



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

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: October 8, 2008

Re: Preliminary Memo Concerning Mailing by Valerie Carr-Winocour

This memo is intended to provide you with preliminary information and views concerning the attached complaint filed yesterday by Rep. Emily Ann Cain. The complaint is about a mailing sent by Senate candidate Valerie Carr-Winocour, who is a Maine Clean Election Act (MCEA) candidate for the State Senate, District 30. Although I have spoken briefly to Ms. Carr-Winocour about the complaint, I have not heard from her in depth, or from her legal counsel, Daniel I. Billings, or other interested persons.

Rep. Cain has a number of concerns about the tone and content of the mailing, but she restricted her complaint to two issues discussed below.

Impact of the Mailing on House Races

In the view of the Commission staff, the mailer is primarily concerned with the Senate race in District 30 between Valerie Carr-Winocour and Elizabeth M. Schneider, the incumbent. Nevertheless, the mailer does contain some content that pertains to the House races in Districts 1, 14, 18, and 19. The mailer includes the names and photographs of Representatives Richard D. Blanchard (running for re-election in District 14), Emily Ann Cain (running for re-election in District 19), and Michael E. Dunn (representing District 18, but not running for re-election), and Senator John L. Martin (running for House District 1), and contains the following language:

- Please feel free to save this flyer and bring it with you on election day so you know who NOT to vote for after the Obama/McCain Race.
- While we can't vote Baldacci out of office, we can turn the State Senate and House to those who will cut off his funding.
- That this group, Get Voted Out Together ... It's time They Go Away Baldacci Bunch!

Rep. Cain argues that the mailer constitutes an independent expenditure against her, Richard Blanchard, and John Martin. The Commission staff tends to agree with her for the following reasons.

An independent expenditure is defined, in part, as:

any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate (21-A M.R.S.A. § 1019-B(1)(A))

In the opinion of the Commission staff, the language in the mailer quoted on the previous page expressly advocates for the defeat of Richard Blanchard, Emily Cain, and John Martin – particularly the first bullet point. Express advocacy is defined in Chapter 1, Section 10(2)(B) of the Commission's rules (attached).

Rep. Michael E. Dunn, although pictured in the mailer, is not running for re-election in District 18. No candidate in his district is clearly identified in the mailer.

Usually, independent expenditures are made by political parties and political action committees. Valerie Carr-Winocour may question whether a committee formed by her to promote her election can be considered to have made an independent expenditure. I have attached the statutory definition of the terms "person" and "political committee," which are used in the definition of an independent expenditure. These terms are sufficiently broad to embrace a candidate committee which makes an expenditure with respect to another candidate's race.

If you agree that Valerie Carr-Winocour's payment for the mailer constitutes – in part – an independent expenditure against Richard Blanchard, Emily Cain, and John Martin, you may wish to request that she file an independent expenditure report. For your information, I have attached Chapter 1, Section 10(4) of the Commission's rules, which addresses allocating an independent expenditure among the different candidates mentioned in a communication. In the view of the Commission staff, most of the mailer concerns the Senate race and only a small portion relates to the House candidates.

Effect on Rep. Richard D. Blanchard. Rep. Richard D. Blanchard, a Democrat, is a traditionally financed candidate (accepting private contributions), who is opposed by two MCEA candidates: Julio DeSanctis (Republican) and Edward Spencer (independent). If you find that the mailer constitutes an independent expenditure against Richard Blanchard, that would permit him to raise additional private contributions for his own race before any matching funds would be paid to his MCEA opponents.

Effect on Rep. Emily Ann Cain

Rep. Emily Ann Cain is not opposed in the general election in House District 19. Therefore, the finding that the mailing was an independent expenditure against her would not affect her campaign funding at all.

Effect on Sen. John L. Martin

It appears that the mailing was not sent directly to any voters in House District 1, in which John L. Martin is running. If that is factually correct, under the Commission's rule, it is doubtful whether a portion of the cost of the mailing should be attributed to opposing him.

Misuse of Maine Clean Election Act Funds

Candidates must spend MCEA funds "for campaign-related purposes." (21-A M.R.S.A. § 1125(6)) The statute does not define campaign-related purposes, but rather requires the Commission to "publish guidelines outlining permissible campaign expenditures."

The Commission's guidelines (attached) are clear that a candidate may not use MCEA funds to promote or defeat other candidates:

Maine Clean Election Act funds may not be spent to:

- make independent expenditures supporting or opposing any candidate, ballot measure, or political committee;
- assist in any way the campaign of any candidate other than the candidate for whom the funds were originally designated;
- contribute to another candidate, a political committee, or a party committee, other than in exchange for goods and services;

The Commission staff recommends that you consider finding that Ms. Carr-Winocour violated 21-A M.R.S.A. § 1125(6) by using some portion of her MCEA funds for purposes that were not related to her campaign.

If you find Ms. Carr-Winocour in violation of 21-A M.R.S.A. § 1125(6), you may wish to consider whether to assess a civil penalty against her under 21-A M.R.S.A. § 1127(1). The rationale for such a penalty would be to underscore to present and future candidates that they are not allowed to use MCEA funds to influence races other than their own.

Responsibility for the Mailer

In my initial conversation with Valerie Carr-Winocour (before she obtained legal counsel), she stated that someone else had prepared the mailer for her campaign and that she had relied on their understanding of what was permissible. She also brought up that she is a first-time candidate. You may wish to give these considerations some weight. Nevertheless, the view of the Commission staff is that every candidate is responsible for the actions of their campaign, and this is especially true with respect to communications that the campaign sends to voters. Valerie Carr-Winocour should have exercised sufficient oversight to ensure that her supporters were acting within acceptable boundaries.

Code of Fair Campaign Practices

On February 2, 2008, Valerie Carr-Winocour voluntarily signed the attached Code of Fair Campaign Practices. Although many candidates believe the code has some relation to the MCEA, the code pre-dated the MCEA and is also signed by traditionally financed candidates on a voluntary basis. The code includes a pledge to “conduct my campaign and, to the extent reasonably possible, insist that my supporters conduct themselves, in a manner consistent with the best Maine and American traditions” You may wish to consider the mailer in that context, although the Legislature has not provided the Commission with the legal authority to any actions regarding a candidate’s violation of the code.

Thank you for your consideration of these preliminary points. Based on new information or legal arguments that are presented, the Commission staff may wish to supplement or amend the views expressed in this memo.

Attachments:

- Complaint by Emily Cain (1 page)
- Mailer by Valerie Carr-Winocour (2 pages)
- 2008 MCEA Expenditure Guidelines (2 pages)
- Code of Fair Campaign Practices signed by Valerie Carr-Winocour (1 page)
- Relevant statutes and rules (7 pages)

EMILY ANN CAIN

7 October 2008

RECEIVED

OCT - 9 2008

Jonathan Wayne, Director
Commission on Governmental Ethics and Election Practices
135 State House Station, Augusta, ME 04333
Fax: 207-287-6775

MAINE ETHICS COMMISSION

Dear Jonathan,

I am writing to formally file a complaint with the Commission regarding the enclosed mailing, which I received from Valerie Carr-Winocour, the Republican candidate in Senate District 30 at the end of last week. It arrived at both my home mailbox and at my PO Box in the coupon circular, which implies broad-reaching distribution. I believe it was sent to postal customers in Orono, Old Town, Veazie, and possibly all of Senate District 30.

The 2008 EXPENDITURE GUIDELINES read, in part:

"Maine Clean Election Act Funds may not be spent to:

- make independent expenditures supporting or opposing any candidate, ballot measure, or political committee;
- assist in any way the campaign of any candidate other than the candidate for whom the funds were originally designated;
- contribute to another candidate, a political committee, or a party committee, other than in exchange for goods and services"

(www.state.me.us/ethics/pdf/forms/2008/can/expenditure_guidelines.pdf; or *2008 Candidate Guide*, p. 69-70)

There are many falsehoods and inaccuracies contained in this mailer, but putting those aside, it is clearly in violation of the above MCEA guidelines because it goes beyond the scope of Valerie Carr-Winnocour's own campaign for the State Senate against Elizabeth Schneider when it negatively campaigns against me, Richard Blanchard, and John Martin who are each seeking re-election this election cycle to the Maine House of Representatives.

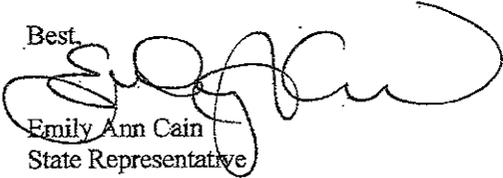
First, this mailer constitutes an independent expenditure against me, Richard Blanchard, and John Martin. Second, it assists in the campaigns of both of Richard Blanchard's opponents because it campaigns against him directly. Third, this mailer should be considered a contribution to the campaigns of Richard Blanchard's opponents, therefore triggering the ability for him to raise additional campaign funds.

I am running unopposed in my race this fall, but if I had opponents, the same standard would apply and I would receive matching funds. John Martin is not, to my knowledge, seeking to be elected anywhere inside Senate District 30, so I do not know how this type of negative campaigning using MCEA Funds impacts his rights under this law.

I am happy to provide additional information or answer any questions that the Commission may have about this complaint. My contact information is below. I believe firmly in the Maine Clean Election Act, and I am proud to be running as a publicly financed candidate for the third time. It is in the spirit of upholding the integrity of the law that I bring this complaint.

Thank you for taking up this serious matter quickly. I hope to hear from you very soon.

Best,


Emily Ann Cain
State Representative

103 FOREST AVE., ORONO, ME 04473
207.866.3753 (H), 207.229.3456 (C), CAINORONO@HOTMAIL.COM

THE BALDACCI BUNCH



2 More Years, Then I Can Run For Olympia's Seat. Let me introduce you to my pals from Penobscot County!

Gov. Baldacci



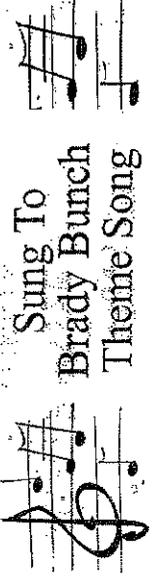
Want to Be A Professional Politician? So Much So... That's the Occupation I list on the State of Maine Website!

Sen. Liz Schneider

*<http://www.maine.gov/legis/senate/senators/bios/123rd/bio30s.htm>

BIO States... Husband Brent, Occupation Legislator.

(We guess the concept of a part-time legislature has surpassed some people)



Here's the story, Of a guy Baldacci, who was bringing up the taxes every day! All his plans increased the spending on the people, Penobscot Dems Will Vote His Way.

Here's the story, Of a girl named Schneider, Who never, ever, votes against the Guv. Grapes in A Bunch, Hanging all together, they're all deep in love.

Till the one day when the people put their foot down, Cause the tax and fees had made them toss their lunch, That this group, Get Voted Out Together, That's the way they'll go... Baldacci Bunch! Baldacci Bunch! - Baldacci Bunch! It's Time They Go Away Baldacci Bunch!

Stomp The Grapes on Nov. 4th!



Rep. Dick Blanchard



Rep. Emily Cain



Rep. Mike Dunn

We Democrats Hold All The Power In The House Too. We outnumber Repubs, 90 to 59. There are also 2 Independents.



Oh Yeah... Don't Forget This Guy. Baldacci's Enforcer...

Perennial Eagle Lake All-Star, John Martin

Dear Neighbors From Penobscot County,

I offer you this parody, but it's no joke, Maine cannot afford Two More Years of Gov. John Baldacci & John Martin.

Since the fine people of Eagle Lake are unlikely to vote Mr. Martin out of office, we must fix things ourselves.

Sen. Elizabeth Schneider and the Reps from Orono and Old Town continue to give Baldacci blank checks which he keeps signing! Running up state debts. Nice people, bad decisions.

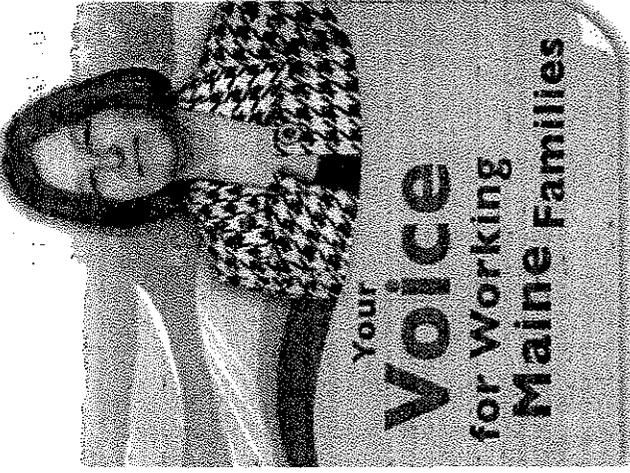
While we can't vote Baldacci out of office, we can turn the State Senate and House to those who will cut off his funding.

Maine's Senate has been run by the Democrats for a Decade and during this time Maine's spending has almost doubled!

This November 4th, VETO Baldacci, Vote Carr-Winocour. I ask humbly for your vote on Election Day! To volunteer and help the cause, please call 827-5265.

Together we can put an end to the mess in Augusta.

Valerie Carr-Winocour



Your Voice for Working Maine Families

VETO BALDACCI - VOTE FOR C-W

Paid for and Authorized by the Candidate • Carr-Winocour for Senate • A Clean Elections Candidate • 160 Gillman Falls Ave, Old Town, ME 04468. Please feel free to save this flyer and bring it with you on election day so you know who NOT to vote for after the Obama/McCain Race. It's Easy to Confuse State and Federal Politics

STRAIGHT FACTS FOR INDEPENDENT VOTERS

Is Maine Better Off Than It Was 10 Years Ago? Are You?

For 10 Years, The Democrats have Controlled the Maine Senate!

See for yourself on the State of Maine Website...

<http://janus.state.me.us/house/history/makeup.htm>

Maine Senate Breakdown Last Decade

YEARS	DEMOCRATS	REPUBLICANS	INDEPENDENTS
97-98	19	15	1
99-00	20	14	1
01-02	19	15	1
03-04	18	17	0
05-06	19	16	0
07-08	18	17	0

What has the Last Decade Brought Us?

HIGHER TAXES & HIGHER FEES

FEWER JOBS - LESS OPPORTUNITY

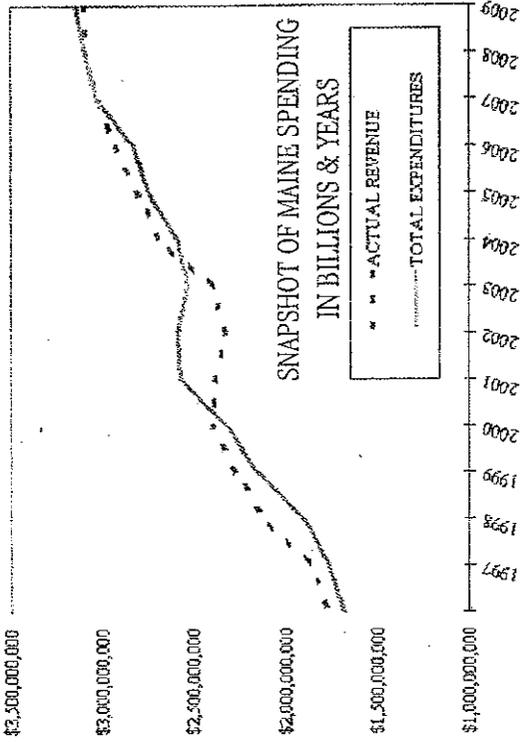
GAVE AWAY LIQUOR REVENUES TO MASSACHUSETTS

4 TOBACCO TAX INCREASES

\$40 MILLION IN NEW BEER, WINE & SODA TAXES

NEW TAXES ON HEALTH CARE SERVICES

AND \$1.5 BILLION IN NEW SPENDING



Schneider is a nice enough woman. But she's WRONG on the issues. She's voted time and time again with Baldacci to raise your taxes, to fund a failing Dirigo Health, to sell our liquor business, to raise tobacco taxes and make it tougher and tougher on working Maine families and small-businesses here in Maine.

YOU can become the VETO that stops the Baldacci Administration!

Swing the balance of power over in the Maine State Senate by voting for

Valerie Carr-Winocour • Nov. 4th



2008 EXPENDITURE GUIDELINES For Maine Clean Election Act Candidates

Candidates must spend Maine Clean Election Act (MCEA) funds for campaign-related purposes and not for other purposes such as the candidate's personal benefit, party-building, or to promote another candidate's campaign.

- Expenditures for "campaign-related purposes" are those which are traditionally accepted as necessary to promote the election of a candidate to political office. Candidates using MCEA funds must also take into account the public nature of the funds, the underlying objectives of the MCEA, and the reasonableness of the expenditures under the circumstances. In Maine, traditional campaign expenses have included:
 - Printing and mailing costs;
 - Political advertising expenses;
 - Campaign communications such as signs, bumper stickers, T-shirts, or caps with campaign slogans, etc.;
 - Office supplies;
 - Campaign events (e.g., food, rent of tent or hall, etc.);
 - Campaign staff expenses;
 - Campaign travel expenses, such as fuel and tolls; and
 - An entry fee for an event organized by a party committee, charity, or community organization or an ad in an event publication, as long as the expenditure benefits the candidate's campaign;

- Candidates may not use MCEA funds for personal expenses. This means candidates may not borrow from or use MCEA funds for personal or other non-campaign expenses, even if temporarily and with the intention of repaying the funds. Personal expenses are for goods and services that the candidate would otherwise purchase independently of the campaign, such as:
 - Day-to-day household food items and supplies;
 - Vehicle and transportation expenses unrelated to the campaign;
 - Mortgage, rent, or utility payments for the candidate's personal residence, even if part of the residence is being used by the campaign; and
 - Clothing, including attire for political functions such as business suits or shoes.

- **Maine Clean Election Act funds may not be spent to:**
 - make independent expenditures supporting or opposing any candidate, ballot measure, or political committee;
 - assist in any way the campaign of any candidate other than the candidate for whom the funds were originally designated;
 - contribute to another candidate, a political committee, or a party committee, other than in exchange for goods and services;
 - pay a consultant, vendor, or campaign staff, other than in exchange for campaign goods or services;
 - make a thank-you gift (including a gift card) to a volunteer or supporter;
 - compensate the candidate for services provided by the candidate;
 - make a donation to a charity or a community organization, other than in exchange for campaign goods or services;
 - promote political or social positions or causes other than the candidate's campaign;
 - pay civil penalties, fines, or forfeitures to the Commission, or defend the candidate in enforcement proceedings brought by the Commission; or
 - assist the candidate in a recount of an election.

■ Guidelines on Selected Issues

- *Electronics and Other Personal Property.* Goods purchased with MCEA funds that could be converted to personal use after the campaign (e.g., computers, fax machines, and cellular telephones) must be reported on Schedules B and E of the candidate reporting form. No later than 42 days after the general election, the goods must be sold at fair market value and the proceeds returned to the Maine Clean Election Fund. Candidates are welcome to lease electronic and other equipment.
- *Food.* Candidates may spend a reasonable amount of MCEA funds on food for campaign events or to feed volunteers while they are working. Legislative candidates may not use MCEA funds to purchase food that is consumed only by the candidate and/or the candidate's spouse.
- *Car Travel.* MCEA campaigns may reimburse the candidate or campaign workers for their car travel, as long as the person reimbursed has kept a travel log. For 2008, the campaign may make a travel reimbursement up to the number of miles traveled (as reported in the log) multiplied by \$0.42. Campaigns must keep the travel logs for two years, and provide them to the Commission if requested. Candidates and their spouses or domestic partners may spend any amount of their personal funds for campaign travel without seeking reimbursement. Other individuals may spend up to \$100 of their personal funds to pay for travel without making a contribution to the campaign.
- *Lodging.* Candidates may use MCEA funds to pay for lodging if necessary for campaign purposes, but must keep lodging expenses reasonable.
- *Post-Election Notes and Parties.* Candidates may spend up to the following maximum amounts of MCEA funds on post-election parties, thank you notes, or advertising to thank supporters or voters: \$250 for State Representative candidates and \$500 for State Senate candidates. Candidates may also use personal funds for these purposes.
- *Campaign Training.* Candidates may use MCEA funds for tuition or registration costs to receive training on campaigning or policy issues.
- *Salary and Compensation.* Candidates may use MCEA funds to pay for campaign-related services by staff or consultants, provided that compensation is made at or below fair market value and sufficient records are maintained to show what services were received. Documentation must include a description of the labor performed by the staff member or consultant, and an itemization of any goods or services purchased from other vendors including date, vendor, and amount.

■ Required Record-Keeping

The MCEA requires participating campaigns to keep two documents for every expenditure over \$50: (1) an invoice from the vendor listing the goods or services purchased, and (2) a canceled check or other acceptable proof of payment to the vendor. Please select a treasurer who will be responsible about keeping these records.

■ Auditing and Compliance

In 2008, the Commission staff will audit at least 20% of MCEA candidates and will review all receipts and expenditures disclosed by MCEA candidates in campaign finance reports. The Commission frequently requests additional information from candidates to verify that public funds were spent for campaign-related purposes. Candidates who misuse public funds may be required to repay some or all public funds received, may be liable for civil penalties, and may be referred to the State Attorney General for possible criminal prosecution.

2008 Election Year

RECEIVED



FEB 4 2008

MAINE ETHICS COMMISSION

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station, Augusta, Maine 04333

Office: 242 State Street, Augusta, Maine

Website: www.maine.gov/ethics

Phone: 207-287-4179

Fax: 207-287-6775

2008 MAINE CODE OF FAIR CAMPAIGN PRACTICES

(21-A M.R.S.A. § 1101(2))

I shall conduct my campaign and, to the extent reasonably possible, insist that my supporters conduct themselves, in a manner consistent with the best Maine and American traditions, discussing the issues and presenting my record and policies with sincerity and candor.

I shall uphold the right of every qualified voter to free and equal participation in the election process.

I shall not participate in and I shall condemn defamation of and other attacks on any opposing candidate or party that I do not believe to be truthful, provable and relevant to my campaign.

I shall not use or authorize and I shall condemn material relating to my campaign that falsifies, misrepresents or distorts the facts, including, but not limited to, malicious or unfounded accusations creating or exploiting doubts as to the morality, patriotism or motivations of any party or candidate.

I shall not appeal to and I shall condemn appeals to prejudices based on race, creed, sex or national origin.

I shall not practice and I shall condemn practices that tend to corrupt or undermine the system of free election or that hamper or prevent the free expression of the will of the voters.

I shall promptly and publicly repudiate the support of any individual or group that resorts, on behalf of my candidacy or in opposition to that of an opponent, to methods in violation of the letter or spirit of this code.

I, the undersigned candidate for election to public office in the State of Maine, hereby voluntarily endorse, subscribe to and solemnly pledge to conduct my campaign in accordance with the above principles and practices.

2/2/08

Date

Valerie Ann Winocour

Candidate's Signature

Senate #30

Office Sought and District

Valerie Ann Winocour

Printed Name

21-A §1019-B. Reports of independent expenditures

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21-A §1019-B. Reports of independent expenditures

1. Independent expenditures; definition. For the purposes of this section, an "independent expenditure":

A. Is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and [2003, c. 448, §3 (NEW) .]

B. Is presumed in races involving a candidate who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5 to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 21 days, including election day, before a primary election; the 35 days, including election day, before a general election; or during a special election until and on election day. [2007, c. 443, Pt. A, §20 (AMD) .]

[2007, c. 443, Pt. A, §20 (AMD) .]

2. Rebutting presumption. A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of making the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and must determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

[2003, c. 448, §3 (NEW) .]

3. Report required; content; rules. A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements and matching fund provisions under chapter 14. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 448, §3 (NEW) .]

B. A report required by this subsection must contain an itemized account of each contribution or

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

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General.** Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.
2. **Definitions.** For purposes of this section, the following phrases are defined as follows:
- A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
-  B. "Expressly advocate" means any communication that uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!".
- C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
3. **Reporting Schedules.** Independent expenditures must be reported to the Commission in accordance with the following provisions:
- A. Independent expenditures aggregating in excess of \$100 per candidate per election but not in excess of \$250 made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, except that expenditures made in the last 11 days before an election must be reported within 24 hours of the expenditure.
- (1) **Quarterly Reports**
- (a) A report must be filed on January 15th and be complete as of January 5th;

3. the date on which the person making the expenditure first learned of the total amount of the expenditure; and
 4. a statement why the expenditure could not be reported by the eighth day before the election.
- D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.

A

4. **Multi-Candidate Expenditures.** When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.
- A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.
- [NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]
- B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.
- [NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]
- C. If a candidate who has received matching funds because of a multi-candidate communication believes that he or she deserves additional matching funds because the communication disproportionately concerns his or her race, the Commission may grant additional matching funds in proportion to the relative treatment of the candidates in the communication.
5. **Rebuttable Presumption.** Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate in a race involving a Maine Clean Election Act candidate and that is disseminated during the 21 days before an election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the

21-A §1001. Definitions

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21-A §1001. Definitions

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

1. Commission. "Commission" means the Commission on Governmental Ethics and Election Practices established under Title 1, section 1002.

[1985, c. 161, §6 (NEW) .]

2. Election. "Election" means any primary, general or special election for state, county or municipal offices as defined in Title 30-A, section 2502, subsection 1.

[1995, c. 483, §1 (AMD) .]

3. Person. "Person" means an individual, committee, firm, partnership, corporation, association or organization.

[2007, c. 443, Pt. A, §1 (AMD) .]

SECTION HISTORY

1985, c. 161, §6 (NEW). 1995, c. 483, §1 (AMD). 2007, c. 443, Pt. A, §1 (AMD).



28. Party. "Party" means a political organization which has qualified to participate in a primary or general election under chapter 5.

[1985, c. 161, §6 (NEW) .]

29. Peace officer. "Peace officer" means state police officer, local police officer, sheriff, deputy sheriff or constable.

[1985, c. 161, §6 (NEW) .]

30. Political committee. "Political committee" means 2 or more persons associated for the purpose of promoting or defeating a candidate, party or principle.

[1985, c. 161, §6 (NEW) .]

30-A. Pollwatcher. "Pollwatcher" means a party worker who remains in the voting place outside the guardrail enclosure for the purpose of viewing the voting process, keeping track of the voters who have voted or challenging voters whose qualifications appear to be in question.

[2001, c. 310, §2 (NEW) .]

31. Population. "Population" means the population determined by the last Decennial Census of the United States.

[1985, c. 161, §6 (NEW) .]

32. Primary election. "Primary election" means the regular election for the election of nominees of a party for the general election.

[1987, c. 423, §1 (AMD) .]

33. Protective counter. "Protective counter" means a separate counter built into a voting machine which records the total number of movements of the operating lever and which cannot be reset.

[1985, c. 161, §6 (NEW) .]

34. Public official. "Public official" means a person elected or appointed to serve the people.

[1985, c. 161, §6 (NEW) .]

35. Question. "Question" means any proposition submitted to the voters.

[1985, c. 161, §6 (NEW) .]

36. Referendum. "Referendum" means an election for the determination of a question.

[1985, c. 161, §6 (NEW) .]

37. Register. "Register" means to enlist as a voter.

[1985, c. 161, §6 (NEW) .]

38. Registrar. "Registrar" means the registrar or deputy registrar of voters of a municipality.

[1997, c. 436, §4 (AMD) .]

39. Regular election. "Regular election" means an election or a referendum held at a regular time



unspent funds to the commission within 3 days of the commission's decision and may be required to return all funds distributed to the candidate. In addition to the requirement to return funds, the candidate may be subject to a civil penalty under section 1127. The candidate may appeal the commission's decision to revoke certification in the same manner provided in subsection 14, paragraph C.

[2007, c. 443, Pt. B, §6 (NEW) .]

6. Restrictions on contributions and expenditures for certified candidates. After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. The commission shall publish guidelines outlining permissible campaign-related expenditures.



[2007, c. 443, Pt. B, §6 (AMD) .]

6-A. Assisting a person to become an opponent. A candidate or a person who later becomes a candidate and who is seeking certification under subsection 5, or an agent of that candidate, may not assist another person in qualifying as a candidate for the same office if such a candidacy would result in the distribution of revenues under subsections 7 and 8 for certified candidates in a contested election.

[2007, c. 443, Pt. B, §6 (NEW) .]

7. Timing of fund distribution. The commission shall distribute to certified candidates revenues from the fund in amounts determined under subsection 8 in the following manner.

A. Within 3 days after certification, for candidates certified prior to March 15th of the election year, revenues from the fund must be distributed as if the candidates are in an uncontested primary election. [2001, c. 465, §4 (AMD).]

B. Within 3 days after certification, for all candidates certified between March 15th and April 15th of the election year, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested primary election. [2001, c. 465, §4 (AMD) .]

B-1. For candidates in contested primary elections receiving a distribution under paragraph A, additional revenues from the fund must be distributed within 3 days of March 15th of the election year. [2001, c. 465, §4 (NEW) .]

C. No later than 3 days after the primary election results are certified, for general election certified candidates, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested general election. [2007, c. 443, Pt. B, §6 (AMD) .]

Funds may be distributed to certified candidates under this section by any mechanism that is expeditious, ensures accountability and safeguards the integrity of the fund.

[2007, c. 443, Pt. B, §6 (AMD) .]

7-A. Deposit into account. The candidate or committee authorized pursuant to section 1013-A, subsection 1 shall deposit all revenues from the fund and all seed money contributions in a campaign account with a bank or other financial institution. The campaign funds must be segregated from, and may not be commingled with, any other funds.

[2007, c. 443, Pt. B, §6 (AMD) .]

8. Amount of fund distribution. By July 1, 1999 of the effective date of this Act, and at least every 4 years after that date, the commission shall determine the amount of funds to be distributed to participating

21-A §1127. Violations

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21-A §1127. Violations

 **1. Civil fine.** In addition to any other penalties that may be applicable, a person who violates any provision of this chapter or rules of the commission adopted pursuant to section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund. The commission may assess a fine of up to \$10,000 for a violation of the reporting requirements of sections 1017 and 1019-B if it determines that the failure to file a timely and accurate report resulted in the late payment of matching funds. This fine is recoverable in a civil action. In addition to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the candidate or the committee authorized by the candidate pursuant to section 1013-A, subsection 1 found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund or any funds not used for campaign-related purposes. If the commission makes a determination that a violation of this chapter or rules of the commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. Fines paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

[2005, c. 542, §6 (AMD) .]

2. Class E crime. A person who willfully or knowingly violates this chapter or rules of the commission or who willfully or knowingly makes a false statement in any report required by this chapter commits a Class E crime and, if certified as a Maine Clean Election Act candidate, must return to the fund all amounts distributed to the candidate.

[1995, c. 1, §17 (NEW) .]

SECTION HISTORY

IB 1995, c. 1, §17 (NEW). 2003, c. 81, §1 (AMD). 2005, c. 301, §33 (AMD). 2005, c. 542, §6 (AMD).

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Additional Materials
October 10, 2008
Special Meeting

October 9, 2008

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

RE: Complaint filed by Rep. Emily Cain concerning mailing by Valerie Carr-Winocour

Dear Jonathan:

I am representing Valerie Carr-Winocour in regards to the complaint that has been filed by Rep. Emily Cain concerning the mailing recently sent by Ms. Carr-Winocour's campaign.

As a preliminary matter, the mailing in question was sent to every home in Senate District 30 through Target Marketing of Maine. The mailing was not targeted to any part of the district or to the areas represented by the House members pictured in the district. The same piece is also scheduled to be inserted in the Bangor Daily News tomorrow.

The mailing was intended to advance Ms. Carr-Winocour's candidacy for the State Senate against incumbent Senator Elizabeth Schneider. The piece is intended to associate Sen. Schneider with Democratic control of the Governor's office; the Maine House; and the Maine Senate and with what Ms. Carr-Winocour believes are the negative consequences of Democratic control of state government. The mailing is intended to try to overcome the common circumstance where voters like their local legislator but do not like the Legislature or state government generally.

It is common tactic in political campaigns for candidates to attempt to associate their opponents with people whom they believe are not popular. In this year's Presidential campaign, Barrack Obama mentions George W. Bush as often as he mentions John McCain. Tom Allen has adopted a similar tactic in Maine's U.S. Senate race. John McCain produced an ad comparing Barrack Obama to Paris Hilton and Britney Spears. During the 1990s, Republican candidates for Congress ran TV ads which morphed the face of their opponents into the face of Bill Clinton. Democratic candidates at the same times produced similar ads that morphed their opponents' faces into the face of Newt Gingrich. Ms. Carr-Winocour is

using a similar tactic in trying to tie her opponent to state and local Democrats whom she believes have advanced policies which have hurt our state.

It is not unusual for candidates to feature pictures of other candidates in their campaign literature. During 2006, I was legal counsel for Chandler Woodcock's campaign for Governor and I saw lots of campaign literature for candidates for the House and Senate which featured pictures of Governor Baldacci. It is also not unusual for House and Senate candidates to feature in their campaign materials pictures or endorsements from popular House or Senate members from their area.

The fact that candidates for other offices may be mentioned or pictured in a campaign communication does not transform that communication into an independent expenditure for or against the candidate pictured. The communication should be looked at as a whole. When that is done in this case, it is apparent that the communication in question is intended to advance Ms. Carr-Winocour's candidacy for the State Senate and any impact on other races is incidental.

This position is supported by consideration of the Democrats who are pictured in the communication. Two of the people pictured – Governor Baldacci and Rep. Mike Dunn – are not even candidates for any office this year. John Martin is a candidate, but he is not on the ballot in the area where the communication in question was distributed. Rep. Emily Cain is a candidate, but she is unopposed. Only Rep. Blanchard is in a contested race where the communication could have even a theoretical impact.

The Complainant is asking the Commission to second guess the campaign tactics of a candidate. This is an area into which the Commission has been reluctant to go. In 2006, the Commission voted unanimously against a complaint filed against State Senate candidate David Babin that claimed his campaign communications discussing the Taxpayer's Bill of Rights were not a proper use of Clean Elections funds. Recently, the Commission voted that a candidate could use Clean Elections funds to pay a rock band featuring his son. In both cases, the Commission considered whether the expenditure was intended to advance the candidate's campaign and did not pass judgment on the wisdom of the particular expenditure.

The conclusion of the Commission staff that a candidate's communication can be considered an independent expenditure is contradicted by the memo that the staff had recently produced offering advice regarding Independent Expenditures for the 2008 General Election. On Page 1 of that memo, it states:

Independent Expenditures are payments or obligations made by individuals and organizations other than candidates or candidate committees for certain communications referring to clearly identified candidates. (Emphasis added.)

A copy of page 1 of the staff memo is attached as Exhibit A. This memo is linked to the front page of the Ethics Commission website. Though the staff memo is not binding authority, it does reflect the considered opinion of the Commission staff. It certainly appears that, before

Rep. Cain filed her complaint, it was the staff's position that candidate communications could not be considered independent expenditures. Though the staff memo notes that it is not binding on the Commission, the Commission should consider whether it is appropriate to penalize a candidate for actions which are consistent with the published advice of the Commission staff. The contradictory positions advanced by Commission staff on this issue also bring into question the conclusions reached in the preliminary memo offered by the staff in this matter.

Most disturbing about the staff's preliminary memo is the suggestion that the mailer in question was not a use of Clean Elections funds "for campaign-related purposes." The mailing in question was distributed in the district in which Ms. Carr-Winocour is seeking office. The mailing features her name, picture, and logo and advocates her election to office. While a number of Democratic politicians are criticized in the mailing, Ms. Carr-Winocour's opponent is singled out by name for the most direct criticism. The suggestion that references to other Democrats transforms this mailing into a non-campaign related expenditure is ridiculous.

For good reasons, the Maine Clean Elections system imposes significant burdens on candidates participating in the system. The accounting and reporting requirements are necessary to ensure that public funds are used properly. However, the Commission should not impose similar requirements on the contents of candidate communications. It should not be necessary for every candidate to have their campaign materials reviewed by a lawyer before they are distributed. If the Commission acts as Rep. Cain and Commission staff suggest, the system will have become a trap for the unwary where inexperienced candidates doing their best to advance their campaigns will be found to have violated rules that even the Commission's staff can't interpret consistently.

For these reasons, I respectfully request that the Commission take no action on the complaint against Valerie Carr-Winocour. I will be in attendance at the Commission meeting and Ms. Carr-Winocour will participate by phone.

Very truly yours,

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

Daniel I. Billings



Advice Regarding Independent Expenditures for the 2008 General Election

Please note: The advice from staff in this memo is not binding on the Commission, and the Commission will judge each matter brought before it on a case-by-case basis. Please contact the Commission staff at the above telephone number or mailing address for more information regarding independent expenditures. A copy of the relevant law (21-A M.R.S.A. § 1019-B) is attached with the corresponding Commission rule regarding independent expenditures.

What is an “independent expenditure?”

Independent expenditures are payments or obligations made by individuals and organizations other than candidates or candidate committees for certain communications referring to clearly identified candidates.

Before October 1, 2008 (more than 35 days before the general election, including election day): independent expenditures are payments or obligations made for communications (for example, advertisements and literature) that expressly advocate the election or defeat of a candidate.

On or after October 1, 2008 (within 35 days of the general election, including election day): payments or obligations made for communications are presumed to be independent expenditures if the communication is disseminated within 35 days before the general election, names or depicts a clearly identified candidate, and involves a race in which a Maine Clean Election Act certified candidate is running. This 35-day period begins on October 1 and ends on November 4 and is often referred to as the “rebuttable presumption period.” Some communications are exempt from the presumption, such as slate cards sent by political party committees (please see exceptions below).

How do I know if my advertisement or literature “expressly advocates” the election or defeat of a candidate?

The term “expressly advocate” is defined in Chapter 1, Section 10(2)(B) of the Commission Rules. The definition includes phrases such as “Jones for House of Representatives” or “Vote for the Governor,” and other words which in context can have no reasonable meaning other than to urge the election or defeat of one or more clearly identified candidates.

If I make an independent expenditure, how does that affect a Maine Clean Election Act candidate?

Independent expenditures are included in the Commission's determination of whether a Maine Clean Election Act candidate is entitled to receive matching funds. For example, if Candidate A and Candidate B (a Maine Clean Election Act candidate) are opponents in the general election, and a political action committee (PAC) makes an independent expenditure in support of Candidate A, Candidate B may be entitled to receive matching funds. The independent expenditure has the same effect regardless how Candidate A is financing his campaign.

