

Agenda

Item #7



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: June 18, 2008
Re: Proposed Advice on Reporting Requirements for Ballot Question Committees

Background on Chapter 477

In 2000, the Legislature required campaign finance reporting for organizations which do not qualify as political action committees (PACs) but which raise or spend money to influence a ballot question. These are organizations which have a major purpose other than influencing ballot questions (*e.g.*, lobbying groups in Maine, national advocacy organizations). The reporting requirement was enacted as 21-A M.R.S.A. § 1056-B. It covers “contributions ... and expenditures [made] ... for the purpose of initiating, promoting, defeating or influencing in any way a ballot question ...” (emphasis added). The staff has interpreted the underlined language to signal a legislative intent that the reporting requirement covers a broad range of activities conducted for the purpose of influencing the ballot question.

The Commission created a form for § 1056-B reports (attached) but relatively few reports were filed until 2006. In that year, the Commission received a number of § 1056-B reports from organizations seeking to support or oppose the Taxpayer Bill of Rights

(TABOR) citizen initiative. These organizations did not qualify as political action committees because their major purpose was not influencing the TABOR election. In addition, the Commission received a number of complaints about organizations influencing the TABOR election, including a complaint filed against the Maine Heritage Policy Center which received attention in the press.

In 2007, three bills were submitted to the Legislature amending the § 1056-B reporting requirement, including a bill from the Commission.¹ All three bills received public hearings before the Commission's oversight committee, the Joint Standing Committee on Legal and Veterans Affairs. The Legislature chose to adopt Chapter 477 (largely based on the Commission's bill) which modified the PAC definition and amended the reporting requirements of § 1056-B filers. In Chapter 477, the Legislature:

- introduced a new legal category ("ballot question committees") to refer to organizations required to file § 1056-B reports;
- increased the reporting threshold triggering an obligation to file campaign finance reports from \$1,500 to \$5,000;
- required ballot question committees to register with the Commission within seven days of raising or spending \$5,000 to influence a ballot question, which included the registration of a treasurer and all primary decision-makers for the committee; and
- mandated that ballot question committees must keep specific financial records such as vendor invoices and detailed accounts of contributions.

Significantly, Chapter 477 did not alter the basic language describing the financial activities covered by the reporting requirement: "contributions ... and expenditures

¹ Those three bills were: LD 490, which limited the § 1056-B reporting requirement to organizations which engaged in express advocacy or purchased advertising to initiate, promote, defeat, or influence a ballot question; LD 508, which required, among other things, the reporting of expenditures to paid staff to influence a ballot question; and LD 1394, the Commission's bill.

[made] ... for the purpose of initiating, promoting, defeating or influencing in any way a ballot question ...”

Proposed Guidance for Ballot Question Committees

To offer better guidance to § 1056-B filers, the staff proposes the attached guidance for your consideration. This draft guidance is an amended version of guidance you have seen previously in draft form. With the permission of the Chair, the staff postponed your consideration of the guidance in order to update it to reflect new provisions enacted in Chapter 477. On May 30, 2008, the Commission staff distributed the proposed guidance for public comment. To date, we have received comments from Patricia A. Peard, Esq. (discussed below) and comments from Carl Lindemann (attached).

Response to Comments by Patricia A. Peard, Esq.

Earlier today the Commission received comments of Patricia A. Peard, Esq. on behalf of Equality Maine, Gay and Lesbian Advocates and Defenders, the Maine Civil Liberties Union, and Maine Women’s Lobby (“the Organizations”).

The Express Advocacy Standard

First Amendment Limitations on Campaign Reporting Requirements

These Organizations urge the Commission to interpret 21-A M.R.S.A. §1056-B to limit its scope to activities that expressly advocate a position on a ballot question (e.g., campaign advertising or literature that includes messages such as “vote for TABOR” or “oppose the Oxford county casino”). I would caution you that the discussion of court

decisions on pages 2 - 5 of the memo is legal advocacy, and does not necessarily present a balanced view of the case law. The discussions do not include a number of federal appellate court decisions suggesting that governments can require the financial disclosure of campaign speech that goes beyond mere express advocacy.

Benefits and Shortcomings of the Express Advocacy Standard

There is no question that the express advocacy standard would provide a clear, bright line for individuals and groups to determine if they were required to file a § 1056-B report and what to include in a report.

From the staff's point of view, the problem with the express advocacy standard is that it can fail to capture a great deal of political speech that is clearly designed to promote or oppose a political candidate or question, which can undermine the transparency-in-government objectives of Maine's campaign finance law. It is not hard to design a public relations campaign that includes positive or negative messages about a candidate or ballot question, but which avoids explicitly urging voters to vote for or against.² The Organizations' memo makes a reference to citizen-initiated legislation that is being promoted by the Christian Civic League (CCL) relating to discrimination based on sexual orientation. If the Commission were to limit § 1056-B reporting to express advocacy and the CCL were to succeed in getting the question on the 2009 ballot, it would be possible

² In the 2006 gubernatorial election, the Republican Governors Association spent \$447,766 on television advertising that clearly promoted the candidacy of Senator Chandler Woodcock by touting his economic policies and experience, but it avoided expressly advocating for his election. Likewise, the Maine Democratic Party spent \$813,312 on television advertising in support of Governor Baldacci which avoided express advocacy. Because this advertising avoided campaign messages that expressly urged the public to vote for those candidates, the public was deprived of prompt, detailed independent expenditure reporting of those campaign expenditures.

for in-state or out-of-state groups that did not qualify as PACs to spend hundreds of thousands of dollars to support or oppose the citizen initiative which would not be publicly disclosed in campaign finance reports. While I do not believe that is the objective of the Organizations in endorsing the express advocacy standard, it could be one unwelcome consequence of the Commission adopting it.

Role of the Commission in Administering Campaign Finance Laws

The duty of the Commission as an administrative agency is to implement the political disclosure laws enacted by the Legislature. As noted above, the Legislature considered three bills in 2007 that proposed to amend the reporting requirements in § 1056-B. The Commission staff followed the progress of these bills in the Legal and Veterans Affairs Committee. We saw no evidence that the Committee or the Legislature intended to limit the § 1056-B reporting requirement to express advocacy. Indeed, that limitation was proposed in LD 490, which the Legal and Veterans Affairs Committee voted unanimously ought not to pass.

Instead, the Legal and Veterans Affairs Committee inserted a sentence in the first paragraph of § 1056-B clearly indicating that paid staff time spent for the purpose of influencing a ballot question election “in any way” was among the expenditures which must be reported in a § 1056-B report (“For the purposes of this section, expenditures include paid staff time spent for the purpose of influencing in any way a ballot question.”). This insertion suggests a legislative preference for broader disclosure of expenditures made to influence an election, not a narrower approach.

The staff agrees with the Organizations that the Commission ought to be sensitive to the First Amendment rights of candidates and political groups, in interpreting and administering Maine's campaign finance laws. The Commission should avoid actions that clearly violate First Amendment limitations on government. Nevertheless, the Commission does have a duty to carry out the campaign finance law as it is written. Indeed, if a zealous complainant believed that the Commission unduly limited the scope of the laws that it is charged with administering and thereby neglected its statutory mandate, the Commission could find itself challenged in a court proceeding for failing to perform its statutory responsibilities.

Improving the Proposed Guidance

It was certainly not the staff's intention to require the disclosure in a § 1056-B report of educational and advocacy activities that are unrelated to a ballot question. In our view, most of the historical activities described in pages 5-10 of the Organizations' memo predated the CCL initiative and would not be covered by the § 1056-B reporting requirements. If you agree with the basic approach of the proposed guidance but believe it should be improved to provide better advice to address the types of situations described in the memo, the staff would be pleased to make whatever improvements you suggest that could be considered at a future meeting. We would like to achieve the very best advice for § 1056-B filers even if it delays the Commission's issuance of the guidance for one or two months. Thank you for your consideration of the proposed guidance.



Guidance on Reporting as a Ballot Question Committee (effective June 30, 2008)

What is a ballot question committee?

Most organizations that raise or spend money to influence a statewide ballot question in Maine form a political action committee (PAC) for that purpose, and file regular PAC reports with the Commission. Some advocacy, charitable, or other organizations do not qualify as PACs under the Election Law, but they are interested in raising and spending money to influence a ballot question. In 2000, the Maine Legislature enacted 21-A M.R.S.A. § 1056-B to create a reporting requirement for these non-PAC organizations. Effective June 30, 2008, the Election Law designates these organizations as "ballot question committees" and they will be required to register with the Commission. Under the new requirements,

[a]ny person not defined as a political action committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$5,000 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the Commission.

The complete language of 21-A M.R.S.A. § 1056-B is attached to this memo.

Does the requirement apply only to individuals?

No. Under Maine Election law, the term "person" includes individuals, committees, firms, partnerships, corporations, associations, or organizations.

When do ballot question committees have to register with the Commission?

Within seven days of receiving contributions or making expenditures to influence an election that exceed \$5,000, a ballot question committee must register with the Commission.

How do ballot question committees register with the Commission and file financial reports?

The committee must register and file campaign finance reports using paper forms (available on the Commission's website). At this time, ballot question committees cannot file campaign finance reports electronically.

Third Draft

What contributions must be reported by ballot question committees?

Section 1056-B covers "contributions [received] for the purpose of initiating, promoting, defeating or influencing in any way a ballot question" This includes:

- funds that the contributor specified were given in connection with a ballot question;
- funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating, promoting, defeating or influencing in any way a ballot question;
- funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating, promoting, defeating or influencing in any way a ballot question when viewed in the context of the contribution and the recipient's activities regarding a ballot question; and
- funds or transfers from the general treasury of an organization filing a ballot question report.

Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used to support an organization's general activities, rather than activities relating to a ballot question, do not need to be reported.

A ballot question committee is not required to itemize contributions from a single source that aggregate \$100 or less in any election.

What expenditures must be reported by a ballot question committee?

Section 1056-B covers "expenditures made for the purpose of initiating, promoting, defeating or influencing in any way a ballot question" The Commission interprets this to include:

- 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 or volunteers who are conducting activities to promote or oppose a ballot question;

- staff time preparing presentations, testimony, letters to the editor, opinion pieces, articles for publication, or press releases to promote or oppose a ballot question;
- research or technical analysis, including the writing of reports, where the organization knows or reasonably should know that the results will be used to promote or oppose a ballot question; and
- expenditures to distribute research or technical analysis regarding 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.

What expenditures are not covered by § 1056-B?

Ballot question committees are not required to itemize expenditures to a single payee that total \$100 or less in an election. Also, expenditures made merely to educate voters or others in a neutral way about a ballot question are not covered by § 1056-B. These would include:

- 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;
- costs of distributing news stories, commentary, or editorials concerning a ballot question 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; and
- research or analysis concerning a ballot question which is not conducted for the purpose of initiating, promoting, or defeating the ballot question. This could include research that is presented in a neutral fashion and is intended to be communicated to opinion leaders, in academic settings, or to the public at large, provided that it is not intended to persuade anyone to vote for or against the question. 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 conducted or communicated for the purpose of promoting or defeating the question, they would not be covered by § 1056-B.

Do “expenditures [made] ... for the purpose of initiating ... a ballot question” include payments to staff or other expenses incurred in drafting legislation intended as a direct initiative?

Yes. If an organization pays its employees (or incurs other expenses) to draft legislation that the organization intends will be submitted to the Secretary of State as a direct initiative (even if submitted by a different organization or individuals), those expenses should be counted as expenditures made to initiate a ballot question.

What about expenditures to circulate ballot question petitions to collect signatures, and other expenses of advocates for and against a ballot question during the signature-gathering phase?

In 2006, the Legislature amended the term “expenditure” to clarify that payments of money to collect signatures for a ballot question must be reported. The Commission interprets the “expenditures [made] ... for the purpose of ... defeating or influencing in any way” includes payments made by opponents of the ballot question during the time period in which proponents may gather petition signatures.

What if an organization raises money to give to a PAC?

If an organization solicits and receives contributions for the purpose of influencing a ballot question and gives those funds to a PAC, the contributions received by the organization count towards the \$5,000 threshold. For example, if a trade association solicits funds from its members in order to make a contribution to a PAC involved in a ballot question, the trade association may have to register as a ballot question committee if it raised more than \$5,000. It is not the contribution to the PAC that triggers the registration requirement; it is the fund-raising activity by the trade association that triggers it.

What if an organization contributes or transfers funds to another organization which is not a PAC?

A contribution or transfer of funds from one organization to another organization for the purpose of influencing a ballot question counts towards the \$5,000 threshold as an expenditure made by the first organization.

What if an organization donates the time of its paid employees to a PAC to influence a ballot question or makes payments to vendors for goods or services to influence a ballot question in coordination with a PAC?

Donating paid staff to a PAC, or coordinating expenditures with a PAC are in-kind contributions to the PAC. They do not count toward the \$5,000 expenditure threshold that would trigger filing of a § 1056-B report by the donor; however, the PAC must report them as in-kind contributions.

An organization's expenditures to influence a ballot question may be considered an in-kind contribution to a PAC only if they are coordinated with the PAC or are accepted by a PAC. Expenditures to influence a ballot question made independently of the PAC should not be considered contributions to the PAC and would count toward the \$5,000 threshold.

Guidance to PACs and Contributors on the Reporting of In-Kind Contributions

In 2006, some PACs involved in ballot question campaigns reported receiving significant in-kind contributions from other organizations, but provided little detail regarding the goods and services they received. In future elections, the Commission will request that PACs provide more detail about large in-kind contributions they have received. For example, if a PAC reports that it received significant paid staff time from another organization, it should include a description of those staff activities and the number of hours of staff time that were contributed. A PAC's reporting of coordinated spending made by a contributor should include a brief description of the goods and services that were purchased and their value. Contributed staff and coordinated expenditures should not be lumped together as a single contribution for the reporting period, but should be itemized as separate contributions.

Other Guidance

If you have any questions, please telephone the Commission's PAC/Party/Lobbyist Registrar, Jeremy Brown, at 287-4179.

21-A M.R.S.A. § 1056-B. Ballot Question Committees

Any person not defined as a political action committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$5,000 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. Within 7 days of receiving contributions or making expenditures that exceed \$5,000, the person shall register with the commission as a ballot question committee. For the purposes of this section, expenditures include paid staff time spent for the purpose of influencing in any way a ballot question. The commission must prescribe forms for the registration, and the forms must include specification of a treasurer for the committee, any other principal officers and all individuals who are the primary fund-raisers and decision makers for the committee.

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 expenditure made to and contribution received from a single source aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name and address of each contributor, payee or creditor. The filer is required to report only those contributions made to the filer for the purpose of initiating, promoting, defeating or influencing in any way a ballot question and only those expenditures made for those purposes. The definitions of "contribution" and "expenditure" in section 1052, subsections 3 and 4, respectively, apply to persons required to file ballot question reports.

2-A. Contributions. For the purposes of this section, "contribution" includes, but is not limited to:

A. Funds that the contributor specified were given in connection with a ballot question;

B. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating, promoting, defeating or influencing in any way a ballot question;

C. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating, promoting, defeating or influencing in any way a ballot question when viewed in the context of the contribution and the recipient's activities regarding a ballot question; and

D. Funds or transfers from the general treasury of an organization filing a ballot question report.

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.

4. Records. A person filing a report required by this section shall keep records as required by this subsection for one year following the election to which the records pertain.

A. The filer shall keep a detailed account of all contributions made to the filer for the purpose of initiating, promoting, defeating or influencing in any way a ballot question and all expenditures made for those purposes.

B. The filer shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50.



2008 CAMPAIGN FINANCE REPORT – BALLOT QUESTION COMMITTEES

FOR PERSONS AND ORGANIZATIONS INVOLVED IN BALLOT QUESTION ELECTIONS (OTHER THAN PACs) (21-A M.R.S.A. § 1056-B)

COMMITTEE OR FILER Check if address is different than previously reported.

Name _____
 (full name of individual, committee, firm, partnership, corporation, association, group or organization)

Mailing address _____

City, zip code _____ Telephone _____

TREASURER Check if treasurer or address is different than previously reported.

Name of treasurer _____

Mailing address _____

City, zip code _____ Telephone _____

E-mail address _____

PURPOSE FOR RECEIVING CONTRIBUTIONS AND MAKING EXPENDITURES IS TO: **SUPPORT** **OPPOSE**

Ballot Question Number (if known): _____ Ballot Question Title/Issue: _____

BALLOT MEASURE COMMITTEE FILING PERIODS (please indicate which report is being filed):

The first report must include all financial activity from the beginning of the campaign to the end of the report period.

- | <input type="checkbox"/> | Report Type | Due Date | Reporting Period |
|--------------------------|--|-------------------|-------------------------------------|
| <input type="checkbox"/> | 11-Day Pre-Primary | May 30, 2008 | April 1, 2008 – May 27, 2008 |
| <input type="checkbox"/> | 42-Day Post-Primary | July 22, 2008 | May 28, 2008 – July 15, 2008 |
| <input type="checkbox"/> | October Quarterly | October 10, 2008 | July 16, 2008 – September 30, 2008 |
| <input type="checkbox"/> | 11-Day Pre-General | October 24, 2008 | October 1, 2008 – October 21, 2008 |
| <input type="checkbox"/> | 42-Day Post-General | December 16, 2008 | October 22, 2008 – December 9, 2008 |
| <input type="checkbox"/> | January Quarterly | January 15, 2009 | December 10, 2008 – January 5, 2009 |
| <input type="checkbox"/> | <u>Amended Report:</u> If this report is an amendment to a previously filed report, check the appropriate report above and this box. | | |
| <input type="checkbox"/> | <u>No Activity Report:</u> If the committee had <u>no</u> contributions and <u>no</u> expenditures during a reporting period, check the appropriate report and this box. | | |
| <input type="checkbox"/> | <u>Termination Report:</u> If this is the committee's last report, check the appropriate report above and this box. | | |

I CERTIFY THAT I HAVE EXAMINED THIS REPORT AND TO THE BEST OF MY KNOWLEDGE, IT IS TRUE, CORRECT AND COMPLETE.

 Signature of Treasurer, Principal Officer or Authorized Individual

 Date

SCHEDULE A CASH CONTRIBUTIONS

List all contributions aggregating in excess of \$100 for this election that were received during this reporting period and include the contributor's name and address. Do not include in-kind contributions or loans on this schedule. Contributions of \$100 or less may be aggregated and listed as a lump sum.

| Date received | Contributor's name, address, and zip code | Amount |
|---|---|--------|
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| | | |
| 1. Total contributions this page only ⇒ | | |
| 2. Total from attached pages (Schedule A) ⇒ | | |
| 3. Aggregate contributions of \$100 or less (not itemized) ⇒ | | |
| 4. Total contributions this reporting period (add lines 1 + 2 + 3) ⇒ | | |

SCHEDULE C IN-KIND CONTRIBUTIONS

List all goods and services received as in-kind contributions that have a fair market value of more than \$100. Enter the date on which the item or service was received, the name of the contributor, a description of the good or service, and the fair market value. Goods and services that have a fair market value of \$100 or less may be aggregated and reported as a lump sum.

| Date of contribution | Name of contributor | Description of goods, services, discounts or facilities received | Fair market value |
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1. Total in-kind contributions this page only ⇒

2. Total from attached Schedule C pages ⇒

3. Aggregate in-kind contributions of \$100 or less (not itemized) ⇒

4. Total in-kind contributions received and expended this reporting period (add lines 1 + 2 + 3) ⇒

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SCHEDULE D LOANS AND LOAN REPAYMENTS

List all new and continuing loans that were unpaid at any time during this reporting period. If a loan amount is forgiven, the amount forgiven must also be entered as a contribution on Schedule A.

| | COLUMN 1 | COLUMN 2 | COLUMN 3 | COLUMN 4 | COLUMN 5 |
|---------------------------------|---|--|---------------------------------|---|--|
| LENDER | LOAN BALANCE AT BEGINNING OF PERIOD | ACTIVITY THIS PERIOD (report amount and date) | | | LOAN BALANCE AT END OF PERIOD (1+2) - 3 - 4 |
| | | AMOUNT LOANED THIS PERIOD | AMOUNT REPAID THIS PERIOD | AMOUNT FORGIVEN THIS PERIOD (Enter each on Schedule A also) | |
| | | DATE AMOUNT | DATE AMOUNT | DATE AMOUNT | |
| | | DATE AMOUNT | DATE AMOUNT | DATE AMOUNT | |
| | | DATE AMOUNT | DATE AMOUNT | DATE AMOUNT | |
| | | DATE AMOUNT | DATE AMOUNT | DATE AMOUNT | |
| | | DATE AMOUNT | DATE AMOUNT | DATE AMOUNT | |
| | | DATE AMOUNT | DATE AMOUNT | DATE AMOUNT | |
| Totals for each column ⇒ | | Enter on Schedule E, line 2 | Enter on Schedule E, line 6 | | |

**SCHEDULE E
SUMMARY SECTION**

RECEIPTS

THIS PERIOD ONLY TOTAL FOR CAMPAIGN

- 1. Contributions received (Schedule A, line 4)
- 2. Other receipts (interest income, etc.)
- 3. Loans received (Schedule D)
- 4. TOTAL RECEIPTS THIS PERIOD (lines 1 + 2 + 3)

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EXPENDITURES

THIS PERIOD ONLY TOTAL FOR CAMPAIGN

- 5. Expenditures (Schedule B, line 3)
- 6. Loan repayments (Schedule D)
- 7. TOTAL EXPENDITURES THIS PERIOD (lines 5 + 6)

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IN-KIND CONTRIBUTIONS

THIS PERIOD ONLY TOTAL FOR CAMPAIGN

- TOTAL IN-KIND CONTRIBUTIONS (Schedule C, line 4)

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PLEASE NOTE: Legislative Information *cannot* perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act Regarding Campaign Finance Disclosure by Political Action Committees

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 21-A MRSA §1051, first ¶, as amended by PL 2007, c. 443, Pt. A, §26, is further amended to read:

This subchapter applies to the activities of political action committees organized in and outside this State that accept contributions, incur obligations or make expenditures ~~in an aggregate amount in excess of \$1,500 in any one calendar year~~ for the election of state, county or municipal officers, or for the support or defeat of any campaign, as defined in this subchapter.

Sec. 2. 21-A MRSA §1052, sub-§5, ¶A, as amended by PL 2005, c. 575, §5, is further amended to read:

A. Includes:

(1) Any separate or segregated fund established by any corporation, membership organization, cooperative or labor or other organization whose purpose is to influence the outcome of an election, including a candidate election or ballot 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~~initiating, promoting, defeating or influencing a candidate election, campaign or ballot question and that 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~~for that purpose, including for the collection of signatures for a direct initiative,or referendum in this State; and

(5) Any organization that does not have as its major purpose promoting, defeating or influencing candidate elections but that spends more than \$5,000 in a calendar year for the purpose of promoting, defeating or influencing in any way the nomination or election of any candidate to political office; and

Sec. 3. 21-A MRSA §1053, first ¶, as amended by PL 2005, c. 575, §6, is further amended to read:

Every political action committee, as defined under section 1052, subsection 5, paragraph A, subparagraph (1) or (4), that accepts contributions, incurs obligations or makes expenditures in the aggregate in excess of \$1,500 in any single calendar year to initiate, support, defeat or influence in any way a campaign, referendum, initiated petition, including the collection of signatures for a direct initiative, candidate, political committee or another political action committee and every political action committee, as defined under section 1052, subsection 5, paragraph A, subparagraph (5), that makes expenditures in the aggregate in excess of \$5,000 must register with the commission, within 7 days of accepting those contributions, incurring those obligations or making those expenditures, exceeding the applicable amount on forms prescribed by the commission. These forms must include the following information and any additional information reasonably required by the commission to monitor the activities of political action committees in this State under this subchapter:

Sec. 4. 21-A MRSA §1056-B, as enacted by PL 1999, c. 729, §8, is amended to read:

§ 1056-B. Ballot question committees

Any person not defined as a political action committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500\$5,000 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. Within 7 days of receiving contributions or making expenditures that exceed \$5,000, the person shall register with the commission as a ballot question committee. For the purposes of this section, expenditures include paid staff time spent for the purpose of influencing in any way a ballot question. The commission must prescribe forms for the registration, and the forms must include specification of a treasurer for the committee, any other principal officers and all individuals who are the primary fund-raisers and decision makers for the committee.

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 expenditure made to and contribution received and expenditure made from a single source aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name and address 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. The filer

is required to report only those contributions made to the filer for the purpose of initiating, promoting, defeating or influencing in any way a ballot question and only those expenditures made for those purposes. The definitions of "contribution" and "expenditure" in section 1052, subsections 3 and 4, respectively, apply to persons required to file ballot question reports.

2-A. Contributions. For the purposes of this section, "contribution" includes, but is not limited to:

- A. Funds that the contributor specified were given in connection with a ballot question;
- B. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating, promoting, defeating or influencing in any way a ballot question;
- C. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating, promoting, defeating or influencing in any way a ballot question when viewed in the context of the contribution and the recipient's activities regarding a ballot question; and
- D. Funds or transfers from the general treasury of an organization filing a ballot question report.

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.

4. Records. A person filing a report required by this section shall keep records as required by this subsection for one year following the election to which the records pertain.

- A. The filer shall keep a detailed account of all contributions made to the filer for the purpose of initiating, promoting, defeating or influencing in any way a ballot question and all expenditures made for those purposes.
- B. The filer shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50.

Sec. 5. 21-A MRSA §1058, as amended by PL 2007, c. 443, Pt. A, §34, is further amended to read:

§ 1058. Reports; qualifications for filing

~~A political action committee that is registered~~required to register with the commission ~~or that accepts contributions or makes expenditures and incurs obligations in an aggregate amount in excess of \$1,500 on any one or more campaigns for the office of Governor, for state or county office or for the support or defeat of a referendum or initiated petition shall file a report on its activities in that campaign with the commission on forms as prescribed by the commission. A political action committee organized in this State required under this section to file a report shall file the report for each filing period under section 1059. A political action committee organized outside this State shall file with the Commission on Governmental Ethics and Election Practices of this State a copy of the report that the~~

political action committee is required to file in the state in which the political action committee is organized. The political action committee shall file the copy only if it has expended funds or received contributions or made expenditures in this State. The copy of the report must be filed in accordance with the schedule of filing in the state where it is organized. If contributions or expenditures are made relating to a municipal office or referendum, the report must be filed with the clerk in the subject municipality.

Sec. 6. 21-A MRSA §1060, sub-§6, as amended by PL 2007, c. 443, Pt. A, §36, is further amended to read:

6. Identification of contributions. Names, occupations, places of business and mailing addresses of contributors who have given more than \$50 to the political action committee in the reporting period and the amount and date of each contribution, except that an organization qualifying as a political action committee under section 1052, subsection 5, paragraph A, subparagraph (5) is required to report only those contributions made to the organization for the purpose of promoting, defeating or influencing a ballot question or the nomination or election of a candidate to political office and all transfers to or funds used to support the political action committee from the general treasury of the organization; and

Sec. 7. 21-A MRSA §1060, sub-§7, as enacted by PL 1991, c. 839, §31 and affected by §33, is amended to read:

7. Other expenditures. Operational expenses and other expenditures in cash or in kind that are not made on behalf of a candidate, committee or campaign, except that an organization qualifying as a political action committee under section 1052, subsection 5, paragraph A, subparagraph (5) is required to report only those expenditures made for the purpose of promoting, defeating or influencing a ballot question or the nomination or election of a candidate to political office.

Effective June 30, 2008



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

MEMORANDUM

To: Interested Persons

From: Jonathan Wayne, Executive Director

Date: May 30, 2008

Subject: Opportunity to Comment on Ballot Question Reporting

The Ethics Commission is soliciting comments on proposed guidance on ballot question reporting. The reporting requirements were recently modified by the Legislature in Chapter 477 of the Public Laws of 2007, and the amended requirements become effective June 30, 2008. Under the amended law, organizations which raise or spend more than \$5,000 to influence ballot questions and which do not qualify as political action committees (PACs) must file reports with the Ethics Commission under 21-A M.R.S.A. § 1056-B.

The Commission will consider the proposed guidance at its meeting on Friday, June 27, at 9:00 a.m., and you are invited to comment at the meeting. You are welcome to comment on the proposed guidance in writing or in person at the June 27 meeting. Your written comments will be most helpful if the Commission receives them no later than Tuesday, June 17, so that the Commission members can read them in advance of the meeting. My e-mail address is Jonathan.Wayne@maine.gov.

If you have any questions, please telephone me at 287-4179. Thank you for your consideration of the proposed amendments.

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

To: Jonathan Wayne, Executive Director and the Commissioners, Commission on Governmental Ethics and Election Practices

From: Patricia A. Peard, Esquire on behalf of EqualityMaine, Gay & Lesbian Advocates & Defenders, Maine Civil Liberties Union, and Maine Women's Lobby

Date: June 18, 2008

Re: Comments on Proposed Guidance on Ballot Question Reporting
21-A M.R.S.A. §1056-B

The groups listed above appreciate the opportunity to submit these comments on the Third Draft of the "Guidance on Reporting as a Ballot Question Committee." There are dueling interests that must be balanced as the Commission acts to put these guidelines in place. Through the passage of 21-A M.R.S.A. §1056-B, the legislature has determined that there is an important governmental purpose to monitor traditional advocacy and charitable groups that "solicit, receive contributions or make expenditures . . . for the purpose of initiating, promoting, defeating or influencing in any way a ballot question." The Legislature certainly intended, at least in part, that this monitoring insure transparency in these covered activities. At the same time, all of these advocacy groups have a long and well established history of engaging in extensive and ongoing educational activities. Their right to be free from governmental burdens on and regulation of their speech as they engage in these advocacy and educational activities is protected by the First Amendment. The Commission must insure that the guidelines that are ultimately adopted do not sweep so broadly as to interfere with the rights of these groups to engage in their traditional advocacy activities which are now and have historically been central to their missions.

The Christian Civic League of Maine ("CCL") is now circulating a petition approved by the Secretary of State's office on May 7, 2008 in order to attempt to place citizen initiated legislation on the ballot in 2009. The title of this proposed initiative is "An Act to Remove Protections Based on Sexual Orientation from the Maine Human Rights Act, Eliminate Funding

of Civil Rights Teams in Public Schools, Prohibit Adoptions by Unmarried Couples, Add a Definition of Marriage, and Declare Civil Unions Unlawful.” The panoply of issues (including but not limited to: marriage equality, adoption, civil rights teams in Maine schools, civil unions, and protections against discrimination based on sexual orientation) covered in this proposed legislation touches on many issues that have always been part of the educational advocacy work of the groups listed above. The mere act of circulating an initiative petition that sweeps all of these issues into a “ballot question” that is covered by the provisions of 21-A M.R.S.A. 1056-B cannot be enough to convert the historical educational work of these advocacy groups into activities that would force these groups to register as Ballot Question Committees. The law will not permit it.

Title 21-A M.R.S.A. § 1056-B explicitly covers “expenditures made for the purpose of initiating, promoting, defeating or influencing in any way a ballot question.” The Commission must assume that the legislature did not intend this statute to conflict with settled First Amendment jurisprudence. We urge you to craft the Commission’s “Guidance on Reporting as a Ballot Question Committee” in such a way as to ensure that the Commission and the public understand the appropriate scope of this statute’s reach and the proper standards for any Commission inquiries.

In interpreting the legitimate scope of regulations on political speech, which forms the core of the First Amendment’s protections, the U.S. Supreme Court has developed the “express advocacy” test, which cautions that the extent of the government’s legitimate interest only extends to material that expressly advocates for the support or defeat of a particular political position. Simply put, the “express advocacy” rule defines the line between speech that may be regulated and speech that may not. All speech which does not in express terms advocate the

election or defeat of a clearly identified candidate or the adoption or rejection of a ballot measure is outside the scope of permissible regulation. “So long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views,” *Buckley v. Valeo*, 424 U.S. 1, 45 (1976), and they are also free from reporting and disclosure requirements. *Id.* at 79-80. *See also* *FEC v. Massachusetts Citizens for Life*, 479 U.S. at 238 (same). As the Court recognized in *Buckley*, the First Amendment demands a bright line because political campaigns in the real world so rarely provide one. “Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest.” *Id.* at 42.

Though much of the case law in this area has involved political speech related to candidates, the law applies equally to issue campaigns. And in the years since *Buckley*, the express advocacy doctrine has become an indispensable bulwark against overzealous efforts to regulate core political speech. From *FEC v. Central Long Island Tax Reform Immediately Committee*, 616 F.2d 45 (2d Cir. 1980) (en banc) (finding that Commission’s enforcement suit against a tax protest group to be “totally meritless”), to *Clifton v. FEC*, 114 F.3d 1309 (1st Cir. 1997) (invalidating FEC regulations on limiting voter guides), the government has suffered “a string of losses in cases between the FEC and issue advocacy groups over the meaning of the phrase ‘issue advocacy’ and the permissible scope of the FEC’s regulatory authority over political speech.” *Federal Election Commission v. Christian Action Network, Inc.*, 110 F.3d 1049, 1064 (4th Cir. 1997) (authorizing an award of fees and costs against the Commission for bringing enforcement proceedings against an issue group in clear violation of this Court’s

“express advocacy” doctrine). *See also Chamber of Commerce v. Moore*, 288 F.3d 187, 193 (5th Cir. 1999).

Those cases can and should stand as a cautionary tale for the Commission. The express advocacy rule provides political speech with the “breathing space” required by the First Amendment, *NAACP v. Button*, 371 U.S. 415, 433 (1963), and creates a constitutional shield that is designed to safeguard uninhibited public debate on issues of obvious public concern.

As recently as 2007 the Supreme Court reiterated that the proper inquiry for “express advocacy” focuses “on the substance of the communication rather than amorphous considerations of intent and effect.” *FEC v. Wisconsin Right to Life*, 127 S.Ct. 2652, 2666 (2007); *citing Buckley*, at 43- 44. Rules tailored to the substance of communications are easy to understand and easy to enforce fairly. In *Buckley*, the Supreme Court provided a list of terms denoting express advocacy and cautioned regulators against restricting political speech lacking such clear indicia. *See id.*, at 44 fn. 52. The Court limited the application of political speech restrictions to “communications containing express words of advocacy of election or defeat, such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ ‘reject.’”

The Commission’s guidelines will be most helpful to organizations who must decide if they are required to register as a Ballot Question Committee, if they clearly and unambiguously adopt the guidance that the Supreme Court has provided as set forth above. This will eliminate confusion on the part of the public and will provide a basis for fair and consistent enforcement by the Commission staff. Any alternative scheme based on an interpretation of context, or a searching inquiry into “purpose” or “effect” is unacceptable. The Supreme Court has clearly and unambiguously rejected the “purpose” and “effects” test for political speech regulation and has

cautioned against context-based inquiries into "the open-ended rough-and-tumble of factors," which "invit[es] complex argument in a trial court and a virtually inevitable appeal." *Wisconsin Right to Life*, 127 S.Ct. at 2667, citing *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 547 (1995).

Finally, these groups also request that the guidelines should make it clear that any doubts or ambiguity should and will be resolved in favor of the right of individuals and groups to engage in political speech without restriction. If there is any reasonable doubt about whether communications or activities come within the purview of the statute, the Commission "must give the benefit of any doubt to protecting rather than stifling speech." *Sullivan* 376 U.S. at 269-270. "Where the First Amendment is implicated, the tie goes to the speaker, not the censor." *Wisconsin Right to Life*, 127 S.Ct. at 2669.

The application of the express advocacy standard to the work of EqualityMaine ("EQME") serves as a good example of where clear lines must be drawn in the Commission guidelines. EQME has been speaking out against discrimination based on sexual orientation for over 25 years. See www.equalitymaine.org. One of the many ways in which it carried out this core purpose of its mission was to amass stories of Maine citizens who had actually been discriminated against in their employment, housing, credit and education. These stories were presented at many places, including the legislature and on EQME's website. These individuals also spoke at house parties arranged by EQME. Similarly, EQME has been holding meetings and house parties and sending out mailings explaining to people the facts about what the actual consequences are for committed lesbian and gay couples who are not permitted to marry in Maine. All of these activities started long before the CCL petition was approved for circulation by the Secretary of State and these activities and more like them continue today. These activities

are central to the purpose of EQME and it is clear they run directly counter to the intent and purpose of the CCL petition. EQME must be permitted to continue these activities without being required to register and report these activities as a Ballot Question Committee..

After the CCL petition was approved for circulation, however, EQME undertook additional activities to those listed above. For example, it sent out mailings which asked directly for donations to oppose the signature gathering by CCL and asked people not to sign the petition. There is no doubt that this activity is covered under 21-A M.R.S.A. § 1056-B and EQME has registered as Ballot Question Committee in order to properly report this portion of their activity. However, this registration and reporting requirement cannot now be read by the Commission to sweep in all of the activities that EQME has historically engaged in to oppose discrimination, support marriage equality or work to protect families by allowing same sex parents to adopt, where there is no direct request to citizens asking or directing them to take any specific action with respect to the CCL petition. The historical advocacy and educational work of EQME may have the effect of causing citizens to oppose the CCL petition but that “effect” cannot be the appropriate test. The express advocacy test makes it clear that it is only the substance of EQME’s, or any other organization’s, communications that may properly be evaluated under the Commission guidelines.

Gay & Lesbian Advocates & Defenders (“GLAD”) provides another worthwhile example. GLAD is celebrating its 30th anniversary as “New England’s leading legal rights organization dedicated to ending discrimination based on sexual orientation, HIV status and gender identity and expression.” See GLAD Mission Statement at <http://www.glad.org>. Throughout these thirty years GLAD has done extensive work in Maine, “providing litigation, advocacy and educational work in all areas of gay, lesbian, bisexual and transgender civil rights

and the rights of people living with HIV.” *Id.* In the course of its work in Maine GLAD has educated and advocated on every single issue raised in the CCL petition, and has done so for many years.¹ On the GLAD website there is an entire section dealing the legal rights of Maine LGBT citizens in several areas, including employment, education and student rights, family law including adoption rights, protections for LGBT youth, and others. See http://www.glad.org/rights/maine_lgbt.shtml. In addition, there is a vast amount of information on marriage equality, including an analysis of the federal benefits denied to LGBT couples because they cannot marry, two detailed documents about Maine law and marriage, namely an analysis of probate-related protections for married persons and employment-related protections workplace, and explanations of the differences between marriage and civil union. See <http://www.glad.org/marriage/>. It has also helped to feature couples who wish to marry, both through written materials and a DVD co-produced with Equality Maine and the Maine Civil Liberties Union.² In short, GLAD zealously advocates for and educates about any and all issues related to how the law treats gay and non-gay people differently, with a goal of ending privileged places in law based on sexual orientation, both in Maine and throughout New England.

GLAD has historically provided and continues to provide education and advocacy in all of the areas encompassed in the CCL petition. However, unlike EQME, GLAD has not directly asked Maine citizens not to sign the CCL petition and has not made any fundraising appeals to

¹ Among other things, GLAD has represented and advocated for people who have lost their jobs because they are gay, lesbian or transgender and its attorneys publicly speak about these issues. It has litigated to attain family protections, including but not limited to *Adoption of M.A. and R.A.*, the 2007 Law Court case acknowledging that unmarried couples have standing to petition to adopt jointly. GLAD has engaged in extensive public discussion about the underlying legal and child welfare issues in that case and others, including organizing public forums, and continues to do so. It has helped people obtain dissolutions of their civil unions obtained in Vermont and has discussed those issues publicly. GLAD attorneys regularly consult with young people and their families, as well as schools and child welfare professionals about issues facing youth. GLAD attorneys have litigated right to marry cases in Massachusetts and Vermont, and are counsel in pending cases in Connecticut, and engage in extensive public education about the couples and the issues involved.

² The DVD is entitled *The Way Life Should Be: Marriage in Maine*. The CCL itself publicized the existence of this DVD.

its donors requesting funds to oppose the CCL petition. There can be little doubt in anyone's mind that GLAD opposes the CCL petition but that "context" is not enough to convert their traditional work into activity that would force them to file and report as a Ballot Question Committee simply because the CCL petition is now being circulated. GLAD's activity at this moment in time is no different than it was before the petition began to be circulated. The guidelines must make it possible for GLAD to continue this work without registration as a Ballot Question Committee.

The Maine Women's Lobby ("MWL") which is celebrating its 30th anniversary has also traditionally been a strong advocate for marriage equality, the strengthening of Maine families by allowing same sex couples to adopt and opposing discrimination based on sexual orientation. MWL has worked to educate its members and the legislature about the real impact of discrimination based on sexual orientation through the distribution of fact sheets and the use of tabling events. It has disseminated a "white paper" on the importance of marriage equality and has worked to educate legislators about the harmful impact of marriage inequality through district meetings and one on one meetings. MWL also has worked in collaboration with others to promote forums on adoption by same sex couples. All of this work is directly related to the four core values of the organization. See <http://www.mainewomen.org/>. Like GLAD, MWL has not asked for contributions to oppose the CCL petition drive and has not asked individuals to refuse to sign the petition or in any other way directly advocated specifically with respect to the CCL petition. MWL will continue its educational and advocacy work which is clearly contrary to every position espoused in the CCL petition. Nonetheless, it should not be required to register as a Ballot Question Committee.

The Maine Civil Liberties Union (“MCLU”) is celebrating its 40th anniversary and equal protection for all people has been part of its mission since its founding in 1968. See <http://www.mclu.org>. The MCLU has, therefore, always stood against discrimination on the basis of sexual orientation through litigation, public education and advocacy. For a number of years, the MCLU headed the Workplace Equity Project, a project to end discrimination against LGBT people in the workplace. In more recent years the MCLU has been an advocate of marriage equality, participating in a comprehensive multi-media campaign to share the stories of lesbian and gay couples. The MCLU produced a photo exhibit highlighting the stories of gay and lesbian couples, a collaborative video titled “*Marriage in Maine: the Way Life Should Be,*” flyers and newsletter articles advocating for marriage equality for same sex couples. MCLU staff has spoken out in favor of marriage equality, joint adoption by same sex couples, and anti-discrimination protections at student conferences, public forums and house parties across the state from Fort Kent to Alfred. Finally, the MCLU has worked closely with civil rights teams in the schools on LGBT civil rights issues as well as other civil rights issues.

The MCLU has historically done this important work as part of its mission and will continue to do so. So long as it does not specifically request its members and/or others to oppose the CCL petition or attempt to raise money for the specific purpose of opposing the CCL petition, it should not be required to register as a Ballot Question Committee. It should, however be able to continue to raise money to promote marriage equality and to speak out against discrimination and harassment against children in schools based on their sexual orientation and other characteristics without being forced to register as a Ballot Question Committee just because the CCL petition raises these issues.

EQME, GLAD, the MCLU and the MWL appreciate the opportunity to provide these comments as the Commission considers its guidelines on Ballot Question Reporting under 21-A M.R.S.A. §1056-B. These organizations strongly urge the Commission to adopt guidelines that follow the requirements of the “express advocacy” test outlined above. The test for determining when a group’s activities require registration and reporting must be based on the substance of the group’s communication and not on any amorphous analysis of the possible intent or the effect of their communications. In short, the guidelines should contain a bright line test that will allow the Commission staff to avoid speculation about intent or effect and make it possible for organizations to clearly understand the requirement for them to register. To adopt any other standard will violate First Amendment protections for the traditional educational and advocacy work of many organizations in Maine similar to those submitting these comments. All of the organizations being represented here have a long transparent history of advocacy that must be respected. The Commission’s regulation cannot be vague and cannot sweep broadly enough to allow the mere filing of a citizen initiated petition or people’s veto petition on an issue to convert an organization’s historical educational and advocacy work on that issue into an activity that requires registration and monitoring by the State.

If you require additional information or have any questions, please contact Patricia A. Peard, Esquire, Bernstein Shur, 100 Middle Street, P.O. Box 9729, Portland Maine 04104..
Direct Line: 228-7306. ppeard@bernsteinshur.com.

TrueDialog.ORG

For a more Authentic Democracy

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

P.O. Box 171
Portland, Maine 04112

To: Members of the Maine Ethics Commission
From: Carl Lindemann
RE: A proposal for Agency Efficiency Regarding 1056-B Guidance

Thank you for this opportunity to comment in writing.

I have a quandary after reviewing the revised legislation and the draft document for providing guidance on 1056-B reporting. As it happens, this provides an opportunity to carry out Commission Chair Friedman's expressed interest in agency efficiency.

It seems that the revisions to the existing law and the guidance document reflecting those revisions closely follows the staff memo that Paul Lavin drafted, dated December 27, 2006. In fact, the text of the legislation and the draft document is almost entirely taken from the staff memo with additions regarding efforts in drafting ballot initiatives and differences in what triggers the reporting. These aside, there do not appear to be any substantive differences between the suggested guidance that Mr. Lavin crafted and what has now become law.

However, Executive Director Wayne's statements to the Commission this past March 31 indicated that there were fundamental changes between the 2006 staff memo and the newly enacted law. As you will recall, Commissioner Thompson argued that a compelling reason for the Commission to go forward with the outstanding complaint I've brought against Maine Heritage Policy Center (MHPC) is that this would provide experience and guidance for future 1056-B reporting, as well as credibility and confidence in the Commission's ability to enforce the law.

According to the minutes of the March 31 2008 meeting:

Mr. Wayne said the Legislature has changed the law this year regarding these reports. The statute is clearer as to what a filer will need to report.

Given this, the value of going forward with the complaint against MHPC is negligible because it reported under the old law. The Executive Director also suggested that he saw the complaint as rooted in a good faith misunderstanding tied to the lack of clarity in the old law – despite MHPC's history of providing the Commission with factually inaccurate and misleading information.

The conundrum here is that MHPC's attorney had testified to the Commission that his client was faithfully reporting under 1056-B following the guidelines provided by the Staff's memo of December 27, 2006, with clarifications received via e-mail communications with Paul Lavin. In other words, the outstanding complaint is about a report that has purportedly been made in accordance with the blueprint of what has now become law.

A Suggestion for Agency Efficiency

Given Commission Chair Friedman's concern for agency efficiency, the present discussion of the draft of "Guidance on Reporting as a Ballot Question Committee" would benefit by reviewing the 1056-B report made by MHPC along with my critical analysis of it.

The Commissioners should be familiar with these from their past preparations for when this has been an agenda item. Looking at this actual example of a 1056-B report, the Executive Director could clarify his comments about changes in the law – how the clarity these provide might have made for differences in this 1056-B report made under the prior statute.

If, as Mr. Wayne suggested, there were substantive changes, such a discussion would build on the Commissioners' experience. The changes in the law could come clearer by this contrast. If that is not the case, it would save time for Commissioners to know if the new law simply codifies what they are already familiar with in the outstanding complaint.

Likewise, a review of my analysis of MHPC's report might provide insight as to how 1056-B information might be formatted for better analysis, in particular to see how the reported ballot measure expenditures make up a percentage of the entity's overall expenditures. This is critical for bringing ballot measure reporting in line with PAC statutes. It indicates if and when ballot measure expenditures become an entities' "major purpose" triggering PAC reporting.

One additional point - I raised concerns about record keeping and preservation at the March 31 meeting, and Commission Chair Friedman offered direction.

"Ask you attorney," he stated.

Would he suggest a similar or different statement be added to the draft document for providing guidance on 1056-B reporting? Should the affected entities likewise be instructed to seek legal counsel concerning requirements for keeping and preserving records, or would it be helpful if those were made explicit?

For the sake of efficiency, I have attached the requisite documents:

- 1.) The Staff memo of December 27, 2006 with e-mail clarifications
- 2.) MHPC's 1056-B report of January 22, 2007
- 3.) The analysis of #2 provided in my March 5 2007 request for an investigation

Yours Very Truly,

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



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

FROM : MAINE HERITAGE POLICY CENTER

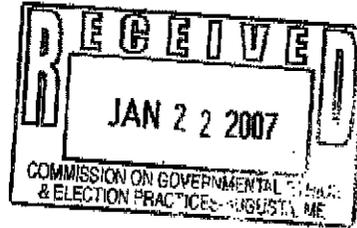
FAX NO. : 2077734385

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

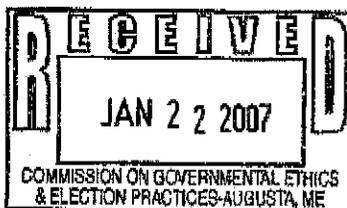
FROM : MAINE HERITAGE POLICY CENTER

FAX NO. : 2077734385

Jan. 22 2007 05:56PM P2

We the people of Maine...

THE MAINE HERITAGE POLICY CENTER



www.maineconomy.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

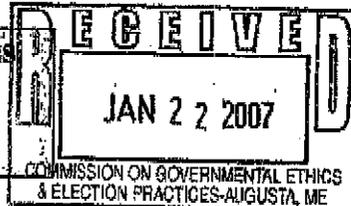
Jan. 22 2007 05:56PM P3

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station, Augusta, Maine 04333-0135

Tel: (207)387-6221 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 207-321-2550 Fax 207-7734385 E-mail info@mainepolicy.org

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

Mailing address 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 |

Other (specify): Per December 22, 2006 Determination Letter

Amendment to: _____

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

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

01/22/2007
Date

FROM : MAINE HERITAGE POLICY CENTER FAX NO. : 2077734395

Jan. 22 2007 05:56PM P4

The Maine Heritage Policy Center
Name of PERSON

Page 1 of 1
(Schedule A only)

**SCHEDULE A
CASH CONTRIBUTIONS**

Include cash contributions only. Itemize contributions aggregating in excess of \$100 in this election from the same source.
Do not include in-kind contributions or loans on this schedule.

| DATE RECEIVED | Contributor's name, mailing address, zip code (Contributions in excess of \$100) | Amount |
|---------------|---|----------|
| 11/06/06 | DAVID A. Briney, 6921 E. Eliff Place, Denver Co 80224 | \$125.00 |
| 10/25/06 | Hugh P. Robinson, Robinson Rd, Falmouth ME 04105 | \$100.00 |
| 8/22/06 | John Graustein, Wartes Landing Rd, Falmouth, ME 04105 | \$250.00 |
| 8/16/06 | Peter PulKkinen, 3 The High Rd, Bronxville, NY 10708 | \$500.00 |
| | | |
| | | |
| | | |
| | | |
| | | |

- 1. Total cash contributions this page only 975.00
- 2. Total from attached Schedule A pages - 0 -
- 3. Aggregate of cash contributions of \$100 or less not itemized - 0 -
- 4. Total cash contributions this reporting period
(Add lines 1, 2 & 3) \$975.00

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. | \$2650. ⁰⁰ |
| MAY - November | STAFF Time Allocated to Public Speaking Events - Bill Becker - 85 HRS. | \$4505. ⁰⁰ |
| MAY - November | STAFF Time Allocated for Travel - Bill Becker - 55 HRS. | \$2915. ⁰⁰ |
| MAY - November | Travel Reimbursement - Bill Becker | \$536. ⁰⁰ |
| 1. Total ^{expenditures} cash contributions this page only | | \$21,730. ⁻ |
| 2. Total from attached Schedule B pages ^{Complete lines 2-4 on last page of Schedule B only:} | | |
| 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 - JAYLEN BRADTON 40 HRS. | \$1,600.00 |
| 5/24/06 | Full Court Press - Printing of Maine View #4-5 | \$888.22 |
| 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 "Minding 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 ^{expenditures} of \$100 or less not itemized | | - 0 - |
| 4. Total cash contributions ^{expenditures} this reporting period <small>(Add lines 1, 2 & 3)</small> | | \$30,962.19 |

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.