whether to look at the bank statement only or all documentation including invoices, etc.

Ms. Thompson said audits, either random or targeted, are very informative in helping to improve the process of the Clean Elections Act and audits tell the public that the Commission is seriously working to protect public money. She also said that a returned check from a campaign account should just not happen, if everything is done appropriately. She strongly urged an audit be done.

Mr. Youngblood said that Ms. Smith's lack of explanation the very next day is suspicious.

Mr. Friedman said the consensus is for the staff to conduct a full audit on Kate Smith's campaign.

Ms. Thompson further stated that an audit procedure is not only to discover something wrong, but to be sure the money has been appropriately used and to be sure candidates are taking the public money very seriously and being careful with it.

Mr. Friedman stated that the audits also have shown that the majority of candidates do spend the public money appropriately.

LaMarche Appeal of Commission's Penalty Determination

Ms. Gardiner informed the Commission that Pat LaMarche has brought a Rule 80(C) action challenging the penalty determination that the Commission decided upon at its October 30th meeting after considering the campaign's audit report.

The meeting adjourned at 9:50 a.m.

Respectfully submitted,

Jonathan Wayne, Executive Director



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Minutes of the February 11, 2008, Meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Hon. David Shiah, Acting Chair and Hon. Edward M. Youngblood. Hon. Mavourneen Thompson, Michael Friedman, Esq. and Hon. Francis C. Marsano attended by teleconference.
Staff: Executive Director Jonathan Wayne.

Due to weather conditions, Chair Friedman could not attend the meeting in person. Mr. Shiah was nominated by Mr. Youngblood to chair today's meeting. On motion by Mr. Youngblood, seconded by Ms. Thompson, it was unanimously decided to have Mr. Shiah chair the meeting.

At 9:07 A.M., Acting Chair David Shiah convened the meeting.

The Commission considered the following items:

Agenda Item #1 Request for Waiver of Late-Filing Penalty/Katherine D. Pelletreau

Mr. Wayne explained that Katherine D. Pelletreau was registered as a lobbyist for the Maine Association of Health Plans in 2007. She was two days late in filing the annual report due on December 31, 2007. Ms. Pelletreau requests a waiver of the penalty because her husband had suffered a heart attack in the late fall and she was on leave from her work through December 31, 2007. The statutory penalty is \$200; however, the staff recommends a penalty of \$50 due to the health circumstances in Ms. Pelletreau's family.

Mr. Marsano stated that "late fall" seems ambiguous. He wondered whether any one on staff had asked her for more detailed information regarding how long she was away from work.

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Mr. Wayne said a staff member had spoken to her, but he had not personally talked to her. He said when a treasurer or candidate has a health issue, the past practice has been for staff to be slightly more lenient. Ms. Pelletreau was notified of today's meeting, but she did not respond to the invitation.

Mr. Youngblood stated that he is not in favor of giving lobbyists a break, since this is their business and they know the filing deadlines for which they are responsible. He said this particular case may be reason to be more lenient and go with the staff recommendation to reduce the penalty to \$50.

Ms. Thompson stated she agreed with Mr. Youngblood. Ms. Thompson thought it might be a good idea to wait until we hear from the lobbyist as to when the medical emergency occurred and how long she was out of the office. Ms. Thompson further stated it is always in the Commission's best interest to get as much information as possible from the candidate or lobbyist in order to make a fair decision and to assess the fairest penalty.

Mr. Wayne said the staff would be willing to go back to Ms. Pelletreau and get more information and put this item back on the agenda for the March meeting.

Ms. Thompson made a motion to table this item until March 31. Mr. Marsano seconded. The motion passed unanimously.

Agenda Item #2 Proposed Rule Amendment

Mr. Wayne stated that the Joint Standing Committee on Legal and Veterans Affairs has requested that the Commission adopt a rule which would allow candidates to re-use signs from a previous election without updating the disclosure statement printed on the signs regarding who paid for the signs. This was a result of a bill put forward last year by Senator Elizabeth Schneider. He said if the treasurer's or committee's name changed, then the sign could be reused as long as the correct address was on the sign. Mr. Wayne said this would apply to any type of communication to voters. Mr. Wayne said that the LVA Committee will be sending a letter outlining instructions for the rule changes.

Mr. Marsano pointed out that section 1014 of Title 21-A, did not use the words 'campaign signs' in the description. He would like to see this phrase introduced into the statute. Mr. Marsano also outlined other changes he would recommend for this section. Mr. Marsano restated that the phrase 'campaign signs'

definitely needs to be in the statute, at the very least, for more detailed clarification on communications. He felt the signs could be reused as long as the rules are followed as to what is acceptable.

Ms. Thompson requested that Mr. Marsano's changes be done in writing to the Commission members in order to see these changes on paper. She also stated that any changes made must not allow confusion on the part of the voters. She said the voter needs to read communications and understand clearly what is being said.

Mr. Friedman stated that the signs need to be 100% correct and not 85% correct.

Mr. Youngblood said that care needs to be taken when dealing with specific communications. Does this mean mailers or any other communication needs to be addressed individually. He said this is probably why the statute was written in this general manner.

Mr. Marsano stated he feels that the words "campaign signs" should definitely be included because there would be no doubt as to whether they may be reused and these are one of the more expensive items in a campaign.

Mr. Shiah suggested this item be tabled until next month in order to see these suggested changes in writing.

Mr. Friedman stated that he agrees with Mr. Marsano regarding keeping the cost of campaign expenses down to a minimum where possible; however, he stressed the importance of having the correct information in all communications of the campaigns. He would not be in favor of the Commission sanctioning a practice that would allow misinformation on a campaign sign.

Ms. Thompson stated that she would support changes, but would like to see them in writing. She also stated the importance of accurate, up to date information on the signs.

Mr. Marsano said he agreed with Ms. Thompson but believes the statute should state specifically what is acceptable for candidates to make changes to the signs in a cost effective manner.

Mr. Youngblood moved to table this item until the March meeting; Ms. Thompson seconded. The motion passed unanimously.

Agenda Item #3 Proposed Investigation of 2006 Candidate Debra J. Reagan

Mr. Wayne explained that Debra J. Reagan was a 2006 candidate for the House of Representatives who was the only candidate remaining who has not returned unspent Maine Clean Election Act funds to the Commission. He said Ms. Reagan promised to make monthly payments but has not reliably paid the promised amounts. The last payment was returned for insufficient funds. Mr. Wayne said Ms. Reagan owes the State of Maine \$3,390. Mr. Wayne said the matter was referred to the Attorney General last year; however, it was decided to put her on a monthly payment schedule after warning her of the penalty she could incur if she does not return the funds. Since she has not fulfilled her obligation, the Commission staff recommends a full investigation of this candidate and requests authorization for a subpoena of her bank accounts. Mr. Wayne stated that there could be civil penalties involved.

Ms. Thompson said in the past, the Commission has been very strict about the use of public funds and how the candidates use those funds in order to maintain the public's trust. She asked if this investigation would include an audit.

Mr. Wayne said that the investigation could include an audit. He further stated that since the candidate had been so uncooperative, the staff felt that a subpoena would be in order.

Mr. Youngblood agreed that an audit should be done and the staff should be given the authority to subpoena the necessary records.

Mr. Marsano asked why this referral to the Attorney General's office has taken so long.

Mr. Wayne stated that due to work load, the staff counsel has been spread very thin. Mr. Wayne said that the priority changed to getting the money back through monthly payments by the candidate.

Mr. Marsano stated that the clean election funds need to be protected and this matter needs to be addressed more aggressively. He also agreed that an audit should be done; however, the subpoena needs to happen immediately.

Mr. Youngblood moved to follow the staff recommendation to investigate Ms. Reagan's misuse of Maine Clean Election funds by simultaneously conducting an audit, and taking all steps necessary, including the subpoenaing of records to get the investigation completed.

Ms. Thompson offered an amendment to the motion that would replace the word "misuse" with "use."

Mr. Marsano stated that clean election money is supposed to be returned and failure to return the money under any circumstances would be misuse.

Ms. Thompson withdrew her amendment.

The original motion passed unanimously.

OTHER BUSINESS

Carl Lindemann's February 7, 2008, Memo

Mr. Wayne stated that Phyllis Gardiner wrote a memorandum regarding Mr. Lindemann's request and it was e-mailed to all the Commission members. He was not sure if everyone had an opportunity to review it. All the Commission members had not had a chance to review Phyllis Gardiner's memo. It was decided to have Mr. Shiah read Ms. Gardiner's memo out loud. (Copy attached hereto.)

Ms. Thompson asked for clarification on complaint procedures.

Mr. Wayne said that the staff had proposed a rule which was meant to clarify that if the staff received a complaint that was outside the Commission's jurisdiction, it can return it to the complainant or refer it to the appropriate agency. This proposed rule was unrelated to Mr. Lindemann's request. Mr. Lindemann commented to that rulemaking saying that he thought that there should be a procedure for complaints against Commission members to be automatically referred to an outside agency. Mr. Wayne said his memo to the Commission stated that he thought that complaints against Commission members were so rare that they could be handled on a case-by-case basis. In that memo, Mr. Wayne also recommended against an automatic referral to an outside agency.

Ms. Thompson wondered if the Legislature would be the proper body to establish a procedure for dealing with complaints regarding a Commission member since the Commission members cannot judge themselves. She expressed her belief that there should be an appropriate avenue for a complainant to take a complaint against a Commission member.

Mr. Wayne said if the complainant felt aggrieved by a decision by the Commission because the Commission or a member of the Commission was biased, that person could file an action in the court. In other contexts, someone could, as Mr. Lindemann has already, bring the matter to the attention of the Legislature.

Mr. Friedman stated that the Commission is, like all others, authorized by statute. It does not have the power to hear issues that are not within its jurisdiction. He said not every matter brought forth by any citizen in Maine should be brought before this Commission. If other commissions have complaints brought against a commission member, the aggrieved individual may go to court to seek a judicial determination. Mr. Friedman stated that Mr. Lindemann has taken it upon himself to send individual Commissioners e-mails, letters, etc. He said that he thinks it is extremely inappropriate for an individual who has an interest pending before the Commission to deal directly with the members of the Commission to the exclusion of the staff. Mr. Friedman said excluding the staff from communications is very inappropriate.

Mr. Friedman also reviewed the duties of the Chair of the Commission. Mr. Friedman said part of those duties includes using the meeting time effectively by reviewing agenda items for jurisdiction and keeping meetings efficient. He also referred to the history of the MHPC and former Commissioner Jean Ginn Marvin and reminded the members that this Commission does not have jurisdiction to investigate or make recommendations with regard to fellow Commissioners. Mr. Friedman said individuals who do feel aggrieved, may go to the legislative leadership, the Governor or go to court, which Mr. Lindemann has done. Mr. Friedman further stated that since the Commissioner in question is no longer on the Commission, the issue is a moot point.

Mr. Lindemann addressed the Commission. He said the staff was included on his communications with the Commissioners. He said this issue has nothing to do with former Commissioner Ginn Marvin's qualifications and conduct. He said it deals with the dilemma of inappropriateness of having an officer of a regulated entity serve on the Ethics Commission. He said the treasurer of a political committee should not

be allowed to be a Commissioner. He said that the Commission should recognize the dilemma in this matter: on one hand, the Commission does have jurisdiction over this matter because it involves a regulated entity; on the other, the matter involves a former Commissioner which creates the problem of having her former fellow Commissioners sitting in judgment over her actions. The Commission should cede jurisdiction because of these extraordinary circumstances and allow this matter to go forward. He said that to do otherwise would mean that a conflicted agency would sit on a matter against a fellow Commissioner, and that it would be close to obstruction for this Commission to decide this matter.

Ms. Thompson asked for clarification as to what exactly Mr. Lindemann's major concern is. She summarized that this Commission voted unanimously that passing judgment on a fellow Commissioner is not within the Commission's jurisdiction. She asked if Mr. Lindemann would like to see the Commission have the ability to formally refer the complaint to another agency.

Mr. Lindemann stated that the decision the Commission made regarding its ability to make a determination on the qualifications of a fellow Commissioner was separate from the matter he was bringing before the Commission now. This matter involves a question of whether the Commission has a conflict of interest in that former Commissioner Jean Ginn Marvin is the treasurer of an entity that filed a report with the Commission, a report which is the subject of his complaint. He stated that he did not see how it would be appropriate for the Commissioners who sat on the Commission with Ms. Ginn Marvin or the Executive Director, Mr. Wayne, to participate in a hearing on the complaint.

Ms. Thompson said since the Commission has several new members, perhaps the issue should be heard again in order for the Commission to find out what should be done in these situations. She did not think it should rest until it is decided how to deal with conflict of interest issues.

Mr. Friedman asked Ms. Thompson to clarify which issue she was speaking about: the issue regarding the adequacy of the 1056-B filing or the issue of conflict of interest of the Commission.

Ms. Thompson said she believes the more important issue is how to deal with a complaint by a citizen of conflict of interest of a member of the Commission. She said the Superior Court would deal with the 1056(B) issue. She recognized that the members of the Commission cannot deal with a complaint of conflict of interest, but perhaps a referral to another agency would be appropriate.

Mr. Friedman said that he did not necessarily disagree with Ms. Thompson, but he said the Commission does not have jurisdiction to even discuss the issue of conflict of interest. He did not think it was necessary for the Commission to provide advice on issues that are outside of the Commission's jurisdiction. He said if an aggrieved citizen has a complaint, the remedy is to go to court or to seek a political solution. He said that the fact that there are new Commissioners does not mean that the Commission has jurisdiction or that the issue should be discussed again. He would strongly discourage the Commission take any more time to discuss this issue during a regular Commission meeting.

Mr. Marsano said he has not seen or heard what the exact parameters of the complaint in Superior Court are. He said that he thought there probably was a way in which the two issues are involved. For instance, Mr. Lindemann's suggestion that, as he was speaking on a matter, a person who has recused sat directly behind him – is that a problem? Is that in the complaint? Does that relate to the conflict? What does it do with respect to the recusal? Another facet of the issue is the statements by Mr. Lindemann and Mr. Wayne that no disclosure of the Commissioner's position in the organization was made to the Governor or the legislative leadership. He said that since he did not know what the case was all about, he did not want to speak with respect to the otherwise philosophical issue until the case was finally resolved. Mr. Lindemann's analogy to jury selection was interesting but the difference was that the breadth of the screening that the Governor and Legislature does in examining potential Commission members is exceedingly greater than the jury screening process. Ultimately, once the case is resolved and is even farther in the past than it is now, the philosophical issue can come back to the Commission, if it wants to take it up again, but in the end, the ultimate decision will lie with the Commissioner who must make that final decision of recusal. He stated that he did not want to do anything regarding these issues until the case was over.

Mr. Friedman said that he did not think that it was necessary for the Commission to do anything regarding this matter at this time. Mr. Marsano agreed. Mr. Shiah asked whether it was the pleasure of the Commission to close this matter. It was the consensus of the Commission to close the matter.

Ms. Thompson brought up the issue regarding whether to insert a public comment item on the monthly agendas. It was decided to put a discussion of this suggestion on the next agenda for the March meeting.

Ms. Thompson also inquired as to how audits were being handled with the resignation of the staff auditor in December. Mr. Wayne said that Mr. Dinan waited until the end of the audit of the 2006 candidates before he retired. The hiring process will be initiated soon to find a replacement for him.

There being no further business, the meeting adjourned at 10:35 a.m.

Respectfully submitted,

Jonathan Wayne, Executive Director

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Memorandum

TO: Commission on Governmental Ethics and Election Practices

CC: Carl Lindemann

FROM: Phyllis Gardiner, Assistant Attorney General

DATE: February 10, 2008

SUBJECT: Carl Lindemann's Request for Commission Action

Since I will not be able to attend the Commission meeting on Monday, February 11, 2008, I am writing to provide some procedural advice regarding the most recent request filed by Mr. Carl Lindemann, dated February 7, 2008.

As you are aware, Mr. Lindemann has a Rule 80C action pending in Superior Court, challenging the Commission's decision of December 22, 2006 that the Maine Heritage Policy Center ("MHPC") is not a political action committee ("PAC"). Among the arguments raised by Mr. Lindemann in his petition for judicial review of that decision are claims that the Commission was biased as a result of former Commissioner Ginn Marvin's role as a board member and treasurer of the MHPC while she served on the Commission, notwithstanding that she recused herself from all proceedings regarding the complaint about MHPC's status. This issue has been fully addressed in briefs filed by both parties with the court. We are now awaiting oral argument before the Superior Court decides the matter.

Although the Commission ruled in December 2006 that MHPC did not meet the definition of a PAC, it simultaneously determined that the organization was legally obligated to file a report of any contributions or expenditures on the TABOR initiative campaign, pursuant to 21-A M.R.S.A. §1056-B. MHPC complied with that directive by filing such a report in January, 2007. On March 5, 2007, Mr. Lindemann filed a request for a new investigation into the accuracy and completeness of this report. That request was initially considered by the Commission at a meeting on May 14, 2007, and after some discussion the members voted 2 to 1 to postpone (or "reschedule") any further consideration of the request until after the Superior Court had ruled on Mr. Lindemann's petition in the case described above. Mr. Cassidy made the motion; Mr. Friedman seconded it; and both of them voted in the affirmative. Ms. Thompson voted in the negative. Ms. Ginn Marvin recused herself from the discussion of this matter. The

minutes of the meeting reflect the majority's view that it would make sense to defer investigation into the adequacy or accuracy of the section 1056-B report since, if the Superior Court were to rule that MHPC is a PAC, MHPC would be required to file a PAC report. Since a PAC report, by definition, is broader in scope than a section 1056-B report, its filing would thereby moot the second request for investigation.

Separate from his section 1056-B request, Mr. Lindemann raised issues last summer concerning Ms. Ginn Marvin's qualifications to serve as a Commission member based on his allegations that she was serving simultaneously as an officer of a "political committee" and had engaged in fundraising for that committee, in violation of Title 1 M.R.S.A. §§ 1002(2) & (6). He raised these concerns in correspondence addressed to the Governor and Legislative leadership first, and then brought the matter to the Commission. The Chair initially determined, based on advice from staff and counsel, that the Commission did not have jurisdiction to rule on the qualifications of a fellow Commission member, or to enforce the provisions of section 1002(2) & (6). He thus declined to put the matter on the agenda. At the meeting on August 13, 2007, after some discussion about whether the full Commission should decide the jurisdictional issue, a motion was made to accept the staff's view that the Commission has no jurisdiction over a complaint to disqualify a Commission member. This motion was adopted on a 4-0 vote, with Ms. Ginn Marvin abstaining.

More recently, Mr. Lindemann has argued to the Commission that it should adopt rules governing the handling of complaints against Commission members. The Commission declined that request, as a matter of policy, and adopted revisions to the Chapter 1 procedural rules at the meeting on January 15, 2008, without including any such provision. Mr. Lindemann now cites to a statement made by Jonathan Wayne in the cover memorandum to those rule changes, which was addressed to Commission members and included in the packet for the January 15 meeting. Mr. Wayne suggested in that memorandum that any complaints that may arise concerning Commission members could simply be dealt with on a case-by-case basis, without the need for procedural rules. In his February 7 letter Mr. Lindemann suggests that, in renewing his complaint about Ms. Ginn Marvin's conduct, he is attempting to invoke this case-by-case procedure.

Mr. Lindemann, however, has already been afforded an opportunity to try to persuade the Commission to act on his complaint regarding Ms. Ginn Marvin's conduct and qualifications, or to refer the matter to another agency or authority. Having already concluded that the Commission lacks jurisdiction to act on this complaint, you are not now under any legal obligation to reconsider that decision, or to treat this as a new complaint.

To the extent that Mr. Lindemann wishes to raise issues of bias or improper procedure based on Ms. Ginn Marvin's role on the Commission, as those issues relate to the Commission's handling of the section 1056-B investigation request, he is free to do so when the Commission takes up that request again following the Superior Court's ruling on his Rule 80C appeal. To take up that request now would require reconsideration of the motion to reschedule his request for an investigation of the 1056-B report. Such a motion would have to be made by one of the Commission members who voted in the majority on May 14, 2007. The same process would be required to reconsider the vote of August 13, 2007 on jurisdiction.

Mr. Friedman noted at the conclusion of the May 14, 2007 meeting, as recorded in the minutes, with respect to the vote to reschedule the request for an investigation into the MHPC's section 1056-B filing:

the vote to delay does not cast any doubt on the validity of the complaint. The complaint is worthy of hearing, but the Commission needs to be concerned with administrative economy. The Commission will look at every aspect of the complaint when the time is right.

Notwithstanding the Chair's expressed willingness to give full and fair consideration to Mr. Lindemann's request when the time is ripe, if Mr. Lindemann no longer wishes to have the Commission investigate the section 1056-B filing by MHPC due to his allegations of bias, then he is free to withdraw the request for the investigation. If he wishes to file a complaint about Ms. Ginn Marvin's conduct with another agency or office, then, as pointed out in Mr. Wayne's February 4 email to him, Mr. Lindemann is at liberty to do so.

Short of a motion to reconsider one of the matters that has already been decided by the Commission, there is no procedural mechanism to deal with Mr. Lindemann's February 7 request, nor is there any legal obligation for the Commission to do so at this juncture. The Commission has jurisdiction to deal with only one pending request by Mr. Lindemann, and that request has been scheduled for consideration after the Superior Court rules on the PAC question.

I hope this outline is useful to you. If you need clarification of any of the above, please let me know. Thank you, and I'll look forward to seeing you at the next Commission meeting.

cc: Jonathan Wayne, Executive Director
Paul Lavin, Assistant Director

Agenda

Item #2



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

Date: March 25, 2008

Re: Carl Lindemann's Requests for an Investigation of the Maine Heritage Policy Center

In preparation for the March 31, 2008 meeting, this memo is to provide you with background information on Carl Lindemann's requests for investigations regarding the Maine Heritage Policy Center (MHPC).

Mr. Lindemann's Two Requests for Investigations

First Request

Carl Lindemann filed his first request for an investigation with the Commission on October 19, 2006, arguing that the Maine Heritage Policy Center (MHPC) qualified as a political action committee (PAC). On December 20, 2006, the Commission determined that the MHPC was not a PAC because it did not have as its major purpose advocating for the Taxpayer Bill of Rights (TABOR) ballot initiative. On January 19, 2007, Mr. Lindemann's attorney initiated a Rule 80C proceeding in the Maine Superior Court requesting review of the Commission's determination.

In a Decision and Order dated February 26, 2008, the Superior Court dismissed the petition because Mr. Lindemann did not have standing to challenge the Commission's December 20, 2006 determination. The Decision and Order did not make any judgment on the merits of the Commission's December 20, 2006 determination that the MHPC did not qualify as a PAC. Mr. Lindemann has appealed the Superior Court's dismissal to the Maine Supreme Judicial Court.

Second Request

Also on December 20, 2006, the Commission determined that the MHPC was required to file a financial report under 21-A M.R.S.A. § 1056-B regarding financial activity in support of TABOR. The MHPC filed the report on January 22, 2007. On March 5, 2007, Mr. Lindemann requested that the Commission investigate whether the § 1056-B report was accurate and complete. His request contends that the MHPC under-reported the

contributions it received related to TABOR and under-reported its expenditures on staff time used to promote TABOR.

The MHPC filed a response on March 30, 2007 through its attorney, Dan Billings. The MHPC argued that if the Commission believed Mr. Lindemann's theories are worthy of consideration, the Commission should defer taking any action until the Superior Court completed its consideration of Mr. Lindemann's appeal. Mr. Lindemann submitted three additional sets of materials in April and May 2007.

At a meeting on May 14, 2007, the Commission voted 2-1 to postpone consideration of Mr. Lindemann's March 5, 2007 request until after the Maine Superior Court decided on his Rule 80C proceeding. I have attached the minutes for that portion of the meeting.

Requests by Mr. Lindemann and the Maine Heritage Policy Center

After the Superior Court's dismissal of the Mr. Lindemann's petition for review, I informed Dan Billings and Carl Lindemann that I intended to schedule Mr. Lindemann's second request for discussion at your March 31, 2008 meeting and I invited them to submit any additional information that they wished. Mr. Lindemann made three submissions on March 18, March 21, and March 25.

In his March 18 letter, Mr. Lindemann requests that you determine by formal vote whether the Commission is the appropriate venue for his March 5, 2007 request because of an alleged conflict of interest. He asks that if the Commission decides that it is the correct venue to consider his request, the Commission should receive testimony under oath.

In his March 21, 2008 letter, Dan Billings requests that Mr. Lindemann's March 5, 2007 request remain tabled until the courts complete their consideration of Mr. Lindemann's first request.

Conflict of Interest Issue Raised by Mr. Lindemann

Mr. Lindemann raises the issue of whether the Commission is the correct venue to consider his March 5, 2007 request for an investigation. He refers to the request as a "complaint about a fellow Commissioner [Jean Ginn Marvin]." In fact, my quick review of his March 5, 2007 request (three pages plus 27 pages of attachments) revealed only three sentences in which Ms. Ginn Marvin is mentioned. The request is overwhelmingly a complaint about the reporting by the MHPC.

After conferring with the Commission's Counsel, Phyllis Gardiner, the Commission staff suggests that if Mr. Lindemann believes current Commission members are required to recuse themselves from considering his March 5, 2007 request due to a conflict of interest, he should identify those members he believes are conflicted, and state the reasons for the conflict.

The Commission's Counsel and I believe that the Commission is the only department of Maine state government that has jurisdiction to conduct the investigation requested by Mr. Lindemann on March 5, 2007.

Options for the Commission

The Commission staff sees two options for the Commission at this time:

- (1) *Defer for further action by Maine courts.* Because the Maine Superior Court did not rule on the merits of Mr. Lindemann's first request, the Commission may wish to defer taking any action on Mr. Lindemann's second request until after the Maine courts have reached a decision on Mr. Lindemann's first request.
- (2) *Decide whether to conduct an investigation requested by Mr. Lindemann on March 5, 2007.* The Commission could decide whether to conduct an investigation on Mr. Lindemann's second request for an investigation. If so, the Commission staff suggests clarifying what the scope of the investigation would be, whether the Commission wishes to hold a public hearing, or wishes to direct the staff to request documents or information.

Attached Materials

I have attached:

- 3/5/07 Request for investigation by Mr. Lindemann
- 3/30/07 Response by MHPC
- 4/3/07 Supplementary materials by Mr. Lindemann
- 5/9/07 Supplementary materials by Mr. Lindemann
- 5/9/07 Memo to Commission by staff [**without attachments**]
- 5/11/07 Supplementary materials by Mr. Lindemann
- 5/14/07 Minutes of meeting relating to MHPC matter
- 2/26/08 Decision and Order by Superior Court
- 3/18/08 Additional Letter by Mr. Lindemann
- 3/21/08 Response by MHPC
- 3/21/08 Cover page of submission by Mr. Lindemann (full materials in separate addendum)
- 3/25/08 Supplemental materials by Mr. Lindemann

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 0.79% 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 P. Lavin". The signature is fluid and cursive, with a long horizontal stroke at the end.

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

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 0.79% 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.

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: Aca2cuLemv9wfnAMQASTEfjeCz9wJxusSeCwAAeWMDA=
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-Nonspam: 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

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

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](#)

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.

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

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

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>.

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.

- 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.



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

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.

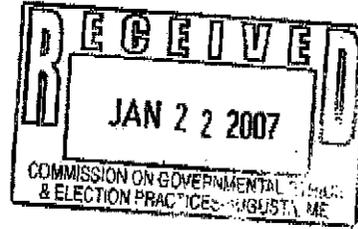
¹ The PAC reported its first contribution from Mr. Monks on November 1, 2004, which in retrospect seems improbable because that was one day before the November 2 general election.

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



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 Jonathan,

The requested 1056-B report is attached per your letter of December 22, 2006.

Sincerely,

Bill Becker

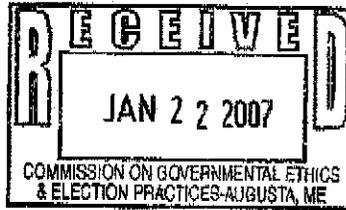
FROM : MAINE HERITAGE POLICY CENTER

FAX NO. : 2077734385

Jan. 22 2007 05:56PM P2

We the people of Maine...

THE MAINE HERITAGE POLICY CENTER



www.maineheritage.org

P.O. Box 7829
Portland, Maine 04112

Tel: 207.321.2650
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)

FROM : MAINE HERITAGE POLICY CENTER

FAX NO. : 2077734385

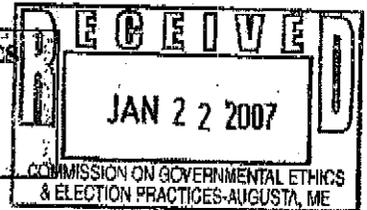
Jan. 22 2007 05:56PM P3

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)



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 207-521-2550 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 Same

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.

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

01/22/2007
Date

FROM : MAINE HERITAGE POLICY CENTER

FAX NO. : 2077734385

Jan. 22 2007 05:57PM P5

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 Hoop - 140 HRS.	\$7,000. ⁰⁰
MAY - November	STAFF Time Allocated to Public Speaking Events - J. Scott Hoop 22 HRS.	\$1,100. ⁰⁰
MAY - November	STAFF Time Allocated for Travel - J. Scott Hoop - 48 HRS.	\$2,400. ⁰⁰
MAY - November	Travel Reimbursement - J. Scott Hoop	\$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		\$21,730. ⁻
Complete lines 2-4 on last page of Schedule B only:		
2. Total from attached Schedule B pages		
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 Tarron Blagden 40 HRS.	\$1,600.00
5/24/06	Full Court Press - Printing of Maine View #4-5	\$858.22
10/17/06	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 "Mindling 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		\$9,232.19
2. Total from attached Schedule B pages <small>Complete lines 2-4 on last page of Schedule B only:</small>		\$21,730.00
3. Aggregate of cash contributions of \$100 or less not itemized expenditures		- 0 -
4. Total ^{expenditures} cash contributions this reporting period <small>(Add lines 1, 2 & 3)</small>		\$30,962.19



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

To: Interested Persons
From: Jonathan Wayne, Executive Director
Date: December 27, 2006
Re: Advice from Commission Staff on §1056-B Reporting

In response to a request, the Ethics Commission staff is offering the advice below regarding which financial activities are covered by 21-A M.R.S.A. §1056-B. This advice is offered provisionally until more permanent guidance can be determined through formal rulemaking or, possibly, a statutory amendment to §1056-B. If you believe you may need to file an amended §1056-B report as a result of this advice, please feel free to telephone Martha Demeritt at 287-4179. Please keep in mind that the advice has been drafted by the Commission staff, and has not been specifically approved by the Commission members.

Contributions Covered by §1056-B

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.

Expenditures Covered by §1056-B

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

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

- expenditures for communications to voters for the purpose of promoting or opposing a ballot question, including advertising on television, radio, and print media; literature that is mailed or distributed by hand to voters; automated telephone calls and scripted calls from live callers; signs, bumper stickers, and other forms of outdoor advertising;
- staff time promoting or opposing the ballot question at public or press events;
- staff time canvassing (conducting door-to-door visits to) voters;
- travel expenses paid to employees in connection with appearances at public or press events;
- staff time preparing presentations, testimony or press releases to promote or oppose the ballot question;
- research or technical analysis including the writing of reports, where the sponsoring organization knows or reasonably should know that the research will be used to promote or oppose the ballot question; and
- expenditures to distribute research or technical analysis of a ballot question for the purpose of encouraging voters to vote yes, or no, on the question.

This list is not intended to be exhaustive and is similar to the types of expenditures reported by political action committees to promote or defeat a ballot question.

Expenditures Not Covered by §1056-B

We propose that expenditures made merely to educate voters or others in a neutral way about a ballot question are not covered by §1056-B:

- Hosting a meeting at which advocates or members of the public are invited to present their views on the ballot question, provided that the sponsors of the event make reasonable efforts to ensure that the forum is balanced.

In 2006, for example, this would include the many community organizations (rotary clubs, public libraries, church groups) that hosted TABOR-related debates.

- News stories, commentary, or editorials concerning a ballot question distributed through the facilities of a broadcasting station, newspaper, magazine, or other periodical publication, unless the facilities are owned or controlled by persons otherwise engaged in other advocacy activities to promote or oppose the ballot question.
- Research or analysis of a ballot question which is not conducted for the purpose of initiating, promoting, or defeating the ballot question.

This could include research that is conducted in a neutral fashion and is intended to be communicated to opinion leaders, in academic settings, or to the public at large. When statewide ballot questions are pending, it is not unusual for individuals with specialized skills (*e.g.*, academics, attorneys, educational institutions, pollsters) to be hired to undertake research or analysis concerning the ballot question. If these activities are neutral and not made for the purpose of promoting or defeating the question, they would not be covered by §1056-B.

Subject: FW: Section 1056-B Report Guidance
Date: Thu, 1 Mar 2007 13:21:05 -0500
X-MS-Has-Attach:
X-MS-TNEF-Correlator:
Thread-Topic: Section 1056-B Report Guidance
Thread-Index: AcczKNWmy3dd2s9zQWGhVYPfXwhFaAAIVMkgCjkModA=
From: "Lavin, Paul" <Paul.Lavin@maine.gov>
To: "Carl Lindemann" <carl@cyberscene.com>
X-OriginalArrivalTime: 01 Mar 2007 18:21:07.0512 (UTC) FILETIME=[615D8B80:01C75C2E]
X-Nonspam: None
X-NAS-Language: English
X-NAS-Bayes: #0: 0; #1: 1
X-NAS-Classification: 0
X-NAS-MessageID: 100
X-NAS-Validation: {05CC28F7-969D-4640-898B-33B21AA18D71}

From: Lavin, Paul
Sent: Monday, January 08, 2007 12:39 PM
To: 'Dib9@aol.com'
Cc: Wayne, Jonathan; Demeritt, Martha
Subject: RE: Section 1056-B Report Guidance

Hi Dan,

Our view is that the exception to expenditure (21-A MRSA § 1012(3)(B)(1)) applies to the costs attributable to the station, newspaper, etc. that published the piece in question, not to the author, unless the author is paid by the broadcaster or publisher. So the cost of staff time would be reportable as would "staff time preparing presentations, testimony or press releases to promote or oppose the ballot question." Please let me know if you have any questions about this interpretation. Thanks.

Paul

From: Dib9@aol.com [mailto:Dib9@aol.com]
Sent: Monday, January 08, 2007 8:28 AM
To: Lavin, Paul
Cc: Wayne, Jonathan; Demeritt, Martha
Subject: Re: Section 1056-B Report Guidance

I have a question about the guidelines. News stories, editorials, and commentaries are not expenditures. Does that mean that staff time spent by an organization drafting a commentary does not need to be reported?

Dan

**MARDEN, DUBORD,
BERNIER & STEVENS**

ATTORNEYS AT LAW

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

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.

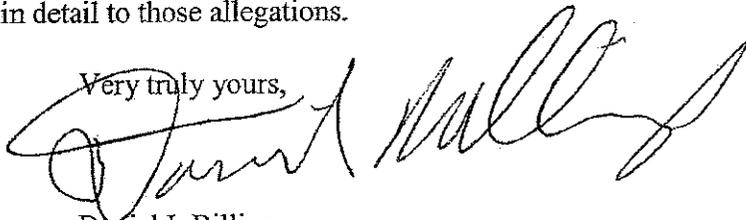
If the Commission decides that Mr. Lindemann's theories are worthy of consideration, I request that any action concerning Mr. Lindemann's new complaint be deferred until the court has completed its consideration Mr. Lindemann's appeal of the Commission's ruling on his earlier complaint. If Mr. Lindemann's 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,

A handwritten signature in black ink, appearing to read "Daniel I. Billings", written in a cursive style.

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

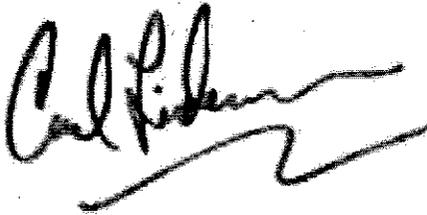
only mentions MHPC's purported efforts to validate expenditures in the 1056-B filing. This focus underscores my point that MHPC is greatly concerned about the IRS regulation that "no substantial part of a charity's activities consist of carrying on propaganda or otherwise attempting to influence legislation." 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 P. Fisher". The signature is fluid and cursive, with a long horizontal stroke at the bottom.

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. Billings'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. Billings'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. Billings'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!"

3/25/2008

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

3/25/2008

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

Reasonable. Effective.
TAXPAYER
BILL OF RIGHTS

Feeling taxed to death?

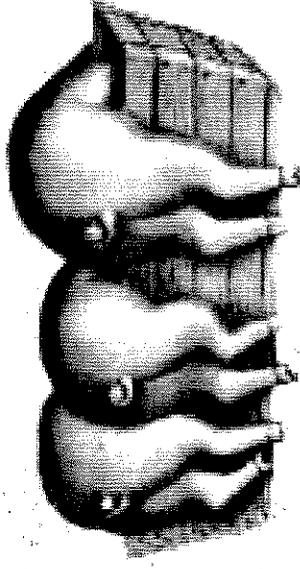
**Are Maine's high taxes hurting
you and your family?**

**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



CITY OF WATERVILLE
OFFICE OF THE MAYOR

Re: TABOR

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

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 decadent organizations. To me any community operating efficiently, while being fiscally responsible to its taxpayers, would have little or no difficulty in asking for excess 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, Palesky 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

WGAM-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.

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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.

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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

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9/15/06: Heather Noyes Joins MHPC as Director of Development

PRESS RELEASE

The Maine Heritage Policy Center

FOR IMMEDIATE RELEASE
SEPTEMBER 15, 2006

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

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

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

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
		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)
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.		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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, 9 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.



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 auxiliary 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)(vii) or Section 509(a)(2) |

If you checked one of the boxes a through f 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 12-03	(c) 01-04 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		



Financial Data (Continued)

B. Balance Sheet (at the end of the period shown)		Current tax year Date 2002
Assets		
1 Cash	1	12,705
2 Accounts receivable, net	2	0
3 Inventories	3	0
4 Bonds and notes receivable (attach schedule)	4	0
5 Corporate stocks (attach schedule)	5	0
6 Mortgage loans (attach schedule)	6	0
7 Other investments (attach schedule)	7	0
8 Depreciable and depletable assets (attach schedule)	8	0
9 Land	9	0
10 Other assets (attach schedule)	10	0
11 Total assets (add lines 1 through 10)	11	12,705
Liabilities		
12 Accounts payable	12	0
13 Contributions, gifts, grants, etc., payable	13	0
14 Mortgages and notes payable (attach schedule)	14	0
15 Other liabilities (attach schedule)	15	0
16 Total liabilities (add lines 12 through 15)	16	0
Fund Balances or Net Assets		
17 Total fund balances or net assets	17	12,705
18 Total liabilities and fund balances or net assets (add line 16 and line 17)	18	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

Form **872-C**

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

OMB No. 1545-0056

(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)(vi) 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)

} 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 from, and developing ways to overhaul public education.

Maine Heritage Policy Center



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

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Phone 207-774-1936
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Maine Commission on Governmental Ethics and Elections Practices
Executive Director Jonathan Wayne, Esq.
135 State House Station
Augusta, ME 04333

May 11, 2007

Dear Executive Director Wayne,

As you recall, I wished to make a fuller response than was possible given the time restraints in composing my e-mail of May 9 and gathering additional documents for inclusion in the Commission's materials. This was to answer the allegations made in Mr. Billings' reply of March 30. Now, it appears some of those allegations, unchallenged, have been taken up into the Staff's recommendations and so these all must be addressed.

It would appear that the staff memo of May 9 suggests to the Commission that it presently has before it two preliminary questions:

a) Question of immediate dismissal of complaint: whether the complaint of March 5 should be dismissed without any hearing or further evidence being adduced. This is expressed in your online summary as follows: *the staff recommends that the Commission decide whether the allegations in the second complaint are worth pursuing.* This restates Mr. Billings' request made in his reply on March 30: *I request that the Commission first determine whether this matter is worthy of consideration.*

This request is governed by 21-A M.R.S.A. § 1003(2):

Investigations requested. A person may apply in writing to the Commission requesting an investigation concerning the registration of a candidate, treasurer, political committee or political action committee and 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 may have occurred.

Please note that your request for response from Maine Heritage Policy Center (MHPC) on March 6 misstate this statute as: "....if the reasons stated for the request show sufficient grounds for believing that a violation **has occurred**." (emphasis added) This represents a far different standard than that of 21-A M.R.S.A. § 1003.

Mr. Billings' request amounts to the equivalent of a civil Rule 56 Summary Judgment request, which the courts all describe as an "extraordinary" remedy to be utilized only in the most convincing of circumstance, and which assigns to the defendant the high burden of showing –

while viewing the evidence in the light most positive to the complainant - that the complaint fails to state a claim upon which relief may be granted. Please also note that such Summary Judgment motions always mandate that the factual averments in such motions be made by sworn Affidavit.

b) Question of appropriate process for adjudication: If the Commission chooses to entertain the complaint, what process should be used.

Therefore, I would first ask that the Commission take Administrative Notice pertaining to the complaint of March 5 2007, of the Commission's record in the matter of the October 19, 2006 complaint for the purposes of resolving these preliminary procedural issues raised by your memo to the Commission of May 9, 2007.

Second, I would make the following assertions concerning these preliminary procedural issues:

1. Mr. Billings has been, and continues to be, a fact witness before this Commission.

The fact that Mr. Billings is also a lawyer does not preclude him from being categorized as a fact witness. He has made, and continues to make, as a part of MHPC's evidentiary case, numerous oral and written assertions as to facts pertinent -- and central -- to the allegations in both my October 19 complaint, and my March 5 complaint. That his past statements were not sworn, either by oral oath at hearing, or within an affidavit, does not prevent him from being categorized as a fact witness. In fact, he appears to be the continuing central, primary fact witness on behalf of MHPC.

2. This Commission's past written findings provide incontrovertible evidence that some of Mr. Billings' past factual affirmations -- including not only "out-of-court", statements, but "in-court" ones made directly to this tribunal (either orally or by written filing) were false.
3. Past false in-court or out-of-court statements by a fact witness mandate a presumptive negative inference as to credibility of continuing, or other, factual affirmations by that same witness.

It is a commonplace of Judicial and Administrative Law that proof of past unreliable or untrue statements by a witness (particularly those made "in-court") allows a fact-finder (including a jury, judge, or an administrative body such as this Commission) to make negative inferences about the reliability or truth of other, or later, factual averments by that same witness.

4. This Commission must apply such a negative inference concerning the reliability of factual affirmations made by Mr. Billings in adjudicating the two procedural issues outlined above.

A.) "Summary Judgment": The application of such a negative inference mandates that this Commission not grant the "extraordinary" remedy of some kind of Summary Judgment, by immediately dismissing the complaint. In other words, viewing the complaints' allegations in the

light most positive to the complainant requires that this Commission conclude that Mr. Billings' factual averments set forth in his written filings on the March 5 complaint are suspect, and that the averments which I have submitted are entitled – for this preliminary determination – to a presumption of truth.

- B.) Continuing Process to be applied by Commission: this negative inference concerning the reliability of MHPC's primary witness, Mr. Billings, should also be applied to combine with the plain language of the statute re: sec. 21-A M.R.S.A. § 1003(1, 3, 4), empowering this Commission to:
1. seek further factual background by ordering either the State Auditor and/or the State Attorney General to conduct a preliminary factual investigation of MHPC's actions and statements;
 2. insist that any factual averments made by Mr. Billings or other fact witness called/presented by MHPC be sworn at hearing and/or by affidavit.

Yours very truly,

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



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

Approved Minutes of Agenda Item #5, May 14, 2007 Meeting

Agenda Item #5 Request for Investigation/Carl Lindemann and Maine Heritage Policy Center

Due to a conflict of interest, Ms. Ginn Marvin recused herself from the discussion of this matter. Mr. Friedman chaired this portion of the meeting.

Mr. Wayne explained that Mr. Lindemann's appeal of the Commission's determination in December as to whether Maine Heritage Policy Center should be considered a PAC is still pending. Mr. Lindemann is complaining that the 1056-B report filed in January by MHPC at the request of the Commission is not complete. MHPC has filed a response requesting the Commission decide whether this second complaint is worth considering at this time, since the appeal is still in the Court's hands.

Mr. Friedman expressed concerns as to whether this discussion has any validity at this point in time since the appeal is still pending. He asked Assistant Attorney General, Phyllis Gardiner for her thoughts on whether this is the appropriate time to consider this second complaint. Mr. Friedman reviewed the order of events and the status of the appeal.

Mr. Friedman asked whether, if the Superior Court does rule in Mr. Lindemann's favor and MHPC is a PAC, that would cause the 1056-B report filed by MHPC to be withdrawn or subsumed.

Ms. Gardiner thought it would then be subsumed, in effect, because a PAC report would be broader in terms of reporting all contributions and expenditures and thus include more than the 1056-B report.

Mr. Friedman stressed that the issue is not whether these complaints are worth pursuing; the issue here is whether the complaints should be pursued at this time. Procedurally, Mr. Friedman does not believe the complaint is ripe because the Commission has not received a final adjudication as to MHPC's status. At this point, he thinks Mr. Lindemann and Mr. Billings should be heard as to the appropriateness of

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

addressing the issue today. Mr. Friedman thought this hearing ought to be delayed until after the court has ruled.

Mr. Cassidy asked whether MHPC would have to report retroactively if the court determined it was a PAC. Ms. Gardiner confirmed that it would. Mr. Cassidy agreed that it would be wise to wait at this point; however, he would like to hear from Mr. Lindemann and Mr. Billings on the issue of delaying the hearing on this complaint.

Ms. Thompson expressed concern with the Commission not hearing a complaint that has been filed against someone who submits a 1056-B report. She believes all complaints should be heard when they are filed regardless of what may be pending. Ms. Thompson asked what the normal procedure is when someone files a complaint against a 1056-B filer. She asked if the staff looked at the MHPC 1056-B report. Mr. Wayne said that the staff did review it. Ms. Thompson does not think this complaint should wait since there is no legal prohibition against hearing the complaint in light of the pending appeal.

Mr. Friedman stressed that this is not a normal situation since there are pending issues regarding the complaint. If this were in front of a court, the court would probably not want to take the complaint up until a final decision had been made regarding MHPC's status because it would not want to take time on an issue that may become moot because of a decision in another forum.

Mr. Cassidy stated that he would favor scheduling the complaint at a later time when the loose ends were more tied up.

Mr. Lindemann addressed the Commission as to whether this is the right time to hear his second complaint. His two major concerns are: 1) how to deal with a 1056-B filing when the reported expenditures far exceed contributions, and 2) the larger issue of new political public relation firms operating under the guise of public policy groups. Mr. Lindemann thought that MHPC should voluntarily disclose all its financial activity in the same way that Democracy Maine had voluntarily disclosed its financial activity on a PAC report as a part of its response to a complaint brought against it by Roy Lenardson. Mr. Lindemann said that the Commission tabled the complaint against Democracy Maine (March 9, 2007 meeting) after it had considered the complaint and thought that the same should be done in this case.

Mr. Lindemann addressed two procedural issues regarding this matter brought up in Mr. Billings' response. First, he believes that this matter is worth pursuing. The Commission has the authority to conduct an investigation if there are sufficient grounds for believing that a violation may have occurred. Mr. Lindemann said that the materials he has presented the Commission more than sufficiently state the grounds for an investigation. Second, Mr. Lindemann said that Mr. Billings asked that the complaint be summarily dismissed. However, Mr. Lindemann stated that Mr. Billings has not provided any sworn statement to substantiate his request for a summary dismissal.

He feels that it would have been appropriate for MHPC to ask for a stay for filing the 1056-B report pending the appeal back in January; however, it did not. It accepted the Commission's determination that it had to file the report and filed one. The 1056-B filing itself is separate and apart from the appeal. For example, if there were material false statements in the report, that would be a separate violation that would not be dependent on the Superior Court's ruling. He believes the fact finding should go forward and stop short of a final determination until the court decision.

Mr. Billings addressed the Commission. He expressed concern with the amount of time his client, MHPC, has already had to put into this issue and this second complaint today will just add more time to process. If there is going to be a fact finding investigation, Mr. Billings believes it should be done once, in accordance with the court's direction. If the complaint were unrelated and a separate factual matter, it would be justified to investigate further. He agreed that the Commission has the discretion to decide how it should proceed. He noted that a similar complaint against the AARP had been tabled pending resolution of the court case. In response to Mr. Lindemann's point about the stay, Mr. Billings noted that since MHPC had decided not to appeal the Commission's earlier ruling, it had no basis to request a stay.

Ms. Thompson stated that she thought the Commission should hear the substantive issues presented in the complaint and not delay because of pending Superior Court case.

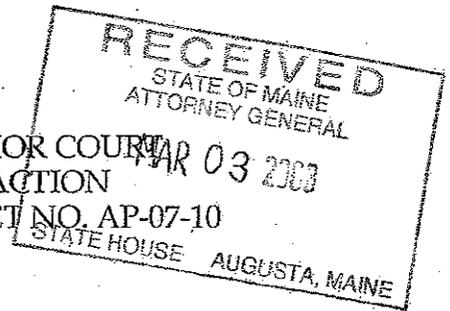
Mr. Cassidy made a motion to reschedule this complaint until after the Superior Court decision; Mr. Friedman seconded. The motion passed 2-1, Ms. Thompson opposed.

Mr. Friedman stated that the vote to delay does not cast any doubt on the validity of the complaint. The complaint is worthy of hearing, but the Commission needs to be concerned with administrative economy. The Commission will look at every aspect of the complaint when the time is right.

Ms. Ginn Marvin took the Chair at the conclusion of this item and stated that items would be taken out of order to prevent parties from having to wait longer.

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-07-10



CARL LINDEMANN,

Petitioner

v.

DECISION AND ORDER

MAINE COMMISSION ON
GOVERNMENT ETHICS &
ELECTION PRACTICES,

Respondent

This M.R. Civ. P. 80C petition for judicial review results from the petitioner's request that the respondent, the Maine Commission on Governmental Ethics & Election Practices (Commission) investigate the conduct of the Maine Heritage Policy Center (MHPC) with regard to the statewide referendum campaign to enact a Taxpayer Bill of Rights (TABOR).

In October 2006, in a letter faxed to the Commission, the petitioner requested an investigation because he believed that the MHPC had been heavily involved in supporting passage of TABOR but had failed to file disclosure forms pursuant to 21-A M.R.S.A. § 1056-B or register as a political action committee pursuant to 21-A M.R.S.A. § 1053. (R. 1.) On October 20, 2006, the Commission considered the request, heard presentations from petitioner, counsel for the MHPC, and the executive director of Democracy, Maine, and tabled the matter for further consideration the following week. (R. 2 at 3-23; 3 at 24-26.) Counsel for the MHPC asserted that it had not solicited or received contributions specifically targeted to influence the outcome of TABOR. (R. 6.)

The Commission determined from the information presented that the MHPC did not meet the definition of a political action committee, but that further research was necessary regarding whether the MHPC should be required to file a § 1056-B report. (R. 8 at 8, 9.)¹

The petitioner sent a letter to the Commission and argued that it had reached the wrong conclusion with regard to the MHPC's status as a political action committee and submitted additional information. (R. 12 at 2-6 and attachments.) The Commission confirmed its conclusion that the MHPC was not a political action committee but that the MHPC was required to file a financial report under 21-A M.R.S.A. § 1056-B because evidence confirmed that it had raised or spent more than \$1,500 to promote, initiate, or influence TABOR. (R. 22; 36 at 219-221; 37.) A motion to conduct further investigation failed by a 2-2 vote. (R. 36 at 238-239.) A motion to determine that the MHPC was not a political action committee passed by a 3-1 vote. (R. 36 at 239-240.) The Commission voted unanimously to require the MHPC to file a § 1056-B report within 30 days. (R. 36 at 240-241.) This decision was memorialized by letter on December 22, 2006. (R. 37.)

The petitioner argues that the Commission acted arbitrarily and capriciously, abused its discretion, committed errors of law and/or was affected by bias in a number of ways. Because the petitioner lacks standing to challenge the enforcement actions of the Commission, the petitioner's various arguments are not addressed and the petition is dismissed.

Maine's Constitution contains no "case or controversy" requirement for standing. Roop v. City of Belfast, 2007 ME 32, ¶ 7, 915 A.2d 966, 968. Maine's standing requirement is thus prudential rather than constitutional and limits access to the courts

¹ The Commission also solicited the opinions of several non-profit groups. See (R. 10, 15, 16, 17, 20, 36 at 180-200 and 201-205.)

to “those best suited to assert a particular claim.” *Id.* (quoting Halfway House, Inc. v. City of Portland, 670 A.2d 1377, 1380 (Me. 1996)). In applying the standing doctrine, “[t]here is no set formula for determining standing. The judicial doctrine of standing ‘has been applied in varying contexts causing it to have a plurality of meanings.’” *Id.* (quoting Walsh v. City of Brewer, 315 A.2d 200, 205 (Me. 1974)).

Rule 80C entitles “any person who is aggrieved by final agency action” to judicial review in the Superior Court. M.R. Civ. P. 80C; 5 M.R.S.A. § 11001. The Law Court has determined that standing to obtain judicial review of an administrative action requires demonstration of a particular injury from the action. Storer v. Department of Environmental Protection, 656 A.2d 1191, 1192 (Me. 1995). “The agency’s action must actually operate prejudicially and directly upon a party’s property, pecuniary or personal rights.” *Id.* The harm must be “distinct from the harm experienced by the public at large” and not one “suffered by all the citizens of the State.” Ricci v. Superintendent, Bureau of Banking, 485 A.2d 645, 647 (Me. 1984).

The petitioner claims that the Commission’s decision deprived citizens of “information vital to the electoral process and to the choices faced by voters in an election.” (Pet.’s Rep. Br. at 5.) He argues that this falls within the “zone of interests” sought to be protected by the pertinent election laws and that the alleged injury is sufficient to establish his standing. *Id.* at 3; see Federal Election Commission v. Akins, 524 U.S. 11 (1998).

In Akins, the Court interpreted the provision of remedies for aggrieved parties in the Federal Election Campaign Act of 1971 (FECA). The Court found that the failure to obtain information fell within the “zone of interests” protected by FECA. *Id.* at 19-20. FECA provides that “any person who believes a violation of this Act . . . has occurred, may file a complaint with the Commission.” Akins, 524 U.S. at 19 (citing 2 U.S.C. §

437g(a)(1)). The petitioner argues that this language is parallel to the provision of section 1003(2): “[a] person may apply in writing to the commission requesting an investigation concerning the registration . . . and contributions by or to and expenditures by a person, candidate, treasurer, political committee or political action committee.” 21-A M.R.S.A. §1003(2). The petitioner argues further that the language in FECA, “any party aggrieved by an order of the Commission dismissing a complaint filed by such party . . . may file a petition’ in district court seeking review of that dismissal” is parallel to the language in the Maine Administrative Procedure Act, “any person who is aggrieved by final agency action shall be entitled to judicial review thereof”. See Akins, 524 U.S. at 19 (citing 2 U.S.C. §437g(8)(A)); 5 M.R.S.A. § 11001(1).

In Akins, the FEC argued that the petitioners did not have standing because agency enforcement actions are “an area generally not subject to judicial review.” Akins, 524 U.S. at 26. The Court agreed that agency enforcement decisions are traditionally committed to agency discretion and concluded that Congress did not intend to alter that tradition by enacting the APA. Id. (quoting Heckler v. Chaney, 470 U.S. 821, 832 (1985)). The Court determined, however, that unlike the APA, FECA explicitly indicated the contrary with regard to judicial review. Id.² FECA allows any party aggrieved by the FEC’s dismissal of a complaint to seek review in federal district court. Id. at 19. The Court found that “nothing in the Act that suggests Congress

² This essential distinction between the APA and FECA is also noted by the dissenting justice who believed that this distinguishing provision of FECA rendered it unconstitutional. Akins, 524 U.S. at 29-30 (Scalia, J., dissenting) (“The provision of law at issue in this case is an extraordinary one, conferring upon a private person the ability to bring an Executive agency into court to compel its enforcement of the law against a third party. Despite its liberality, the Administrative Procedure Act does not allow such suits, since enforcement action is traditionally deemed ‘committed to agency discretion by law.’”).

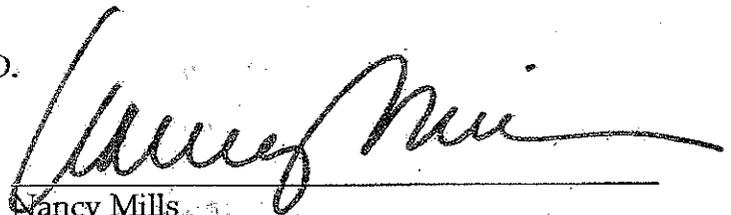
intended to exclude voters from the benefits of these provisions, or otherwise to restrict standing". Id. at 19-20.

None of the statutes relied on by the petitioner explicitly indicates an intent to alter the traditional discretion given to agency enforcement actions in a way similar to FECA. See 21-A M.R.S.A. § 1001, et seq.; 5 M.R.S.A. § 11001, et seq. The petitioner has expressed only a generalized injury indistinct from any injury to the public at large and as a result has failed to satisfy the "threshold issue" of standing. Ricci, 485 A.2d at 647.³

The entry is

The Petition is DISMISSED.

Date: February 26, 2008



Nancy Mills
Justice, Superior Court

³ The petitioner dedicates a significant part of his reply brief to a discussion of public policy considerations that support granting him standing. The FECA, unlike Maine's election laws, requires judicial review of claims that traditionally would have been committed to agency discretion. Akins, 524 U.S. at 26.

Carl Lindemann

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Phone 207-774-1936
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March 18, 2008

Dear Executive Director Wayne,

Unfortunately, this is the busiest time of the year in my business, and I will not be able to attend in person on the 31st. However, this should not preclude the resolution of procedural matters at that session. I have alerted you to these before and significant work has been done on them already. Therefore I request that the following be included on the agenda for the March meeting so the case can move forward, if appropriate, at the April meeting.

1. I request that the Commission determine by formal vote whether the Commission is the appropriate venue for this case about a fellow Commissioner. If it is determined that the Commission is not the proper venue due to the conflict of interest, I request that the Commission cede its jurisdiction here and take steps to refer it to an appropriate venue. The Commission heard these arguments last month and had a chance to question me in person, but did not move forward on this issue. Unfortunately, Mr. Billings and Assistant Attorney Gardiner were not present and may wish to have the opportunity to participate. I can be available by teleconference, and will have a summation/follow-up comments for review soon. All parties may review the recording and other materials of the meeting. I am not sure if Mr. Billings received Ms. Gardiner's statement or my (unanswered) follow-up questions. They are attached here.

2. Should the Commission decide it is appropriate for it to investigate and adjudicate a case about a fellow Commissioner, then I request that the Commission determine by formal vote whether the proceedings go forward under oath. As you will recall, when this case was first scheduled, I provided you significant evidence that demonstrated MHPC's inaccuracy in its statements. Mr. Billings did not challenge this evidence undermining his credibility as a fact witness. I have since gathered additional factual inaccuracies in MHPC's oral and written testimony to the Commission. I will provide this expanded catalog as soon as possible so that, if necessary, the Commissioners can come to a formal determination on this matter.

If 1 & 2 are settled, then it may be worth addressing whatever ancillary issues Mr. Billings may have raised in his discussions with you.

Also, please be advised that additional material evidence has come out in my own investigation of these matters that will be of interest. I would prefer not to make this public until the venue issue is resolved. If at the March meeting the Commission decides it is appropriate to hear the case, I do not believe it would give proper time if MHPC and the Commissioners receive, review and consider this evidence during that same session. In terms of your agenda, once the above matters are settled, then it may be appropriate to schedule the case for the April meeting where this new evidence could be reviewed beforehand.

Sincerely,



**MARDEN, DUBORD,
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March 21, 2008

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 in response to your letter of March 12, 2008 requesting that I submit any additional materials that I believe the Commissioners need by this date. I respectfully request that this letter be provided to the Commissioners, along with a copy of the minutes of the Commission's meeting of May 14, 2007, which was the meeting when this matter was last considered by the Commission.

The matter should remain tabled

On behalf of the Maine Heritage Policy Center ("MHPC"), I request that Mr. Lindemann's complaint of March 5, 2007 remain tabled until the courts complete consideration Mr. Lindemann's appeal of the Commission's December 20, 2006 decision on his first complaint against MHPC. On March 14, 2008, Mr. Lindemann appealed the Superior Court's decision dismissing his appeal of the Commission's December 20, 2006 decision. The issues raised in the notice of appeal filed on behalf of Mr. Lindemann will now be considered by the Law Court.

It should be noted that one of the arguments included in Mr. Lindemann's brief to the Superior Court was that the Commission's investigation of the first complaint was not conducted properly and was affected by bias. He asserts that the Commission did not conduct a full investigation and that the Commission acted arbitrarily and capriciously in acting as it did. With those issues still potentially to be considered by the courts, and in light of the similar procedural issues now raised by Mr. Lindemann in regards to his second complaint, it would not be wise for the Commission to move forward with an investigation when the procedures that the Commission has used regularly to consider such matters are still under question in the courts.

With the appeal of Mr. Lindemann's first complaint remaining before the courts, the rational for the Commission's decision to table the second complaint is as valid today as it

was when the Commission tabled the matter on May 14, 2007. Delaying further consideration of the matter until the courts complete their work will allow the Commission to have the full benefit of the courts' consideration of the related matter and will reduce the burden placed on the Commission, the Commission's staff, and MHPC by ensuring that the complaint will only need to be considered once by the Commission.

Mr. Lindemann's March 18, 2008 correspondence

In a letter dated March 18, 2008, Mr. Lindemann requests that the Commission determine by a formal vote "whether the Commission is the appropriate venue for this case about a fellow Commissioner." He goes on to suggest that the Commission "cede its jurisdiction here and take steps to refer it to an appropriate venue."

Mr. Lindemann's complaint of March 5, 2007 concerning MHPC's 1056-B filing is a complaint against an organization - MHPC. Mr. Lindemann argues that his complaint is effectively a complaint against a Commissioner due to then Commissioner Jean Ginn Marvin's role as Treasurer of MHPC. It should be noted that the report was not signed by Ms. Marvin and no evidence has been offered to suggest that she played any role in its preparation or was involved with the contributions or expenditures detailed in the report.

Even if one is to accept the suggestion that Mr. Lindemann's complaint is effectively a complaint against Ms. Marvin, it is not now a complaint "about a fellow Commissioner" because Ms. Marvin is no longer a member of the Commission. Any concerns about a potential conflict of interest should have been eliminated by Ms. Marvin leaving the Commission.

It is also significant to note that two of the current Commissioners were not members of the Commission when Ms. Marvin was a member. Three of the current Commissioners were not members of the Commission when the Commission considered Mr. Lindemann's first complaint against MHPC. These changes in the Commission's membership should eliminate any concerns about the ability of the Commission to fairly consider this matter.

Maine law gives the Commission the responsibility to "administer and investigate any violations of the requirements for campaign reports and campaign financing." 1 M.R.S.A. §1008. The law provides no process for the Commission to "cede its jurisdiction" regarding Mr. Lindemann's complaint. If Mr. Lindemann wants the complaint to be heard, the only venue for initial review of the complaint is before the Commission.

If Mr. Lindemann wishes to request that any specific Commissioner recuse themselves from consideration of his March 5, 2007 complaint, he should make such a request and state the specific reasons that he believes that the Commissioner is biased or otherwise incapable of fairly considering the complaint.

Even if both the Commissioners who participated in the consideration of Mr. Lindemann's previous complaint against MHPC were to recuse themselves that would leave three Commissioners who were not members of the Commission at that time when the prior

matter was heard who could hear the second complaint. Even if one were to accept the suggestion that the Commission's proceedings regarding Mr. Lindemann's first complaint were tainted by Ms. Marvin's membership on the Commission that should have no impact on the ability of Commissioners Marsano, Shiah, and Youngblood to fairly hear the second complaint.

I also take issue with Mr. Lindemann suggestion that I have appeared as a fact witness before the Commission regarding these matters. I have appeared before the Commission as an attorney for MHPC. As is common in administrative proceedings, I have presented summaries of factual information that has been provided to me and have made arguments based on information provided by my client. This does not make me a fact witness.

A Preliminary Determination is Required Before Investigation May Proceed

In his letter of March 5, 2007, Mr. Lindemann requests that the Commission investigate whether the 1056-B filing made by MHPC is complete and accurate. When the Commission decides that it is the appropriate time to consider Mr. Lindemann's request, it must make a preliminary determination before an investigation may proceed.

21-A M.R.S.A. §1003 governs the Commission's consideration of requests for investigations:

A person may apply in writing to the commission requesting an investigation concerning the registration of a candidate, treasurer, political committee or political action committee and 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 may have occurred.

This statute requires the Commission to make a qualitative assessment of the request for an investigation. More than a mere allegation or potential for a violation is required before an investigation is ordered. The Commission should only begin an investigation if the person requesting an investigation has come forward with sufficient grounds to convince the Commission that a violation may have occurred.

This determination required by the statute is important to protect parties from the burdens imposed by unnecessary investigations. It is also a protection from someone using the Commission to harass their political opponents. Mr. Lindemann 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 and his analysis of press releases. These allegations and theories fall well short of meeting his burden to provide sufficient grounds for believing that a violation may have occurred.

Mr. Lindemann also suggests that the Commission should believe that MHPC's 1056-B filing is incomplete because it lists more expenditures than contributions. Below is a

summary of organizations that filed 1056-B reports in 2006 due to their activities in opposition to the Taxpayer's Bill Of Rights ("TABOR"). As you can see, it is not unusual for 1056-B filers to list more expenditures than contributions. AARP listed \$295,558.00 in expenditures and no contributions. If a significant difference between contributions and expenditures provides sufficient grounds to believe that a 1056-B filer has committed a violation than investigations should be opened concerning AARP and the other organizations listed below whose TABOR related expenditures significantly exceeded their TABOR related contributions.

<u>2006 1056-B Filings of those opposed to TABOR</u>	<u>Contributions</u>	<u>Expenditures</u>
AARP	\$ -	\$ 295,558.00
Center on Budget & Policy Priorities	\$ -	\$ 28,221.10
Katahdin Institute	\$ 10,000.00	\$ 7,576.22
Maine Association of Nonprofits	\$ -	\$ 4,394.81
Maine Center for Economic Policy	\$ 1,000.00	\$ 13,404.55
Maine Equal Justice Partners	\$ -	\$ 5,571.48
Maine People's Alliance	\$ 11,171.00	\$ 20,423.29
Maine People's Resource Center	\$ 15,200.00	\$ 13,977.34
Maine Women's Lobby	\$ -	\$ 13,336.10
TOTAL	\$ 37,371.00	\$ 402,462.89

In his March 18, 2008 letter, Mr. Lindemann also requests that the Commission determine whether or not any proceedings relating to the investigation would go forward under oath. Even if the Commission decides to begin an investigation at this time, it is premature to determine whether or not testimony of any kind will be necessary. As you know, the Commission staff often conducts investigations into matters which are ultimately concluded without any testimony being provided to the Commission.

Your May 9, 2007 Memo

In your memo dated May 9, 2007, you attempt to interpret §1056-B and try to determine how the statute should apply to MHPC's 1056-B report and Mr. Lindemann's complaint. You suggest that the whether MHPC's report is complete could turn on whether reporting of contributions is triggered by the contributor's intent or the recipient's intent. You go on to suggest that one interpretation of the statute could require reporting based on the contributor's purpose in making the contribution. This is contrary to the plain language of the statute.

Section 1056-B requires reporting of contributions by any person "who solicits and receives contributions . . . for the purpose of initiating, promoting, defeating or influencing in any way a ballot question." This language establishes that reporting is based on the purpose of the person that solicits and receives the contribution, not the purpose of the person making the contribution. As noted in your memo, the Commission received testimony from then MHPC President William Becker that MHPC solicited and received contributions during 2006 to support MHPC's "overall mission" and its "ongoing work on spending limits." He also noted that no funds were segregated for TABOR related activities and no activities were tied to or dependent upon contributions. It is also significant that MHPC returned a large

Jonathan Wayne, Executive Director
March 21, 2008
Page 5

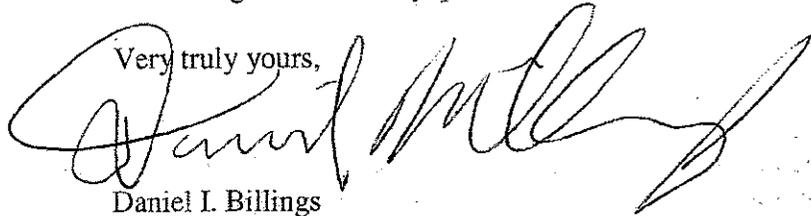
contribution that it determined was intended for the pro-TABOR campaign. This action supports the conclusion that MHPC did not intend to solicit or receive contributions for the purpose of promoting or influencing the vote on the ballot question.

The discussion in your memo concerning Mr. Lindemann's complaints regarding MHPC expenditure reporting illustrates well the problems with his arguments. Mr. Lindemann does not know MHPC's total budget in 2006 so his alleged analysis based on press releases is sophistry. Unless Mr. Lindemann can come forward with examples of specific expenditures by MHPC that have not been reported, he has not met his burden of showing that there are sufficient grounds for believing that a violation in regards to reporting of expenditures has occurred.

Conclusion

I appreciate the opportunity to present this additional information to the Commission. I will be in attendance at the March 31st meeting to address any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel I. Billings", written in a cursive style.

Daniel I. Billings

Carl Lindemann

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Portland, Maine 04112

Phone 207-774-1936
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Jonathan Wayne, Executive Director
Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333

March 21, 2008

Dear Executive Director Wayne,

As promised in my initial response earlier this week to your letter of March 12, 2008, please include the following as the Commission moves forward in addressing my March 5, 2007 request for an investigation into the accuracy and completeness of Maine Heritage Policy Center's 1056-B filing. These include:

1. Previous documents and additional comments to support my request that the Commission determine whether it is the appropriate venue for this complaint. Also, I include a follow-up on questions raised at the Commission's last session under "other business." This is contained in a sizable (91 page) archive of materials attached.
2. Materials to support my request that, if the Commission does decide it is the appropriate venue, then the proceedings should go forward under oath. Factually inaccurate statements made by MHPC's representatives in previous testimony to the Commission raise fundamental doubts about the reliability of Mr. Billings and his client as fact-witnesses. The Commission should respond when witnesses have a demonstrable history of providing inaccurate testimony.

In my May 9, 2007 e-mail (included in pgs 49-50 of Agenda Item #5 for May 14, 2007), I show that a core claim by MHPC, that it had not expressly advocated for the Taxpayer Bill of Rights ("TABOR") ballot initiative, is not factually accurate. Mr. William Becker and MHPC attorney Dan Billings asserted this inaccurate claim on at least six occasions each. Pages 54-55 in the agenda item compare a slide from an MHPC "TABOR" presentation with a flyer from the proponent PAC. MHPC utilized the PAC's slogan in the campaign and so had expressly advocated. I also provided an additional instance where MHPC's Becker also used the campaign slogan to expressly advocate on WGAN-AM on October 30, 2006. This is of particular interest because of Becker's factually inaccurate explanation of his statement made the next day under questioning at the Commission. The transcript is found on pgs 57-60 of Agenda Item #5.

Another instance of MHPC's factually inaccurate testimony is Becker's claim also made at the October 31st 2006 meeting that his organization had not expressly advocated for LD 2075, the pre-TABOR bill before it became a ballot initiative. "We don't take any pro or con stance on any issue," he testified.

On December 8th, 2006, Executive Director Wayne received a voicemail from Commissioner Mavoureen Thompson requesting that the staff seek out legislative testimony to fact-check

Becker's statements. The staff discovered that Mr. Becker's testimony was not factually accurate, as he stated in a memo of December 8, 2006:

At the hearing, Bill Becker testified for the Maine Heritage Policy Center (MHPC). The MHPC testified in support of LD 2075 (the MHPC thanked the committee for the opportunity to testify in "full support" of the bill). When Mr. Becker signed up as the second witness, he placed a check-mark in the proponent column...

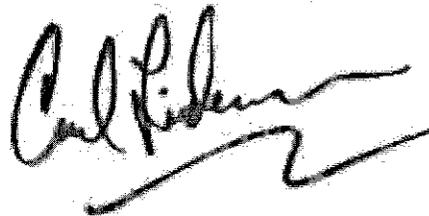
There are other examples of Mr. Billings and Mr. Becker's factual inaccuracies in testimony to the Commission. I would be happy to provide additional examples if these are insufficient to show the need for sworn testimony should the Commission decide to proceed with this follow-up complaint.

Finally, setting aside these procedural concerns for a moment, I would like to address a statement in your March 12 letter:

At that meeting, I will be suggesting to the Commission members that they decide whether to authorize the staff to initiate an investigation.

During the May 14th session last year, Commission Chair Friedman had acknowledged the "validity" of the complaint – i.e. that I had met the statutory requirement for such an investigation. So, if I understand the Commission's statutory responsibilities correctly, the question is not if this will be investigated and adjudicated, but when. Please clarify your comments in this light.

Sincerely,

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

1. Issues with the Commission investigating a Commissioner

This issue should be self-evident, but a fuller explication of this is contained in the documents submitted to you on January 31, your reply, and the clarification sent on February 4. For completeness, I also include the cover letter for when these documents were forwarded directly to the Commissioners. Please include these in the packet for the agenda item.

Commissioner Marsano expressed special interest in the matter of Ms. Ginn Marvin's failure to disclose her board membership on a political committee when she candidated for the Ethics Commission. I include that archive of material here as well. Of special interest here is the telling response of the Commission and staff to these revelations.

I have also included the news report about Ms. Ginn Marvin's failure to report published in the Portland Press Herald. This is noteworthy because of Assistant Attorney General Gardiner's highly prejudicial summary conclusions later echoed by Executive Director Wayne at the July 16th meeting of the Commission:

The Maine Attorney General's Office determined that Ginn Marvin's role with the think tank does not bar her from serving on the ethics commission, because the organization does not appear to fit the legal definition of a "political committee."

Assistant Attorney General Gardiner is, in fact, the source of this statement, and can confirm that fact for the Commission if necessary. Since, I have provided the Executive Director and the Assistant Attorney General ample proof that MHPC does fit the "legal definition of a 'political committee,' and their failure to respond to that has been telling. It is interesting to note that, since, the Executive Director has attempted to narrow the definition of what constitutes a "political committee."

Again, these examples of questionable conduct underscore concerns about the Executive Director and Assistant Attorney General's neutrality in any investigation related to Commission Chair Ginn Marvin. Why is her conduct such a problem for them? It draws attention to the charge that the Commission was improperly constituted with a Commissioner serving as an officer of a political committee. If this were ever to be investigated and adjudicated, it should bring significant professional embarrassment to the Executive Director, the Assistant Attorney General, and others.

INDEX TO MATERIALS:

1. January 31 request and ancillary documents (sent directly to Commissioners on February 7, 2008). 19 pages.
2. July 2, 2007 complaint on Commission Chair Ginn Marvin's conduct and qualifications. 38 pages.
3. July 16, 2007 Portland Press Herald report on Ginn Marvin complaint. 2 pages.
4. August 6, 2007 challenge to Assistant Attorney General's "it just sits there" doctrine. 27 pages. Pages 12-27 examines whether MHPC is a "Political Committee."

Carl Lindemann

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

March 25, 2008

Dear Executive Director Wayne,

Having reviewed Mr. Billings letter of March 21, I request that the Commission take administrative notice of his prior testimony/statements in the initial case against his client Maine Heritage Policy Center. This is not about the truth of the matters asserted then, but to show that Billings is not a credible witness in the current matter.

Of particular interest is Mr. Billings letter of December 4, 2006 in response to a request for information from the Commission staff. His reply to question #4 quotes a mission statement purportedly drawn from MHPC's "application for 501(c)(3) status". However, this statement is not contained in the document he refers to, MHPC's Form 1023 filing with the IRS. I have attached these documents for your convenience.

Mr. Billings' past averments to the Commission have been shown to be false, at the very least due to his sloppiness or at worst due to deliberate misrepresentation. If he wants to make averments about material issues, the Commission, as a matter of prudence, should require that he make them as a sworn/signed affidavit since he is an unreliable fact-witness.

Given his purported concern over "administrative economy" to justify further delays of the proceedings against his client, it is important to consider the waste of time and effort caused by Mr. Billings and his client's past failure to provide accurate information to the Commission.

Sincerely,



**MARDEN, DUBORD,
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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.

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 that would justify state regulation 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

“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

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.

- (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

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.

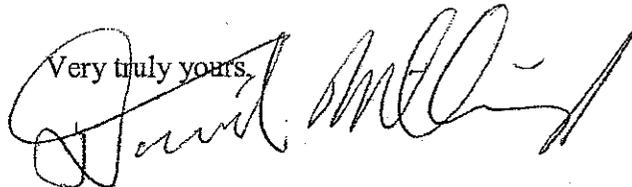
Allegations contained in Carl Lindemann's November 27th letter

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.

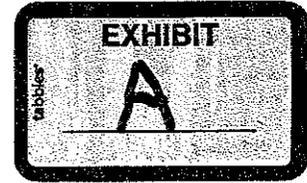
Mr. Lindemann's complaints to the Commission are just one part of his long running campaign against MHPC. Previously, he has filed complaints against MHPC with the Internal Revenue Service which were dismissed. His more recent actions, which include what appears to be an attempt to entrap MHPC into accepting 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 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

Addendum to Item #2

(Carl Lindemann's
93-page submission
dated
March 21, 2008)

Carl Lindemann

P.O. Box 171
Portland, Maine 04112

Phone 207-774-1936

Email Carl@cyberscene.com

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

March 21, 2008

Dear Executive Director Wayne,

As promised in my initial response earlier this week to your letter of March 12, 2008, please include the following as the Commission moves forward in addressing my March 5, 2007 request for an investigation into the accuracy and completeness of Maine Heritage Policy Center's 1056-B filing. These include:

1. Previous documents and additional comments to support my request that the Commission determine whether it is the appropriate venue for this complaint. Also, I include a follow-up on questions raised at the Commission's last session under "other business." This is contained in a sizable (91 page) archive of materials attached.
2. Materials to support my request that, if the Commission does decide it is the appropriate venue, then the proceedings should go forward under oath. Factually inaccurate statements made by MHPC's representatives in previous testimony to the Commission raise fundamental doubts about the reliability of Mr. Billings and his client as fact-witnesses. The Commission should respond when witnesses have a demonstrable history of providing inaccurate testimony.

In my May 9, 2007 e-mail (included in pgs 49-50 of Agenda Item #5 for May 14, 2007), I show that a core claim by MHPC, that it had not expressly advocated for the Taxpayer Bill of Rights ("TABOR") ballot initiative, is not factually accurate. Mr. William Becker and MHPC attorney Dan Billings asserted this inaccurate claim on at least six occasions each. Pages 54-55 in the agenda item compare a slide from an MHPC "TABOR" presentation with a flyer from the proponent PAC. MHPC utilized the PAC's slogan in the campaign and so had expressly advocated. I also provided an additional instance where MHPC's Becker also used the campaign slogan to expressly advocate on WGAN-AM on October 30, 2006. This is of particular interest because of Becker's factually inaccurate explanation of his statement made the next day under questioning at the Commission. The transcript is found on pgs 57-60 of Agenda Item #5.

Another instance of MHPC's factually inaccurate testimony is Becker's claim also made at the October 31st 2006 meeting that his organization had not expressly advocated for LD 2075, the pre-TABOR bill before it became a ballot initiative. "We don't take any pro or con stance on any issue," he testified.

On December 8th, 2006, Executive Director Wayne received a voicemail from Commissioner Mavoureen Thompson requesting that the staff seek out legislative testimony to fact-check

Becker's statements. The staff discovered that Mr. Becker's testimony was not factually accurate, as he stated in a memo of December 8, 2006:

At the hearing, Bill Becker testified for the Maine Heritage Policy Center (MHPC). The MHPC testified in support of LD 2075 (the MHPC thanked the committee for the opportunity to testify in "full support" of the bill). When Mr. Becker signed up as the second witness, he placed a check-mark in the proponent column...

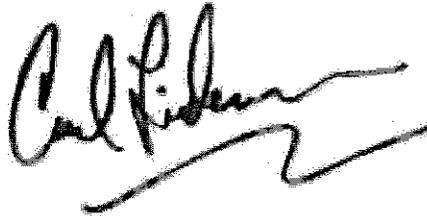
There are other examples of Mr. Billings and Mr. Becker's factual inaccuracies in testimony to the Commission. I would be happy to provide additional examples if these are insufficient to show the need for sworn testimony should the Commission decide to proceed with this follow-up complaint.

Finally, setting aside these procedural concerns for a moment, I would like to address a statement in your March 12 letter:

At that meeting, I will be suggesting to the Commission members that they decide whether to authorize the staff to initiate an investigation.

During the May 14th session last year, Commission Chair Friedman had acknowledged the "validity" of the complaint – i.e. that I had met the statutory requirement for such an investigation. So, if I understand the Commission's statutory responsibilities correctly, the question is not if this will be investigated and adjudicated, but when. Please clarify your comments in this light.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl Friedman". The signature is written in a cursive style with a long, sweeping underline.

1. Issues with the Commission investigating a Commissioner

This issue should be self-evident, but a fuller explication of this is contained in the documents submitted to you on January 31, your reply, and the clarification sent on February 4. For completeness, I also include the cover letter for when these documents were forwarded directly to the Commissioners. Please include these in the packet for the agenda item.

Commissioner Marsano expressed special interest in the matter of Ms. Ginn Marvin's failure to disclose her board membership on a political committee when she candidated for the Ethics Commission. I include that archive of material here as well. Of special interest here is the telling response of the Commission and staff to these revelations.

I have also included the news report about Ms. Ginn Marvin's failure to report published in the Portland Press Herald. This is noteworthy because of Assistant Attorney General Gardiner's highly prejudicial summary conclusions later echoed by Executive Director Wayne at the July 16th meeting of the Commission:

The Maine Attorney General's Office determined that Ginn Marvin's role with the think tank does not bar her from serving on the ethics commission, because the organization does not appear to fit the legal definition of a "political committee."

Assistant Attorney General Gardiner is, in fact, the source of this statement, and can confirm that fact for the Commission if necessary. Since, I have provided the Executive Director and the Assistant Attorney General ample proof that MHPC does fit the "legal definition of a 'political committee,' and their failure to respond to that has been telling. It is interesting to note that, since, the Executive Director has attempted to narrow the definition of what constitutes a "political committee."

Again, these examples of questionable conduct underscore concerns about the Executive Director and Assistant Attorney General's neutrality in any investigation related to Commission Chair Ginn Marvin. Why is her conduct such a problem for them? It draws attention to the charge that the Commission was improperly constituted with a Commissioner serving as an officer of a political committee. If this were ever to be investigated and adjudicated, it should bring significant professional embarrassment to the Executive Director, the Assistant Attorney General, and others.

INDEX TO MATERIALS:

1. January 31 request and ancillary documents (sent directly to Commissioners on February 7, 2008). 19 pages.
2. July 2, 2007 complaint on Commission Chair Ginn Marvin's conduct and qualifications. 38 pages.
3. July 16, 2007 Portland Press Herald report on Ginn Marvin complaint. 2 pages.
4. August 6, 2007 challenge to Assistant Attorney General's "it just sits there" doctrine. 27 pages. Pages 12-27 examines whether MHPC is a "Political Committee."

Document Set #1:

January 31 request and ancillary documents (sent directly to Commissioners on February 7, 2008). 19 pages.

Carl Lindemann

P.O. Box 171
Portland, Maine 04112

Phone 207-774-1936

Email Carl@cyberscene.com

February 7, 2007

Dear Commissioners Marsano, Shiah, Thompson & Youngblood:

I am contacting you directly as per the procedure for handling complaints against Commissioners set out my Executive Director Wayne in the staff's letter concerning January agenda item #5 dated January 15, 2008.

I have attached letters and e-mail documenting an exchange between myself and the Executive Director concerning the outstanding case against former Commission Chair Ginn Marvin and her political committee, the Maine Heritage Policy Center (MHPC) for failing to file a 1056-B report that is "true, correct and complete." I am requesting is that the Commission determine by formal vote whether or not the Commission is the appropriate venue for the complaint. If the Commission determines that it is inappropriate for the Commission to investigate and adjudicate a case against a fellow Commissioner, I ask that the Commission cede jurisdiction in this matter and refer it to the Attorney General to craft an appropriate process. If the Commission decides that it is appropriate, it is necessary that the reasons for such an unusual view be made explicit. The need for addressing this procedural issue now is detailed in the communications attached.

I have contacted you directly because of a failure to follow the procedure Mr. Wayne set out. He stated that "members of the Commission" were to be part of this process. Instead, Commission Chair Friedman has taken it upon himself to resolve the conflict issue concerning his predecessor unilaterally. The matter was apparently settled behind closed doors and any opinion of the Executive Director or the Assistant AG has not been expressed publicly. It is unimaginable that the Commission did not intend to cede its authority in such matters to the sole discretion of the Chair, perhaps without even informing you of these actions.

In any case I request, once again, that the Commission address this issue formally and publicly during the Commission meeting on Monday, February 11 under "other business." In addition, it would also be appropriate for the Commission to revisit the suggestion for a rule change that would automatically refer complaints made against Commissioners to outside authorities. The need to do so should be all-too-apparent now, and this could be considered alongside the other rule change now on Monday's agenda.

Sincerely,



cc Wayne, Lavin, Gardiner, Billings, and Friedman
encl.

Carl Lindemann

P.O. Box 171
Portland, Maine 04112

Phone 207-774-1936

Email Carl@cyberscene.com

January 31, 2008

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

Dear Executive Director Wayne:

I request that the Commission make a determination at its next meeting about a key procedural issue in the case pending before the Commission regarding former Commission Chair Ginn Marvin, treasurer of Maine Heritage Policy Center. This is necessitated by new information that corrects factual errors made in your earlier arguments concerning the conflict of interest surrounding her dual, conflicting role serving on the Commission while also serving as an officer of a political committee.

As I stated in my complaint of March 5:

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.

No one has challenged the validity of this point. In fact, Ms. Ginn Marvin's response to the complaint confirmed it. After she stepped away from her role as Chair of the Commission during this agenda item at the May 14th, 2007 meeting, she remained in the room to participate as treasurer of her political committee. In fact, Ms. Ginn Marvin's responsibility as MHPC's treasurer is heightened by her position on the Ethics Commission. She had a dual duty to see to it that her political committee faithfully followed her Commission's order to file a report that is "true, correct and complete."

In addition, this case has an additional ramification for Ms. Ginn Marvin that is material to the Commission. One of the findings will be the expenditures her organization made for fundraising in the Taxpayer Bill of Rights (TABOR) ballot initiative. One anomaly in MHPC's 1056-B filing is that it shows that the political committee raised and expended funds, yet reports zero expenditures for fundraising. This is in direct contradiction to testimony from the organization's President and CEO who, when describing the TABOR initiative, exclaimed "what a better time to raise money!" Also, their fundraising solicitations and "thank you" form letter for the TABOR campaign demonstrate this unreported expenditure. The significance for Ms. Ginn Marvin is that such fundraising is specifically prohibited to Commissioners under MRSA 1 § 1002(6).

Previous Responses to this Issue:

During the May 14th, 2007 meeting, then-acting Chair Friedman summarily dismissed the inherent conflict of interest of having the Commission investigating and adjudicating a case about a fellow Commissioner. Commissioner Friedman stated "We've heard that before." Apparently, he was referring to your dismissal of these concerns in your letter of November 29, 2006. There, you stated that:

She (Commissioner Ginn Marvin) was a member of the MHPC board when the Governor appointed her at the suggestion of the legislative leadership, so apparently the issue was not viewed as a disqualifying conflict at the time of her appointment.

As we now know, Ms. Ginn Marvin failed to disclose her board membership on MHPC. The Governor and legislative leadership were denied the ability to properly assess her qualifications in this light. The upshot is that your reasoning on the conflict of interest issue was based on misinformation. To put this in Commission Chair Friedman's terms, the Commission has not heard any of this before.

Evidence of the Conflict of Interest:

That there is an irresolvable conflict of interest here should be apparent on general terms – Commissioners trying a case about a fellow Commissioner. In addition, numerous events surrounding the Commission's relationship with Ms. Ginn Marvin as well as actions taken regarding her demonstrate an irrevocable conflict of interest. Here are a few examples.

First, let's look at your dealings with Ms. Ginn Marvin:

1. By her own account made at the Commission meeting on January 19 last year, you have dutifully served as a direct report to Ms. Ginn Marvin for some two years and enjoyed a close relationship built on almost daily contact.
2. During the July 16 meeting, she personally credited you with returning her to the role of Chair after Commissioner Ketterer's departure.
3. You have made significant errors in your professional duties regarding Ms. Ginn Marvin. I have already mentioned your initial error presuming that she had been properly cleared to serve on the Commission. Then, during this case, you misstated 21-A M.R.S.A. § 1003, the standard for having the Commission launch an investigation as "...if the reasons stated for the request show sufficient grounds for believing that a violation *has occurred*." (emphasis added). This statement of the law, in a case directly calling into question the legality of actions undertaken by your boss, was fundamentally and entirely wrong. The standard for determining when the Commission should undertake an investigation is "...if the reasons stated for the request show sufficient grounds for believing that a violation *may have occurred*." (emphasis added)

4. At the July 16 meeting of the Commission, you made a summary dismissal pronouncement about the allegations challenging Commission Chair Ginn Marvin's conduct and qualifications to serve. Since, you have not substantiated or affirmed your assertion that Commission Chair Ginn Marvin was not an officer of a political committee, an automatic disqualification for service on the Commission.

Second, the episode culminating at the August 13 session with Commission Chair Friedman presiding over what was purportedly a discussion of a discussion about Commissioner Ginn Marvin's qualifications and conduct is a portrait of an agency in crisis due to a conflict of interest. How Ms. Ginn Marvin – despite my objections – participated in this “discussion” was telling. Commission Chair Friedman stated:

What we're discussing is a general rule or policy and procedure that this Commission has the authority to discuss - whoever discusses it. It's not directed to anyone at this point in time. It's just a simple, uh, dialog, so to speak among us to figure out where we're going today from here. Whether or not we're going to have a further discussion or whether or not we will not.

What was Ms. Ginn Marvin's decisive contribution to this discussion about no one in particular? She announced she was leaving the Commission, so pursuing issues of her conduct and qualifications were “a waste of time.” Her personal declaration shows Commission Chair Friedman's claim that they were “discussing... a general rule or policy and procedure” was factually inaccurate. In fact, it shows his conduct here regarding Ms. Ginn Marvin was arbitrary and capricious, abusive of his discretion, committed errors of law and was affected by bias.

This is not an exhaustive list of instances that demonstrate why it is simply not reasonable to claim that the Commission can appropriately process this case. I am happy to provide additional examples as needed. However, this should be sufficient to establish that the Commission would be acting arbitrarily and capriciously, abusing its discretion, committing errors of law and is affected by bias to insist on investigating and adjudicating Commissioner Ginn Marvin's case. Given this, whatever final determination the Commission might make here would legitimately be subject for review pursuant to Rule 80C of the Maine Rules of Civil Procedure. This is clear even prior to discussing the merits of the case.

At the May session, Commission Chair Friedman cited “agency efficiency” repeatedly as a guiding principle in his leadership. In this situation, insisting that the Commission continue to operate here with an irrevocable conflict of interest is inherently contrary to that principle. At best, it is grossly inefficient for the Commission waste its own time and that of the courts. At worst, it undermines the very purpose of the commission. As stated in MRSA 1 § 1001, the purpose of the Commission is foster “faith and confidence in the integrity of the election process” for the people of Maine. Having the Commission administer a colleague's case is corrosive to any such confidence.

Yours very truly,





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

February 1, 2008

By E-Mail and Regular Mail

Carl Lindemann
PO Box 171
Portland, ME 04112

Dear Mr. Lindemann:

Thank you for your letter of January 31, 2008. The Commission's Counsel, Assistant Director, and I have reviewed it. We are having difficulty determining what you are asking the Commission to do. This is a request for clarification.

Complaint #1

By way of background, you filed your first complaint with the Commission in October 2006, arguing that the Maine Heritage Policy Center (MHPC) qualified as a political action committee (PAC). On December 20, 2006, the Commission determined that the MHPC was not a PAC because it did not have as its major purpose advocating for the TABOR ballot initiative. On January 19, 2007, your counsel initiated a Rule 80C proceeding in the Maine Superior Court requesting review of the Commission's determination. My understanding of the status of that proceeding is that it has been fully briefed, and that oral argument has not been scheduled.

Complaint #2

Also on December 20, 2006, the Commission determined that the MHPC was required to file a financial report under 21-A M.R.S.A. § 1056-B regarding financial activity in support of TABOR. The MHPC filed the report on January 22, 2007. On March 5, 2007, you requested that the Commission investigate whether the § 1056-B report was accurate and complete. At a meeting on May 14, 2007, the Commission voted 2-1 to postpone consideration of your request until after the Maine Superior Court decided on your Rule 80C proceeding.

Because former Commission member Jean Ginn Marvin served on the board of directors of the MHPC, she has consistently recused herself from any matter relating directly to the MHPC. To my knowledge, she has not influenced the Commission's deliberations or the staff's recommendations in any way. Her term on the Commission expired in April 2007, and she participated in Commission meetings as a holdover member until August 13, 2007.

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

Your Request of Yesterday.

In your letter of yesterday, it appears that you are asking the Commission to take some action in light of new information, but it is not clear what action you are requesting. Could you please state specifically what action you are asking the Commission to take and the reasons the Commission should take that action?

For example, if you are requesting that the Commission consider your March 5, 2007 request before the Superior Court has decided on your Rule 80C proceeding, please explain why. If you are requesting that the Commission refer some matter to a different authority, please identify the matter, the other authority, and why the Commission should take that action.

Thank you for the anticipated clarification.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Wayne". The signature is written in a cursive style with a large initial "J" and "W".

Jonathan Wayne
Executive Director

cp

cc: Assistant Attorney General Phyllis Gardiner, Commission Counsel
Daniel I. Billings, Esq.

Carl Lindemann

P.O. Box 171
Portland, Maine 04112

Phone 207-774-1936
Email Carl@cyberscene.com

February 4, 2007

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

Dear Executive Director Wayne:

Thank you for your request for clarification. My apologies for not being more explicit.

What I am requesting is that the Commission to make a formal vote to determine whether or not the Commission is the appropriate venue for the complaint I brought to it on March 5 and that was an agenda item for the May 14 session. If the Commission determines that it is inappropriate for the Commission to investigate and adjudicate a case against a fellow Commissioner, then I ask that the Commission refer it to the Attorney General to craft an appropriate process. If the Commission decides that it is appropriate, it is necessary that the reasons for such an unusual view be made explicit.

If it helps to clarify matters, I would add these additional points to my arguments and evidence detailed in my previous communication. First, I said that Commission Chair Friedman's citation of your reasons to summarily dismiss the conflict of interest issue is invalid given that your judgment on the matter was based on factually incorrect information. I would also add that your summary dismissal of the issue was improper even if you had the facts right. That there was no factual basis for the flawed reasoning simplifies matters here. In addition, the Commission itself never actually had a chance to discuss the conflict of interest as our correspondence on the matter between November 27-30, 2006 shows. I am attaching that correspondence here.

Finally, during the May 14 discussion, Mr. Friedman either did not understand or refused to accept the distinction between a typical recusal and this unusual case where the recused Commissioner remained in the room to address a complaint. At the December meeting, Mr. Friedman inaccurately recollected the facts claiming that Ms. Ginn Marvin had recused herself AND had left the room. This indicated that he now understands the significance of her remaining in the room on May 14. As such, he should also understand why it is a necessary step in processing such unusual cases to determine whether the Commission can act in any way other than referring the case.

Does this provide what you need? This is a simple matter that can be settled expeditiously at the February 11th Commission meeting.

Regarding the other items in your communication, I appreciate your update on the appeal underway, but none of this has any bearing here if the actions regarding this taken by the Commission on May 14 were not properly processed.

In addition, I do take exception to this assertion you make in your letter:

(Ms. Ginn Marvin) has consistently recused herself from any matter relating directly to the MHPC. To my knowledge, she has not influenced the Commission's deliberations or the staff's recommendations in any way.

These statements are not factually accurate. Let me detail at least four examples:

1. Commissioner Ginn Marvin participated in deliberations over rescheduling the date for the MHPC case on December 12, 2006. My attorneys raised objections of the propriety of this given the conflict of interest and asked that she recuse herself and leave the room. She remained on the panel throughout this discussion of the conflict of interest. Her mere presence "influenced the Commission's deliberations."

2. At the January 19 meeting last year, Commissioner Ginn Marvin, by formal vote of the Commission, participated in discussions about proposed legislation regarding 1056-B reports. The Commission had just determined that MHPC was a regulated entity and ordered it to file such a report. In other words, MHPC enjoyed the advantage of having a seat on the Commission to help craft how it would be regulated. As it happens, the proposed legislation you offered that day, if applied retroactively, would have exempted one organization from reporting in the previous cycle – Commissioner Ginn Marvin's political committee, MHPC.

Another detail here is worth noting. During the session, you were questioned as to whether you had followed the due process of soliciting suggestions to inform the legislative proposals put forth in MRSA 1 § 1009. You stated that you had made such a solicitation. However, my FOIA after revealed that, contrary to your statements, you had not done so. It is unclear what informed your proposal that was of particular benefit to your former boss' political committee. It is reasonable to believe that she influenced your recommendation here either directly or indirectly.

3. After your *sua sponte* restoration of Commissioner Ginn Marvin to her previous role as Chair (and while you were processing my complaint that named her specifically), she presided over a case that directly related to her political committee. In fact, a political operative, likely operating as an agent for MHPC, brought the case. This complaint against Democracy Maine, *et alia*, was the fulfillment of MHPC's declared strategy to respond to its failure to report its activities in the TABOR ballot initiative (see attached letter of Nov. 30, 2006, page 2). In the interest of promoting transparency, Democracy Maine fully disclosed its finances at the meeting as it might if it were determined to be a PAC and compelled to do so. Also note that you, *sua sponte*, brought additional complaints against Democracy Maine, above and beyond those brought by the complainant.

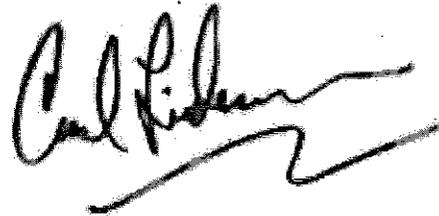
As Commission Chair Ginn Marvin presided, her political committee's attorney came forward to testify – purportedly as a private citizen. Mr. Billings put forward the suggestion that the question of whether Democracy Maine should make a PAC report should be postponed till the appeal of the Commission's final determination about MHPC was settled. He seemed oblivious to the fact that Democracy Maine had unexpectedly just provided such a report. His actions at this session are inexplicable

except when understood as part of a strategy to delay investigation and adjudication of Commission Chair Ginn Marvin's political committee. Did she "influence" these deliberations "in any way"? She presided over them.

4. Commission Chair Ginn Marvin sat^{ed} behind me during my testimony about her and MHPC at the May 14 meeting. Do you maintain that the spectacle of Commission Chair Ginn Marvin sitting in the same field of view for her colleagues during testimony about her political committee's dubious 1056-B report did not influence the Commission's deliberations in any way? This gets to the heart of the matter – and makes clear the Legislature's wisdom in denying officers of political committees the ability to serve on the Commission.

Finally, your description of Ms. Ginn Marvin's departure from the Commission glosses over the reality. You give the impression that she happened to stay as a holdover for a few months while replacement candidates were located. There was no indication that she had any intention to leave the Commission till the news story exposing her failure to properly disclose her board membership on a political committee was published. You may recall that she expressed surprise when Assistant Attorney General Gardiner unexpectedly set in motion Ginn Marvin's removal as Chair on the day of publication. Apparently, she had reason to expect that she would be enjoying that position for an indefinite period before being ousted amidst a public scandal raising questions (still unanswered) about her conduct and qualifications as a Commissioner.

Yours Very Truly,

A handwritten signature in black ink, appearing to read "Carl P. Gardner". The signature is written in a cursive style with a long, sweeping underline.

cc Lavin, Gardiner, Billings
encl.

Carl Lindemann

P.O. Box 2228
Cedar Park, Texas 78630

Phone: 512-528-1516; 207-318-7093 (cell)
Email: Carl@cyberscene.com

November 27, 2006

BY FACSIMILE, ELECTRONIC MAIL & FIRST CLASS MAIL

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

RE: Maine Heritage Policy Center/Jean Ginn Marvin

Dear Mr. Wayne,

Following the meeting of the Commission on October 31st, I was shocked to discover that Commission Chair Jean Ginn Marvin has a far more involved relationship with Maine Heritage Policy Center than was previously known to me. In addition to serving on the Board of Directors of MHPC, she currently serves as that organization's Treasurer. In light of the nature of the pending complaint against MHPC before the Board, and the new evidence presented, Ms. Ginn Marvin's testimony before the Commission will be unavoidable in the context of any reasonable investigation into MHPC's finances. Even if she is somehow not deemed by the Commission to be relevant witness, there can be no dispute about her inability to be impartial in this matter. For these reasons, Ms. Ginn Marvin must not be permitted to participate in any investigation, deliberation or decision-making by the Commission in the context of the pending complaint against the MHPC, nor can she be permitted to have access to, or be privy to, any internal discussions, investigation, documents or deliberations within the Commission about this matter.

It also plainly apparent that a simple recusal by Ms. Ginn Marvin in this case is insufficient to fully address and remedy the appearance of impropriety flowing from her position as Chair of the Commission. How can it be that Ms. Marvin is permitted to hold the position of Chair of the Commission on Governmental Ethics & Election, while contemporaneously serving as board member and treasurer of an organization whose activities are subject to regulation by the Commission? Does not this obvious conflict compel Ms. Ginn Marvin to resign her post as Chair of the Commission, or, alternatively, to immediately resign her position as Treasurer and Board Member of MHPC? I respectfully request that you and the Commission members carefully consider these questions and take the appropriate action.

Thank you for your prompt consideration of and attention to this important matter.

Sincerely,

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

Carl Lindemann

cc: Jonathan Crasnick, Executive Director of Democracy Maine
Daniel I. Billings, Esq., Attorney for Maine Heritage Policy Center



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

November 29, 2006

Carl Lindemann
General Delivery
Calais, ME 04619

Dear Mr. Lindemann:

This letter is to respond on behalf of the Ethics Commission staff to your letter of November 27 regarding Jean Ginn Marvin's participation in the complaint you have brought against the Maine Heritage Policy Center (MHPC).

As you will recall, at the October 31 meeting Ms. Ginn Marvin recused herself from participating in Agenda Item #10 because she is on the MHPC board. Her recusal was not required under the Commission's statute or rules, but she voluntarily recused herself to avoid any perception that she had a conflict of interest. She intends to recuse herself from this issue at the December 12 meeting as it relates specifically to the MHPC.

In the view of the Commission staff, Ms. Ginn Marvin's membership on the MHPC board is not a conflict of interest that would require her to step down from the Commission. She was a member of the MHPC board when the Governor appointed her at the suggestion of legislative leadership, so apparently the issue was not viewed as a disqualifying conflict at the time of her appointment. In case you did not read them before writing your November 27 letter, I have attached 1 M.R.S.A. §1002(2) and (6) which address qualifications for Commission membership and prohibited activities.

Since Maine is not a populous state and members of the Commission are appointed by political leaders, members of the Commission occasionally have had political or other affiliations that have prevented them from participating in a particular matter. The appropriate remedy is recusal from that item, not disqualification from service on the Commission altogether. Disqualification would greatly reduce the number of people who would be eligible to serve on the Commission.

I also wish to respond to some comments by you and your advisor John Branson that have been conveyed to me by news reporters, because they reflect a misunderstanding of the Commission's operations. The employees of the Commission make recommendations and gather preliminary factual information independently of the Commission members. We believe we perform our jobs as civil servants best if we do not take into consideration the political or organizational affiliations of the members. As long as we are fair and even-handed, we believe we have the members' support in making these decisions independently. If the staff's actions to date regarding your

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

Carl Lindemann

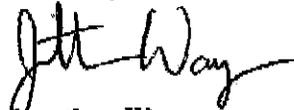
- 2 -

November 29, 2006

complaint have appeared cautious, it has been in an effort to consider valid constitutional concerns, to receive comments from other affected organizations, and to provide the best advice to the Commission about an area of the campaign finance law that is relatively new and in need of clarification. Your complaint has been and will continue to be considered in an open-minded, impartial manner by the Commission staff and members.

I will include your November 27 letter and this response in the materials that the Commission considers for the December 12 meeting. Please feel free to raise any continuing concerns with the Commission members at that time, and to telephone me at 287-4179 if you have any questions about this response.

Sincerely,



Jonathan Wayne
Executive Director

cc: Daniel I. Billings, Esq.
Jonathan Crasnick
Phyllis Gardiner, Esq.
John D. Branson, Esq.

Title 1, §1002, Commission on Governmental Ethics and Election Practices

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§1002. Commission on Governmental Ethics and Election Practices

1. Membership.

[2001, c. 470, §1 (am'd); T. 1, §1002, sub-§1, paragraph F (rp).]

1-A. Membership. The Commission on Governmental Ethics and Election Practices, established by Title 5, section 12004-G, subsection 33 and referred to in this chapter as the "commission," consists of 5 members appointed as follows.

A. By December 1, 2001 and as needed after that date, the appointed leader from each political party in the Senate and the appointed leader from each political party in the House of Representatives jointly shall establish and advertise a 30-day period to allow members of the public and groups and organizations to propose qualified individuals to be nominated for appointment to the commission. [2001, c. 470, §2 (new).]

B. By January 1, 2002 and as needed after that date, the appointed leader from each political party in the Senate and the appointed leader from each political party in the House of Representatives each shall present a list of 3 qualified individuals to the Governor for appointment of 4 members to the commission. The appointed leadership from each party in both bodies of the Legislature jointly shall present a list of 3 qualified individuals to the Governor for appointment of a 5th member to the commission. [2001, c. 470, §2 (new).]

C. By March 15, 2002, the Governor shall appoint the members of the commission selecting one member from each of the lists of nominees presented in accordance with paragraph A. These nominees are subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature. No more than 2 commission members may be enrolled in the same party. [2001, c. 470, §2 (new).]

D. Two initial appointees are appointed for one-year terms, 2 are appointed for 2-year terms and one is appointed for a 3-year term, according to a random lot drawing under the supervision of the Secretary of State. Subsequent appointees are appointed to serve 3-year terms. A person may not serve more than 2 terms. [2001, c. 470, §2 (new).]

E. The commission members shall elect one member to serve as chair for at least a 2-year term. [2001, c. 470, §2 (new).]

F. Upon a vacancy during an unexpired term, the term must be filled as provided in this paragraph for the unexpired portion of the term only. The nominee must be appointed by the Governor from a list of 3 qualified candidates provided by the leader of the party from the body of the Legislature that suggested the appointee who created the vacancy. If the vacancy during an unexpired term was created by the commission member who was appointed from the list of candidates presented to the Governor by the leaders of each party of each body of the Legislature jointly, the nominee must be appointed from a list of 3 qualified candidates provided jointly by the leaders of each party of each body of the Legislature. Nominees appointed pursuant to this paragraph are subject to review by the joint standing committee of the Legislature having jurisdiction over election practices and legislative ethics and to confirmation by the Legislature. [2005, c. 295, §1 (am'd).]

G. Upon a vacancy created by an expired term, the vacancy must be filled as provided in this paragraph. The nominee must be appointed by the Governor from a list of 3 qualified candidates provided by the leader of the party from the body of the Legislature that suggested the appointee whose term expired. When a vacancy is created by an expired term of the commission member who was appointed from the list of candidates presented to the Governor by the leaders of each party of each body of the Legislature jointly,

Title 1, §1002, Commission on Governmental Ethics and Election Practices

the nominee must be appointed from a list of 3 qualified candidates provided jointly by the leaders of each party of each body of the Legislature. Nominees appointed pursuant to this paragraph are subject to review by the joint standing committee of the Legislature having jurisdiction over election practices and legislative ethics and to confirmation by the Legislature. [2005, c. 295, §1 (amd).]

H. For the purposes of this subsection, "political party" has the same meaning as "party" as defined by Title 21-A, section 1, subsection 28. [2001, c. 470, §2 (new).]
[2005, c. 295, §1 (amd).]

2. Qualifications. The members of the commission must be persons of recognized judgment, probity and objectivity. A person may not be appointed to this commission who is a member of the Legislature or who was a member of the previous Legislature, who was a declared candidate for an elective county, state or federal office within 2 years prior to the appointment, who now holds an elective county, state or federal office, who is an officer of a political committee, party committee or political action committee or who holds a position in a political party or campaign.
[2005, c. 271, §1 (amd).]

3. Oath. Each member shall, within 10 days of his appointment, take an oath of office to faithfully discharge the duties of a commissioner in the form prescribed by the Constitution. Such oath shall be subscribed to by the commissioner taking it, certified by the officer before whom it is taken and immediately filed in the Office of the Secretary of State.
[1975, c. 621, §1 (new).]

4. Legislative per diem. The members of the commission are entitled to receive legislative per diem according to Title 5, chapter 379.
[IB 1995, c. 1, §2 (amd).]

5. Employees. The commission shall employ an executive director and such other assistance as may be necessary to carry out its duties. The commission also shall retain a general counsel or a computer analyst as an employee of the commission, based on the staffing needs of the executive director. If the commission employs a general counsel, the general counsel may not hold any other state office or otherwise be employed by the State. The commission shall select the executive director by an affirmative vote of at least 4 commission members.
[2003, c. 381, §1 (amd).]

6. Prohibited activities. A member of the commission may not engage in political fund-raising to promote the election or defeat of a candidate, passage or defeat of a ballot measure or endorse a political candidate. This prohibition does not apply to fund-raising for campaigns or endorsement of candidates at the county or municipal level or out-of-state nonfederal elections.
[2005, c. 271, §2 (new).]

MRSA, §T.1 SEC 1002/1/F (AMD).

PL 1975, Ch. 621, §1 (NEW).

PL 1983, Ch. 812, §1 (AMD).

PL 1989, Ch. 503, §B1 (AMD).

PL 1991, Ch. 86, § (AMD).

PL 1991, Ch. 880, §1 (AMD).

IB 1995, Ch. 1, §1,2 (AMD).

PL 2001, Ch. 430, §1 (AMD).

PL 2001, Ch. 470, §1-3 (AMD).

PL 2003, Ch. 381, §1 (AMD).

PL 2005, Ch. 271, §1,2 (AMD).

PL 2005, Ch. 295, §1 (AMD).

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*Admitted to practice in Maine, Massachusetts &
the District of Columbia.

November 30, 2006

BY FACSIMILE, ELECTRONIC & FIRST CLASS MAIL

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

RE: Carl Lindemann/ Maine Heritage Policy Center

Dear Executive Director Wayne:

I am writing in response to your letter to my client, Carl Lindemann dated November 29, 2006. While my client is appreciative of your initial consideration of the issues raised by Jean Ginn Marvin's continued membership on the Commission, he respectfully disagrees with your conclusion, specifically, that Ms. Ginn Marvin's continued service on the Commission does not present a conflict of interest requiring her to step down. At the outset, I note that you did not respond to one of the fundamental concerns raised in Mr. Lindemann's November 27th letter on this subject—that the pending complaint regarding the financial and campaign activities of the Maine Heritage Policy Center ("MHPC") pending before the Commission, and the new evidence recently presented, renders Ms. Ginn Marvin an extremely material witness by virtue of her position as *treasurer* and board member of the MHPC during the critical time period in question. I cannot conceive of any way to handle or investigate the current matter properly without taking Ms. Ginn Marvin's testimony, or without requesting her direct cooperation in the production of relevant financial documents in her possession, custody or control as treasurer of the investigated entity.

If the Commission decides to address and resolve this obvious conflict by not calling Ms. Ginn Marvin as a witness or subpoenaing documents in her possession, custody or control, then serious questions and concerns will unavoidably be raised in the mind of the public regarding the integrity of any investigation of the MHPC conducted by the Commission. If the Commission does what it should and subpoenas Ms. Ginn Marvin's testimony, along with documents in her possession custody and control as treasurer of MHPC, but *without* requiring Ms. Ginn Marvin to step down, then a different

LAW OFFICE OF JOHN H. BRANSON, P.A.

Jonathan Wayne
November 30, 2006
Page 2

yet equally troubling impression will be created for the public with regard to the fairness and integrity of any investigation of the MHPC the Commission undertakes.

Finally, I wish to offer another compelling reason as to why Ms. Ginn Marvin's simple recusal from the pending investigation of the MHPC does not resolve the larger conflict created by her continued service on the Commission. You must be aware by now that the investigation of the MHPC in this matter will likely compel the Commission to examine the activities of other organizations to ensure their compliance with Maine law regarding campaign finance and reporting. Indeed, the MHPC has thus far made no secret that it seeks to distract and deflect attention from its own activities by suggesting to the Commission that other organizations were doing the exact same things that it was, without filing reports to the Commission. While I am not presently aware of any other organizations in Maine that have engaged in activities similar to those of the MHPC currently in question without establish a political action committee or filing the reports required under 21-A M.R.S.A. §1056-B, the MHPC has every right to ask the Commission to look into that. In the context of any and all future investigations of the activities of other organizations that flow from Mr. Lindemann's initial complaint, does Jean Ginn Marvin intend to actively preside and participate as a Commission member? Because the investigation of these other entities is such a critical aspect of the MHPC's strategy of defense in this case, and may ultimately affect the judgment of the Commission with regard to MHPC's activities, would not Ms. Ginn Marvin be required to recuse herself from all future investigation under 21-A M.R.S.A. § 1001 et seq. by virtue of her position as treasurer and board member of MHPC? Would not this be true whether or not Ms. Ginn Marvin ultimately decides to resign from her current positions with MHPC?

For the foregoing reasons, Mr. Lindemann's position is that, pursuant to 1 M.R.S.A. § 1002(2), Ms. Ginn Marvin cannot possibly serve with the required "objectivity" in the context of any investigations that the Commission may undertake in the arena of campaign finance and reporting under 21-A M.R.S.A. § 1001 et seq. Moreover, so long as Ms. Ginn Marvin remains on the Ethics Commission, the Commission will be unable to ensure, both in substance *and* appearance, a full, fair and impartial investigation of the current MHPC matter and all future matters regarding the campaign finance and reporting activities of other organizations subject to regulation by the Commission. Please understand that Mr. Lindemann's interest in this matter has now gone beyond the activities of MHPC of which he complained, in large measure owing to the very cool and unenthusiastic response to his initial complaint, and the fact that he was asked, as a precursor to any investigation by the Commission, to produce the kind of evidence that in theory could only be obtained by the Commission *as the result of* an investigation. For these reasons, Mr. Lindemann is interested not merely in ensuring that the laws are enforced in this particular case, but also that they be enforced for the benefit

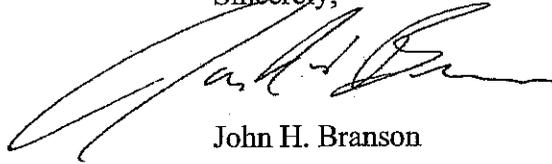
LAW OFFICE OF JOHN H. BRANSON, P.A.

Jonathan Wayne
November 30, 2006
Page 3

of the public, and the integrity of the democratic process in Maine, in years and elections yet to come.

Thank you for your full and complete consideration of the concerns underlying Mr. Lindemann's position with regard to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John H. Branson", written in a cursive style.

John H. Branson

cc: Carl Lindemann
Phyllis Gardner, Esq.
Daniel I. Billings, Esq.
Jonathan Crasnick

Subject: Request to Commission in January 31 Letter

Date: Tue, 5 Feb 2008 17:09:55 -0500

X-MS-Has-Attach:

X-MS-TNEF-Correlator:

Thread-Topic: Request to Commission in January 31 Letter

Thread-Index: AchoQ9WehyLGTIeHQvKDW+yVKpQwpQ==

From: "Wayne, Jonathan" <Jonathan.Wayne@maine.gov>

To: "Carl Lindemann" <carl@TrueDialog.org>,

"Carl Lindemann" <carl@cyberscene.com>

Cc: "Gardiner, Phyllis" <Phyllis.Gardiner@maine.gov>,

"Lavin, Paul" <Paul.Lavin@maine.gov>,

<Dib9@aol.com>,

"Michael P. Friedman" <mfriedman@rudman-winchell.com>

X-OriginalArrivalTime: 05 Feb 2008 22:13:45.0648 (UTC) FILETIME=[5FECD300:01C86844]

X-Nonsпам: Whitelist

Thank you for your February 4 letter clarifying your January 31 request.

On March 5, 2007, the Ethics Commission received your request that the Ethics Commission investigate whether the § 1056-B report of the Maine Heritage Policy Center (MHPC) was accurate and complete. It was included in a packet of materials which the Commission members received for the May 14, 2007 meeting, along with a memo from the Commission staff. You had a full opportunity to address the Commission at the May 14, 2007 meeting to argue in favor of the request. Jean Ginn Marvin recused herself from the Commission's consideration of the item.

At the May 14, 2007 meeting, the members voted 2-1 to postpone considering the request until after the Maine Superior Court decides on your Rule 80C petition regarding the Commission's previous determination that the MHPC did not qualify as a PAC. The Commission took this action because of the inefficiency of conducting an investigation about compliance with 21-A M.R.S.A. § 1056-B when the Superior Court might take the view that the MHPC was required, instead, to make broader disclosure as a PAC.

Because the Commission has acted on your March 5, 2007 request and is awaiting a decision by the Maine Superior Court before taking the matter up again, the Commission Chair has directed me not to put your January 31, 2008 request on the agenda for the Commission's meeting on February 11, 2008. You will have an opportunity to present arguments in support of your request, including addressing any procedural issues, after the Superior Court rules and the matter is again ripe for consideration by the Commission. In the meantime, if you believe that the March 5, 2007 complaint would be properly filed with the State Attorney General's Office, that is an action that you would be at liberty to take.

Document Set #2:

July 2, 2007 complaint on Commission
Chair Ginn Marvin's conduct and
qualifications. 38 pages.

TRUE DIALOG.ORG

Restoring Authenticity in our Democracy

Phone 207-774-1936

Email: carl@truedialog.org

P.O. Box 171

Portland, Maine 04112

July 2, 2007

Dear Governor Baldacci, Senate President Edmonds and Speaker of the House Cummings,

This reports on apparent improprieties of Ethics Commission Chair Jean Ginn Marvin, a situation that requires your immediate attention and intervention to ensure the integrity of that agency and, with it, the integrity of the democratic process in the State of Maine.

Ethics Commission Chair Ginn Marvin is an officer of Maine Heritage Policy Center (MHPC), a political committee. As such, she is not qualified to serve on the Ethics Commission as per MSRA 1 § 1002 1A-2: "A person may not be appointed to this Commission...who is an officer of a political committee." Her appointment expired in April, yet she continues to serve at your pleasure.

Ethics Commission Chair Ginn Marvin's improprieties include activities specifically prohibited to commissioners as per MSRA 1 § 1002 1A-6: "A member of the commission may not engage in political fund-raising to promote the election or defeat of a candidate, passage or defeat of a ballot measure or endorse a political candidate." As MHPC's treasurer, she engaged in political fund-raising to promote the passage of a ballot measure last year. In addition, she shares in the responsibility for material false statements made by MHPC officials and their representatives to the Commission in a case brought against her organization last year. She also shares in the responsibility for MHPC's failure to fully and accurately provide information on its activities as ordered by the Commission in the final agency determination of that case. Her ties with MHPC have undermined the integrity of the Commission in an unknown number of other Commission rulings, rule makings, and legislative proposals. One such example is the Duddy-Mowes case heard before the Commission last summer where she failed to disclose her relationship with the spouse of the complainant, fellow MHPC officer Michael Duddy.

It may well be that Ethics Commission Chair Ginn Marvin would have been rejected for service on the Commission during the initial appointment process had she disclosed her role at MHPC in the Legislative Staff Questionnaire for Gubernatorial Nominees she submitted in support of her nomination in 2004. At that time she was a Director on the MHPC board. Her failure to accurately and completely fill out this standard form necessary for her own appointment to the Commission raises doubts about her ability to judge and sanction persons similarly required to fill out identical forms for filing with Ethics Commissioners.

In light of the numerous apparent or proven statutory and regulatory violations or shortcomings described above, which have substantially impaired the effectiveness and credibility of the Ethics Commission, I am requesting that you:

1.) Demand that Ethics Commission Chair Marvin, who continues to serve on the Commission, beyond the expiration of her term (because the Republican party did not nominate a replacement during the legislative term), immediately execute and file with the Governor's Office, the Ethics Commission, President of the Senate, and the Speaker of the House, and the Attorney General, an Affidavit thoroughly addressing each of the fundamental statutory "qualification-to-serve" facts brought into question by her actions or omissions.

2.) Appoint an impartial Special Counsel to:

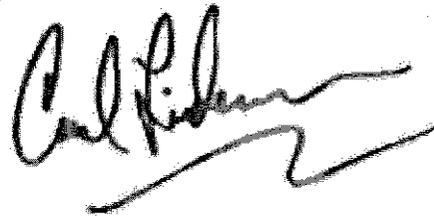
a) Conduct a preliminary investigation of issues raised by Ethics Commission Chair Ginn Marvin's conduct as described above; including, but not limited to:

- whether Ethics Commission Chair Ginn Marvin's "disqualification," and "disclosure," omissions, and/or her other actions as a member or officer of MHPC referred to above, have the potential for making some or all Commission decisions in which she participated void or voidable;
- whether Ethics Commission Chair Ginn Marvin remains "qualified" to continue serving as an Ethics Commissioner;
- whether any of Ethics Commission Chair Ginn Marvin's actions or omissions described above render her unfit to serve as an Ethics Commissioner, and whether she should be immediately removed.
- Whether further formal actions ought be taken to review, investigate, or sanction Ethics Commission Chair Ginn Marvin for those actions or omissions described above

b) Investigate and make advisory recommendations, to the Governor and the appropriate legislative body, concerning both statutory amendments and/or agency rules required to insure that Ethics Commissioners are, as mandated in Section 1002, "persons of recognized judgment, probity and objectivity," including, but not limited to,

- imposing upon Ethics Commissioners the same kind of periodic annual (or immediate) written disclosure/disqualification mandates which are required of legislators they regulate. This would help avoid the situation above.

Yours very truly,

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

Carl Lindemann
Executive Director

FACTUAL BACKGROUND & SUPPORTING DOCUMENTS

1. As a part of the processing of Ethics Commission Chair Jean Ginn Marvin's nomination for the position of Ethics Commissioner, the Legislature required that she complete a standard written "Qualifications" questionnaire. This "*Legislative Staff Questionnaire for Gubernatorial Nominees*" was filled out and signed by her on July 17, 2004. It nowhere listed any service, status, position, membership, or office held, or other factor, which might have disqualified her at that time from service on the Commission.

2. That "*Legislative Staff Questionnaire for Gubernatorial Nominees*" contained the following specific inquiry: "*Please list any organizations, businesses or corporations in which you or your spouse or children hold any office, ownership interest, stocks or bonds, and indicate the nature of your relationship.*"

In filling out her response to that specific request on July 16, 2004, Ethics Commission Chair Ginn Marvin:

- a) did not disclose that on that, on July 16, 2004, she was holding the office of "Director" of the Maine Heritage Policy Center [MHPC]; and
- b) did not "indicate the nature of [her] relationship" with Maine Heritage Policy Center.

3. That "*Legislative Staff Questionnaire*" also required a listing of "Professional Background," "Community Service Background," and "Miscellaneous" factors. In none of her responses did Ethics Commission Chair Ginn Marvin list anything having to do with her service as a Director of MHPC, or her membership in MHPC.

4. Since her execution of the above-referenced July 16, 2004 "Questionnaire," no similar form or affirmation, or written disclosure of factors affecting continuing qualification for service on the Ethics Commission, has been filed by Ethics Commission Chair Ginn Marvin, either with the Governor's Office, the Committee on Legislative and Veteran's Affairs, the Attorney General's office, or the Commission itself. [See, for example, the Section 1018 "*Updating Statement*" required of legislators by the Ethics Commission.]

(cf. foll. pgs 3-21: Ginn Marvin 2004 application/disclosure/appointment.)

5. Ethics Commission Chair Ginn Marvin's original status as a Director of MHPC, at the time of her July 2004 appointment, disqualified her from serving as an Ethics Commissioner. Her new appointment as Treasurer of MHPC, on December 14, 2005, also disqualified her from service as an Ethics Commissioner. The "Qualifications" portion of Section 1002(2), disqualifies from service anyone "*who is an officer of a political committee, party committee, or political action committee.*"

(cf. pg 22 *MHPC IRS 2003 Form 990 Board List, 4/28/2004*
23-24 *MHPC Board Appointments press release, 12/14/2005*
25-26 *MHPC Board Appointments press release, 1/12/2007)*

6. Ethics Commissioner Ginn Marvin, as an Officer and Treasurer of MHPC, has engaged in "prohibited activities" in violation of Section 1002(6) by engaging in "political fund-raising to promote the election or defeat of a candidate, passage or defeat of a ballot measure...."

(cf. 27-28 *MHPC Ballot Initiative Fundraising Solicitation, 08/02/2006*
29 *Fundraising "Thank You" for Ballot Initiative, 11/6/2006*)

7. An action filed in October 2006 with the Ethics Commission asserted that MHPC was a Political Action Committee that had solicited and received contributions to be used to influence the TABOR referendum campaign. In hearing before the Commission (from which Ethics Commission Chair Ginn Marvin recused herself), an Attorney representing MHPC flatly denied to the Commission that any such contributions relating to TABOR were made or solicited. This affirmation later was proven false, by an extrinsic and conclusive document. Only after the production of that extrinsic, conclusive proof that a contribution had been received by MHPC did the Attorney for MHPC then admit to the receipt of that contribution, and to the existence of other contributions.

8. As Treasurer of MHPC at the time that its' Attorney falsely asserted to the Ethics Commission that no TABOR contributions had been solicited or received by MHPC, the Attorney's false statement must be imputed to the Treasurer/Officer of MHPC, Ethics Commission Chair Ginn Marvin.

9. In the 1056-B filing ordered in the Final Agency Determination for the above action, MHPC admitted receiving contributions to affect the TABOR campaign. As such, MHPC functioned as a "political committee," which is defined under Title 21-A, Section 1(30) as "2 or more persons associated for the purpose of promoting or defeating a candidate, party or principle."

(cf pgs 30 *MHPC 1056-B Report/Donations; January 22, 2007.*)

Statements made in the above case are also prima facie evidence that MHPC has been a "political committee" for a substantial period of time prior to October 2006.

11. On June 12, 2006, Ethics Commission Chair Ginn Marvin cast a deciding vote in a matter before the Ethics Commission involving Cape Elizabeth legislative candidates Duddy and Morow. Ethics Commission Chair Ginn Marvin "... stated that she knew both the complainant and the respondent and lives in the district, but can be unbiased in this case because she does not know either of them particularly well." What she did not disclose at that time was that Legislative Candidate Duddy was married to Michael Duddy, who at that time was serving as an Officer of MHPC alongside her. (Ginn Marvin was MHPC Treasurer; Michael Duddy was MHPC Clerk).

(cf pgs 31-36 *Ethics Commission Minutes, June 12, 2006*)

JEAN GINN MARVIN
49 Cranbrook Drive
Cape Elizabeth, ME 04107

EXPERIENCE

1999 to Present Director of Sales
Nonantum Resort
Kennebunkport, ME

1994 to 2000 Representative, District 25
Maine State Legislature
Augusta, ME

1989 to 1999 Partner, Ginn-Marvin Real Estate
South Portland, ME

1984 to 1989 President, Ginn-Marvin Moving and Storage Co.
South Portland, ME

1983 to 1984 Director, National Account Sales
Kimball & Brown/Allied Van Lines
Dover, NH

1982 to 1983 Sales Manager
Fox & Ginn Moving and Storage Co.
South Portland, ME

CIVIC ACTIVITIES

*Portland Conservatory Of Music
Board Chair 2001 to present

*Southern Maine Community College
Foundation Board 2000 to present

*Town Councilor 1992 to 1994

*President, Board of Trustees 1993 to 1994

Portland Symphony Orchestra

*President, Chamber of Commerce 1989 to 1992

*Member, Nominating Committee 1998 to Present

Maine Medical Center

*Co-Chairman of the Board 1988

Maine Science & Technology

EDUCATION

High School

Cape Elizabeth High School
Cape Elizabeth, ME

Class of 1977

Interlochen Arts Academy
Interlochen, MI

Class of 1978

Certificate in Trombone Performance

College

Syracuse University
Syracuse, NY

Class of 1982

B.A. Political Science

B.A. Policy Studies

Muskie School of Public Affairs
University of Southern Maine
Portland, ME

Master's Degree in Public Policy

AWARDS

Women of Achievement Award, Portland YWCA
John Kelly Award, National Moving & Storage Assn
Institute for Civic Leadership
Leadership Maine

FAMILY

Married to Bob Marvin

Children: Adam 18, Parker 15, Colby 9

HOBBIES

Skiing, Sailing, Reading, Walking

LEGISLATIVE STAFF QUESTIONNAIRE
FOR
GUBERNATORIAL NOMINEES

NAME: Jean Ginn Marvin

HOME ADDRESS: 49 Cranbrook Drive
Cape Elizabeth, Maine 04107

HOME PHONE: 799-6283

BUSINESS ADDRESS: 95 Ocean Ave - PO Box 2626
Kennebunkport, Me
04046

BUSINESS PHONE: 967-4050

POSITION TO WHICH NOMINATED: Ethics Commission

IS THIS A REAPPOINTMENT? no

IF YES, LENGTH OF PREVIOUS SERVICE:

EDUCATIONAL BACKGROUND

High School: Cape Elizabeth High School

College: Syracuse University BA in Policy Studies BA in Political Science

Graduate Work, if any: University of Southern Maine - Masters in Public Policy

Special Training: Certificate in Conflict Resolution (USM)

Certificate in Trombone Performance - Interlochen Arts Academy

PROFESSIONAL BACKGROUND

Present Employment: Nonantum Resort

How Long? 6 years

Contact Person for Reference: Tina Hewett

Phone: 967-4050

Prior Employment: Ginn Real Estate

How Long? 12 years

Contact Person for Reference: Herb Ginn

Phone: 761-2131

PROFESSIONAL BACKGROUND (Continued):

Prior Employment: *Maine State Legislature*

How Long? *6 years*

Contact Person for Reference:

Phone:

COMMUNITY SERVICE BACKGROUND:

Civic: *Former President South Portland Chamber of Commerce*
Former President Portland Symphony Orchestra Board of Trustees

Church (optional): *UCC*

Political: *Former member Cape Elizabeth Town Council*

Other:

PROFESSIONAL AND BUSINESS AFFILIATIONS AND ASSOCIATIONS:

Maine Educational Services - Vice Chair of Board
Southern Maine Community College - Foundation Board Vice Chair
Portland Conservatory of Music - Board Chair

SPECIAL RECOGNITION, HONORS OR AWARDS:

Henri Benoit Award - Greater Portland Chamber of Commerce
Women of Achievement Award - YWCA

MISCELLANEOUS

Graduate Alpha Class - Leadership Maine
Graduate Alpha Class - Institute for Civic Leadership

HAVE YOU EVER SERVED ON ANY OTHER STATE BOARDS OR HELD ANY OTHER APPOINTIVE OR ELECTIVE POSITION IN STATE GOVERNMENT?

Appointed to the Chiropractic Board of Review 1990-1994

IF YES, LIST POSITIONS AND DATES:

Elected to the Maine House of Representatives 1994-2000

DID YOU SEEK THIS APPOINTMENT?

No

IF SO, WHY:

WHAT EXPERIENCE OR EXPERTISE DO YOU FEEL YOU WOULD BRING TO THIS APPOINTMENT?

As a legislator, I became aware of the reporting requirements, deadlines and how the system works. In my work as a member of the Appropriations Committee. I processed information, read materials independently, learned to understand statutes and was an active participant in discussions.

DO YOU KNOW OF ANY REASON WHY ANY INDIVIDUAL OR GROUP WOULD BE OPPOSED TO YOUR NOMINATION?

No

IF SO, WHY?

PLEASE LIST ANY ORGANIZATIONS, BUSINESSES OR CORPORATIONS IN WHICH YOU OR YOUR SPOUSE OR CHILDREN HOLD ANY OFFICE, OWNERSHIP INTEREST, STOCKS OR BONDS, AND INDICATE THE NATURE OF YOUR RELATIONSHIP.

attached

ARE YOU AWARE OF ANY ACTUAL OR POTENTIAL CONFLICT OF INTEREST ARISING OUT OF THIS APPOINTMENT PURSUANT TO TITLE 5, PARAGRAPH 18, 2. A-E, AS FOLLOWS:

2. EXECUTIVE EMPLOYEE. An executive employee commits a civil violation if he personally and substantially participates in his official capacity in any proceeding in which, to his knowledge, any of the following have a direct and substantial financial interest:
 - A. Himself, his spouse or his dependent children
 - B. His partners
 - C. A person or organization with who he is negotiating or has agreed to an arrangement concerning prospective employment
 - D. An organization in which he has a direct and substantial financial interest
 - E. Any person with whom he has been associated as a partner or a fellow shareholder in a professional service corporation pursuant to Title 13, Chapter 22, during the preceding year.

IF YOU HAVE A CONFLICT, WHAT STEPS HAVE YOU TAKEN OR DO YOU PLAN TO TAKE TO DISASSOCIATE YOURSELF FROM THIS CONFLICT SITUATION?

I would recuse myself from any vote or discussion that there was a perceived conflict of interest.

ARE YOU OR HAVE YOU EVER BEEN A PARTY OF CIVIL OR CRIMINAL COURT LITIGATION EITHER PERSONALLY OR AS AN OFFICER OR A CORPORATION, ASSOCIATION, OR OTHER LEGAL ENTITY? DESCRIBE THE CIRCUMSTANCES OF ANY SUCH LITIGATION.

no

HAVE YOU EVER BEEN SANCTIONED OR REPRIMANDED BY A PROFESSIONAL OR OCCUPATIONAL BOARD? IF SO, WHEN? FOR WHAT REASON?

no

WHAT ACTION WAS TAKEN?

WOULD YOU HAVE ANY OBJECTION TO HAVING A BACKGROUND CHECK RUN ON YOUR MOTOR VEHICLE AND CRIMINAL RECORD?

no

ADDITIONAL COMMENTS:

7/16/04 *Carsten Maer* _____
DATE SIGNATURE OF NOMINEE STAFF PERSON

SOCIAL SECURITY ████████████████████ DATE OF BIRTH 7/30/59

Jean Ginn Marvin – Legislative Staff Questionnaire

Publicly Traded Stocks and Bonds owned by Children

- Agere Systems Inc. Class A
- Agere Systems /Inc Class B
- ATT Wireless Services
- Cendant, Inc.
- Cendant, Inc.
- Citigroup Inc.
- Coca Cola Company
- Comcast Corp New Class A
- Corts Trust 8.5% Corporate
- Walt Disney Co.
- Dupont EI De Nemour & co.
- General Electric Company
- Home Depot Inc.
- Hewlett Packard Company
- Intel Corp.
- Lucent Technologies, Inc.
- Medcohealth Solutions
- Merck & Co. Inc.
- Microsoft Corp.
- Nokia Corp.
- Nortel Networks CP
- Walgreen Company
- Wal-mart Stores Inc.

Publicly Traded Stocks and Bonds owned by Spouse

- Amerisource Tech.
- Coca Cola Company
- Hewlett Packard Company
- Imaging Diagnostic Systems
- Microsoft Corp.
- Palm One Inc.
- Palm Source Inc.
- Vision Twenty-One Inc.

Publicly Traded Stocks and Bonds owned by Candidate

- Coca Cola Company
- Dell, Inc.
- Walt Disney Co.
- Equity Residential 8.6% Preferred
- General Electric Company
- Gillette Co.
- Home Depot, Inc.
- Medcohealth Solutions
- Merck & Co. Inc.
- Microsoft Corp.
- Wal-mart Stores Inc.
- Unum Provident Corp.
- Oppenheimer Mutual Funds

Privately Owned Corporations:

Flash Island, Inc.

Candidate is President

Children each have ownership interest

Privately Owned Partnerships:

- **GMG Family Limited Partnership**
Candidate, spouse & children all have ownership interests
- **Kennebec Shores Associates**
Spouse and child have ownership interest

Privately Owned Limited Liability Companies:

- **262 Payne Road, LLC**
Children have ownership interest
 - **Midcoast Land Development, LLC**
Children have ownership interest
-

121st MAINE LEGISLATURE

NOTICE OF CONFIRMATION HEARING

THE JOINT STANDING COMMITTEE ON LEGAL AND VETERANS AFFAIRS

Senator Kenneth T. Gagnon, Senate Chair
Representative Joseph E. Clark, House Chair

POSITION: Commission on Governmental Ethics and Election Practices
NOMINEE: Jean Ginn Marvin of Cape Elizabeth

PUBLIC HEARING: Tuesday, August 17, 2004, 9:00 am, Room 436, State House

POSITION DESCRIPTION:

The Commission on Governmental Ethics and Election Practices (MRSA 1 § 1002) was established to guard against corruption or undue influencing of the election process and against acts or the appearance of misconduct. The Commission consists of 5 members appointed by the Governor who are subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and to confirmation by the Legislature. Revisions to the appointment process were made pursuant to 2001, c. 470 as follows. The appointed leader from each political party in the Senate and in the House of Representatives jointly establish and advertise a 30-day period to allow members of the public and groups and organizations to propose qualified individuals to be nominated for appointment to the commission. Appointed leaders present lists of qualified individuals to the Governor for appointment of members to the commission. The Governor appoints members from those lists and no more than 2 commission members may be enrolled in the same political party. Two initial appointees are appointed for 1-year terms, 2 for 2-year terms and one for a 3-year term. The appointee serving the 3-year term is to be selected by random lot drawing under the supervision of the Secretary of State. Subsequent appointees serve 3-year terms and may not serve more than 2 terms.

The general duties of the commission are described in MRSA 1 § 1008. Duties include investigating and making advisory recommendations to the appropriate body of any apparent violations of the ethical standards set by the Legislature; administering and investigating any violations of the requirements for campaign reports and campaign financing, including the provisions of the Maine Clean Election Act and The Maine Clean Election Fund; and to conduct, in conjunction with the Attorney General and the Chair of the Legislative Council, an ethics seminar for Legislators.

The commission administers the lobbyist disclosure laws, and provides enhanced monitoring and computerized tracking of campaign, elections and lobbying information under the commission's jurisdiction. The commission adopts rules, procedures and regulations as necessary to carry out its duties. Members of the commission are entitled to receive legislative per diem according to MRSA 5, c. 379.

DEADLINE FOR COMMENTS: Written comments relevant to qualifications of the nominee may be filed with the Legislative Information Office by 9 am on the day of the hearing.

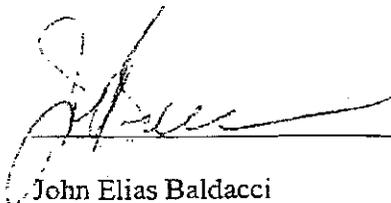
CONTACT PERSON: Teen Ellen Griffin, Legislative Information Office, 100 State House Station, Augusta, Maine 04333-0100; 207-287-1692; FAX 207-287-1580; TTY 207-287-6826

NOMINATIONS BY THE GOVERNOR

July 22, 2004

1. COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Jean Ginn Marvin of Cape Elizabeth



John Elias Baldacci

RECOMMENDED GUIDELINES FOR LEGISLATIVE CONFIRMATION HEARING

1. INTRODUCTORY STATEMENT BY CHAIR

“This is a Public Hearing of the Joint Standing Committee on **Legal and Veterans Affairs** for the purpose of considering the nomination by the Governor of **Jean Ginn Marvin of Cape Elizabeth** for appointment to the **Commission on Governmental Ethics and Election Practices**.

Under the Law and Joint Rules of the Legislature, this committee is required to hold this public hearing and to recommend confirmation or denial of the nominee by majority vote of the committee members present and voting. As Chairs of the committee, we will then send written notice of the Committee's recommendations to the President of the Senate.”

The Committee will hear testimony from and have an opportunity to question the Governor or his representative, the nominee and any other persons present who wish to speak for or against the nomination.

2. MOTION TO CONFIRM

1. “Pursuant to Title 3, Section 157 of the Maine Statutes, which requires that there be an affirmative motion to recommend confirmation of the nominee, the Chair recognizes (Committee member making motion) for the purpose of making such a motion.”
2. (Motion by Committee Member)

“I move that the Joint Standing Committee on **Legal and Veterans Affairs** recommend confirmation of **Jean Ginn Marvin of Cape Elizabeth** for appointment to the **Commission on Governmental Ethics and Election Practices**.”

3. TITLE OF THE POSITION AND LEGAL REQUIREMENTS FOR A NOMINEE

A copy of the statutory requirements and a job description for this position are available at the rostrum.

4. RECOGNIZE THE GOVERNOR OR HIS REPRESENTATIVE

1. “The Chair now recognizes (name of Governor or his representative) for the purpose of making a statement concerning this nomination.”
 2. (Statement by Governor or his representative)
 3. “The Chair would ask if any member of the Committee has questions (of the Governor or his representative) at this time.”
-

5. STATEMENT BY NOMINEE

1. "The Chair now recognizes **Jean Ginn Marvin** for the purpose of making a statement concerning this nomination."
2. (Statement of nominee)
3. "The Chair would ask if any member of the Committee has questions of the nominee."

6. STATEMENTS FROM THE FLOOR

1. "The Chair will now take comments from persons attending this hearing who wish to speak for or against this nomination.
 - A. Anyone who has a written statement but who does not wish to speak should have submitted the statement with the Committee Clerk prior to today's hearing. All such statements shall contain the name and residence of the person who prepared the statement. A copy of each written statement presented to the Committee at this hearing will be made available to the nominee prior to the Committee's vote and the nominee will have an opportunity to respond to the written comment.
 - B. Those who wish to speak in person should observe the following:
 - Please speak from the rostrum and, state your name and place of residence prior to presenting your testimony.
 - Only comments concerning the suitability of this particular nominee for this particular position will be considered in order. All other comments will be considered out of order.
 - Please remain at the podium after you complete your statement so that members of the Committee may have an opportunity to ask questions.
 2. Recognize persons wishing to testify:
 - A. First, is there anyone present who wishes to speak in favor of the nomination.
 - B. Is there anyone present who wishes to speak against the nomination.
 - C. Is there anyone else who wishes to speak on the nomination.
-

7. CONCLUDING STATEMENT BY THE CHAIR

1. All public comments having been taken, the Committee will now proceed as follows:
 - Review any additional written comments on the nomination that have been received by the committee. A copy of all written comments will be made available to the nominee so that he/she may have an opportunity to respond (prior to the vote of the committee).
 - Review the written report of the investigation of the partisan assistants, which has been conducted pursuant to the Joint Rules.
 - Vote on the nomination and notify the President of the Senate, pursuant to Title 3 MRSA, Section 157 and the Joint Rules. The vote must be taken within 35 days from the date of the Governor's written notice.
2. The hearing by the Joint Standing Committee on **Legal and Veterans Affairs** for **Jean Ginn Marvin of Cape Elizabeth** for appointment to the **Commission on Governmental Ethics and Election Practices** is closed.

8. TAKING THE VOTE

1. In accordance with the law, the Committee may not take the vote on this nomination sooner than 15 minutes after the close of the public hearing unless all committee members who are present agree. At this time, therefore, the Chair will inquire whether any member present objects to proceeding to take the vote immediately. If there is no objection:
2. "The pending question before the Committee is that the Joint Standing Committee on **Legal and Veterans Affairs** recommend to the Senate of the **121st** Maine Legislature that the nomination of **Jean Ginn Marvin of Cape Elizabeth** for appointment to the **Commission on Governmental Ethics and Election Practices** be confirmed."

"In accordance with 3 MRSA, Chapter 6, Section 157, and with the Joint Rules of the **121st** Legislature, the vote will be taken by the yeas and nays:

"A vote of yes will be in favor of recommending confirmation."

"A vote of no will be against the motion to recommend confirmation."

"Is the Committee ready for the question?"

The Committee Clerk will call the roll."

"(Number) members of the Committee having voted in the affirmative and (Number) in the negative, it is the vote of the Joint Standing Committee on **Legal and Veterans Affairs** that the nomination of **Jean Ginn Marvin of Cape Elizabeth** for appointment to the **Commission on Governmental Ethics and Election Practices** be confirmed (denied)."

Testimony of Jean Ginn Marvin

Nominee for the Commission on Governmental Ethics and Election Practices.

Joint Standing Committee on Legal Affairs

August 17, 2004

Senator Gagnon, Representative Clark, and members of the Joint Standing Committee on Legal and Veterans Affairs:

My name is Jean Ginn Marvin and I am pleased to be here today to submit for your consideration my nomination to serve on the Commission on Governmental Ethics and Election Practices.

As a former member of the Legislature, I know the first hand the importance of upholding the public's trust in our electoral process ---and I believe the Ethics Commission is a critical component of insuring that our election process is fair.

I believe that here in Maine we have been very fortunate to have elections largely free of the corruption that we hear about in other parts of the country. I view my role on the commission as three-fold. First, I believe that we should work to make sure that our election laws are current and accurately reflect the current political climate, taking into account both federal and state laws that may impact the conduct of elections here in Maine.

Second, I believe that our system of compliance and oversight should continue to focus on helping candidates and other organizations comply with our laws. While punitive action is certainly a part of the process, when warranted, I think the system in Maine has been very pro-active. I appreciate that the staff and the current commission spends a significant part of its energy on helping people to comply with Maine laws, as opposed to looking for ways to catch people doing the wrong thing. In short, I believe a commission that is committed to working with candidates, lobbyists and PAC's to improve compliance with Maine Law best serves the public.

Finally, I accept that a part of this job will be to hear complaints and review violations of Maine Law. I would like to assure you that as a former elected official I am very cognizant of the need to balance compliance with Maine Laws with that of a citizen Legislature in an era of term limits. I expect that there will be a learning curve for citizens who get involved in elections, and I would certainly look to the staff for guidance in how we can work to make sure that compliance is easy and expected.

However, as I mentioned in my opening remarks, I believe that preserving the public trust in our election process is the highest priority, and I would certainly work to make sure that Maine Laws are not ignored.

Thank you again for your consideration. I would be pleased to answer any questions you might have.



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002

(207) 287-1400

TTY: (207) 287-4469

Janet L. McLaughlin

23 Old Colony Lane
Cape Elizabeth, ME 04107
Residence: (207) 799-6190
Fax: (207) 799-6190
E-Mail: JanetCE25@aol.com
repjanet.mclaughlin@legislature.maine.gov

13 August 2004

To: Sen. Kenneth Gagnon, Senate chairman
Rep. Joseph Clark, House chairman
Members of the Joint Standing Committee on Legal & Veterans Affairs

Re: Nomination of Hon. Jean Ginn Marvin to the Commission on Governmental Ethics and Election Practices

From: Rep. Janet McLaughlin 

Please accept the following comments on behalf of this nomination.

I have known Jean for over ten years and served with her on our Town Council. In all my dealings with her, she has consistently been reasonable and even-minded. She respects the need to "follow the rules" and does not shy away from making what some may consider the difficult decisions.

Above all else, Jean is fair - which I believe is the overriding qualification for someone to this Commission.

I give this nomination my heartiest support and hope you will do so unanimously.

District 25 Part of Cape Elizabeth

Printed on recycled paper

VOTING TALLY SHEET

For Confirmation Hearings

Confirmation of: Jan Ginn Marvin

Committee: Joint Standing Committee on Legal & Veterans Affairs

Date: August 17, 2004

Motion: confirm

Motion by: Senator Gagnon

Seconded by: Rep. Clark

	Other	
Those Voting to Confirm		
Yea	Nay	Absent Abstain

Senators

Name	(CH)	Yea	Nay	Absent	Abstain
1. Kenneth Gagne	(CH)	✓			
2. Kenneth Lemont		✓			
3. Arthur Mayo III		✓			

Representatives

Name	(CH)	Yea	Nay	Absent	Abstain
1. Joseph Clark	(CH)	✓			
2. Kevin Glynn		✓			
3. Randy Hotham		✓			
4. Richard Brown		✓			
5. Gary Moore		✓			
6. John Patrick		✓			
7. Patricia Blanchette		✓			
8. Marilyn Canavan		✓			
9. Rodney Jennings		✓			
10. Roger Landry				✓	
Totals		12		1	

SENATE

HOUSE

KENNETH T. GAGNON, DISTRICT 14, CHAIR
KENNETH F. LEMONT, DISTRICT 35
ARTHUR F. MAYO III, DISTRICT 19



JOSEPH E. CLARK, MILLINOCKET, CHAIR
JOHN L. PATRICK, RUMFORD
PATRICIA A. BLANCHETTE, BANGOR
MARILYN E. CANAVAN, WATERVILLE
RODNEY C. JENNINGS, LEEDS
ROGER A. LANDRY, SANFORD
GARY W. MOORE, STANDISH
KEVIN J. GLYNN, SOUTH PORTLAND
RICHARD B. BROWN, SOUTH BERWICK
RANDY E. HOTHAM, DIXFIELD

DANIELLE D. FOX, LEGISLATIVE ANALYST
LUCIA NIXON, LEGISLATIVE ANALYST
ELAINE DOAK, COMMITTEE CLERK

STATE OF MAINE

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE
COMMITTEE ON LEGAL AND VETERANS' AFFAIRS

August 17, 2004

The Honorable Beverly C. Daggett
President of the Senate of Maine
121st Maine Legislature
State House
Augusta, Maine 04333-0003

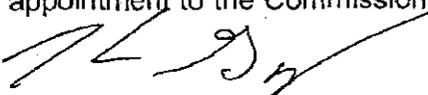
Dear Madame President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 121st Maine Legislature, the Joint Standing Committee on Legal and Veterans Affairs has had under consideration the nomination of Jean Ginn Marvin of Cape Elizabeth, for appointment to the Commission on Governmental Ethics and Election Practices.

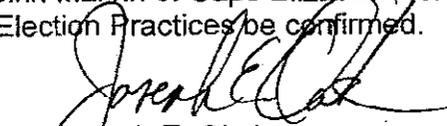
After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS	Senators	3	Gagnon of Kennebec, Lemont of York, Mayo of Sagadahoc
	Representatives	9	Clark of Millinocket, Blanchette of Bangor, Brown of South Berwick, Canavan of Waterville, Glynn of South Portland, Hotham of Dixfield, Jennings of Leeds, Moore of Standish, Patrick of Rumford
NAYS		0	
ABSENT		1	Rep. Landry of Sanford

Twelve members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Jean Ginn Marvin of Cape Elizabeth, for appointment to the Commission on Governmental Ethics and Election Practices be confirmed.


Kenneth T. Gagnon
Senate Chair

Signed,


Joseph E. Clark
House Chair

Part IV-A Reconciliation of Revenue per Audited Financial Statements with Revenue per Return

a	Total revenue, gains, and other support per audited financial statements	a	N/A
b	Amounts included on line a but not on line 12, Form 990:		
(1)	Net unrealized gains on investments \$		
(2)	Donated services and use of facilities \$		
(3)	Recoveries of prior year grants \$		
(4)	Other (specify): \$		
	Add amounts on lines (1) through (4)	b	
c	Line a minus line b	c	
d	Amounts included on line 12, Form 990 but not on line a:		
(1)	Investment expenses not included on line 6b, Form 990 \$		
(2)	Other (specify): \$		
	Add amounts on lines (1) and (2)	d	
e	Total revenue per line 12, Form 990 (line c plus line d)	e	

Part IV-B Reconciliation of Expenses per Audited Financial Statements with Expenses per Return

a	Total expenses and losses per audited financial statements	a	N/A
b	Amounts included on line a but not on line 17, Form 990:		
(1)	Donated services and use of facilities \$		
(2)	Prior year adjustments reported on line 20, Form 990 \$		
(3)	Losses reported on line 20, Form 990 \$		
(4)	Other (specify): \$		
	Add amounts on lines (1) through (4)	b	
c	Line a minus line b	c	
d	Amounts included on line 17, Form 990 but not on line a:		
(1)	Investment expenses not included on line 6b, Form 990 \$		
(2)	Other (specify): \$		
	Add amounts on lines (1) and (2)	d	
e	Total expenses per line 17, Form 990 (line c plus line d)	e	

Part V List of Officers, Directors, Trustees, and Key Employees (List each one even if not compensated)

(A) Name and address	(B) Title and average hours per week devoted to position	(C) Compensation (If not paid, enter -0-)	(D) Contributions to employee benefit plans & deferred compensation	(E) Expense account and other allowances
W. R. JACKSON, JR. 55 BURBANK LANE YARMOUTH, ME 04096	CHAIRMAN 1 HR	0.	0.	0.
RONALD L. TROWBRIDGE, PH.D. 30 COLONIAL DRIVE DURHAM, ME 04222	PRESIDENT 1 HR	0.	0.	0.
THOMAS W. MEAD 9 LEDGEWATER DRIVE KENNEBUNK, ME 04043	TREASURER 1 HR	0.	0.	0.
WILLIAM G. BECKER, III 66 BIRCHWOOD DRIVE PORTLAND, ME 04102	SECRETARY/EXEC. DIR. 40+ HRS	67,000.	5,465.	0.
JEAN GINN MARVIN 49 CRANBROOK DRIVE CAPE ELIZABETH, ME 04107	DIRECTOR 1 HR	0.	0.	0.
MICHAEL A. DUDDY 4 CRESCENT VIEW AVENUE CAPE ELIZABETH, ME 04107	DIRECTOR 1 HR	0.	0.	0.

75 Did any officer, director, trustee, or key employee receive aggregate compensation of more than \$100,000 from your organization and all related organizations, of which more than \$10,000 was provided by the related organizations? Yes No

We the people of Maine...

THE MAINE HERITAGE POLICY CENTER

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Press Releases

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12/14/05: The Maine Heritage Policy Center Elects New Officers

PRESS RELEASE

The Maine Heritage Policy Center

FOR IMMEDIATE RELEASE
DECEMBER 14, 2005

CONTACT: JASON FORTIN
(207) 321-2550

The Maine Heritage Policy Center Elects New Officers

2006 Board leadership group has strong qualifications and business experience.

PORTLAND, ME - At their recent annual meeting, the Board of Directors of The Maine Heritage Policy Center elected officers for 2006. MHPC officers include:

- Chairman of the Board – W. R. Jackson, Jr.
- President & Chief Executive Officer – Bill Becker
- Treasurer – Hon. Jean Ginn Marvin
- Clerk – Michael A. Duddy

“The Board is excited with this new slate of officers that will lead The Maine Heritage Policy Center through a busy upcoming year,” stated Dick Jackson, Chairman of the Board. “The Center’s mission is to advance free market and conservative public policy solutions that serve to strengthen Maine’s economy in a nonpartisan fashion. Together with the support of Maine citizens, our Boards and Staff are committed to a vision of Maine where such solutions result in a stronger and more vibrant economic climate.”

“On behalf of the Board, I am confident in the management and policy leadership that will be provided by Bill Becker, who has been named president and chief executive officer,” Jackson concluded. “Under Bill’s direction, Maine will be well served by the research and analysis of The Maine Heritage Policy Center’s staff and policy experts.”

Mr. Jackson co-founded MHPC and is a retired executive from Pitt-Des Moines, Inc. Mr. Becker is also a co-founder of the Center and had served as its executive director and vice president for the past three years. Previously, he was a fundraising consultant and development director for a number of Maine nonprofits and political campaigns. Ms. Ginn Marvin is a small business owner, former legislator, and current chair of the state’s Ethics Commission. Mr. Duddy is an attorney at Kelly, Rimmel & Zimmerman.

The Maine Heritage Policy Center is a nonprofit, nonpartisan research and educational organization based in Portland, Maine. The Center formulates and promotes conservative public policies in the areas of tax and fiscal policy, 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.

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We the people of Maine...

THE MAINE HERITAGE POLICY CENTER

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1/12/07: John Chandler Joins The Maine Heritage Policy Center Board

PRESS RELEASE

The Maine Heritage Policy Center

FOR IMMEDIATE RELEASE
 JANUARY 12, 2007
 (m)

CONTACT: JASON FORTIN (207) 321-2550 (o)
 (207) 939-0038

John Chandler Joins The Maine Heritage Policy Center Board

Chandler's experience as president and managing principal of Berry, Dunn, McNeil and Parker will help guide future work at the Center.

PORTLAND, ME - At their recent annual meeting, the Board of Directors of The Maine Heritage Policy Center elected John M. Chandler, CPA to join them for a three-year term. Mr. Chandler, a Yarmouth resident, is the president and managing principal of the Portland-based accounting firm Berry, Dunn, McNeil and Parker. Previously, Mr. Chandler served on The Maine Heritage Policy Center's Board of Advisors.

"I am honored to join an organization with the quality and vibrancy of The Maine Heritage Policy Center," stated Mr. Chandler. "I look forward to adding my experience and advice to the continued growth of the organization's outstanding work."

The current Board of Directors of the Maine Heritage Policy Center is comprised of:

- Mr. W. R. Jackson, Jr., Chairman of the Board
- Mr. William G. Becker, III, President & Chief Executive Officer
- Hon. Jean Ginn Marvin, Treasurer
- Michael A. Duddy, Esq., Clerk
- Mr. John Austin
- Hon. Richard A. Bennett
- Mr. John M. Chandler

The following is Mr. Chandler's biography from the Berry, Dunn, McNeil and Parker website:

John has served as the President & Managing Principal of Berry Dunn since being elected in 1999. He has worked with forest products and telecommunications companies since first joining the Firm. John is proud to come from a timberland owning/logging family in Maine.

In addition to his responsibilities as Firm leader, John provides audit and consulting services to privately-held, family businesses throughout Northern New England. He has helped businesses chart their way through a wide range of issues, including mergers, sales, and acquisitions, with a focus on creating value for owners and shareholders.

John started his accounting career in 1987 when he came to work at Berry Dunn. John is a Certified Public Accountant and a member of the AICPA and the Maine Society of

CPAs. He also holds leadership positions on the Boards of several charitable and civic organizations.

A picture of Mr. Chandler is available at: <http://www.bdmp.com/page.asp?shorttitle=jchandler>.

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.

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



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

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,

A handwritten signature in black ink that reads "Bill Becker". The signature is written in a cursive style with a large, stylized "B" at the beginning.

Bill Becker
President & CEO
The Maine Heritage Policy Center

We the people of Maine...

THE MAINE HERITAGE POLICY CENTER

November 6, 2006

www.mainepolicy.org

Mr.

REDACTED
Denver, Colorado

P.O. Box 7829
Portland, Maine 04112

Tel: 207.321.2550
Fax: 207.773.4385

Dear REDACTED

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

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

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.

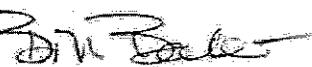
We understand that the economic pie is shrinking. A large part of the problem has been Maine's highest-in-the-nation tax burden, driven by out-of-control government spending. One way to address that problem is through an effective "Tax-and-Expenditure Limit" such as Maine's proposed The Taxpayer Bill 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



Amended Minutes of the June 12, 2006 Meeting of the
Commission on Governmental Ethics and Election Practices
Held via conference call.

Present: Chair Jean Ginn Marvin; Hon. Vinton E. Cassidy; Hon. Andrew Ketterer;
Staff: Executive Director Jonathan Wayne, Paul Lavin, Martha Demeritt;
Commission Counsel: Phyllis Gardiner;
Complainant: Jennifer Duddy; For the Complainant: Jane Amero.

At 2:20P.M., Chair Ginn Marvin convened the meeting. The Commission considered one item:

Request for Consideration of Mike Mowles for Legislature Campaign Flyer

Chair Ginn-Marvin opened the hearing by introducing the complaint by Jennifer Duddy, Republican candidate for House District 121, who believes a campaign flyer recently mailed by her primary opponent Michael Mowles is misleading. She also pointed out that Mr. Mowles has indicated to staff that this hearing was happening too soon, he would not be able to participate in the hearing, and that he needed time to appoint legal counsel. Chair Ginn-Marvin then asked Executive Director Wayne to summarize the complaint and discuss how the Commission should proceed.

Executive Director Wayne summarized the complainant's request for Commission review. A mailer was sent out recently by the Mike Mowles campaign in House District 121 which includes language of endorsement by United States Senators Olympia Snowe and Susan Collins. This endorsement language was made when Mowles ran for the Maine House of Representatives in the 2004 general election against a Democrat, not in this primary and may appear to be misleading. Section 1014-A of Title 21-A states, "A candidate may not use an endorsement unless the endorser has expressly authorized its use." There is no suggestion that these quotations were made for 2006 use.

Counsel Gardiner asked if we had obtained any statements from Senators Snowe or Collins.

Ms. Demeritt described her conversation with Steve Abbott, chief of staff for Senator Collins. Mr. Abbott orally indicated to Ms. Demeritt that Senator Collins has not endorsed any state races in Maine whatsoever in 2006. Ms. Demeritt also read an e-mail she received from Senator Snowe's campaign manager, Lucas Caron, indicating that Senator Snowe did not endorse any candidates for office in Maine during the primary.

Ms. Duddy indicated that this flyer came to her attention on June 11, 2006 when a campaign volunteer making Get Out The Vote (GOTV) calls informed her that a voter told the volunteer that Senators Snowe and Collins had endorsed Mowles. She proceeded to get several copies of this mailer from a couple of her neighbors and proceeded to advise her GOTV volunteers about it. She subsequently discovered that indeed others who had received the flyer had been misled into thinking that Maine's Senators had endorsed Mowles.

Ms. Duddy believes the critical statement is: *See what people are saying about...Mike Mowles.* This statement, she believes, is effectively perceived to be nothing short of an endorsement for his campaign. She said this flyer has compromised the entire election and should not be misconstrued. Based on Mr. Mowles' letter to the Commission staff responding to her complaint, his comments are disingenuous. Ms. Duddy believes that this was an unauthorized endorsement. She thinks the Commission should make a finding of violation of endorsement, levy a penalty and issue a press release.

Ms. Amero, a campaign volunteer for the Duddy campaign, made GOTV calls to voters she personally knew in HD 121, not cold calls. Prior to making the calls on the afternoon of June 11th she was told by Ms. Duddy about the flyer. Ms. Amero made calls to those known to her and stated "I am supporting Jennifer Duddy on June 13th and hope you would do the same." If the voters response to that statement was less than warm, she proceeded to describe the mailer and explain that the statements from Maine's Senators were not made for the 2006 primary, but instead for the 2004 general election which she personally confirmed by calling the chiefs of staff for Senators Snowe and Collins on June 11th.

Counsel Gardiner asked Ms. Amero if any of those who received the flyer had interpreted it not as an endorsement. Ms. Amero responded that her politically astute neighbor understood that it was not an endorsement for the 2006 primary, but other people who were less familiar with campaigns, even though they saw the October 2004 date may not realize it was an endorsement for that campaign only.

Counsel Gardiner asked how many voters Ms. Amero contacted thought it was an endorsement. Ms. Amero responded "at least 10, maybe a few more."

Chair Ginn-Marvin pointed out that the font for the date of the endorsements (October 2004) on the flyer appears to be substantially smaller than the rest of the text on the document.

Ms. Amero stated that she only mentioned the flyer to voters if they did not note their commitment to candidate Duddy. She also stated that to construe Senator Snowe's last sentence "I urge you to elect Mike Mowles to the Maine House of Representatives" to be anything but an endorsement is disingenuous, the endorsement is very clear. The use of a small font for the date of the quotation does not negate the endorsement.

Mr. Cassidy asked whether or not there is any precedent for this kind of complaint. Both Counsel Gardiner and Executive Director Wayne indicated that there was not to the best of their recollection.

Mr. Cassidy also asked what the penalty would be and how the law addresses this particular matter. Counsel Gardiner responded stating that §1014-A states that there could be a civil forfeiture of no more than \$200.

Mr. Ketterer asked if the respondent received notice of today's hearing. Mr. Lavin indicated that Commission staff had received a statement from Mr. Mowles, who was notified of the today's meeting as soon as he determined that there would be three Commission Member's available to hear the complaint.

Executive Director Wayne summarized the letter received from Mr. Mowles which requests that the Commission take up this matter at a later date because:

- (1) He was not supplied with a written copy of the complaint.
- (2) He was not told when the complaint was made and in what fashion.
- (3) Ample notice had not been given so that he could be properly represented before the Commission.
- (4) He wished to be represented by an attorney for this matter.
- (5) His attorney will need proper time to prepare for the hearing.

Mr. Mowles also stated in his letter that the dates of the quotations included on the flyer are clearly marked as October 2004. He believes that for these statements to be construed as an endorsement of the June 2006 primary is inaccurate. Furthermore, he states it is important to show primary voters that he has earned the trust and support of the two U.S. Senators in the past is highly relevant to this primary and the selection of a viable nominee for 2006.

Executive Director Wayne, at the urging of the chair, gave the staff interpretation of the facts. First, it is procedurally permissible to make a decision at this meeting, although it is an odd situation that the respondent has declined to be heard except for his submitted letter. Second, based on his own reading of the flyer, that although the quotes parenthetically mention October 2004, when you read the other side, with the names of other supporters on it, a sophisticated recipient will understand that these quotes were not meant for this year, but others may be misled.

While Mr. Wayne sympathizes with Ms. Duddy, he does not recommend the Commissioners send out a press release, as that would be a major departure from the Commission's previous practices. He went on to state that the members should be concerned about the appearance of a rushed decision.

Chair Ginn-Marvin said that the timing of this meeting is germane to the primary election to be held tomorrow (June 13th) and that it is the role of the Commission to take swift action for all complaints filed before an election. While a \$200 finding of violation does not change things, she believes that the Commission's duty is to act expeditiously.

Counsel Gardiner suggested that the Commission could make a preliminary or final finding on whether the flyer constitutes an endorsement and defer any decision regarding a penalty to the next regularly scheduled meeting of the Commission so that Mr. Mowles can be heard.

Mr. Ketterer stated that based on the presentation, the person who did this mailing did so recently and did it in a calculated manner so that the opposing candidate would not have the time to respond. He feels that this flyer was intended to be an endorsement. The intent was to show that the Senators were not endorsing a Republican woman. He believes that it warrants a finding of violation on the points that Executive Director Wayne mentioned. He also did not believe a press release from the Commission was necessary. If he so chooses, Mr. Mowles could file a motion to reconsider, as others have done in the past. However, Mr. Ketterer does not give great weight to Mr. Mowles' inability to appear at this hearing.

Mr. Ketterer discussed making a motion to find the endorsement in violation of §1014-A and defer the penalty until a later date.

Mr. Cassidy agreed that a flyer sent at the 11th hour was intended to mislead the voters. He also would like to deal with the penalty at a later meeting.

Mr. Ketterer made a motion that a finding of violation of §1014-A be made based on the definition of endorsement in §1014-A, that the quotations constituted endorsements, and that they were not authorized by the endorsers, and that any penalty be discussed at a later date.

The Commission voted (3-0) to find the Mowles campaign in violation of §1014-A and consider any penalties at the next meeting of the Commission on June 22nd.

Mr. Ketterer asked that the record reflect he worked with the complainant at the Attorney General's (AG) office where she was an employee and that he may have hired her. He was not willing to recuse himself because the nature of their relationship was strictly professional, that he has not been at the AG office for six years, and that he may have hired her eight or nine years ago.

Chair Ginn-Marvin also stated that she knew both the complainant and the respondent and lives in the district, but can be unbiased in this case because she does not know either of them particularly well.

The meeting adjourned at 3:05 p.m.

Respectfully submitted,

Jonathan Wayne
Executive Director

Document Set #3:

July 16, 2007 Portland Press Herald report
on Ginn Marvin complaint. 2 pages.

[<< back to story >>](#)

Portland Press Herald Maine Sunday Telegram

Complaint targets head of ethics panel

Jean Ginn Marvin failed to disclose her role in a conservative think tank in 2004, the complaint says.

By KEVIN WACK Staff Writer

July 16, 2007

A complaint filed with Gov. John Baldacci takes the chairwoman of the state ethics commission to task for failing to disclose her role with a conservative think tank before being confirmed by the state Senate in 2004.

Jean Ginn Marvin, a former Republican lawmaker from Cape Elizabeth, did not mention her position as a director of the Maine Heritage Policy Center on a questionnaire that asked nominees to list organizations in which they held an office.

The omission was brought to light in a July 2 letter of complaint sent to Baldacci by Carl Lindemann, a former WGAN-AM radio commentator who previously had filed ethics complaints against the Maine Heritage Policy Center.

Lindemann's letter calls for the appointment of a special counsel to investigate whether Ginn Marvin should be allowed to continue serving on the Maine Commission on Governmental Ethics and Election Practices. Lindemann said he did not file a formal complaint with the ethics commission itself because the issues he raises involve a commission member.

David Farmer, a spokesman for the governor, indicated his office is unlikely to launch an investigation.

The Maine Attorney General's Office determined that Ginn Marvin's role with the think tank does not bar her from serving on the ethics commission, because the organization does not appear to fit the legal definition of a "political committee."

In an interview, Ginn Marvin said her failure to disclose her role with the Maine Heritage Policy Center was an honest mistake.

"I would have guessed that I would have disclosed that, but if I didn't, it was inadvertent," she said.

Ginn Marvin noted that she has recused herself from discussions before the ethics commission about the Portland-based think tank, which she said has grown in prominence since her 2004 confirmation hearing.

Still, several current and former lawmakers who helped to confirm Ginn Marvin said her role at the Maine Heritage Policy Center should have been disclosed and would have raised concerns.

In 2004, House Republican Leader Joseph Bruno recommended Ginn Marvin to Baldacci to fill a GOP vacancy on the ethics commission. The governor later nominated her.

Farmer said no one in his office could recall learning in 2004 that Ginn Marvin was serving on the think tank's board, despite a vetting process that includes an interview with the candidate. He said the information would have been relevant.

"It certainly would have been taken into consideration," Farmer said. "And the ethics commission, because of the nature of the job they do, it's particularly important that there's full disclosure."

After a public hearing in August 2004, the Legislature's Legal and Veterans Affairs Committee recommended Ginn Marvin's confirmation by a 12-0 vote. The Maine Senate later confirmed her.

In interviews, eight of 12 current and former members of the legislative committee, including two of five Republicans, voiced concerns about Ginn Marvin's role with the Maine Heritage Policy Center.

"If we had known, I would not have voted for her," said Kenneth Gagnon, a Democrat who is no longer in the Legislature, but who in August 2004 was the Senate chairman of the Legal and Veterans Affairs Committee.

He called for Ginn Marvin to resign from either the ethics commission or the think tank's board of directors.

Former Sen. Kenneth Lemont, R-Kittery, said he would have expected Ginn Marvin to have either resigned from the think tank's board or withdrawn her ethics commission nomination.

"It definitely would have been a concern," he said.

Founded in 2002, the Maine Heritage Policy Center was perhaps best known at the time of Ginn Marvin's confirmation hearing for its opposition to Baldacci's Dirigo health-care plan.

It also had convened a tax summit featuring anti-tax activist Grover Norquist. The group later wrote the statewide referendum known as the Taxpayer Bill of Rights, which appeared on the November 2006 ballot.

The ethics commission eventually required the think tank to disclose its TABOR-related spending in response to a complaint filed by Lindemann. Ginn Marvin recused herself from the matter.

Ginn Marvin's term on the ethics commission officially ended in April, but she continues to serve. She said she is not seeking reappointment, but she has no plans to resign from either the ethics commission or the Maine Heritage Policy Center board.

House Republican Leader Josh Tardy has not yet submitted a list of possible candidates to the Governor's Office.

Rep. John Patrick, D-Rumford, House chairman of the Legal and Veterans Affairs Committee, said he plans to take a closer look at the political ties of future ethics commission candidates.

"I think it'll actually help the committee be more diligent in asking questions in the future," he said.

Staff Writer Kevin Wack can be contacted at 791-6365 or at:

kwack@pressherald.com

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Document Set #4:

August 6, 2007 challenge to Assistant Attorney General's "it just sits there" doctrine. 27 pages.

Pages 12-27 examine the question of whether MHPC is a "Political Committee."

TrueDialog.ORG

For a more Authentic Democracy

Phone 207-774-1936
Email: info@truedialog.org

P.O. Box 171
Portland, Maine 04112

August 6, 2007

Dear Commission Chair Friedman, Commissioners Cassidy, Shiah, and Thompson:

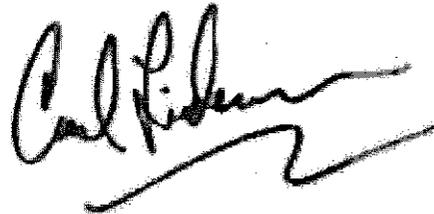
Unusual circumstances necessitate that I contact you directly regarding Commissioner Ginn Marvin's conduct and qualifications to serve.

At the last Commission meeting on July 16, Executive Director Wayne expressed highly prejudicial summary conclusions regarding his boss apparently with the cooperation of Assistant Attorney General Gardiner. They must be disqualified for their potentially biased mediation.

How should this matter be processed? Assistant Attorney General Gardiner offered her novel "It Just Sits There" doctrine where Commissioners decide for themselves if they are fit to serve and if their conduct does not violate the statutes administered by the Commission. The Commission, without formal vote, apparently accepted this. The doctrine and the adoption "process" are unacceptable. Instead, the Commission must reject this and adopt an "Above Reproach" approach by formal vote instead.

The following document compares and contrasts the "It Just Sits There" doctrine and the "Above Reproach" approach as well as the actions that must follow either of their formal adoption. I request that a discussion of these and a formal vote to choose between them and these actions be included on the August 13 agenda.

Yours very truly,



cc Wayne, Gardiner, Lavin, AG Rowe, Gov. Baldacci, Sen. Pres. Edmonds, Speaker Cummings, *et alia.*

The Ethics Commission's Choice:

The "It Just Sits There" doctrine vs. an "Above Reproach" Approach

On July 16, Assistant Attorney General Phyllis Gardiner offered the entirely novel "It Just Sits There" doctrine regarding Commissioner Jean Ginn Marvin:

Just looking at the statute, title 1 section 1002, I don't see that it really is within the Commission's purview as a body to rule on the qualifications of any member or whether – the question of whether - any member is engaged in what's defined as prohibited activities under that statute....any commission member whose qualifications are challenged, or whose activities are challenged, can answer that individually as to their reasoning as to why they feel they're able to continue serving and have not engaged in prohibited activities and then it just sits there. I don't see that the remedy is with this Commission. [Assistant Attorney General Gardner, 7/16/07, Emphasis added.]

This erroneously suggests that there is nothing for the Commission to do in this matter. It is true that if the Commission should choose to formally accept this doctrine, then it is their decision that this matter "just sits there."

However, the Commission must adopt an "above reproach" approach instead. These two principles are the foundation for this:

- a. That the conduct of Maine Ethics Commissioners needs to be beyond reproach, both in fact and in appearance.
- b. That Commissioners must be held to the highest possible standard of conduct – higher, even, than those they regulate.

Adopting this affords a very different outcome than the "It Just Sits There" doctrine. It necessitates significant actions by the Commission responding to Commissioner Ginn Marvin's failure to disclose and the subsequent challenges to her qualifications to serve as well as her conduct.

The following document compares and contrasts the difference between the "It Just Sits there" doctrine and "Above Reproach" approach applied to Ginn Marvin's:

1. pre-appointment failure to disclose her board membership on MHPC
2. engagement in "prohibited activities" as MHPC's treasurer
3. qualifications to serve on the Commission as an MHPC board member

1. Commissioner Ginn Marvin's pre-appointment failure to disclose to the Maine Legislature her Board Membership on Maine Heritage Policy Center:

Ethics Commissioner Ginn Marvin failed to disclose the material fact of her Maine Heritage Policy Center (MHPC) Board membership in her July 17, 2004 "Qualification-to-serve-as-Regulator" Legislative Staff Questionnaire for Gubernatorial Nominees form.

On November 29, 2006, Ethics Commission Executive Director Jonathan Wayne correctly emphasized the central importance of Commissioner Ginn Marvin's disclosure of her MHPC Board membership on her July 2004 "Qualification-to-serve" form.

...Ms. Ginn Marvin's membership on the MHPC board is not a conflict of interest that would require her to step down from the Commission. She was a member of the MHPC board when the Governor appointed her at the suggestion of the legislative leadership, so apparently the issue was not viewed as a disqualifying conflict at the time of her appointment. (response of Ethics Commission staff to Lindemann letter of Nov. 27)

This comment by the Ethics Commission Executive Director highlights the misapprehension by many that Ms. Ginn Marvin had been appropriately "cleared" to serve, as a result of her having filled out the 2004 "Qualification-to-serve" form. In addition, it also correctly suggests that her MHPC Board membership would, in fact, have been, and continues to be, a factor potentially "disqualifying" her from participation in Ethics Commission decision-making.

In the July 16, 2007 Portland Press Herald, a news report on this matter included numerous quotes from the Governor's office and members of the Maine legislature expressing dismay at Commissioner Ginn Marvin's omission. In this, she admitted her omission and claimed that it was "inadvertent."

The omission may have been intentional or, as she claims, "inadvertent." Is her claim not subject to objective review by some regulatory body? What mandates and options were available to the Maine Ethics Commission, under common principles of administrative and ethics law, upon first learning of Commissioner Ginn Marvin's failure to disclose, some three years after she began service on the Commission?

A. What did the Maine Ethics Commission do?

-- **Nothing**. The Ethics Commission "Just sat there," tacitly accepting Assistant Attorney General Gardiner's novel "It Just Sits There" doctrine.

There is the grave possibility that Ms. Ginn Marvin's appointment to the Ethics Commission was gained by intentional material misrepresentation on the "Qualification" form mandated for legislative appointment. Also, material misrepresentations made to the Commission by other MHPC officials (eg. no solicitations/donations or express advocacy for TABOR, never taking 'pro' or 'con' stances on any issue, etc.) raise fundamental doubts about whatever she asserts here. This history of offering what are at best factually inaccurate statements to the Commission should necessitate objective review. Yet, according to the novel "It Just Sits There" doctrine, the

subject of Ms. Ginn Marvin's admitted material misrepresentation must "just sit there," without further Ethics Commission action - substantive or even symbolic - or even any other "alternative" regulatory/enforcement review. Thus, Commissioner Ginn Marvin's claim of "inadvertence" is accepted without any objective review of its credibility.

B. What could the Maine Ethics Commission do with an "Above Reproach" approach?

-- At the outset of the July 16 meeting, it would have announced that questions have been raised about Ginn Marvin's conduct and then voted to ask the Commissioner to recuse herself until the Commission, without her presence, addresses the allegation.

-- Require Ethics Commissioner Ginn Marvin to immediately file an attested, revised and fully completed July 14, 2004 "Qualification to Serve" form, pertaining to her interests as of July 14, 2004, since there remains the possibility that other omissions occurred, either intentional or unintentional, and suspend her from further involvement with Commission affairs until that form is filed and reviewed.

-- Recognize that the mere fact that Ginn-Marvin's July 2004 failure to disclose predated her service on the Ethics Commission does not require or suggest that the Commission should "just sit there." Because the omission undermines the legitimacy - if not the legality - of her original appointment, the opposite conclusion applies: the Commission has a heightened duty to act.

-- Recognize that her current status as an Ethics Commissioner must not be a bar to regulatory and enforcement investigation and review of her conduct. Again, the opposite conclusion applies: Maine Ethics Commissioners must be subject to the highest standards of ethical conduct and the highest standards of ethical scrutiny.

-- Recognize that truthful, written disclosure forms are the lynchpin of all Maine Ethics Commission oversight and enforcement: The entire enforcement/regulatory function is founded on the EXPECTATION that all written reporting forms WILL be filled out completely and honestly, and affirmed as true with the signature of the filer.

-- Recognize the highly symbolic "enforcement" value generated by maintaining and enforcing the highest standards of conduct for Ethics Commissioners. If Ethics Commissioner Ginn Marvin can assert that mere "inadvertence" caused her failure to disclose on that form, and that excuse is accepted without objective review and investigation, then a fundamental question of fairness arises. Others required to file written affirmed forms with the Commission, upon witnessing this special treatment which - to date - has been granted to Ethics Commissioner Ginn Marvin, might now reckon for the first time that similar claims of "inadvertent failure to disclose" on their part will now 'just sit there' at the Commission, with no real threat of enforcement sanction.

-- Consider a vote of censure, reprimand, suspension, or expulsion of Commissioner Ginn Marvin, to send a message to other filers that claims of inadvertent omission on critical forms are unacceptable - especially for an Ethics Commissioner.

-- Immediately adopt a requirement that all Commissioners file attested annual "interest disclosure" affidavits, consistent with many similar periodic filing requirements enforced by the Ethics Commission.

-- Initiate Agency Rule making to require filing of such complete annual "interest disclosure" affidavits by Ethics Commissioners.

-- Alternatively, recognize that, because Ethics Commissioner Ginn Marvin has, since April 2007, been serving as a holdover "expired-term" Ethics Commissioner, thereby avoiding review for a second-term, she should be asked by the other Commissioners to step down from such temporary service, or at least be required to immediately file a new and attested form outlining her current qualifications to serve.

-- Recognize that Ginn Marvin's failure-to-disclose may jeopardize not only her current fitness-to-serve, but also her past service, and – more importantly – may generate some claims that decisions rendered by the Ethics Commission since her appointment in 2004 may be subject to challenge, as being void or voidable.

-- Immediately move to establish a "beyond reproach" investigation and adjudication – by appointing an entirely independent person or body - to review and investigate Ethics Commissioner Ginn Marvin's relationship and offices held with MHPC, and her associated claim that her failure to disclose was "inadvertent."

C. Conclusion – The Inaccurate Assessment of the "It Just Sits There" doctrine.

The above listing of options/mandates available to the Commission, to judiciously and ethically act upon Ethics Commissioner Ginn Marvin's failure to disclose on her Qualification to serve form does not pretend to be an exhaustive list. However, it does illustrate the fundamentally flawed nature of the "Just Sits There" Doctrine articulated by Assistant Attorney General Gardner. The claim that there is nothing for the Commission to do under these circumstances is simply false.

Surely no Commission statute or rule is required to allow a body to police itself in this manner, since each of these administrative/regulatory "self-policing sanctions" are commonplace at every level of government, in every legislative and administrative setting.

The point is that addressing Commissioner Ginn Marvin's pre-appointment failure to disclose her membership on MHPC's board falls within the purview of the Ethics Commission. However, circumstances demands that the Commission must immediately take formal action to cede that jurisdiction and authority to some other person or persons. Thus, the Commission should immediately act by formal vote to request that someone entirely removed from the scene (eg. the Governor, the Speaker of the House, the President of the Senate) appoint an independent Special Counsel, person or group to undertake a "beyond reproach" investigation and adjudication of Commissioner Ginn Marvin's failure to disclose and the issues subsequent to it.

2. **Ethics Commissioner Ginn Marvin, as an Officer and Treasurer of MHPC, has engaged in “prohibited activities” in violation of MSRA 1 § 1002 1A-6 through “political fund-raising to promote the election or defeat of a candidate, passage or defeat of a ballot measure....”**

The call for an investigation addressed to the Governor and legislative leaders sent on July 2 stated that Ethics Commissioner Ginn Marvin, as Treasurer of MHPC, has engaged in “prohibited activities” in violation of MSRA 1 § 1002 1A-6 by partaking in “political fund-raising to promote the election or defeat of a candidate, passage or defeat of a ballot measure....”

Evidence that MHPC had engaged in fundraising for the Taxpayer Bill of Rights (TABOR) ballot initiative include a fundraising solicitation letter and “thank you” form letter for contributions “to advance our mission of promoting The Taxpayer Bill of Rights in Maine...” As Treasurer of the organization, Commissioner Ginn Marvin cannot reasonably claim that she did not participate in what are prohibited activities for a Commissioner. This meets the standard for the Commission to initiate an investigation as per 21-A M.R.S.A. § 1003 because it “shows sufficient grounds for believing that a violation may have occurred.”

A. What did the Maine Ethics Commission do?

-- **Nothing.** By embracing Assistant Attorney General Gardiner’s “It Just Sits There” Doctrine, Ethics Commissioners are, in effect, not subject to enforcement of MSRA 1 § 1002 1A-6.

B. What could the Maine Ethics Commission do with an “Above Reproach” approach?

Ascertaining the facts necessary to determine whether or not MHPC engaged in political fundraising for the ballot initiative is clearly within the Commission’s jurisdiction. In fact, the Commission staff has determined that there is cause for such an investigation into this matter. It is contained in the outstanding complaint regarding the accuracy and completeness of MHPC’s 1056-B report. However, the investigation and adjudication of this complaint has, for reasons which may or may not be related to the fact that the allegations directly pertain to the conduct of Commissioner Ginn Marvin, have been put on hold by the Commission.

Because of the direct relevance to a determination of Commissioner Ginn Marvin engaging in prohibited activities, an “above reproach” Commission would determine the following:

-- Announce that sufficient grounds for believing that a violation of MSRA 1 § 1002 1A-6 may have occurred and then voted to ask that Commissioner Ginn Marvin recuse herself until the allegation is addressed by the Commission without her presence.

--Immediately act by formal vote to cede jurisdiction over Ginn Marvin/MHPC’s TABOR fundraising and to request that someone entirely removed from the scene (eg. the Governor, the Speaker of the House, the President of the Senate) appoint an independent Special Counsel, person or group to undertake a “beyond reproach” investigation and adjudication.

-- Immediately act by formal vote to cede jurisdiction of the entire March 5th complaint against Ginn Marvin/MHPC to this independent Special Counsel, person or group. Ginn Marvin's dual identity as Treasurer for MHPC makes it impossible to effectively and fairly extricate the various elements. Also, in the interest of resolving the issue expeditiously, this case should be heard immediately *in toto* rather than to simply focus on elements regarding Ginn Marvin's alleged activities. This abides by the Commission's expressed interest in "agency economy" when it voted to put this investigation on hold.

C. Conclusion – Premises Behind the “It Just Sits There” doctrine.

Applying the “It Just Sits There” doctrine here instead of an “above reproach” approach reveals these premises behind this failure to act on the part of the Commission that ignores basic principles of administrative and conflict-of-interest law:

Premise No. 1: The “It Just Sits There” Doctrine must be immediately applied when any claim involving a Commissioner arises.

Premise No. 2: That pertinent Administrative law and conflict-of-interest legal precedents should be interpreted to mean that:

- a) when an allegation arises that an Ethics Regulator has engaged in prohibited acts, the only remedy is to have the Commissioner “*answer that individually as to their reasoning as to why they feel they're able to continue serving and have not engaged in prohibited activities,*” and
- b) that the other Commissioners can and should do nothing.

Premise No. 3: That Ethics Commissioners are immune from Ethics Statute regulation: Appointment to a position on the Maine Ethics Commission frees that person from the bounds of the Maine Ethics statute, and from any oversight, investigation, or enforcement by the Maine Ethics Commission.

In sum, adopting the “It Just Sits There” Doctrine redefines the Ethics Commission where it becomes something fundamentally different than what the name suggests.

3. As an MHPC Board Member, Commissioner Ginn Marvin was/is disqualified to serve on the Ethics Commission.

Section 1 § 1002(2) of Governmental Ethics Law states:

Qualifications. The members of the commission must be persons of recognized judgment, probity and objectivity. A person may not be appointed to this commission who is a member of the Legislature or who was a member of the previous Legislature, who was a declared candidate for an elective county, state or federal office within 2 years prior to the appointment, who now holds an elective county, state or federal office, who is

an officer of a political committee, party committee or political action committee or who holds a position in a political party or campaign.

Two independent analyses show sufficient grounds for believing that Commissioner Ginn Marvin is disqualified for service on the Commission.

a. The governing principle is that regulated individuals and leadership of regulated entities are disqualified from service on the Commission.

The Commission did not determine what kind of entity MHPC actually is during the case brought against the organization last Fall. At the October 31 meeting, MHPC's president, Bill Becker compared the organization to other educational or research institutions such as the Margaret Chase Center at the University of Maine or the Muskie School of Public Policy. However, the Staff Memo of December 6 disagreed with this self-assessment:

The promotional aspect of some of the MHPC's statements, however, seems to put it in a different category than the Margaret Chase Center or the Muskie School...

Whatever kind of entity MHPC is, it is not what Mr. Becker claimed – i.e. an entity not regulated by the Commission. This became explicit with the Commission's Final Determination ordering the organization to file a 1056-B report. What does MHPC's status as a regulated entity in 2006 say about 2004 when Commissioner Ginn Marvin was appointed to serve? MHPC repeatedly testified that its conduct and character in 2006 was unchanged from the founding of the organization in 2002. Therefore, it is reasonable to infer that since it was a regulated entity in 2006, it was also one in 2004.

b. MHPC is a "political committee" so Commissioner Ginn Marvin is specifically excluded from service on the Commission.

A "political committee" is defined under 21-A M.R.S.A. §1, sub-§30 as "2 or more persons associated for the purpose of promoting or defeating a candidate, party or principle." Since as early as the organization's founding in 2002-2003, MHPC has been and continues to be a "political committee" promoting the principle of Tax and Expenditure Limitation (TEL) laws that include ballot initiatives such as TABOR (see addenda: MHPC as a "Political Committee"). Therefore, Commissioner Ginn Marvin's service on the MHPC Board of Directors disqualifies her from service on the Commission.

A. What did the Maine Ethics Commission do?

-- **Nothing.**

B. What could the Maine Ethics Commission do with an "Above Reproach" approach?

It may be appropriate for the Commission to determine whether the standard of 21-A M.R.S.A. § 1003 is satisfied, that there are "sufficient grounds for believing that a violation may have

occurred.” Based on this, they might decide that an investigation of some kind must ensue concerning the claim that the proper disclosure would disqualify her from service.

Note, however, that a “beyond reproach” Ethics Commission held to the highest possible standard of conduct, would **lower** the legal standard of 21-A M.R.S.A. § 1003 in the case of claims of statutory violation by an Ethics Commissioner. Here, that would require investigation if there are “any grounds for believing that a violation may have occurred.” One would think that any Commissioner worthy of service and with nothing to hide would welcome any such clearance after due process. This threshold for investigation applies to all of the issues here - Ginn Marvin’s “failure to disclose”, the claim that the proper disclosure would disqualify her from service, and whether she had engaged in “prohibited activities.” It also is pertinent to concerns over whether the Commission was improperly constituted with her presence, and whether that taints determinations and rule-making during her tenure.

Because of the broad issues raised by the distinct possibility that Commissioner Ginn Marvin was not qualified to serve either as a Director on MHPC’s board in 2004 or as that board’s Treasurer since 2005, an “above reproach” Commission would carry out the following:

-- Announce that sufficient grounds for believing that a violation of Section 1 § 1002(2) may have occurred and then vote to ask that Commissioner Ginn Marvin recuse herself until the allegation is addressed by the Commission without her presence.

--Immediately act by formal vote to cede jurisdiction over investigating and adjudicating Commissioner Ginn Marvin’s possible violation of Section 1 § 1002(2) and to request that someone entirely removed from the scene (eg. the Governor, the Speaker of the House, the President of the Senate) appoint an independent Special Counsel, person or group to undertake a “beyond reproach” investigation and adjudication.

-- Recognize that the Commission may have been and continues to be improperly constituted as the result of having an unqualified Commissioner. This may generate some claims that decisions rendered by the Ethics Commission since her appointment in 2004 may be subject to challenge, as being void or voidable.

C. Additional Concerns and Considerations: Need for Executive Director Wayne and Assistant Attorney General Gardiner to be recused from any participation in processing Ginn Marvin matter.

Before the Commission could consider the matter during the July 16 session, Executive Director Wayne (apparently with the advice and consent of In-House-Counsel Gardner) took an unusual and unexpected action. He boldly began his remarks by expressing a prejudicial and summary conclusion that, in effect, “cleared” the question of Commissioner Ginn Marvin’s qualification-to-serve:

Carl has raised an argument that Jean Ginn Marvin is disqualified from serving on the Commission because she’s an officer of the Maine Heritage Policy Center and that qualifies as a political committee. I’ve had a chance to talk it over with

Phyllis, about what her view is and we disagree with that point of view. [Executive Dir. Wayne, 7/16/07]

The Executive Director has worked closely with Commissioner Ginn Marvin for several years during her service as Chair reporting directly to her. That, on the face of it, makes his astonishing "there's no wrongdoing and no legal issue" summary dismissal pronouncement inappropriate.

What premises lies behind this morally and procedurally bankrupt, and legally fatuous conclusion, which ignores all basic principles of administrative and conflict-of-interest law?

That - again, unlike the average citizen - when an allegation arises that an Ethics Commissioner has engaged in activity prohibited under the statute, that Commissioner is immediately entitled to specialized treatment, in the form of Ms. Ginn Marvin's immediate "clearance" by the Commission's Executive Director and the Assistant Attorney General, including apparently:

- expedited, instantaneous "process" which omits every common procedural due process element. Here, there was no "process" whatsoever proceeding Wayne's bold and summary automatic "clearance" of Commissioner Ginn Marvin on this issue.
- no investigation (other than, possibly, input from only Ms. Ginn Marvin)
- no accumulation of evidence
- no hearing (at least with advance public notice, and held in public)
- failure to isolate Ms. Ginn Marvin from any adjudication or decision-making on the claim, through a firewall, and formal recusal/removal from the entire subject
- no public comment
- no vote by the Ethics Commission, or any other body
- no written decision, and no recitation of facts found to be true, legal standard applied, or legal conclusions made.

These statements by Executive Director Wayne and Assistant Attorney General Gardiner shows that they both have entirely "pre-judged" any claim of any statutory violation by Ethics Commissioner Ginn Marvin. However, the Commission "just sat there" in response.

This explicit "pre-judging" mandates that both Executive Director Wayne and Assistant Attorney General Gardiner be recused from any further involvement or contact with any issues having anything to do with claims of qualification, ethical or statutory violation by Commissioner Ginn Marvin.

This bold and summary adjudication and clearance is especially troubling in the Executive Director's case because of what may be his pattern of biased conduct favoring Ethics Commissioner/MHPC Treasurer Ginn Marvin as pertains to charges of statutory violation.

Executive Director Wayne wrote a March 6, 2007 Memorandum to the Commission, which outlined for the Commissioners the alleged statutory standard to be applied by the Commission in judging the accuracy and completeness of a report which the Commission had previously ordered by filed by MHPC. This complaint concerns the organization's fundraising and expenditures, a subject directly within the bailiwick of Ethics Commissioner/MHPC Treasurer Ginn Marvin. In that memo, Executive Director misstated the legal standard to be applied by the

Commission. He inaccurately quoted 21-A M.R.S.A. § 1003, the standard for having the Commission launch an investigation:

....if the reasons stated for the request show sufficient grounds for believing that a violation **has occurred.**" (emphasis added) .

This statement of the law, in a case directly calling into question the legality of actions undertaken by his boss, was fundamentally and entirely wrong. The obvious standard for determining when the Commission should undertake an investigation is:

....if the reasons stated for the request show sufficient grounds for believing that a violation **may have occurred.**" (emphasis added)

These two articulations of the statutory standard which lies at the very heart of the entire statutory and regulatory framework are fundamentally different. The statute means to mandate a Commission investigation when there is merely the possibility of violation. In startling contrast, Executive Director Wayne asserted a very different standard in writing in his legal memorandum on a case that named his boss in a claim of violation. He stated that only when there is a much larger element of certainty that a violation has occurred is an investigation warranted. The gross and fundamental nature of Executive Director Wayne's written misstatement of this legal standard raises several possible inferences:

- 1) it was merely "inadvertent";
- 2) it was evidence of gross incompetence;
- 3) whether intentional or "inadvertent", the Executive Director's recitation of such a baldly false legal standard, some three years into his tenure as Executive Director, calls into question every Commission decision – to investigate or not investigate - during his entire tenure prior to that March 2007 advice to the Commission;
- 4) it was part of a pattern of conduct of providing favorable treatment to his boss, Ethics Commissioner/MHPC Treasurer Ginn Marvin

It is difficult to tell, absent more information, which of the above inferences is accurate. However, the possibility of a pattern of Executive Director Wayne's unfairly favorable conduct toward Commissioner Ginn Marvin is heightened by the subsequent "summary clearance" he offered spontaneously on July 16 described above.

The "Above Reproach" approach necessitates a specific response. This apparent pattern, alone, makes it clear that Executive Director Wayne needs to be recused and separated by a firewall. In fact, the mere fact that Executive Director Wayne served directly under Commissioner Ginn Marvin mandates this same need for his recusal/firewall separation. Likewise, Assistant Attorney General Gardiner's participation in such a "summary clearance on all charges" for Commissioner Ginn Marvin makes clear that she, too, needs to be removed from any further processing of any matters involving Commissioner Ginn Marvin.

4. Conclusions and Considerations: Is the Ethics Commission Ethical?

It is absurd for Assistant Attorney General Gardiner to maintain that all of the matters here concerning Commissioner Ginn Marvin are not “within the Commission’s purview.” In fact, much of this is well within the Commission’s jurisdiction. However, the self-evident conflict of interest involved in the Commission investigating or adjudicating any complaint involving a Commissioner makes it necessary to move the action to an appropriate venue. At the very least, the “It Just Sits There” doctrine must be repudiated if the Commission is to have any claims to “ethical” standing.

By asserting her novel “It Just Sits There” doctrine, Assistant Attorney General Gardiner has brought the Commission to a point of decision. This is an opportunity to publicly declare whether or not the Commission adheres and aspires to the highest ethical, moral and legal standards. By formally rejecting the “It Just Sits There” doctrine and also voting to carry out the appropriate actions to see to it that Commissioner Ginn Marvin’s apparent violations. This is the only way the Commission can properly carry out its mission as it:

...guards against corruption and undue influence of the election process...promptly, fairly, and efficiently...(with Commissioners that) investigate and advise on apparent violations of ethical standards.

Alternately, the Commission may wish to positively embrace the “It Just Sits There” doctrine by formal vote. If so, this should be a matter of great interest to Maine citizens and their elected representatives. Finally, the Commission may elect to tacitly accept the “It Just Sits There” doctrine by taking no formal action here whatsoever. That would be of grave concern. It might indicate that the Commission was unable to fulfill its statutory obligations and lacked the fundamental integrity necessary to even be clear about what standards it did embody.

Howsoever the Commission decides to act or to not act regarding Commissioner Ginn Marvin, it is a moment of truth.

ADDENDA: MHPC as a “Political Committee”

Is there sufficient grounds for believing that Jean Ginn Marvin is unqualified for service on the Ethics Commission? That easily accessible evidence provides sufficient grounds for believing that Maine Heritage Policy Center (MHPC) is a “political committee” exposes Assistant Attorney General Gardiner and Executive Director Wayne’s prejudicial and summary conclusion as unfounded.

The challenge to Commissioner Ginn Marvin’s qualifications to serve on the Commission on the grounds that she serves on the board of MHPC arises from 1 § 1002(2):

A person may not be appointed to this commission who is a member of the Legislature or who was a member of the previous Legislature, who was a declared candidate for an elective county, state or federal office within 2 years prior to the appointment, who now holds an elective county,

state or federal office, who is an officer of a political committee, party committee or political action committee or who holds a position in a political party or campaign.

As per 21-A MRSA §1, sub-§30. Definitions, a 'Political committee' means 2 or more persons associated for the purpose of promoting or defeating a candidate, party or principle."

MHPC in 2003: Advocating for TEL legislation from its Inception

Easily accessible documentary evidence shows that, in a plain language understanding of the definition, MHPC is a political committee "associated for the purpose of promoting the principle" of tax and expenditure limitation laws (TELS). MHPC's Executive Director Bill Becker began promoting the principle of TELS within weeks of the organization's founding. He is explicit in an opinion piece he wrote for the Lewiston Sun Journal published on February 16, 2003:

...tax and expenditure limitations should be passed...TELS legally limit a state's ability to increase either taxes and/or expenditures. Maine's state government has chronically proven that it is unable to apply fiscal discipline to the budget process, as each of us must do with our own families or businesses. Therefore, legal limits must be placed on policymakers." (see Exhibit A)

2004: TELS vs. Tax Cap

In 2004, the so-called "Palesky Tax Cap" referendum was at the forefront with signatures for the ballot initiative certified on February 10. Apparently, this threatened to eclipse MHPC purpose in promoting TELS. In response, the organization held an "Emergency Tax Summit" on March 23. This was a well-publicized event featuring national anti-tax activist Grover Norquist. Rather than focus on the Palesky Tax Cap, the "summit" apparently focused on TELS, specifically Colorado's Taxpayer Bill of Rights. Two of four presentations still found on MHPC's website from the event, from Colorado's Penn Pfiffner and Dr. Barry Poulson, reflect the TEL/TABOR focus. A news report in the Lewiston Sun Journal the following day further underscores this:

In addition to a local tax cap, Norquist said Mainers should adopt a Taxpayers Bill of Rights, or TABOR, such as Colorado voters did in 1992. That measure limits state spending to the annual rate of inflation plus population growth and requires a two-thirds vote in the Legislature to approve tax increases. (see exhibit B)

Concurrent with these events, future Ethics Commission Chair Ginn Marvin is listed as a Director on the MHPC board in the organization's first annual tax filing, IRS Form 990, dated April 28, 2004. She filled out her disclosure for membership on the Ethics Commission several months later, dated on July 16, 2004. She was appointed to the Commission on August 17. Just over three weeks later, on September 10, MHPC published a press release supporting TABOR a new ballot initiative put forward by Mary Adams. Becker's advocacy here reflects his earlier advocacy in 2003:

Our state has shown itself incapable of managing its own affairs without guidelines. Tax and spending limits will provide the parameters for our state and local

governments to live within their means. (see exhibit C)

Four days later, on September 14, Grover Norquist's organization, Americans for Tax Relief, sent out a media advisory apparently to provide follow-up support for MHPC's release. Norquist is quoted in it saying "As I watch tax developments nationwide, I see that TABOR is the future." (see exhibit D)

MHPC's partnership with Adams to promote TABOR becomes even more explicit after the failure of the Palesky Tax Cap as is reported by Victoria Wallack in the Brunswick Times Record on November 22:

Today (Adams) has hooked up with a national movement called the Taxpayers Bill of Rights (TABOR) and the conservative Maine Heritage Policy Center, based in Portland. With their help she hopes to put a question on the ballot next year... (see exhibit E)

Also of interest is how these documents seem to show a close relationship that appears to be at odds with Becker's later testimony to the Ethics Commission where he claimed MHPC had operated independently of Adams (see exhibit F).

MHPC's TEL Promotion Yesterday, Today & Tomorrow

MHPC expressly advocated for the 2006 TABOR ballot initiative. Of particular interest is the mission statement contained in a "thank you" form letter used as part of MHPC's fundraising program for the ballot initiative. In the letter signed by Becker, he states that donations will be used "to advance our mission of promoting the Taxpayer Bill of Rights...an effective 'Tax and Expenditure Limit'..." (see attached, Exhibit G)

MHPC has already signaled that it will continue its work as a political committee to promote the principle of TELs. Becker made this statement on WLOB radio on July 19, 2007:

I can fully report that we are rewriting TABOR. We're not rewriting TABOR as the Taxpayer Bill of Rights. We're rewriting a tax and expenditure limitation bill based on the fact that we wrote the last one...here's another version of the same tool. (audio available at www.truedialog.org/audio/WLOB_becker_7_19_07.mp3)

Conclusion:

There is sufficient reason to believe that MHPC may be properly defined as a "political committee" in a plain language reading of 21-A MRSA §1, sub-§30. The documentary evidence makes it clear that promoting the passage of TELs in Maine is a major purpose for MHPC likely going back to its founding.

Sun Journal

Significant changes sought in economic policies

Sunday, February 16, 2003

Maine government has chronically proven that it is unable to apply fiscal discipline to the budget process. Legal limits must be placed on policymakers.

We live in one of the finest places in the nation - our great state of Maine. Our magnificent and immense natural resources, our safe and varied communities, combined with the determination and grit of Maine people, makes the state a place about which books are written and movies are made.

Yet Maine is on the verge of significant population and economic decline. If we do not direct our elected (and non-elected) officials to make significant, structural changes in our long-held policies on taxes, economic development, and regulations that we place on both our people and businesses, Maine will see more closings, more layoffs, and more businesses deciding to locate their operations somewhere outside our borders. That potential end result will have a devastating effect on each of us in a very real way.

Conservatives have long held that there are certain key elements to a thriving and robust economy: lowering the tax burden, encouraging responsible free market competition among the business community and limiting the amount of unfunded and overly burdensome regulations placed upon both individuals and corporations.

As it relates to the states, these beliefs are based upon factual data that show the competitive advantage in those states that have embraced this fundamental understanding. States such as Colorado, Florida, and our neighbor New Hampshire, have seen a significant growth in population, business development and, as a result, tax revenue.

The Maine Heritage Policy Center has emerged as a leading Maine voice for these honorable views of the conservative philosophy - and as such is once again reminding Mainers of their strong, independent and participatory Maine heritage.

MHPC is a new nonprofit, nonpartisan 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 purpose of providing public policy solutions that benefit the people of Maine.

In the critical area of the economy, we all heard the rhetoric during the recent gubernatorial contest regarding Maine's high tax rate, and that the business community is finding it hard to live and work here. While the campaign may be over, that reality still exists.

In a 2002 study published by the Tax Institute, Maine was the last - the lowest, the bottom - of the list in terms of tax-friendly states. Maine's individual tax burden (combining a Maine resident's state, local, property, sales and excise taxes), as a percentage of personal income, was 13.6 percent - the highest in the union!

These are facts that we can no longer ignore. These types of well-publicized reports cannot and do not bode well for Maine's prospect at attracting new businesses to the state. Remember that along with those businesses come dozens or hundreds or thousands of new people to Maine who would buy houses, cars, food and, yes, pay taxes.

Mainers must be adamant in their strong opposition to any tax increases; in fact, we must push for significant, structural reform that decreases the overall tax burden on Maine's people and businesses. Such reform must include property tax caps, such as are already in place and working well in Bath. Additionally, tax and expenditure limitations should be passed, as they have been by a majority of the states. TELs legally limit a state's ability to increase either taxes and/or expenditures. Maine's state government has chronically proven that it is unable to

apply fiscal discipline to the budget process, as each of us must do with our own families or businesses. Therefore, legal limits must be placed on policymakers.

The Maine Heritage Policy Center provides objective, fair and grounded analyses of public policy issues facing the state. The need for an organization of MHPC's nature is based on the principles of balance.

Mainers need to hear all ideas that could influence and shape the course of our state. MHPC provides research and analysis with the utmost integrity, drawing on both local and national experts to offer solutions and to promote effective and responsible public policy models that already occur within Maine.

Our Maine heritage is based on grit, determination and ingenuity. Those characteristics together provide the ideal foundation for promoting positive change that will ensure a more secure future for our state.

Bill Becker of Portland is the Executive Director of The Maine Heritage Policy Center.

Sun Journal

Activist critiques Maine, gets critiqued himself

By Christopher Williams, Staff Writer
Wednesday, March 24, 2004

PORTLAND - A national tax activist who visited Maine Tuesday endorsed a proposed 1 percent property tax cap that will go to voters later this year.

Grover Norquist, president of Americans for Tax Reform, told reporters a tax cap likely would limit government spending and lessen the need for higher taxes.

Critics say the cap would drain more than \$500 million from municipalities and cripple local services.

Norquist was keynote speaker at an "Emergency Tax Summit" at the Holiday Inn by the Bay hosted by Maine Heritage Policy Center, a conservative economic think tank.

Politicians will push any tax to the breaking point, Norquist said. By capping property taxes, voters should successfully send a message to lawmakers that rising taxes and the higher spending that triggers them are not acceptable.

"I think it does lead to permanent restraint on spending, or is likely to," he said.

The state's distinction as having the highest tax burden as a percent of income has pushed residents to the brink, he said.

"When it comes to tax and spending policies, ... Maine is not just a little bit out of whack," he said. "Maine does not have superior services than other states, just more expensive services."

In addition to a local tax cap, Norquist said Mainers should adopt a Taxpayers Bill of Rights, or TABOR, such as Colorado voters did in 1992. That measure limits state spending to the annual rate of inflation plus population growth and requires a two-thirds vote in the Legislature to approve tax increases.

Only a constitutional amendment that restricts spending will work, Norquist said. It is not enough to enact a law that sets budgetary limits and creates a rainy day fund, such as the so-called stabilization fund proposed last year by Gov. John Baldacci and passed by the Legislature. It is too easily breached, he said.

"It's not an escrow account; it's a slush fund. And it will be spent when they want to spend it."

George Christie, executive director of Maine Citizen Leadership Fund, said Norquist was a polarizing presence who showed disdain for Maine's tradition of Democrats and Republicans working together to solve the state's tax problems.

"He is one of the most radical anti-tax figures in this country with a direct line to the White House," Christie said. "We will not tolerate that kind of debate."

Christie said he and his group used satire to "make light of a very serious issue" during the conference by pulling up in a limousine dressed as millionaires in top hats, tails and fur coats while clutching cigars. Fake bills spilled from their pockets. They entered the hotel and tried to confront Norquist, but were turned away at the door to the luncheon reception.

By inviting Norquist to serve as keynote speaker, the Maine Heritage Policy Center has "declared war on bipartisanship," Christie said.

When asked about Christie's remarks, Norquist later answered that, at the federal level of government, bipartisanship has historically yielded spending increases. "I thought that the best moments of the last several years have been the clarifying partisan bickering."

Christie said tax reform in Maine should include boosting revenues to help provide property tax relief to those who need it most. It also should include protections from Medicaid cuts.

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Taxpayer Bill of Rights Challenged by Governor's Office

This despite previous statements that supported spending limits

PORTLAND – The Maine Heritage Policy Center today requested clarification on the Governor's position on controlling government spending.

Taxpayer advocate Mary Adams has submitted a proposed citizen's initiative that would limit state and local spending to the rate of inflation plus population growth. Known as a Taxpayer Bill of Rights, the initiative would also require a vote by the people to override such limits. 27 states have some sort of limitation on the growth in state spending. Spending is what has driven Maine's tax burden to epic heights with disastrous consequences.

The Bangor Daily News reported on April 28 that the Governor "said he would consider supporting a constitutional spending cap." Yet the Portland Press Herald reported today that the Governor's spokesman stated that tax and spending relief efforts "are looking to send Maine back into the Stone Age."

Bill Becker, Executive Director of the Maine Heritage Policy Center remarked that "Governor Baldacci was right when, in his January, 2003 inaugural address he noted that 'State spending is out of line with state revenues, creating a billion dollar deficit. This huge imbalance requires immediate and serious attention.'" Yet the state faces another \$1 billion deficit in the next legislative session.

"I'm not sure what changed in the Governor's office, but I would encourage the Governor to support the proposal as he did in his inaugural address," said Becker.

Maine taxpayers have had enough and are taking matters into their own hands. "There is nothing more powerful than grassroots citizens organizing to reclaim the American notion that government serves the people, and not the other way around," stated Becker. "Our state has shown itself incapable of managing its own affairs without guidelines. Tax and spending limits will provide the parameters for our state and local governments to live within their means."

Becker concluded: "By lowering our tax burden, Maine will once again be an attractive option for families and businesses thinking about moving to Maine. Our tax base will expand, providing more government revenue and a healthier economy for all Maine people. Isn't that our ultimate goal?"

###

Contacts:

William Becker
 Maine Heritage Policy Center
 207.321.2550
wbecker@mainepolicy.org

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AMERICANS FOR TAX REFORM



Talk Radio Alert

1920 L Street, NW • Suite 200 • Washington, DC 20036
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WWW.ATR.ORG

FOR IMMEDIATE RELEASE
14 SEPTEMBER 2004

CONTACT: Chris Butler
202-785-0266

INTERVIEW ALERT:

The Tax Revolution Advances in Maine

Mainers are up in arms against taxes. They shoulder the highest tax burden in the nation, and their businesses face a tax climate that ranks 43rd out of the 50 states (The Tax Foundation, 2003).

A backlash has begun, as Mainers are demanding a less oppressive government and greater economic opportunities. A key component in that backlash is a 1% property tax cap referendum to be voted on November 2.

But an even bigger revolution is coming, if some have their way: A Taxpayers Bill of Rights (TABOR)

A Taxpayers Bill of Rights is a constitutional limit on tax and spending growth, allowing government to grow only as fast as population plus inflation. First passed in Colorado in 1992, it has become a model for budget reform and economic growth. Its successes are clear:

- Colorado passed the model TABOR amendment in 1992, requiring a vote of the people to raise taxes, limiting the growth of spending, and rebating excess funds to taxpayers.
- Colorado avoided the painful budget shortfalls experienced by Wisconsin and most other states.
- From 1995 to 2000, Colorado was #1 in the nation in Gross State Product growth.
- From 1995 to 2000, Colorado was #2 in the nation in personal income growth.
- **Since 1993, the people of Colorado received \$3.2 billion in tax rebates, because spending grew more slowly than tax revenues.**

“As I watch tax developments nationwide, I see that TABOR is the future,” said Grover Norquist, president of American for Tax Reform. **“The states that pass TABOR will lead the nation in growth, investment, and jobs, and those that fail to pass it will become the new Rust Belt. Maine can position itself at the vanguard of this revolution if it adopts TABOR now. Mary Adams is doing a great service to her state by promoting this idea.”**

Americans for Tax Reform is a non-partisan coalition of taxpayers and taxpayer groups who support tax simplification and oppose all federal and state tax increases. For more information or to arrange an interview please contact Jonathan Collegio at (202) 785-0266 or by email at jcollegio@atr.org.

Harvard-educated and street-smartened by years as a Washington insider, Norquist is your show's ultimate guest to discuss the state budget crises. His bio can be found at <http://www.aitr.org/staff>. You can find more information about his organization Americans for Tax Reform at www.aitr.org.

EXHIBIT E

Mary Adams: Fighting for Maine taxpayers

Victoria.Wallack@TimesRecord.Com 11/22/2004 By Victoria Wallack, Times Record Bureau

AUGUSTA — Mary Adams has folk-hero status among some in coastal towns for her successful fight 30 years ago to repeal a state tax on property that soaked waterfront communities to help pay for education statewide.

Today she has hooked up with a national movement called the Taxpayers Bill of Rights (TABOR) and the conservative Maine Heritage Policy Center, based in Portland. With their help she hopes to put a question on the ballot next year that would limit spending at all levels of government — state, county, municipal and school district — to the rate of inflation plus population growth.

If there is money left over under that formula, 80 percent would be returned to taxpayers and the rest put into a budget stabilization fund. In fiscal emergencies, taxes could be raised above the inflation plus population rate, but it would require a two-thirds vote of the Legislature and a majority vote of the people.

While Adams said she is using some of the same people and local tax organizations that supported Carol Palesky's tax cap to gather petition signatures, she believes the spending cap could pass where the tax cap failed because it sounds less draconian.

"The Taxpayers Bill of Rights has no price tag to it. The roof's not going to fall in," Adams said, unlike the Palesky initiative where opponents convinced voters that local services would be lost because of a decline of more than \$500 million in local revenue.

Under a spending cap, Adams said, the issue isn't cutting what we have but rather slowing down the rate of growth.

"I've found people want government to prioritize. They have to. They have surprises in their own personal budgets," and have to adjust spending, she said. She calls the Taxpayers Bill of Rights proposal, "firm but gentle discipline."

"It puts the bit in the government's mouth and gives the reins to the people," she said.

Viable option?

Christopher "Kit" St. John of the progressive Maine Center for Economic Policy said the fact the Maine Heritage Policy Center is involved makes the Taxpayers Bill of Rights more viable than Palesky's initiative.

It will be "much better organized," he said, and with Heritage Policy Center's ties to national groups, "it is poised to bring in very large amounts of outside money." It also takes the focus off local service cuts and talks about state spending, which to most taxpayers is "a big black hole," even though the bulk is returned to cities and towns, he said.

"There are a lot of ways in which the TABOR proposal might have a bigger head of steam than the Palesky proposal," said St. John, who was a vocal opponent of the tax cap. "It bears close watching."

"Our argument is not with their intention at all," but rather the specifics of the TABOR proposal, said Dana Connors, president of the Maine State Chamber of Commerce, which also is proposing a tax reform package that limits spending.

Connors said it is too far-reaching in terms of limiting all fees and the growth of all state budgets, including the highway fund, which attracts huge amounts of federal matching dollars.

He also said TABOR is really a Colorado import, much like Palesky was a copy-cat of California's Proposition 13. The chamber's initiative is homegrown and customized to Maine.

Still "their intent is to do much the same," as the chamber, he said, "to lower the tax burden and focus on spending ... At the end of the day, it's pretty hard to criticize them."

A Colorado invention

The Taxpayers Bill of Rights was adopted in Colorado in 1992. Other states — including California, Tennessee and Wisconsin — have considered adopting it, although none has done so.

Colorado Gov. Bill Owens was in South Portland last Monday night as the keynote speaker at the Maine Heritage Policy Center annual dinner to promote TABOR. The same day the Denver Post in his home state reported that taxpayers there would be asked to give up their tax refund under TABOR next year to help fill a gaping state budget hole.

The governor likes to boast — and did so on talk radio in Maine on Nov. 13 — that TABOR has returned \$3.2 billion to Colorado taxpayers in the last 10 years. The problem, he said, is that Colorado voters also passed a constitutional amendment requiring the state to increase aid to K-12 education annually, and the two measures compete with one another, particularly during a recession.

Adams said it is those times of recession that worry her, when the government keeps spending despite a loss of revenue, with no money in the bank. Instead of cutting back, it raises property taxes.

"There's a whole lot of people who have been radicalized by taxes, and I don't mean that in a bad way. We're No. 1 in property taxes in the whole nation as a percentage of income," she said, adding that people are fed up.

Tax reform activist

Nearly 30 years ago, Adams, then a mother of two young children, helped lead her first taxpayer revolt against a uniform state property tax, which was levied on all cities and towns to pay for education.

The group she organized to collect signatures called themselves "Freedom Fighters" because they met in Freedom in Waldo County.

"There were a huge bunch of wonderful people from Washington County, Hancock, Lincoln and right down into York," she recalled.

In her latest battle, Adams said she is hoping for broad-based support.

"If Kit St. John's group got in touch with me to circulate petitions, I would rush to deliver them. I go where the interest is," Adams said. But she is not concerned that her effort may be tagged with the "conservative" label.

"I grew up in conservative Maine. 'Conservative' is a good word to me. My father was a businessman, a banker, and my mother was a school teacher. My father and mother didn't overspend," she said.

"There's no mystery what we're doing here," Adams said. "We're trying to slow down government so that people can pay for it, and save — just as Dad did — for years when the income is less."

EXHIBIT F

MHPC's Independent Research Role in TABOR

(Corrected transcript of 10/31/06 Maine Ethics Commission pgs 39-43)

COMMISSIONER MAVOUREEN THOMPSON: Yes, couple questions. Dan or Bill or both, would you say that either through staff time or research — staff research and so forth for presentations and so forth, MHPC has spent more than \$1,500 working towards the — I mean the passage of TABOR?

WILLIAM BECKER: In terms of our staff time, we've allocated it out, not towards the passage or defeat of TABOR, we've really been prior provided, we've been basically the experts on taxation and expenditure limitation laws, now in the state for well over three years. Now that's when we first issued our very, very, very first report as an organization. We wrote them [unintelligible] tax and expenditure limitation bills and then spent a number of months drafting model legislation for what it would look like in the State of Maine.

So not for the passage or defeat of TABOR, but for becoming policy experts in the field of tax and expenditure limitation laws. That's what we have done. That's what we continue to be and that's what we've done for many other press, is provide them with answers. I accept [Unintelligible] from them says what is demanded when this happens? Well what happens along those lines? Well what is the handle on that?

It's really in the context of the Maine economy and that's really in the context in which we talk about.

THOMPSON: So I think I heard an earlier speaker say that — that the Policy Center actually wrote the Tabor referendum and so forth?

BECKER: No -

THOMPSON: (Interposing) Or to what extent were you involved in that?

BECKER: All right, we wrote back in 2004 — we wrote model legislations saying okay, this was such a great idea in some other states. What would it look like in the state of Maine? And we spent about three or four months writing that, talking to experts, economists, BHCs all over the country and then put it out there as model legislation and two, it moved forward separately in two different ways, absent, separate from our organization.

One to Senator Mary Andrews of York, doing it forward in a legislature as a piece of legislation and that was actually somewhat amended before it got there and secondly, Mary Adams [Unintelligible] submitted it as a citizen's initiative and that too was amended between the revisers office the secretary of state's office before it got sent out as the Taxpayer Bill of Rights. Our role is almost a year earlier than that, drafting a model legislation to say how it would work in regards to Maine law.

THOMPSON: Did Andrews or Adams get your participation from the Center when in fact their bills were debated before the legislative committee?

BECKER: We were called to testify, by the Tax Committee primarily.

THOMPSON: And were pros and cons indicated in that? Sometimes the legislature will ask for people who are pro legislation and con.

BECKER: Yes.

THOMPSON: And either to sign up and indicate or just to take turns and so forth for the thing. Has there been a testimony?

BECKER: We represented basically the authors of the model legislation. That's the way we were represented.

THOMPSON: So you didn't — you were not like on the pro side or the con side in terms of -

BECKER: (Interposing) I think we had been perceived that we went on the pro side because wrote it. We were obviously proud of something that we had drafted two, you know, a year earlier. But we represented it as the experts, as the policy experts on that piece of the model legislation.

We the people of Maine...

EXHIBIT G

THE MAINE HERITAGE POLICY CENTER

November 6, 2006

www.mainepolicy.org

P.O. Box 7829
Portland, Maine 04112

Tel: 207.321.2550
Fax: 207.773.4385

REDACTED

Dear REDACTED

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

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

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 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

Agenda

Item #3



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

To: Commission Members
Cc: Dennise D. Whitley
From: Jonathan Wayne, Executive Director
Date: March 21, 2008
Re: Late Registration by Dennise D. Whitley

Dennise D. Whitley filed her 2008 registration as a lobbyist for the American Heart Association on February 12, 2008. In the view of the Commission staff, the registration was filed late. As explained below, the Commission staff's standard advice is that a lobbyist must file a registration form within 15 business days after completing eight hours of lobbying in a calendar month. Then, the lobbyist must begin filing monthly lobbyist reports and must file an annual report at the end of the lobbying year.

Ms. Whitley stated on her 2008 registration form that she began lobbying for the American Heart Association this year on January 2, 2008 and met the 8-hour threshold on January 17, 2008. The Commission staff believes that her registration was therefore due February 8, 2008 (fifteen business days after January 17, excluding Martin Luther King, Jr. Day as a holiday).

Ms. Whitley has requested a waiver of the \$200 penalty for filing her registration late. This memo is to explain how the Commission staff has interpreted the registration requirement and the penalty statute. These interpretations represent the longstanding views of the Commission, and pre-date the Commission's current employees.

Requirement to Register

The Lobbyist Disclosure Law defines lobbyist as:

10. Lobbyist. "Lobbyist" means any person who is specifically employed by another person for the purpose of and who engages in lobbying in excess of 8 hours in any calendar month, or any individual who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying. "Lobbyist" does not include a lobbyist associate. (3 M.R.S.A. § 312-A(10))

Lobbyists must register as follows:

Every employer of a lobbyist and every lobbyist and lobbyist associate who lobbies on behalf of that employer shall register jointly at the office of the commission no later than 15 business days after commencement of lobbying and pay a registration fee of \$200 (3 M.R.S.A. § 313)

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

Historically, the Commission has interpreted these two provisions to mean that an individual must register fifteen business days after the date on which he or she exceeded the 8-hour threshold. I have attached the explanation of the requirement in the Lobbyist Handbook.

The Commission's website contains the advice: "The joint registration must be filed within 15 business days after the lobbyist has completed eight hours of lobbying in any calendar month." In her February 20, 2008 letter to the Commission, Ms. Whitley states that she interpreted this advice to mean that the deadline for filing the registration was the 15th calendar day of the following month – the same deadline as for the monthly lobbyist reports. (For example, the monthly lobbyist report covering the month of February is due on March 15.) Accordingly, Ms. Whitley believed that after exceeding the 8-hour threshold in January, her registration was due on February 15, 2008.

Amount of Penalties

Penalties for late filings by lobbyists are determined by 3 M.R.S.A. § 319(2):

Any person who fails to file a registration or report as required by this chapter may be assessed a fine of \$100 for each person listed or who should have been listed on the lobbyist registration for every month the person fails to register or is delinquent in filing a report pursuant to section 317. The Commission may waive the penalty in whole or in part if the Commission determines the failure to register or report was due to mitigating circumstances.

Traditionally, the Commission considered the lobbyist's registration and annual report to be joint filings on behalf of the lobbyist and the lobbyist's employer. Because two persons were listed on these documents (the lobbyist and the employer), the Commission adopted an interpretation in its rules that the penalty for filing these documents late is \$200 per month. Because the monthly lobbyist report was signed only by the lobbyist, the penalty in the Commission's rule for filing the monthly report late is \$100 per month. To be consistent with the Commission's rule and past practice, the staff recommends that the baseline penalty in Ms. Whitley's case should be \$200 per month (before any reduction for good faith misunderstanding of the filing requirement).

Recommendation

The Commission staff does not question that Ms. Whitley made a good-faith inference that the registration was due on February 15, 2008. Nevertheless, we recommend assessing a penalty of \$200 for the late registration because in recent years, the Commission has taken a fairly strict line on penalties for late-filed reports. On the other hand, the staff has no objection if you wish to reduce the penalty amount.

For the 2009 legislative session, the Commission staff may recommend that you propose an amendment to make the penalty statute (3 M.R.S.A. § 319) more clear and less expensive for mistakes that are promptly remedied.



American Heart Association | American Stroke Association

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RECEIVED

February 20, 2008

FEB 25 2008

MAINE ETHICS COMMISSION
Attn: Gavin O'Brien, Registrar
State of Maine
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333-0135

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Hank Waslak

Dear Commission Members:

Please consider this letter as a request for a penalty waiver. When I filed my 2008 registration, I was under the assumption that my registration needed to be filed within the fifteen days following the month in which I reached at least 8 hours of lobbying activity. I indicated on my registration that I had reached that threshold on 1/17/08. So, I filed within the 15 days after the close of the month as is usual with filing a long form. I reread the Lobbyist registration information on the webpage: "The joint registration must be filed within 15 business days after the lobbyist has completed eight hours of lobbying in any calendar month." I feel it is confusing and can be interpreted as needing to file within fifteen days after the end of the calendar month, as we do with monthly reporting. Because this was an unintentional violation, I am asking for a waiver of the penalty fee.

I also question that the penalty is \$200, because I am the only lobbyist for my organization. The letter states that "a penalty of \$100 for each person listed on the lobbyist registration." The only reason that another person is listed on my registration is that the form asks for the name of my supervisor who is out of state and does not lobby in Maine.

On behalf of my employer, a non-profit organization, I try to comply with Maine's Lobbyist criteria and I apologize that my registration was determined not in compliance, but it was an error of misunderstanding the registration regulations.

Thank you for your consideration. I await your decision.

Dennise D. Whitley

Dennise D. Whitley
Maine Advocacy Director
American Heart Association
51 US Route 1
Suite M
Scarborough, Maine 04074





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

February 14, 2008

To: Dennise Whitley, Lobbyist for:
 American Heart Association, Founders Affiliate

From: Gavin O'Brien, Registrar

Every employer of a lobbyist and every lobbyist and lobbyist associate who lobbies on behalf of that employer is required to register jointly with the Commission no later than **15 business days** after the point at which the lobbyist has lobbied more than 8 hours in a calendar month, and pay a registration of \$200 for each lobbyist and \$100 for each lobbyist associate.

Your joint registration was received in this office on 2/12/08, along with your registration fee of \$200. The registration submitted for the above-named employer indicates that the date when you met your 8 hours of lobbying in a single month was 1/17/08. Based on this date, your registration should have been filed no later than 2/8/08. Any person who fails to file a registration in a timely manner may be assessed a penalty of \$100 for each person listed on the lobbyist registration; thus, the preliminary determination of the penalty that may be imposed for your late registration is \$200.

If you agree with this preliminary penalty determination, you may use the attached billing statement to pay that penalty within 30 days of the date of this notice. Please mail your remittance to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333.

However, if you have a valid reason for filing late, you may request a final penalty determination by the Commission. Requests for penalty waivers must be received within 15 days of the date of this letter. The Commission will notify you of the disposition of your case within 10 days after its determination.

Any person who fails to file a report or pay a fee may be suspended from further lobbying by written notice of the Commission until such failure is corrected.

Please direct any questions you may have about this matter to the Commission at (207) 287-6221.

Cut Along Dotted Line

To: Commission on Governmental Ethics and Election Practices
 135 State House Station
 Augusta, Maine 04333

From: Dennise Whitley, Lobbyist for:
 American Heart Association, Founders Affiliate

Re: Penalty for late filing of Joint Lobbyist/Employer Registration

Amount Enclosed: \$ _____
 Check/M.O. No.: # _____

Please Make Check/M.O. Payable to Treasurer, State of Maine

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

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS & ELECTION PRACTICES

Mail: 135 State House Station, Augusta, Maine 04333

Office: 242 State Street, Augusta, Maine

Phone: (207) 287-6221 Fax: (207) 287-6775

Website: <http://www.maine.gov/ethics>

Electronic Filing: <http://mainecampaignfinance.com/public/home.asp>

LOBBYIST/EMPLOYER JOINT REGISTRATION

1. Lobbyist name WHITLEY, DENNISE D.		
Lobbyist's Firm/Organization American Heart Association, Founders Affiliate		
Business address 51 US ROUTE 1, STE. M	Telephone (207)523-3007	Fax (207)879-5918
City, state, zip code SCARBOROUGH ME 04074	E-mail Dennise.whitley@heart.org	
Name of person authorized by lobbyist to sign reports if different from lobbyist		

2. Employer name AMERICAN HEART ASSOCIATION, FOUNDERS AFFILIATE		Principal contact name BILL THOMPSEN
Business address 20 SPEEN STREET	Telephone (508)620-1700	Fax (508)620-6157
City, state, zip code FRAMINGHAM MA 01701	E-mail bill.thompson@heart.org	
Name of person authorized by employer to sign annual report if different from principal contact		

3. Please list the names of lobbyist associates.

N/A

4. Indicate the date when lobbying commenced, or is expected to commence.	1/2/2008
----------------------------------------------------------------------------------	----------

4a. Date when lobbying exceeded 8 hours in a calendar month.	1/17/2008
---------------------------------------------------------------------	-----------

5. Specify the amount of compensation that the lobbyist will receive for the lobbyist's services or, if an exact amount is unascertainable, the basis upon which the lobbyist will charge for those services.

\$28.62/HR. HOURLY RATE ALLOCATED PER HOUR OF LOBBYING ACTIVITY

6. Indicate the primary nature of the business of the person employing the lobbyist by checking ONE category below.

HEALTH CARE

We, the undersigned, hereby swear or affirm that the information contained in this registration is true and complete, and that no information is knowingly withheld.	
SIGNATURE ON FILE	1/2/2008
Signature of lobbyist	Date
_____	_____
SIGNATURE ON FILE	2/12/2008
Signature of employer	Date
_____	_____

Sworn falsification is a Class D crime (17-A MRSA Section 453).



MAINE LOBBYIST HANDBOOK

**STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0135
PHONE: (207) 287-4179
FAX: (207) 287-6775**

WWW.MAINE.GOV/ETHICS

REGISTRATION

* [Lobbyists must file a joint registration for each employer (client) with the Ethics Commission once they have reached 8 hours of lobbying in a calendar month. The registration form and fee must be filed no later than 15 business days after the lobbyist has lobbied more than 8 hours in a calendar month. This is the only report that must be filed on paper. All other reports must be filed electronically.

Registration fees: Lobbyist: \$200
 Lobbyist Associate: \$100

Once registered, lobbyists are required to file monthly reports with the Commission even if no work was performed during the month that is covered by the report. Monthly reports must be filed by every lobbyist who is registered, even if the lobbyist has registered before meeting the 8-hour threshold.

The Lobbyist/Employer Joint Registration form is filed on an annual basis. The lobbying year is December 1st - November 30th. All registrations expire on November 30th.

An employee of the State of Maine who meets the requirements as a lobbyist for a state agency must register with the Commission using a special form, but is not required to file monthly or annual reports.

ELECTRONIC FILING

Beginning January 1, 2006, all lobbyists must file monthly session reports and annual reports through the Commission's electronic filing system. The Commission may make an exception to the electronic filing requirement if a lobbyist submits a written request that states that the lobbyist lacks access to the technology or does not have the technological ability to file reports electronically. The request for exception must be submitted at least 10 days prior to the deadline for the first report that the lobbyist is required to file for the lobbying year. The Commission will grant reasonable requests for exceptions.

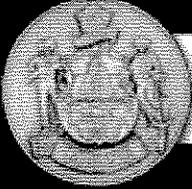
The Commission will provide the lobbyist a user code, temporary password and directions to file reports electronically. All reports, except the registration, can be filed electronically.

Lobbyists with multiple employers will have one user code and password.


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MAINE COMMISSION ON
Governmental Ethics & Election Practices

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Registration

Every [lobbyist](#) must file a joint registration with his or her employer (client), and pay a registration fee of \$200 for each lobbyist and \$100 for each [lobbyist associate](#). (Please read the [definitions](#) of lobbying, lobbyist, and legislative action and the [Lobbying FAQ](#) to determine if you qualify as a lobbyist.) The registration may be completed [online](#) or [on paper](#). The joint registration must be filed within 15 business days after the lobbyist has completed eight hours of lobbying in any calendar month. Lobbyists may register by completing the paper registration form and submitting it along with the fees to the Commission. Lobbyists may also use the online registration feature on this website. Please see the link to "Lobbyist Registration" in the navigational menu on the left hand side of this page.

The registration expires on November 30 after the end of the next legislative session. The registration may also be [terminated](#) if the employer notifies the Commission that it is no longer engaging the lobbyist, or if the employer and lobbyist file an [annual report](#).

Every registered lobbyist is required to file [monthly reports](#) with the Commission, except that after the legislative session has ended, the lobbyist may request a [waiver](#) of the requirement if the lobbyist does not anticipate conducting any further lobbying before the following December 1st.

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3 MRSA §312-A. Definitions

3 §312-A. Definitions

As used in this chapter, unless the context otherwise indicates, the following words have the following meanings. [1983, c. 160, §1 (NEW) .]

. . .

9. Lobbying. "Lobbying" means to communicate directly with any official in the legislative branch or any official in the executive branch or with a constitutional officer for the purpose of influencing any legislative action or with the Governor or the Governor's cabinet and staff for the purpose of influencing the approval or veto of a legislative action when reimbursement for expenditures or compensation is made for those activities. "Lobbying" includes the time spent to prepare and submit to the Governor, an official in the legislative branch, an official in the executive branch, a constitutional officer or a legislative committee oral and written proposals for, or testimony or analyses concerning, a legislative action. "Lobbying" does not include time spent by any person providing information to or participating in a subcommittee, stakeholder group, task force or other work group regarding a legislative action by the appointment or at the request of the Governor, a Legislator or legislative committee, a constitutional officer, a state agency commissioner or the chair of a state board or commission as long as the person's regular employment does not otherwise include lobbying.

[2007, c. 373, §1 (AMD) .]

10. Lobbyist. "Lobbyist" means any person who is specifically employed by another person for the purpose of and who engages in lobbying in excess of 8 hours in any calendar month, or any individual who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying. "Lobbyist" does not include a lobbyist associate.

[1993, c. 691, §5 (RPR) .]

SECTION HISTORY

1983, c. 160, §2 (NEW). 1985, c. 779, §4 (AMD). 1987, c. 816, §KK4 (AMD). 1987, c. 868, §2 (AMD). 1993, c. 446, §§A1-10, B1, 2 (AMD). 1993, c. 691, §§4-9 (AMD). 1993, c. 446, §A20 (AFF). 2007, c. 373, §§1, 2 (AMD).

3 MRSA §313. Registration of lobbyists and employers

3 §313. Registration of lobbyists and employers

Every employer of a lobbyist and every lobbyist and lobbyist associate who lobbies on behalf of that employer shall register jointly at the office of the commission no later than 15 business days after commencement of lobbying and pay a registration fee of \$200 for the registration of each lobbyist and \$100 for the registration of each lobbyist associate or such other amounts as the commission determines approximate the cost to the commission of administering and enforcing the provisions of this chapter. [1999, c. 745, §1 (AMD) .]

SECTION HISTORY

1975, c. 621, §2 (RP). 1975, c. 576, (RPR). 1975, c. 724, (REN). 1977, c. 108, §1 (AMD). 1991, c. 465, §1 (AMD). 1993, c. 446, §B3 (AMD). 1993, c. 691, §10 (RPR). IB 1995, c. 1, §7 (AMD). 1999, c. 745, §1 (AMD).

3 MRSA §319. Penalty

3 §319. Penalty

1. Failure to file registration or report. Any person who fails to file a registration or report as required by this chapter may be assessed a fine of \$100 for each person listed or who should have been listed on the lobbyist registration for every month the person fails to register or is delinquent in filing a report pursuant to section 317. The commission may waive the penalty in whole or in part if the commission determines the failure to register or report was due to mitigating circumstances.

[1993, c. 691, §22 (RPR) .]

1-A. Notice of suspension. Any person who fails to file a report or pay a fee as required by this chapter may be suspended from further lobbying by written notice of the commission until such failure is corrected.

[1993, c. 446, Pt. B, §12 (AMD) .]

2.

[1979, c. 632, §3 (RP) .]

3. Exemption. Notwithstanding section 317, subsection 1, a registered lobbyist is exempt from the penalty imposed under this section if, while the Legislature is convened in special session, the lobbyist failed to file a report with the commission pursuant to section 317 if no lobbying has been performed during that special session.

[1993, c. 446, Pt. B, §13 (AMD) .]

SECTION HISTORY

1975, c. 576, (NEW). 1975, c. 621, §2 (RP). 1975, c. 724, (REN). 1977, c. 696, §17 (AMD). 1979, c. 632, §3 (RPR). 1989, c. 114, (AMD). 1991, c. 465, §2 (AMD). 1993, c. 446, §§A15,B11-13 (AMD). 1993, c. 691, §22 (AMD).

- E. If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting.
- F. The signature of a person authorized to sign a report or form constitutes certification by that person of the completeness and accuracy of the information reported. The use of a password in filing an electronic report constitutes certification of the completeness and accuracy of the report.

3. Lobbyist Disclosure Procedures

- A. **Report Review.** The Commission staff will monitor all filings made pursuant to 3 M.R.S.A. §311 *et seq.* for timeliness, legibility, and completeness. The staff will send the lobbyist a notice of any apparent reporting deficiency, including failure to use prescribed forms. The notice will include a request that the deficiency be corrected within 15 business days of the notice. If remedy is not made, it will be noted on the agenda of the next Commission meeting. The Commission may reject reports that are incomplete or illegible.
- B. **Late Registrations and Reports.** Notice will be given by mail to any lobbyist whose registration, monthly disclosure report, or annual report is delinquent. In the case of a late monthly report, the notice must be mailed within 7 business days following the filing deadline for the report. In the case of late annual reports and registrations, the notice must be mailed within 15 business days following the filing deadline. The notice must include a statement specifying the amount assessed. A penalty of \$100 will be assessed the lobbyist for every month that a monthly disclosure report is late and a penalty of \$200 will be assessed the lobbyist and employer for every month a registration or annual report is filed late. For purposes of 3 M.R.S.A. §319(1), the month will end on the 15th day of the month following the month in which a report was due. Any failure to submit a required report, registration, or penalty fee will be noted on the Commission agenda.
- C. **Suspensions.** The Commission may suspend any person from lobbying who fails to file a required report or pay an assessed fee. A notice of the suspension must be mailed to the lobbyist by U.S. Certified Mail within three days following the suspension. Reinstatement will occur on the date the required report or payment is received in the Commission office. A notice of the reinstatement must be mailed to the lobbyist by U.S. Certified Mail or given directly to the lobbyist within three days following receipt of the required report or payment.
- D. **Request for Penalty Waiver.** A lobbyist may request a waiver of any late penalty the lobbyist incurs. The request must be made in writing to the Commission and must state the reason for the delinquency. Any such request must be noted on the agenda of the next Commission meeting. Only the Commission may grant penalty waivers.

Agenda

Item #4

Wayne, Jonathan

From: Katherine D. Pelletreau [meahp@maine.rr.com]
Sent: Monday, March 03, 2008 1:34 PM
To: Wayne, Jonathan
Subject: Response to request for information

Dear Mr. Wayne:

I have requested a waiver of the \$200 penalty for late filing of an annual report of my lobbying activities. I am writing to respond to your request for more information about my situation.

My husband's initial heart attack occurred on October 10th, 2007 at home. He had two subsequent heart attacks in the hospital during the following week. Throughout the fall from November 5th thru December 14th, we were engaged in an intensive rehabilitation program through Turning Point at MMC campus in Scarborough. I was on temporary leave from work through the end of the year.

For the past 8 years, I have been the only employee of the Maine Association of Health Plans.

I apologize for the oversight. It occurred because I was not engaged in the details of work as I attempted to help and support my husband through the fall. Once I returned, I realized that the deadline had been missed and filed immediately on January 2nd, 2008.

Sincerely,

Katherine D. Pelletreau

Katherine D. Pelletreau, MPH
Executive Director
Maine Association of Health Plans
250 Greely Road
Cumberland, Maine 04021
Phone: 207-829-5696
Fax: 207-829-9204



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

To: Katherine Pelletreau, Lobbyist for:
Maine Association of Health Plans

From: Gavin O'Brien, Registrar

Date: January 7, 2007

Each registered lobbyist was required to file an annual report with the Commission on Governmental Ethics and Election Practices no later than 5:00 p.m. on December 31, 2007. Any person who fails to file a timely report may be assessed a penalty of \$200 for every month the report is late. You filed your annual report on 1/2/08. The penalty is \$200.

If you agree with this preliminary penalty determination, you may use the attached billing statement to pay that amount within 30 days of the date of this notice. Please mail your remittance to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333.

However, if you have a valid reason for filing late, you may request the Commission to make a final penalty determination. The Commission will notify you of the disposition of your case within 10 days after its determination.

Any person who fails to file a report or pay a fee may be suspended from further lobbying by written notice of the Commission until such failure is corrected.

Please direct any questions you may have about this matter to the Commission at (207) 287-4709.

Cut Along Dotted Line

To: Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

From: Katherine Pelletreau, Lobbyist

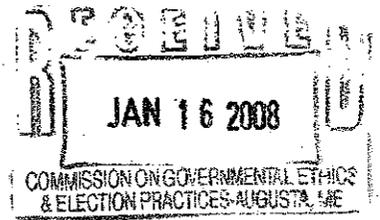
Re: Penalty for late filing of the annual lobbyist disclosure report (\$200)

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

Please make Check or Money Order Payable to Treasurer, State of Maine

MAINE ASSOCIATION
OF
HEALTH PLANS



January 15, 2008

Mr. Gavin O'Brien
Registrar
State of Maine
Commission on Governmental Ethics
And Election Practices
135 State House Station
Augusta, ME 04333-0135

Dear Mr. O'Brien:

Unfortunately my family experienced a medical emergency in the late fall – my husband had a heart attack. I have been on leave from work through December 31, 2007 and filed the annual report as soon as I returned from this leave. Because of this situation, I would ask that the commission waive the \$200 fine.

Please contact me at 829-5696 if I can answer any questions.

Sincerely,

Katherine D. Pelletreau
Executive Director

Enc.



Welcome to the Campaign Finance Electronic Filing System Site

Menu Home Help Logout Change Password Admin Page

1/28/2008

Home Page for Maine Association of Health Plans

LOBBYIST YEAR 2007 Refresh

REPORT TYPE	REPORTING PERIOD	DUE DATE	DATE FILED	STATUS	LAST MODIFIED
Lobbyist/Employer Registration	12/1/2006 to 11/30/2007		1/31/2007 4:43:05 PM	Filed	Print
→ Annual Report	12/1/2006 to 11/30/2007	12/31/2007	1/2/2008 10:23:23 AM	Filed	Print
Non-Session Waiver	7/1/2007 to 11/30/2007		8/7/2007	Filed	Print
Notification of Termination	12/1/2006 to 11/30/2007				

Monthly Report - Short Form	N/A	MULTIPLE
Monthly Report - Long Form	N/A	MULTIPLE

Last Name	First Name	Employer Name	
Allen ✓	David	Central Maine Power	done
Alusic ✓	Lorin	Grocery Manufacturers/Food Products Association	Called & emailed
Beliveau ✓	Severin	Schaller Anderson Incorporated	631 5565-1
Beliveau ✓	Michael	Tides Center / Environmental Health Strategy Center	Called & emailed
Bickford ✓	Julie-Marie	Maine Dairy Industry Association	Called will get it in - done
Butts ✓	John	Associated General Contractors of Maine	Called & emailed
Buxton ✓	Anthony	Industrial Energy Consumer Group	done
Collings ✓	Benjamin	Penobscot Nation	Called & emailed
Cook ✓	Kimberly	Wild Blueberry Commission of Maine	
Cook ✓	Kimberly	Martin's Point Health Care	
Cook ✓	Kimberly	Drive Insurance from Progressive	done
Dickstein ✓	Carla	Coastal Enterprises, Inc.	
Diehl ✓	Leann	American Chemistry Council	
Diehl ✓	Leann	Central Maine Power Company	333 8040
Diehl ✓	Leann	Central Boilers, Inc.	
Diehl ✓	Leann	Multi-State Associates o/b/o National Electrical Manufacturers Association	
Diehl ✓	Leann	Consumer Electronic Association	Terminated - Called & emailed
Diehl ✓	Leann	MultiState Associates o/b/o Coin Laundry Association	
Doyle Jr. ✓	John	Consumer Council System of Maine	done
Gorham ✓	Edward	Maine AFL-CIO	Called & emailed 446 4228
Hudson ✓	Steven	Fairpoint New England	ph. mailbox full - emailed
Mackey ✓	Joseph	Maine Youth Camping Association	Called & emailed
Mackey ✓	Joseph	Maine Public Broadcasting Corporation	Called & emailed
Mackey ✓	Joseph	City of Portland	
Mackey ✓	Joseph	EDS Corporation	Called & emailed
Mackey ✓	Joseph	Town of Kennebunkport	
Mackey ✓	Joseph	City of Auburn	
Matthews ✓	Zack	AFSCME Council 93	Called & emailed
Micoleau ✓	Charles	UST Public Affairs, Inc.	done
Nadeau ✓	Robert	St. Andre Home, Inc.	done
Pachios ✓	Harold	National Council on Compensation Insurance	
Pachios ✓	Harold	Maine State Society for the Protection of Animals	done
Pachios ✓	Harold	Brookefield Asset Management, Inc.	
Pears ✓	Kathryn	Maine Alzheimer's Association	done
Pelletreau ✓	Katherine	Maine Association of Health Plans	Called & emailed
Public Affairs Group ✓		L.L. Bean, Inc.	
Public Affairs Group ✓		CIGNA Healthcare	done
Public Affairs Group ✓		Maine Affordable Rental Housing Coalition	
Public Affairs Group ✓		TracFone Wireless, Inc.	
Public Affairs Group ✓		Mortgage Bankers Association of Maine	emailed
Public Affairs Group ✓		Stateside Associates o/b/o American Legal Finance Association	done
Public Affairs Group ✓		Maine Business Aviation Association	done
Purgavie ✓	Vicki	Home Care & Hospice Alliance of Maine	Called & emailed
Py ✓	Jamie	Maine Oil Dealers Association	done
Quint ✓	Christopher	Planned Parenthood of Northern New England	done
Robinson ✓	Ann	American Express Travel Related Services	
Robinson ✓	Ann	Motorcycle Industry Council, Inc.	
Robinson ✓	Ann	Medco Health Solutions, Inc.	
Robinson ✓	Ann	Pharmaceutical Research and Manufacturers of America	done
Robinson ✓	Ann	Maine Biomedical Research Coalition	
Robinson ✓	Ann	Municipal Review Committee, Inc.	
Robinson ✓	Ann	Securities Industry and Financial Markets Association	
Robinson ✓	Ann	Merck and Company, Inc.	
Robinson ✓	Ann	Spectrum Medical Group	
Smith ✓	George	Sportsmans Alliance of Maine	done
Sweet ✓	Elizabeth	Maine Coalition to End Domestic Violence	will do now - done
Walton ✓	Tim	Cianbro Corporation	done

*



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

To: Lobbyists Who Have Not Filed Annual Report

From: Gavin O'Brien, Temporary Lobbyist Registrar

Date: December 18, 2007

Re: Annual Report Due December 31 at 5:00 p.m.

All lobbyists registered for the 2007 session are required to file an annual report with the Commission, including those who have filed a non-session waiver or a notice of Termination. Since the December 30th deadline falls on a weekend, this year's report will be due on Monday, December 31 by 5:00 p.m. The annual report must be filed electronically from your homepage in the Commission's e-filing system.

The penalty for filing your annual report late is \$200 per month after the deadline.

Our records indicate that you have not yet filed the report for one or more of your employers. To avoid the assessment of a penalty, please make sure you file it on or before Monday, December 31st at 5:00 p.m.

The Commission office will be open next week on December 26-28. The staff will be available to assist you in that period, but please be aware that I will be out of the office and we will have only one or two employees in the office during the week. The Commission's Assistant, Cyndi Phillips, and I will be back in the office on Monday, December 31 (the deadline).

If you have any questions, please telephone us at 287-4179. Thank you.

December 18 Reminder Letter

Pears	Ralph Buchanan	2 Round Cove Lane	Phippsburg	ME	04562
Pelletreau	Katherine	250 Greely Rd.	Cumberland	ME	04021
Perkins	Logan	P.O. Box 151	Thorndike	ME	04986
Pietroski	Joseph	P.O. Box 735	Augusta	ME	04330
Pineau	Edward	P.O. Box 297	Manchester	ME	04351
Pinkham	Christopher	489 Congress St., Ste. 300	Portland	ME	04101
Public Affairs Group	.	185 State St.	Augusta	ME	04330
Purgavie	Vicki	20 Middle St.	Augusta	ME	04330
Py	Jamie	P.O. Box 249	Brunswick	ME	04011
Quint	Christopher	51 U.S. Rte 1, Ste. C	Scarborough	ME	04074
Rathband	Jed	P.O. Box 17851	Portland	ME	04112
Robinson	Ann	P.O. Box 1058	Augusta	ME	04332-1058
Romano	Jeffrey	1 Main St., Ste. 201	Topsham	ME	04086
Rosario	Stephen	99 Washington Ave., Ste. 701	Albany	NY	12240
Sanborn	Benjamin	P.O. Box 5347	Augusta	ME	04332
Saxl	Michael	P.O. Box 5307	Augusta	ME	04332
Schulberger	Sharon	60 Gray Rd., Unit 8	Falmouth	ME	04105
Shoos	John	P.O. Box 15200	Portland	ME	04112-5200
Smith	George	205 Church Hill Rd.	Augusta	ME	04330
Smith	Rebecca	11 Parkwood Drive	Augusta	ME	04330
Soltan	Charles	P.O. Box 188	Augusta	ME	04332-5307
Spence	Ruth Anne	45 Memorial Cir., Ste. 103	Augusta	ME	04330
Spencer	Richard	P.O. Box 9781	Portland	ME	04104
Stoddard	Michael	101 Brentwood Street	Portland	ME	04103
Sweet	Elizabeth	P.O. Box 71	Hallowell	ME	04347
Tardy	Robert	P.O. Box 336	Newport	ME	04953
Thompson	Richard	9 White Birch Dr.	Readfield	ME	04355
Timberlake	Cheryl	P.O. Box 615	Augusta	ME	04332-0615
Trahey	Richard	77 Water St.	Hallowell	ME	04347
Trask	Norman	41 N.Shore Ln.	E. Winthrop	ME	04343
Turowski	Mary Anne	P.O. Box 1072	Augusta	ME	04332
Viger	Celeste	50 Moody St.	Saco	ME	04072
Walker	Daniel	P.O. Box 1058	Augusta	ME	04332
Walton	Tim	P.O. Box 1000	Pittsfield	ME	04967
Whitley	Dennise	51 US Route 1, Ste. M	Scarborough	ME	04074
Williams	John	P.O. Box 5670	Augusta	ME	04330
Wood	Gary	City Hall, 389 Congress St.	Portland	ME	04101
Worsowicz	Paul	P.O. Box 1415	Concord	NH	03302

*

Prev: Chapter 15 §318
 Next: Chapter 15 §319-A

Title 3: LEGISLATURE**Chapter 15: LOBBYIST DISCLOSURE PROCEDURES (HEADING: PL 1975, c.****576 (rpr); 1975, c. 621, §2 (rp); c. 724, (ren))**

Download Chapter 15
 PDF, Word (RTF)

Download Section 319
 PDF, Word (RTF)

[Statute Search](#)[List of Titles](#)[Maine Law](#)[Disclaimer](#)**§319. Penalty**

1. Failure to file registration or report. Any person who fails to file a registration or report as required by this chapter may be assessed a fine of \$100 for each person listed or who should have been listed on the lobbyist registration for every month the person fails to register or is delinquent in filing a report pursuant to section 317. The commission may waive the penalty in whole or in part if the commission determines the failure to register or report was due to mitigating circumstances. [1993, c. 691, §22 (rpr).]

[Revisor's Office](#)

1-A. Notice of suspension. Any person who fails to file a report or pay a fee as required by this chapter may be suspended from further lobbying by written notice of the commission until such failure is corrected. [1993, c. 446, Pt. B, §12 (amd).]

[Maine Legislature](#)

2. [1979, c. 632, §3 (rp).]

3. Exemption. Notwithstanding section 317, subsection 1, a registered lobbyist is exempt from the penalty imposed under this section if, while the Legislature is convened in special session, the lobbyist failed to file a report with the commission pursuant to section 317 if no lobbying has been performed during that special session. [1993, c. 446, Pt. B, §13 (amd).]

Section History:

PL 1975, Ch. 576, § (NEW).
 PL 1975, Ch. 621, §2 (RP).
 PL 1975, Ch. 724, § (REN).
 PL 1977, Ch. 696, §17 (AMD).
 PL 1979, Ch. 632, §3 (RPR).
 PL 1989, Ch. 114, § (AMD).
 PL 1991, Ch. 465, §2 (AMD).
 PL 1993, Ch. 446, §A15, B11-13 (AMD).
 PL 1993, Ch. 691, §22 (AMD).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public. If you need legal advice, please consult a qualified attorney.

Office of the Revisor of Statutes
 7 State House Station
 State House Room 108
 Augusta, Maine 04333-0007

This page created on: 2006-10-31

Agenda

Item #5



RECEIVED

FEB 22 2008

MAINE ETHICS COMMISSION

39 Exchange St., Ste. 301
Portland, ME 04101
www.EnvironmentMaine.org

info@EnvironmentMaine.org
P (207) 253-1965
F (207) 253-1966

To Whom It may Concern:

I would like to request a late fee waiver for submitting forms on lobbying activity. I was out of town when forms needed to be filed, and did not receive notice until one day prior. Please let me know what steps I should take to get this fee waived.

Thank you,

Tracy Allen

Environment Maine



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

To: Tracy Allen, Lobbyist for:
 Environment Maine

From: Gavin O'Brien, Registrar

Date: February 20, 2008

Each registered lobbyist is required to file monthly reports with the Commission on Governmental Ethics and Election Practices no later than 15 calendar days following the month that is the subject of the report. Reports are due by 5:00 p.m. Any person who fails to file a timely report may be assessed a penalty of \$100 for every month the report is late. You filed your January Lobbyist Monthly Disclosure report on 2/18/08 that was due on 2/15/08. The penalty is \$100.

If you agree with this preliminary penalty determination, you may use the attached billing statement to pay that amount within 30 days of the date of this notice. Please mail your remittance to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333.

However, if you have a valid reason for filing late, you may request the Commission to make a final penalty determination. The Commission will notify you of the disposition of your case within 10 days after its determination.

Any person who fails to file a report or pay a fee may be suspended from further lobbying by written notice of the Commission until such failure is corrected.

Please direct any questions you may have about this matter to the Commission at (207) 287-4709.

 Cut Along Dotted Line

To: Commission on Governmental Ethics From: Tracy Allen, Lobbyist
 and Election Practices
 135 State House Station
 Augusta, Maine 04333

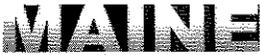
Re: Penalty for late filing of the January Lobbyist Disclosure Report (\$100)

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

Please make Check or Money Order Payable to Treasurer, State of Maine

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



- Menu
- Home
- Help
- Logout
- Change Password
- ✓ Popup Help

Multiple Reports for Ms. Tracy P. Allen

Monthly Report - Long Form

Report Description	Report Status	Report Date		
January -- 2008	Filed	2-18-2008	Delete	Print

- Search
- Add
- Top
- Page Up
- Page Dn
- End
- Report Menu

Instructions to:

Create new monthly report - click the Add button

****See Help Menu for Instructions****

O'Brien, Gavin

From: O'Brien, Gavin
Sent: Thursday, February 14, 2008 5:17 PM
Subject: January Lobbyist Report Due Tomorrow, Feb. 15

Dear Lobbyist,

Please remember to file your January lobbyist report no later than 5:00 p.m. on Friday, February 15th.

You must file one of the two reports listed below regardless of your activity during the month for all of your registered clients. Remember, once registered all lobbying activity is reportable. This means that if you're registered, and you lobbied at all during January, you must file the long form and report your activity.

Long Form -- If you have either lobbied or received compensation.

Short Form -- If you have neither lobbied nor received compensation.

To avoid the statutorily imposed \$100 penalty, please file your report on time. If you have any questions, please call me at the number below or reply to this e-mail. I will be out of the office tomorrow, so if you need assistance then, please call the main office number at (207) 287-4179. Thank you.

—
Gavin O'Brien
Registrar
Maine Ethics Commission
(207) 287-4709

O'Brien, Gavin

From: O'Brien, Gavin
Sent: Monday, February 04, 2008 9:21 AM
Subject: January Lobbyist Report Due Feb. 15

To All Lobbyists:

The lobbyist monthly report covering January is due by 5:00 p.m. on February 15. If you filed a lobbyist registration form before February 1, you are required to file a January monthly report for that client, even if you performed no lobbying in January. You are also required to file the January report if you registered in February but exceeded 8 hours of lobbying during the month of January. Please note that you have 15 business days after exceeding the 8-hour threshold to file a lobbyist registration form.

Please file the long form if you have either lobbied or received compensation during January. Please file the short form if you have neither lobbied nor received compensation during January. Feel free to contact me if you have any questions.

—
Gavin O'Brien
Registrar
Maine Ethics Commission
(207) 287-4709

Agenda

Item #6

O'Brien, Gavin

From: John Hennessy [jihmaine@maine.rr.com]
Sent: Tuesday, February 12, 2008 3:37 AM
To: O'Brien, Gavin
Subject: LATE FILING WAIVER
Follow Up Flag: Follow up
Flag Status: Red

Gavin –

Please initiate a late filing waiver for Moose Ridge Associates for the following November 2007 client reports: American Cancer Society, Maine AIDS Alliance, Maine Child Care Directors Association, Maine Community Action Association and Maine Primary Care Association.

I mistakenly believed that the end of session reports due on December 31, 2007 would include the November filing requirement. We take our reporting to the Ethics Commission quite seriously and are usually 100% compliant. Please review the situation and a waiver of the \$500 fee would be most appreciated. I will read the instructions much better going forward.

Many thanks –

John Hennessy

Maine AIDS Alliance



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- [Change Password](#)
- [✓ Popup Help](#)

Multiple Reports for Ms. Elizabeth Sweet

Monthly Report - Long Form

Report Description	Report Status	Report Date		
January -- 2007	Filed	2-15-2007	Delete	Print
February -- 2007	Filed	3-14-2007	Delete	Print
March -- 2007	Filed	4-16-2007	Delete	Print
April -- 2007	Filed	5-7-2007	Delete	Print
May -- 2007	Filed	6-4-2007	Delete	Print
June -- 2007	Filed	7-9-2007	Delete	Print
September -- 2007	Filed	10-15-2007	Delete	Print
October -- 2007	Filed	11-14-2007	Delete	Print
November -- 2007	Filed	12-20-2007	Delete	Print

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Instructions to:

Create new monthly report - click the Add button

****See Help Menu for Instructions****

Maine Primary Care Association



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Multiple Reports for Ms. Elizabeth Sweet

Monthly Report - Long Form

Report Description	Report Status	Report Date		
January -- 2007	Filed	2-15-2007	Delete	Print
February -- 2007	Filed	3-14-2007	Delete	Print
March -- 2007	Filed	4-16-2007	Delete	Print
April -- 2007	Filed	5-7-2007	Delete	Print
May -- 2007	Filed	6-4-2007	Delete	Print
June -- 2007	Filed	7-9-2007	Delete	Print
September -- 2007	Filed	10-15-2007	Delete	Print
October -- 2007	Filed	11-14-2007	Delete	Print
November -- 2007	Filed	12-20-2007	Delete	Print

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Instructions to:

Create new monthly report - click the Add button

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Maine Community Action Association



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Multiple Reports for Ms Elizabeth Sweet

Monthly Report - Short Form

Report Description	Report Status	Report Date		
December -- 2006	Filed	1-16-2007	Delete	Print
July -- 2007	Filed	8-15-2007	Delete	Print
August -- 2007	Filed	9-16-2007	Delete	Print
September -- 2007	Filed	10-15-2007	Delete	Print
October -- 2007	Filed	11-14-2007	Delete	Print
November -- 2007	Filed	12-20-2007	Delete	Print

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Instructions to:

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Maine Child Care Directors Association



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Multiple Reports for Ms Elizabeth Sweet

Monthly Report - Long Form

Report Description	Report Status	Report Date		
January -- 2007	In-Progress	2-12-2007	Delete	Print
February -- 2007	Filed	3-14-2007	Delete	Print
March -- 2007	Filed	4-30-2007	Delete	Print
April -- 2007	Filed	5-7-2007	Delete	Print
May -- 2007	Filed	6-4-2007	Delete	Print
June -- 2007	Filed	7-9-2007	Delete	Print
July -- 2007	Filed	8-15-2007	Delete	Print
August -- 2007	Filed	9-16-2007	Delete	Print
September -- 2007	Filed	10-15-2007	Delete	Print
October -- 2007	Filed	11-14-2007	Delete	Print
November -- 2007	Filed	12-20-2007	Delete	Print

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Instructions to:

Create new monthly report - click the Add button

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American Cancer Society



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Multiple Reports for Ms. Elizabeth Sweet

Monthly Report - Long Form

Report Description	Report Status	Report Date		
January -- 2007	Filed	2-15-2007	Delete	Print
February -- 2007	Filed	3-14-2007	Delete	Print
March -- 2007	Filed	4-16-2007	Delete	Print
April -- 2007	Filed	5-7-2007	Delete	Print
May -- 2007	Filed	6-4-2007	Delete	Print
June -- 2007	Filed	7-9-2007	Delete	Print
September -- 2007	Filed	10-15-2007	Delete	Print
October -- 2007	Filed	11-14-2007	Delete	Print
November -- 2007	Filed	12-20-2007	Delete	Print

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Instructions to:

Create new monthly report - click the Add button

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

January 22, 2008

FINAL NOTICE

Elizabeth Sweet
P.O. Box 71
Hallowell, ME 04347

Dear Ms. Sweet:

You have neither paid your penalty determination communicated to you on December 18, 2007 for the late filing of your November monthly reports, nor have you requested a commission determination of the penalty to be assessed. Any person who fails to file a report or pay a fee may be suspended from further lobbying by written notice of the Commission until such failure is corrected. Therefore, if your check for \$500.00 or a request for a waiver is not received in this office within 10 business days of the date of this letter, the Commission may refer this matter to the Attorney General's office for appropriate action.

If your records indicate that you have paid this penalty, please provide this office with a copy of the canceled check or other proof of payment.

In the meantime, if you have any questions, please call me at 287-4709.

Sincerely,

Gavin O'Brien
Registrar

Encl: Original Notice



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

COPY

To: Elizabeth Sweet, Lobbyist for:
 Maine Child Care Directors Association
 Maine Community Action Association
 Maine Primary Care Association
 American Cancer Society
 Maine AIDS Alliance

From: Gavin O'Brien, Temporary Lobbyist Registrar

Date: December 18, 2007

Our records show that your November monthly lobbyist disclosure report has not been filed to date for the above employers. The November report was due by 5:00 p.m. on December 17, 2007.

3 M.R.S.A. §319(1) states that any person who fails to file a timely report may be assessed a penalty of \$100 for every month the person is delinquent in filing the report; thus, to date your penalty is **\$500**. If you agree with this preliminary determination, you may use the attached billing statement to pay that penalty within 30 days of the date of this notice. Please mail your remittance to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333.

However, if you have a valid reason for filing late, you may request a final penalty determination by the Commission. The Commission will notify you of the disposition of your case within 10 days after its determination.

To avoid further penalty, you should file the report as soon as possible. Pursuant to 3 M.R.S.A. § 319(1-A), any person who fails to file a report or pay a fee may be suspended from further lobbying by written notice of the Commission until such failure is corrected.

Please direct any questions you may have about this matter to me at (207) 287-4709.

Cut Along Dotted Line

To: Commission on Governmental Ethics and Election Practices
 135 State House Station
 Augusta, Maine 04333

For Office Use Only Account: CGEEP Fund: 014 Appr: 01

From: Elizabeth Sweet

Re: Penalty for late filing of the November 2007 monthly lobbyist disclosure report (\$500)

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

Please Make Check or Money Order Payable to Treasurer, State of Maine

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

O'Brien, Gavin

From: O'Brien, Gavin

Sent: Monday, December 17, 2007 10:56 AM

Subject: Lobbyist report due today

This is a reminder to file your November lobbyist report by 5:00 p.m. today. Please contact me if you have any questions.

--

Gavin O'Brien
Candidate Registrar
Maine Ethics Commission
(207) 287-4709

O'Brien, Gavin

From: O'Brien, Gavin
Sent: Monday, December 03, 2007 1:35 PM
Subject: November Lobbyist Report Due on December 17

Dear Lobbyist,

Please remember to file your November lobbyist report no later than 5:00 p.m. on Monday, December 17 (the 15th is a Saturday).

You must file one of the two reports listed below regardless of your activity during the month for all of your registered employers. Remember, once registered all lobbying activity is reportable. This means that if you're registered, and you lobbied at all during November, you must file the long form and report your activity.

Long Form	If you have either lobbied or received compensation.
Short Form	If you have neither lobbied nor received compensation.

To avoid the statutorily imposed \$100 penalty, please file your report on time. If you have any questions, please call me at the number below or reply to this e-mail. Thank you.

--
Gavin O'Brien
Candidate Registrar
Maine Ethics Commission
(207)287-4709

Agenda

Item #7

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES

Request for Waiver of Late-Filing Penalty/Lobbyist Severin Beliveau
AFFIDAVIT OF G. PAUL PADILLO

I, G. Paul Padillo, of Portland, Maine, being first duly sworn hereby state as follows:

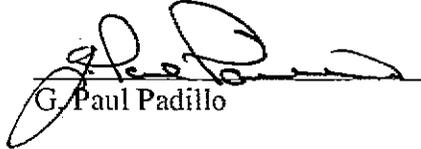
1. I am a legal/legislative assistant for Preti Flaherty Beliveau & Pachios, employed at the firm's Portland, Maine office since February 2002.
2. My duties include filing monthly lobbying reports for certain of our legislative clients.
3. On February 15, 2008 I was working on a project away from my desk for most of the day. Near the close of business I went to file the lobbying report for Maine Health Care Association, but discovered I had no internet access from my computer. I attempted to make several calls to inquire if there was a firm-wide problem or the problem was only from my computer.
4. This was the beginning a holiday weekend (Presidents' Day), and as all offices were scheduled to be closed Monday, February 18th, most of the staff had departed early and I was the only person remaining in our suite.
5. When my calls went unanswered, I made the decision to immediately go to file the report believing I could get it in as near the deadline as possible.
6. Weather conditions were icy and slick and traveling on foot it took longer than normal to arrive home.
7. Once home I proceeded to the Ethics Commission website, but had difficulty accessing my office computer's drive to retrieve password and other information necessary to

log in and file the report, the receipt of which is attached hereto as Exhibit A, and showing the report was received by the Ethics Commission at 6:02 p.m. that day.

8. During the following weeks I spoke with both our technical department and administration inquiring whether there was some record that showed (a) the firm's internet service to have been down for any period during that date; or (b) whether the internet access difficulty emanated solely from my computer. In each instance I was informed there is no log or record indicating whether or not the server had been down at that time nor was any explanation provided as to why I could not access the Ethics Commission's web site to file the report.

9. It is my sincere hope the Ethics Commission forgo assessing any penalty \$100 for late filing in this particular instance given that I made every effort to file this report in as timely a matter as possible given unusual and unforeseen circumstances.

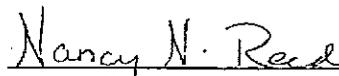
Dated at Portland, , Maine this 28th day of March, 2008.


G. Paul Padillo

STATE OF MAINE
Cumberland, ss.

March 28, 2008

Personally appeared before me the above-named Susan Crane and made oath that the above statements made by her are true to the best of her knowledge, information and belief, and where based upon information and belief, she believes the same to be true.


Nancy N. Reed
Notary Public
My commission expires:

NANCY N. REED
Notary Public, Maine
My Commission Expires December 3, 2010

EXHIBIT A**FILED REPORT RECEIPT**

LOBBYIST NAME: Mr. Severin M. Beliveau
EMPLOYER NAME: Maine Health Care Association
E-MAIL ADDRESS: krivera@preti.com
REPORT TITLE: Monthly Report - Long Form
FILED DATE: 02/15/08, 6:02 p.m. EST

O'Brien, Gavin

From: Padillo, G. Paul [gpadillo@preti.com]
Sent: Friday, February 22, 2008 10:51 AM
To: O'Brien, Gavin
Subject: January Lobbying Report for Maine Health Care Association
Attachments: MHCA - Ethics Commission Notice - January Filing 2008.PDF

Gavin -

I appreciate your letting me take a moment to explain the situation regarding my tardiness in filing our January report for Maine Health Care Association.

I certainly understand the reasons for timely filing and strive always to have ours filed on or before the monthly deadline.

I had been involved on a several days on a project for which I was not using my computer. When, late in the afternoon of Friday, the 15th I attempted to log in to the Ethic's Commission site and file our report I had difficulty accessing the site before finally discovering I had no internet access from my office computer. As it was the end of the day, there was no one present to help me or re-establish an internet connection. Realizing time was of the essence, I raced home on foot (in rather slick conditions, if that aids my cause!) to log into the Ethics Commission site from home file our January report from there. After a bit of fumbling attempting to access the site from my home computer, I was finally able to get the report filed, but - as you can see from the attached notice from the Commission - it was logged in at 6:02 p.m.

Given this occurrence was a highly unusual one, and the report **was** filed on the 15th - I sincerely hope the Commission will consider granting leniency in this specific instance, particularly since I could not have anticipated the initial office internet failure and immediately upon discovering it, made every effort to file this as close to the deadline as possible from my home computer.

If you need any further explanation or I can provide further information, please don't hesitate to e-mail me, or call me at 791-3138.

Thanks for your assistance.

G. Paul Padillo
Assistant to John P. Doyle, Jr.
PretiFlaherty

<<MHCA - Ethics Commission Notice - January Filing 2008.PDF>>

In accordance with Internal Revenue Service Circular 230, we hereby advise you that if this E-mail or any attachment hereto contains any tax advice, such tax advice was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer by the Internal Revenue Service.

This E-Mail may contain information that is privileged, confidential and / or exempt from discovery or

2/22/2008



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

To: Severin Beliveau, Lobbyist for:
Maine Health Care Association

From: Gavin O'Brien, Registrar

Date: February 20, 2008

Each registered lobbyist is required to file monthly reports with the Commission on Governmental Ethics and Election Practices no later than 15 calendar days following the month that is the subject of the report. Reports are due by 5:00 p.m. Any person who fails to file a timely report may be assessed a penalty of \$100 for every month the report is late. You filed your January Lobbyist Monthly Disclosure report on 2/15/08 at 6:02 p.m. The penalty is \$100.

If you agree with this preliminary penalty determination, you may use the attached billing statement to pay that amount within 30 days of the date of this notice. Please mail your remittance to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333.

However, if you have a valid reason for filing late, you may request the Commission to make a final penalty determination. The Commission will notify you of the disposition of your case within 10 days after its determination.

Any person who fails to file a report or pay a fee may be suspended from further lobbying by written notice of the Commission until such failure is corrected.

Please direct any questions you may have about this matter to the Commission at (207) 287-4709.

Cut Along Dotted Line

To: Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

From: Severin Beliveau, Lobbyist

Re: Penalty for late filing of the January Lobbyist Disclosure Report (\$100)

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

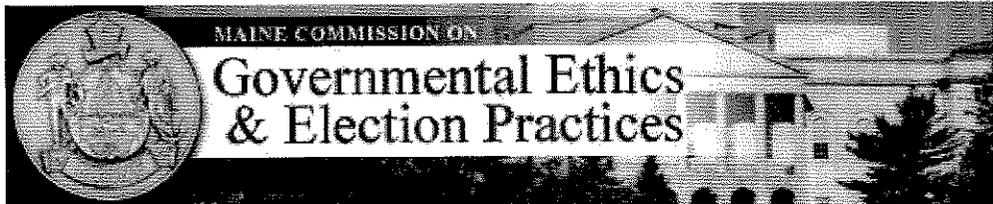
Please make Check or Money Order Payable to Treasurer, State of Maine

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



Agencies | Online Services | Web Policies | Help

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 - Lobbying Info
 - Entire Public Access Site
- REGISTRATION**
 - Lobbyist Registration

Lobbyist Reports For Severin M. Beliveau Maine Health Care Association

2008 Reports for Severin M. Beliveau/Maine Health Care Association		
Associates: Charles Dingman, John Doyle		
Report Type	Filed Date	Amendment
Lobbyist/Employer Registration	1/15/2008 10:18:23 AM	
Monthly Report - Long Form - January	2/15/2008 6:02:46 PM	
Monthly Report - Long Form - February	3/14/2008 4:40:32 PM	

2007 Reports for Severin M. Beliveau/Maine Health Care Association		
Associates: John P. Doyle, Jr., Charles Dingman, Daniel Walker		
Report Type	Filed Date	Amendment
Lobbyist/Employer Registration	4/30/2007 10:50:12 AM	
Annual Report	12/19/2007 3:10:38 PM	
Monthly Report - Short Form - August	8/15/2007 2:39:20 PM	
Monthly Report - Long Form - February	4/30/2007 1:02:21 PM	
Monthly Report - Long Form - March	4/30/2007 12:59:11 PM	Yes
Monthly Report - Long Form - May	5/15/2007 3:38:20 PM	

O'Brien, Gavin

From: O'Brien, Gavin

Sent: Thursday, February 14, 2008 5:17 PM

Subject: January Lobbyist Report Due Tomorrow, Feb. 15

Dear Lobbyist,

Please remember to file your January lobbyist report no later than 5:00 p.m. on Friday, February 15th.

You must file one of the two reports listed below regardless of your activity during the month for all of your registered clients. Remember, once registered all lobbying activity is reportable. This means that if you're registered, and you lobbied at all during January, you must file the long form and report your activity.

Long Form -- If you have either lobbied or received compensation.

Short Form -- If you have neither lobbied nor received compensation.

To avoid the statutorily imposed \$100 penalty, please file your report on time. If you have any questions, please call me at the number below or reply to this e-mail. I will be out of the office tomorrow, so if you need assistance then, please call the main office number at (207) 287-4179. Thank you.

--

Gavin O'Brien
Registrar
Maine Ethics Commission
(207) 287-4709

O'Brien, Gavin

From: O'Brien, Gavin
Sent: Monday, February 04, 2008 9:21 AM
Subject: January Lobbyist Report Due Feb. 15

To All Lobbyists:

The lobbyist monthly report covering January is due by 5:00 p.m. on February 15. If you filed a lobbyist registration form before February 1, you are required to file a January monthly report for that client, even if you performed no lobbying in January. You are also required to file the January report if you registered in February but exceeded 8 hours of lobbying during the month of January. Please note that you have 15 business days after exceeding the 8-hour threshold to file a lobbyist registration form.

Please file the long form if you have either lobbied or received compensation during January. Please file the short form if you have neither lobbied nor received compensation during January. Feel free to contact me if you have any questions.

--
Gavin O'Brien
Registrar
Maine Ethics Commission
(207) 287-4709

Agenda

Item #8

RECEIVED

FEB 19 2008

Christine Zachman
42 Scott Dyer Road
Cape Elizabeth, ME 04107
CDoyle01@maine.rr.com • (207) 318-3761 MAINE ETHICS COMMISSION

February 16, 2008

Via Facsimile
(207) 287-6775

Gavin O'Brien
State of Maine Commission on Government Ethics & Election Practices
135 State House Station
Augusta, ME 04033-0135

Re: Cape Elizabeth Republican Committee Fine for Late Filing

Dear Mr. O'Brien:

I served as the Cape Elizabeth Republican Committee Treasurer until December 18, 2007. At that time, a new Treasurer, William Gross III, was elected. In the fall of 2007, our Committee had several emergency elections to fill the positions of Chairperson, Secretary and Treasurer. As I'm sure you can understand, there were several weeks of confusion as files, documents and other information exchanged hands to get to the appropriate officer.

At the time that the Notice of the filing was sent, the new Treasurer had just been elected. I don't recall receiving the Notice. However, I did receive a call mid-January alerting me of the missed deadline and the steps to follow to file the report. It was my understanding that we had until the end of the month to get the report filed. Due to personal and work travel, it was the following week until I was able to get the information needed to prepare the Report for filing.

I did file the Report the last week of January. Shortly thereafter the new Treasurer, Mr. Gross, received a notification of a \$120.00 fine assessed for the late filing. Though I understand that the deadlines are set for a purpose, I ask for your understanding of the extenuating circumstances in our Committee at the time resulting in the late filing of our end of year Report. I also ask that the \$120.00 fine be waived.

I thank you for your attention to this matter and I look forward to your response.

Sincerely,



Christine R. Zachman, Secretary
Cape Elizabeth Republican Committee

RECEIVED

FEB 14 2008

MAINE ETHICS COMMISSION

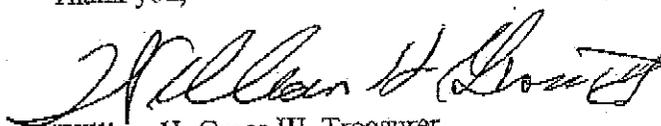
William H. Gross III, Treasurer
Cape Elizabeth Republican Committee
7 Seaview Avenue
Cape Elizabeth, Maine 04107

Gavin O'Brien
State of Maine
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04033-0135
Fax (207) 287-6775

Dear Mr. O'Brien

I would like to request a final determination by the commission on the \$120.00 penalty assessed for late reports. I am the newly elected Treasurer and never received the notice of the filing deadline. The previous Treasurer informed me that she had not received the filing deadline notice and only became aware of the deadline when she received a notice that the deadline had passed, when she immediately forwarded the required information to your office.

Thank you,



William H. Gross III, Treasurer
Cape Elizabeth Republican Committee



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

January 31, 2008

William H. Gross III, Treasurer
Cape Elizabeth Republican Committee
7 Seaview Avenue
Cape Elizabeth, ME 04107

Dear Mr. Gross:

Our records show that your committee's January Semiannual report, due on 1/15/08 was filed on 1/31/08. State law [21-A M.R.S.A. §1020-A] requires that a penalty be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the party committee's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your campaign finance report would be \$120.00. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request a final determination by the Commission on Governmental Ethics and Election Practices. Any request for a Commission determination must be made within 10 calendar days of receipt of this certified U.S. mail notice, beginning on the day you sign for receipt of this notice of the proposed penalty. If this certified letter has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter.

Upon receipt of your request for a Commission determination, we will schedule you to appear at the next scheduled Commission meeting and notify you of the date and time of that meeting. You or a person you designate may then appear personally before the Commission; or, you may send a written statement for the Commission's consideration. If you elect to send a statement, it must be notarized and must contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid personal emergency of the committee treasurer, such as a personal illness or death in the immediate family; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or 4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

Sincerely,

Gavin O'Brien

enc: Penalty Matrix & Billing Statement

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

January 31, 2008

William H. Gross III, Treasurer
Cape Elizabeth Republican Committee
7 Seaview Avenue
Cape Elizabeth, ME 04107

The Commission on Governmental Ethics and Election Practices has made a preliminary determination that a penalty of \$120.00 applies for the late filing of your January 2008 Semiannual report. If you agree with this determination, please make your check or money order payable to "**Treasurer, State of Maine,**" and send it, along with the bottom half of this letter, to the **Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333** within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like to request a formal Commission determination of any penalty to be assessed in this case.

FAILURE TO PAY THE FULL AMOUNT OF THIS PENALTY IS A CIVIL VIOLATION.
Pursuant to 21-A M.R.S.A. § 1020-A(10), the Commission is required to report to the Attorney General the name of any political committee that fails to pay the full amount of any penalty.

Please direct any questions you may have about this matter to the Commission at 287-4179.

Cut Along Dotted Line

To: Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

From: William H. Gross III, Treasurer
Cape Elizabeth Republican Committee

For Office Use Only Account: CGEEP Fund: 014 Appr: 02

Re: Penalty for late filing of January Semiannual campaign finance report (\$120.00)

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

Please Make Check/M.O. Payable to: Treasurer, State of Maine

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

RECEIVED

Mail: 135 State House Station, Augusta, ME 04333

Office: 242 State Street, Augusta, Maine

Tel: (207) 287-4179 Fax: (207) 287-6775

Website: www.maine.gov/ethics

Electronic Filing: http://www.maine.campaignfinance.com

JAN 31 2008

MAINE ETHICS COMMISSION

MUNICIPAL, DISTRICT & COUNTY PARTY COMMITTEE REPORT - 2007

COMMITTEE IDENTIFICATION (Include full name of committee.)

Name Cape Elizabeth Republican Committee
Mailing address 7 Seaview Avenue
(official headquarters of committee)
City, zip code Cape Elizabeth, ME 04107 Telephone 799-1634

Check if address is different than previously reported



TREASURER IDENTIFICATION

Name of treasurer William H. Gross III
Mailing address 7 Seaview Avenue
City, zip code Cape Elizabeth, ME 04107 Telephone 799-1634
E-mail address BGross@maine.rr.com

Check if address is different than previously reported



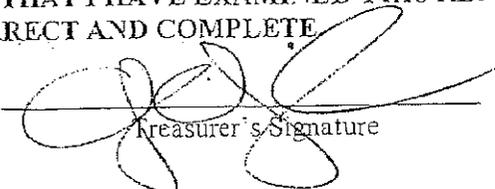
MUNICIPAL/COUNTY/DISTRICT COMMITTEE FILING PERIODS (Check applicable period below):

Due Date	Reporting Period
<input type="checkbox"/> July 16, 2007	January 1, 2007 – June 30, 2007
<input checked="" type="checkbox"/> January 15, 2008	July 1, 2007 – December 31, 2007
<input type="checkbox"/> October 31, 2007	July 1, 2007 – October 25, 2007
<input type="checkbox"/> January 15, 2008	October 26, 2007 – December 31, 2007

Any local party committees participating in the November 6, 2007 election who raise or spend money to support or defeat items on that ballot must file the following reports:

<input type="checkbox"/> October 31, 2007	July 1, 2007 – October 25, 2007
<input type="checkbox"/> January 15, 2008	October 26, 2007 – December 31, 2007

I CERTIFY THAT I HAVE EXAMINED THIS REPORT AND TO THE BEST OF MY KNOWLEDGE IT IS TRUE, CORRECT AND COMPLETE


Treasurer's Signature

1/29/08
Date

REPORTING EXEMPTION: Any party committee receiving and expending less than \$1,500 in one calendar year is exempt from the reporting requirements for that year.



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

CERTIFIED MAIL

January 28, 2008

Christine Zachman, Treasurer
Cape Elizabeth Republican Committee
42 Scott Dyer Road
Cape Elizabeth, ME 04107

Re: Failure to File Campaign Finance Report

Dear Ms. Zachman:

Our records show that your January Semiannual campaign finance report, due 1/15/08 for the above-mentioned party committee, has not been filed. Maine State Election law requires that a penalty be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the party's filing record. Because your penalty may increase daily, we **urge you to file your report as soon as possible.**

Once you have filed your delinquent report, our office will calculate any penalty that may apply, and will notify you of the amount. Maine State Elections law (21-A M.R.S.A. § 1004-A) permits the commission to assess a late-filing penalty on reports with zero financial activity.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Gavin O'Brien".

Gavin O'Brien
Registrar

IMPORTANT: A TREASURER WHO FAILS TO FILE A REQUIRED PAC REPORT WITHIN 30 DAYS OF THE FILING DEADLINE IS GUILTY OF A CLASS E CRIME. VIOLATIONS ARE REFERRED TO THE ATTORNEY GENERAL FOR PROSECUTION.

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

Action

called 1/16; treasurer is away and will file next week

Last Name
Cape Elizabeth Republican Committee



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

To: All Municipal, District, and County Party Committees
From: Gavin O'Brien, Registrar
Date: December 21, 2007
Re: January 15, 2008 Filing Deadline

Your municipal, district or county party committee filed a July semiannual campaign finance report with our office. Since you have met the \$1,500 threshold for reporting in 2007, you are obligated to file the January semiannual report. The report must include all financial activity from July 1 to December 31, 2007.

Filing Deadline: 11:59 p.m. on January 15, 2008

Reporting Period: July 1 – December 31, 2007

Committees that file reports electronically may do so at any time. If you do not remember your user code and password or if you have any problems entering information into the report, please contact the Commission. To file your report on time, you must hit the "File Report" button by 11:59 p.m. on January 15, 2008.

If you do not file your report electronically, you may fax it to the Commission (at 287-6775), provided the signed original report is received in this office within 5 calendar days after the fax. The time stamp on the Commission's fax machine will be deemed the time the report was filed.

You may also mail your report. If you mail your report, the Commission must receive it on January 15, 2008. A report that is sent by certified or registered mail and is postmarked at least two days prior to the deadline will not be considered late even if it is received after the deadline.

A blank reporting form is enclosed with this memo. You can also download a reporting form on the Commission's website at <http://www.maine.gov/ethics/forms/index.htm#party>.

A party committee that receives and spends less than \$1,500 in a calendar year is exempt from the requirement of filing reports for that year. Once a party committee receives or spends more than \$1,500 in a calendar year, the committee must file the next scheduled report and all subsequent reports for that year. The first report filed in any calendar year must include all contributions received and expenditures made since January 1 of that year.

Please call me at 287-4709 or e-mail Gavin.O'Brien@maine.gov if you have any questions.

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

Last Name	Address 1	City	State	Zip	Treasurer Name	Treasurer Address	Treasurer City
Androscoggin County Republican Committee	544 Sabattus Street	Sabattus	ME	04280	Tammy W. Seger	P. O. Box 1255	Sabattus
Aroostock Democratic County Committee	19 Baird Road	Caribou	ME	04736	Roger A. Roy	19 Baird Road	Caribou
Cape Elizabeth Republican Committee	42 Scott Dyer Road	Cape Elizabeth	ME	04107	Christine Zachman	42 Scott Dyer Road	Cape Elizabeth
Cumberland County Democratic Committee	P. O. Box 1894	Portland	ME	04104	Lawrence Bliss	504 Cottage Rd.	South Portland
Cumberland County Green Independent Committee	Fore Street	Portland	ME	04101	Benjamin Melkejohn	11 Exchange St.	Portland
Hancock County Democratic Committee	PO Box 1414	Ellsworth	ME	04605	Sally A. Crowley	P. O. Box 64	Corea
Hancock County Republican Committee	P. O. Box 5407	Ellsworth	ME	04605	Troy A.H. Adams	200 High St.	Ellsworth
Kennebec County Democratic Committee	P. O. Box 238	Manchester	ME	04284	Linda Mckee	201 Walton Rd.	Wayne
Knox County Democratic Committee	P. O. Box 482	Rockland	ME	04841	Stuart Thro	PO Box 215	Owl's Head
Knox County Republican Committee	P. O. Box 448	Rockland	ME	04841	Lawrence A. Bird	PO Box 391	Owl's Head
Lincoln County Democratic Committee	P. O. Box 336	Waldoboro	ME	04572	Sandra O'Farrell	P. O. Box 336	Waldoboro
Lincoln County Republican Committee	Inn Rd.	South Bristol	ME	04568	Peter Lawrence	438 Duck Puddle Road	Nobleboro
Oxford County Democratic Committee	PO Box 187	Greenwood	ME	04255	Michael K. Broderick	77 Sunday River Road	Bethel
Oxford County Republican Committee	1023 King Street	Oxford	ME	04270	Lynn Hamper	1023 King St.	Oxford
Penobscot County Democratic Committee	P. O. Box 2685	Bangor	ME	04402	Kurt A. Keef	42 Skyway Dr.	Heron
Penobscot County Republican Committee	P. O. Box 1734	Bangor	ME	04402	Harrison Clark	P. O. Box 1734	Bangor
Piscataquis County Democratic Committee	PO Box 44	Gulford	ME	04443	Patricia Fortier	P. O. Box 44	Gulford
Portland Democratic City Committee	P. O. Box 1332	Portland	ME	04104	Sive Neilan	29 Emerson St.	Portland
Sagadahoc County Democratic Committee	241 Fiddler's Reach Road	Phillpsburg	ME	04562	Stephen C. Masters	241 Fiddler's Reach Road	Phillpsburg
Seacoast Democrats	647 US Route 1 Unit 14-121	York	ME	03909			
Waldo County Republican Committee	P. O. Box 811	Belfast	ME	04915	Brian Scaglianni	P. O. Box 811	Belfast
Woolwich Republican Committee	157 Phipps Point Road	Woolwich	ME	04579	Pamela L. Cahill	157 Phipps Point Road	Woolwich
York County Republican Committee	P. O. Box 291	Lebanon	ME	04027	Karen Gerrish	PO Box 291	Lebanon
York Democratic Town Committee	3 Carwin Drive	York	ME	03909	Glen MacWilliams	77 Chases Pond Road	York

Agenda

Item #9



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

To: Commission Members
From: Jonathan Wayne, Executive Director
Date: March 25, 2008
Re: Requirements for Lobbyist Registration

At the January 25, 2008 meeting, Commission member Mavourneen Thompson suggested that the Commission consider whether the current lobbyist registration requirements are sufficient. Current law defines 'lobbyist' as someone who lobbies for more than eight hours in a calendar month for compensation:

10. Lobbyist. "Lobbyist" means any person who is specifically employed by another person for the purpose of and who engages in lobbying in excess of 8 hours in any calendar month, or any individual who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying. "Lobbyist" does not include a lobbyist associate. (3 M.R.S.A. § 312-A(10))

Once an individual qualifies as a lobbyist, he or she must register with the Commission within 15 business days and begin filing monthly reports.

At the January 25 meeting, the Commission considered lobbying and other services provided by the Verrill Dana law firm for the Maine Community Cultural Alliance in support of legislative funding for arts and cultural programs. As part of its submission to the Commission, the firm provided a summary of time spent providing lobbying and other services (labeled Exhibit 6). The columns headed "Lobby" show the number of hours that James Cohen and Michael Saxl spent lobbying for the client for each month

from May 2004 to September 2007. At the meeting, the Commission agreed with the view proposed by staff that Verrill Dana was not required to register as a lobbyist for the Maine Community Cultural Alliance.

Ms. Thompson raised the issue that under the current statute, individuals could lobby the Legislature on behalf of a paying client for several hours each month - not exceeding the 8-hour threshold - and that this could accumulate to a significant amount of unreported lobbying over the course of a legislative session.

To gather further input on the issue, on February 29, 2008, I invited lobbyists to comment by e-mail. I received two substantive comments (attached) plus two more informal comments that there is no problem with the current statute.

If the Commission wishes to make a legislative proposal regarding this issue, it could consider proposing a second threshold (in addition to the 8-hour-per-month threshold) which would require an individual to register as a lobbyist if he or she lobbied for more than 25 hours during a lobbying year on behalf of a paying client. (The lobbying year begins on December 1 of each year and concludes on November 30.) One drawback of this proposal, however, is that a lobbyist could begin lobbying in January and not be required to register until April, which would make the reporting less timely.

Wayne, Jonathan

From: Charlie Soltan [Charles.Soltan@Soltanlaw.com]
Sent: Monday, March 03, 2008 7:34 AM
To: Wayne, Jonathan
Subject: Re: More Opportunities to Comment on Changes to Lobbyist Disclosure Law

Good Morning Jonathan. One issue for many of us on the 5th is that there are about 5 hearings I need to be at. It is a hell of a day, so this hearing is down on the list! The picture idea really ought to go away by the way!

As to the 8 hour rule, it has been very effective and works very well. If you lower it or remove it, it will sweep in numerous people who take a day off work to come give their views on important issues before the legislature. These are not just "business" people but people of all political views. I would be very opposed to any change in the rule. The Commissioner's concern is unfounded as I have never seen it. It would be very difficult to engage for 8 hours a month and then disengage. Issues are not that conveniently timed. They come all at once or are strung out so that you are in or out quite clearly. If someone were to claim this kind of behavior, then they are not likely complying with the current law. I just have not seen this happen in my 20 years of lobbying. While theoretically possible, is is not what happens. We should legislate for the real world, not the theoretical world. Please do not change this well regarded and practical rule.

I hope this helps. Take care, Charlie

Charles C. Soltan, Esq.
Charles C. Soltan, LLC
P.O. Box 188
96 State Street, 2nd Floor
Augusta, ME 04332-0188
207-621-6300
207-671-6970 (Cell)
207-621-9797 (Fax)
Charles.Soltan@Soltanlaw.com
www.Soltanlaw.com

----- Original Message -----

From: [Wayne, Jonathan](#)
To: [Wayne, Jonathan](#)
Sent: Friday, February 29, 2008 12:40 PM
Subject: More Opportunities to Comment on Changes to Lobbyist Disclosure Law

Legislative Action

One week ago, I e-mailed you to let you know that on March 5 at 1:00 p.m. the Legal and Veterans Affairs (LVA) Committee will hold a public hearing on an amendment to LD 2068. This is to advise you that on the following day (March 6, at 1:00 p.m.), the LVA committee will be holding a work session on that amendment and on two lobbyist disclosure bills (LD 1393 and LD 2068).

Matter before the Ethics Commission

One of the members of the Ethics Commission, Mavourneen Thompson, has asked that the Commission consider whether to recommend a statutory amendment to the 8-hour-per-month threshold for lobbyist registration. She is concerned about one specific issue: that individuals could lobby the Legislature on behalf of a paying client for several hours each month - not exceeding the 8-hour threshold - and that this could accumulate to a significant amount of unreported lobbying over the course of a legislative session. She does not have a specific proposal yet. The Commission will be considering the issue at its March 31 meeting which will begin at 9:00 a.m. If you would like to express a viewpoint, please feel free to e-mail comments to me by March 21 that I will distribute to the Commission members or to come to the meeting.

Thank you.

Wayne, Jonathan

From: [REDACTED]
Sent: Friday, February 29, 2008 2:36 PM
To: Wayne, Jonathan
Subject: RE: More Opportunities to Comment on Changes to Lobbyist Disclosure Law

Jonathan,

Thanks for the notification. I was aware of both the public hearing and the work session, but had not heard of the Commission's concerns with the 8 hour threshold. I can tell you from my own experience, that I have had a few, rare occasions where I've been able to handle a client's legislative concerns without ever reaching the monthly 8 hour limit that triggers registration and reporting. As a result, my activities on behalf of such client(s) went unreported for that year, yet I was fully in compliance with the provisions of the law. It's just another example of some of the unintended consequences that changes to the lobby laws have produced over the years. Perhaps a solution might be to retain the 8 hour trigger for any given month, but to add a second "cumulative" threshold for registration and reporting.

Ralph

-----Original Message-----

From: Wayne, Jonathan [mailto:Jonathan.Wayne@maine.gov]
Sent: Friday, February 29, 2008 12:41 PM
To: Wayne, Jonathan
Subject: More Opportunities to Comment on Changes to Lobbyist Disclosure Law

Legislative Action

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Thank you.

Agenda

Item #10

Maine Revised Statutes

 [§403 PDF](#)

§402-A

**Title 1: GENERAL
PROVISIONS**

§404

 [§403WORD/RTF](#)

 [STATUTE SEARCH](#)

Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

 [CH. 13 CONTENTS](#)

HEADING: PL 1975, c. 758 (rpr)

 [TITLE 1 CONTENTS](#)

**Subchapter 1: FREEDOM OF ACCESS HEADING: PL 1975, c.
758 (rpr)**

 [LIST OF TITLES](#)

 [DISCLAIMER](#)

 [MAINE LAW](#)

§403. Meetings to be open to public

 [REVISOR'S OFFICE](#)

 [MAINE](#)

 [LEGISLATURE](#)

Except as otherwise provided by statute or by section 405, all public proceedings shall be open to the public, any person shall be permitted to attend any public proceeding and any record or minutes of such proceedings that is required by law shall be made promptly and shall be open to public inspection. [1975, c. 758; (RPR) .]

SECTION HISTORY

1969, c. 293, (AMD) . 1975, c. 422, §1 (AMD) . 1975, c. 758, (RPR) .

Data for this page extracted on 03/11/2008 09:25:18.

**The Revisor's Office cannot provide legal advice or interpretation of
Maine law to the public.**

If you need legal advice, please consult a qualified attorney.

Office of the Revisor of Statutes

7 State House Station

State House Room 108

Augusta, Maine 04333-0007

University of Maine System Board of Trustees Meeting
at the University of Southern Maine
Glickman Library, 7th Floor
March 10, 2008

AGENDA

A. CITIZEN COMMENT

B. ACCEPTANCE OF MINUTES

C. CHAIR'S AGENDA AND REPORT

D. CHANCELLOR'S AGENDA AND REPORT

E. COMMITTEE REPORTS/ACTION

Academic and Student Affairs Committees
Ad Hoc Technology Committee
Audit Committee
Finance/Facilities Committee
Human Resources and Labor Relations Committee
Investment Committee

F. CONSENT AGENDA

TAB 1 Confirmation and Ratification of Board of Trustees Actions from the January Board Meeting
TAB 2 Confirm Student Representative to the Board of Trustees
TAB 3 Transfer of University College Outreach to UMA
TAB 4 Appointment of the Trustee Nominating Committee
TAB 5 Approval of the Board Meeting Schedule and Calendar for 2008-09 and 2009-10 Academic Years
TAB 6 Academic Program Elimination: AS in Legal Technology - UMA
TAB 9 Tenure Nominations 2008
TAB 12 FY09 Compensation Adjustments for Non-Represented Employees
TAB 13 Appointment of President, University of Southern Maine
TAB 16 Approval of Board Policy 701 - Operating & Capital Budgets and Policy 712 - Debt Policy
TAB 17 Renaming of the Maine Center for the Arts - UM
TAB 18 Naming of the Student Innovation Center - UM
TAB 19 Renovations to Stone Hall and Merrill Hall - UMF
TAB 20 Lease of Space - USM
TAB 21 Torrey Hall/Science Building Renovations - UMM
TAB 22 Acceptance of Property - UM

G. INFORMATION ITEMS

TAB 7 University of Southern Maine Update
TAB 8 Summary of Spring 2008 Enrollments
TAB 10 Presentation by Dr. Vincent Tinto - "Promoting the Student Success: A Shared Responsibility"
TAB 11 Human Resources Strategic Role and Goals and Workforce Profile
TAB 14 Update on Collective Bargaining
TAB 15 CFO Update
TAB 23 University of Maine System Student Profiles
TAB 24 Faculty & Tenure Statistics 2007-2008
TAB 25 Report on Real Property Transactions
TAB 26 Agenda Calendar

H. DATE OF NEXT MEETING: May 18-19, 2008 at the University of Maine at Presque Isle

MAINE LAND USE REGULATION COMMISSION

Department of Conservation
22 State House Station - Augusta, Maine 04333-0022
TEL (207) 287-2631 FAX (207) 287-7439

AGENDA

Meeting Date: March 5, 2008
Meeting Time: 9:30AM
Meeting Location: Best Western Black Bear Inn
4 Godfrey Drive
Orono, Maine

PAGE	ACTION NUMBER	AGENDA ITEM	ACTION	PRESENTER
ADMINISTRATIVE MATTERS 9:30AM to 10:30AM				
		Introductions	None	
		Minutes of January 14, 2008 Meeting	Decision	
	ZP 707	Plum Creek Maine Timberlands, L.L.C. and Plum Creek Land Company, post hearing schedule	Decision	Aga Pinette
		Director's Report	Information	Catherine Carroll
		Indicators	Information	Scott Rollins
PLANNING MATTERS 10:30AM to 1:00PM				
		Comprehensive Land Use Plan revision, conservation groups' perspective on the principals of the Commission's jurisdiction, issues facing the jurisdiction, a historical perspective of LURC and its regulatory jurisdiction, and economic opportunities provided by recreational uses in the unorganized areas	Discussion	
PERMITTING AND COMPLIANCE MATTERS 1:30 PM to 4:30 PM				
	DP 4764 DP 4764 Project Site	Western Mountains Foundation, request to reopen the hearing record to amend application to withdraw the Grand Falls hut site, Carrying Place Town Township and Spring Lake Townships, Somerset County	Decision	Scott Rollins
	DP 4764 DP 4764 Project Site	Western Mountains Foundation, development of a "hut", Flagstaff Lake, Carrying Place Town Township, Somerset County	Decision	Scott Rollins
	BP 13826	Elizabeth Closson, appeal of staff decision for a single family dwelling unit, Cupsuptic Lake, Adamstown Township, Oxford County	Decision	Erle Townsend
	DP 4131-K	Saddleback Land & Timber Corporation and Saddleback, Inc., amendment to final development plan, Dallas and Sandy River Plantations, Franklin County	Decision	Marcia Spencer-Famous
	ZP 702	Maine Mountain Power, LLC request to withdraw the rezoning application	Decision	
	ZP 702	Maine Mountain Power, LLC rezoning 487 acres from (P-MA) Mountain Area Protection Subdistrict and (P-SG) Soils and Geology Subdistrict to (D-PD) Planned Development Subdistrict and Preliminary Development Plan approval for an 18 turbine wind farm, Redington Twp, Franklin County	Decision	Marcia Spencer-Famous
	ZP 709	TransCanada Maine Wind Development, Inc. and Plum Creek Maine Timberlands, LLC, rezoning 2,367 acres from (M-GN) General Management Subdistrict, (P-MA) Mountain Area Protection Subdistrict, (P-WL) Wetland Protection Subdistrict, and (P-SL) Shoreland Protection Subdistrict to (D-PD) Planned	Decision	Diana McKenzie

Development Subdistrictand Preliminary
Development Plan approval, for a 44 turbine wind
farm, Kibby Twp. and Skinner Twp., Franklin
County

OTHER MATTERS
4:30PM to 5:00PM

Report of the Governor's Task Force on Windpower Development – a presentation on the findings and recommendations of the task force	Information	Alec Giffen
Commissioner Comments	None	
Adjourn	None	

Maine Public Utilities Commission

CALENDAR

March 24, 2008

Deliberative session

2:30 PM

Contact person: Laurel Peaslee
Email: laurel.peaslee@maine.gov
Phone: 207-287-1386

Date: March 24, 2008 Location: 242 State Street Time: 2:30 p.m. Augusta, Maine 04333 Date Prepared: March 19, 2008 MEETING AGENDA CONSENT

ELECTRIC ITEM(S):

1. I.C. THOMASSON ASSOCIATES, INC., DOCKET NO. 2008-126, Application for License to Operate as a Competitive Electricity Provider, Order Granting License (Smith)

REGULAR

CAD ITEM(S):

1. BANGOR HYDRO-ELECTRIC COMPANY, DOCKET NO. 2008-80, Appeal of Consumer Assistance Division Decision by Utility of #2008-23724 Regarding Customer, Consideration of Order on Appeal (Steneck)

COMMUNICATIONS ITEM(S):

1. MAINE PUBLIC UTILITIES COMMISSION, DOCKET NO. 2006-365, PSAP Consolidation Filings in Compliance with Chapter 1 Section 4, Consideration of Request from Town of China for use of Somerset County Communications Center for PSAP Service (Steneck/Gervenack)
2. VERIZON NEW ENGLAND INC., D/B/A VERIZON MAINE, DOCKET NO. 2007-67, Request for Approval of Affiliated Transaction and/or Transfer of Assets of Verizon's Property and Customer Relations to be Merged with and into Fairpoint Communications,

Inc., Consideration of Issues Related to Condition No. 36 (Collins/Bragdon)

ELECTRIC ITEM(S):

1. CENTRAL MAINE POWER COMPANY, DOCKET NO. 2007-621, Request for Approval of Affiliated Interest Transaction with MaineCom Services, Order Approving Affiliated Interest Transaction (Kivela)
2. FOX ISLAND ELECTRIC COOPERATIVE, Docket No. 2008-48, Request for an Accounting Order for Incurring Extraordinary Costs in Dealing with Storm Damage, Consideration of Accounting Order (Cohen/Smith/Kivela)
3. MAINE PUBLIC UTILITIES COMMISSION, DOCKET NO. 2008-106, Establishment of Assessment and Apportionment Amounts for Low-Income Assistance Plan and Assessment Amounts for Oxygen Pump and Ventilator Programs Pursuant to Chapter 314, Consideration of Recommended Decision (Smith/Brooks)

RULEMAKING ITEM(S):

1. MAINE PUBLIC UTILITIES COMMISSION, Docket No 2007-230, Amendments to Chapter 200 Telecommunications Carriers Reporting Requirements for Service Interruptions, Consideration of Order Adopting Rule (Hagler/Spelke)

NOTE: Unless a Consent item is transferred to the Regular Agenda prior to the meeting, the item will be approved as proposed without discussion at the beginning of the meeting. To determine if an item has been transferred contact the Administrative Director's Office.

This agenda is published pursuant to the Freedom of Access Act. Attendance by interested parties is not required. However, interested persons may attend the meeting, but may not participate in Commission deliberations. Following the meeting, outcome of Commission deliberations may be obtained by calling the Administrative Director's Office at 287-3831. Specific items on the above agenda may be deleted. Anyone planning to attend should confirm the schedule the business day of the meeting by telephone (287-3831). If discussion of a specific item is not completed at the meeting, a subsequent meeting may be scheduled. An announcement to this effect will be made when the discussion is suspended and interested persons should contact the Administrative Director's Office to determine whether and when additional discussions will occur.

The PUC does not discriminate in employment or in the provision of services because of race, creed, national origin, sex, political affiliation, religion, ancestry

or disability. We will provide reasonable accommodation upon your request. 1-207-287-3831.

Session Audio:

Transcript:

Audio:

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BOARD OF

Environmental Protection

STATE OF MAINE

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Agenda

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round, Augusta at 9:00 a.m.

February 21, 2008

I. Departmental

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. [Board Calendar](#)
- E. [Departmental Orders- Applications Accepted for Processing](#)
- F. Executive Session

II. Consent Agenda Items

1. [BEP MINUTES – November 1, 2007 \(approval\)](#)
2. [BEP MINUTES – November 15, 2007 \(approval\)](#)
3. [BEP MINUTES – December 6, 2007 \(approval\)](#)
4. [RED SHIELD ENVIRONMENTAL, LLC, Old Town - Administrative Consent Agreement \(Multi Bureau Agreement\)](#)
5. [NEW HERITAGE BUILDERS, INC., Old Orchard Beach - Administrative Consent Agreement \(BLWQ-Land\)](#)
6. [KEMPTON TOBEY & SON, INC., China - Administrative Consent Agreement \(BLWQ-Land\)](#)

Administrative Consent Agreement:

Proposed wastewater discharge enforcement resolution open for public comment
Pursuant to 38 M.R.S.A. §347-A(6)

[THIBODEAU REALTY & DEVELOPMENT CORPORATION and VAUGHN THIBODEAU AND SONS, INC, Bangor/Hermon \(James Beyer 941-4580\)](#)

*Comment Deadline: **February 25, 2008** - Tentative schedule for BEP action: **March 6, 2008***

[FRED WHEELER and W & S WOOD PRODUCTS, INC. D/B/A SHERWOOD WOOD PRODUCTS, Manchester \(Amy Lemelin 287-7811\)](#)

*Comment Deadline: **March 17, 2008** - Tentative schedule for BEP action: **March 20, 2008***

III. Regular Agenda Items continued

1. CHAPTER 900, BIOMEDICAL WASTE MANAGEMENT RULES - PROGRAM REVENUE & EXPENSE ANALYSIS / AMENDMENTS (Post to 30 Day Written Public Comment)
Staff: Scott Austin, Bureau of Remediation & Waste Management

- o [Department memo to the Board](#)
- o [Draft proposed rule for adoption](#)

Informational Session

- Governors Task Force concerning Wind Power // Briefing
 - o David Littell, Commissioner
- Freedom of Access Act
 - o Peter Carney, Director of Procedures & Enforcement

Next Regular Board Meeting - Thursday, March 6, 2008 - Holiday Inn Ground Round-
updated agenda and documents expected availability (02/28/08)

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Agenda

Item #11

SENATE

LISA T. MARRACHÉ, District 25, ~~Chair~~
BRUCE S. BRYANT, District 14
DEBRA D. PLOWMAN, District 33

RECEIVED

FEB 11 2008



HOUSE

JOHN L. PATRICK, Rumford, Chair
JOHN L. TUTTLE, JR., Sanford
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GARY W. MOORE, Standish
PAMELA JABAR TRINWARD, Waterville
LANCE WEDDELL, Frankfort
JOAN M. NASS, Acton
WRIGHT H. PINKHAM, SR., Lexington Township
MARK E. BRYANT, Windham
STACEY A. FITTS, Pittsfield

DANIELLE D. FOX, Legislative Assistant
JOHANNAH OBERG, Committee Clerk

MAINE ETHICS COMMISSION

State of Maine
ONE HUNDRED AND TWENTY-THIRD LEGISLATURE
COMMITTEE ON LEGAL AND VETERANS AFFAIRS

January 31, 2008

Michael P. Friedman, Esq., Chair
Maine Commission on Governmental Ethics and Election Practices
242 State Street
Augusta, Maine 04333

Dear Commissioner Friedman:

During the course of the work sessions on LD 1854 during the First Regular Session of the 123rd Legislature, the Legal and Veterans' Affairs committee inadvertently neglected to address an issue raised by another bill (LD 1679) that would direct the Commission on Governmental Ethics and Election Practices to adopt rules allowing candidates to re-use campaign signs from a primary or general election campaign at a subsequent primary or general election campaign. The aim of the proposal was to not require reprinting of signs or the placement of stickers on signs because of outdated information, such as the name of a campaign treasurer.

The Legal and Veterans' Affairs committee supports the adoption of a rule that allows for this sign re-use, provided that the rule apply to all candidates, not just those participating as Maine Clean Election Act candidates (as LD 1679 proposed), and the address of the candidate listed on the campaign sign be current for the election in which it is used.

We have communicated with Executive Director Wayne and trust that he clearly understands the intent of the committee's direction with regard to adoption of this rule. Thank you for your time and consideration of this matter.

Sincerely,

Handwritten signature of Lisa T. Marrache in cursive.

Lisa T. Marrache, Senate Chair
Committee on Legal and Veterans' Affairs

Sincerely,

Handwritten signature of John L. Patrick in cursive.

John L. Patrick, House Chair
Committee on Legal and Veterans' Affairs

PROPOSED CHANGE TO CHAPTER 1, SECTION 7 OF ETHICS COMMISSION RULES

SECTION 7. EXPENDITURES

1. **Expenditures by Consultants, Employees, and Other Agents of a Political Campaign.** Each expenditure made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc., employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee must be reported separately by the candidate or committee as if made or incurred by the candidate or committee directly. The report must include the name of the third party vendor or payee to whom the expenditure was made, the date of the expenditure, and the purpose and amount of the expenditure. It is not sufficient to report only the total retainer or fee paid to the person, agency, firm, organization, etc., if that retainer or fee was used to pay third party vendors or payees for campaign-related goods and services.
2. **Expenditures by Political Action Committees.** In addition to the requirements set forth in 21-A M.R.S.A. §1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.
3. **Timing of Reporting Expenditures**
 - A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.
 - B. Expenditures must be reported at the earliest of the following events:
 - (1) The placement of an order for a good or service;
 - (2) The signing of a contract for a good or service;
 - (3) The delivery of a good or the performance of a service by a vendor;
 - (4) A promise or an agreement (including an implied one) that a payment will be made; or
 - (5) The making of a payment for a good or service.
 - C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.

4. **Advance Purchases of Goods and Services for the General Election**
 - A. Consulting services, or the design, printing or distribution of campaign literature or advertising, including the creation and broadcast of radio and television advertising, contracted or paid for prior to the primary election must be received prior to the primary election in order to be considered primary election expenditures.
 - B. If the Commission receives a complaint stating that a candidate or a committee purchased goods or services before a primary election for use in the general election, the Commission may request that the candidate or committee distinguish which of the goods and services were used in the primary election and which were used in the general election.
5. All campaign-related payments made with the personal funds or credit card of the candidate or an individual authorized by the candidate must be reported as expenditures in the reporting period during which the payment to the vendor or payee is made. The candidate must report the name of the vendor or payee to whom the payment was made, the date of the expenditure, and the purpose and amount of the expenditure. When the expenditure is reported, the candidate should indicate the person who made the payment by entering "Paid by [name of candidate or supporter]" in the remarks section of the expenditure schedule. It is not sufficient to report only the name of the candidate or authorized individual to whom reimbursement was made and the total amount of the reimbursement. If a Maine Clean Election Act candidate uses his or her personal funds to make an expenditure, the campaign must reimburse the candidate within the same reporting period.
6. Multiple expenditures for bank fees and for vehicle travel may be reported in an aggregate amount, provided that the candidate or committee identifies the time period of the expenditures in the remarks section of the report.
7. When a political action committee or party committee makes an expenditure for a communication to voters for the purpose of influencing the election of a clearly identified candidate, the amount spent to influence that candidate's election must be specified on the regularly filed campaign finance report of the committee, regardless whether the communication expressly advocates for the election or defeat of the candidate. If a single expenditure influences the election of more than one candidate, the political action committee or party committee shall itemize the amount spent per candidate.
8. **Re-Use of Campaign Signs.** A candidate may re-use campaign signs if they were purchased by the candidate or campaign treasurer for a previous election, and the candidate is not required to update the name and address of the person financing the communication so long as the address in the disclosure is accurate.

21-A M.R.S.A. §1014. Publication or distribution of political communications

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

[2007, c. 443, Pt. A, §9 (AMD) .]

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

[2003, c. 510, Pt. F, §1 (AMD); 2003, c. 599, §15 (AFF) .]

2-A. Other communications. Whenever a person makes an expenditure to finance a communication that names or depicts a clearly identified candidate and that is disseminated during the 21 days before a primary election or 35 days before a general election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate. The disclosure is not required if the communication was not made for the purpose of influencing the candidate's nomination for election or election.

[2007, c. 443, Pt. A, §9 (AMD) .]

3. Broadcasting prohibited without disclosure. No person operating a broadcasting

station within this State may broadcast any communication, as described in subsections 1 to 2-A, without an oral or written visual announcement of the disclosure required by this section.

[2007, c. 443, Pt. A, §9 (AMD) .]

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

The use or distribution of in-kind printed materials contributed to a candidate, political committee or political action committee must be reported as an expenditure on the campaign finance report of that candidate, political committee or political action committee.

[1991, c. 839, §9 (NEW) .]

3-B. Newspapers. A newspaper may not publish a communication described in subsections 1 to 2-A without including the disclosure required by this section. For purposes of this subsection, "newspaper" includes any printed material intended for general circulation or to be read by the general public, including a version of the newspaper displayed on a website owned or operated by the newspaper. When necessary, a newspaper may seek the advice of the commission regarding whether or not the communication requires the disclosure.

[2007, c. 443, Pt. A, §9 (AMD) .]

4. Enforcement. An expenditure, communication or broadcast made within 20 days before the election to which it relates that results in a violation of this section may result in a civil fine of no more than \$200. The person who financed the communication or who committed the violation shall correct the violation within 10 days after receiving notification of the violation from the commission. An expenditure, communication or broadcast made more than 20 days before the election that results in a violation of this section may result in a civil fine of no more than \$100 if the violation is not corrected within 10 days after the person who financed the communication or other person who committed the violation receives notification of the violation from the commission. If the commission determines that a person violated this section with the intent to misrepresent the name or address of the person who made or financed the communication or whether the communication was or was not authorized by the candidate, the commission may impose a fine of no more than \$5,000 against the person responsible for the communication. Enforcement and collection procedures must be in accordance with section 1020-A.

[2007, c. 443, Pt. A, §9 (AMD) .]

5. Telephone calls. Prerecorded automated telephone calls and scripted live telephone communications that name a clearly identified candidate during the 21 days before a primary election or the 35 days before a general election must clearly state the name of the person who made or financed the expenditure for the communication, except for prerecorded automated telephone calls paid for by the candidate that use the candidate's voice in the telephone call and that are made in support of that candidate. Telephone calls made for the purposes of researching the views of voters are not required to include the disclosure.

[2007, c. 443, Pt. A, §9 (AMD) .]

SECTION HISTORY

1985, c. 161, §6 (NEW). 1987, c. 188, §17 (AMD). 1989, c. 504, §§5,6,31 (AMD). 1991, c. 466, §37 (AMD). 1991, c. 839, §§8-10 (AMD). 1995, c. 483, §6 (AMD). 2003, c. 302, §1 (AMD). 2003, c. 510, §F1 (AMD). 2003, c. 510, §F2 (AFF). 2003, c. 599, §15 (AFF). 2005, c. 301, §§10-12 (AMD). 2005, c. 308, §1 (AMD). 2005, c. 542, §1 (AMD). 2007, c. 443, Pt. A, §9 (AMD).



CHAPTER 13

Disclosure on Campaign Communications

Disclosure on Campaign Communications

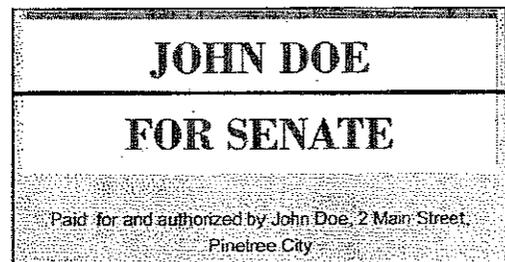
Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, campaign signs or outdoor advertising facilities, publicly accessible websites, direct mails or other similar types of general public political advertising, or through flyers, handbills, bumper stickers, and other non-periodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee, or their agents, must clearly and conspicuously state that the communication has been so authorized. The communication must also clearly state the name and address of the person who made or financed the expenditure for the communication.

In addition, these requirements apply to any communication that names or depicts a clearly identified candidate and that is disseminated to voters in the last 21 days before the primary election or in the last 35 days before the general election.

The following are examples of suitable attribution statements for political communications financed:

By a Candidate

- Paid for and authorized by John Doe, 2 Main Street, Pinetree City
- Paid for and authorized by the candidate, 2 Main Street, Pinetree City (where the candidate's full name is clearly stated in the communication)



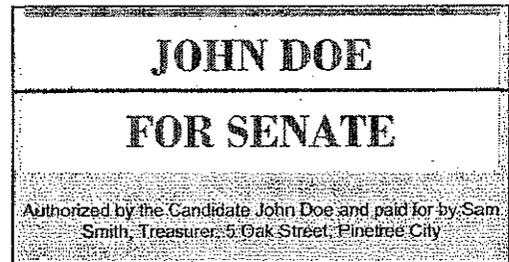


By a Candidate's Political Committee

- Authorized by the Candidate and paid for by the Committee to Elect John Doe,
2 Main Street, Pinetree City

By a Candidate's Agents

- Authorized by Candidate John Doe and paid for by Sam Smith, Treasurer, 5 Oak Street, Pinetree City;
- Paid for by the Candidate and authorized by John Jones, Chairman of Committee to Reelect John Doe, 1 Cool Street, Pinetree City



Communications Exempt from Disclosure

Certain items are exempt from the disclosure requirement because of their small size: ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, and tickets to fund-raisers. The Commission may exempt similar items if it determines those items are too small and, therefore, it would be unnecessary to include the required disclosure.

Automated Telephone Calls

Prerecorded automated telephone calls and scripted live telephone calls that name a clearly identified candidate during the 21 days before a primary election or 35 days before a general election must include the name of the person who made or financed the communication, except that the disclosure is not required for prerecorded automated calls paid for by the candidate using the candidate's voice and are made in support of that candidate.

Communications Not Authorized by the Candidate

Similar requirements apply to communications that are paid for by third-parties such as political action committees, party committees and individuals and that are not authorized by the candidates. Those communications must disclose the person who made or financed the communication and that the communication was not authorized by the candidate or campaign.