Agenda Item #10

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

To: Ethics Commission Members

From: Jonathan Wayne, Executive Director

Date: July 21, 2009

Re: Request for Investigation by Carl Lindemann

In this matter, Carl Lindemann asks the Ethics Commission to consider his March 5, 2007 request that the Commission investigate whether a January 22, 2007 campaign finance report filed by the Maine Heritage Policy Center (MHPC) was accurate and complete. The report related to the MHPC's activities in support of the Taxpayer Bill of Rights (TABOR) citizen initiative in the 2006 general election. In the view of the Commission staff, the Commission is required to review Mr. Lindemann's request, but it is not required to conduct an investigation.

As explained below, Mr. Lindemann's request was not resolved in 2007 because of related litigation that concluded on December 16, 2008. That month, Mr. Lindemann confirmed with me that he was interested in the Commission considering his March 5, 2007 request. I tentatively planned to schedule it for your March 26, 2009 and May 28, 2009 meetings. Prior to setting the agendas for those meetings, I received requests for postponements from Mr. Lindemann due to scheduling issues. He resides in Austin, Texas.

Whatever your decision in this matter, the Commission staff believes that Mr. Lindemann's advocacy before the Commission in 2006 has resulted in improved

campaign finance reporting concerning ballot questions by organizations which do not qualify as political action committees (PACs). In 2007, three bills were introduced in the Maine Legislature to improve the reporting requirements under 21-A M.R.S.A. § 1056-B for organizations other than PACs which spend money to influence ballot questions. In 2008, the Legislature enacted changes to the § 1056-B reporting requirement. The Commission has adopted better written guidance for § 1056-B filers. This year, organizations such as the MHPC, Equality Maine, Maine Leads, and the Maine Center for Economic Policy have already filed § 1056-B reports in connection with questions on the ballot for the November 2009 election.

Mr. Lindemann's First Request: Is MHPC a PAC?

On October 19, 2006, Mr. Lindemann filed an earlier request that the Commission consider whether the MHPC's activities in support of TABOR qualified it as a political action committee (PAC) under Maine Election Law. The Commission invested considerable time considering Mr. Lindemann's request and reviewed lengthy submissions by Mr. Lindemann and the MHPC. At a meeting on December 20, 2006 held specially to consider Mr. Lindemann's request, the Commission determined by a vote of 3-1 that the MHPC did not qualify as a PAC. Nevertheless, the Commission determined that the MHPC was required to file a financial report of its contributions and expenditures relating to TABOR under 21-A M.R.S.A. § 1056-B. Mr. Lindemann appealed the Commission's determination that the MHPC was not a PAC by filing a Rule 80C proceeding with the Maine Superior Court.

Carl Lindemann's March 5, 2007 Request for an Investigation

On January 22, 2007, the MHPC filed a campaign finance report under 21-A M.R.S.A. § 1056-B with respect to the November 2006 TABOR initiative. The report stated that the MHPC received four contributions totaling $975.00 for the purpose of promoting the TABOR election and made $30,962.19 in expenditures to promote TABOR, mostly for staff time of paid employees. On March 5, 2007, Mr. Lindemann filed this request, which alleges that the MHPC's report was not complete and accurate.

For the purposes of this memo, I have summarized what I regard as Mr. Lindemann's two major arguments. First, he argues that the MHPC sent fundraising solicitations in 2006 that heavily mentioned TABOR, so it is highly unlikely that the MHPC was required to report only four contributions. Second, Mr. Lindemann argues that the MHPC has under-reported the amount of staff time which the organization dedicated to supporting TABOR.

At its meeting on May 14, 2007, the Commission voted 2-1 to postpone consideration of Mr. Lindemann's March 5, 2007 request until after the Maine Superior Court decided on his Rule 80C proceeding regarding the Commission's determination that the MHPC was not a PAC. I have attached the minutes for that portion of the meeting.

On February 26, 2008, the Superior Court issued a Decision and Order dismissing Mr. Lindemann's Rule 80C petition and finding that he did not have standing to challenge the Commission's December 20, 2006 determination. The Decision and Order did not make any judgment on the merits of the Commission's December 20, 2006

determination that the MHPC did not qualify as a PAC. Mr. Lindemann appealed the Superior Court's dismissal to the Maine Supreme Judicial Court.

In March 2008, Mr. Lindemann made three submissions to the Commission asking it to consider his March 5, 2007 request. At its March 31, 2008 meeting, the Commission voted 4-1 that further proceedings with respect to his request be tabled pending a final decision by the courts on his Rule 80C proceeding which was on appeal to the Maine Supreme Judicial Court. Commission members Michael Friedman, Francis Marsano, David Shiah, and Ed Youngblood voted in favor of the motion to table, and Mavourneen Thompson voted against it.

On December 16, 2008, the Maine Supreme Judicial Court affirmed the Superior Court decision that Mr. Lindemann lacked standing to challenge the Commission's determination that the MHPC was not a PAC. That month, Mr. Lindemann confirmed that he would like the Commission to consider his March 5, 2007 request.

March 30, 2007 Response by the MHPC

Attorney Daniel Billings submitted a response on behalf of the MHPC in a letter dated March 30, 2007. He stated that the MHPC's §1056-B report is complete and accurate, and that the MHPC worked diligently to apply the guidelines provided by the Commission staff. He argued that Mr. Lindemann's points have been heard by the Commission before, were not supported by new evidence, and so are not worthy of consideration. He requested that if the Commission decides to consider them, the matter should be deferred until the Maine Superior Court has reached a decision on Mr. Lindemann's first request for an investigation. Mr. Billings stated that the MHPC has

spent a great deal of time and resources responding to Mr. Lindemann's allegations and it would be an unfair burden on the MHPC to require the organization to respond to Mr. Lindemann's new complaint at the same time it is participating in Mr. Lindemann's appeal in the Superior Court.

Mr. Lindemann and counsel for the MHPC have filed a number of additional submissions in March 2008 and in 2009, which are attached for your consideration.

Reporting Requirements under 21-A M.R.S.A. §1056-B in Effect in 2006 and 2007

On December 20, 2006, the Commission determined that the MHPC was required to file a report under 21-A M.R.S.A. §1056-B. Section 1056-B was inserted in the PAC law in 2000 to cover organizations that do not qualify as a PAC but which raise or spend more than $1,500 to influence a ballot question. I have attached to this memo the version of this statute that was in effect during 2006, 2007, and through June 29, 2008 (labeled "applied through 6/29/08"). This statute provides in full:

> Any person not defined as a political committee <u>who solicits and receives contributions</u> or makes expenditures, other than by contribution to a political action committee, <u>aggregating in excess of $1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question</u> must file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the clerk of that municipality. [underlining added]
>
> **1. Filing requirements.** A report required by this section must be filed with the commission according to a reporting schedule that the commission shall establish that takes into consideration existing campaign finance reporting schedule requirements in section 1059.
>
> **<u>2. Content.</u>** <u>A report must contain an itemized account of each contribution received and expenditure made aggregating in excess of $100 in any election; the date of each contribution;</u> the date and purpose of each expenditure; <u>and the name of each contributor</u>, payee or creditor. Total contributions or expenditures of less than $500 in any election need not be

itemized. The report must state whether the purpose for receiving contributions and making expenditures is in support of or in opposition to the ballot question. [underlining added]

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

Amendments to § 1056-B Enacted in 2008

For your information, in its 2007 session the Maine Legislature considered three bills that proposed to amend the reporting requirement in 21-A M.R.S.A. § 1056-B for organizations other than PACs that raise or spend money to influence ballot questions. In 2008, the Legislature amended the statute. In the amendment, the Maine Legislature increased the reporting threshold to $5,000, introduced a new term for this type of campaign finance filer ("ballot question committee"), required ballot question committees to register with the Commission before filing campaign finance reports, and clarified the requirement to report contributions received by ballot question committees. This amended version of § 1056-B took effect on June 30, 2008. It is attached to this memo with the notation of "current law."

It is important to note that Mr. Lindemann's March 5, 2007 request concerns financial activity that took place in 2006, before the § 1056-B was amended. Therefore, the staff recommends that you apply the version of § 1056-B in effect through June 29, 2008.

Summary of Information Previously Submitted to the Commission Concerning MHPC's 2006 Fundraising

In its §1056-B report, the MHPC reported four contributions totaling $975.00. In its December 4, 2006 letter to the Commission, the MHPC stated that it completed a review of all of its 2006 contributions and could find only these four contributions for which the contributor included a specific reference to TABOR either on the contribution check or in correspondence accompanying the check. The MHPC argues that it is only required to report these four contributions and is not required to report donations it solicited for the purpose of promoting its general mission and activities.

Mr. Lindemann draws the Commission's attention to two fundraising solicitations received by the Commission that cite the MHPC's work on TABOR at length: an August 2, 2006 e-mail solicitation and a fundraising letter dated October 18, 2006.

August 2, 2006 E-Mail Solicitation

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

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

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

Mr. Lindemann argues that two thirds of the text of the fundraising e-mail dated August 2, 2006 concerned the MHPC's efforts to promote TABOR. He contends that the MHPC's §1056-B report should include all of the contributions received by the MHPC in response to the August 2, 2006 fundraising e-mail because they were all contributions made to influence TABOR.

Fundraising Letter dated October 18, 2006

In the MHPC's December 4, 2006 submission, it included an MHPC fundraising letter dated October 18, 2006 as Exhibit A. Mr. Billings refers to it as an example of the organization's "general fundraising activities." In their testimony on December 20, Mr. Billings and Mr. Becker explained that the letter was intended to be mailed before the November 7, 2006 general election but because of a problem with a printer or mailhouse it was not distributed until after the election. (Transcript, at 159-60.)

MHPC'S Description of its Fundraising

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

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

On November 27, 2006, Carl Lindemann submitted to the Commission a check dated November 1, 2006 to the MHPC which he had asked a friend of his, David Briney, to make to the organization. In response the MHPC sent a thank you letter to Mr. Briney dated November 6, 2006. The letter states: "We are very grateful for this donation, and will use it to advance our mission of promoting The Taxpayer Bill Of Rights, a solution that will benefit all people of Maine." (underlining added.) Following this submission, I requested more information from the MHPC in the form of four questions numbered (1) - (4).

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

> MHPC has not received any funds from any sources specifically to promote, initiate, or influence the TABOR initiative. All contributions received are used to support the overall operations and general mission of MHPC. No funds were specifically segregated or dedicated to activities

> related to the Maine Taxpayers Bill of Rights. No activities undertaken by MHPC related to the Maine Taxpayers Bill of Rights were contingent upon or the result of any funds received from any source.
>
> As a result of this question, MHPC staff has reviewed all contributions received by the Center this year. Four contributions, including the contribution from Mr. Briney, were made along with correspondence or references on checks mentioning TABOR or MHPC's work related to TABOR. ...

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

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

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

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

The other major contention in Mr. Lindemann's request for an investigation is that the MHPC has under-reported the amount of staff time it dedicated to supporting

TABOR in 2006. Mr. Lindemann focuses on the six-month period of May 5 – November 7, 2006. He observes that 18 of the MHPC's press releases (60% for that period) relate to TABOR, but that the MHPC reported only 35 hours of labor by Jason Fortin, the MHPC's Director of Communications. According to Mr. Lindemann, this represents only 4% of Mr. Fortin's work time for the six-month period leading up to the general election.

Mr. Lindemann has calculated that during the six-month period, each employee was available to work for 984 hours. The MHPC reported that William Becker, the MHPC's Executive Director, spent 190 hours in support of TABOR in speaking engagements, research, and travel. Mr. Lindemann believes that this amount is less than 20% of his work time for the period. He finds this implausible, but he has not cited specific reasons. For example, is the amount of 190 hours inconsistent with the volume of TABOR-related activities which Mr. Becker engaged in (public forums, comments to the press, etc.? Perhaps Mr. Lindemann believes the reason is obvious based upon his monitoring of the MHPC, but his reasoning is not clear from the March 5, 2007 request.

Mr. Lindemann argues that the MHPC's total TABOR-related expenditures of $30,962 account for only 12.4% (about one-eighth) of MHPC's "projected budget" for the late part of 2006.[1] He believes this total is incredible, but he does not explain why the Commission must conclude that the MHPC's total TABOR expenditures were in fact higher.

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

Staff Recommendation

The standard in the Commission's statutes for considering requests for investigation is 21-A M.R.S.A. § 1003(2):

> **2. Investigations requested.** A person may apply in writing to the Commission requesting an investigation concerning the registration of a candidate, treasurer, political committee or political action committee and contributions by or to and expenditures by a person, candidate, treasurer, political committee or political action committee. The Commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

In the view of the Commission staff, the Commission is required under 21-A M.R.S.A. § 1003(2) to review Mr. Lindemann's application, but it is not required to conduct any investigation. During its consideration of Mr. Lindemann's October 2006 complaint that the MHPC was a PAC, the Commission has already received information from the MHPC and from Mr. Lindemann concerning MHPC's fundraising. In our view, the Commission has the discretion to make a further investigation or to decline to do so.

The MHPC has argued that under 21-A M.R.S.A. § 1056-B, it was required to disclose only those contributions which it <u>solicited and received for the specific purpose</u> of promoting TABOR. It relies on the language in § 1056-B to support this interpretation. The MHPC argues that the reporting requirement applies to an organization who "solicits and receives contributions ... for the purpose of initiating [or] promoting ... a ballot question ...." Thus, the MHPC argues, it was not required to disclose the sources of its funding that it had <u>solicited for the purpose of supporting its general mission and activities</u>.

Similarly, the MHPC draws your attention to subsection 2 of § 1056-B ("The report must state whether the purpose for receiving contributions and making

expenditures is in support of or in opposition to the ballot question."). It argues that it is the organization's purpose in receiving contributions that determines whether a contribution must be reported. The MHPC points to the language and timing of the fundraising solicitations and argues that its purpose in receiving the solicited funds was to support its general activities, not its staff time spent on the November 2006 general election. If you accept this as a valid interpretation § 1056-B, you may conclude that there is insufficient evidence to conclude that the MHPC violated 21-A M.R.S.A. § 1056-B by under-reporting its contributions in its January 22, 2007 report.

On the other hand, if the Commission examines the language of the MHPC's 2006 solicitations, it may conclude that there were contributors who gave to the MHPC specifically to promote TABOR, and that the MHPC was statutorily required to report these contributions. If the Commission adopts this view, there could be grounds for believing that MHPC may have violated 21-A M.R.S.A. § 1056-B by under-reporting its contributions in its January 5, 2007 report.

With respect to MHPC's reported expenditures, the Commission staff does not believe Mr. Lindemann has produced sufficient grounds for believing that MHPC under-reported its staff expenditures to promote TABOR.

In addition to differences in legal interpretation, I draw your attention to allegations by Mr. Lindemann that the MHPC has made significant factual misrepresentations to the Commission concerning its activities in support of TABOR. He believes these statements by the MHPC should affect the Commission's view of the MHPC's overall credibility. His allegations are included in Agenda Item #11.

Thank you for your consideration of this memorandum.

2. Prohibited expenditures. No committee may make any expenditure for liquor to be distributed to or consumed by voters while the polls are open on election day.

21A § 1056-A. Expenditures by political action committees

A political action committee shall report all expenditures in cash or in kind made by the committee.

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

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

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

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

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.

21A § 1057. Records

Any political action committee that makes expenditures which aggregate in excess of $50 to any one or more candidates, committees or campaigns in this State shall keep records as provided in this section. Records required to be kept under subsections 1, 2 and 3 shall be retained by the political action committee until 10 days after the next election following the election to which the records pertain.

1. Details of records. The treasurer of a political action committee must record a detailed account of:

A. All expenditures made to or in behalf of a candidate, campaign or committee;

B. The identity and address of each candidate, campaign or committee;

21A § 1056-A. Expenditures by political action committees

A political action committee shall report all expenditures in cash or in kind made by the committee.

21A § 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 seven 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.

21A § 1057. Records

Any political action committee that makes expenditures which aggregate in excess of $50 to any one or more candidates, committees or campaigns in this State shall keep records as provided in this section. Records required to be kept under subsections 1, 2 and 3 shall be retained by the political action committee until ten (10) days after the next election following the election to which the records pertain.

1. Details of records. The treasurer of a political action committee must record a detailed account of:

A. All expenditures made to or in behalf of a candidate, campaign or committee;

B. The identity and address of each candidate, campaign or committee;

C. The office sought by a candidate and the district he seeks to represent, for candidates which a political action committee has made an expenditure to or in behalf of; and

D. The date of each expenditure.

2. Receipts. The treasurer of a political action committee must retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of $50.

3. Record of contributions. The treasurer of a political action committee must keep a record of all contributions to the committee, by name and mailing address, of each donor and the amount and date of the contribution. This provision does not apply to aggregate contributions from a single donor of $50 or less for an election or referendum campaign. When any donor's contributions to a political action committee exceed $50, the record must include the aggregate amount of all contributions from that donor.

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station, Augusta, Maine 04333-0135
Tel: (207)287-6221 FAX: (207)287-6775 Website: /www.maine.gov/ethics

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

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

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

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

Mailing address P O Box 9829

City, zip code Portland ME 04112

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

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

Mailing address 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:
( ) 6-day pre-primary	June 7, 2006	January 1, 2006 to June 1, 2006
( ) 42-day post-primary	July 25, 2006	June 2, 2006 to July 18, 2006
( ) 6-day pre-general	November 1, 2006	July 19, 2006 to October 26, 2006
( ) 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.

Person's/Authorized Official's signature — **Date** 01/22/2007

CGEEP Form 1056-B (Rev. 5/06)

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. Iliff Place, Denver Co 80224	$125.00
10/23/06	Hugh P. Robinson, Robinson Rd, Falmouth ME 04105	$100.00
8/22/06	John Graustein, Waites Landing Rd, Falmouth, ME 04105	$250.00
8/16/06	Peter Paul Kkinen, 3 The High Rd, Bronxville, NY 10708	$500.00

1. Total cash contributions this page only	975.00
Complete lines 2-4 on last page of Schedule A only: 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

CGEEP Form 1056-B (Rev. 5/06)

The Maine Heritage Policy Center
Name of PERSON

Page 1 of 2
(Schedule B only)

SCHEDULE B
EXPENDITURES

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

Date of Expenditure	Name of Payee or Creditor and Purpose of Expenditure	Amount
MAY - November	STAFF Time Allocated for Research - J. Scott Moody - 140 HRS.	$7,000.00
MAY - November	STAFF Time Allocated to Public Speaking Events - J. Scott Moody 22 HRS.	$1,100.00
MAY - November	STAFF Time Allocated for Travel - J. Scott Moody - 48 HRS.	$2,400.00
MAY - November	Travel Reimbursement - J. Scott Moody	$624.00
MAY - November	STAFF Time Allocated To Research - Bill Becker - 50 HRS.	$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 ~~cash contributions~~ expenditures this page only	$21,730.-
Complete lines 2-4 on last page of Schedule B only:	
2. Total from attached Schedule B pages	
3. Aggregate of ~~cash contributions~~ expenditures of $100 or less not itemized	
4. Total ~~cash contributions~~ expenditures this reporting period (Add lines 1, 2 & 3)	

CGEEP Form 1056-B (Rev. 5/06)

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 - Darren Bragdon 40 HRS.	$1,600.00
5/24/06	FULL COURT PRESS - Printing of Maine View #4-5	$858.22
10/17/06	FULL COURT PRESS - Printing of Maine View #4-8	$184.68
9/20/06	Hon. John Andrews - Travel Expenses to Maine	$731.00
MAY - November	Kinko's - Copies for handouts at public speaking events	$1,153.00
08/05/06	CRITICAL Insights - 2 questions on "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 ~~cash contributions~~ expenditures this page only	$9232.19
Complete lines 2-4 on last page of Schedule B only:	
2. Total from attached Schedule B pages	$21,730.00
3. Aggregate of ~~cash contributions~~ expenditures of $100 or less not itemized	— 0 —
4. Total ~~cash contributions~~ expenditures this reporting period (Add lines 1, 2 & 3)	$30,962.19

CGEEP Form 1056-B (Rev. 5/06)

The Maine Heritage Policy Center
Name of PERSON

Page 1 of 1
(Schedule C only)

SCHEDULE C

IN-KIND CONTRIBUTIONS/EXPENDITURES

With respect to all items and services received and expended, enter the date received/expended, a description of the item or service, and the fair market value. Enter contributor/payee or creditor only. If the fair market value of donated item or service is more than $100.

Date of Contribution or Expenditure	Name of Contributor/Payee or Creditor	Description of goods, services, discounts or facilities received/expended	Fair market value

1. Total in-kind contributions/expenditures this page only	
Compete lines 2-3 on last page of Schedule C: 2. Total from attached Schedule C pages	
3. Total in-kind contributions received and expended this reporting period (Add lines 1 & 2)	-0-

CGEEP Form 1056-B (Rev. 5/06)

Carl Lindemann

P.O. Box 171
Portland, Maine 04112

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

March 5, 2007

BY ELECTRONIC AND OVERNIGHT MAIL
Jonathan Wayne, Executive Director
Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333

Dear Executive Director Wayne:

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

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

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

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

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

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

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

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

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

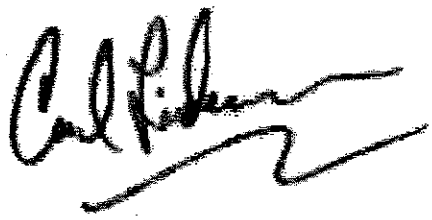
MHPC's written testimony dated December 4 included a single solicitation letter that, it was claimed, did not go out till after voting had taken place despite the document's October 18 date. After the December 20 Commission meeting, an additional fundraising letter dated August 2 surfaced and was distributed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

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

Moreover, Assistant Attorney General Gardiner's questioning of MHPC President Bill Becker on December 20 revealed that there may be additional solicitations for TABOR that are, as yet, undisclosed, along with the contributions they elicited. MHPC attorney Daniel Billings stated in his December 4 written testimony that there were no such solicitations whatsoever. That one has surfaced since and others may exist is troubling and points to another anomaly - the exceptionally small disclosure of contributions. As that attached analysis indicates, the $975 in total contributions MHPC reported represents 0.79% of a projected budget increase of $124,000 over the previous year. There is little doubt that this 33% growth was fueled by donations resulting from the visibility enjoyed by MHPC for its prominent role in the TABOR campaign. Despite its high visibility in promoting the passage of TABOR, it is simply not credible that this highly publicized work earned the negligible public support in terms of contributions reported by MHPC in its most recent filing.

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

Sincerely,



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

Carl Lindemann

P.O. Box 171
Portland, Maine 04112

Phone 207-318-7093
Email Carl@cyberscene.com

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

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

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

Methodology Accepted by Commission & MHPC

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

MHPC Media Output May-November, 2006

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

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

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

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

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

Time Factor Added to Analysis of MHPC Self-Report

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

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

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

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

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

Added Information on Funding Raises Questions

Beyond the underreporting of staff/contract time spent on promoting the passage of the ballot initiative, funding disclosures, too, are implausible. MHPC reported the same four contributions previously admitted in testimony to the Commission. The $975 in total contributions represents 0.79% of a projected budget increase of $124,000 over 2005*. Though this 33% growth was likely fueled by donations resulting from the visibility enjoyed by MHPC for its TABOR promotions, there is no indication of that. Despite its high visibility for promoting the passage of TABOR, this signature work earned negligible financial support according to this disclosure.

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

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

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

No In-Kind Contributions/Expenditures

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

Dates Connect the Dots

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

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

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

Conclusion:

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

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

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

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

-END-

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

Subject: For Your Information - MHPC Fundraising Letter
Date: Thu, 21 Dec 2006 15:59:43 -0500
X-MS-Has-Attach: yes
X-MS-TNEF-Correlator:
Thread-Topic: For Your Information - MHPC Fundraising Letter
Thread-Index: Aca2cuLemv9wfnAMQASTEFjeCz9wJxusSeCwAAeWMDA=
From: "Wayne, Jonathan" <Jonathan.Wayne@maine.gov>
To: <Dib9@aol.com>
Cc: "John Branson" <jbranson@bransonlawoffice.com>,
"John Branson" <jbranson@bransonlawoffice.com>,
"Carl Lindemann" <carl@cyberscene.com>,
<jcrasnick@democracymaine.org>,
<mecep@mecep.org>,
"Lavin, Paul" <Paul.Lavin@maine.gov>,
"Gardiner, Phyllis" <Phyllis.Gardiner@maine.gov>
X-OriginalArrivalTime: 21 Dec 2006 20:59:44.0313 (UTC) FILETIME=[F0E7A290:01C72542]
X-Nonspam: Whitelist
X-NAS-Language: English
X-NAS-Bayes: #0: 0; #1: 1
X-NAS-Classification: 0
X-NAS-MessageID: 12
X-NAS-Validation: {05CC28F7-969D-4640-898B-33B21AA18D71}

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

Dear Paul and Jonathan,

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

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

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

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

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

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

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

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

August 2, 2006

Dear Friend,

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

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

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

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

The Taxpayer Bill of Rights:

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

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

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

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

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

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

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

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

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

Sincerely,

Bill Becker

Bill Becker
President & CEO
The Maine Heritage Policy Center

06 TABOR revenue.xls

TABOR ask.doc

MANP
maine association of nonprofits

advancing the nonprofit sector

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

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

Purpose

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

Lobbying

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

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

Standard One - Insubstantial Part Test

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

Standard Two - Expenditure Test

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

These limits are:

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

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

565 Congress Street, Suite 301 ~ Portland, ME 04101
(207) 871-1885, FAX (207) 780-0346, manp@nonprofitmaine.org
www.nonprofitmaine.org

Example:

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

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

Direct vs. Grassroots Lobbying

Examples of Direct Lobbying

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

Examples of Grassroots Lobbying

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

Is it Advocacy or Lobbying?

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

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

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

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

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

501(h) Status Election

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

Keep Track of Lobbying Activities

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

Sanctions for Violation of 501(h) Standards

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

501(h) Election, Worry Free Lobbying

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

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

Special Circumstances

Foundations

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

Federal Grants

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

Using the Internet

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

Activities Surrounding Elections

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

The following activities are acceptable surrounding elections:

Voter Education and Registration

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

Candidate Forums and Appearances

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

Publishing Voting Records

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

Candidate Questionnaires and Public Opinion Polls

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

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

Lobbying as a 501(c)(4)

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

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

Political Action Committees

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

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

To: Commission Members and Counsel

From: Jonathan Wayne, Executive Director

Date: March 1, 2007

Re: Complaint against Democracy Maine

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

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

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

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

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

Democracy Maine does not appear to be a PAC

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

> **5. Political action committee.** The term "political action committee:"
>
> A. Includes:
>
> (1) Any separate or segregated fund established by any corporation, membership organization, cooperative or labor organization whose purpose is to influence the outcome of an election, including a candidate or question;
>
> (2) Any person who serves as a funding and transfer mechanism and spends money to initiate, advance, promote, defeat or influence in any way a candidate, campaign, political party, referendum or initiated petition in this State;
>
> (3) Any organization, including any corporation or association, that has as its major purpose advocating the passage or defeat of a ballot question and that makes expenditures other than by contribution to a political action committee, for the purpose of the initiation, promotion or defeat of any question; and
>
> (4) Any organization, including any corporation or association, that has as its major purpose advocating the passage or defeat of a ballot question and that solicits funds from members or nonmembers and spends more than $1,500 in a calendar year to initiate, advance, promote, defeat or influence in any way a candidate, campaign, political party, referendum or initiated petition, including the collection of signatures for a direct initiative, in this State; and

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

Completeness of §1056-B Reporting

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

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

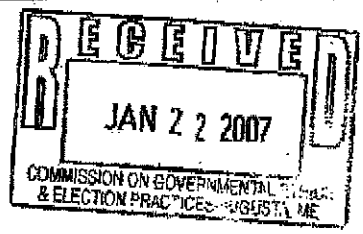
In the case of Democracy Maine, its website explains that it was founded by real estate developer and businessman Robert C.S. Monks. Democracy Maine's office is located at Mr. Monk's office on the fourth floor of City Center in Portland. Mr. Monks remains a one of its three board members. During the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

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

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

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

The Maine Heritage Policy Center



Fax

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

Dear Jonathan,

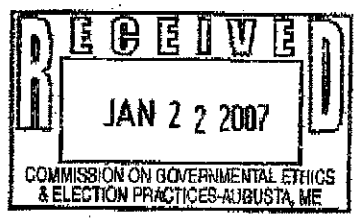
The requested 1056-B report is attached per your letter of December 22, 2006.

Sincerely,

Bill Becker

We the people of Maine...

THE MAINE HERITAGE POLICY CENTER



www.mainepolicy.org

P.O. Box 7829
Portland, Maine 04112

Tel: 207.321.2550
Fax: 207.773.4385

January 22, 2007

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

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

Dear Jonathan:

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

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

Sincerely,

Bill Becker
President and Chief Executive Officer

Attachment: Report (5 pages)

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:

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

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

Expenditures Not Covered by §1056-B

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

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

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

- News stories, commentary, or editorials concerning a ballot question distributed through the facilities of a broadcasting station, newspaper, magazine, or other periodical publication, unless the facilities are owned or controlled by persons otherwise engaged in other advocacy activities to promote or oppose the ballot question.

- Research or analysis of a ballot question which is not conducted for the purpose of initiating, promoting, or defeating the ballot question.

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

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

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

Hi Dan,

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

Paul

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

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

Dan

MARDEN, DUBORD, BERNIER & STEVENS

ATTORNEYS AT LAW

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

March 30, 2007

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

RE: Carl Lindemann's March 5, 2007 Complaint

Dear Jonathan:

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

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

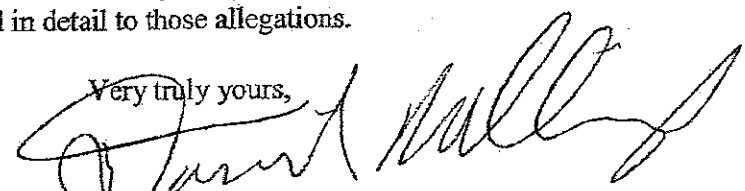
The arguments made by Mr. Lindemann in his March 5, 2007 complaint are fundamentally the same as those he made in support of his earlier complaint against MHPC. He has offered no evidence to support his claim that MHPC's §1056(B) filing is incomplete. His complaint is based on his allegations concerning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

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

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

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

Very truly yours,



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

Carl Lindemann

P.O. Box 171
Portland, Maine 04112

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

April 3, 2007

BY ELECTRONIC AND USPS MAIL
Jonathan Wayne, Executive Director
Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333

Dear Executive Director Wayne:

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

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

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

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

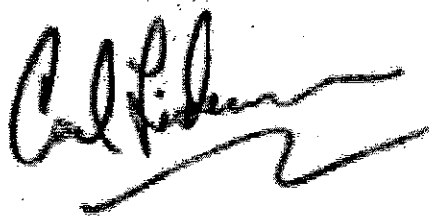
only mentions MHPC's purported efforts to validate expenditures in the 1056-B filing. This focus underscores my point that MHPC is greatly concerned about the IRS regulation that "no substantial part of a charity's activities consist of carrying on propaganda or otherwise attempting to influence legislation."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

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

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

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

Sincerely,



cc: D. Billings
P. Gardiner

Wayne, Jonathan

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

Dear Jonathan,

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

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

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

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

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

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

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

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

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

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

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

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

ANCILLARY MATERIAL:

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

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

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

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

Sincerely,

-CL

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

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

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

"Who seeks gold
digs much earth
and finds little"

-Heracleitus

Unknown

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

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

Dan

Unknown

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

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

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

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

;-)

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

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. General. Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of $100 per candidate in an election must file a report with the Commission according to this section.

2. Definitions. For purposes of this section, the following phrases are defined as follows:

   A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.

   B. "Expressly advocate" means any communication that uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!".

   C. "Independent expenditure" has the same meaning as in Title 21-A, section 1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.

3. Reporting Schedules. Independent expenditures must be reported to the Commission in accordance with the following provisions:

   A. Independent expenditures aggregating in excess of $100 per candidate per election but not in excess of $250 made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, except

The Taxpayer Bill of Rights – Reasonable. Effective.

Reasonable

Provide reasonable growth of government at all levels

- Growth rate- inflation plus population growth

Allow additional spending increases with voter approval

Effective

Make it tougher to raise taxes

- Require voter approval of all tax and fee increases

Provide a Rainy Day Fund for emergencies

Return surplus taxes to taxpayer

Needed

Maine is #1 in tax burden (with highest property tax burden)
#39 in income
#45 in small business climate

Reasonable. Effective.

TAXPAYER BILL OF RIGHTS

Feeling taxed to death?

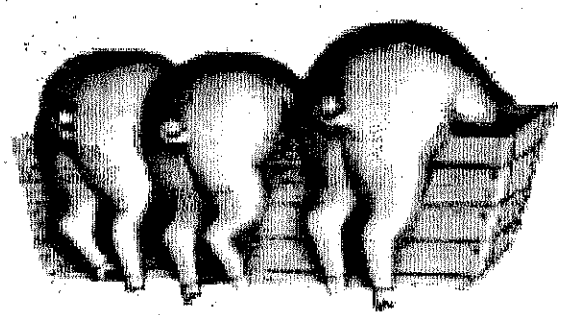
Are Maine's high taxes hurting you and your family?

Let's cut property taxes and take control!

Spread the word

Vote YES on #1 on November 7th.

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



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

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

Paid for and authorized by TaxpayerBillofRights.com
Brian Parke – Treasurer, P.O. Box 5271, Augusta, ME 04330

Reasonable. Effective.

TAXPAYER BILL OF RIGHTS

WHO'S SPEAKING FOR YOUR TOWN?

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

THEY DON'T.

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

WHY?

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

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

LEARN MORE AND GET INVOLVED!
Visit us on the web at
www.TaxpayerBillofRights.com

Paid for by the TaxpayerBillofRights.com PAC

CITY OF WATERVILLE
OFFICE OF THE MAYOR

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

Re: TABOR

Dear Mr. Herman,

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

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

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

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

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

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

Sincerely,

Paul R. LePage

Paul R. LePage, Mayor

WGAN-AM 10/30/2006 Close of Debate

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

Dennis Bailey: And – no on 1.

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

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

DB: He can't say "yes".

MV: Thank you fellas.

JONATHAN WAYNE: So would you mind if I -

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

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

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

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

2 MR. BECKER: Because I haven't expressly
3 advocated. As a matter of fact what Dennis
4 Bailey said at the end of that interview
5 yesterday was, could Becker keep his — I said
6 specifically I said, Maine voters would be
7 wise to look at this issue I said, and if
8 they like the current status quo then they
9 should vote against it. If they think that
10 we need a new direction and a new opportunity
11 then there is much about the Taxpayer Bill of
12 Rights that they might want to study.
13 Dennis Bailey said then, to my left, he
14 said because he can't specifically say vote
15 yes on one vote no on one, I vote no on one
16 and he said that is right. Because I can't
17 and I won't, I cannot put out stuff like that
18 and I would not put out stuff like that which
19 specifically says, here Dan Tabor wipes out
20 real tax relief vote no and that is express
21 advocacy. My organization has policy
22 restriction. Their organization is doing
23 political advocacy. There is a difference
24 between policy and politics.
25

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

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

We the people of Maine...

THE MAINE HERITAGE POLICY CENTER

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

PRESS RELEASE

The Maine Heritage Policy Center

FOR IMMEDIATE RELEASE *CONTACT: JASON FORTIN*
SEPTEMBER 15, 200 *(207) 321-2550*

Heather Noyes Joins MHPC as Director of Development

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

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

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

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

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

Material from this document may be copied and distributed with proper citation.
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P. O. Box 7829
Portland, ME 04112
http://www.mainepolicy.org
http://blog.mainepolicy.org

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

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

Application for Recognition of Exemption

Under Section 501(c)(3) of the Internal Revenue Code

OMB No. 1545-0056

Note: If exempt status is approved, this application will be open for public inspection.

Read the instructions for each Part carefully.

A User Fee must be attached to this application.

If the required information and appropriate documents are not submitted along with Form 8718 (with payment of the appropriate user fee), the application may be returned to you.

Complete the Procedural Checklist on page 8 of the instructions.

Part I Identification of Applicant

1a Full name of organization (as shown in organizing document) The Maine Heritage Policy Center	2 Employer identification number (EIN) (If none, see page 3 of the **Specific Instructions**.) 22 3888250
1b c/o Name (if applicable)	3 Name and telephone number of person to be contacted if additional information is needed
1c Address (number and street) / Room/Suite P.O. Box 7829	(207) 831-4674, William Becker
1d City, town, or post office, state, and ZIP + 4. If you have a foreign address, see **Specific Instructions** for Part I, page 3. Portland, ME 04112	4 Month the annual accounting period ends December 5 Date incorporated or formed December 20, 2002
1e Web site address	6 Check here if applying under section: a ☐ 501(c) b ☐ 501(l) c ☐ 501(k) d ☐ 501(n)

7 Did the organization previously apply for recognition of exemption under this Code section or under any other section of the Code? . . . . . ☐ Yes ☑ No
If "Yes," attach an explanation.

8 Is the organization required to file Form 990 (or Form 990-EZ)? . . . . . ☐ N/A ☑ Yes ☐ No
If "No," attach an explanation (see page 3 of the **Specific Instructions**).

9 Has the organization filed Federal income tax returns or exempt organization information returns? . . ☐ Yes ☑ No
If "Yes," state the form numbers, years filed, and Internal Revenue office where filed.

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

a ☑ Corporation—Attach a copy of the Articles of Incorporation (including amendments and restatements) showing approval by the appropriate state official; also include a copy of the bylaws.

b ☐ Trust—Attach a copy of the Trust Indenture or Agreement, including all appropriate signatures and dates.

c ☐ Association—Attach a copy of the Articles of Association, Constitution, or other creating document, with a declaration (see instructions) or other evidence the organization was formed by adoption of the document by more than one person; also include a copy of the bylaws.

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

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

Please Sign Here ▶ Ronald L. Trowbridge (Signature) | Ronald Trowbridge, President (Type or print name and title or authority of signer) | 1-20-03 (Date)

For Paperwork Reduction Act Notice, see page 7 of the instructions. Cat. No. 17133K

Part II **Activities and Operational Information**

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

See Attachment #1

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

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

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

See Attachment #2

Part II Activities and Operational Information *(Continued)*

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

a Names, addresses, and titles of officers, directors, trustees, etc.	b Annual compensation
Richard Jackson, Chairman of the Board, 55 Burbank Lane, Yarmouth, ME 04096	0
Ronald Trowbridge, President, 30 Colonial Drive, Durham, ME 04222	0
Thomas Mead, Treasurer, 3 Ledgewater Drive, Kennebunk, Maine 04043	0
William Becker, Executive Director and Secretary, ADDRESS TK	$65,000

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

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

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

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

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

Part IV Activities and Operational Information *(Continued)*

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

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

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

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

b Is the organization a party to any leases? ☐ Yes ☑ No

If either of these questions is answered "Yes," attach a copy of the contracts and explain the relationship between the applicant and the other parties.

11 Is the organization a membership organization? ☐ Yes ☑ No

If "Yes," complete the following:

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

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

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

12a If the organization provides benefits, services, or products, are the recipients required, or will they be required, to pay for them? ☐ N/A ☐ Yes ☑ No

If "Yes," explain how the charges are determined and attach a copy of the current fee schedule.

b Does or will the organization limit its benefits, services, or products to specific individuals or classes of individuals? ☐ N/A ☐ Yes ☑ No

If "Yes," explain how the recipients or beneficiaries are or will be selected.

13 Does or will the organization attempt to influence legislation? ☐ Yes ☑ No

If "Yes," explain. Also, give an estimate of the percentage of the organization's time and funds that it devotes or plans to devote to this activity.

14 Does or will the organization intervene in any way in political campaigns, including the publication or distribution of statements? ☐ Yes ☑ No

If "Yes," explain fully.

Technical Requirements

1 Are you filing Form 1023 within 15 months from the end of the month in which your organization was created or formed? . . . . . ☑ Yes ☐ No

If you answer "Yes," do not answer questions on lines 2 through 6 below.

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

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

☐ a Is a church, interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church. See **Specific Instructions**, Line 2a, on page 4;

☐ b Is not a private foundation and normally has gross receipts of not more than $5,000 in each tax year; or

☐ c Is a subordinate organization covered by a group exemption letter, but only if the parent or supervisory organization timely submitted a notice covering the subordinate.

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

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

If "No," answer question 4.

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

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

If "No," answer questions 5 and 6.

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

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

Part II Technical Requirements (Continued)

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

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

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

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

THE ORGANIZATION IS NOT A PRIVATE FOUNDATION BECAUSE IT QUALIFIES:

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

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

Part VIII Technical Requirements *(Continued)*

10 If you checked box h, i, or j in question 9, has the organization completed a tax year of at least 8 months?

☐ Yes—Indicate whether you are requesting:

☐ A definitive ruling. (Answer questions 11 through 14.)

☐ *An advance ruling. (Answer questions 11 and 14 and attach two Forms 872-C completed and signed.)*

☑ **No—You must request an advance ruling by completing and signing two Forms 872-C and attaching them to the Form 1023.**

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

No unusual grants received.

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

a Enter 2% of line 8, column (e), Total, of Part IV-A . . . . . _____

b Attach a list showing the name and amount contributed by each person (other than a governmental unit or "publicly supported" organization) whose total gifts, grants, contributions, etc., were more than the amount entered on line 12a above.

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

a For each of the years included on lines 1, 2, and 9 of Part IV-A, attach a list showing the name of and amount received from each "disqualified person." (For a definition of "disqualified person," see **Specific Instructions**, Part II, Line 4d, on page 3.)

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

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

Part V Financial Data

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

A. Statement of Revenue and Expenses

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

Financial Data *(Continued)*

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

If there has been any substantial change in any aspect of the organization's financial activities since the end of the period shown above, check the box and attach a detailed explanation ▶ ☐

Form **872-C**

(Rev. September 1998)

Department of the Treasury
Internal Revenue Service

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

(See instructions on reverse side.)

OMB No. 1545-0056

To be used with Form 1023. Submit in duplicate.

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

The Maine Heritage Policy Center
(Exact legal name of organization as shown in organizing document)

P.O. Box 7829, Portland, ME 04112
(Number, street, city or town, state, and ZIP code)

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

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

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

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

Name of organization (as shown in organizing document)	Date
The Maine Heritage Policy Center	1-20-03
Officer or trustee having authority to sign	Type or print name and title
Signature ▶ Ronald L. Trowbridge	Ronald Trowbridge, President

For IRS use only

District Director or Assistant Commissioner (Employee Plans and Exempt Organizations)	Date

By ▶

For Paperwork Reduction Act Notice, see page 7 of the Form 1023 Instructions.

Cat. No. 16905Q

ATTACHMENT #1

IRS FORM 1023
Part II, Question 1

ACTIVITIES AND OPERATIONAL INFORMATION

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

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

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

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

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

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

1. A series of periodic, in-depth analyses of public policy issues. Each report shall be accompanied by an executive summary and, when appropriate, press releases. Authorship shall generally be by outside contractors, who are experts in their various fields of study and/or experience.

2. A regularly issued newsletter mailed to all supporters of the Center and any/all other interested persons or organizations. This newsletter will be used for the purpose of informing the above-mentioned interested supporters/organizations about developments at the Center and will be written primarily by Center staff.

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

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

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

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

Maine Heritage Policy Center

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

To: Ethics Commission Members

From: Jonathan Wayne, Executive Director

Date: May 9, 2007

Re: Second Request for Investigation by Carl Lindemann

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

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

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS
PHONE: (207) 287-4179
FAX: (207) 287-6775

Carl Lindemann's Second Request for an Investigation

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

Response by the MHPC

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

Reply by Carl Lindemann

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

Staff Recommendation on Deferring the Second Complaint

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

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

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

> Any person not defined as a political committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of $1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the clerk of that municipality. [underlining added]
>
> **1. Filing requirements.** A report required by this section must be filed with the commission according to a reporting schedule that the commission shall establish that takes into consideration existing campaign finance reporting schedule requirements in section 1059.
>
> **2. Content.** A report must contain an itemized account of each contribution received and expenditure made aggregating in excess of $100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name of each contributor, payee or creditor. Total contributions or expenditures of less than $500 in any election need not be itemized. The report must state whether the purpose for receiving contributions and making expenditures is in support of or in opposition to the ballot question. [underlining added]
>
> **3. Forms.** A report required by this section must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

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

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

- funds which the contributor specified were given in connection with a ballot question (*i.e.*, for the purpose of promoting or opposing a ballot question);

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

- funds which can reasonably be determined to have been provided by the contributor for the purpose of promoting or opposing a ballot question when viewed in the context of the contribution and the recipient's activities regarding a ballot question.

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

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

MHPC's Reporting of Contributions to Influence TABOR

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

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

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

Background on MHPC Fundraising Concerning TABOR

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

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

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

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

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

> MHPC has not received any funds from any sources specifically to promote, initiate, or influence the TABOR initiative. All contributions received are used to support the overall operations and general mission of MHPC. No funds were specifically segregated or dedicated to activities related to the Maine Taxpayers Bill of Rights. No activities undertaken by MHPC related to the Maine Taxpayers Bill of Rights were contingent upon or the result of any funds received from any source.
>
> As a result of this question, MHPC staff has reviewed all contributions received by the Center this year. Four contributions, including the contribution from Mr. Briney, were made along with correspondence or references on checks mentioning TABOR or MHPC's work related to TABOR. ...

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

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

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

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

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

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

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

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

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

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

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

> The Taxpayer Bill of Rights is a reasonable and effective way for Maine to begin repairing its lagging economy. It paves the way for lower taxes and a more favorable business climate, attracting new jobs, strengthening the economy and increasing incomes.
>
> The net result will be to expand the economic pie – securing existing jobs, while keeping young people, families, and retirees in Maine. It will also create an environment where fewer people will need to rely on government assistance programs, thus relieving at least some of the pressure on state and local government. It is, in short, smart growth for our public and private sectors.
>
> Now more than ever, your support is needed to help us educate Maine people about the opportunity that could be found through a reasonable and effective measure. [emphasis added] Unfortunately, there are those who are actively misleading the public and distorting the facts.
>
> However, thanks to your support and generosity, we will continue to provide truthful and credible analysis, information, and commentary about

> Maine's competitive position and how we can improve it. It's great when the facts are on our side!
>
> Please consider a gift today to support the important work of The Maine Heritage Policy Center.

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

Staff Recommendation on Reporting of Contributions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Lindemann argues that the MHPC's total TABOR-related expenditures of $30,962 account for only 12.4% (about one-eighth) of MHPC's "projected budget" for the late part of 2006.[1] Apparently, he believes this total is incredible, but he does not explain why the Commission must conclude that the MHPC's total TABOR expenditures were in fact higher.

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

Thank you for your consideration of this memorandum.

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

Carl Lindemann

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

May 11, 2007

Dear Executive Director Wayne,

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

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

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

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

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

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

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

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

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

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

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

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

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

2. This Commission's past written findings provide incontrovertible evidence that some of Mr. Billings' past factual affirmations – including not only "out-of-court", statements, but "in-court" ones made directly to this tribunal (either orally or by written filing) were false.

3. Past false in-court or out-of-court statements by a fact witness mandate a presumptive negative inference as to credibility of continuing, or other, factual affirmations by that same witness.

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

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

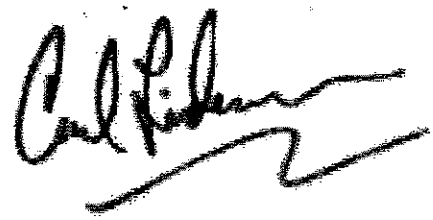
A.) "Summary Judgment": The application of such a negative inference mandates that this Commission not grant the "extraordinary" remedy of some kind of Summary Judgment, by immediately dismissing the complaint. In other words, viewing the complaints' allegations in the

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

B.) Continuing Process to be applied by Commission: this negative inference concerning the reliability of MHPC's primary witness, Mr. Billings, should also be applied to combine with the plain language of the statute re: sec. 21-A M.R.S.A. § 1003(1, 3, 4), empowering this Commission to:

1. seek further factual background by ordering either the State Auditor and/or the State Attorney General to conduct a preliminary factual investigation of MHPC's actions and statements;
2. insist that any factual averments made by Mr. Billings or other fact witness called/presented by MHPC be sworn at hearing and/or by affidavit.

Yours very truly,



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

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

Agenda Item #5 Request for Investigation/Carl Lindemann and Maine Heritage Policy Center
Due to a conflict of interest, Ms. Ginn Marvin recused herself from the discussion of this matter. Mr. Friedman chaired this portion of the meeting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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ATTORNEY GENERAL
MAR 03 2008
STATE HOUSE AUGUSTA, MAINE

STATE OF MAINE
KENNEBEC, ss.

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

CARL LINDEMANN,

Petitioner

v.

DECISION AND ORDER

MAINE COMMISSION ON
GOVERNMENT ETHICS &
ELECTION PRACTICES,

Respondent

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

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

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

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

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

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

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

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

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

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

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

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

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

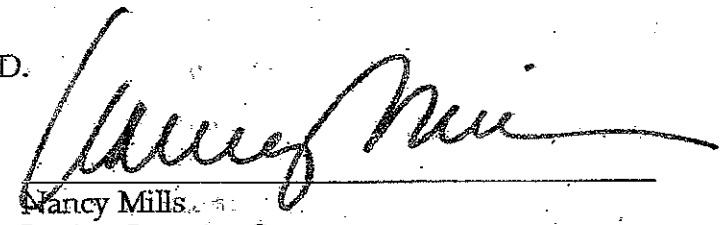
[2] This essential distinction between the APA and FECA is also noted by the dissenting justice who believed that this distinguishing provision of FECA rendered it unconstitutional. Akins, 524 U.S. at 29-30 (Scalia, J., dissenting) ("The provision of law at issue in this case is an extraordinary one,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

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

None of the statutes relied on by the petitioner explicitly indicates an intent to alter the traditional discretion given to agency enforcement actions in a way similar to FECA. See 21-A M.R.S.A. § 1001, et seq.; 5 M.R.S.A. § 11001, et seq. The petitioner has expressed only a generalized injury indistinct from any injury to the public at large and as a result has failed to satisfy the "threshold issue" of standing. Ricci, 485 A.2d at 647.[3]

The entry is

The Petition is DISMISSED.



Date: February 26, 2008

Nancy Mills
Justice, Superior Court

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

Carl Lindemann

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March 18, 2008

Dear Executive Director Wayne,

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

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

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

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

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

Sincerely,

MARDEN, DUBORD,
BERNIER & STEVENS
ATTORNEYS AT LAW

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March 21, 2008

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

RE: Carl Lindemann's March 5, 2007 Complaint

Dear Jonathan:

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

The matter should remain tabled

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

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

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

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

Mr. Lindemann's March 18, 2008 correspondence

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

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

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

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

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

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

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

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

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

A Preliminary Determination is Required Before Investigation May Proceed

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

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

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

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

This determination required by the statute is important to protect parties from the burdens imposed by unnecessary investigations. It is also a protection from someone using the Commission to harass their political opponents. Mr. Lindemann has offered no evidence to support his claim that MHPC's §1056(B) filing is incomplete. His complaint is based on his allegations concerning the veracity of statements by representatives of MHPC and his analysis of press releases. These allegations and theories fall well short of meeting his burden to provide sufficient grounds for believing that a violation may have occurred.

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

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

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

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

Your May 9, 2007 Memo

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

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

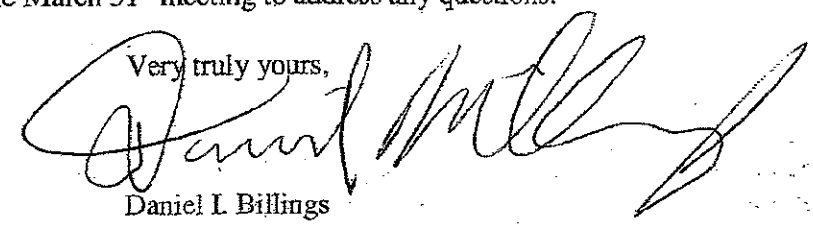
contribution that it determined was intended for the pro-TABOR campaign. This action supports the conclusion that MHPC did not intend to solicit or receive contributions for the purpose of promoting or influencing the vote on the ballot question.

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

Conclusion

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

Very truly yours,



Daniel L Billings

Carl Lindemann

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

March 21, 2008

Dear Executive Director Wayne,

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

1. Previous documents and additional comments to support my request that the Commission determine whether it is the appropriate venue for this complaint. Also, I include a follow-up on questions raised at the Commission's last session under "other business." This is contained in a sizable (91 page) archive of materials attached.

2. Materials to support my request that, if the Commission does decide it is the appropriate venue, then the proceedings should go forward under oath. Factually inaccurate statements made by MHPC's representatives in previous testimony to the Commission raise fundamental doubts about the reliability of Mr. Billings and his client as fact-witnesses. The Commission should respond when witnesses have a demonstrable history of providing inaccurate testimony.

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

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

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

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

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

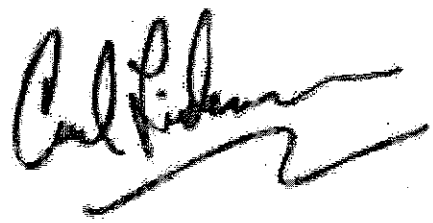
There are other examples of Mr. Billings and Mr. Becker's factual inaccuracies in testimony to the Commission. I would be happy to provide additional examples if these are insufficient to show the need for sworn testimony should the Commission decide to proceed with this follow-up complaint.

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

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

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

Sincerely,



1. Issues with the Commission investigating a Commissioner

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

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

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

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

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

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

INDEX TO MATERIALS:

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

Document Set #1:

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

Carl Lindemann

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February 7, 2007

Dear Commissioners Marsano, Shiah, Thompson & Youngblood:

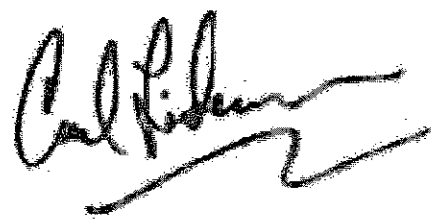
I am contacting you directly as per the procedure for handling complaints against Commissioners set out my Executive Director Wayne in the staff's letter concerning January agenda item #5 dated January 15, 2008.

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

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

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

Sincerely,



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

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January 31, 2008

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

Dear Executive Director Wayne:

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

As I stated in my complaint of March 5:

> Complicating this matter is Commissioner Jean Ginn Marvin's role as treasurer for MHPC. The treasurer has a fiduciary responsibility to see to it that the organization's 1056-B filing is 'true, correct and complete.' As such, the review necessary to fulfill the Commission's statutory duty is, of necessity, a review of her conduct.

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

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

Previous Responses to this Issue:

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

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

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

Evidence of the Conflict of Interest:

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

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

1. By her own account made at the Commission meeting on January 19 last year, you have dutifully served as a direct report to Ms. Ginn Marvin for some two years and enjoyed a close relationship built on almost daily contact.

2. During the July 16 meeting, she personally credited you with returning her to the role of Chair after Commissioner Ketterer's departure.

3. You have made significant errors in your professional duties regarding Ms. Ginn Marvin. I have already mentioned your initial error presuming that she had been properly cleared to serve on the Commission. Then, during this case, you misstated 21-A M.R.S.A. § 1003, the standard for having the Commission launch an investigation as "....if the reasons stated for the request show sufficient grounds for believing that a violation ***has occurred***." (emphasis added) . This statement of the law, in a case directly calling into question the legality of actions undertaken by your boss, was fundamentally and entirely wrong. The standard for determining when the Commission should undertake an investigation is "....if the reasons stated for the request show sufficient grounds for believing that a violation ***may have occurred***." (emphasis added)

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

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

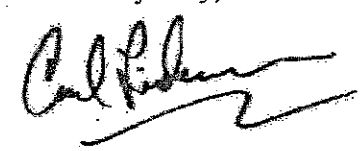
> What we're discussing is a general rule or policy and procedure that this Commission has the authority to discuss - whoever discusses it. It's not directed to anyone at this point in time. It's just a simple, uh, dialog, so to speak among us to figure out where we're going today from here. Whether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

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

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

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

Yours very truly,



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

February 1, 2008

By E-Mail and Regular Mail
Carl Lindemann
PO Box 171
Portland, ME 04112

Dear Mr. Lindemann:

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

Complaint #1

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

Complaint #2

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

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

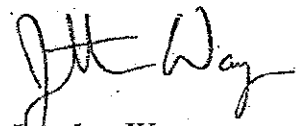
Your Request of Yesterday.

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

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

Thank you for the anticipated clarification.

Sincerely,



Jonathan Wayne
Executive Director

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

Carl Lindemann

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February 4, 2007

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

Dear Executive Director Wayne:

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

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

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

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

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

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

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

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

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

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

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

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

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

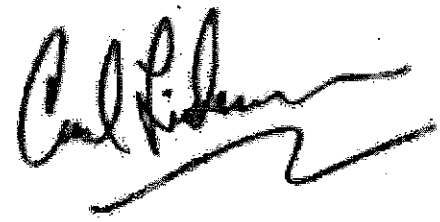
   As Commission Chair Ginn Marvin presided, her political committee's attorney came forward to testify – purportedly as a private citizen. Mr. Billings put forward the suggestion that the question of whether Democracy Maine should make a PAC report should be postponed till the appeal of the Commission's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

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

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

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

Yours Very Truly,



cc Lavin, Gardiner, Billings
encl.

Carl Lindemann

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November 27, 2006

BY FACSIMILE, ELECTRONIC MAIL & FIRST CLASS MAIL
Jonathan Wayne
Executive Director
Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333

RE: Maine Heritage Policy Center/Jean Ginn Marvin

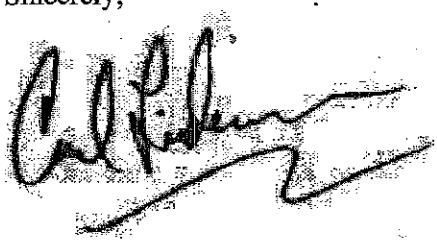
Dear Mr. Wayne,

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

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

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

Sincerely,



Carl Lindemann

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

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

November 29, 2006

Carl Lindemann
General Delivery
Calais, ME 04619

Dear Mr. Lindemann:

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

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

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

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

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

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

PHONE: (207) 287-4179 FAX: (207) 287-6775

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

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

Sincerely,

Jonathan Wayne
Executive Director

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

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

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§1002. Commission on Governmental Ethics and Election Practices

1. Membership.
[2001, c. 470, §1 (amd); T. 1, §1002, sub-§1, paragraph F (rp).]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MRSA , §T.1 SEC 1002/1/F (AMD).
PL 1975, Ch. 621, §1 (NEW).
PL 1983, Ch. 812, §1 (AMD).
PL 1989, Ch. 503, §B1 (AMD).
PL 1991, Ch. 86, § (AMD).
PL 1991, Ch. 880, §1 (AMD).
IB 1995, Ch. 1, §1,2 (AMD).
PL 2001, Ch. 430, §1 (AMD).
PL 2001, Ch. 470, §1-3 (AMD).
PL 2003, Ch. 381, §1 (AMD).
PL 2005, Ch. 271, §1,2 (AMD).
PL 2005, Ch. 295, §1 (AMD).

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

November 30, 2006

BY FACSIMILE, ELECTRONIC & FIRST CLASS MAIL
Jonathan Wayne
Executive Director
Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333

RE: Carl Lindemann/ Maine Heritage Policy Center

Dear Executive Director Wayne:

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

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

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

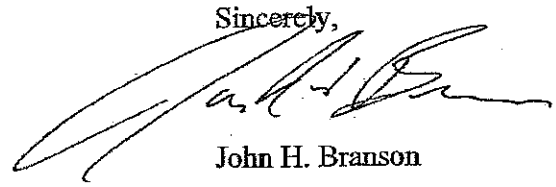
Finally, I wish to offer another compelling reason as to why Ms. Ginn Marvin's simple recusal from the pending investigation of the MHPC does not resolve the larger conflict created by her continued service on the Commission. You must be aware by now that the investigation of the MHPC in this matter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

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

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

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

Sincerely,



John H. Branson

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

Subject: Request to Commission in January 31 Letter
Date: Tue, 5 Feb 2008 17:09:55 -0500
X-MS-Has-Attach:
X-MS-TNEF-Correlator:
Thread-Topic: Request to Commission in January 31 Letter
Thread-Index: AchoQ9WehyLGTleHQvKDW+yVKpQwpQ==
From: "Wayne, Jonathan" <Jonathan.Wayne@maine.gov>
To: "Carl Lindemann" <carl@TrueDialog.org>,
"Carl Lindemann" <carl@cyberscene.com>
Cc: "Gardiner, Phyllis" <Phyllis.Gardiner@maine.gov>,
"Lavin, Paul" <Paul.Lavin@maine.gov>,
<Dib9@aol.com>,
"Michael P. Friedman" <mfriedman@rudman-winchell.com>
X-OriginalArrivalTime: 05 Feb 2008 22:13:45.0648 (UTC) FILETIME=[5FECD300:01C86844]
X-Nonspam: Whitelist

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

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

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

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

Document Set #2:

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

TRUE DIALOG.ORG

Restoring Authenticity in our Democracy

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

P.O. Box 171
Portland, Maine 04112

July 2, 2007

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

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

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

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

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

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

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

2.) Appoint an impartial Special Counsel to:

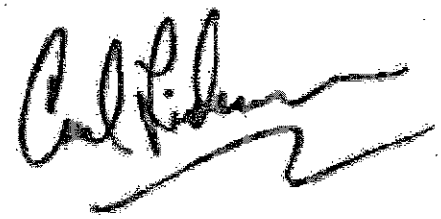
a) Conduct a preliminary investigation of issues raised by Ethics Commission Chair Ginn Marvin's conduct as described above; including, but not limited to:

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

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

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

Yours very truly,



Carl Lindemann
Executive Director

FACTUAL BACKGROUND & SUPPORTING DOCUMENTS

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

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

In filling out her response to that specific request on July 16, 2004, Ethics Commission Chair Ginn Marvin:
a) did not disclose that on that, on July 16, 2004, she was holding the office of "Director" of the Maine Heritage Policy Center [MHPC]; and
b) did not "indicate the nature of [her] relationship" with Maine Heritage Policy Center.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

****

JEAN GINN MARVIN
49 Cranbrook Drive
Cape Elizabeth, ME 04107

EXPERIENCE

1999 to Present	Director of Sales Nonantum Resort Kennebunkport, ME
1994 to 2000	Representative, District 25 Maine State Legislature Augusta, ME
1989 to 1999	Partner, Ginn-Marvin Real Estate South Portland, ME
1984 to 1989	President, Ginn-Marvin Moving and Storage Co. South Portland, ME
1983 to 1984	Director, National Account Sales Kimball & Brown/Allied Van Lines Dover, NH
1982 to 1983	Sales Manager Fox & Ginn Moving and Storage Co. South Portland, ME

CIVIC ACTIVITIES

*Portland Conservatory Of Music	
Board Chair	2001 to present
*Southern Maine Community College	
Foundation Board	2000 to present
*Town Councilor	1992 to 1994
*President, Board of Trustees	1993 to 1994
Portland Symphony Orchestra	
*President, Chamber of Commerce	1989 to 1992
*Member, Nominating Committee	1998 to Present
Maine Medical Center	
*Co-Chairman of the Board	1988
Maine Science & Technology	

EDUCATION

High School	Cape Elizabeth High School Cape Elizabeth, ME	Class of 1977
	Interlochen Arts Academy Interlochen, MI Certificate in Trombone Performance	Class of 1978
College	Syracuse University Syracuse, NY B.A. Political Science B.A. Policy Studies	Class of 1982
	Muskie School of Public Affairs University of Southern Maine Portland, ME Master's Degree in Public Policy	

AWARDS

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

FAMILY

Married to Bob Marvin
Children: Adam 18, Parker 15, Colby 9

HOBBIES

Skiing, Sailing, Reading, Walking

LEGISLATIVE STAFF QUESTIONNAIRE FOR GUBERNATORIAL NOMINEES

NAME: Jean Ginn Marvin

HOME ADDRESS: 49 Cranbrook Drive
Cape Elizabeth, Maine 04107

HOME PHONE: 799-6283

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

BUSINESS PHONE: 967-4050

POSITION TO WHICH NOMINATED: Ethics Commission

IS THIS A REAPPOINTMENT? no

IF YES, LENGTH OF PREVIOUS SERVICE:

EDUCATIONAL BACKGROUND

High School: Cape Elizabeth High School

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

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

Special Training: Certificate in Conflict Resolution (USM)
Certificate in Trombone Performance - Interlochen Arts Academy

PROFESSIONAL BACKGROUND

Present Employment: Nonantum Resort

How Long? 6 years

Contact Person for Reference: Tina Hewett

Phone: 967-4050

Prior Employment: Ginn Real Estate

How Long? 12 years

Contact Person for Reference: Herb Ginn

Phone: 761-2131

PROFESSIONAL BACKGROUND (Continued):

Prior Employment: Maine State Legislature

How Long? 6 years

Contact Person for Reference:

Phone:

COMMUNITY SERVICE BACKGROUND:

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

Church (optional): UCC

Political: Former member Cape Elizabeth Town Council

Other:

PROFESSIONAL AND BUSINESS AFFILIATIONS AND ASSOCIATIONS:

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

SPECIAL RECOGNITION, HONORS OR AWARDS:

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

MISCELLANEOUS

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

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

Appointed to the Chiropractic Board of Review 1990-1994

IF YES, LIST POSITIONS AND DATES:

Elected to the Maine House of Representatives 1994-2000

DID YOU SEEK THIS APPOINTMENT?

No

IF SO, WHY:

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

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

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

no

IF SO, WHY?

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

attached

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

2. EXECUTIVE EMPLOYEE. An executive employee commits a civil violation if he personally and substantially participates in his official capacity in any proceeding in which, to his knowledge, any of the following have a direct and substantial financial interest:

   A. Himself, his spouse or his dependent children
   B. His partners
   C. A person or organization with who he is negotiating or has agreed to an arrangement concerning prospective employment
   D. An organization in which he has a direct and substantial financial interest
   E. Any person with whom he has been associated as a partner or a fellow shareholder in a professional service corporation pursuant to Title 13, Chapter 22, during the preceding year.

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

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

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

no

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

no

WHAT ACTION WAS TAKEN?

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

no

ADDITIONAL COMMENTS:

7/16/09
DATE

SIGNATURE OF NOMINEE

STAFF PERSON

SOCIAL SECURITY [redacted]

DATE OF BIRTH 7/30/59

Publicly Traded Stocks and Bonds owned by Children

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

Publicly Traded Stocks and Bonds owned by Spouse

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

Publicly Traded Stocks and Bonds owned by Candidate

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

Privately Owned Corporations:

Flash Island, Inc.
Candidate is President
Children each have ownership interest

Privately Owned Partnerships:

- **GMG Family Limited Partnership**
  Candidate, spouse & children all have ownership interests

- **Kennebec Shores Associates**
  Spouse and child have ownership interest

Privately Owned Limited Liability Companies:

- **262 Payne Road, LLC**
  Children have ownership interest

- **Midcoast Land Development, LLC**
  Children have ownership interest

121st MAINE LEGISLATURE

NOTICE OF CONFIRMATION HEARING

THE JOINT STANDING COMMITTEE ON LEGAL AND VETERANS AFFAIRS

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

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

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

POSITION DESCRIPTION:

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

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

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

DEADLINE FOR COMMENTS: Written comments relevant to qualifications of the nominee may be filed with the Legislative Information Office by 9 am on the day of the hearing.
CONTACT PERSON: Teen Ellen Griffin, Legislative Information Office, 100 State House Station, Augusta, Maine 04333-0100; 207-287-1692; FAX 207-287-1580; TTY 207-287-6826

NOMINATIONS BY THE GOVERNOR

July 22, 2004

1. **COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES**

Jean Ginn Marvin of Cape Elizabeth

John Elias Baldacci

RECOMMENDED GUIDELINES FOR LEGISLATIVE CONFIRMATION HEARING

1. INTRODUCTORY STATEMENT BY CHAIR

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

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

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

2. MOTION TO CONFIRM

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

   2. (Motion by Committee Member)

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

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

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

4. RECOGNIZE THE GOVERNOR OR HIS REPRESENTATIVE

   1. "The Chair now recognizes (name of Governor or his representative) for the purpose of making a statement concerning this nomination."

   2. (Statement by Governor or his representative)

   3. "The Chair would ask if any member of the Committee has questions (of the Governor or his representative) at this time."

5. STATEMENT BY NOMINEE

   1. "The Chair now recognizes **Jean Ginn Marvin** for the purpose of making a statement concerning this nomination."

   2. (Statement of nominee)

   3. "The Chair would ask if any member of the Committee has questions of the nominee."

6. STATEMENTS FROM THE FLOOR

   1. "The Chair will now take comments from persons attending this hearing who wish to speak for or against this nomination.

      A. Anyone who has a written statement but who does not wish to speak should have submitted the statement with the Committee Clerk prior to todays' hearing. All such statements shall contain the name and residence of the person who prepared the statement. A copy of each written statement presented to the Committee at this hearing will be made available to the nominee prior to the Committee's vote and the nominee will have an opportunity to respond to the written comment.

      B. Those who wish to speak in person should observe the following:

         - Please speak from the rostrum and, state your name and place of residence prior to presenting your testimony.

         - Only comments concerning the suitability of this particular nominee for this particular position will be considered in order. All other comments will be considered out of order.

         - Please remain at the podium after you complete your statement so that members of the Committee may have an opportunity to ask questions.

   2. Recognize persons wishing to testify:

      A. First, is there anyone present who wishes to speak in favor of the nomination.

      B. Is there anyone present who wishes to speak against the nomination.

      C. Is there anyone else who wishes to speak on the nomination.

7. CONCLUDING STATEMENT BY THE CHAIR

1. All public comments having been taken, the Committee will now proceed as follows:

   - Review any additional written comments on the nomination that have been received by the committee. A copy of all written comments will be made available to the nominee so that he/she may have an opportunity to respond (prior to the vote of the committee).

   - Review the written report of the investigation of the partisan assistants, which has been conducted pursuant to the Joint Rules.

   - Vote on the nomination and notify the President of the Senate, pursuant to Title 3 MRSA, Section 157 and the Joint Rules. The vote must be taken within 35 days from the date of the Governor's written notice.

2. The hearing by the Joint Standing Committee on **Legal and Veterans Affairs** for **Jean Ginn Marvin** of **Cape Elizabeth** for appointment to the **Commission on Governmental Ethics and Election Practices** is closed.

8. TAKING THE VOTE

1. In accordance with the law, the Committee may not take the vote on this nomination sooner than 15 minutes after the close of the public hearing unless all committee members who are present agree. At this time, therefore, the Chair will inquire whether any member present objects to proceeding to take the vote immediately. If there is no objection:

2. "The pending question before the Committee is that the Joint Standing Committee on **Legal and Veterans Affairs** recommend to the Senate of the **121st** Maine Legislature that the nomination of **Jean Ginn Marvin** of **Cape Elizabeth** for appointment to the **Commission on Governmental Ethics and Election Practices** be confirmed."

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

"A vote of yes will be in favor of recommending confirmation."
"A vote of no will be against the motion to recommend confirmation."
"Is the Committee ready for the question?"

The Committee Clerk will call the roll."

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

Testimony of Jean Ginn Marvin

Nominee for the Commission on Governmental Ethics and Election Practices.

Joint Standing Committee on Legal Affairs

August 17, 2004

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

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

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002
(207) 287-1400
TTY: (207) 287-4469

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

13 August 2004

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

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

From: Rep. Janet McLaughlin

Please accept the following comments on behalf of this nomination.

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

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

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

District 25 Part of Cape Elizabeth

Printed on recycled paper

TESTIMONY SIGN IN SHEET

Joint Standing Committee on Legal & Veteran's Affairs

LD# Jean Ginn Marvin

Date: 8/17/04

	Name	Town/Affiliation	Proponent	Opponent	Neither
00	Kurt Adams	Governors representative	✓		
164	Jean Ginn Marvin	Nominee	✓		
stop	294				

VOTING TALLY SHEET

For Confirmation Hearings

Confirmation of: Jean Giron Marvin

Committee: Joint Standing Committee on Legal & Veterans Affairs

Date: August 17, 2004

Motion: Confirm

Motion by: Senator Gagnon

Seconded by: Rep. Clark

	Those Voting to Confirm Yea	Other: Nay	Other: Absent	Other: Abstain
Senators				
1. Kenneth Gagne (CH)	✓			
2. Kenneth Lemont	✓			
3. Arthur Mayo III	✓			
Representatives				
1. Joseph Clark (CH)	✓			
2. Kevin Glynn	✓			
3. Randy Hotham	✓			
4. Richard Brown	✓			
5. Gary Moore	✓			
6. John Patrick	✓			
7. Patricia Blanchette	✓			
8. Marilyn Canavan	✓			
9. Rodney Jennings	✓			
10. Roger Landry			✓	
Totals	12		1	

SENATE

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

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

HOUSE

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

STATE OF MAINE

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

COMMITTEE ON LEGAL AND VETERANS' AFFAIRS

August 17, 2004

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

Dear Madame President:

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

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

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

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

Signed,

Kenneth T. Gagnon
Senate Chair

Joseph E. Clark
House Chair

100 STATE HOUSE STATION, AUGUSTA, MAINE 04333-0100 TELEPHONE 207-287-1310

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

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

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

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

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

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

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

We the people of Maine...

THE MAINE HERITAGE POLICY CENTER

Press Releases

Back to Complete Listing

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

PRESS RELEASE

The Maine Heritage Policy Center

FOR IMMEDIATE RELEASE
DECEMBER 14, 2005

CONTACT: JASON FORTIN
(207) 321-2550

The Maine Heritage Policy Center Elects New Officers

2006 Board leadership group has strong qualifications and business experience.

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

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

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

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

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

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

Material from this document may be copied and distributed with proper citation.
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P. O. Box 7829

Portland, ME 04112
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jfortin@mainepolicy.org

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We the people of Maine...

THE MAINE HERITAGE POLICY CENTER

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

PRESS RELEASE

The Maine Heritage Policy Center

FOR IMMEDIATE RELEASE
JANUARY 12, 2007
(m)

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

John Chandler Joins The Maine Heritage Policy Center Board

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

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

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

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

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

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

> John has served as the President & Managing Principal of Berry Dunn since being elected in 1999. He has worked with forest products and telecommunications companies since first joining the Firm. John is proud to come from a timberland owning/logging family in Maine.
>
> In addition to his responsibilities as Firm leader, John provides audit and consulting services to privately-held, family businesses throughout Northern New England. He has helped businesses chart their way through a wide range of issues, including mergers, sales, and acquisitions, with a focus on creating value for owners and shareholders.
>
> John started his accounting career in 1987 when he came to work at Berry Dunn. John is a Certified Public Accountant and a member of the AICPA and the Maine Society of

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

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

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

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

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

August 2, 2006

Dear Friend,

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

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

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

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

The Taxpayer Bill of Rights:

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

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

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

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

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

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

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

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

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

Sincerely,

Bill Becker

Bill Becker
President & CEO
The Maine Heritage Policy Center

We the people of Maine...

THE **MAINE HERITAGE** POLICY CENTER

November 6, 2006

www.mainepolicy.org

P.O. Box 7829
Portland, Maine 04112

Tel: 207.321.2550
Fax: 207.773.4365

Mr.
REDACTED
Denver, Colorado

Dear REDACTED

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

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

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

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

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

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

Yours truly,

Bill Becker

Bill Becker
President and Chief Executive Officer

Thank you!

Board of Directors

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

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. Tilly Place, Denver Co 80224	$125.00
10/25/06	Hugh P. Robinson, Robinson Rd, Falmouth ME 04105	$100.00
8/22/06	John Graustein, Waites Landing Rd, Falmouth, ME 04105	$250.00
8/16/06	Peter Paul Kkinen, 3 The High Rd, Bronxville, NY 10708	$500.00

1. Total cash contributions this page only	975.00
Complete lines 2-4 on last page of Schedule A only: 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

CGEEP Form 1056-B (Rev. 5/06)

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

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

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

Request for Consideration of Mike Mowles for Legislature Campaign Flyer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) He was not supplied with a written copy of the complaint.

(2) He was not told when the complaint was made and in what fashion.

(3) Ample notice had not been given so that he could be properly represented before the Commission.

(4) He wished to be represented by an attorney for this matter.

(5) His attorney will need proper time to prepare for the hearing.

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

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

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

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

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

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

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

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

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

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

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

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

The meeting adjourned at 3:05 p.m.

Respectfully submitted,

Jonathan Wayne
Executive Director

Document Set #3:

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

<< back to story >>

Portland Press Herald Maine Sunday Telegram

Complaint targets head of ethics panel

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

By KEVIN WACK Staff Writer

July 16, 2007

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

kwack@pressherald.com

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<< back to story >>

Document Set #4:

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

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

TrueDialog.ORG

For a more Authentic Democracy

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

P.O. Box 171
Portland, Maine 04112

August 6, 2007

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

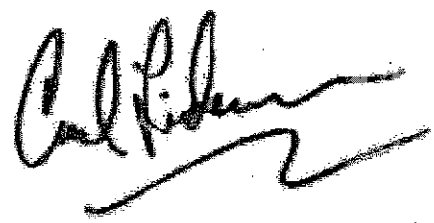
Unusual circumstances necessitate that I contact you directly regarding Commissioner Ginn Marvin's conduct and qualifications to serve.

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

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

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

Yours very truly,



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

The Ethics Commission's Choice:

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

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

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

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

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

a. That the conduct of Maine Ethics Commissioners needs to be beyond reproach, both in fact and in appearance.

b. That Commissioners must be held to the highest possible standard of conduct – higher, even, than those they regulate.

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

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

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

***

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

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

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

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

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

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

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

A. What did the Maine Ethics Commission do?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. What did the Maine Ethics Commission do?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Whatever kind of entity MHPC is, it is not what Mr. Becker claimed – i.e. an entity not regulated by the Commission. This became explicit with the Commission's Final Determination ordering the organization to file a 1056-B report. What does MHPC's status as a regulated entity in 2006 say about 2004 when Commissioner Ginn Marvin was appointed to serve? MHPC repeatedly testified that its conduct and character in 2006 was unchanged from the founding of the organization in 2002. Therefore, it is reasonable to infer that since it was a regulated entity in 2006, it was also one in 2004.

b. MHPC is a "political committee" so Commissioner Ginn Marvin is specifically excluded from service on the Commission.

A "political committee" is defined under 21-A MRSA §1, sub-§30 as "2 or more persons associated for the purpose of promoting or defeating a candidate, party or principle." Since as early as the organization's founding in 2002-2003, MHPC has been and continues to be a "political committee" promoting the principle of Tax and Expenditure Limitation (TEL) laws that include ballot initiatives such as TABOR (see addenda: MHPC as a "Political Committee"). Therefore, Commissioner Ginn Marvin's service on the MHPC Board of Directors disqualifies her from service on the Commission.

A. What did the Maine Ethics Commission do?

-- **Nothing.**

B. What could the Maine Ethics Commission do with an "Above Reproach" approach?

It may be appropriate for the Commission to determine whether the standard of 21-A M.R.S.A. § 1003 is satisfied, that there are "sufficient grounds for believing that a violation may have

occurred." Based on this, they might decide that an investigation of some kind must ensue concerning the claim that the proper disclosure would disqualify her from service.

Note, however, that a "beyond reproach" Ethics Commission held to the highest possible standard of conduct, would **lower** the legal standard of 21-A M.R.S.A. § 1003 in the case of claims of statutory violation by an Ethics Commissioner. Here, that would require investigation if there are "any grounds for believing that a violation may have occurred." One would think that any Commissioner worthy of service and with nothing to hide would welcome any such clearance after due process. This threshold for investigation applies to all of the issues here - Ginn Marvin's "failure to disclose", the claim that the proper disclosure would disqualify her from service, and whether she had engaged in "prohibited activities." It also is pertinent to concerns over whether the Commission was improperly constituted with her presence, and whether that taints determinations and rule-making during her tenure.

Because of the broad issues raised by the distinct possibility that Commissioner Ginn Marvin was not qualified to serve either as a Director on MHPC's board in 2004 or as that board's Treasurer since 2005, an "above reproach" Commission would carry out the following:

-- Announce that sufficient grounds for believing that a violation of Section 1 § 1002(2) may have occurred and then vote to ask that Commissioner Ginn Marvin recuse herself until the allegation is addressed by the Commission without her presence.

--Immediately act by formal vote to cede jurisdiction over investigating and adjudicating Commissioner Ginn Marvin's possible violation of Section 1 § 1002(2) and to request that someone entirely removed from the scene (eg. the Governor, the Speaker of the House, the President of the Senate) appoint an independent Special Counsel, person or group to undertake a "beyond reproach" investigation and adjudication.

-- Recognize that the Commission may have been and continues to be improperly constituted as the result of having an unqualified Commissioner. This may generate some claims that decisions rendered by the Ethics Commission since her appointment in 2004 may be subject to challenge, as being void or voidable.

C. Additional Concerns and Considerations: Need for Executive Director Wayne and Assistant Attorney General Gardiner to be recused from any participation in processing Ginn Marvin matter.

Before the Commission could consider the matter during the July 16 session, Executive Director Wayne (apparently with the advice and consent of In-House-Counsel Gardner) took an unusual and unexpected action. He boldly began his remarks by expressing a prejudicial and summary conclusion that, in effect, "cleared" the question of Commissioner Ginn Marvin's qualification-to-serve:

> *Carl has raised an argument that Jean Ginn Marvin is disqualified from serving on the Commission because she's an officer of the Maine Heritage Policy Center and that qualifies as a political committee. I've had a chance to talk it over with*

Phyllis, about what her view is and we disagree with that point of view. [Executive Dir. Wayne, 7/16/07]

The Executive Director has worked closely with Commissioner Ginn Marvin for several years during her service as Chair reporting directly to her. That, on the face of it, makes his astonishing "there's no wrongdoing and no legal issue" summary dismissal pronouncement inappropriate.

What premises lies behind this morally and procedurally bankrupt, and legally fatuous conclusion, which ignores all basic principles of administrative and conflict-of-interest law?

That - again, unlike the average citizen - when an allegation arises that an Ethics Commissioner has engaged in activity prohibited under the statute, that Commissioner is immediately entitled to specialized treatment, in the form of Ms. Ginn Marvin's immediate "clearance" by the Commission's Executive Director and the Assistant Attorney General, including apparently:

-- expedited, instantaneous "process" which omits every common procedural due process element. Here, there was no "process" whatsoever proceeding Wayne's bold and summary automatic "clearance" of Commissioner Ginn Marvin on this issue.
-- no investigation (other than, possibly, input from only Ms. Ginn Marvin)
-- no accumulation of evidence
-- no hearing (at least with advance public notice, and held in public)
-- failure to isolate Ms. Ginn Marvin from any adjudication or decision-making on the claim, through a firewall, and formal recusal/removal from the entire subject
-- no public comment
-- no vote by the Ethics Commission, or any other body
-- no written decision, and no recitation of facts found to be true, legal standard applied, or legal conclusions made.

These statements by Executive Director Wayne and Assistant Attorney General Gardiner shows that they both have entirely "pre-judged" any claim of any statutory violation by Ethics Commissioner Ginn Marvin. However, the Commission "just sat there" in response.

This explicit "pre-judging" mandates that both Executive Director Wayne and Assistant Attorney General Gardiner be recused from any further involvement or contact with any issues having anything to do with claims of qualification, ethical or statutory violation by Commissioner Ginn Marvin.

This bold and summary adjudication and clearance is especially troubling in the Executive Director's case because of what may be his pattern of biased conduct favoring Ethics Commissioner/MHPC Treasurer Ginn Marvin as pertains to charges of statutory violation.

Executive Director Wayne wrote a March 6, 2007 Memorandum to the Commission, which outlined for the Commissioners the alleged statutory standard to be applied by the Commission in judging the accuracy and completeness of a report which the Commission had previously ordered by filed by MHPC. This complaint concerns the organization's fundraising and expenditures, a subject directly within the bailiwick of Ethics Commissioner/MHPC Treasurer Ginn Marvin. In that memo, Executive Director misstated the legal standard to be applied by the

Commission. He inaccurately quoted 21-A M.R.S.A. § 1003, the standard for having the Commission launch an investigation:

> ....if the reasons stated for the request show sufficient grounds for believing that a violation **has occurred.**" (emphasis added) .

This statement of the law, in a case directly calling into question the legality of actions undertaken by his boss, was fundamentally and entirely wrong. The obvious standard for determining when the Commission should undertake an investigation is:

> ....if the reasons stated for the request show sufficient grounds for believing that a violation **may have occurred.**" (emphasis added)

These two articulations of the statutory standard which lies at the very heart of the entire statutory and regulatory framework are fundamentally different. The statute means to mandate a Commission investigation when there is merely the possibility of violation. In startling contrast, Executive Director Wayne asserted a very different standard in writing in his legal memorandum on a case that named his boss in a claim of violation. He stated that only when there is a much larger element of certainty that a violation has occurred is an investigation warranted. The gross and fundamental nature of Executive Director Wayne's written misstatement of this legal standard raises several possible inferences:

1) it was merely "inadvertent";
2) it was evidence of gross incompetence;
3) whether intentional or "inadvertent", the Executive Director's recitation of such a baldly false legal standard, some three years into his tenure as Executive Director, calls into question every Commission decision – to investigate or not investigate - during his entire tenure prior to that March 2007 advice to the Commission;
4) it was part of a pattern of conduct of providing favorable treatment to his boss, Ethics Commissioner/MHPC Treasurer Ginn Marvin

It is difficult to tell, absent more information, which of the above inferences is accurate. However, the possibility of a pattern of Executive Director Wayne's unfairly favorable conduct toward Commissioner Ginn Marvin is heightened by the subsequent "summary clearance" he offered spontaneously on July 16 described above.

The "Above Reproach" approach necessitates a specific response. This apparent pattern, alone, makes it clear that Executive Director Wayne needs to be recused and separated by a firewall. In fact, the mere fact that Executive Director Wayne served directly under Commissioner Ginn Marvin mandates this same need for his recusal/firewall separation. Likewise, Assistant Attorney General Gardiner's participation in such a "summary clearance on all charges" for Commissioner Ginn Marvin makes clear that she, too, needs to be removed from any further processing of any matters involving Commissioner Ginn Marvin.

4. Conclusions and Considerations: Is the Ethics Commission Ethical?

It is absurd for Assistant Attorney General Gardiner to maintain that all of the matters here concerning Commissioner Ginn Marvin are not "within the Commission's purview." In fact, much of this is well within the Commission's jurisdiction. However, the self-evident conflict of interest involved in the Commission investigating or adjudicating any complaint involving a Commissioner makes it necessary to move the action to an appropriate venue. At the very least, the "It Just Sits There" doctrine must be repudiated if the Commission is to have any claims to "ethical" standing.

By asserting her novel "It Just Sits There" doctrine, Assistant Attorney General Gardiner has brought the Commission to a point of decision. This is an opportunity to publicly declare whether or not the Commission adheres and aspires to the highest ethical, moral and legal standards. By formally rejecting the "It Just Sits There" doctrine and also voting to carry out the appropriate actions to see to it that Commissioner Ginn Marvin's apparent violations. This is the only way the Commission can properly carry out its mission as it:

...guards against corruption and undue influence of the election process...promptly, fairly, and efficiently...(with Commissioners that) investigate and advise on apparent violations of ethical standards.

Alternately, the Commission may wish to positively embrace the "It Just Sits There" doctrine by formal vote. If so, this should be a matter of great interest to Maine citizens and their elected representatives. Finally, the Commission may elect to tacitly accept the "It Just Sits There" doctrine by taking no formal action here whatsoever. That would be of grave concern. It might indicate that the Commission was unable to fulfill its statutory obligations and lacked the fundamental integrity necessary to even be clear about what standards it did embody.

Howsoever the Commission decides to act or to not act regarding Commissioner Ginn Marvin, it is a moment of truth.

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ADDENDA: MHPC as a "Political Committee"

Is there sufficient grounds for believing that Jean Ginn Marvin is unqualified for service on the Ethics Commission? That easily accessible evidence provides sufficient grounds for believing that Maine Heritage Policy Center (MHPC) is a "political committee" exposes Assistant Attorney General Gardiner and Executive Director Wayne's prejudicial and summary conclusion as unfounded.

The challenge to Commissioner Ginn Marvin's qualifications to serve on the Commission on the grounds that she serves on the board of MHPC arises from **1 § 1002(2)**:

A person may not be appointed to this commission who is a member of the Legislature or who was a member of the previous Legislature, who was a declared candidate for an elective county, state or federal office within 2 years prior to the appointment, who now holds an elective county,

state or federal office, who is an officer of a political committee, party committee or political action committee or who holds a position in a political party or campaign.

As per 21-A MRSA §1, sub-§30. Definitions, a 'Political committee' means 2 or more persons associated for the purpose of promoting or defeating a candidate, party or principle."

MHPC in 2003: Advocating for TEL legislation from its Inception

Easily accessible documentary evidence shows that, in a plain language understanding of the definition, MHPC is a political committee "associated for the purpose of promoting the principle" of tax and expenditure limitation laws (TELs). MHPC's Executive Director Bill Becker began promoting the principle of TELs within weeks of the organization's founding. He is explicit in an opinion piece he wrote for the Lewiston Sun Journal published on February 16, 2003:

> ...tax and expenditure limitations should be passed...TELs legally limit a state's ability to increase either taxes and/or expenditures. Maine's state government has chronically proven that it is unable to apply fiscal discipline to the budget process, as each of us must do with our own families or businesses. Therefore, legal limits must be placed on policymakers." (see Exhibit A)

2004: TELs vs. Tax Cap

In 2004, the so-called "Palesky Tax Cap" referendum was at the forefront with signatures for the ballot initiative certified on February 10. Apparently, this threatened to eclipse MHPC purpose in promoting TELs. In response, the organization held an "Emergency Tax Summit" on March 23. This was a well-publicized event featuring national anti-tax activist Grover Norquist. Rather than focus on the Palesky Tax Cap, the "summit" apparently focused on TELs, specifically Colorado's Taxpayer Bill of Rights. Two of four presentations still found on MHPC's website from the event, from Colorado's Penn Pfiffner and Dr. Barry Poulson, reflect the TEL/TABOR focus. A news report in the Lewiston Sun Journal the following day further underscores this:

> In addition to a local tax cap, Norquist said Mainers should adopt a Taxpayers Bill of Rights, or TABOR, such as Colorado voters did in 1992. That measure limits state spending to the annual rate of inflation plus population growth and requires a two-thirds vote in the Legislature to approve tax increases. (see exhibit B)

Concurrent with these events, future Ethics Commission Chair Ginn Marvin is listed as a Director on the MHPC board in the organization's first annual tax filing, IRS Form 990, dated April 28, 2004. She filled out her disclosure for membership on the Ethics Commission several months later, dated on July 16, 2004. She was appointed to the Commission on August 17. Just over three weeks later, on September 10, MHPC published a press release supporting TABOR a new ballot initiative put forward by Mary Adams. Becker's advocacy here reflects his earlier advocacy in 2003:

> Our state has shown itself incapable of managing its own affairs without guidelines. Tax and spending limits will provide the parameters for our state and local

governments to live within their means. (see exhibit C)

Four days later, on September 14, Grover Norquist's organization, Americans for Tax Relief, sent out a media advisory apparently to provide follow-up support for MHPC's release. Norquist is quoted in it saying "As I watch tax developments nationwide, I see that TABOR is the future." (see exhibit D)

MHPC's partnership with Adams to promote TABOR becomes even more explicit after the failure of the Palesky Tax Cap as is reported by Victoria Wallack in the Brunswick Times Record on November 22:

> Today (Adams) has hooked up with a national movement called the Taxpayers Bill of Rights (TABOR) and the conservative Maine Heritage Policy Center, based in Portland. With their help she hopes to put a question on the ballot next year... (see exhibit E)

Also of interest is how these documents seem to show a close relationship that appears to be at odds with Becker's later testimony to the Ethics Commission where he claimed MHPC had operated independently of Adams (see exhibit F).

MHPC's TEL Promotion Yesterday, Today & Tomorrow

MHPC expressly advocated for the 2006 TABOR ballot initiative. Of particular interest is the mission statement contained in a "thank you" form letter used as part of MHPC's fundraising program for the ballot initiative. In the letter signed by Becker, he states that donations will be used "to advance our mission of promoting the Taxpayer Bill of Rights...an effective 'Tax and Expenditure Limit'..." (see attached, Exhibit G)

MHPC has already signaled that it will continue its work as a political committee to promote the principle of TELs. Becker made this statement on WLOB radio on July 19, 2007:

> I can fully report that we are rewriting TABOR. We're not rewriting TABOR as the Taxpayer Bill of Rights. We're rewriting a tax and expenditure limitation bill based on the fact that we wrote the last one...here's another version of the same tool. (audio available at www.truedialog.org/audio/WLOB_becker_7_19_07.mp3)

Conclusion:

There is sufficient reason to believe that MHPC may be properly defined as a "political committee" in a plain language reading of 21-A MRSA §1, sub-§30. The documentary evidence makes it clear that promoting the passage of TELs in Maine is a major purpose for MHPC likely going back to its founding.

EXHIBIT A

Sun Journal

Significant changes sought in economic policies

Sunday, February 16, 2003

Maine government has chronically proven that it is unable to apply fiscal discipline to the budget process. Legal limits must be placed on policymakers.

We live in one of the finest places in the nation - our great state of Maine. Our magnificent and immense natural resources, our safe and varied communities, combined with the determination and grit of Maine people, makes the state a place about which books are written and movies are made.

Yet Maine is on the verge of significant population and economic decline. If we do not direct our elected (and non-elected) officials to make significant, structural changes in our long-held policies on taxes, economic development, and regulations that we place on both our people and businesses, Maine will see more closings, more layoffs, and more businesses deciding to locate their operations somewhere outside our borders. That potential end result will have a devastating effect on each of us in a very real way.

Conservatives have long held that there are certain key elements to a thriving and robust economy: lowering the tax burden, encouraging responsible free market competition among the business community and limiting the amount of unfunded and overly burdensome regulations placed upon both individuals and corporations.

As it relates to the states, these beliefs are based upon factual data that show the competitive advantage in those states that have embraced this fundamental understanding. States such as Colorado, Florida, and our neighbor New Hampshire, have seen a significant growth in population, business development and, as a result, tax revenue.

The Maine Heritage Policy Center has emerged as a leading Maine voice for these honorable views of the conservative philosophy - and as such is once again reminding Mainers of their strong, independent and participatory Maine heritage.

MHPC is a new nonprofit, nonpartisan research and educational organization whose mission is to formulate and promote conservative public policies based on the principles of free enterprise; limited, constitutional government; individual freedom; and traditional American values - all for purpose of providing public policy solutions that benefit the people of Maine.

In the critical area of the economy, we all heard the rhetoric during the recent gubernatorial contest regarding Maine's high tax rate, and that the business community is finding it hard to live and work here. While the campaign may be over, that reality still exists.

In a 2002 study published by the Tax Institute, Maine was the last - the lowest, the bottom - of the list in terms of tax-friendly states. Maine's individual tax burden (combining a Maine resident's state, local, property, sales and excise taxes), as a percentage of personal income, was 13.6 percent - the highest in the union!

These are facts that we can no longer ignore. These types of well-publicized reports cannot and do not bode well for Maine's prospect at attracting new businesses to the state. Remember that along with those businesses come dozens or hundreds or thousands of new people to Maine who would buy houses, cars, food and, yes, pay taxes.

Mainers must be adamant in their strong opposition to any tax increases; in fact, we must push for significant, structural reform that decreases the overall tax burden on Maine's people and businesses. Such reform must include property tax caps, such as are already in place and working well in Bath. Additionally, tax and expenditure limitations should be passed, as they have been by a majority of the states. TELs legally limit a state's ability to increase either taxes and/or expenditures. Maine's state government has chronically proven that it is unable to

apply fiscal discipline to the budget process, as each of us must do with our own families or businesses. Therefore, legal limits must be placed on policymakers.

The Maine Heritage Policy Center provides objective, fair and grounded analyses of public policy issues facing the state. The need for an organization of MHPC's nature is based on the principles of balance.

Mainers need to hear all ideas that could influence and shape the course of our state. MHPC provides research and analysis with the utmost integrity, drawing on both local and national experts to offer solutions and to promote effective and responsible public policy models that already occur within Maine.

Our Maine heritage is based on grit, determination and ingenuity. Those characteristics together provide the ideal foundation for promoting positive change that will ensure a more secure future for our state.

Bill Becker of Portland is the Executive Director of The Maine Heritage Policy Center.

EXHIBIT B

Sun Journal

Activist critiques Maine, gets critiqued himself

By Christopher Williams , Staff Writer
Wednesday, March 24, 2004

PORTLAND - A national tax activist who visited Maine Tuesday endorsed a proposed 1 percent property tax cap that will go to voters later this year.

Grover Norquist, president of Americans for Tax Reform, told reporters a tax cap likely would limit government spending and lessen the need for higher taxes.

Critics say the cap would drain more than $500 million from municipalities and cripple local services.

Norquist was keynote speaker at an "Emergency Tax Summit" at the Holiday Inn by the Bay hosted by Maine Heritage Policy Center, a conservative economic think tank.

Politicians will push any tax to the breaking point, Norquist said. By capping property taxes, voters should successfully send a message to lawmakers that rising taxes and the higher spending that triggers them are not acceptable.

"I think it does lead to permanent restraint on spending, or is likely to," he said.

The state's distinction as having the highest tax burden as a percent of income has pushed residents to the brink, he said.

"When it comes to tax and spending policies, ... Maine is not just a little bit out of whack," he said. "Maine does not have superior services than other states, just more expensive services."

In addition to a local tax cap, Norquist said Mainers should adopt a Taxpayers Bill of Rights, or TABOR, such as Colorado voters did in 1992. That measure limits state spending to the annual rate of inflation plus population growth and requires a two-thirds vote in the Legislature to approve tax increases.

Only a constitutional amendment that restricts spending will work, Norquist said. It is not enough to enact a law that sets budgetary limits and creates a rainy day fund, such as the so-called stabilization fund proposed last year by Gov. John Baldacci and passed by the Legislature. It is too easily breached, he said.

"It's not an escrow account; it's a slush fund. And it will be spent when they want to spend it."

George Christie, executive director of Maine Citizen Leadership Fund, said Norquist was a polarizing presence who showed disdain for Maine's tradition of Democrats and Republicans working together to solve the state's tax problems.

"He is one of the most radical anti-tax figures in this country with a direct line to the White House," Christie said. "We will not tolerate that kind of debate."

Christie said he and his group used satire to "make light of a very serious issue" during the conference by pulling up in a limousine dressed as millionaires in top hats, tails and fur coats while clutching cigars. Fake bills spilled from their pockets. They entered the hotel and tried to confront Norquist, but were turned away at the door to the luncheon reception.

By inviting Norquist to serve as keynote speaker, the Maine Heritage Policy Center has "declared war on bipartisanship," Christie said.

When asked about Christie's remarks, Norquist later answered that, at the federal level of government, bipartisanship has historically yielded spending increases. "I thought that the best moments of the last several years have been the clarifying partisan bickering."

Christie said tax reform in Maine should include boosting revenues to help provide property tax relief to those who need it most. It also should include protections from Medicaid cuts.

cwilliams@sunjournal.com

EXHIBIT C

We the people of Maine...

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Taxpayer Bill of Rights Challenged by Governor's Office

This despite previous statements that supported spending limits

PORTLAND – The Maine Heritage Policy Center today requested clarification on the Governor's position on controlling government spending.

Taxpayer advocate Mary Adams has submitted a proposed citizen's initiative that would limit state and local spending to the rate of inflation plus population growth. Known as a Taxpayer Bill of Rights, the initiative would also require a vote by the people to override such limits. 27 states have some sort of limitation on the growth in state spending. Spending is what has driven Maine's tax burden to epic heights with disastrous consequences.

The Bangor Daily News reported on April 28 that the Governor "said he would consider supporting a constitutional spending cap." Yet the Portland Press Herald reported today that the Governor's spokesman stated that tax and spending relief efforts "are looking to send Maine back into the Stone Age."

Bill Becker, Executive Director of the Maine Heritage Policy Center remarked that "Governor Baldacci was right when, in his January, 2003 inaugural address he noted that 'State spending is out of line with state revenues, creating a billion dollar deficit. This huge imbalance requires immediate and serious attention.' Yet the state faces another $1 billion deficit in the next legislative session.

"I'm not sure what changed in the Governor's office, but I would encourage the Governor to support the proposal as he did in his inaugural address," said Becker.

Maine taxpayers have had enough and are taking matters into their own hands. "There is nothing more powerful than grassroots citizens organizing to reclaim the American notion that government serves the people, and not the other way around," stated Becker. "Our state has shown itself incapable of managing its own affairs without guidelines. Tax and spending limits will provide the parameters for our state and local governments to live within their means."

Becker concluded, "By lowering our tax burden, Maine will once again be an attractive option for families and businesses thinking about moving to Maine. Our tax base will expand, providing more government revenue and a healthier economy for all Maine people. Isn't that our ultimate goal?"

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EXHIBIT D

Talk Radio Alert

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FOR IMMEDIATE RELEASE
14 SEPTEMBER 2004

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INTERVIEW ALERT:

The Tax Revolution Advances in Maine

Mainers are up in arms against taxes. They shoulder the highest tax burden in the nation, and their businesses face a tax climate that ranks 43rd out of the 50 states (The Tax Foundation, 2003).

A backlash has begun, as Mainers are demanding a less oppressive government and greater economic opportunities. A key component in that backlash is a 1% property tax cap referendum to be voted on November 2.

But an even bigger revolution is coming, if some have their way: A Taxpayers Bill of Rights (TABOR)

A Taxpayers Bill of Rights is a constitutional limit on tax and spending growth, allowing government to grow only as fast as population plus inflation. First passed in Colorado in 1992, it has become a model for budget reform and economic growth. It's successes are clear:

- Colorado passed the model TABOR amendment in 1992, requiring a vote of the people to raise taxes, limiting the growth of spending, and rebating excess funds to taxpayers.
- Colorado avoided the painful budget shortfalls experienced by Wisconsin and most other states.
- From 1995 to 2000, Colorado was #1 in the nation in Gross State Product growth.
- From 1995 to 2000, Colorado was #2 in the nation in personal income growth.
- **Since 1993, the people of Colorado received $3.2 billion in tax rebates, because spending grew more slowly than tax revenues.**

"As I watch tax developments nationwide, I see that TABOR is the future," said Grover Norquist, president of American for Tax Reform. **"The states that pass TABOR will lead the nation in growth, investment, and jobs, and those that fail to pass it will become the new Rust Belt. Maine can position itself at the vanguard of this revolution if it adopts TABOR now. Mary Adams is doing a great service to her state by promoting this idea."**

Americans for Tax Reform is a non-partisan coalition of taxpayers and taxpayer groups who support tax simplification and oppose all federal and state tax increases. For more information or to arrange an interview please contact Jonathan Collegio at (202) 785-0266 or by email at jcollegio@atr.org.

-30-

Harvard-educated and street-smartened by years as a Washington insider, Norquist is your show's ultimate guest to discuss the state budget crises. His bio can be found at http://www.atr.org/staff. You can find more information about his organization, Americans for Tax Reform at www.atr.org.

EXHIBIT E

Mary Adams: Fighting for Maine taxpayers

Victoria.Wallack@TimesRecord.Com 11/22/2004 *By Victoria Wallack, Times Record Bureau*

AUGUSTA — Mary Adams has folk-hero status among some in coastal towns for her successful fight 30 years ago to repeal a state tax on property that soaked waterfront communities to help pay for education statewide.

Today she has hooked up with a national movement called the Taxpayers Bill of Rights (TABOR) and the conservative Maine Heritage Policy Center, based in Portland. With their help she hopes to put a question on the ballot next year that would limit spending at all levels of government — state, county, municipal and school district — to the rate of inflation plus population growth.

If there is money left over under that formula, 80 percent would be returned to taxpayers and the rest put into a budget stabilization fund. In fiscal emergencies, taxes could be raised above the inflation plus population rate, but it would require a two-thirds vote of the Legislature and a majority vote of the people.

While Adams said she is using some of the same people and local tax organizations that supported Carol Palesky's tax cap to gather petition signatures, she believes the spending cap could pass where the tax cap failed because it sounds less draconian.

"The Taxpayers Bill of Rights has no price tag to it. The roof's not going to fall in," Adams said, unlike the Palesky initiative where opponents convinced voters that local services would be lost because of a decline of more than $500 million in local revenue.

Under a spending cap, Adams said, the issue isn't cutting what we have but rather slowing down the rate of growth.

"I've found people want government to prioritize. They have to. They have surprises in their own personal budgets," and have to adjust spending, she said. She calls the Taxpayers Bill of Rights proposal, "firm but gentle discipline."

"It puts the bit in the government's mouth and gives the reins to the people," she said.

Viable option?

Christopher "Kit" St. John of the progressive Maine Center for Economic Policy said the fact the Maine Heritage Policy Center is involved makes the Taxpayers Bill of Rights more viable than Palesky's initiative.

It will be "much better organized," he said, and with Heritage Policy Center's ties to national groups, "it is poised to bring in very large amounts of outside money." It also takes the focus off local service cuts and talks about state spending, which to most taxpayers is "a big black hole," even though the bulk is returned to cities and towns, he said.

"There are a lot of ways in which the TABOR proposal might have a bigger head of steam than the Palesky proposal," said St. John, who was a vocal opponent of the tax cap. "It bears close watching."

"Our argument is not with their intention at all," but rather the specifics of the TABOR proposal, said Dana Connors, president of the Maine State Chamber of Commerce, which also is proposing a tax reform package that limits spending.

Connors said it is too far-reaching in terms of limiting all fees and the growth of all state budgets, including the highway fund, which attracts huge amounts of federal matching dollars.

He also said TABOR is really a Colorado import, much like Palesky was a copy-cat of California's Proposition 13. The chamber's initiative is homegrown and customized to Maine.

Still "their intent is to do much the same," as the chamber, he said, "to lower the tax burden and focus on spending ... At the end of the day, it's pretty hard to criticize them."

A Colorado invention

The Taxpayers Bill of Rights was adopted in Colorado in 1992. Other states — including California, Tennessee and Wisconsin — have considered adopting it, although none has done so.

Colorado Gov. Bill Owens was in South Portland last Monday night as the keynote speaker at the Maine Heritage Policy Center annual dinner to promote TABOR. The same day the Denver Post in his home state reported that taxpayers there would be asked to give up their tax refund under TABOR next year to help fill a gaping state budget hole.

The governor likes to boast — and did so on talk radio in Maine on Nov. 13 — that TABOR has returned $3.2 billion to Colorado taxpayers in the last 10 years. The problem, he said, is that Colorado voters also passed a constitutional amendment requiring the state to increase aid to K-12 education annually, and the two measures compete with one another, particularly during a recession.

Adams said it is those times of recession that worry her, when the government keeps spending despite a loss of revenue, with no money in the bank. Instead of cutting back, it raises property taxes.

"There's a whole lot of people who have been radicalized by taxes, and I don't mean that in a bad way. We're No. 1 in property taxes in the whole nation as a percentage of income," she said, adding that people are fed up.

Tax reform activist

Nearly 30 years ago, Adams, then a mother of two young children, helped lead her first taxpayer revolt against a uniform state property tax, which was levied on all cities and towns to pay for education.

The group she organized to collect signatures called themselves "Freedom Fighters" because they met in Freedom in Waldo County.

"There were a huge bunch of wonderful people from Washington County, Hancock, Lincoln and right down into York," she recalled.

In her latest battle, Adams said she is hoping for broad-based support.

"If Kit St. John's group got in touch with me to circulate petitions, I would rush to deliver them. I go where the interest is," Adams said. But she is not concerned that her effort may be tagged with the "conservative" label.

"I grew up in conservative Maine. 'Conservative' is a good word to me. My father was a businessman, a banker, and my mother was a school teacher. My father and mother didn't overspend," she said.

"There's no mystery what we're doing here," Adams said. "We're trying to slow down government so that people can pay for it, and save — just as Dad did — for years when the income is less."

EXHIBIT F

MHPC's Independent Research Role in TABOR

(Corrected transcript of 10/31/06 Maine Ethics Commission pgs 39-43)

COMMISSIONER MAVOUREEN THOMPSON: Yes, couple questions. Dan or Bill or both, would you say that either through staff time or research — staff research and so forth for presentations and so forth, MHPC has spent more than $1,500 working towards the — I mean the passage of TABOR?

WILLIAM BECKER: In terms of our staff time, we've allocated it out, not towards the passage or defeat of TABOR, we've really been prior provided, we've been basically the experts on taxation and expenditure limitation laws, now in the state for well over three years. Now that's when we first issued our very, very, very first report as an organization. We wrote them [unintelligible] tax and expenditure limitation bills and then spent a number of months drafting model legislation for what it would look like in the State of Maine.

So not for the passage or defeat of TABOR, but for becoming policy experts in the field of tax and expenditure limitation laws. That's what we have done. That's what we continue to be and that's what we've done for many other press, is provide them with answers. I accept [Unintelligible} from them says what is demanded when this happens? Well what happens along those lines? Well what is the handle on that?

It's really in the context of the Maine economy and that's really in the context in which we talk about.

THOMPSON: So I think I heard an earlier speaker say that — that the Policy Center actually wrote the Tabor referendum and so forth?

BECKER: No -

THOMPSON: (Interposing) Or to what extent were you involved in that?

BECKER: All right, we wrote back in 2004 — we wrote model legislations saying okay, this was such a great idea in some other states. What would it look like in the state of Maine? And we spent about three or four months writing that, talking to experts, economists, BHCs all over the country and then put it out there as model legislation and two, it moved forward separately in two different ways, absent, separate from our organization.

One to Senator Mary Andrews of York, doing it forward in a legislature as a piece of legislation and that was actually somewhat amended before it got there and secondly, Mary Adams [Unintelligible} submitted it as a citizen's initiative and that too was amended between the revisers office the secretary of state's office before it got sent out as the Taxpayer Bill of Rights. Our role is almost a year earlier than that, drafting a model legislation to say how it would work in regards to Maine law.

THOMPSON: Did Andrews or Adams get your participation from the Center when in fact their bills were debated before the legislative committee?

BECKER: We were called to testify, by the Tax Committee primarily.

THOMPSON: And were pros and cons indicated in that? Sometimes the legislature will ask for people who are pro legislation and con.

BECKER: Yes.

THOMPSON: And either to sign up and indicate or just to take turns and so forth for the thing. Has there been a testimony?

BECKER: We represented basically the authors of the model legislation. That's the way we were represented.

THOMPSON: So you didn't — you were not like on the pro side or the con side in terms of -

BECKER: (Interposing) I think we had been perceived that we went on the pro side because wrote it. We were obviously proud of something that we had drafted two, you know, a year earlier. But we represented it as the experts, as the policy experts on that piece of the model legislation.

***

We the people of Maine...

EXHIBIT G

THE **MAINE HERITAGE POLICY CENTER**

November 6, 2006

www.mainepolicy.org

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REDACTED

Dear REDACTED

On behalf of the Board of Directors, please accept my sincere thanks for your generous contribution of $125.00 to The Maine Heritage Policy Center. We are very grateful for this donation, and will use it to advance our mission of promoting The Taxpayer Bill Of Rights, a solution that will benefit all people of Maine.

As the author of The Taxpayer Bill Of Rights, we believe that this initiative provides a road map to jump-start Maine's economy. With only a few weeks until the election, we are in a fight for Maine's economic life. As you are aware, Maine has the highest property taxes and the highest state and local tax burden in the country. Our economy continues to struggle. In 2005, Maine was just one of two states to see a decline in economic activity, as reported by the Federal Reserve Bank of Boston. Louisiana, which was ravaged by hurricane Katrina, was the only other state to see a decline. It is more important than ever to educate Maine citizens about the challenges we currently face.

We understand that the economic pie is shrinking. A large part of the problem has been Maine's highest-in-the-nation tax burden, driven by out-of-control government spending. One way to address that problem is through an effective "Tax-and-Expenditure Limit" such as Maine's proposed The Taxpayer Bill Of Rights. Such responsible public policy encourages Maine businesses to remain in the state and grow, thus creating more Maine jobs and higher incomes for Maine workers. With Maine's per capita tax burden growing 50% faster than the rate of inflation, we must act now and work to stop Maine's spending frenzy. Since January 2003, government jobs are growing at more than twice the rate of private sector jobs. This is not an investment in Maine's future. We are digging out the facts everyday and working hard to promote this race based on facts and evidence, not emotions.

The Taxpayer Bill Of Rights is the only public policy in front of Maine voters or our legislators that is guaranteed to reduce Maine's tax burden and ensure that government does not grow faster than the people's ability to pay. It is a reasonable solution for Maine citizens and I thank you for being part of the solution in helping to solve Maine's economic challenges and for investing in Maine's future.

Thank you for joining this effort to help our leaders understand the need for genuine reforms in the way Maine operates – and for providing them with viable and proven policy solutions that will change Maine's future to one of opportunity and promise.

Please do not hesitate to contact me at 207-321-2550 with any questions or suggestions. Thank you again for your support – I look forward to seeing you at a Maine Heritage event very soon.

Yours truly,

Bill Becker

Bill Becker
President and Chief Executive Officer

Carl Lindemann

P.O. Box 171
Portland, Maine 04112

Phone 207-774-1936
Email Carl@cyberscene.com

Jonathan Wayne, Executive Director
Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333

March 25, 2008

Dear Executive Director Wayne,

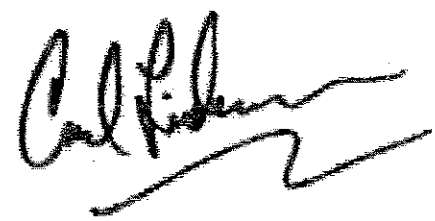
Having reviewed Mr. Billings letter of March 21, I request that the Commission take administrative notice of his prior testimony/statements in the initial case against his client Maine Heritage Policy Center. This is not about the truth of the matters asserted then, but to show that Billings is not a credible witness in the current matter.

Of particular interest is Mr. Billings letter of December 4, 2006 in response to a request for information from the Commission staff. His reply to question #4 quotes a mission statement purportedly drawn from MHPC's "application for 501(c)(3) status". However, this statement is not contained in the document he refers to, MHPC's Form 1023 filing with the IRS. I have attached these documents for your convenience.

Mr. Billings' past averments to the Commission have been shown to be false, at the very least due to his sloppiness or at worst due to deliberate misrepresentation. If he wants to make averments about material issues, the Commission, as a matter of prudence, should require that he make them as a sworn/signed affidavit since he is an unreliable fact-witness.

Given his purported concern over "administrative economy" to justify further delays of the proceedings against his client, it is important to consider the waste of time and effort caused by Mr. Billings and his client's past failure to provide accurate information to the Commission.

Sincerely,



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December 4, 2006

Jonathan Wayne, Executive Director
State of Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333-0135

RE: Maine Heritage Policy Center

Dear Jonathan:

I am writing in response to your November 28th letter seeking more information from the Maine Heritage Policy Center ("MHPC") due to new allegations raised by Carl Lindemann. While I am happy to answer the questions raised in your letter, I need to first address the legal standard that the Commission must apply when considering the questions that have been raised concerning MHPC's activities related to the Maine Taxpayer Bill of Rights. Much of the difficulty in assessing the concerns that have been raised about MHPC has been the uncertainty that has resulted from the broad language contained in 21-A M.R.S.A. §1056-B and the court decisions indicating only a much narrower approach to regulation of speech regarding ballot measures can sustain constitutional scrutiny. Before considering the complaint against MHPC, the Commission should first decide how it will apply Maine law to all persons and entities engaging in speech regarding ballot measures in light of the court decisions in this area.

Constitutional Standards

21-A M.R.S.A. §1056-B requires that "[a]ny person not defined as a political committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of $1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the commission." The statute further requires that the report filed "contain an itemized account of each contribution received and expenditure made aggregating in excess of $100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name of each contributor, payee or creditor." The statute includes very broad language, which if not applied narrowly, would, for the reasons explained below, not withstand a constitutional challenge.

In Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), the Supreme Court considered wide-ranging challenges to the Federal Election Campaigns Act ("FECA"). The Court described "[d]iscussion of public issues and debate on the qualifications of candidates [as] integral to the operation of the system of government established by our Constitution [to which] [t]he First Amendment affords the broadest protection." Id. at 14, 96 S.Ct. 612. The Court then recognized a "distinction between discussion of issues and candidates and advocacy of election or defeat of candidates." Id. at 42, 96 S.Ct. 612. To avoid problems of vagueness and overbreadth that would otherwise be presented by certain of FECA's provisions, the Court construed them to reach only communications "that expressly advocate the election or defeat of a clearly defined candidate." Id. at 80, 96 S.Ct. 612; See also Id. at 43-44, 96 S.Ct. 612. The Court restricted express advocacy, in turn, to communications utilizing imperative terms such as "vote for [or against]," "support," "defeat" or "reject." Id. at 44 n. 52, 96 S.Ct. 612.

While Buckley dealt with candidate elections, only in later cases did the Supreme Court deal with ballot measures that did not involve candidates for office. An examination of the Supreme Court's jurisprudence in the area is useful to the issues currently before the Commission.

In First National Bank of Boston v. Bellotti, 435 U.S. 765, 790, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978), the Supreme Court recognized that votes on ballot measures involve less risk of corruption that would justify state regulation than do candidate elections where there is concern to avoid a quid pro quo arrangement between a candidate and the contributor. "Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue." Id. at 790, 98 S.Ct. 1407 (citations and footnote omitted).

In Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, 102 S.Ct. 434, 70 L.Ed.2d 492 (1981), the Supreme Court struck down state limitations on money contributions to political committees supporting or opposing a ballot measure. In doing so, the Court observed that "[t]he integrity of the political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed." Id. at 299-300, 102 S.Ct. 434.

In McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 347, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995), the Supreme Court held that "the principles enunciated in Buckley extend equally to issues-based elections" and made clear that exacting scrutiny applies to any state regulation of advocacy in noncandidate elections like referenda.

The Supreme Court's most recent pronouncement in this area of noncandidate elections is Buckley v. American Constitutional Law Foundation, 525 U.S. 182, 119 S.Ct. 636, 142 L.Ed.2d 599 (1999) ("Buckley II"). That decision struck down a number of Colorado regulations concerning the state's petition process. In doing so, however, the Supreme Court said that it was legitimate for a state to require sponsors of ballot initiatives to disclose to the State the names of proponents of the petition and the amount being spent. Id. at 647-48. The Court approvingly identified that requirement as a way to inform voters of

"the source and amount of money spent by proponents to get a measure on the ballot." Id. at 647.

Though the Supreme Court cases in this area do not directly address whether a state can constitutionally require disclosure of contributions and expenditures that are spent on speech that does not expressly advocate the passage or defeat of a referendum question, the lower courts that have considered the issue have concluded that state regulation must be limited to express advocacy. In Richey v. Tyson, 120 F. Supp. 2d 1298, 1319 (D. Alabama 2000), the District Court held that the U.S. Constitution required that Alabama's Fair Campaign Practices Act, which contained broad language such as is contained in Maine law, must be read narrowly to confine the scope of its disclosure requirements to contributions and expenditures for the purpose of expressly advocating the passage or defeat of a referendum question. In California Pro-Life Council, Inc. v. Getman, 328 F.3d 1088, 1098-99 (9th Cir. 2003), the Court of Appeals held that a state court ruling limiting state regulation of candidate related ads to those containing express advocacy also applied to speech related to referendum questions.

A review of these cases leads to the conclusion that state regulation of speech regarding referendum questions is only constitutional if the regulation is limited to speech which expressly advocates the passage or defeat of a referendum question. With these cases in mind, the Commission should read Maine law narrowly as to only require reporting of contributions and expenditures which are used for speech which directly advocates the passage or defeat of a referendum question. Any other reading would impermissibly interfere with speech which is entitled to the broadest First Amendment protection.

It should also be noted that none of the policy concerns that continue to be debated regarding what expenditures should trigger matching funds to candidate under Maine's Clean Elections Act are relevant to this issue. There are no matching funds at stake that can be triggered in referendum campaigns and there are no contribution limits which are applicable to such campaigns.

If Maine law is read narrowly, as required by the U.S. Constitution, no reporting of any kind should be required by MHPC. A great deal of material concerning MHPC has been submitted to the Commission. To date, I have seen nothing which would indicate that MHPC spent any funds to expressly advocate the passage of the Maine Taxpayer Bill of Rights.

Responses to Questions in November 28th letter

In your letter, you asked four questions. Each question is addressed below:

(1) *Has the MHPC received any funds from any source specifically to promote, initiate, or influence the TABOR initiative? If so, please state the total amount received. If an exact amount is not available by December 4, please provide an estimated amount for the time being.*

MHPC has not received any funds from any source specifically to promote, initiate, or influence the TABOR initiative. All contributions received are used to support the overall

operations and general mission of MHPC. No funds were specifically segregated or dedicated to activities related to the Maine Taxpayers Bill of Rights. No activities undertaken by MHPC related to the Maine Taxpayer Bill of Rights were contingent upon or the result of any funds received from any source.

As a result of this question, MHPC staff has reviewed all contributions received by the Center this year. Four contributions, including the contribution from Mr. Briney, were made along with correspondence or references on checks mentioning TABOR or MHPC's work related to TABOR. These four contributions total $975, less than the $1500 threshold requiring reporting under Maine law. It should be noted that these contributions were not treated any differently than any other contributions to MHPC and the funds were not dedicated to any activities related to the Maine Taxpayers Bill of Rights. It should be no surprise that some contributors may mention MHPC's TABOR related work, based on MHPC's activities as detailed in my letter of October 26th.

There were also two other contributions received where TABOR was referenced along with the contributions. In both cases, MHPC staff spoke to the donor and made sure the donor understood that contributions to MHPC would not be used as part of the campaign to pass TABOR and that all contributions received are used to support the overall operations and general mission of MHPC.

In October, MHPC received a $3,000 contribution with "TABOR" in the memo. MHPC staff knew the donor personally, and communicated with the donor regarding the donor's intent. MHPC staff explained to the donor that MHPC's role was limited to research and education and that a separate, independent organization was running the initiative campaign and purchasing media, etc. Based on these discussions, the contributor asked that $2500 be refunded, with $500 retained by MHPC for their general operating research and analysis work. MHPC complied with the request.

Additionally, one other $1,000 unsolicited donation was received in 2006 with a personal check that did not reference TABOR. However, on the inside of the donation envelope, a note "For TABOR!" was handwritten. MHPC staff called the donor and spoke with the donor about the nature of MHPC's work. It is the MHPC staff's belief that the donor was aware that the organization's work was not political, nor engaged in express advocacy – but rather that the donor's contribution was for general support of MHPC's role in strictly research and education efforts

(2) Has the MHPC solicited any contributions or other funds in connection with the TABOR initiative?

No. However, MHPC has mentioned its TABOR related work in its general fundraising activities. For example, the enclosed fundraising letter, marked as Exhibit A, mentions MHPC's work related to TABOR. It should be noted that though the letter is dated October 18th, it did not go out until after November 7th and no contributions were received as a result of the letter before November 7th. Also, the letter was only sent to existing MHPC members.

(3) Is the November 6 letter from Bill Becker a form letter used by the MHPC to thank donors for contributions or other funds given to promote TABOR?

No. Enclosed, marked as Exhibit B, is a copy of the form letter used by MHPC to thank contributors. As you can see, changes were made to the regular form letter to recognize Mr. Briney's expressed interest in MHPC's work related to TABOR. It is MHPC's practice to alter the general form letter as a result of areas of interest mentioned by the donor.

(4) Was part of MHPC's mission in 2006 to promote TABOR, as stated in Mr. Becker's November 6 letter?

The language contained in the November 6 letter was a result of changing the usual form letter which states "we will use [your donation] to advance our mission of promoting free markets and conservative public policy solutions that will benefit all people of Maine."

MHPC's mission, as stated on its application for 501(c)(3) status is:

The Maine Heritage Policy Center is a research and educational organization whose mission is to formulate and promote conservative public policies based on the principles of free enterprise; limited, constitutional government; individual freedom; and traditional American values--all for the purpose of providing public policy solutions that benefit the people of Maine.

MHPC's staff pursues this mission by undertaking accurate and timely research and marketing these findings to its primary audience: the Maine Legislature, nonpartisan Legislative staff, the executive branch, the state's media, and the broad policy community. MHPC's products include publications, articles, conferences, and policy briefings.

The Maine Heritage Policy Center researches and formulates innovative and proven conservative public policy solutions for Maine in three general areas:

Economy/Taxation
Education
Health Care

Governed by an independent Board of Directors, The Maine Heritage Policy Center is a nonprofit, nonpartisan, tax-exempt organization. MHPC relies on the generous support from individuals, corporations, and foundations, and does not accept government funds or perform contract work.

A more abbreviated version of MHPC's mission appears on its publications:

The Maine Heritage Policy Center is a 501 (c) 3 nonprofit, nonpartisan research and educational organization based in Portland, Maine. The Center formulates and promotes free market, conservative public policies in the areas

of economic growth, fiscal matters, health care, and education – providing solutions that will benefit all the people of Maine. Contributions to MHPC are tax deductible to the extent allowed by law.

MHPC believes that its work related to the Maine Taxpayer Bill of Rights, which was detailed in my October 26th letter and in testimony to the Commission, is in keeping with this mission.

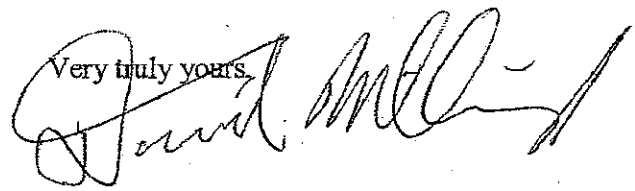
Allegations contained in Carl Lindemann's November 27th letter

Mr. Lindemann's allegations of "criminality," "willful deceit," and "material false statements" are not worthy of a response. The alleged "new evidence" provided by Mr. Lindemann is dated after my letter of October 26th and after the October 31st Commission Meeting. Therefore, nothing contained in the documents is relevant to the facts as they existed on October 26th or October 31st. More importantly, for the reasons stated above, the documents do not substantively contradict the position previously advanced by MHPC.

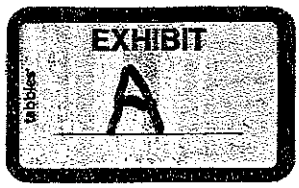
Mr. Lindemann's complaints to the Commission are just one part of his long running campaign against MHPC. Previously, he has filed complaints against MHPC with the Internal Revenue Service which were dismissed. His more recent actions, which include what appears to be an attempt to entrap MHPC into accepting what he believes is an illegal contribution and written attacks against me, Bill Becker, Commission staff, and members of the Commission, go well beyond what should be considered acceptable behavior by someone appearing before the Commission. A good faith disagreement on the meaning of the law should not result in such personal attacks as part of a proceeding before a regulatory board. The Commission should also consider what could result if it takes action based one party's apparent attempt to lure an opposing party into what the first party sees as a campaign finance violation.

I will be in attendance at the Commission's December 12th meeting, along with MHPC President and Chief Executive Officer Bill Becker. If I can be of assistance by providing additional information or answering additional questions before the meeting, please let me know.

Very truly yours,



Daniel I. Billings
e-mail: dbillings@gwi.net



October 18, 2006

Dear :

The Maine Heritage Policy Center continues to educate Maine people on the value of a strong economy and the need for fundamental reforms in the way we operate our state. In addition to authoring THE TAXPAYER BILL OF RIGHTS, we've completed our latest publication, the *Maine Economic Atlas*. This comprehensive book provides an objective look at Maine at the municipal level, providing lawmakers, schools and the media with a tool with which to make informed policy decisions. The Atlas provides statistics on demographics, education, economics, health care and taxation and it's available for purchase by calling our office at 207-321-2550 or on our Web site at www.mainepolicy.org.

As the author of THE TAXPAYER BILL OF RIGHTS, we believe that this initiative provides a road map to jump-start Maine's economy. With only a few weeks until the election, we are in a fight for Maine's economic life. As you are aware, Maine has the highest property taxes and the highest state and local tax burden in the country. Our economy continues to struggle. In 2005, Maine was just one of two states to see a decline in economic activity, as reported by the Federal Reserve Bank of Boston. Louisiana, which was ravaged by hurricane Katrina, was the only other state to see a decline. It is more important than ever to educate Maine citizens about the challenges we currently face.

We understand that the economic pie is shrinking. A large part of the problem has been Maine's highest-in-the-nation tax burden, driven by out-of-control government spending. One way to address that problem is through an effective "Tax-and-Expenditure Limit" such as Maine's proposed TAXPAYER BILL OF RIGHTS. Such responsible public policy encourages Maine businesses to remain in the state and grow, thus creating more Maine jobs and higher incomes for Maine workers. With Maine's per capita tax burden growing 50% faster than the rate of inflation, we must act now and work to stop Maine's

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

April 2, 2008

By E-Mail and Regular Mail
Carl Lindemann
PO Box 171
Portland, ME 04112

Dear Mr. Lindemann:

At its meeting on March 31, 2008, the Maine Ethics Commission considered the status of your March 5, 2007 request for an investigation of campaign finance reporting by the Maine Heritage Policy Center. The Commission reviewed its May 14, 2007 decision to reschedule your request until after the Superior Court decided on your petition to review the Commission's December 20, 2006 determination.

At the March 31, 2008 meeting, the Commission voted 4-1 that further proceedings with respect to your March 5, 2007 request be tabled pending a final decision by the courts on your petition for review which is currently on appeal to the Maine Supreme Judicial Court. Commission members Michael Friedman, Francis Marsano, David Shiah, and Ed Youngblood voted in favor of the motion to table, and Mavourneen Thompson voted against it.

Please feel free to call me at 287-4179 if you have any questions regarding this issue.

Sincerely,

Jonathan Wayne
Executive Director

cp
cc: Daniel I. Billings, Esq.
Assistant Attorney General Phyllis Gardiner

Carl Lindemann

P.O. Box 74
Austin, Texas 78767

Phone 512-495-1511
Email Carl@cyberscene.com

April 28, 2009

Dear Commission Chair Friedman, Commissioners Marsano, McKee, Thompson & Youngblood,

This supplementary information serves to complete the materials submitted in my March 27, 2007 complaint. At that time, Maine Heritage Policy Center (MHPC) failed to respond to the allegations. Despite this, the Commission's staff was able to effectively analyze one aspect of the complaint – how a violation of the laws you are charged to enforce may have occurred from MHPC's failure to report contributions for its TABOR campaign. But because of time pressures, the staff did not address the issue of MHPC's underreporting of expenditures in that campaign.

In March 2008, MHPC did finally respond to the complaint. Since, significant new information has been uncovered. Also, numerous material statements made by MHPC and its representatives have been exposed as false. Finally, new findings underscore a motive for MHPC's underreport – what appears to be a concerted effort to protect the entity's tax-exempt status while promoting itself as a quasi-academic institution. Hopefully, staff will review these materials and subsequent responses to them and provide appropriate recommendations.

Process: Sworn Testimony & Standard for Initiating an Investigation

In his letter to Executive Director Wayne dated March 21, 2008, as well as his testimony before the Commission on March 30, 2008 (see attached), MHPC attorney Daniel Billings argues that this complaint should be disregarded because, he says, I have taken issue with the Commission's process. My objection was how, in direct contradiction to the Commission's stated procedures, the proceedings on December 20, 2006 went forward without requiring sworn testimony. Since, the courts have not addressed these matters. My concern over setting aside common-sense policy and procedure to require sworn testimony in the face of material false statements remains. Alongside this addendum, I am submitting a separate complaint that addresses material false statements made by MHPC and its representatives that, at the very least, necessitate sworn testimony here.

Another issue that Mr. Billings raises is the process for the commission initiating an investigation. While he accurately cites 21-A M.R.S.A. §1003, he goes on to suggest that this complaint pass a far higher standard. Instead of what the law stipulates – that I show that a violation <u>may have</u> occurred – he requests that I show that a violation <u>has</u> occurred:

> Unless Mr. Lindemann can come forward with examples of specific expenditures by MHPC that have not been reported, he has not met his burden of showing that there are sufficient grounds for believing that a violation in regards to reporting of expenditures has occurred.

The burden is for me to meet the legal standard, not his misrepresentation of it. From there, the Commission's duty is to determine whether or not a violation has occurred. Incidentally, my complaint concerning MHPC's material false statements show that a violation has, in fact, occurred.

MHPC's Objects to the Executive Director's Inquiry

Concerning the substance of the complaint, Mr. Billings first addresses what he inaccurately identifies as my concern over the fact that MHPC's reported expenditures exceed reported contributions. This is Executive Director Wayne's concern raised *sua sponse* in the case brought against Democracy Maine by an MHPC associate. I suggested that if the Executive Director investigates there, he should do so in this instance, too. Mr. Billings did not object when the Executive Director pursued this line of inquiry against Democracy Maine. As I stated in my March 5, 2007 complaint:

> If Executive Director Wayne is appropriate raising such a matter on his own initiative, then bringing this parallel case forward here through standard procedures is not only appropriate but also necessary.

In brief, Mr. Billings' objection should be directed towards the Executive Director. It is, however, interesting to note the contrast between MHPC's reaction to the Executive Director's inquiry compared to that of Democracy Maine. For your convenience, I have attached the staff's recommendation "Completeness of 1056-B Reporting" from Executive Director Wayne's March 1, 2007 memo.

The Intent of Solicitations vs. Contributors

In his March 21, 2008 memo, Mr. Billings addresses the issue as to whether §1056-B reporting is required for MHPC's fundraising solicitations. He argues that these solicitations are not specific. He substantiates this argument based on his client's unsworn testimony. He states:

> ...the Commission received testimony from then MHPC President William Becker that MHPC solicited and received contributions during 2006 to support MHPC's "overall mission" and "ongoing work on spending limits." He also noted that no funds were segregated for TABOR related activities and no activities were tied to or dependent on contributions."

However, Becker's testimony is demonstrably unreliable. Examples of his material false statements are detailed elsewhere. Since the Commission has no reason to trust Mr. Becker's statements, there is no factual basis for Mr. Billings' argument.

Mr. Billings also states in the same memo:

> It is also significant that MHPC returned a large contribution that it determined was intended for the pro-TABOR campaign. This action supports the conclusion that MHPC did not intend to solicit or receive contributions for the purpose of promoting or influencing the vote on the ballot question.

This is drawn from Mr. Billings' responses to the staff's "Request for Information" memo dated November 28, 2006. His responses are, at best, problematic and are addressed in my complaint about MHPC's false statements.

Even if this unsubstantiated, unsworn testimony from a demonstrably unreliable witness is taken at face value, there are alternate interpretations of the actions described. It is a distinct possibility that the donor wanted, for example, to buy radio time for campaign ads. Since MHPC did not handle that aspect of the campaign, it may have passed it along to Taxpayerbillofrights.com. As such, the event does not "support the conclusion" Mr. Billings would like. Instead, it shows how MHPC likely worked with the PAC and was soliciting and receiving contributions for the public relations campaign to pass the ballot measure. In this interpretation based on the same facts, the donor had mistakenly contacted the wrong arm of the campaign and was likely directed to the PAC since it handled such contributions for paid media. This is akin to other instances where this partnership between MHPC and Taxpayerbillofrights.com and its leadership resulted in referrals – eg. Mary Adams referred inquiries about speaking engagements to MHPC, and MHPC referred misdirected press inquiries to Mary Adams.

In any case, MHPC has provided very limited information regarding this donation. An independent fact-finding and fact checking is necessary to determine if either interpretation of the event is accurate.

New Evidence on Underreporting of Expenditures:

Regarding the question of expenditures, Mr. Billings raises perfunctory objections to the examination of MHPC's press releases reporting on the organization's activities during its TABOR campaign in 2006. In his March 21, 2008 memo he states:

> Mr. Lindemann does not know MHPC's total budget in 2006 so his alleged analysis based on press releases is sophistry.

First, this only addresses the percentage of TABOR expenditures in the context of total expenditures. The parallel analysis that places the time reported for expenditures placed in the context of the work-hours in the reporting period remains. The Commission should accept this analysis as validated by Mr. Billings since it is unchallenged.

Regarding the budget figures, on November 15, 2007, MHPC filed its form 990 tax return (see attached) stating what it claims to be its income and expenditures in 2006. Adjusting the analysis with their figures should answer Mr. Billings' objection. However, MHPC underreports its non-exempt political activities there. Therefore, these figures, too, may be inaccurate. But if these are taken as reported, MHPC's expenditures were about 10% higher than projected - $569,059 in expenditures reported versus $500,000 projected. That means that, percentage-wise, MHPC's reported TABOR expenditures are <u>even less</u> than my initial analysis based on the projected figures.

Mr. Billings also raised an objection to the general methodology. In his testimony of March 30, 2008, he asserts that what an entity reports of itself publicly does not indicate what its actual activities are. He states:

> Um, on the expenditure side, the only evidence that Mr. Lindemann has brought forward to suggest that the expenditure reporting is incorrect is this analysis of press releases. And, um, you know that's not something that the Commission can take – take seriously. I mean first, I mean, first the idea that an organization's press releases somehow are an indication of how much money the organization spends or how much time the Staff spends on a particular issue. I don't think there's anything to base that theory on.

I agree with Mr. Billings that MHPC is not what it claims to be, but not for the reason he intends. Even if the Commission accepts his unfounded assertion that "an organization's press releases…(are not) an indication of how much money the organization spends or how much time the Staff spends on a particular issue," these public relations activities are closely tied to the staff member that carries them out. Also, the staff time spent authoring these releases is just a fraction of the total time expended.

Jason Fortin's activities promoting the passage of TABOR through his work as MHPC's Director of Communications is reported in MHPC's §1056-B report as 35 hours of staff time for "Press Activities". In addition to writing these press releases, the duties typical to this role include monitoring media, developing strategy, writing/editing "byliner" opinion pieces and "Pitch & Place," marketing these communication products to media outlets. In his "Linked In" profile, Fortin lists the following specialties, many or all of which were likely employed to promote the passage of TABOR:

> **Jason Fortin's Specialties:**
> • Communication activities: media relations, constituent outreach, exchanges with the general public, and spokesman duties, editorial writing, news writing, marketing materials, website content development and maintenance. Publishing including: policy research, layout, copyedit and fact check, negotiate printing rates, and publication dissemination. Event coordination and intern management.

The claim that Mr. Fortin was able to produce and market all of these releases – plus additional op/ed pieces and all the other publicity related to TABOR for MHPC – by just expending 35 hours of staff time over six months is not credible.

Unreported Activities, New Staff Hires:

In his testimony before the Commission on March 30, 2008, Mr. Billings stated:

> So this isn't a situation where someone's come forward and said, "This organization has bought this ad, or done this mailing, or **hired this Staff person that's engaged in activities that's not been reported**." And I think if you look back on past issues where there's been, um, complaints about inaccurate reporting of expenditures, that's the kind of evidence that's been brought forward. Someone has pointed to a specific advertisement or a specific activity that – that someone has been involved in. (emphasis added)

MHPC hired two new full-time staff members towards the end of its TABOR campaign. Heather Noyes joined MHPC as director of development in August 2006 and executive assistant Sandy Cleveland was hired as executive assistant the following month. It is likely that Ms. Noyes invested staff time in the as-yet unknown number of fundraising letters sent out at that time. It is also likely that she sent out an as-yet unknown number of the same "thank you" form letter to respondents stating:

> "We are very grateful for this donation, and will use it to advance our mission or promoting The Taxpayer Bill of Rights, a solution that will benefit all the people of Maine."

MHPC's 1056-B makes no mention of Ms. Noyes, nor for any expenditures for fundraising whatsoever. In MHPC's 990 tax return, it indicated that 25% of Mr. Becker's time is allocated to fundraising - $26,174. In addition, another $16,955 is reported for salaries and wages of other employees spent on fundraising – presumably Ms. Noyes. This investment yielded MHPC's remarkable fundraising success in 2006. Though Mr. Becker's testimony is unreliable, he did testify to the Commission that MHPC's TABOR campaign afforded an exceptional fundraising opportunity. That statement appears to be borne out by the facts, if not MHPC's §1056-B report.

Ms. Cleveland's tasks as "executive assistant" likely included booking MHPC speakers advocating for TABOR. MHPC operated as the speaker bureau for the pro-TABOR PAC, taxpayerbillofrights.com, and worked hand-in-glove with it to carry out this key function. The increased administrative workload in managing the flurry of speaking events in the last weeks of the campaign likely precipitated the need for adding staff to manage this.

Additional evidence that these two added employees were engaged in activities to promote the ballot initiative come from MHPC's own statements (likely written by Mr. Fortin) made in news items published by the State Policy Network (SPN), an umbrella organization servicing state-level "free market think tanks." MHPC made the following statements (emphasis added):

In the August/September 2006 newsletter:

> **The entire MHPC staff** has been engaged in various research projects, speaking engagements and seminars all focused on educating the public on the merits of a TEL.

In the "November/December 2006, State Updates":

> Maine: **During the last six months, the Maine Taxpayer Bill of Rights kept the Maine Heritage Policy Center busy**. As the drafters of the original model legislation, **MHPC staff members gave over 100 presentations** on the benefits a TEL would provide the state economy. **Along with a heavy circuit of town meetings, Rotary Clubs, and Chamber of Commerce presentations**, MHPC continued publishing original research, including two new reports: "A Taxpayer Bill of Rights: Improving Mainers' Incomes" and "The Cost of Living in Maine."

A partial list of the speaking events (see attached) shows that there were a great number of these in September/October. No staff time is reported for managing the logistics.

Another "missing" MHPC employee may be Roy Lenardson, who apparently worked for MHPC as the "Editor" of MHPC's "Maine Economic Atlas" during the 1056-B reporting period while simultaneously leading Taxpayerbillofrights.com. Mr. Lenardson's profile posted on MHPC's site shows that he apparently has no professional skills or qualifications that would enable him to carry out the tasks suggested by his title:

Roy Lenardson served as a senior policy analyst at the Maine Heritage Policy Center from 2001 to 2006. Prior to his work with MHPC Roy served as the campaign manager for republican gubernatorial candidate, Peter Cianchette. Prior to his campaign position he worked for the Maine Legislature for 10 years. In the Legislature he served as a committee analyst in the Office of Policy and Legal Analysis, and later as the chief of staff in the Senate Republican Office.

Roy has a graduate degree in Public Policy from the Muskie Institute for Public Service, and a Bachelor of Arts in Political Science from the University of New Hampshire.

His description of services at "Strategic Advocacy", his consulting firm, also fails to show any of the requisite editorial skill set:

The company manages public affairs programs for its clients by developing strategic plans, creating issue advocacy campaigns, and executing opinion leader and voter education activities

Strategic Advocacy helps its clients establish relationships with elected officials, conducts lobbying and grassroots programs, and provides full service campaign management.

Much as Executive Director Wayne directed the Commission to consider the "red flag" of organizations that have expenditures far in excess of contributions, Mr. Lenardson's dual role during the reporting period should also trigger interest. Since Mr. Lenardson was supposedly paid for tasks he does not seem qualified to perform, it is a distinct possibility that the payment was to support his other activities at the PAC. The Commission may wish to explore the opportunities for funding and transfer mechanisms that manifest when PAC employees are also in the pay of entities like MHPC.

MHPC's Claims of Ignorance for State & Federal Law

The SPN made an extensive outreach to its members during the 2006 campaign cycle to ensure that member groups including MHPC were aware of responsibilities under federal and state law. MHPC officials knew or should have known what they needed to do to comply with state and federal law. The claims that they did not know are, at best, implausible (see material false statement complaint, "Billings as Fact-Witness").

Mr. Becker may have attended the "2006 Leadership Development Breakfast" on April 20, 2006 that addressed these matters directly. Jon Caldara of the Independence Institute headlined his "takeaway" message with this (see attached):

•Understand your state election laws as well as federal laws and IRS code

If Mr. Becker did not attend, MHPC likely received the "SPN NEWS"issue for August/September 2006 (see attached) that drew the relevant information from the session. In addition, Mr. Becker is on record discussing the TABOR vote in Colorado in 2005 and so was certainly aware of the events surrounding his counterpart, Mr. Caldara, and his activities in it. The notion that Mr. Becker was somehow unaware of the issues surrounding tax-exempt organizations that lobby and disclosure requirements is not credible given how Mr. Becker engaged this issue regarding proposed federal legislation on February 28, 2006 (see attached). Also, it may interest the Commission to consider how MHPC has altered its practices since 2006 to comply with Federal Law is telling.

Finally, MHPC attorney Billings certainly understood the laws regarding 501(c)3 entities by the Commission's meeting of October 31, 2006. This indicates that he should have

been well aware of his client's exposure should it be required to report its TABOR activities fully. The Commission should note his testimony of March 30, 2008:

> As far as the expenditures go, the process that was used to come up with those numbers was that there was guidance provided by the Staff. That guidance was provided and MHPC applied that guidance to its activities and reported the best that it could. I will say that it was difficult because we were - they were - trying to recreate things after the fact and looking at Staff schedules, calendars, events that the organization had participated in and coming up with Staff numbers based on, based on those events. It was not a situation where before getting involved in any of those events MHPC had anticipating reporting, so there weren't kind of logs or anything kept during the months before the election. It was a matter of trying to recreate those things after the fact. And the organization did the best that it could to do so. And it was my advice based on the guidance provided by the Staff that when there was a close call on whether something should be reported or not, MHPC should report it…

Supposedly, MHPC engaged in its advocacy willy-nilly without any record keeping or concern for its IRS tax-exempt status. It is a noteworthy coincidence that the supposedly generous reporting of these activities just happen to come to almost exactly 5% of its overall expenditures. This, as it happens, is the "safe" figure that such an entity would aim to stay under in a properly managed campaign – as published in the "SPN NEWS"issue for August/September 2006. This raises the distinct possibility that the figures provided to the Commission were calculated to meet the IRS "insubstantial part test" rather than as described by Mr. Billings in his testimony.

Peripheral Issues: the Commission's Relationship to MHPC:

In his letter to Executive Director Wayne dated March 21, 2008, as well as his testimony before the Commission on March 30, 2008, Mr. Billings offers arguments that address the allegations contained in the complaint as well as the Commission's extraordinary situation of addressing a complaint about a member of the Commission. My concerns about the propriety of having the Commission investigate a Commissioner remain. This introduces dynamics that make it problematic for the Commission and staff to address the issues of MHPC's fundraising as well as coming to an understanding of what this entity is under Maine law. Mr. Billings apparently appreciates this and seeks to take advantage of it. In his testimony to the Commission on March 30, 2008, he offers sophistry to argue that MHPC is not a political committee. If it is the Commissioner's pleasure, I will detail the shortcoming of his argument as well as delve into what's behind it.

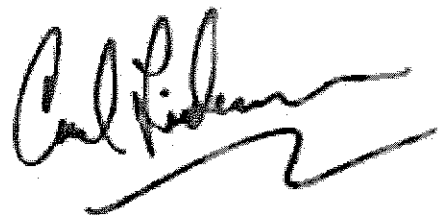
The upshot is that the Commission and staff have, at the very least, the appearance of a conflict of interest here. The Supreme Judicial Court's ruling that public interest complaints such as this are not subject to judicial review heightens my concerns. There is no possibility of my filing an appeal even in the face of the most egregious conflicts of

interest or even gross misconduct. Mr. Billings argues that all this is unimportant because the Commissioners operate independently of the staff. They are free to make their own decisions regardless of staff recommendations. In other words, it is irrelevant if the staff is biased. In reality, the Commission is a lay body that relies on receiving accurate, unbiased information from the professional staff.

Again, I am prepared to delve into this at whatever depth the Commission desires. However, my desire is to stay focused on the substance of the complaint and to keep these peripheral issues at the periphery. If for whatever reason they move to center stage, then they should get attention they demand.

I await Mr. Billings' response to this addendum, and will respond to that as needed.

Sincerely,



BILLINGS' MEMO

MARCH 21, 2008

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March 21, 2008

Jonathan Wayne, Executive Director
State of Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333-0135

RE: Carl Lindemann's March 5, 2007 Complaint

Dear Jonathan:

I am writing in response to your letter of March 12, 2008 requesting that I submit any additional materials that I believe the Commissioners need by this date. I respectfully request that this letter be provided to the Commissioners, along with a copy of the minutes of the Commission's meeting of May 14, 2007, which was the meeting when this matter was last considered by the Commission.

The matter should remain tabled

On behalf of the Maine Heritage Policy Center ("MHPC"), I request that Mr. Lindemann's complaint of March 5, 2007 remain tabled until the courts complete consideration Mr. Lindemann's appeal of the Commission's December 20, 2006 decision on his first complaint against MHPC. On March 14, 2008, Mr. Lindemann appealed the Superior Court's decision dismissing his appeal of the Commission's December 20, 2006 decision. The issues raised in the notice of appeal filed on behalf of Mr. Lindemann will now be considered by the Law Court.

It should be noted that one of the arguments included in Mr. Lindemann's brief to the Superior Court was that the Commission's investigation of the first complaint was not conducted properly and was affected by bias. He asserts that the Commission did not conduct a full investigation and that the Commission acted arbitrarily and capriciously in acting as it did. With those issues still potentially to be considered by the courts, and in light of the similar procedural issues now raised by Mr. Lindemann in regards to his second complaint, it would not be wise for the Commission to move forward with an investigation when the procedures that the Commission has used regularly to consider such matters are still under question in the courts.

With the appeal of Mr. Lindemann's first complaint remaining before the courts, the rational for the Commission's decision to table the second complaint is as valid today as it

was when the Commission tabled the matter on May 14, 2007. Delaying further consideration of the matter until the courts complete their work will allow the Commission to have the full benefit of the courts' consideration of the related matter and will reduce the burden placed on the Commission, the Commission's staff, and MHPC by ensuring that the complaint will only need to be considered once by the Commission.

Mr. Lindemann's March 18, 2008 correspondence

In a letter dated March 18, 2008, Mr. Lindemann requests that the Commission determine by a formal vote "whether the Commission is the appropriate venue for this case about a fellow Commissioner." He goes on to suggest that the Commission "cede its jurisdiction here and take steps to refer it to an appropriate venue."

Mr. Lindemann's complaint of March 5, 2007 concerning MHPC's 1056-B filing is a complaint against an organization – MHPC. Mr. Lindemann argues that his complaint is effectively a complaint against a Commissioner due to then Commissioner Jean Ginn Marvin's role as Treasurer of MHPC. It should be noted that the report was not signed by Ms. Marvin and no evidence has been offered to suggest that she played any role in its preparation or was involved with the contributions or expenditures detailed in the report.

Even if one is to accept the suggestion that Mr. Lindemann's complaint is effectively a complaint against Ms. Marvin, it is not now a complaint "about a fellow Commissioner" because Ms. Marvin is no longer a member of the Commission. Any concerns about a potential conflict of interest should have been eliminated by Ms. Marvin leaving the Commission.

It is also significant to note that two of the current Commissioners were not members of the Commission when Ms. Marvin was a member. Three of the current Commissioners were not members of the Commission when the Commission considered Mr. Lindemann's first complaint against MHPC. These changes in the Commission's membership should eliminate any concerns about the ability of the Commission to fairly consider this matter.

Maine law gives the Commission the responsibility to "administer and investigate any violations of the requirements for campaign reports and campaign financing." 1 M.R.S.A. §1008. The law provides no process for the Commission to "cede its jurisdiction" regarding Mr. Lindemann's complaint. If Mr. Lindemann wants the complaint to be heard, the only venue for initial review of the complaint is before the Commission.

If Mr. Lindemann wishes to request that any specific Commissioner recuse themselves from consideration of his March 5, 2007 complaint, he should make such a request and state the specific reasons that he believes that the Commissioner is biased or otherwise incapable of fairly considering the complaint.

Even if both the Commissioners who participated in the consideration of Mr. Lindemann's previous complaint against MHPC were to recuse themselves that would leave three Commissioners who were not members of the Commission at that time when the prior

matter was heard who could hear the second complaint. Even if one were to accept the suggestion that the Commission's proceedings regarding Mr. Lindemann's first complaint were tainted by Ms. Marvin's membership on the Commission that should have no impact on the ability of Commissioners Marsano, Shiah, and Youngblood to fairly hear the second complaint.

I also take issue with Mr. Lindemann suggestion that I have appeared as a fact witness before the Commission regarding these matters. I have appeared before the Commission as an attorney for MHPC. As is common in administrative proceedings, I have presented summaries of factual information that has been provided to me and have made arguments based on information provided by my client. This does not make me a fact witness.

A Preliminary Determination is Required Before Investigation May Proceed

In his letter of March 5, 2007, Mr. Lindemann requests that the Commission investigate whether the 1056-B filing made by MHPC is complete and accurate. When the Commission decides that it is the appropriate time to consider Mr. Lindemann's request, it must make a preliminary determination before an investigation may proceed.

21-A M.R.S.A. §1003 governs the Commission's consideration of requests for investigations:

> *A person may apply in writing to the commission requesting an investigation concerning the registration of a candidate, treasurer, political committee or political action committee and contributions by or to and expenditures by a person, candidate, treasurer, political committee or political action committee. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.*

This statute requires the Commission to make a qualitative assessment of the request for an investigation. More than a mere allegation or potential for a violation is required before an investigation is ordered. The Commission should only begin an investigation if the person requesting an investigation has come forward with sufficient grounds to convince the Commission that a violation may have occurred.

This determination required by the statute is important to protect parties from the burdens imposed by unnecessary investigations. It is also a protection from someone using the Commission to harass their political opponents. Mr. Lindemann has offered no evidence to support his claim that MHPC's §1056(B) filing is incomplete. His complaint is based on his allegations concerning the veracity of statements by representatives of MHPC and his analysis of press releases. These allegations and theories fall well short of meeting his burden to provide sufficient grounds for believing that a violation may have occurred.

Mr. Lindemann also suggests that the Commission should believe that MHPC's 1056-B filing is incomplete because it lists more expenditures than contributions. Below is a

summary of organizations that filed 1056-B reports in 2006 due to their activities in opposition to the Taxpayer's Bill Of Rights ("TABOR"). As you can see, it is not unusual for 1056-B filers to list more expenditures than contributions. AARP listed $295,558.00 in expenditures and no contributions. If a significant difference between contributions and expenditures provides sufficient grounds to believe that a 1056-B filer has committed a violation than investigations should be opened concerning AARP and the other organizations listed below whose TABOR related expenditures significantly exceeded their TABOR related contributions.

2006 1056-B Filings of those opposed to TABOR	Contributions	Expenditures
AARP	$ -	$ 295,558.00
Center on Budget & Policy Priorities	$ -	$ 28,221.10
Katahdin Institute	$ 10,000.00	$ 7,576.22
Maine Association of Nonprofits	$ -	$ 4,394.81
Maine Center for Economic Policy	$ 1,000.00	$ 13,404.55
Maine Equal Justice Partners	$ -	$ 5,571.48
Maine People's Alliance	$ 11,171.00	$ 20,423.29
Maine People's Resource Center	$ 15,200.00	$ 13,977.34
Maine Women's Lobby	$ -	$ 13,336.10
TOTAL	$ 37,371.00	$ 402,462.89

In his March 18, 2008 letter, Mr. Lindemann also requests that the Commission determine whether or not any proceedings relating to the investigation would go forward under oath. Even if the Commission decides to begin an investigation at this time, it is premature to determine whether or not testimony of any kind will be necessary. As you know, the Commission staff often conducts investigations into matters which are ultimately concluded without any testimony being provided to the Commission.

Your May 9, 2007 Memo

In your memo dated May 9, 2007, you attempt to interpret §1056-B and try to determine how the statute should apply to MHPC's 1056-B report and Mr. Lindemann's complaint. You suggest that the whether MHPC's report is complete could turn on whether reporting of contributions is triggered by the contributor's intent or the recipient's intent. You go on to suggest that one interpretation of the statute could require reporting based on the contributor's purpose in making the contribution. This is contrary to the plain language of the statute.

Section 1056-B requires reporting of contributions by any person "who solicits and receives contributions . . . for the purpose of initiating, promoting, defeating or influencing in any way a ballot question." This language establishes that reporting is based on the purpose of the person that solicits and receives the contribution, not the purpose of the person making the contribution. As noted in your memo, the Commission received testimony from then MHPC President William Becker that MHPC solicited and received contributions during 2006 to support MHPC's "overall mission" and its "ongoing work on spending limits." He also noted that no funds were segregated for TABOR related activities and no activities were tied to or dependent upon contributions. It is also significant that MHPC returned a large

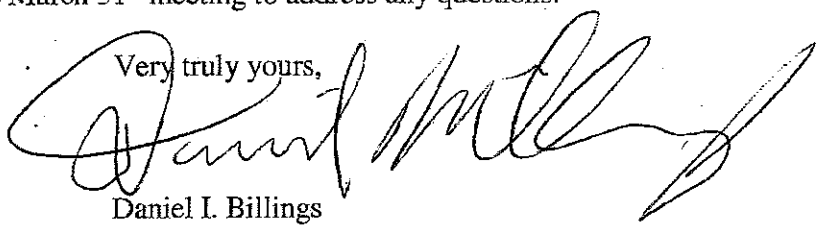
contribution that it determined was intended for the pro-TABOR campaign. This action supports the conclusion that MHPC did not intend to solicit or receive contributions for the purpose of promoting or influencing the vote on the ballot question.

The discussion in your memo concerning Mr. Lindemann's complaints regarding MHPC expenditure reporting illustrates well the problems with his arguments. Mr. Lindemann does not know MHPC's total budget in 2006 so his alleged analysis based on press releases is sophistry. Unless Mr. Lindemann can come forward with examples of specific expenditures by MHPC that have not been reported, he has not met his burden of showing that there are sufficient grounds for believing that a violation in regards to reporting of expenditures has occurred.

Conclusion

I appreciate the opportunity to present this additional information to the Commission. I will be in attendance at the March 31st meeting to address any questions.

Very truly yours,



Daniel I. Billings

BILLINGS' TESTIMONY

MARCH 30, 2008

Dan Billings Testimony for MHPC at Maine Ethics Commission 3/30/2008

Dan Billings: Good morning, my name is Dan Billings on behalf of the Maine Heritage Policy Center. I believe you have in your packet my letter of March 21st which I think addresses the issues you are discussing presently.

First, um, related to this issue of whether or not the Commission should take up this issue. It is my belief that this is the only body that can take up the complaint, and uh, that there is no procedure in Maine Law for you to uh, refer it to any other body and um, on behalf of my client, if you were to attempt to do that we would resist that as being unfair to the organization because this is the body that has been charged by the legislature to deal with these complaints and um, we believe this is where the issue should be decided. If there are any issues about particular Commissioners, um, again, as has been done in the past, anyone who has any concern about a particular Commissioner can bring those issues forward and the Commissioners can make a decision on those particular concerns. Um, I don't see, um, why there would be any concern in regards to the three commissioners who did not participate, um, in the prior considerations of the complaints against MHPC. Um, I fail to see how any of the Commissioners who have not substantively considered any of these issues could somehow be tainted in regards to this new matter. In regards to the issues about the Commission's council and staff, they simply advise the Commission. And I've been here on many occasions where they've advised the Commissioners and the Commissioners have done other things. Um, I think the Commissioners take their advice seriously and consider it, but ultimately the Commissioners ultimately make their own decisions. So any concerns someone has about, um, the advice of the staff or the council, um, if people disagree with the advice brought by the staff or council, they can explain why they think the staff or council is mistaken. I've certainly done that on a number of occasions and probably will in the future.

In regards to Ms. Ginn-Marvin, I think it's important for the considerations today to recognize that she is no longer a Commissioner. Um, and I think that makes it a much different situation. And I think it's also factually incorrect to say that she was an officer of a political committee. By the Commission's decision in December 2006 - finding that

MHPC was not a PAC - that finding also has the effect of deciding that MHPC is not a political committee. Organizations that are not political committees may be required to file 1056B, uh, reports. On the issue of tabling the matter, um, I think the most significant reason the matter should be tabled, um, is the issues that Mr. Lindemann raised in his brief to the Superior Court and also, the issues he's raising currently to the Commission. In both forums, Mr. Lindemann has taken issue with the procedures used by this Commission. Um, that was one of the most significant issues in his brief to the Superior Court that this Commission is biased, incapable of being fair and also that the procedures that were used to investigate the first complaint were insufficient. Um, and that was one of the issues that was advanced at the Superior Court and I assume that if his appeal to the Law Court is successful, that issue will be advanced again.

Very similar issues are being advanced right now to the Commission - questions about the Commission's jurisdiction and appropriateness to hear this complaint. Um, and my concern in representing MHCP is that if this matter moves forward currently that anything this Commission does, um, will not satisfy Mr. Lindemann and that you're likely to proceed in the manner that the Commission has proceeded in the past. And in the past Mr. Lindemann has found those procedures to be inadequate, and has advanced that argument to Courts. So my concern, or one of my concerns, is that if you move forward now and deal with this complaint in the usual manner that Mr. Lindemann will again find that procedure lacking and that it would be wise to see if the Courts decide to take up that issue in the first appeal and give you guidance in regards to that issue. It may very well be that that won't be the case, but I do think that issue in particular is significant, again particularly with the arguments you're hearing here today is that he's again questioning the procedures advanced by the Commission.

In regards to the complaint itself, my letter addresses two issues and the first is that I do believe that until you move forward with any investigation there is a preliminary finding that needs to made by the Commission. And I'll certainly admit that the Law and the rules don't give you good guidance about what that finding should be. But I do think that there has to be some consideration of the complaint and the evidence coming forward in

support of that complaint before you head off into an investigation. And I think that's particularly important in a case like this where you have a history of the person making the complaint, raising similar issues about the same organization and that, uh, I think the Law does anticipate that the Commission will only undergo investigations when the Commission determines that there is a reason to do so. And simply someone coming forward and saying, "I don't believe that report is correct" is not enough to justify, uh, justify an investigation.

Uh, in the memo that Mr. Wayne prepared last May when this matter was last considered by the Commission he raised the issue about what, what contributions need to be reported in a 1056B report and whether it's the contributor's intent that's important or the intent of the organization that accepts the contributions. I think if you look at the language of the Law it's clear that the intent is, uh, the intent of the person or organization accepting the contribution and that it's their intent that triggers reporting. And I think if you put, if you take that, if you consider that, it's understandable why an organization filing a 1056B report might have more expenditures than contributions. And if you look at the list of organizations that filed 1056B reports on the other side of the TABOR issue in 2006, you'll see that there's a great variety of reporting there and in a few cases there were organizations that actually took in more contributions than expenditures were reported and there were a number of organizations that, similar to MHCP, had more expenditures than contributions. So that fact in and of itself does not seem to be unusual. And I would point out that AARP in particular, which spent nearly $300,000 in opposing TABOR reported no contributions. So if the difference between those two numbers is somehow significant to the Commission, that's not only an issue for MHCP, but it's an issue for those other organizations.

As far as the expenditures go, the process that was used to come up with those numbers was that there was guidance provided by the Staff. That guidance was provided and MHPC applied that guidance to its activities and reported the best that it could. I will say that it was difficult because we were - they were - trying to recreate things after the fact and looking at Staff schedules, calendars, events that the organization had participated in

and coming up with Staff numbers based on, based on those events. It was not a situation where before getting involved in any of those events MHPC had anticipating reporting, so there weren't kind of logs or anything kept during the months before the election. It was a matter of trying to recreate those things after the fact. And the organization did the best that it could to do so. And it was my advice based on the guidance provided by the Staff that when there was a close call on whether something should be reported or not, MHPC should report it to try to avoid being back here as we are today.

Um, on the expenditure side, the only evidence that Mr. Lindemann has brought forward to suggest that the expenditure reporting is incorrect is this analysis of press releases. And, um, you know that's not something that the Commission can take – take seriously. I mean first, I mean, first the idea that an organization's press releases somehow are an indication of how much money the organization spends or how much time the Staff spends on a particular issue. I don't think there's anything to base that theory on. And on top of that, the numbers that he was using is based on assumptions about what the budget is based on.

So this isn't a situation where someone's come forward and said, "This organization has bought this ad, or done this mailing, or hired this Staff person that's engaged in activities that's not been reported." And I think if you look back on past issues where there's been, um, complaints about inaccurate reporting of expenditures, that's the kind of evidence that's been brought forward. Someone has pointed to a specific advertisement or a specific activity that – that someone has been involved in. Before the last election, there was an issue about paid Staffers from the Maine Democratic Party doing – doing work for candidates and how that should be reported. And people were able to come forward and say, you know, "People in my district were received this flier door-to-door and it apparently was distributed by paid staff people and that's something you should look into," and that was looked into. Because again there was specific expenditures that people could point to that led someone to believe that there might be an issue of reporting. Um, and that's the more typical issue on the expenditure side. And…and here, there's been nothing pointed to, um, where anyone said, "MHPC did this and it's not been reported."

It's just sort of this analysis - the press releases and the general statement that, um, they must have spent more time on this than they did. And I don't think that those kind of general allegations, um, are enough to justify the Commission going forward with that investigation. Thank you.

WAYNE MEMO
STAFF RECS 2007
DEMOCRACY MAINE

Based on the information provided to date, the Commission staff is inclined to conclude that Democracy Maine does not have as its major purpose advocating the defeat of TABOR. Although press releases and statements to the media alone may not provide a full picture of an organization's activities, the materials provided do not appear to suggest that opposing TABOR was Democracy Maine's major purpose. Also relevant is the timing of the founding of the organization in May 2005. While opposing TABOR may have been a significant project for Mr. Crasnick in 2006, the Commission staff is not ready to conclude that opposing TABOR was the major purpose of the organization.

Completeness of §1056-B Reporting

The staff wishes to raise for your consideration another issue: whether Democracy Maine's §1056-B reporting of contributions is complete. In its two §1056-B reports, the organization reported total expenditures of $58,689.14, but its contributions totaled only $1,705.00. Mr. Crasnick responds that the balance "came from Democracy Maine's funds for general activities."

In the recent attention over the sufficiency of §1056-B reporting, some have raised the general concern that if a §1056-B filer claims that it used its general funds to support or oppose a ballot question, there remains a possibility that the filer could be shielding the original source of those funds who provided them for the purpose of influencing an election. Indeed, this concern one of the central contentions of the complainant against the Maine Heritage Policy Center.

In the case of Democracy Maine, its website explains that it was founded by real estate developer and businessman Robert C.S. Monks. Democracy Maine's office is located at Mr. Monk's office on the fourth floor of City Center in Portland. Mr. Monks remains a one of its three board members. During the Commission's consideration of the complaint against the Maine Heritage Policy Center, I was asked informally by the press why the Commission was not considering why Mr. Monks was not included as a contributor on Democracy Maine's §1056-B reports, since – it was presumed – that Mr. Monks was the sole funder of the organization. In 2004, Mr. Monks was the sole contributor to a PAC, the Citizenship Fund, and he provided $29,000 to the organization, which was largely spent in six highly contested State Senate races.[1]

In order to perform the Commission's statutory duty to verify that §1056-B reporting is complete, you may conclude that the question is worth pursuing even though it was not included in Mr. Lenardson's complaint and was first raised with me informally by the press based on inferences about Democracy Maine's funders. Since Mr. Monks was part of the organization's board of directors which officially voted in early September 2006 to oppose TABOR, it may be worth asking whether he provided funds to the organization *knowing* that they would be used to oppose TABOR. If that did occur, he should be listed as a contributor in Democracy Maine's §1056-B reports. Please be mindful, however, that Democracy Maine like any nonprofit organization is not generally required to disclose its funders and may be reluctant to disclose this information.

[1] The PAC reported its first contribution from Mr. Monks on November 1, 2004, which in retrospect seems improbable because that was one day before the November 2 general election.

MHPC
IRS FORM 990

Form 990

Department of the Treasury
Internal Revenue Service

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

► The organization may have to use a copy of this return to satisfy state reporting requirements.

OMB No 1545 0047

2006

Open to Public Inspection

A For the 2006 calendar year, or tax year beginning , 2006, and ending

B Check if applicable
- [ ] Address change
- [ ] Name change
- [ ] Initial return
- [ ] Final return
- [ ] Amended return
- [ ] Application pending

Please use IRS label or print or type. See specific instructions.

C
MAINE HERITAGE POLICY CENTER
PO BOX 7829
PORTLAND, ME 04112-7829

D Employer identification Number 22-3888250

E Telephone number (207) 321-2550

F Accounting method: [ ] Cash [X] Accrual [ ] Other (specify) ►

• **Section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts must attach a completed Schedule A (Form 990 or 990-EZ).**

H and I are not applicable to section 527 organizations

H (a) Is this a group return for affiliates? [ ] Yes [X] No

H (b) If 'Yes,' enter number of affiliates ►

H (c) Are all affiliates included? [ ] Yes [ ] No (If 'No,' attach a list See instructions)

H (d) Is this a separate return filed by an organization covered by a group ruling? [ ] Yes [X] No

G Web site: ► WWW.MAINEPOLICY.ORG

J Organization type (check only one) ► [X] 501(c) 3 ◄ (insert no) [ ] 4947(a)(1) or [ ] 527

K Check here ► [ ] if the organization is not a 509(a)(3) supporting organization **and** its gross receipts are normally **not** more than $25,000. A return is not required, but if the organization chooses to file a return, be sure to file a complete return.

I Group Exemption Number ►

M Check ► [ ] if the organization is not required to attach Schedule B (Form 990, 990-EZ, or 990-PF)

L Gross receipts Add lines 6b, 8b, 9b, and 10b to line 12 ► 541,414.

SCANNED DEC 27 2007

Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances *(See the instructions.)*

REVENUE	1 Contributions, gifts, grants, and similar amounts received				
	a Contributions to donor advised funds	1a			
	b Direct public support (not included on line 1a)	1b	504,148.		
	c Indirect public support (not included on line 1a)	1c			
	d Government contributions (grants) (not included on line 1a)	1d			
	e Total (add lines 1a through 1d) (cash $ 474,279. noncash $ 29,869.)			1e	504,148.
	2 Program service revenue including government fees and contracts (from Part VII, line 93)			2	
	3 Membership dues and assessments			3	
	4 Interest on savings and temporary cash investments			4	
	5 Dividends and interest from securities			5	224.
	6a Gross rents	6a			
	b Less rental expenses	6b			
	c Net rental income or (loss). Subtract line 6b from line 6a			6c	
	7 Other investment income (describe ►)			7	
	8a Gross amount from sales of assets other than inventory — (A) Securities: ; (B) Other:	8a			
	b Less. cost or other basis and sales expenses	8b			
	c Gain or (loss) (attach schedule)	8c			
	d Net gain or (loss). Combine line 8c, columns (A) and (B)			8d	
	9 Special events and activities (attach schedule). If any amount is from **gaming**, check here ► [ ]				
	a Gross revenue (not including $ of contributions reported on line 1b)	9a	36,583.		
	b Less. direct expenses other than fundraising expenses	9b	27,391.		
	c Net income or (loss) from special events. Subtract line 9b from line 9a STATEMENT 1			9c	9,192.
	10a Gross sales of inventory, less returns and allowances	10a			
	b Less. cost of goods sold	10b			
	c Gross profit or (loss) from sales of inventory (attach schedule) Subtract line 10b from line 10a			10c	
	11 Other revenue (from Part VII, line 103)			11	459.
	12 **Total revenue.** Add lines 1e, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11			12	514,023.
EXPENSES	13 Program services (from line 44, column (B))			13	407,437.
	14 Management and general (from line 44, column (C))			14	103,711.
	15 Fundraising (from line 44, column (D))			15	57,911.
	16 Payments to affiliates (attach schedule)			16	
	17 **Total expenses.** Add lines 16 and 44, column (A)			17	569,059.
NET ASSETS	18 Excess or (deficit) for the year. Subtract line 17 from line 12			18	-55,036.
	19 Net assets or fund balances at beginning of year (from line 73, column (A))			19	477.
	20 Other changes in net assets or fund balances (attach explanation)			20	
	21 Net assets or fund balances at end of year Combine lines 18, 19, and 20			21	-54,559.

BAA For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

TEEA0109L 01/22/07 Form **990** (2006)

Part II Statement of Functional Expenses All organizations must complete column (A) Columns (B), (C), and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others.

Do not include amounts reported on line 6b, 8b, 9b, 10b, or 16 of Part I.		(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
22a Grants paid from donor advised funds (attach sch) (cash $ ____ non-cash $ ____) If this amount includes foreign grants, check here ► ☐	22a				
22b Other grants and allocations (att sch) (cash $ ____ non-cash $ ____) If this amount includes foreign grants, check here ► ☐	22b				
23 Specific assistance to individuals (attach schedule)	23				
24 Benefits paid to or for members (attach schedule)	24				
25a Compensation of current officers, directors, key employees, etc listed in Part V-A (attach sch) SEE STMT 2	25a	104,699.	52,350.	26,175.	26,174.
b Compensation of former officers, directors, key employees, etc listed in Part V-B (attach sch)	25b	0.	0.	0.	0.
c Compensation and other distributions, not included above, to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B) (attach schedule)	25c	0.	0.	0.	0.
26 Salaries and wages of employees not included on lines 25a, b, and c	26	163,750.	122,160.	24,635.	16,955.
27 Pension plan contributions not included on lines 25a, b, and c	27	6,759.	4,422.	1,069.	1,268.
28 Employee benefits not included on lines 25a - 27	28	16,564.	11,945.	2,857.	1,762.
29 Payroll taxes	29	21,529.	14,084.	4,039.	3,406.
30 Professional fundraising fees	30				
31 Accounting fees	31	7,500.		7,500.	
32 Legal fees	32	17,172.		17,172.	
33 Supplies	33	7,987.		7,987.	
34 Telephone	34	13,955.	12,349.		1,606.
35 Postage and shipping	35	2,779.		2,779.	
36 Occupancy	36	18,000.	18,000.		
37 Equipment rental and maintenance	37	1,209.	1,209.		
38 Printing and publications	38	27,386.	27,386.		
39 Travel	39	18,649.	18,649.		
40 Conferences, conventions, and meetings	40	1,747.	1,747.		
41 Interest	41	483.		483.	
42 Depreciation, depletion, etc (attach schedule)	42	4,885.	3,664.	1,221.	
43 Other expenses not covered above (itemize) a SEE STATEMENT 3	43a	134,006.	119,472.	7,794.	6,740.
b	43b				
c	43c				
d	43d				
e	43e				
f	43f				
g	43g				
44 **Total functional expenses.** Add lines 22a through 43g (Organizations completing columns (B) - (D), carry these totals to lines 13 - 15)	44	569,059.	407,437.	103,711.	57,911.

Joint Costs. Check ► ☐ if you are following SOP 98-2

Are any joint costs from a combined educational campaign and fundraising solicitation reported in **(B)** Program services? ► ☐ Yes ☒ No

If 'Yes,' enter **(i)** the aggregate amount of these joint costs $ ____; **(ii)** the amount allocated to Program services $ ____; **(iii)** the amount allocated to Management and general $ ____; and **(iv)** the amount allocated to Fundraising $ ____

Part III Statement of Program Service Accomplishments

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments.

What is the organization's primary exempt purpose? ► RESEARCH AND EDUCATION All organizations must describe their exempt purpose achievements in a clear and concise manner State the number of clients served, publications issued, etc Discuss achievements that are not measurable. (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others)	Program Service Expenses (Required for 501(c)(3) and (4) organizations and 4947(a)(1) trusts, but optional for others)
a SEE STATEMENT 4	
(Grants and allocations $) If this amount includes foreign grants, check here ► ☐	407,437.
b	
(Grants and allocations $) If this amount includes foreign grants, check here ► ☐	
c	
(Grants and allocations $) If this amount includes foreign grants, check here ► ☐	
d	
(Grants and allocations $) If this amount includes foreign grants, check here ► ☐	
e Other program services (Grants and allocations $) If this amount includes foreign grants, check here ► ☐	
f **Total of Program Service Expenses** (should equal line 44, column (B), Program services) ►	407,437.

Part IV Balance Sheets *(See the instructions.)*

Note: *Where required, attached schedules and amounts within the description column should be for end-of-year amounts only.*			(A) Beginning of year		(B) End of year
ASSETS					
45 Cash – non-interest-bearing			8,161.	45	1,013.
46 Savings and temporary cash investments				46	
47a Accounts receivable	47a				
b Less. allowance for doubtful accounts	47b			47c	
48a Pledges receivable	48a				
b Less. allowance for doubtful accounts	48b		15,000.	48c	
49 Grants receivable				49	
50a Receivables from current and former officers, directors, trustees, and key employees (attach schedule)				50a	
b Receivables from other disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B) (attach schedule)				50b	
51a Other notes and loans receivable (attach schedule)	51a				
b Less. allowance for doubtful accounts	51b			51c	
52 Inventories for sale or use				52	
53 Prepaid expenses and deferred charges			30.	53	20.
54a Investments – publicly-traded securities	► ☐ Cost ☐ FMV			54a	
b Investments – other securities (attach sch)	► ☐ Cost ☐ FMV			54b	
55a Investments – land, buildings, & equipment. basis	55a				
b Less accumulated depreciation (attach schedule)	55b			55c	
56 Investments – other (attach schedule)				56	
57a Land, buildings, and equipment. basis	57a	20,122.			
b Less. accumulated depreciation (attach schedule) STATEMENT 5	57b	10,162.	12,867.	57c	9,960.
58 Other assets, including program-related investments (describe ► _____)				58	
59 **Total assets** (must equal line 74). Add lines 45 through 58			36,058.	59	10,993.
LIABILITIES					
60 Accounts payable and accrued expenses			35,581.	60	18,031.
61 Grants payable				61	
62 Deferred revenue				62	
63 Loans from officers, directors, trustees, and key employees (attach schedule)				63	
64a Tax-exempt bond liabilities (attach schedule)				64a	
b Mortgages and other notes payable (attach schedule) SEE STATEMENT 6				64b	47,500.
65 Other liabilities (describe ► SEE STATEMENT 7)				65	21.
66 **Total liabilities.** Add lines 60 through 65			35,581.	66	65,552.
NET ASSETS OR FUND BALANCES					
Organizations that follow SFAS 117, check here ► ☒ and complete lines 67 through 69 and lines 73 and 74.					
67 Unrestricted			-42,740.	67	-54,559.
68 Temporarily restricted			43,217.	68	
69 Permanently restricted				69	
Organizations that do not follow SFAS 117, check here ► ☐ and complete lines 70 through 74.					
70 Capital stock, trust principal, or current funds				70	
71 Paid-in or capital surplus, or land, building, and equipment fund				71	
72 Retained earnings, endowment, accumulated income, or other funds				72	
73 **Total net assets or fund balances.** Add lines 67 through 69 or lines 70 through 72. (Column (A) **must** equal line 19 and column (B) **must** equal line 21)			477.	73	-54,559.
74 **Total liabilities and net assets/fund balances.** Add lines 66 and 73			36,058.	74	10,993.

Part IV-A Reconciliation of Revenue per Audited Financial Statements with Revenue per Return *(See the instructions.)*

a	Total revenue, gains, and other support per audited financial statements			a	541,414.
b	Amounts included on line a but not on Part I, line 12				
	1 Net unrealized gains on investments	b1			
	2 Donated services and use of facilities	b2			
	3 Recoveries of prior year grants	b3			
	4 Other (specify). SEE STM 8	b4	27,391.		
	Add lines b1 through b4			b	27,391.
c	Subtract line b from line a			c	514,023.
d	Amounts included on Part I, line 12, but not on line a:				
	1 Investment expenses not included on Part I, line 6b	d1			
	2 Other (specify).	d2			
	Add lines d1 and d2			d	
e	**Total revenue** (Part I, line 12) Add lines c and d ►			e	514,023.

Part IV-B Reconciliation of Expenses per Audited Financial Statements with Expenses per Return

a	Total expenses and losses per audited financial statements			a	596,450.
b	Amounts included on line a but not on Part I, line 17.				
	1 Donated services and use of facilities	b1			
	2 Prior year adjustments reported on Part I, line 20	b2			
	3 Losses reported on Part I, line 20	b3			
	4 Other (specify). SEE STMT 9	b4	27,391.		
	Add lines b1 through b4			b	27,391.
c	Subtract line b from line a			c	569,059.
d	Amounts included on Part I, line 17, but not on line a:				
	1 Investment expenses not included on Part I, line 6b	d1			
	2 Other (specify):	d2			
	Add lines d1 and d2			d	
e	**Total expenses** (Part I, line 17). Add lines c and d ►			e	569,059.

Part V-A Current Officers, Directors, Trustees, and Key Employees (List each person who was an officer, director, trustee, or key employee at any time during the year even if they were not compensated.) *(See the instructions.)*

(A) Name and address	(B) Title and average hours per week devoted to position	(C) Compensation (if not paid, enter -0-)	(D) Contributions to employee benefit plans and deferred compensation plans	(E) Expense account and other allowances
SEE STATEMENT 10		97,500.	7,199.	0.

Part V-A Current Officers, Directors, Trustees, and Key Employees *(continued)*

		Yes	No
75a Enter the total number of officers, directors, and trustees permitted to vote on organization business as board meetings ► 8			
b Are any officers, directors, trustees, or key employees listed in Form 990, Part V-A, or highest compensated employees listed in Schedule A, Part I, or highest compensated professional and other independent contractors listed in Schedule A, Part II-A or II-B, related to each other through family or business relationships? If 'Yes,' attach a statement that identifies the individuals and explains the relationship(s)	75b		X
c Do any officers, directors, trustees, or key employees listed in form 990, Part V-A, or highest compensated employees listed in Schedule A, Part I, or highest compensated professional and other independent contractors listed in Schedule A, Part II-A or II-B, receive compensation from any other organizations, whether tax exempt or taxable, that are related to the organization? See the instructions for the definition of 'related organization'	75c		X
If 'Yes,' attach a statement that includes the information described in the instructions.			
d Does the organization have a written conflict of interest policy?	75d	X	

Part V-B Former Officers, Directors, Trustees, and Key Employees That Received Compensation or Other Benefits (If any former officer, director, trustee, or key employee received compensation or other benefits (described below) during the year, list that person below and enter the amount of compensation or other benefits in the appropriate column. See the instructions.)

(A) Name and address	(B) Loans and Advances	(C) Compensation (if not paid, enter -0-)	(D) Contributions to employee benefit plans and deferred compensation plans	(E) Expense account and other allowances
NONE				

Part VI Other Information *(See the instructions.)*

		Yes	No
76 Did the organization make a change in its activities or methods of conducting activities? If 'Yes,' attach a detailed statement of each change	76		X
77 Were any changes made in the organizing or governing documents but not reported to the IRS?	77		X
If 'Yes,' attach a conformed copy of the changes.			
78a Did the organization have unrelated business gross income of $1,000 or more during the year covered by this return?	78a		X
b If 'Yes,' has it filed a tax return on **Form 990-T** for this year?	78b	N/A	
79 Was there a liquidation, dissolution, termination, or substantial contraction during the year? If 'Yes,' attach a statement	79		X
80a Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc, to any other exempt or nonexempt organization?	80a		X
b If 'Yes,' enter the name of the organization ► N/A and check whether it is ☐ exempt or ☐ nonexempt.			
81a Enter direct and indirect political expenditures. (See line 81 instructions) 81a 0.			
b Did the organization file **Form 1120-POL** for this year?	81b		X

Part VI Other Information *(continued)*

			Yes	No
82a Did the organization receive donated services or the use of materials, equipment, or facilities at no charge or at substantially less than fair rental value?		82a		X
b If 'Yes,' you may indicate the value of these items here. Do not include this amount as revenue in Part I or as an expense in Part II (See instructions in Part III)	82b N/A			
83a Did the organization comply with the public inspection requirements for returns and exemption applications?		83a	X	
b Did the organization comply with the disclosure requirements relating to *quid pro quo* contributions?		83b	X	
84a Did the organization solicit any contributions or gifts that were not tax deductible?		84a		X
b If 'Yes,' did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?		84b	N/A	
85 *501(c)(4), (5), or (6) organizations.* a Were substantially all dues nondeductible by members?		85a	N/A	
b Did the organization make only in-house lobbying expenditures of $2,000 or less?		85b	N/A	
If 'Yes' was answered to either 85a or 85b, **do not** complete 85c through 85h below unless the organization received a waiver for proxy tax owed for the prior year.				
c Dues, assessments, and similar amounts from members	85c N/A			
d Section 162(e) lobbying and political expenditures	85d N/A			
e Aggregate nondeductible amount of section 6033(e)(1)(A) dues notices	85e N/A			
f Taxable amount of lobbying and political expenditures (line 85d less 85e)	85f N/A			
g Does the organization elect to pay the section 6033(e) tax on the amount on line 85f?		85g	N/A	
h If section 6033(e)(1)(A) dues notices were sent, does the organization agree to add the amount on line 85f to its reasonable estimate of dues allocable to nondeductible lobbying and political expenditures for the following tax year?		85h	N/A	
86 *501(c)(7) organizations.* Enter: a Initiation fees and capital contributions included on line 12	86a N/A			
b Gross receipts, included on line 12, for public use of club facilities	86b N/A			
87 *501(c)(12) organizations.* Enter: a Gross income from members or shareholders	87a N/A			
b Gross income from other sources. (Do not net amounts due or paid to other sources against amounts due or received from them.)	87b N/A			
88a At any time during the year, did the organization own a 50% or greater interest in a taxable corporation or partnership, or an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? If 'Yes,' complete Part IX		88a		X
b At any time during the year, did the organization, directly or indirectly, own a controlled entity within the meaning of section 512(b)(13)? If 'Yes,' complete Part XI ►		88b		X
89a *501(c)(3) organizations.* Enter: Amount of tax imposed on the organization during the year under: section 4911 ► 0. ; section 4912 ► 0. , section 4955 ► 0.				
b *501(c)(3) and 501(c)(4) organizations.* Did the organization engage in any section 4958 excess benefit transaction during the year or did it become aware of an excess benefit transaction from a prior year? If 'Yes,' attach a statement explaining each transaction		89b		X
c Enter: Amount of tax imposed on the organization managers or disqualified persons during the year under sections 4912, 4955, and 4958 ►	0.			
d Enter: Amount of tax on line 89c, above, reimbursed by the organization ►	0.			
e *All organizations.* At any time during the tax year, was the organization a party to a prohibited tax shelter transaction?		89e		X
f *All organizations.* Did the organization acquire a direct or indirect interest in any applicable insurance contract?		89f		X
g *For supporting organizations and sponsoring organizations maintaining donor advised funds.* Did the supporting organization, or a fund maintained by a sponsoring organization, have excess business holdings at any time during the year?		89g		X
90a List the states with which a copy of this return is filed ► NONE				
b Number of employees employed in the pay period that includes March 12, 2006 (See instructions)		90b	6	
91a The books are in care of ► WILLIAM BECKER Telephone number ►				
Located at ► PO BOX 7829, PORTLAND ME ZIP + 4 ► 04112-7829				
			Yes	No
b At any time during the calendar year, did the organization have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)?		91b		X
If 'Yes,' enter the name of the foreign country ►				
See the instructions for exceptions and filing requirements for **Form TD F 90-22.1**, Report of Foreign Bank and Financial Accounts.				

Part VI Other Information *(continued)*

		Yes	No
c At any time during the calendar year, did the organization maintain an office outside of the United States?	91c		X
If 'Yes,' enter the name of the foreign country ►			
92 *Section 4947(a)(1) nonexempt charitable trusts filing Form 990 in lieu of* ***Form 1041*** — Check here ► ☐		N/A	
and enter the amount of tax-exempt interest received or accrued during the tax year ►	92	N/A	

Part VII Analysis of Income-Producing Activities *(See the instructions.)*

Note: *Enter gross amounts unless otherwise indicated.*	Unrelated business income (A) Business code	(B) Amount	Excluded by section 512, 513, or 514 (C) Exclusion code	(D) Amount	(E) Related or exempt function income
93 Program service revenue.					
a					
b					
c					
d					
e					
f Medicare/Medicaid payments					
g Fees & contracts from government agencies					
94 Membership dues and assessments					
95 Interest on savings & temporary cash invmnts					
96 Dividends & interest from securities			14	224.	
97 Net rental income or (loss) from real estate.					
a debt-financed property					
b not debt-financed property					
98 Net rental income or (loss) from pers prop					
99 Other investment income					
100 Gain or (loss) from sales of assets other than inventory					
101 Net income or (loss) from special events			1	9,192.	
102 Gross profit or (loss) from sales of inventory					
103 Other revenue. a					
b ATLAS - SALE			1	459.	
c					
d					
e					
104 Subtotal (add columns (B), (D), and (E))				9,875.	
105 **Total** (add line 104, columns (B), (D), and (E)) ►					9,875.

Note: *Line 105 plus line 1e, Part I, should equal the amount on line 12, Part I.*

Part VIII Relationship of Activities to the Accomplishment of Exempt Purposes *(See the instructions.)*

Line No. ▼	Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes (other than by providing funds for such purposes).
N/A	

Part IX Information Regarding Taxable Subsidiaries and Disregarded Entities *(See the instructions.)*

(A) Name, address, and EIN of corporation, partnership, or disregarded entity	(B) Percentage of ownership interest	(C) Nature of activities	(D) Total income	(E) End-of-year assets
N/A	%			
	%			
	%			
	%			

Part X Information Regarding Transfers Associated with Personal Benefit Contracts *(See the instructions.)*

a Did the organization, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract?	☐ Yes	☒ No
b Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract?	☐ Yes	☒ No

Note: *If 'Yes' to* ***(b)****, file Form 8870* ***and*** *Form 4720 (see instructions).*

Part XI **Information Regarding Transfers To and From Controlled Entities.** *Complete only if the organization is a controlling organization as defined in section 512(b)(13).*

		Yes	No
106	Did the reporting organization **make** any transfers **to** a controlled entity as defined in section 512(b)(13) of the Code? If 'Yes,' complete the schedule below for each controlled entity		X

	(A) Name, address, of each controlled entity	(B) Employer Identification Number	(C) Description of transfer	(D) Amount of transfer
a				
b				
c				
	Totals			

		Yes	No
107	Did the reporting organization **receive** any transfers **from** a controlled entity as defined in section 512(b)(13) of the Code? If 'Yes,' complete the schedule below for each controlled entity		X

	(A) Name, address, of each controlled entity	(B) Employer Identification Number	(C) Description of transfer	(D) Amount of transfer
a				
b				
c				
	Totals			

		Yes	No
108	Did the organization have a binding written contract in effect on August 17, 2006, covering the interest, rents, royalties, and annuities described in question 107 above?		X

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge

Signature of officer — Date 11/15/07

William G Becker, III President & CEO

Type or print name and title

Paid Preparer's Use Only

Preparer's signature		Date 11/15/07	Check if self employed ☐	Preparer's SSN or PTIN (See General Instruction W) P00516452
Firm's name (or yours if self employed), address, and ZIP + 4	MACDONALD PAGE & CO LLC 30 LONG CREEK DR SOUTH PORTLAND, ME 04106		EIN 01-0242373 Phone no 207-774-5701	

SCHEDULE A
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Organization Exempt Under Section 501(c)(3)

(Except Private Foundation) and Section 501(e), 501(f), 501(k), 501(n), or 4947(a)(1) Nonexempt Charitable Trust

Supplementary Information — (See separate instructions.)

► **MUST be completed by the above organizations and attached to their Form 990 or 990-EZ.**

OMB No 1545 0047

2006

Name of the organization: MAINE HERITAGE POLICY CENTER

Employer identification number: 22-3888250

Part I Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees

(See instructions. List each one. If there are none, enter 'None.')

(a) Name and address of each employee paid more than $50,000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans and deferred compensation	(e) Expense account and other allowances
SCOTT MOODY PORTLAND, ME	VP POLICY 40	84,000.	4,200.	0.
Total number of other employees paid over $50,000 ►	0			

Part II — A Compensation of the Five Highest Paid Independent Contractors for Professional Services

(See instructions. List each one (whether individuals or firms). If there are none, enter 'None.')

(a) Name and address of each independent contractor paid more than $50,000	(b) Type of service	(c) Compensation
NONE		
Total number of others receiving over $50,000 for professional services ► 0		

Part II — B Compensation of the Five Highest Paid Independent Contractors for Other Services

(List each contractor who performed services other than professional services, whether individuals or firms. If there are none, enter 'None.' See instructions.)

(a) Name and address of each independent contractor paid more than $50,000	(b) Type of service	(c) Compensation
NONE		
Total number of other contractors receiving over $50,000 for other services ► 0		

BAA For Paperwork Reduction Act Notice, see the Instructions for Form 990 and Form 990-EZ.

Schedule A (Form 990 or 990-EZ) 2006

TEEA0401L 01/19/07

Part III **Statements About Activities** (See instructions.)

			Yes	No
1	During the year, has the organization attempted to influence national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum? If 'Yes,' enter the total expenses paid or incurred in connection with the lobbying activities ► $ 30,962. (Must equal amounts on line 38, Part VI-A, or line i of Part VI-B.)	1	X	
	Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A. Other organizations checking 'Yes' must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities.			
2	During the year, has the organization, either directly or indirectly, engaged in any of the following acts with any substantial contributors, trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary? *(If the answer to any question is 'Yes,' attach a detailed statement explaining the transactions.)*			
a	Sale, exchange, or leasing of property?	2a		X
b	Lending of money or other extension of credit?	2b		X
c	Furnishing of goods, services, or facilities?	2c		X
	SEE FORM 990, PART V			
d	Payment of compensation (or payment or reimbursement of expenses if more than $1,000)?	2d	X	
e	Transfer of any part of its income or assets?	2e		X
3a	Did the organization make grants for scholarships, fellowships, student loans, etc? (If 'Yes,' attach an explanation of how the organization determines that recipients qualify to receive payments.)	3a		X
b	Did the organization have a section 403(b) annuity plan for its employees?	3b	X	
c	Did the organization receive or hold an easement for conservation purposes, including easements to preserve open space, the environment, historic land areas or historic structures? If 'Yes,' attach a detailed statement	3c		X
d	Did the organization provide credit counseling, debt management, credit repair, or debt negotiation services?	3d		X
4a	Did the organization maintain any donor advised funds? If 'Yes,' complete lines 4b through 4g. If 'No,' complete lines 4f and 4g	4a		X
b	Did the organization make any taxable distributions under section 4966?	4b	N/A	
c	Did the organization make a distribution to a donor, donor advisor, or related person?	4c	N/A	
d	Enter the total number of donor advised funds owned at the end of the tax year ► N/A			
e	Enter the aggregate value of assets held in all donor advised funds owned at the end of the tax year ► N/A			
f	Enter the total number of separate funds or accounts owned at the end of the tax year (excluding donor advised funds included on line 4d) where donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts ► 0			
g	Enter the aggregate value of assets held in all funds or accounts included on line 4f at the end of the tax year ► 0.			

Part IV **Reason for Non-Private Foundation Status** (See instructions.)

I certify that the organization is not a private foundation because it is (Please check only **ONE** applicable box)

5 ☐ A church, convention of churches, or association of churches. Section 170(b)(1)(A)(i).

6 ☐ A school. Section 170(b)(1)(A)(ii). (Also complete Part V.)

7 ☐ A hospital or a cooperative hospital service organization. Section 170(b)(1)(A)(iii).

8 ☐ A federal, state, or local government or governmental unit. Section 170(b)(1)(A)(v).

9 ☐ A medical research organization operated in conjunction with a hospital. Section 170(b)(1)(A)(iii). **Enter the hospital's name, city, and state** ►

10 ☐ An organization operated for the benefit of a college or university owned or operated by a governmental unit. Section 170(b)(1)(A)(iv). (Also complete the **Support Schedule** in Part IV-A.)

11a ☒ An organization that normally receives a substantial part of its support from a governmental unit or from the general public. Section 170(b)(1)(A)(vi). (Also complete the **Support Schedule** in Part IV-A.)

11b ☐ A community trust. Section 170(b)(1)(A)(vi). (Also complete the **Support Schedule** in Part IV-A.)

12 ☐ An organization that normally receives. **(1) more than 33-1/3%** of its support from contributions, membership fees, and gross receipts from activities related to its charitable, etc, functions — subject to certain exceptions, and **(2) no more than 33-1/3%** of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975 See section 509(a)(2). (Also complete the **Support Schedule** in Part IV-A.)

13 ☐ An organization that is not controlled by any disqualified persons (other than foundation managers) and otherwise meets the requirements of section 509(a)(3) Check the box that describes the type of supporting organization: ►

☐ Type I ☐ Type II ☐ Type III-Functionally Integrated ☐ Type III-Other

Provide the following information about the supported organizations. (See instructions.)

(a) Name(s) of supported organization(s)	(b) Employer identification number (EIN)	(c) Type of organization (described in lines 5 through 12 above or IRC section)	(d) Is the supported organization listed in the supporting organization's governing documents? Yes	No	(e) Amount of support
Total				►	0.

14 ☐ An organization organized and operated to test for public safety Section 509(a)(4). (See instructions)

Part IV-A Support Schedule (Complete only if you checked a box on line 10, 11, or 12) ***Use cash method of accounting.***

Note: *You may use the worksheet in the instructions for converting from the accrual to the cash method of accounting.*

Calendar year (or fiscal year beginning in) ►	(a) 2005	(b) 2004	(c) 2003	(d) 2002	(e) Total
15 Gifts, grants, and contributions received. (Do not include unusual grants. See line 28)	335,697.	230,841.	146,700.		713,238.
16 Membership fees received					0.
17 Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is related to the organization's charitable, etc, purpose	27,940.	16,261.	28,560.		72,761.
18 Gross income from interest, dividends, amounts received from payments on securities loans (section 512(a)(5)), rents, royalties, and unrelated business taxable income (less section 511 taxes) from businesses acquired by the organization after June 30, 1975	56.	14.	2.		72.
19 Net income from unrelated business activities not included in line 18					0.
20 Tax revenues levied for the organization's benefit and either paid to it or expended on its behalf					0.
21 The value of services or facilities furnished to the organization by a governmental unit without charge. Do not include the value of services or facilities generally furnished to the public without charge					0.
22 Other income. Attach a schedule. Do not include gain or (loss) from sale of capital assets					0.
23 Total of lines 15 through 22	363,693.	247,116.	175,262.		786,071.
24 Line 23 minus line 17	335,753.	230,855.	146,702.		713,310.
25 Enter 1% of line 23	3,637.	2,471.	1,753.		

26 Organizations described on lines 10 or 11: a Enter 2% of amount in column (e), line 24 ► 26a 14,266.

b Prepare a list for your records to show the name of and amount contributed by each person (other than a governmental unit or publicly supported organization) whose total gifts for 2002 through 2005 exceeded the amount shown in line 26a **Do not file this list with your return** Enter the total of all these excess amounts ► 26b 367,552.

c Total support for section 509(a)(1) test. Enter line 24, column (e) ► 26c 713,310.

d Add. Amounts from column (e) for lines. 18 72. 19 _____ 22 _____ 26b 367,552. 26d 367,624.

e Public support (line 26c minus line 26d total) ► 26e 345,686.

f **Public support percentage (line 26e (numerator) divided by line 26c (denominator))** ► 26f 48.46 %

27 Organizations described on line 12: N/A

a For amounts included in lines 15, 16, and 17 that were received from a 'disqualified person,' prepare a list for your records to show the name of, and total amounts received in each year from, each 'disqualified person' **Do not file this list with your return.** Enter the sum of such amounts for each year.

(2005) _____ (2004) _____ (2003) _____ (2002) _____

b For any amount included in line 17 that was received from each person (other than 'disqualified persons'), prepare a list for your records to show the name of, and amount received for each year, that was more than the **larger** of **(1)** the amount on line 25 for the year or **(2)** $5,000. (Include in the list organizations described in lines 5 through 11b, as well as individuals) **Do not file this list with your return.** After computing the difference between the amount received and the larger amount described in **(1)** or **(2)**, enter the sum of these differences (the excess amounts) for each year.

(2005) _____ (2004) _____ (2003) _____ (2002) _____

c Add. Amounts from column (e) for lines. 15 _____ 16 _____ 17 _____ 20 _____ 21 _____ 27c

d Add. Line 27a total _____ and line 27b total _____ 27d

e Public support (line 27c total minus line 27d total) ► 27e

f Total support for section 509(a)(2) test. Enter amount from line 23, column (e) ► 27f

g **Public support percentage (line 27e (numerator) divided by line 27f (denominator))** ► 27g %

h **Investment income percentage (line 18, column (e) (numerator) divided by line 27f (denominator))** ► 27h %

28 Unusual Grants: For an organization described in line 10, 11, or 12 that received any unusual grants during 2002 through 2005, prepare a list for your records to show, for each year, the name of the contributor, the date and amount of the grant, and a brief description of the nature of the grant **Do not file this list with your return.** Do not include these grants in line 15

Part V **Private School Questionnaire** (See instructions.)
(To be completed ONLY by schools that checked the box on line 6 in Part IV) N/A

		Yes	No
29 Does the organization have a racially nondiscriminatory policy toward students by statement in its charter, bylaws, other governing instrument, or in a resolution of its governing body?	29		
30 Does the organization include a statement of its racially nondiscriminatory policy toward students in all its brochures, catalogues, and other written communications with the public dealing with student admissions, programs, and scholarships?	30		
31 Has the organization publicized its racially nondiscriminatory policy through newspaper or broadcast media during the period of solicitation for students, or during the registration period if it has no solicitation program, in a way that makes the policy known to all parts of the general community it serves?	31		
If 'Yes,' please describe, if 'No,' please explain (If you need more space, attach a separate statement)			
32 Does the organization maintain the following.			
a Records indicating the racial composition of the student body, faculty, and administrative staff?	32a		
b Records documenting that scholarships and other financial assistance are awarded on a racially nondiscriminatory basis?	32b		
c Copies of all catalogues, brochures, announcements, and other written communications to the public dealing with student admissions, programs, and scholarships?	32c		
d Copies of all material used by the organization or on its behalf to solicit contributions?	32d		
If you answered 'No' to any of the above, please explain. (If you need more space, attach a separate statement.)			
33 Does the organization discriminate by race in any way with respect to			
a Students' rights or privileges?	33a		
b Admissions policies?	33b		
c Employment of faculty or administrative staff?	33c		
d Scholarships or other financial assistance?	33d		
e Educational policies?	33e		
f Use of facilities?	33f		
g Athletic programs?	33g		
h Other extracurricular activities?	33h		
If you answered 'Yes' to any of the above, please explain. (If you need more space, attach a separate statement.)			
34a Does the organization receive any financial aid or assistance from a governmental agency?	34a		
b Has the organization's right to such aid ever been revoked or suspended?	34b		
If you answered 'Yes' to either 34a or b, please explain using an attached statement.			
35 Does the organization certify that it has complied with the applicable requirements of sections 4.01 through 4.05 of Rev Proc 75-50, 1975-2 C.B. 587, covering racial nondiscrimination? If 'No,' attach an explanation.	35		

Part VI-A **Lobbying Expenditures by Electing Public Charities** (See instructions.)
(To be completed **ONLY** by an eligible organization that filed Form 5768)

Check ► a [ ] if the organization belongs to an affiliated group Check ► b [ ] if you checked 'a' and 'limited control' provisions apply.

Limits on Lobbying Expenditures (The term 'expenditures' means amounts paid or incurred.)		(a) Affiliated group totals	(b) To be completed for all electing organizations
36 Total lobbying expenditures to influence public opinion (grassroots lobbying)	36		
37 Total lobbying expenditures to influence a legislative body (direct lobbying)	37		
38 Total lobbying expenditures (add lines 36 and 37)	38	0.	0.
39 Other exempt purpose expenditures	39		
40 Total exempt purpose expenditures (add lines 38 and 39)	40	0.	0.
41 Lobbying nontaxable amount. Enter the amount from the following table —	41		
If the amount on line 40 is — / **The lobbying nontaxable amount is —**			
Not over $500,000 / 20% of the amount on line 40			
Over $500,000 but not over $1,000,000 / $100,000 plus 15% of the excess over $500,000			
Over $1,000,000 but not over $1,500,000 / $175,000 plus 10% of the excess over $1,000,000			
Over $1,500,000 but not over $17,000,000 / $225,000 plus 5% of the excess over $1,500,000			
Over $17,000,000 / $1,000,000			
42 Grassroots nontaxable amount (enter 25% of line 41)	42	0.	0.
43 Subtract line 42 from line 36. Enter -0- if line 42 is more than line 36	43	0.	0.
44 Subtract line 41 from line 38. Enter -0- if line 41 is more than line 38	44	0.	0.
Caution: *If there is an amount on either line 43 or line 44, you must file Form 4720.*			

4-Year Averaging Period Under Section 501(h)

(Some organizations that made a section 501(h) election do not have to complete all of the five columns below. See the instructions for lines 45 through 50.)

	Lobbying Expenditures During 4-Year Averaging Period				
Calendar year (or fiscal year beginning in) ►	(a) 2006	(b) 2005	(c) 2004	(d) 2003	(e) Total
45 Lobbying nontaxable amount					0.
46 Lobbying ceiling amount (150% of line 45(e))					0.
47 Total lobbying expenditures					0.
48 Grassroots nontaxable amount					0.
49 Grassroots ceiling amount (150% of line 48(e))					0.
50 Grassroots lobbying expenditures					0.

Part VI-B **Lobbying Activity by Nonelecting Public Charities**
(For reporting only by organizations that did not complete Part VI-A) (See instructions.)

During the year, did the organization attempt to influence national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of:	Yes	No	Amount
a Volunteers		X	
b Paid staff or management (Include compensation in expenses reported on lines c through h.)	X		
c Media advertisements		X	
d Mailings to members, legislators, or the public		X	
e Publications, or published or broadcast statements	X		15,273.
f Grants to other organizations for lobbying purposes		X	
g Direct contact with legislators, their staffs, government officials, or a legislative body		X	
h Rallies, demonstrations, seminars, conventions, speeches, lectures, or any other means	X		15,689.
i Total lobbying expenditures (add lines c through h.)			30,962.

If 'Yes' to any of the above, also attach a statement giving a detailed description of the lobbying activities. SEE STATEMENT 11

Part VII Information Regarding Transfers To and Transactions and Relationships With Noncharitable Exempt Organizations (See instructions)

51 Did the reporting organization directly or indirectly engage in any of the following with any other organization described in section 501(c) of the Code (other than section 501(c)(3) organizations) or in section 527, relating to political organizations?

		Yes	No
a Transfers from the reporting organization to a noncharitable exempt organization of			
(i) Cash	51a (i)		X
(ii) Other assets	a (ii)		X
b Other transactions.			
(i) Sales or exchanges of assets with a noncharitable exempt organization	b (i)		X
(ii) Purchases of assets from a noncharitable exempt organization	b (ii)		X
(iii) Rental of facilities, equipment, or other assets	b (iii)		X
(iv) Reimbursement arrangements	b (iv)		X
(v) Loans or loan guarantees	b (v)		X
(vi) Performance of services or membership or fundraising solicitations	b (vi)		X
c Sharing of facilities, equipment, mailing lists, other assets, or paid employees	c		X

d If the answer to any of the above is 'Yes,' complete the following schedule. Column (b) should always show the fair market value of the goods, other assets, or services given by the reporting organization. If the organization received less than fair market value in any transaction or sharing arrangement, show in column (d) the value of the goods, other assets, or services received.

(a) Line no.	(b) Amount involved	(c) Name of noncharitable exempt organization	(d) Description of transfers, transactions, and sharing arrangements
N/A			

52a Is the organization directly or indirectly affiliated with, or related to, one or more tax-exempt organizations described in section 501(c) of the Code (other than section 501(c)(3)) or in section 527? ► ☐ Yes ☒ No

b If 'Yes,' complete the following schedule.

(a) Name of organization	(b) Type of organization	(c) Description of relationship
N/A		

STATEMENT 1
FORM 990, PART I, LINE 9
NET INCOME (LOSS) FROM SPECIAL EVENTS

SPECIAL EVENTS	GROSS RECEIPTS	LESS CONTRI-BUTIONS	GROSS REVENUE	LESS DIRECT EXPENSES	NET INCOME (LOSS)
	36,583.	0.	36,583.	27,391.	9,192.
TOTAL	$ 36,583.	$ 0.	$ 36,583.	$ 27,391.	$ 9,192.

STATEMENT 2
FORM 990, PART II, LINE 25A
COMPENSATION OF OFFICERS, DIRECTORS, ETC.

COMPENSATION RECEIVED NAME	(A) TOTAL	(B) PROGRAM SERVICES	(C) MANAGEMENT & GENERAL	(D) FUNDRAISING
WILLIAM G. BECKER, III	97,500.	48,750.	24,375.	24,375.
TOTAL	$ 97,500.	$ 48,750.	$ 24,375.	$ 24,375.

EMPLOYEE BENEFIT PLAN CONTRIBUTION NAME	(A) TOTAL	(B) PROGRAM SERVICES	(C) MANAGEMENT & GENERAL	(D) FUNDRAISING
WILLIAM G. BECKER, III	7,199.	3,600.	1,800.	1,799.
TOTAL	$ 7,199.	$ 3,600.	$ 1,800.	$ 1,799.

EXPENSE ACCT. & OTHER ALLOWANCES NAME	(A) TOTAL	(B) PROGRAM SERVICES	(C) MANAGEMENT & GENERAL	(D) FUNDRAISING
WILLIAM G. BECKER, III	0.	0.	0.	0.
TOTAL	$ 0.	$ 0.	$ 0.	$ 0.

STATEMENT 3
FORM 990, PART II, LINE 43
OTHER EXPENSES

	(A) TOTAL	(B) PROGRAM SERVICES	(C) MANAGEMENT & GENERAL	(D) FUNDRAISING
ATLAS EXPENSE	22,677.	22,677.		
CONTRACT RESEARCH	52,700.	52,700.		
CONTRACT SERVICES	14,960.	14,960.		
DUES AND SUBSCRIPTIONS	1,038.	1,038.		
INSURANCE	2,265.		2,265.	
MEALS AND ENTERTAINMENT	12,156.	6,078.		6,078.
MISCELLANEOUS	12,494.	6,750.	5,324.	420.
PARKING	4,092.	4,092.		
POSITION BROCHURES	-585.	-585.		
RESEARCH	10,916.	10,916.		
ROUNDING	1.	1.		

STATEMENT 3 (CONTINUED)
FORM 990, PART II, LINE 43
OTHER EXPENSES

	(A) TOTAL	(B) PROGRAM SERVICES	(C) MANAGEMENT & GENERAL	(D) FUNDRAISING
WORKERS COMP	1,292.	845.	205.	242.
TOTAL	$ 134,006.	$ 119,472.	$ 7,794.	$ 6,740.

STATEMENT 4
FORM 990, PART III, LINE A
STATEMENT OF PROGRAM SERVICE ACCOMPLISHMENTS

DESCRIPTION	GRANTS AND ALLOCATIONS	PROGRAM SERVICE EXPENSES
FORMULATE AND PROMOTE CONSERVATIVE PUBLIC POLICIES BASED ON THE PRINCIPLES OF FREE ENTERPRISE; LIMITED, CONSTITUTIONAL GOVERNMENT; INDIVIDUAL FREEDOM; AND TRADITIONAL AMERICAN VALUES - FOR THE PURPOSE OF PROVIDING PUBLIC POLICY SOLUTIONS THAT BENEFIT THE PEOPLE OF MAINE.		407,437.
INCLUDES FOREIGN GRANTS: NO		
	$ 0.	$ 407,437.

STATEMENT 5
FORM 990, PART IV, LINE 57
LAND, BUILDINGS, AND EQUIPMENT

CATEGORY	BASIS	ACCUM. DEPREC.	BOOK VALUE
MISCELLANEOUS	$ 20,122.	$ 10,162.	$ 9,960.
TOTAL	$ 20,122.	$ 10,162.	$ 9,960.

STATEMENT 6
FORM 990, PART IV, LINE 64B
MORTGAGES AND OTHER NOTES PAYABLE

OTHER NOTES PAYABLE

LENDER'S NAME:	KEY BANK OF MAINE	
INTEREST RATE:	7.25%	
PURPOSE OF LOAN:	LINE OF CREDIT	
BALANCE DUE:		$ 47,500.
	TOTAL	$ 47,500.

STATEMENT 7
FORM 990, PART IV, LINE 65
OTHER LIABILITIES

OTHER ACCRUED LIABILITIES	$ 21.
TOTAL	$ 21.

STATEMENT 8
FORM 990, PART IV-A, LINE B(4)
OTHER AMOUNTS

SPECIAL EVENTS EXPENSES	$ 27,391.
TOTAL	$ 27,391.

STATEMENT 9
FORM 990, PART IV-B, LINE B(4)
OTHER AMOUNTS

SPECIAL EVENTS EXPENSES	$ 27,391.
TOTAL	$ 27,391.

STATEMENT 10
FORM 990, PART V-A
LIST OF OFFICERS, DIRECTORS, TRUSTEES, AND KEY EMPLOYEES

NAME AND ADDRESS	TITLE AND AVERAGE HOURS PER WEEK DEVOTED	COMPEN-SATION	CONTRI-BUTION TO EBP & DC	EXPENSE ACCOUNT/ OTHER
JOHN AUSTIN PO BOX 7829 PORTLAND, ME 04112	DIRECTOR 0	$ 0.	$ 0.	$ 0.
MICHAEL A. DUDDY PO BOX 7829 PORTLAND, ME 04112	CLERK 0	0.	0.	0.
WILLIAM G. BECKER, III PO BOX 7829 PORTLAND, ME 04112	PRESIDENT & CEO 40	97,500.	7,199.	0.
JEAN GINN MARVIN PO BOX 7829 PORTLAND, ME 04112	TREASURER 0	0.	0.	0.
RICHARD A. BENNETT PO BOX 7829 PORTLAND, ME 04112	DIRECTOR 0	0.	0.	0.

STATEMENT 10 (CONTINUED)
FORM 990, PART V-A
LIST OF OFFICERS, DIRECTORS, TRUSTEES, AND KEY EMPLOYEES

NAME AND ADDRESS	TITLE AND AVERAGE HOURS PER WEEK DEVOTED	COMPEN-SATION	CONTRI-BUTION TO EBP & DC	EXPENSE ACCOUNT/ OTHER
W. R. JACKSON, JR PO BOX 7829 PORTLAND, ME 04112	CHAIRMAN 0	$ 0.	$ 0.	$ 0.
JINGER DURYEA PO BOX 7829 PORTLAND, ME 04112	DIRECTOR 0	0.	0.	0.
JOHN M CHANDLER PO BOX 7829 PORTLAND, ME 04112	DIRECTOR 0	0.	0.	0.
	TOTAL	$ 97,500.	$ 7,199.	$ 0.

STATEMENT 11
SCHEDULE A, PART VI-B, LINE I
DESCRIPTIONS OF THE LOBBYING ACTIVITIES

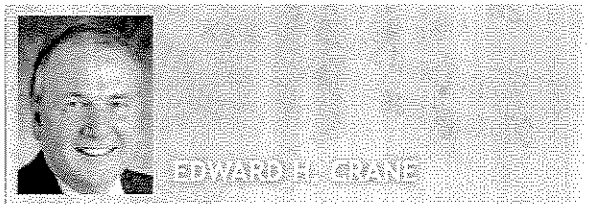
EXPENDITURES WERE MADE TO PUBLISH NONPARTISAN ANALYSES OF THE TAXPAYER BILL OF RIGHTS ("TABOR"), AND TO SUPPORT THE ENACTMENT OF TABOR, A CITIZEN INITIATIVE THAT APPEARED ON THE BALLOT IN MAINE IN NOVEMBER OF 2006.

STATE POLICY NETWORK (SPN) NEWSLETTER AUG/SEPT 2006

Inside
Political Tactics and State Think Tanks
Advice from the SPN Leadership Breakfast Page 3

SPN NEWS
State Policy Network
Strategies for State Think Tanks • August/September 2006

Think Tanks Should Think, Not Lobby



The late Antony Fisher – godfather to so many groups in the State Policy Network – famously met with F. A. Hayek at the London School of Economics after having read the condensed version of Road to Serfdom in *Reader's Digest* in 1945. Antony informed the great man that he had been inspired by his arguments for limited government and was contemplating a career in politics in order to advance them. Hayek was appalled. He warned, Fisher later said, "against wasting time." According to John Blundell, General Director of London's Institute for Economic Affairs (which Fisher first established after Hayek's admonition), Hayek said, "First, you must reach the intellectuals, the teachers, and writers, with reasoned argument....It will be their influence which will prevail and the politicians will follow."

The wisdom of Hayek's insights on this matter is as sound today as it is on so many other issues. Far too many think tanks, it seems to me, have drifted from being principled idea factories to become political "players," anxious to influence the most recent legislative mark-up or ingratiate themselves to this politician or to that. In fact, too many think tanks are taking openly partisan political stances that undermine their credibility and threaten the tax-exempt status of 501(c)3 policy research groups over the long-term. Remarkably enough there are those at the Cato Institute who disagree with me on these matters, so my argument is solely my own.

Several think tanks have affiliated 501(c)4 organizations that actively engage in lobbying. Others have taken the so-called H election that allows them to spend roughly 20 percent of their tax deductible contributions on direct legislative and appointment lobbying. Without the H election (c)3s that lobby are left with the IRS' intentionally ill-defined "substantial" standard as a guideline for what they may do without losing their tax-exempt status. Still others engage in conference calls, meetings and activities designed to promote specific legislation that would appear to be the same thing as lobbying. I think these approaches are wrong for both strategic and practical reasons.

> *"First, you must reach the intellectuals, the teachers, and writers, with reasoned argument.... It will be their influence which will prevail and the politicians will follow."*
>
> F. A. Hayek

The essence of classical liberalism is a respect for the dignity of the individual. It is axiomatic that such dignity is enhanced to the extent individuals have more control over their own lives, whether we're talking about spending our own money, choosing the school our children go to, or picking a personal lifestyle. Our policy proposals should be consistent with that goal. Our loyalties must be to the principles of liberty, not to any politician or political party. Just as African-Americans have greatly diluted their political influence by seemingly reflexively voting Democratic, so, too, will think tanks find their influence reduced when politicians know they will always tow the party line.

ThinkTanks, continued on page 9

Jennifer Butler joins SPN as Vice President

This past June, Jennifer Butler joined State Policy Network as Vice President. Jennifer will be responsible for the organization's planning and operations, which includes the development and implementation of the strategic plan and assisting the president in the coordination of core programs that support state-based free market think tanks.

Jennifer has more than 12 years experience in the public policy arena and running issue campaigns. Prior to joining SPN, she served as Vice President of Government Affairs for the Realtors Association of the Palm Beaches, a 10,500 member real estate related trade organization in South Florida. She was an advocate for policies that advanced homeownership opportunities and private property rights. She has also lobbied on issues related to the restaurant industry, prison privatization and health care.

Jennifer earned her undergraduate in Political Science from Florida State University. She earned her graduate degree in Public Administration, with an emphasis in Administrative Law, from Portland State University in Oregon.

A resident of West Palm Beach, Florida, Jennifer lives with her husband and two dogs. She is involved with several South Florida charitable organizations, among them Habitat for Humanity, West Palm 100 and her church's international mission board. She is an avid cyclist and participates in several triathlons throughout the season.

You can contact Jennifer at butler@spn.org and at
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SPN NEWS

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SPN News reports on issues of importance to state-based, market-oriented, non-profit public policy research organizations. Drawing from current updates and events from within the industry, the publication provides timely information on the most pressing issues facing public policy state think tank executives. State Policy Network publishes *SPN News* six times a year. Individual copies can be ordered from the State Policy Network offices at (510) 965-9700. *All book images used in this issue are owned by their respective copyright holders.*

MISSION STATEMENT

The mission of State Policy Network is to provide strategic assistance to independent research organizations devoted to discovering and developing market-oriented solutions to state and local public policy issues.

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Political Tactics and State Think Tanks
Advice from the SPN Leadership Breakfast

Part One

Choices When Direct Action is Necessary

By Lynn Harsh

A think tank's most important currency is its integrity. This means a think tank must maintain high standards in its research, policy positions, manner of influence, finances, internal and external evaluations and overall conduct.

Direct political action or advocacy is something many think tanks are considering, but these activities can compromise integrity. Why, then, would a think tank even consider direct action or advocacy?

The "Why" Question

Ask yourself: "Can my institute accomplish its stated mission without direct action?" If the answer is "yes," how do you know? To accomplish your group's mission necessitates an understanding of your audiences, the lay of the land, your organizational capacity, and a timeline for achieving your goals.

If your answer is "no," and you believe direct action is necessary to fulfill your institute's mission, have you carefully evaluated the impediments between your mission and its successful execution? Are you certain these obstacles can't be removed through patient education and persuasive conversation?

After all, as NCPA's John Goodman remarked in the March 2006 *SPN News*, a think tank is principally "an idea factory." Changing ideas requires patience. In a free country, reform that lasts longest is accomplished when people have been educated to understand issues and to reason them through with one another. Besides, the work of a think tank is multi-generational. We will never be finished.

On the other hand, consider what happens to a think tank and its mission when:

- the locus of power shifts significantly from the electorate to a powerful elite;
- essential pillars of our Republic, such as individual liberty and the rule of law, suffer noticeable and potentially irreversible erosion;
- freedom to think and speak openly about ideas is legislated or regulated away; and,
- most of the next generation is too poorly educated to identify and protect themselves against coercion and loss of sovereign power.

In my opinion, we face all of these concerns right now. If this is true, and if it is also true that they are permanently destructive to freedom in America (rather than temporarily counterproductive), direct action must be considered by some in our movement as part of the remedy.

The "What" and "Who" Questions

Each think tank is a unique institution, but we all have one thing in common: scarce resources. Consider these questions:

How will you allocate scarce resources to accomplish your mission, and over what time period? Looking at the numbers this way, does direct action make sense?

> Ask yourself: Can my institute accomplish its stated mission without direct action? If the answer is "yes," how do you know?

In considering allocation of resources, remember opportunity cost (doing the next best thing). The elements that must be weighed to determine opportunity cost include: the organization's mission; the temperament of the directors and governing board; the political climate; your state's campaign finance laws; and, the timing of "wedge" issues.

By weighing and balancing these factors, you can determine whether or not you should:

- forego all direct action,
- allow advocacy expenditures of 10 percent or less to survive an IRS audit,
- use the "H" designation that allows your organization to spend up to 20 percent on advocacy, or
- create a (c)(4).

Another factor to consider goes back to my opening statement:

Tactics: Choices, continued on next page

Tactics: Choices
continued from page 3

A think tank's most important currency is its integrity. Many 501(c)(3) organizations violate the intent and spirit of the law as it regulates advocacy. They use their non-profit status to collect tax-exempt funds, but they spend a significant amount of those funds for political purposes.

Our organizations should not fall in this category. In addition to surviving an IRS audit, we need to pass the straight-face test. Media and lawmakers must know that the research coming from our (c)(3)s is the result of careful analysis, not the result of special interests that open fat wallets to us.

Do your homework.

Your group's success is also an important factor when it comes to deciding whether or not to advocate, take the H election, and/or set up a (c)(4). The more successful your institute is in fulfilling its mission, the more attention it will attract—in the form of lawsuits, audits, probes by regulatory agencies, and media speculation. If you plan to be successful, also plan to receive this type of attention. Think about the best way to structure your organization so as to avoid even the appearance of fudging the books. Scandal runs, while truth crawls.

EFF creates a (c)4

For several years, staff and Trustees at the Evergreen Freedom Foundation (EFF) have discussed the options for properly balancing the vast majority of what we do, public policy development, with the handful of times when we take direct action. In the end, we decided a (c)(4) was the best way to draw a very bright line, and thus keep our integrity intact. In addition to integrity, there are four key reasons why EFF made this decision: the erosion of our Republic's pillars; the lack of civic and economic education; unclear, subjective IRS case law; and, lawsuits.

We must retain integrity with media and lawmakers. Media are justifiably cynical about (c)(3)s that claim to be independent and non-partisan, when in fact they are prostituting themselves to special interests. While this happens mostly on the left (but is mostly noticed and reported on the right), it is wrong whenever it occurs in an organization claiming to be independent of financial or political influences. When EFF participates in direct action or advocacy, the media and everyone else will know who paid for it, because donors to (c)(4)s are publicly disclosed.

We are also deeply concerned about the erosion of the pillars of our Republic. Our efforts will lead to naught if this erosion, such as fraudulent elections, is not curbed or stopped. In Washington State, this means direct action.

Then there is the reality that the average American today has little valid civic and economic education. This makes it nearly impossible to engage citizens in meaningful debate about the fundamentals of our country. While we work to change this destructive trend, we must protect the bulwarks of freedom.

Furthermore, in the direct action arena, IRS case law appears to be muddy and somewhat subjective. Our state's public disclosure requirements are similarly unclear in some respects. We may think we have complied completely with the spirit and intent of the law only to receive an expensive challenge from a law enforcement official.

Our Foundation attracts attention. We have been sued. I have been sued. We have been audited and investigated by state authorities. In the years to come, we expect to be under an even stronger magnifying glass as our effectiveness increases. Given these realities, we think a little differently about making the highest use of our resources.

Homework, Agreement and Fences

Regardless of which IRS-related advocacy status an organization elects, certain cautions are in order. In sum, do your homework; be sure your board is in agreement; work with attorneys who specialize in this area, and construct fences.

Fences are really important. For example: Our (c)(4) will only advocate for 1) issues directly related to and fundamental to accomplishing our mission (no candidates, annoyances, special favors, paybacks, etc.), 2) issues where the legislative process has been exhausted, and/or 3) issues where non-resolution puts the condition of our state or country in peril, and no other reasonable remedy exists in the foreseeable future.

Direct action/advocacy is not for every think tank, but I urge consideration for those organizations whose mission statements cannot be accomplished without it. This is a tough decision. If you are a think tank executive considering similar options, and you have questions, please feel free to contact me. SPN

Lynn Harsh is chief executive officer of the Evergreen Freedom Foundation, based in Olympia, Washington. Contact Lynn at lharsh@effwa.org.

Political Tactics and State Think Tanks
Advice from the SPN Leadership Breakfast
Part Two

Think Tanks, Lobbying, and Section H: Which Way to Turn?

By Joseph Bast

Section H – What Is It?

There is a debate underway over whether or not think tanks should take the Section H election when filing their annual tax returns. A 501(c)3 organization that does not take the Section H election cannot devote a substantial portion of its resources to lobbying or propaganda. Nobody knows for sure what "substantial" means, but it probably means 10% or more. Alan Dye puts the safe threshold even lower, at 5%, but he's a lawyer, and lawyers tend to be overly cautious.

Electing to be covered by the provisions of Section 501(h) of the Internal Revenue Code permits you to devote up to 20% of your annual budget to lobbying. The formula is: you can devote 20% of the first $500,000 of exempt purpose expenditures to lobbying, 15% of the next $500,000, 10% of the next $500,000, and 5% of anything over $1.5 million, but not to exceed total lobbying expenses of $1 million. You take the Section H election by filling out Form 5768 and then reporting your spending on the organization's annual 990 tax return.

The benefits of Section H are said to be greater legal certainty as well as being able to devote more resources to direct political action. Instead of drawing up short of actually advocating for or opposing a bill, Section H allows you to speak out and even run ads declaring your position. In an age of media saturation, being subtle often doesn't win the debate. Section H lets you come out and say what legislation you support or oppose.

The price you pay for the higher threshold for lobbying under Section H is more difficult to summarize, partly because it is wrapped up in the separate question of whether a 501(c)3 should lobby at all, and partly because it depends on people and conditions that are beyond your control. Taking the Section H election doesn't mean you have to lobby. It only means that you must report the actual and permitted amounts of your lobbying expenditures in your annual 990 tax return, on page 5 of Schedule A.

If you lobby and take Section H, the numbers are there for reporters and your opponents to note and report. They are also there for the IRS and your Secretary of State to use to compare with their own estimates of your spending on lobbying, should they decide to audit you.

If you are currently spending 10% or more of your resources on lobbying, you should take the Section H election. You are violating the law if you don't. If you don't currently lobby, or spend less than 10% on lobbying, I believe you should not take the Section H election. I think lobbying hurts a think tank's reputation, and while taking the Section H election doesn't require that you lobby, it creates the appearance that you are or soon will start to lobby.

Balancing the Costs and the Benefits

If The Heartland Institute were still a state-based think tank, just focused on Illinois issues, we would probably have taken Section H a long time ago. In Illinois, ideas seem to mean very little to our state elected officials. (Our former governor was convicted earlier this year on all 22 counts of public corruption. He told a reporter, "I have no feeling of guilt." I don't doubt him for a minute.) Political clout in a state like Illinois means a lot. A think tank that doesn't lobby, then, is at a big disadvantage in Illinois.

> Taking the Section H election doesn't mean you have to lobby. It only means that you must report the actual and permitted amounts of your lobbying expenditures.

But you do pay a price. How big that price will be isn't really up to you. I suggest you think about the impact Section H might have on each of your three major constituencies: media, donors, and elected officials.

Media

If I were the head of a liberal think tank and knew my conserva-

Tactics: Turning, continued on next page

Tactics: Turning
continued from page 5

tive counterpart, the ABC Institute, took the Section H election, I would send a letter to reporters that read as follows:

Dear Editor:

I am writing to alert you to the fact that the ABC Institute is now a lobbying organization. By filing IRS Form 5768, ABC has told the IRS it intends to devote up to 20 percent of its annual budget to lobbying, using a section of the tax law called Section 501(h). This is alarming because nonprofit organizations traditionally do not lobby, and largely for this reason the general public views them as being credible.

The ABC Institute's decision to use Section 501(h) is especially alarming because:

-- Section H allows the ABC Institute to average its lobbying expenditures over four years, so it could devote its entire budget to lobbying this year, without telling anyone it is no longer a nonpartisan research organization;

-- it allows special interest groups to get tax deductions for lobbying expenditures which otherwise would not be tax deductible;

-- it allows special interest donors to hide their identities even as other participants in the debate must disclose their involvement and contributions; and

-- it doesn't require the ABC Institute to tell you, a reporter, or anyone else when it is acting as a paid lobbyist and when it is acting as a truly nonpartisan and independent source of information.

In my opinion, the ABC Institute is no longer a reliable source of research and commentary on matters of public policy. I hope you agree.

In the future, if you choose to quote the ABC Institute at all, I urge you to label it a "lobbying organization," not a "nonpartisan" or even a "nonprofit" organization. I think your readers deserve to know that the spokespersons for the ABC Institute may be being paid to take the positions they are advocating.

Sincerely,

Alec Baldwin
Concerned Citizen

Is this rhetoric fair or accurate? Maybe not, but when have our opponents ever been fair or accurate?

I think this rhetoric would be pretty damaging to an organization's reputation with the media. While we all are pretty used to getting beat up by liberal reporters, Section H is, I think, different. Reporters really should be disturbed if there is no way of knowing whether an organization with a fine sounding name is lobbying or educating. If I were a reporter, I'd want to know.

Donors

If you have a policy of not lobbying, your donors are unlikely to ask you to lobby, and you have a solid and convenient excuse for saying no if they do ask. But if you lobby just a little, and take the Section H election, your donors will be encouraged to ask you to lobby more. In fact, we're debating this issue right now because some of your donors are trying to avoid new campaign finance laws limiting how much they can give or forcing them to disclose their gifts. They want to use your organization to launder some of their charitable giving to groups that lobby.

Consider the worst-case scenario. Let's say 20% of your organization's budget this year is $100,000. What if a donor offers to contribute $110,000 to you, with the understanding that you will pass through $100,000 to XYZ Institute to lobby for Social Security reform? XYZ Institute is a good organization and Social Security reform is a good cause, let's say the donor is a member of your Board, and you could sure use the $10,000. By making the gift to you instead of directly to XYZ Institute, the donor gets a tax deduction worth about $25,000 that he wouldn't otherwise get, and the gift won't have to be publicly reported. It would be entirely legal for you to do this.

For those of you who are thinking you would say no, what if the gift was for $150,000 and you got to keep $50,000? How about $200,000 and you get to keep $100,000? Are we just debating the price?

But why stop here? Since Section H allows lobbying expenditures to be averaged over a four-year period, a 501(c)3 organization can legally devote as much as 100 percent of its spending in any given year to lobbying efforts. You could agree to pass through your entire annual receipts this year to XYZ Institute, solely to lobby for Social Security reform, and so long as your four-year average comes out to 20 percent or less, you're legally okay.

Elected Officials

Finally, how do elected officials view 501(c)3 organizations that lobby? In some cases it might lead to the 501(c)3 being viewed as more of a player, as an organization that

Tactics: Turning, continued on page 20

Political Tactics and State Think Tanks
Advice from the SPN Leadership Breakfast

Part Three

Lessons Learned From the Field

By Jon Caldara

It is important for those of us in the freedom movement to understand the double-standard of 501(c)(3) organizations. Those that work toward expanding government use their power liberally during elections. When we limited government groups do our job, we can find ourselves spending more time talking with lawyers than with voters.

The recent experience of the Independence Institute might be helpful as you weigh the costs of fully utilizing your organization's (c)(3) status.

In 2005, Coloradoans faced Referendums C and D — a massive tax increase and debt package. This election was a frontal attack on the state's Taxpayer's Bill of Rights. The entire spending lobby of Colorado, including our formerly conservative governor, came out to make sure this tax increase would pass.

And Independence? We did what we always do — the principled thing. We educated voters about the dangers of Referendums C and D, but never told voters how to vote. We knew the fight was coming; we discussed it with our board. We knew to go against 1,200 organizations promoting the tax increase and a powerful governor we would come under attack. But that's our job. But if we didn't do it, who would?

To actually advocate a "no" vote I created an issue committee called "Vote No - It's Your Dough." An issue committee is a creature of Colorado election law; it is a way to disclose contributions and expenditures of an advocacy campaign. An issue committee accomplishes largely what a 501(c)(4) does, but without all the hassle. An issue committee is really nothing more than a checking account that is fully disclosed to the Secretary of State. At the end of the election, one can close the checking account and the issue committee goes away. Unlike a (c)(4), all contributions to the committee must be reported.

Before your think tank rolls out a (c)(4) arm, you should check your state's election laws to see if an issue committee might be useful when used outside and separate from your (c)(3).

Back to our story, Independence did what think tanks do — papers, op-eds and speeches. We did even more though, including a website dedicated to the issue, TaxIncrease.org - a portal for information on the issue. We posted the Spend-O-Meter, showing the growth of state spending. And we put out a series of creative and entertaining educational radio ads that spoke to the dangers of C and D.

The proponents of the tax increase claimed that Independence was campaigning with our (c)(3) money. Of course we weren't. But we were remarkably effective in educating voters. So effective the well-funded proponents set out to silence us.

Editorialists, commentators and reporters went after us. One columnist called me a "one-man media monolith," claiming that my radio show, TV show and newspaper column were all weapons in our advocacy campaign. Mind you other media commentators continued pounding away on the pro-tax side of this issue. *The Denver Post* was so brazen as to put a "vote yes" editorial on its page.

Understand the difference between education and advocacy. Make a clear distinction between what you're doing.

Next came the outcry: Where did your Independence Institute money come from? Who are your donors!? The proponents went to every radio station trying to find out how much we spent, to newspapers to demand that they find out where our money came from. Editorials said, "The Independence Institute and Jon Caldara are operating in the shadows." The Governor weighed in, "We need to know where this money comes from." We respect our donors' privacy and never disclose such information.

The C and D proponents sued Independence, claiming we violated state election law and failed to disclose our donors. Remember,

Tactics: Lessons, continued on next page

Tactics: Lessons
continued from page 7

for my "Vote No - It's Your Dough" Issue Committee everything was disclosed, as required by law. Nevertheless, opponents made the political move to link Independence to the issue committee.

Independence Institute staff members were subpoenaed. They were then deposed. On the trial day I spent eight straight hours on the witness stand. Independence was forced to spend tens of thousands of dollars on legal fees.

What did we say in court? The Independence Institute produced, paid for, and aired the radio ads as part of its educational effort to inform Colorado voters of the dangers of Referendums C and D. The judge concluded likewise. We won the case.

The ruling came out three days following the election. After five straight months of getting bludgeoned in the press, only the Rocky Mountain News reported the decision, on page eight.

The double-standard

The Colorado Association for Not-For-Profits proudly reported that half of the 1,200 organizations that endorsed and worked for the passage of C and D were nonprofits. They reported these nonprofits helped distribute 120,000 yard signs and mobilize 1,000 get-out-the-vote volunteers. Nonprofits contributed staff time, constituent communication, in-kind contributions and money to the C and D campaigns. Proponents boasted how their 501(c)(3)'s pushed the issue over the top. The Colorado Association for Not-For-Profits held town meetings to teach 300 not-for-profit professionals and 200 organizations about C and D and advocacy. They even sent campaign posters to every nonprofit in the state, including to the Independence Institute, with instructions to hang them in their offices for their constituents to see.

None of the 600 plus not-for-profits who actually endorsed and advocated a "yes" vote were sued. Independence Institute, which never advocated a "no" vote, was.

Six hundred pro-government not-for-profit organizations knew how to use the system.

The lessons

Briefly, here are some lessons. Know your own state laws, not just IRS code. With the IRS, it can take years for an audit to be performed; however, your opponents can sue you immediately and directly under state law.

Be sure you have at the ready two good lawyers, one for federal issues and one for state issues so you know exactly what you're doing.

Expect journalists to go after you — they will and they will leave your opponents alone. In Colorado, the Independence Institute was the target for attack ads from the proponents, editorials, columns and news articles.

Understand the difference between education and advocacy. Make a clear distinction between what you're doing. If you are doing advocacy you need to report it. So keep a clean paper trail of all your expenses.

The Independence Institute has an IRS H filing, and I'm glad we do. It's an insurance policy. Our 501(c)(3) designation is key to our existence; it is what we need to protect. If we lose that we go out of business. Having an H filing means if a different judge decided to rule a different way we still have protection.

Use outside organizations for your advocacy. In Colorado we use issue committees — it's handy, it's easy. A 501(c)(4) might be the best way in your state, but talk to an attorney.

Six hundred Colorado nonprofit organizations used their 501(c)(3) designations for political purposes, to push ballot measures, to do something that Independence never did.

The Right needs to figure out how to use our 501(c)(3)s as effectively as the Left does. SPN

Jon Caldara is president of the Independence Institute in Golden, Colorado. The rabble rouser can be reached at jon@i2i.org.

State Policy Network

Think Tanks
continued from page 1

We must make it a point of honor to remain nonpartisan.

The closer one gets to politics, the easier it is to lose sight of the principles of liberty. Nobel laureate James Buchanan wrote in *The Wall Street Journal* on New Year's Day, 2002, "My larger thesis is that classical liberalism cannot secure sufficient public accountability when its vocal advocates are limited to 'does it work?' pragmatists." And pragmatism is the name of the game when it comes to worrying about legislative mark-ups. How many of us have heard solid pragmatic arguments against the minimum wage (there are many) that nevertheless end up sounding greedy more than principled? Why not a principled argument, as well? You and I have a natural right to agree to a job and a salary. Rights are not cumulative. A majority does not have the right, through legislation, to tell us we cannot agree on a job and a salary. In this day and age, the latter will not carry the day; the pragmatic arguments need to be made, as well. But we should always try to insert the principled argument into the debate. Over time, such arguments will have more force. More importantly, such arguments keep us headed in the right direction.

Most of our groups are headquartered in state capitols or the nation's capitol. We all know how easy it is to lose perspective in those environments. And losing perspective is much easier with an H election or with an affiliated (c)4. By the way, an organization that is principally a (c)4, not a think tank, probably should have an affiliated (c)3 for big ticket activities that do not involve direct lobbying. The advantage of think tanks focusing on ideas rather than politics is brought home clearly with the advent of the Democracy Alliance, a group of left wing millionaires (and a handful of billionaires) that is spreading about $80 million around Democratic activist groups and think tanks this year with the express purpose of electing liberal Democrats (pardon my redundancy). Does anyone think the "ideas" emanating from those think tanks will be taken seriously?

We should always try to insert the principled argument into the debate. Over time, such arguments will have more force.

Finally, I worry that from a practical standpoint the flirtation with politics and lobbying will play into the hands of those who would shut down all open debate in America. The so-called campaign finance reform movement is a bipartisan effort on the part of the political class to essentially stifle any criticism of Congress. There is not a line in McCain-Feingold not intended to protect incumbents. We live in a nation today in which it is a criminal offense to air a radio or television ad within two months of an election that even mentions the name of a candidate for federal office. (And we presume to lecture the rest of the world on the need for democracy.) These people are ruthless. The debate over shutting down 527s is instructive. They participated in the 2004 elections and had an impact. They must go! And the GOP-controlled House voted to limit their heretofore unlimited contributions to $5,000. The Democrats in the Senate will likely keep them alive, because it is believed they favor Democrats (though I don't see why that should be the case). Eventually, both sides will decide to shoot them down.

Former chairman of the Federal Election Commission Bradley Smith believes once the 527s are gone, Congress will focus on the 501(c)3 policy research groups. Indeed, following the House 527 debate, both the Republican chairman of the committee, Vern Ehlers of Michigan, and the ranking Democrat, Louise Slaughter of New York, said they now need to address the "loophole" of 501(c)3s. To the extent think tanks are perceived to be actively involved in politics and lobbying, whether through H election, (c)4 affiliations, or just their appearance of lobbying activities, it will be much easier for Congress to effectively shut us down. Don't think it won't happen. Since 2004 the IRS has been warning tax-exempt groups about illegal political activities. It has investigated 200 such organizations and found more than 30 percent to be in violation.

As James Buchanan wrote, "A vision, an ideal, is necessary. People need something to yearn and struggle for. If the liberal ideal is not there, there will be a vacuum and other ideas will supplant it....Creating a new vision, a new soul for [classical] liberalism, is our most important task now." If not classical liberal think tanks, who?

Edward H. Crane is founder and president of the Cato Institute, headquartered in Washington, DC. You can write him at ecrane@cato.org.

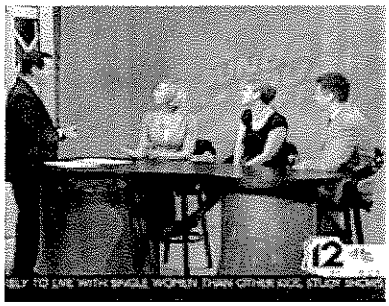
ALABAMA

The **Alabama Policy Institute** welcomes J. Bart Fletcher, CAE, who joined the API staff as vice president for advancement. On the last day of the session, the Alabama Legislature passed the only accountability bill, which was proposed by API and showcased in "Legislative Agenda 2006." As an April 18 *Associated Press* article headlined "Bill to put state board members on website" stated, "Anyone who has ever wondered who serves on state boards, commissions and task forces will soon have a way to find out." API recently released "The Unfinished Business of Tort Reform," which provides real authoritative solutions to the abuses and problems in Alabama's civil justice system. API's program, "Facts on Fiction" (**www.factsonfiction.org**), now provides over one hundred detailed reviews of children's books. This tool gives parents and educators information on popular and classic children's books so that they can help their children make the best decisions on book selection. On November 9, 2006 API will host Newt Gingrich to keynote their annual Birmingham Banquet. **www.alabamapolicy.org**

Advancement
J. Bart Fletcher joins the staff of the Alabama Policy Institute.

ARIZONA

The **Goldwater Institute** proudly welcomes Dr. Matthew Ladner as vice president for research. Dr. Ladner previously served as director of state projects at the Alliance for School Choice. With the close of Arizona's legislative session, the Goldwater Institute celebrated historic passage of four school choice bills and a personal income tax cut. Each measure, including the nation's first ever tuition scholarships for children in foster care, was informed by Goldwater Institute research. The most recent policy report released by the Goldwater Institute is "Playing the Takings Game: How Government Regulates Away Property Rights." It reveals that government-mandated land-use limitations often violate property rights every bit as much as an outright, uncompensated taking. The Goldwater Institute also updated its Arizona Spending Watch, which shows state government spends $834 per second – enough to buy a fully-loaded Cadillac Escalade in just two minutes. Goldwater Institute analysts are dominating the media on issues from wasteful spending to a proposed statewide minimum wage and high school drop out rates. **www.goldwaterinstitute.org**



Goldwater Institute President Darcy Olsen (2nd from left) appears as a guest on NBC's lively public affairs show "Sunday Square Off."

ARKANSAS

Attorney General Mike Beebe, the Democratic nominee for governor, has proposed using surplus state revenues to repeal nearly all of Arkansas' sales tax on groceries, an idea advanced by the **Arkansas Policy Foundation** this decade. Last year, Attorney General Beebe cited Policy Foundation Executive Director Greg Kaza's research on price deflation in a formal opinion. Kaza's deflation research was published this summer in "The Quarterly Journal of Austrian Economics" (Rutgers University: Transaction Periodicals Consortium). Another peer-reviewed journal, "Derivatives Use, Trading & Regulation" (London: Palgrave Macmillan) published Kaza's research on derivatives in February. Attorney General Beebe, while Senate President Pro Tempore in 2001, sponsored a successful performance-based budgeting measure. The Policy Foundation recommended the reform in 1998. **www.reformarkansas.org**

CALIFORNIA

Pacific Research Institute recently unveiled the new book What States Can Do to Reform Health Care: A Free-Market Primer at the American Legislative Exchange Council's annual meeting in San Francisco. In May PRI released the "U.S. Tort Liability Index: 2006 Report," the first objective state-by-state ranking of the best and worst tort systems in America. The Index uses 39 data variables to rank the 50 states in terms of the litigation burden borne by state residents and businesses. PRI also unveiled its new weekly podcast – Pacific Policycast – a 10-15 minute downloadable audio file, featuring PRI's scholars and special guests. Learn more at **www.pacificresearch.org**.

COLORADO

Colorado's Lt. Governor Jane Norton was the keynote speaker at the **Independence Institute**'s Spring Women's Luncheon. The ladies of the Independence Institute and their guests once again left their husbands, sons, fathers and brothers at home, donned their finest luncheon duds, and gathered at Denver Country Club. The women enjoyed conversing with friends at the always elegant luncheon. The highlight of the event was Lt. Governor Norton's inspiring address. On June 24, the Independence Institute held its fourth annual Alcohol, Tobacco and Firearms Party, and fulfilled its mission of irritating the politically-correct world while having a fabulous time in the process. After morning pastries

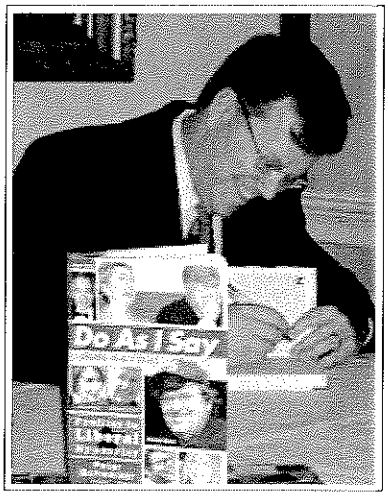
and coffee with registration, guests headed off to slaughter as many clay pigeons as time would permit. Lunch was then served, followed thereafter by smokes and repeating rounds of distilled spirits. Syndicated columnist Jay Ambrose later took up the microphone as keynote speaker and praised the Independence Institute for its stands on an array of Colorado policy issues over the years. **www.i2i.org**

CONNECTICUT

The **Yankee Institute** is proudly releasing a new paper called "Fifteen Years of Folly: The Failures of Connecticut's Income Tax." This comprehensive examination of the state's dysfunctional, counterproductive system of revenue collection was written by D. Dowd Muska, the Institute's Philip Gressel Fellow for Tax and Budget Policy. Connecticut was in fact the last state in the nation to adopt a broad-based tax on personal income. Imposed in 1991, the change in tax policy was sold by proponents as a way to "jumpstart" the Nutmeg State's economy and solve its fiscal woes. Muska's study examines the many negative consequences of the tax. Multiple copies of the study are available for $2.95 each by contacting (860) 297-4271 or info@yankeeinstitute.org. More Yankee Institute studies can be downloaded at **www.yankeeinstitute.org**.

FLORIDA

The **James Madison Institute** opened May with a luncheon and book signing featuring Peter Schweizer, author of the *New York Times* bestseller Do As I Say (Not As I Do): Profiles in Liberal Hypocrisy. The month finished strong with four notable policy victories for JMI in the 2006 Florida legislative session: limitations on the use of eminent domain, passage of the A++ Plan (educational reform), repeal of the Intangibles Tax, and repeal of joint and several liability. In June JMI President Bob McClure took



Do As I Say
Author Peter Schweizer at a James Madison Institute luncheon.

part in the Nassau Institute's "Taking Small Nations to Greatness" conference at the invitation of the American Ambassador to the Bahamas, John Rood. Also during June, JMI's Board of Directors met with representatives from the four Florida gubernatorial campaigns. Each representative presented the policy priorities and plans of their candidate then fielded questions on specific issues posed by the board members. The 2006 summer edition of *The Journal* focuses on the proper role of the judicial branch of government and is available online at **www.jamesmadison.org**.

GEORGIA

In just its second year, the charter high school that the **Georgia Public Policy Foundation** helped found in the Atlanta Public Schools has achieved the highest average test scores among city high schools. As a Georgia charter school, this math-, science- and technology-oriented Tech High can't handpick students; it must accept district students on a first come, first served basis. Two summer interns are at the Foundation: Navy veteran Jess Chandler, a dual Master of Science candidate for Nuclear and Radiological Engineering and Public Policy at Georgia Institute of Technology, and Lyra Zeller, a recent graduate of North Georgia College and State University majoring in Political Science with minors in Business and History. Sign up for the American Dream Coalition's fourth annual national Preserving the American Dream Conference, hosted by the Foundation Sept. 15-17 in trendy Buckhead, Atlanta. The conference focuses on land use, transportation and housing affordability. Call Benita Dodd at 800-423-8867 for information. Holly Robinson consulted on the new Georgia curriculum, whose World History Standards received an A from Fordham Foundation! **www.gppf.org**

ILLINOIS

On October 5, **The Heartland Institute** will celebrate the 22nd Anniversary of its founding in the Grand Ballroom of the Hilton Chicago Hotel. Keynote addresses will be delivered by distinguished author and libertarian law professor Richard Epstein of the University of Chicago, and Rev. Robert A. Sirico, co-founder and president of the Acton Institute. The theme of the evening will be "Skepticism, Faith, and Freedom." Earlier in the day Heartland will host its third annual Emerging Issues Forum at the stately Newberry Library, one of the country's leading privately-owned research centers focusing on the humanities. The forum will consist of panels on the environment, telecom policy, and health care. Heartland is making complimentary tickets available to SPN members while supplies last. For more info contact Michael Van Winkle at 312-377-4000. Heartland's PolicyBot now has more than 17,000 documents, making it the rational first stop for any of free-market research project. You can find PolicyBot on Heartland's homepage, **www.heartland.org**. Heartland also has a new blog and podcast, **www.fromtheheartland.org**.

Andrew Hollingsead joined the **Illinois Policy Institute** as a summer associate in June and is leaving in August to join the Illinois House Republican

staff. Associate Collin Hitt has been named Director of Education Reform Studies at the Institute and is examining the accountability under No Child Left Behind and rural school choice programs. In the area of health care, the Institute's Medicaid reform proposal was assessed as part of the Illinois Health Insurance Underwriters proposal to the Illinois Adequate Health Care Task Force. While the assessment's model was heavily biased toward government intervention and failed to address past experience of various proposals, Medicaid Personal Health Accounts and HSA's scored very competitively. **www.illinoispolicyinstitute.org**

Policy Fellow
Greg Schneider plans to build a consumer-driven health care program for Flint Hills Center for Public Policy.

INDIANA

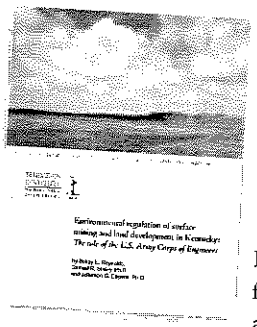
The **Indiana Policy Review** reports that Andrea Neal, a teacher and award-winning former editorial page editor of the Indianapolis Star, completed a year-long study of perhaps the state's most troubled school, Geyer Middle School in Fort Wayne. Geyer was one of the first to be closed in Indiana under the No Child Left Behind Act. The act was signed into law more than four years ago amidst both fanfare and controversy. Its bipartisan supporters in Congress hoped that federal teeth and incentives would force struggling school systems to raise standards, expectations and achievement. Critics feared that federal meddling into local schools would simply make things worse. Neal concludes that, barring systemic change to the Indiana Collective Bargaining Act, both sides will be right. **www.inpolicy.org**

KANSAS

Medicaid reform is still the top priority at **Flint Hills Center for Public Policy**. Stephen Moses of the Center for Long Term Care is preparing a report on how the Medicaid reform provisions of the Deficit Reduction Act can be implemented in Kansas. Michael Bond returns to Kansas in July to present the Flint Hills proposal on reform of acute care to the new Kansas Health Policy Authority which assumed responsibility for Medicaid on July 1. Greg Schneider has joined Flint Hills as a policy fellow to build the consumer-driven health care program. Matt Hisrich has returned to Flint Hills for the summer. Flint Hills advisor Dick Warner was elected president of the Kansas Medical Society. John LaPlante continues to make the case for competition and choice in Kansas. His articles and policy briefs appear in newspapers around the state. Recently LaPlante met with the Education Commissioner and finance officials to extend his education cost analysis. A Flint Hills economic education initiative featured Russ Sobel in a public address as well as a lecturer at a seminar. **www.flinthills.org**

KENTUCKY

This summer, the **Bluegrass Institute for Public Policy Solutions** and the Reason Foundation will jointly release a policy report titled "Environmental Regulation of Surface Mining and Land Development in Kentucky: The Role of the U.S. Army Corps of Engineers (USACE)." This in-depth research report examines how USACE regulations adversely affect landowners and entrepreneurs. During its 2006 session, the Kentucky General Assembly passed legislation that now requires all public high schools to administer the nationally-normed ACT test to all 11th graders. This action occurred after the Bluegrass Institute pointed out significant problems with Kentucky's proprietary Commonwealth Accountability Testing System (CATS). The Bluegrass Institute will continue to make sure the Kentucky Department of Education does not administratively gut this new law that introduces more transparency to parents and holds the department accountable for fixing its failing schools. In May, the Bluegrass Institute hosted *ABC News - 20/20* co-host John Stossel, who drew an audience of nearly 200 for a talk on education reform called "Stupid Schools: How the government monopoly ruins kids." **www.bipps.org**



MAINE

Having authored the impending citizens' initiative referendum that would create a statutory Taxpayer Bill of Rights for Maine, the **Maine Heritage Policy Center** is the leading data and information source on the proposed legislation. The entire MHPC staff has been engaged in various research projects, speaking engagements and seminars all focused on educating the public on the merits of a TEL. MHPC has recently released several original policy reports, including "State and Local Sales Tax Collections: How Does Maine Compare" and "The Explosion of Maine Medicaid Costs." MHPC also developed "Issue Briefs," a new publication format that will better allow the center to produce short reports in a quick, easily discernable format. The first issue brief released was titled "Government Spending and Economic Development." Additionally, Scott Moody, vice president of policy and chief economist, had his cost-of-living research featured in a *CNN Money* article for the second time in four months. MHPC is also pleased to announce that former U.S. House Speaker Newt Gingrich will be the keynote speaker at the annual Freedom and Opportunity Luncheon on September 6. **www.mainepolicy.org**

Newt Gingrich

MARYLAND

The **Maryland Public Policy Institute** generated numerous policy reports and media placements in the spring and summer of 2006. Education policy has been an area of particular emphasis in light of MPPI's school choice award from The Milton and Rose D. Friedman Foundation, and the continuing battles to reform Baltimore City's failing public school system. Electricity deregulation has also been a charged topic in the news lately and continues to ignite debate. Senior fellow Thomas A. Firey provided testimony in the state capital and numerous radio and television appearances on the issue. For its innovative proposal to provide school choice to Maryland's 11,500 foster care children, MPPI was honored to receive a $25,000 grant to continue to promote school choice for Maryland's foster care children. On school choice, education reform, and electricity deregulation, MPPI scholars shared their views in a number of pieces for *The Baltimore Examiner*.

www.mdpolicy.org

The **Calvert Institute for Policy Research, Inc.** will sponsor an all-day program on transit-based development at the Loyola College Graduate Center in Timonium, Md., on Thursday, December 14. The Institute has recently published an annotated version of the Baltimore City Teachers' Union Contract.

www.calvertinstitute.org

MASSACHUSETTS

As part of the Suffolk University's centennial celebration, the **Beacon Hill Institute** will release its "2006 Metro Area and State Competitiveness" report in December. The Institute is spending the summer updating data that comprises the annual ranking. Once again the effort is made possible by a gifted group of summer interns. In June, BHI executive director David G. Tuerck spoke about the importance of good fiscal policy during a symposium on Competitiveness and the Arts sponsored by The Lynde and Harry Bradley Foundation titled, "Milwaukee: The Future of the City." As the gubernatorial campaign heats up in Massachusetts, BHI will continue to brief the major candidates on economic competitiveness, revenue forecasting, tax and labor policy, health care and government efficiency. The briefings present an opportunity to highlight the Institute's tax model, STAMP. BHI is also planning to take a closer look at the "groundbreaking" new universal health care law passed by the legislature and its impact on economic growth.

www.beaconhill.org

Property rights are human rights

Scott Bullock from Institute for Justice speaks at the first in a series of property rights forums presented throughout the state of Michigan. The forums are hosted by the Mackinac Center for Public Policy. Mackinac Center senior legal analyst Patrick J. Wright and Lansing property owner Nancy Kurdziel also participated in the panel.

MICHIGAN

In July, the **Mackinac Center** hosted its second property rights forum, educating more than 150 Michigan residents on recent threats to their private property and arming them with strategies to protect themselves. Mackinac Center Senior Legal Analyst Patrick J. Wright talked with attendees about government's uses of eminent domain and blight designation in pursuit of property takings. Senior environmental policy analyst Russ Harding addressed regulatory takings, a topic of particular concern for owners of waterfront properties or those designated as "wetlands." The Center also welcomed three new staff members this spring. In May, Louis H. Schimmel, Jr. was named director of municipal finance and James M. Hohman joined the Center as a fiscal policy research assistant. In April, Bruce Edward Walker joined the Center as editor of a new publication, the "Michigan Science Report." The Center also promoted Christopher F. Bachelder to vice president for advancement and Michael D. Jahr to director of communications.

www.mackinac.org

MISSOURI

Since the high-profile launch of its first study in the spring, the **Show-Me Institute** has expanded its staff and is preparing for an ambitious fall publishing schedule. Rebecca Bruchhauser has joined the staff to oversee event planning and fundraising responsibilities. Part-time research assistant Sarah Brodsky assists Institute scholars with education policy. And the Institute's

first intern, graduate student Shaida Dezfuli, is spending her summer researching eminent domain abuse. The Institute plans to publish three new studies — on eminent domain abuse, city earnings taxes, and minimum wage hikes — in advance of November's elections. And the Institute has two more studies on campaign finance restrictions and school choice planned for early 2007.
www.showmeinstitute.org

NEVADA

Helene Denney, executive director of the **Nevada Policy Research Institute**, has announced she'll retire at the end of the summer. Since coming to NPRI in 2001, Helene oversaw a wholesale reorganization of the Institute, its membership has more than doubled, and the organization has ascended from a financial deficit of $67,000 to a healthy operating reserve/surplus. Under Helene's tenure, the Institute has achieved a significant increase in impact in the Silver State, through innovative programs in tax and education reform. Foremost among the latter, currently, is "TeacherTalk Nevada," a moderated blog service for teachers that is now under development. Already the project has, as intended, produced anecdotal grist for NPRI's education-focused op-eds, which are published around the state.
www.npri.org

NEW MEXICO

The past few months have been busy ones at the **Rio Grande Foundation**. In addition to adding a new

board member and picking up a couple summer interns, the Foundation has been extremely visible in the New Mexico media. Over the past four months, Foundation representatives have appeared on various radio outlets and in print (especially the state's largest newspaper, the *Albuquerque Journal*) to discuss topics including out-of-control spending, oil and gas prices, school financing, minimum wage policies, and the Kelo decision. The Foundation is also publishing substantive and well-received research. In June, the Foundation published a policy paper, "Building on Success: Leveraging New Mexico's Strong Fiscal Position for Future Economic Growth," that praised the economic impact of recent income tax cuts, and made the case for additional rate reductions. Another recently-published study – titled "How Accessible Are Your Legislators?" – revealed that many New Mexico lawmakers make little effort to avail themselves to voters via email. Immediately after that story was published, the Speaker of the House added his email address to the legislative website.
www.riograndefoundation.org

OHIO

State legislators followed the **Buckeye Institute for Public Policy Solution**'s lead and made several improvements to Ohio's new statewide school voucher program including a significant broadening of student eligibility. Buckeye Institute educational policy director, Matthew Carr, effectively defended the program against attacks from the education status quo by benchmarking its high first year enrollment figures to successful voucher programs around the country. Local governments have been trying their hand at direct competition with private enterprise in the delivery of telecommunications and other technology services. The City of Lebanon, Ohio was an early entrant into this game and in his just released analysis of that city's experiences, while Marc Kramer finds much folly in the price and practice of government competing with business. This report offers a valuable perspective on the reality of 'municipal broadband' and other similar schemes. It can be found at **www.BuckeyeInstitute.org**. Buckeye Institute's principles of limited government spending were incorporated into state law in May as Ohio legislators wriggled for an escape from a referendum vote for a Tax and Expenditure Limit (TEL) amendment to the state constitution. While lacking constitutional authority, the statutory limits will serve as a political tripwire signaling voters when the spending of legislators outpaces what taxpayers can afford to pay.

Hey, Big Spender
OCPA interns Garrett King, Amy Barnett, Jennifer Bryan, Lindsay Walle, and Clay Lightfoot inspect one of OCPA's "Hey Big Spender" billboards.

OKLAHOMA

Aggressive reduction of the personal income tax and elimination of the state's death tax were the top policy objectives the **Oklahoma Council of Public Affairs** outlined prior to the most recent legislative session. OCPA was successful on both fronts and realized a 10 percent reduction in the income tax rate and gradual elimination of the estate tax. The Council also helped to fend off a ballot initiative to dramatically increase the state's minimum wage. To help in these accomplishments, OCPA recruited five outstanding interns from colleges across the region. Despite these policy victories, however, Oklahoma's state budget grew by a double-digit per-

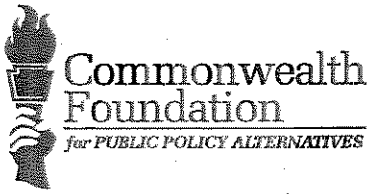
cent margin for a second consecutive year. Therefore, OCPA's new "Hey Big Spender!" awareness campaign, which includes a new hard-hitting web site (www.heybigspender.org) that ruffled some politicians' feathers, will continue to expose undisciplined spending at the State Capitol. OCPA turned their attention to their annual Summer Speaker Series event in August, headlined by popular talk radio personality Laura Ingraham. **www.ocpathink.org**

OREGON

Cascade Policy Institute is pleased to announce the hiring of two new policy analysts. Sreya Sarkar, a native of Calcutta, India, will oversee the "Wheels to Wealth" project, which advocates for auto ownership in low income communities as a means to improve job opportunity and security. Bina Patel, from Chicago, will direct the Asset Building Program, which focuses on converting existing entitlement programs (unemployment insurance, social security, government education) into personal asset accounts. Working alongside our new analysts are six student interns, who are spending the summer researching a host of issues, including the prevailing wage law, the repeal of the capital gains tax, the tobacco Master Settlement Agreement, the misuse of licensing, mandated generic advertising in agriculture, and economic development obstacles in rural communities. Cascade also hosted two speakers this spring — Dr. Howard Fuller speaking on school choice and Dr. Donald Boudreaux speaking on economic literacy as a foundation of liberty. In the fall, Kevin Chavous will continue the discussion on education reform, and David Henderson will offer his perspective as a speaker in our "Foundations of Liberty" series. **www.cascadepolicy.org**

PENNSYLVANIA

The **Commonwealth Foundation** will hold its Speaker Franklin



Awards Gala on December 6 at the Union League in Philadelphia. Heritage Foundation President Ed Feulner is the scheduled keynote speaker for the event, which will be preceded by a full-day policy orientation for newly elected officials as part of the Speaker Franklin Institute. The Institute is designed to help educate and equip policymakers with a better understanding of free-market principles and policies. On the policy front, the Commonwealth Foundation continues to focus on the looming public pension and healthcare benefits crisis in Pennsylvania. A commission within the House of Representatives was formed in response to the Foundation's early 2006 study on the multi-billion dollar unfunded liability in the state's pension funds for teachers and government employees. Forthcoming studies from the Commonwealth Foundation will further demonstrate the need for immediate policy action in order to thwart massive tax increases on the citizens of Pennsylvania. More information on the work of the Commonwealth Foundation can be found at **www.CommonwealthFoundation.org.**

SOUTH CAROLINA

The **South Carolina Policy Council** hosted a small, private dinner briefing for its Council of Governors membership featuring state House Speaker Bobby Harrell. A member of SCPC, Harrell addressed the need to limit government spending and to cut taxes. SCPC also released studies on why pre-k programs will not solve our long-term education crisis, why constitutionally-mandated tax and spending limits are critical, and the need for telecommunications reform. **www.scpolicycouncil.com**

SOUTH DAKOTA

The South Dakota Budget Spend-O-Meter, which can be found on the **Great Plains Public Policy Institute** website (**www.greatplainsppi.org**), has been updated and reflects the new state budget spending for Fiscal Year 2007. The FY 2007 General and other State Fund spending is a 6.2 percent increase over FY 2006 spending.

TENNESSEE

The **Tennessee Center for Policy Research** scored a major victory in May when state legislators passed a second sales tax holiday allowing Tennesseans to purchase clothes, home items and school supplies without the burden of Tennessee's 7 percent state sales tax. According to the majority leader of the Tennessee State Senate, the holiday would not have occurred if not for a series of commentaries and white papers authored by TCPR encouraging state lawmakers to return the state's budget surplus to taxpayers. A TCPR publication that asserted Tennessee's "Unauthorized Substances Tax" violated the Fifth Amendment — in addition to costing state taxpayers more to implement than it generated in revenue — helped lead to a recent court decision overturning the law. A judge agreed with TCPR's conclusions and declared the state's tax on illegal drugs unconstitutional. Later this summer, the Tennessee Center for Policy Research will release a comprehensive report exposing extensive taxpayer-funded lobbying of the federal and state governments by cities, counties and municipally-owned utility companies. **www.tennesseepolicy.org**

TEXAS

With the conclusion of a court-ordered legislative session on school finance, several recommendations from the **Texas Public Policy Foundation** were adopted into legislation. These included using $2.4 billion of

Policy Primers
Supreme Court Justice Scott Brister, State Senator Robert Duncan, and State Representative Dan Gattis took very different positions on judicial selection, in this July installment of the Texas Public Policy Foundation's Policy Primer Series.

surplus revenues for tax cuts, as well as tightening limits on future property tax increases. Lawmakers enacted another Foundation-promoted idea in creating the largest merit-based teacher pay system in the nation. The successful Policy Primer Series continues to draw standing-room-only attendance; the most recent forums have focused on welfare reform, judicial selection, and prison alternatives. Panelists have included a member of Texas' Supreme Court, state senators and representatives, and numerous experts from around the country. Over the next two months the Foundation will host a series of special events in Dallas, San Antonio, Midland, and Houston. Audio from many of the Foundation's policy events is available at **www.TexasPolicy.com**. Since January, the Foundation has generated $11 million in earned media ad equivalency, while issuing more than 40 research papers and two dozen commentaries.

UTAH

The Best of State organization named the **Sutherland Institute** as Utah's top "Education/Advocacy" organization for its innovative program, the Transcend Series. This is the first time any organization has been honored in this category. Sutherland Institute vice president and Transcend Series director Stan Rasmussen said, "We are most grateful to be acknowledged in this manner. It is our hope that this recognition will encourage even more elected officials and active citizens to participate in the Transcend Series and take advantage of the unique opportunity for the understanding and growth it provides." The Transcend Series began after the Institute saw the need for a way elected officials could become better informed, equipped and skilled to serve in their respective roles. Now in its third year, over 200 elected officials and community leaders across the political spectrum have benefited from participation in this innovative and groundbreaking program that enables them to transcend politics as usual in the service of their constituents and communities. **www.sutherlandinstitute.org**

WINNER
BEST OF STATE
UTAH 2006

VERMONT

On July 8 the **Ethan Allen Institute** partnered with FreedomWorks-Vermont to sponsor FreedomFest 2006. Becky Norton Dunlop, vice president of the Heritage Foundation and former Virginia Secretary of Natural Resources, gave a stirring keynote talk on preserving our freedoms, particularly those related to land ownership and wise use of national forests. The Leadership Institute presented two workshops on building coalitions and developing the freedom message. Ethan Allen Institute also released its fourth biennial "Vermont Voters Report Card," telling voters how their legislators voted on nine key issues such as taxes, property rights, health care collectivism, medical malpractice reform, universal preschools, labor union powers, and energy regulation. The Institute continued its 13 year tradition of hardhitting newspaper commentaries. Recent subjects included: an exposition of the economics and subsidy features of the wind farm industry, an explanation of the likely consequences of school district consolidation, and a critique of the "petroleum panic" and the calls by politicians for subsidies, price controls, and inquisitions into "price gouging." **www.ethanallen.org**

VIRGINIA

The **Thomas Jefferson Institute** organized two conferences aimed at reforming and streamlining state government, attracting more than 125 former and current state agency leaders. Speakers included Bill Eggers, of conference sponsor Deloitte Research, with a focus on reducing government cost. The Institute issued its "Annual Economic Forecast," prepared by Chmura Economics and Analytics. Ever year the forecast is one of Jefferson's most popular publications, a must read for Virginia's top business executives. Another popular publication was "Policy Alternatives for Clean Up of Virginia's Waters," which presented free-market solutions for cleaning one of Virginia's greatest natural resources. The Institute has also now become the leading opponent to Governor Tim Kaine's plans to establish a Universal Preschool program in Virginia, with three different op-eds published in papers throughout the state, including the state capitol's Richmond *Times-Dispatch*. The Institute

has positioned itself so that reporters seeking alternative voices to universal preschool advocates have put the Thomas Jefferson Institute at the top of their list.
www.thomasjeffersoninst.org

WASHINGTON

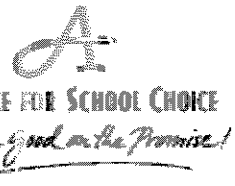
The Washington Policy Center is excited to formally announce their newest research centers. Establishment of the Center for Health Care Reform, which is directed by Tanya Karwaki, was announced during our sold-out health care conference in June. Also in June, the Center for Small Business & Entrepreneurship, directed by Carl Gipson, hosted a kick-off luncheon featuring CJ Buck, president and CEO of Buck Knives. Both of these centers will enable WPC to devote even more resources to these important policy issues in our state. In August, WPC will release "Policy Guide for Washington State," a book-length publication comprised of 11 chapters and covering over 132 policy recommendations. A revised and updated edition of our popular "Agenda 2005," this policy guide will be a valuable resource for candidates, policymakers and voters as they prepare for the November election and the 2007 Washington State legislative session. WPC's Annual Dinner is scheduled for September 26 in Seattle. The dinner, with a perennial attendance of over 800 people, will this year welcome Pulitzer Prize winning author and journalist George Will as the recipient to WPC's Columbia Award. To register for this event or any other WPC events visit their website at **www.washingtonpolicy.org**.

NATIONAL

The **Alliance for School Choice** helped to usher in a recent victorious season for school choice in the states. Arizona passed an expansion of the new corporate tax credit program and two new scholarship programs for special needs and foster care children.

Nina Owcharenko (The Heritage Foundation)
At Washington Policy Center's health care conference

Iowa, Rhode Island, Utah, Ohio and Pennsylvania passed new scholarship programs or expanded current programs, and Congress renewed funding for scholarships to students displaced by Hurricane Katrina. In addition, President Bush's national opportunity scholarship program reached Congress. Edspresso.com, the Alliance for School Choice blog, was launched this spring and offers



daily commentary and news on education issues around the country. The Alliance will co-host an education summit along with SPN, the Friedman Foundation and other organizations in October, bringing together education policy leaders and activists; to register or to receive more information, visit www.spn.org/events or email lmoser@allianceforschoolchoice.org. Finally, and most notably, Alliance for School Choice President and General Counsel Clint Bolick received the Bradley Foundation Prize this spring for more than a decade of dedication to education reform. **www.allianceforschoolchoice.org**

The **American Council of Trustees and Alumni** has just published its latest report, "How Many Ward Churchills?," named for the infamous University of Colorado professor who compared the victims of 9/11 to Nazis. The report examines departmental websites, online course descriptions, electronic course syllabi, and faculty home pages at *U.S. News & World Report's* top 25 private colleges and universities and the Big 10 and Big 12 conference schools. Ward Churchills abound on our college campuses, it finds: "[T]hroughout American higher education, professors are using their classrooms to push political agendas in the name of teaching students to think critically." Examples include a Penn State professor who promises to promote "unlearning" by his students, a Vassar College course that explores how "our culture covertly and overtly condones the abuse of women by their intimate partners," a Davidson College course requiring students to put on skits on topics like "five ways to demonize an ethnic minority" or "more ways than one to be white," and much more. The report concludes with recommendations on addressing this problem. **www.goacta.org**

The **Americans for Limited Government Foundation** announced the success of its Action Conference, held at Chicago's Intercontinental Hotel on August 17, 18 & 19. Senator Tom Coburn, ALG's chairman emeritus, was the featured speaker and attendees included activ-

ists from across the country, think tank representatives, and media representatives. To learn more visit **www.getliberty.org/actionconference**.

July 12 was Cost of Government Day 2006 — a mere 193 days into the year. **Americans for Tax Reform** calculates Cost of Government Day every year. Cost of Government Day is the date of the calendar year on which the average American worker has earned enough gross income to pay off his or her share of spending and regulatory burdens imposed by all levels of government, federal, state and local. A full report and slide show of all the charts is available at www.atr.org. Grover Norquist, ATR's president, has been discussing the issue on talk radio shows in numerous states and has been interviewed on the subject by several newspapers and weekly publications. Around the country more than 1,320 incumbent state legislators have signed the Taxpayer Protection Pledge, an important public commitment to limited government and fiscal responsibility. ATR invites all incumbents and candidates at the state and federal level to sign. Check out who has (or hasn't) signed the pledge in your state at **www.atr.org/pledge**.

The **Atlas Economic Research Foundation** recently launched an essay contest called "Finding Common Ground: The Challenge of Freedom in the West

and In the Muslim World." The goal of the competition is to promote a dialogue heightening understanding for the view that, despite religious and cultural differences, all human beings are entitled to dignity, respect, and political and economic liberty. The contest is open to fulltime undergraduate and graduate students under the age of 25 throughout the United States, Canada and the Middle East. The first place winner receives a $2,000 cash prize. Deadline for submissions is September 15. For more information visit **www.atlasusa.org**. Also of note, Atlas's annual Freedom Dinner will take place on November 16 at the Willard Intercontinental Hotel in Washington, D.C. Charles Murray, author of In Our Hands: A Plan to Replace the Welfare State (2006) and Losing Ground (1985), is scheduled to deliver the keynote address. The dinner also features Toasts to Freedom from champions of the free society and the presentation of the 2006 Freda Utley Prize for Advancing Liberty.

On Friday the 13th of October, the **Center for Education Reform** (CER) will celebrate its "lucky" 13th anniversary. The gala event in Washington, D.C. commemorates the day of the founding of CER. The celebration will feature clips from classic horror stories that mirror some of the bureaucratic abominations of today's education system. A stellar list of guest participants and surprise awards are also planned for the event program. CER has worked doggedly in 2006 to meet challenges and propose solutions for problems facing education systems in New Orleans, Ohio and Florida, to name a few. In the Sunshine State, CER provided outstanding leadership in the fight to create a new charter school authorizer. When the bill was signed by Governor Jeb Bush, the Florida Department of Education asked CER president Jeanne Allen to comment: "The new authorizer is a groundbreaking development that draws on our best experiences nationwide and is likely to be a model for other states," said Allen. "It is no surprise that such innovation comes from a state that has led the way in all education reform." **www.edreform.org**

For the past few months **FreedomWorks** has been leading grassroots campaigns against "net neutrality," intercepting congressmen with thousands of phone calls, emails and office visits. An aide to Wisconsin Republican Rep. Mark Green told FreedomWorks state director Cameron Sholty, "We sure are glad we heard from you before the vote." President Matt Kibbe appeared on CNBC's "Morning Call," and his op-eds on net neutrality were featured in *Human Events* and the *European Voice*. Chief Economist Dr. Wayne Brough published articles on net neutrality in The Washington Examiner and also directly lobbied members of Congress. Grassroots manager Brendan Steinhauser orchestrated a crash of the press conference held by Rep. Ed Markey (D-Md.) and the pop musician Moby. FreedomWorks was subsequently mentioned in five stories about the event, and a clip of the protest aired on the PBS program *NewsHour* with Jim Lehrer. FreedomWorks chairman Dick Armey sent personal letters to congressional lawmakers urging them to oppose net neutrality. FreedomWorks continues to stress the importance of passing a meaningful "video choice" bill this year. **www.freedomworks.org**

From July 16-20, the **Foundation for Research on Economics and the Environment** in Bozeman, Mont., offered its second annual seminar for state judges and cabinet-level state officials, "Environmental Federalism: States, NGOs, and Environmental Quality." Lectures covered federalism, state and federal environmental policies, wildlife management, ecological failure in West Africa, private land protection, and the role and activities of NGOs. Speakers included Jonathan Adler of Case Western Reserve Law School, Dan Chirot from the University of Washington's Jackson School of International Studies, Steve Eagle of George Mason Law School, Dennis Glick from the Sonoran Institute, and Brent Haglund of the Sand County Foundation. Agendas for this and last year's programs are posted at **www.free-eco.org**. If you know of high-court and appellate judges or agency

officials and elected officeholders in your state perhaps interested in attending a future program, please contact FREE at (406) 585-1776.

The **Galen Institute** has been busy hosting a diverse round of conferences, meetings, and briefings in Washington, D.C. Highlights included a media briefing featuring Kentucky Governor Ernie Fletcher discussing his state's efforts to reform Medicaid. Galen also hosted the Second Annual Consumer Choice Community Conference, where members from around the country attended a health policy roundtable meeting with Chief White House Economic Advisor Allan Hubbard, U.S. Rep. Marsha Blackburn, and the architects of the Massachusetts health plan. Galen co-hosted a Capitol Hill briefing titled "Innovations in the Health Care Marketplace" highlighting advances that are revolutionizing the industry in health insurance, financial services, long-term care, and information technologies. Galen also held a reception honoring former FDA commissioner Peter Pitts and health policy colleague Bob Goldberg as they launched their new think tank, the Center for Medicine in the Public Interest. In addition, Grace-Marie Turner, president of Galen, has been very active attending hearings and working to develop recommendations for Medicaid reform as a federally-appointed member of the Medicaid Commission. The commission's final report is due in December.
www.galen.org

Learn the secrets of media success at the **Leadership Institute**'s Effective Communications Workshop at the State Policy Network's 14th Annual Meeting in Milwaukee, WI on October 7, 2006. The success of your organization often hinges on how well you articulate your message through the media — a tough challenge for many in the free-market movement already disadvantaged in the mainstream press. The workshop gives you latest professional advice on how to deliver effective speeches, win media favor, and effectively develop your message. Learn how to: Craft an Effective Message Strategy, Formulate a Complete Earned Media Plan, Develop Relationships with the Media, Organize and Build an Effective Speech. The registration fee is $15 only for attendees of the State Policy Network's 14th Annual Meeting and K-12 Education Reform Summit. The Leadership Institute's Effective Communications Workshop is scheduled for October 7, from 3:00-8:00PM at the Hilton Milwaukee City Center. For more information and to register, please visit the **www.spn.org/events** or contact Tonya Barr, Outreach Coordinator for State Policy Network, at (703) 243-1655 or tbarr@spn.org. **www.leadershipinstitute.org**.

The **Manhattan Institute**'s Center for Policing Terrorism (CPT) released a video entitled "1st Preventers: A Conversation on the Role of Law Enforcement in the War on Terror." The program features a discussion between Los Angeles Police Chief William Bratton and leading social scientist James Q. Wilson. The video explains the shift in thinking about the role of the police in combating terrorism. The video may be viewed at **www.manhattan-institute.org**.

The **National Center for Policy Analysis** recently unveiled a "Medicaid Reform Service Center," which provides organizations, including State Policy Network members, with the best and latest information on state Medicaid reform. The NCPA also provides the support and expertise necessary to help facilitate significant Medicaid policy changes at the state level. For more on the service center, visit www.ncpa.org. In other news, the NCPA has named Brian Williams to the position of legislative director. Williams will lead the NCPA's Washington, D.C. policy outreach efforts, representing the NCPA and its public policy issues to the Bush administration, Congress, Capitol Hill staffers and other government constituencies. Williams has more than ten years of experience in government relations and as a Capitol Hill staffer.
www.ncpa.org

A few months ago the **National Legal and Policy Center** broke a major congressional scandal, forcing Rep. Alan Mollohan (D-W.Va.) to resign from the ethics committee on April 21. He was the ranking Democrat. On February 28, NLPC chairman Ken Boehm secretly filed a 500-page complaint with the U.S. Attorney in Washington, D.C. that triggered an FBI investigation. NLPC alleged 262 omissions and misrepresentations on Mollohan's disclosure forms. NLPC went public on April 7 in an exclusive front-page *The Wall Street Journal* story. Mollohan, a member of the House Appropriations Committee, earmarked more than $200 million to nonprofits he created that

National Legal and Policy Center

"promoting ethics in public life"

are dominated by his business partners and contributors. The scandal is putting the spotlight on earmark abuse. NLPC sponsored shareholder proposals this spring asking for charitable contribution disclosure. At the annual meetings of Citigroup, Boeing and PepsiCo, NLPC President Peter Flaherty denounced corporate support for Jesse Jackson. NLPC has published a monograph titled "Union Corruption and the Law," by Phillip. B. Wilson of the Labor Relations Institute. NLPC published a Special Report titled "Why Unions Promote Mass Immigration," by NLPC's Dr. Carl Horowitz. **www.nlpc.org**

Latest news from the **National Right to Work Legal Defense Foundation**, a nonprofit, charitable organization providing free legal aid to

employees whose human or civil rights have been violated by compulsory unionism abuses: In response to a federal civil rights lawsuit filed by seven nonunion Lexington, Ky., firefighters with free legal assistance from the National Right to Work Foundation, International Association of Fire Fighters (IAFF) Local 526, union officials have temporarily backtracked and asked city officials to cease the seizure of forced union dues from the firefighters' paychecks. The suit against the IAFF union, filed June 22 by the firefighters, also named Lexington Mayor Teresa Isaac – and other top city officials – for signing and enforcing an agreement with the union that resulted in the unconstitutional acts. The firefighters had asked the court to enjoin IAFF union officials from seizing mandatory dues from any nonunion employee forced to be "represented" by the union officials until they provided the legally-required notice and procedures. Union officials backtracked to head off an embarrassing court order. **www.nrtw.org**

The **National Taxpayers Union Foundation**'s VoteTally project made a media splash with a June 22 column on the latest results by syndicated writer Steve Chapman. VoteTally, which measures the dollar impact of voting activity in Congress, found that on average members of the U.S. House of Representatives supported five cents in federal spending reductions for every dollar of increases, while the Senate's ratio was just two cents on the dollar. A new United Nations-supported aviation tax taking effect in France this month should worry Americans as much as those boarding French aircraft, according to an NTUF Issue Brief published June 13. The study predicted that the tax, up to $47.66 per ticket, could actually thwart the policy's goal of funding development programs by hurting tourism that benefits poorer nations. NTUF's third in a series of state finance analyses proved particularly timely as New Jersey lawmakers were debating tax increases earlier this month. The upshot: had Trenton restrained spending to population growth plus inflation over the last ten years, the state's budget would be about $8 billion less than what Governor Corzine submitted. **www.ntu.org**

The **Tax Foundation** is pleased to invite any interested SPN member groups to participate in its State Tax Working Group conference calls. The calls are monthly, hour-long conference calls between state lawmakers, corporate tax executives; state policy groups, Washington policy groups such as the Tax Foundation, and others, like the Council on State Taxation (COST) and the American Legislative Exchange Council (ALEC). The purpose of the State Tax Working Group is to facilitate open communication on tax issues throughout various sectors of the policy community. Each month, the agenda includes state-specific tax issues that have immediate and long-term implications. We invite speakers from the corporate, legislative and policy communities to speak on those issues. If you would like to learn more about the Tax Foundation's State Tax Working Group, please contact Jonathan Williams at 202-464-5119 or Williams@taxfoundation.org. For more on current Tax Foundation projects, see **www.taxfoundation.org.** SPN

Tactics: Turning

continued from page 6

doesn't just give advice or write op-eds, but actually puts players on the field and can deliver votes or punish politicians who vote wrong on important legislation. That's a good thing, and as I said earlier, in states like Illinois, this may be the only way to be relevant.

In other states, it will lead elected officials to doubt that you are genuinely nonpartisan. Ideas and principles are nonpartisan; legislation rarely is. When you engage in lobbying, you almost invariably side with one political party or the other. So some of what you gain in stature by virtue of being feared, you lose by being viewed as partisan. In some states, and maybe in all states at some time, that might be a trade-off worth making. In others, probably not.

Conclusion

I recommend Section H for organizations already spending more than 10 percent of their budgets on lobbying, and I recommend not taking Section H if you are not already lobbying or don't plan to. If you want to lobby, create or partner with a 501(c)4 and do it by the book.

If you treat your 501(c)3 organization like a convenient tool for achieving short-term political objectives, don't be surprised when the media, legislators, and your own donors start treating it the same way. You may win some short-term political victories, but you will have surrendered any claim to being able to speak with authority about the long-term best interests of your state. SPN

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February 28, 2006

Congress Set to Muzzle the Citizen Activist

Kerri Houston

The following is a Statement of Principles from the LobbySense Coalition Regarding Congression Efforts to Restrict Grassroots Activities:

From the birth of the American experience, citizen expression has been the heart of political discourse.

The First Amendment to the Constitution protects the rights of free speech and the right to "petition the government." Armed with ingenuity, passion and recognition of the power inherent in a collective voice, the American public developed a wide range of grassroots and public policy organizations, large and small, structured and ad hoc, that provide them with an outlet to communicate a cohesive message to their elected officials.

With the national spotlight focused on illegal and abhorrent behavior demonstrated in the Abramoff lobbying "scandal," our national conscience is ignited, in turn providing an opportunity to target systemic problems that allowed abuse of the system by a few offenders.

Conversely, Congress could overreach politically, and unnecessarily diminish the rights of the many for misguided public image purposes.

As Congress moves under public pressure to swiftly enact "lobby" reform, we believe that catastrophic overreach is taking form in Section 105 of 2128, the Lobbying Transparency and Accountability Act of 2005 sponsored by Senator John McCain (R-AZ), with similar language in S. 2180, the Honest Leadership and Open Government Act sponsored by Senators Harry Reid (D-NV) and Barrack Obama (D-IL),

Specific provisions of these bills would diminish the citizen voice and significantly reduce the ability of grassroots organizations to continue to express and promote the peoples' will.

The current lobbying scandal was not caused by grassroots nor public policy organizations either liberal, moderate or conservative, yet the harshest restrictions in this bill's "lobby" reform target issue advocates and public policy educators.

Existing law was broken and then enforced; already those complicit in the lawbreaking face jail time and significant fines, and in time, more lawbreakers may be subject to the rule of law. As congressional staffers and corporate lobbyists are at the heart of the current scandal, it is incomprehensible that nonprofit organizations, their supporters and members who carry concern for the nation into action, would be targeted for punishment for

a scheme in which they had no complicity.

The overly broad provisions of The Lobbying Transparency and Accountability Act of 2005 will impose millions of dollars of regulatory costs, and adversely harm individuals and groups in their efforts to influence and affect public decisions.

The legislation defines grassroots lobbying as any attempt to influence the public, or to engage in lobbying contacts in support of a view or position. Under the terms of both bills, grassroots lobbying would even include companies and organizations working in support of grassroots lobbying, such as researchers and consulting services involved in preparing information on issues and views.

Legions of citizen organizations, small businesses, and even individuals would become subject to onerous registration and reporting requirements, simply because they were trying to motivate the public to support a position or point of view.

Grassroots lobbying is the conscience of the American will, and has been used by concerned U.S. citizens through the course of our history to assist in shaping public policy. Rev. Martin Luther King's efforts to stimulate a grassroots movement in the early and mid-1960's were instrumental in securing passage of legislation to secure the protections of all U.S. citizens regardless of race. Under the terms of S. 2128 and 2180, Rev. King would have been greatly hampered in his efforts to effectuate social change.

More recently, grassroots efforts have been heavily employed in efforts by organizations to express their views both in favor of and against then Supreme Court nominees John Roberts and Samuel Alito. Grassroots on both sides of issues such as abortion, tax reform and the environment have stimulated public policy to advocate, educate and inform.

America's "grassroots" are not inert plant life; they are people, citizens, voters. Grassroots activity is an integral part of the American fabric of freedom.

Although many on Capital Hill oppose grassroots restrictions such as those presents in these bills, some senators on the Homeland Security and Governmental Affairs Committee, which has jurisdiction over this legislation and is chaired by Senator Susan Collins (R-ME), continue to assert that free speech restraints on American citizens are a necessary part of lobby reform.

We hope that Members of Congress intent on a grassroots component will review their copy of the Constitution, meet with their constituents and then target reforms that bring transparency to lobbying activities relating to Congress, embrace efforts to restrain the spending that lays at the heart of corruption, and enforce and strengthen penalties for those actually breaking ethics and lobbying laws.

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President
Tradition, Family, Property, Inc.

Cynthia de Lorenzi
Co-founder
Washington Bureau for ISP Advocacy

###

Kerri Houston is Vice President of Policy for Frontiers of Freedom. She is a policy analyst and expert in

media, marketing and external relations for the public policy community. Her areas of expertise include tax, social security reform, and healthcare. Prior to joining Frontiers of Freedom, Ms. Houston served as National Field Director for the American Conservative Union. She was also executive director of State Policy Network and director of external affairs for Dallas' Institute for Policy Innovation. A strong proponent of individual and economic liberty, Ms. Houston is a Brain Trust columnist for Investor's Business Daily, and her opeds have appeared in The Wall Street Journal, The Washington Times, The Dallas Morning News, Forbes magazine, Intellectual Ammunition, and numerous other print, internet and institutional publications. She has appeared on Fox News and MSNBC, and was a frequent guest on Politically Incorrect with Bill Maher. Ms. Houston is a member of the National Paycheck Protection Working Group and an advisor to the Texas Conservative Coalition's Health and Human Services Task Force. She serves on the Board of Directors for GOPUSA.com and the Board of Advisors for The Project for California's Future. She was also nominated to serve on the President's Commission to Strengthen Social Security. Well known for her dedication to presenting public policy in a way that will "pass the dinner table test," Ms. Houston brings a sharp wit and a practical spin to her areas of expertise.

khouston@ff.org

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opeds@opeds.com

JON CALDERA

Independence Institute Colorado SPN 2006 Leadership Development Breakfast

Lessons

- Understand your state election laws as well as federal laws and IRS code
- Expected the double-standard
- Understand the difference between "education" and "advocacy" and make a clear distinction which you are doing
- Use the H filing as an insurance policy
- Use an outside organization for direct advocacy
- If they can do it, we can do it better

ADDITIONAL TABOR SPEAKING ENGAGEMENTS

APPEARANCES, ETC

Add'l MHPC TABOR Debates, Appearances, Publications 2006:
(Drawn from MMA report, *As Maine Goes* announcements)

May 28	Becker – LSJ editorial
June 12	???? DEBATE: MMA v. ???? – Maine Innkeepers Assoc.
July 14	Becker - WGAN-AM appearance
July 26	Becker - Cape Elizabeth Presentation (express advocacy)
Aug. 3	???? DEBATE: MMA v. ???? ME Better Transp. Assoc.
Aug. 18	Becker & John Andrews Speak at Chicago Forum
Aug. 21	???? DEBATE: MMA v. ???? Waterboro Town Hall
Sept. 6	???? DEBATE: MMA v. ???? MSMA - Augusta Civic Ctr.
Sept. 13	DEBATE: Bragdon v. MMA – East Millinocket
Sept. 15	DEBATE: Moody v. MMA- M. Assoc County
Sept. 18	DEBATE: Becker v. MMA – Waterboro (express advocacy)
Sept. 19	???? DEBATE: MMA v. ???? – ME Principal's Assoc.
Sept. 21	DEBATE: Becker/Lenardson at Biddeford City Hall
Oct. 3	DEBATE: Bragdon/Adams vs. Herman – East Machias
Oct. 8	Fortin editorial in KJ (express advocacy)
Oct. 11	???? DEBATE: MMA v. ???? Assoc. Constructors of Maine
Oct. 11	Becker editorial in LSJ
Oct. 11	Becker on WGAN
Oct. 11	DEBATE: Moody v. MMA – Falmouth PTO
Oct. 12	DEBATE: Becker v. MMA – Mid ME CoC
Oct. 12	DEBATE: Becker/Lenardson v. MMA – Harpwell School
Oct. 13	???? DEBATE: MMA v. ???? – Small Schools Coalition – Orono
Oct. 14	???? DEBATE: MMA v. ???? – Maine Grocers Assoc. Bar Harbor
Oct. 18	DEBATE: Bragdon v. Herman – Lewiston & Auburn Schools Comm.
Oct. 19	DEBATE: Moody v. MMA – Blue Hill Town Hall
Oct. 19	???? DEBATE: MMA v ???? – WLOB Portland (likely Becker - Thursday)
Oct. 19	DEBATE: Becker v. MMA – Mechanic Falls, Elm St. School
Oct. 20	DEBATE: Bragdon v. MMA – Maine Merchants Assoc. Augusta
Oct. 23	DEBATE: Bragdon v. Herman – Mt. Vernon Board of Selectmen
Oct. 24	DEBATE: Becker vs. Herman in Turner
Oct. 25	Moody editorial in Times Record (express advocacy)
Oct. 26	DEBATE: Adams/Bragdon vs. MECEP in Rumsford
Oct. 26	DEBATE: Becker v. MMA – Greater Newport SAD
Oct. 26	???? DEBATE: MMA v. ???? – Municipal/School Boards in Eliot
Oct. 27	DEBATE: Becker/Adams v. MMA – WERU-FM Blue Hill
Oct. 30	DEBATE: Becker v. Bailey – Westbrook High
Nov. 5	Becker – TABOR Express Bus Tour
Weekly	Becker on WLOB Thursday mornings (aka "TABOR Boy")

Unknown: Becker - Maine Guide to Referendum (express advocacy)

ADD'L:

Oct. 12/19 "Speaking Engagements" KELLY, REMMEL & ZIMMERMAN (Thursdays)

PAC Speakers ONLY:

Oct 3	DEBATE: Adams v. MMA – Washington County Regional Debate
Oct. 9	DEBATE: Adams v. MMA – Dover-Foxcroft Public Forum
Oct. 18	DEBATE: Adams v. ???? - WABI-TV Bangor (?)
Oct. 20	Adams on MPBN
Oct. 21	Lenardson at USM Senate

Oct. 14 DEBATE: Tom Zimmerman v. MMA – WLOB Portland

DEMOCRACY MAINE LIST OF MHPC SPEAKING ENGAGEMENTS

The following are a list of past and upcoming debates and forums where Maine Heritage Policy Center staff have spoken, and will speak in favor of TABOR.

Past engagements

- Sept 15, 2005, 7 am: Bangor Rotary Club - Bill Becker
- Sept 11, 2006, 6:30 pm: Portland Water District Board of trustees meeting; 6:30pm; Geoff Hermann vs Tarren Bragdon
- Sept 8th: Skowhegan Chamber of Commerce; Tarren Bragdon
- Sept 13th: Auburn-Lewiston Rotary, Bill Becker
- Sept 14th: Androscoggin Chamber of Comkmerce, Bill Becker vs Kit St John
- Sept 20th: Bangor Chamber of Commerce; Tarren Bragdon
- Sept 20th: Maine Tourism Board, Taryn Bragdon vs Kit St. John
- Sept 21st, 7 pm: Kittery Tabor Fourm, Tarren Bragdon vs Ed Cervone
- Sept 27th, 5 pm: Penobscott Valley Council of Gov't; 5pm.. Mark Gray vs Tarren Bragdon
- Sept 27th: Harpswell Community TV, Scott Moody and Bill Becker
- Sept 29th: Western Maine Legislative Caucus. Ed Cervone vs Scott Moddy
- Oct 3rd: Bath Library Forum Kit St. John vs Scott Moddy
- Oct 4th, 4 pm: Piper Shores, Bill Becker
- Oct 5th, 7:15 am: Winthrop Chamber of Commerce; Kit St John vs Scott Moddy
- Oct 9th, 6 pm: Yarmouth Unitarian Church; Church Men's Club, Kit St. John vs Bill Becker
- Oct 11th, 7:30 am: USM, Larry Benoit vs Bill Becker
- Oct 12th, 6 pm: UMO TABOR Debate, Kit St John Vs Scott Moody
- Thurs, Oct 12th, 7 pm: Harpswell TABOR Forum. Bill Becker and Roy Lenardson.
- Thurs, Oct 12th, 1 pm: Augusta Kiwanis meeting with Bill Becker
- Oct 17th, 7:30 pm: Alfred TABOR Forum; Mary Ann Gleason vs Scott Moody
- Oct 19th: Gardiner Rotary Club, Tarren Bragdon
- Oct 20th, 7 pm: Elliot Tabor Forum; Mary Ann Gleason vs Tarren Bragdon
- Sunday, Oct 22nd, 1 pm: Cape Elizabeth Tabor Forum; Nancy Kelleher vs Bill Becker
- Mon, Oct 23rd, 7 pm: Cumberland Congregational Church, Lions Club, Nancy Kelleher vs Bill Becker
- Mon, Oct 23rd, 6:30 pm: Rockland TABOR Forum; Ed Cervone vs Scott Moddy

Upcoming engagements

- Tues, Oct 24th, 7 pm: Topsham TABOR Forum; Ed Cervone vs Tarren Bragon
- Wed, October 25th, 5 pm: United Way TABOR Forum, York Community College, Mary Ann Gleason vs Bill Becker
- Wed Oct 25th, 6:30 pm: Camden TABOR Forum; Lisa Pohlman vs Scott Moddy
- Mon, Oct 30th, 7 am: WGAN radio debate. Dennis Bailey vs Bill Becker
- Tues, Oct 31st, 7:30 am: Portland Chamber of Commerce, Jeanne Hulit vs Bill Becker

WAYNE MEMO 12/6/06 MHPC'S TESTIMONY FOR TABOR LEGISLATION

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: December 8, 2006
Re: Additional Materials for Agenda Item #8

I have attached two materials relating to Agenda Item #8:

- A letter received today from Daniel I. Billings, Esq. on behalf of the Maine Heritage Policy Center.

- Legislative testimony relating to the Taxpayer Bill of Rights (TABOR) which I obtained in response to a voicemail left by Mavourneen Thompson today. Earlier this year, TABOR was considered by the Legislature as LD 2075 before it was put on the general election ballot. It received a public hearing on March 30, 2006 before the Joint Standing Committee on Taxation.

  At the hearing, Bill Becker testified for the Maine Heritage Policy Center (MHPC). The MHPC testified in support of LD 2075 (the MHPC thanked the committee for the opportunity to testify in "full support" of the bill). When Mr. Becker signed up as the second witness, he placed a check-mark in the proponent column. One of the materials attached to his supportive testimony was an article in the Maine View, a newsletter published by the MHPC.

  Please keep in mind that PAC reporting and §1056-B reporting are concerned with financial reporting of efforts to influence an <u>election</u>, not a bill before the Legislature. Nevertheless, the MHPC testimony in support of TABOR may have some bearing on whether you believe – later in the year – the MHPC made expenditures to promote or influence in any way the TABOR ballot question.

MARDEN, DUBORD, BERNIER & STEVENS

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F. HAROLD DUBORD (1891-1964)
RICHARD J. DUBORD (1921-1970)
HAROLD C. MARDEN (1900-1994)
ROBERT A. MARDEN (RETIRED)

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DEC 8 2006
COMMISSION ON GOV. & ELECTION PRAC.

December 8, 2006

Jonathan Wayne, Executive Director
Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, ME 04333-0135

RE: Issues Raised by December 6th Staff Memo

Dear Jonathan:

I apologize for writing after the meeting packet has been put together, but the December 6th staff memo brought to mind issues that should be considered by the Commission staff and counsel before the December 12th meeting.

Statutory Construction of 21-A M.R.S.A. §1056-B

Page 13 of the staff memo states "we believe that the Commission should apply §1056-B as it is written." If that is going to be done, consideration must be given to the legal meaning of the terms used in the statute. The staff memo does not consider the statutory meaning of the terms used in §1056-B.

§1056-B(2) requires reports containing "an itemized account of each contribution received and expenditure made aggregating in excess of $100 in any election." The terms "contribution" and "expenditure" as used in §1056-B are defined in 21-A M.R.S.A. §1021.

The term expenditure is defined in §1021(4) as including "[a] purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of influencing . . . the initiation, support or defeat of a campaign, referendum or initiative." Therefore, by definition, expenditures required to be reported under §1056-B(2) are limited to those made for the purpose of influencing the initiation, support, or defeat a referendum or initiative. If the Commission is to apply §1056-B "as written" the statute must be so limited.

The question then becomes what speech would qualify as being made for the purpose of influencing the initiation, support or defeat of a campaign, referendum or initiative? Would it include speech that does not expressly advocate the passage or defeat of a referendum question? If so, would the definition of expenditure then become unconstitutionally vague or overbroad? How would a speaker know when their speech concerning a referendum question triggered reporting and when it did not?

Historical Application of 21-A M.R.S.A. §1056-B

Commission staff have determined that no groups filed §1056-B reports in 2004, despite a great deal of activity concerning the Palesky Tax Cap referendum. Some of the groups that now suggest that the Commission should apply the statute broadly did not apply such a reading of the law to their own activities two years ago. A number of groups who filed reports this year had conducted similar activities in 2004 without filing reports. Also, there were a number of organizations other than MHPC which conducted activities this year regarding the Taxpayer Bill of Rights who have also not filed reports with the Commission. These organizations include a number of Chambers of Commerce, trade organizations, municipalities, school districts, and businesses who endorsed or opposed the Taxpayer Bill of Rights and whose activities would exceed the $1500 threshold if staff time spent on those activities is to be counted towards the reporting threshold.

This suggests that there has been no widespread agreement or understanding of the requirement of §1056-B and little action by the Commission to enforce the law or to educate groups regarding its requirements. The same conclusion that MHPC reached regarding filing was reached by a number of other organizations in both 2004 and 2006. If the approach suggested by the staff memo is adopted by the Commission, will all groups who have conducted referendum related activities now be required to report their past activities?

What should be reported?

The staff memo provides little guidance to what a group such as MHPC should report. As has been detailed in the information MHPC has provided to the Commission, MHPC spent no money on advertisements, mailings, or other campaign type activities related to the referendum. There are no bills or invoices to consult to determine what expenditures should be reported if the Commission adopts the view expressed in the staff memo.

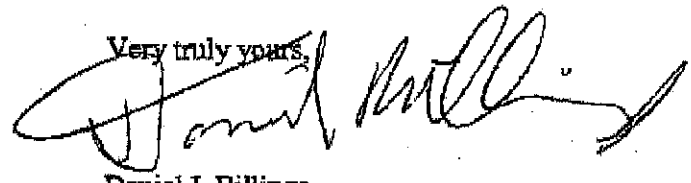
If MHPC were to be required to report, the main item on the report would be staff time. What staff time should be reported? Should research and report writing be reported? At least one group that has filed a §1056-B report has stated that they did not report staff time spent on research. If public speaking by staff members is to be reported, how should media appearances covering several different topics be reported? MHPC President & Chief Executive Officer Bill Becker is a regular guest on radio talk shows. In many of his appearances during 2006, a number of topics were discussed along with discussion of the Taxpayer Bill of Rights. How should the time spent on such appearances be reported?

After the fact, it will be nearly impossible to accurately determine the exact amount of staff time spent on such activities.

It is also important to note that MHPC's public speaking on the initiative was primarily at the invitation of media, cities, towns, and service organizations that decided to organize forums. MHPC did not organize meetings to educate voters or organizations about the initiative. However, as experts on the issue, MHPC was asked to explain the proposal at a number of events organized by others.

If reporting by MHPC is to be required, guidance should also be provided regarding the time period where reporting is required. As has been earlier explained, MHPC was the author of model legislation that eventually became the basis for a legislative bill introduced in the Legislature in 2005 and a citizens' initiative known as the Maine Taxpayer Bill of Rights. However, MHPC did not draft the model legislation to be a referendum question and MHPC did not initiate or organize the effort to have the bill placed on the ballot. Should staff time spent on drafting the model legislation be reported? If reporting is to be required, must MHPC report staff time answering press calls concerning the bill while the signature gathering process was underway? It should be noted that opponents spoke out against the Taxpayer Bill of Rights before the decision was made to place it on the ballot. However, those that have filed reports appear to have limited their reporting to the period after the decision was made to place the question of the ballot.

Very truly yours,



Daniel I. Billings
e-mail: dbillings@gwi.net

TESTIMONY SIGN IN SHEET

Joint Standing Committee on Taxation

LD 2075 (TABOR)

PAGE 1

Date: March 30, 06

Name	Town/Affiliation	Proponent	Opponent	Neither
Mary Adams	Gorham / Director	✓		
Bill Becker	Portland / MHPC	✓		
PEM SCHAEFFER	BRUNSWICK	✓		
[illegible]	FARMINGTON	✓		
TOM GLEASON	WINDHAM	✓		
Lane Hittinger	Windham	✓		
Jack Matson	HARRISON	✓		
KC Howell	BRISTOL	✓		
JAN HOWELL	BRISTOL	✓		
Alison Love	Yarmouth	✓		
Sarah Love	Yarmouth	✓		
Ted Candelet	Yarmouth	✓		
Norman Rodwell	Yarmouth	✓		
Mark Lyon	Falmouth	✓		
Tom Morton	Jefferson	✓		
Dawn Blake	Belfast	✓		
Rita Marie Russell	Bristol	✓		

Testimony of Bill Becker
In support of LD 2075, An Act to Create a Taxpayer Bill Of Rights

Delivered by Bill Becker, president & CEO of The Maine Heritage Policy Center at the March 30,2006 hearing on LD 2075 before the Joint Standing Committee on Taxation

Senator Perry, Representative Woodbury, distinguished members of the Committee, my name is Bill Becker, and I am the President of The Maine Heritage Policy Center, a public policy think tank located in Portland, Maine. I wish to express my sincere thanks to the Committee for the opportunity to testify in full support of LD 2075, An Act to Create a Taxpayer Bill of Rights.

Patrick Henry, when asked to define the role of government in America, stated: "The Constitution is not an instrument for the government to restrain the people; it is an instrument for the people to restrain the government -- lest it come to dominate our lives and interests."

That very statement is exactly what the Taxpayer Bill of Rights sets out to do through a reasoned, principled, and moderate approach to creating a healthier Maine economy.

The meaning of the words "The Taxpayers' Bill of Rights" reminds us of the original Bill of Rights which guaranteed us certain additional protections from an overreaching government. Some examples included the right to bear arms, the right to free speech, the right to state sovereignty.

Here in Maine, we are talking about the taxpayer's right to set parameters, or guidelines, regarding the growth of our taxes and the spending that drives them. We are talking about slowing the rate of growth of government to something that Maine people can afford.

What does the Maine Taxpayer Bill of Rights do?

1. It will allow government at all levels to grow as fast as our economy grows, using inflation (erosion of the value of money) plus an allowance for population growth. The government should not grow at a rate that is faster than the taxpayers' ability to pay.
2. If government leaders decide we do need to increase a tax, a fee, or government spending – they must fist ask for our permission after a 2/3 vote of the governing body. Similar to the way that major decisions are passed in this state – constitutional amendments and bonds, and until recently, the state budget - the legislature would be required to have a 2/3 vote to send it to the voters for their approval with just a majority vote needed.
3. And, if excess money comes in over an above the allowable spending, 80% gets returned to the taxpayer and 20% goes into a budget stabilization fund – at every level of government.

Why is this needed? One need only look at our current situation to understand that a dramatic change is needed. Maine is facing:

- Highest State and Local Tax burden in the nation – a rank we have held for the last decade.
- 2nd highest health insurance rates in the nation – only exacerbated by this Administration's unsustainable Dirigo Health initiative and Medicaid expansion, leaving Maine with the highest percentage of its population on Medicaid of any state in the nation.
- Ranked 5th worst just this month in our states business tax climate by the nonprofit Tax Foundation
- Ranked 2nd worst in the Small Business Survivability index produced by the nonprofit Small Business and Entrepreneurship Council

- Population growth is slow over the last 15 years, and is one of the lowest in the nation at only 7.8% - averaging near stagnant annual growth
- Multiple jobs reports in the past few months look at the data clearly and state a net loss of jobs in last few years – and the only growth is in government, education, and health care – all funded primarily from our tax dollars
- All 3 bond rating agencies downgraded Maine last year – first time in our history, and we are on a watch list again this year
- Maine's personal income growth has persistently lagged the national average over the last 50 years.
- The highly touted LD1 which promised to lower Maine's tax burden to the middle third of all states by 2015, has failed to deliver much tax relief while state spending has again increased at over 10% during this biennium. It is nearly statistically impossible, as we will point out in the coming weeks, that LD1 will achieve the desired goal anywhere near the year 2015.

Maine people have learned about these facts, and realize that we cannot continue to support the same public policies that have brought us to the bottom of the economic barrel when compared to most states. Unfortunately, reasonable reform is being opposed only by a small yet vocal minority of organizations that depend on unfettered increases in government spending to their government departments, agencies, nonprofits, or special interests. This "spending lobby" is very well staffed, vocal, and strident in their opposition to any common sense, reasonable, moderate, and proven public policy such as the Taxpayer Bill of Rights.

I would like to address some of the points recently made by well-meaning but misinformed critics who have spoken out against the value of growth allowances made by the Maine Taxpayer Bill or Rights. It is important to put an end to the misinformation by providing the committee with fact over fiction.

1. FICTION: You will be told by opponents that The Maine Taxpayer Bill of Rights will cut government spending and devastate Maine public services.

   FACT: Maine's Taxpayer Bill of Rights does not propose a cut in any program or a service. It allows all levels of government to grow annually at the rate of inflation with an allowance for population growth. No cuts are proposed. Those who argue that there will be cuts are really arguing that even today, Maine does not spend enough money per capita on government programs or services, and that any sort of restraint would prevent even greater levels of spending and taxes. It is true that in a very small percent of municipalities which are losing a large portion of their population (faster than the inflation rate), that the growth allowance will be negative – reflecting not a cut in real per capita government services, but the reality of a smaller population being served by that level of government.

2. FICTION: Opponents will claim that Colorado has repealed, repudiated, or otherwise suspended their own earlier version of the Taxpayer Bill of Rights.

   FACT: The Taxpayer Bill of Rights remains in place in Colorado. Since Colorado voters passed it as a constitutional amendment 14 years ago, not one word, comma, or other alteration has touched the Taxpayer Bill of Rights. In November of 2005, Colorado voters approved a 2/3-vote request by the Colorado legislature to forego any rebates that would be returned to the taxpayers for the next five years. It was the first such statewide approval in 14 years conducted through the law's own provisions.

3. FICTION: You will hear that TABOR has devastated Colorado. Sine the Colorado Taxpayer Bill of Rights was passed, Colorado has become a bad place to create jobs, do business, or to live.

FACT: Colorado's population has grown by 40% over the last 15 years, from 3 million to 4.5 million people. Nearly one million jobs have been created, and Colorado is consistently in the top ten states in job growth. Colorado's gross state product is one of the fastest growing in the nation. Colorado has one of the lowest tax burdens and friendliest business environments in all national rankings.

4. FICTION: You will hear from opponents that Colorado's Taxpayer Bill of Rights has devastated Colorado's government programs and services. K-12 education, higher education, and health care services for the poor have deteriorated.

   FACT: Government has not suffered under their Taxpayer Bill of Rights. In just the past six years (after the boom of the 1990's and through Colorado's recession), total state government spending has increased by 50% from $10 billion in 1999 to $15 billion in 2005.
   Most of the problems that impacted government in Colorado were caused by the 2001-02 recession, the high-tech bust, and a drought and forest fire season that caused state tax revenue to decline by 17% in just 18 months. That revenue decline was not at all due to the Taxpayer Bill of Rights. Still, average teacher salaries in Colorado are 22nd highest in the nation, and Colorado boasts some of the most well-respected universities in the nation. Some of the recent vote, under the law's provisions, is to go to higher education.

5. FICTION: At the same time that opponents will try and convince you of Colorado's devastation, another report comes out claiming that Colorado's economic success is not due to Colorado's Taxpayer Bill of Rights.

   FACT: In fact, neither claim is true. A March 16, 2006 report from the Center for Budget and Policy Priorities, a direct funder and supporter of the Maine Center for Economic Policy, claims that Colorado has suffered significant decline and deterioration under the Taxpayer Bill of Rights. But a report released last week (March 23, 2006) by this same organization, makes that case that Colorado in fact prospered in the 1990's – but that it was not due to the Taxpayer Bill of Rights. You can't have it both ways. Colorado either prospered, or it didn't, and the CBPP's own paper contradicts earlier efforts to claim devastation. The data speaks for itself.

6. FICTION: Christopher St. John of the Maine Center for Economic Policy stated on a Tuesday television interview that Maine's high tax burden is due to the fact that Mainers have a Massachusetts appetite for level of services, but an Arkansas level of income.

   FACT: Looking at both Arkansas and Massachusetts, we find that they both have a dramatically lower state an local tax burden than does Maine, a much lower median age, and have more residents with a bachelors degree or higher. Yet Massachusetts has a much lower percent of its population receiving Medicaid (one of the largest services that any state government provides), and roughly the same percent of uninsured as Maine. And Arkansas residents do earn less than Mainers, yet that state is seen as one of the more business-friendly states in the union, while Maine is second to last. So while it is true that Arkansas residents earn less than Massachusetts or Maine residents, both of their states have figured out how to attract jobs, people, and businesses through a lower rate of spending and taxes.

7. FICTION: Opponents, such as former Colorado State Representative Brad Young, will claim that by the citizen's having a greater say in tax and spending increases, we have lost our representative democracy.

FACT: TABOR does nothing to jeopardize representative democracy. Elected officials will still hold the ultimate responsibility for determining the laws of this state and local government. Budgets and taxes will still be crafted and negotiated by legislators and town officials. But the people will now define the parameters within which officials can tax and spend – tied to a very solid and economically significant statistic such as inflation and population growth. There are new parameters within which officials can operate – similar to the term limits which defined how long a legislator can serve.

8. FICTION: You will be told by the opposition that there is no need for a two-thirds vote in order to ask the citizens for their majority vote to approve tax or spending increases above the inflation plus population formula.

   FACT: Major decisions by Maine state government require a two-thirds majority vote. The budget has traditionally required that deference, and it is required that both bonds and constitutional amendments receive a two-thirds vote of the Legislature followed by a majority vote of the people. This is exactly the same formula being proposed under Maine's Taxpayer Bill of Rights. Some states actually require a three-fifths vote in this area. Why so stringent at the state and local level? Because Maine's highest-in-the-nation tax burden necessitates a change from the status quo when it comes to both spending and taxes, a two-thirds vote is appropriate. Otherwise, without the two-thirds requirement, it would be business as usual.

9. FICTION: Opponents will claim that Maine's Taxpayer Bill of Rights will not be effective on the state level if it is not in the Constitution as an amendment.

   FACT: It is the responsibility of our legislators to uphold the will of the people – and a citizen's petition and initiative is a demonstration of that will. It is important to note two specific citizen's initiatives that are not found in the Maine Constitution, but were passed as citizen's initiatives and hold tremendous sway over this body today. Both term limits, and Clean Elections, were citizen's initiative but are cot constitutional. The will of the people is a powerful message, and does not necessarily need to be a constitutional law.

10. FICTION: Opponents will make the claim that TABOR is complicated, or that it would be difficult to implement at the state and local level. Opponents will also claim that the administrative costs of sending tax and spending increases to the voters would be high.

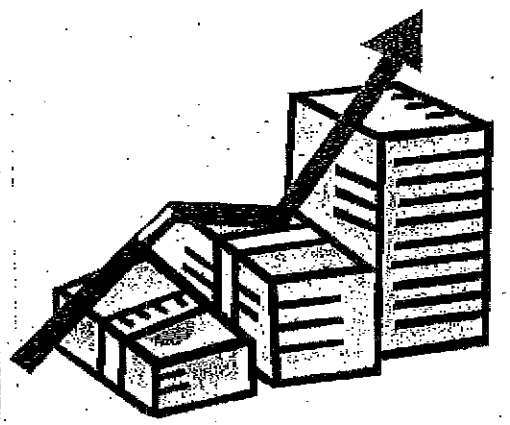
    FACT: Whenever a new law is implemented, there can be great consternation regarding the imp[lamentation and conformity with other state and local laws. One example were the critics of both term limits and clean elections – both have survived the test of time well. I'm fully confident that the good people at the Maine Municipal Association, having worked hard at implementing even the dubious and complex LD1, would be fully capable of managing the implementation of the Maine Taxpayer Bill of Rights.

Noted political opinion leader George Will once stated: "In the lexicon of the political class, the word 'sacrifice' means that the citizens are supposed to mail even more of their income to the government so that the political class will not have to sacrifice the pleasure of spending it."

It's time to end that pattern in Maine.

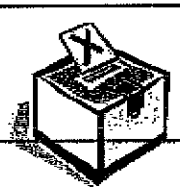
Thank you for your time and would be happy to answer any questions you might have.

How Does It Work? – Schools



- Current Year Spending
- Plus Growth Allowance

(inflation + pupil change)

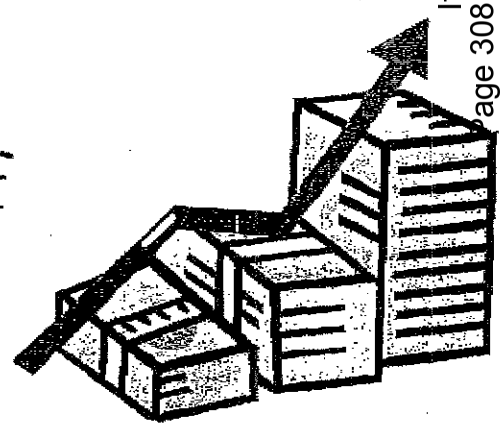
Approval Process	*Spending Increase*		*Mill Rate Increase*
	At or below	*Above*	
	allowed growth allowance		
School Board, City Council OR Annual Town Meeting	Simple majority	2/3rds majority AND	
Voters 	NONE	Majority voter approval	

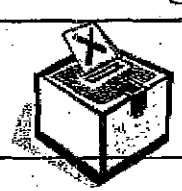
We the people of Maine...

How Does It Work? – Local/County

- Current Year Spending
- Plus Growth Allowance – lesser of

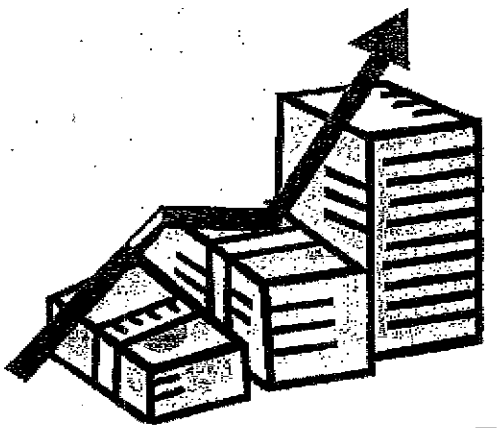
  (inflation + population growth OR *increase in property valuation)*



Approval Process	*Spending Increase*		*Mill Rate or Fee Increase*
	At or below allowed growth allowance	*Above allowed growth allowance*	
County Commissioners, City Council OR Annual Town Meeting	Simple majority	2/3rds majority AND	
Voters 	NONE	Majority voter approval	

We the people of Maine...

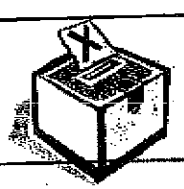
How Does It Work? - State



- Current Year Spending
- Plus Growth Allowance

(inflation + population growth)

Approval Process	*Spending Increase*		*Tax or Fee Increase*
	At or below	*Above*	
	allowed growth allowance		
State Legislature and Governor	Simple majority and Governor's signature (current law)	2/3rds majority and Governor's signature AND	
Voters	NONE	Majority voter approval	



We the people of Maine...

THE MAINE HERITAGE POLICY CENT

What's the Taxpayer Bill of Rights?

- Provide an allowance for the growth of government spending (annual increases - inflation plus population growth)
- Requires 2/3rds vote of legislative body AND voter approval
  - to override spending limits AND/OR
  - to increase a tax or fee
- Requires automatic refunds of 80% surplus revenue
- Requires that 20% of surplus revenue be placed in Budget Stabilization Fund to provide level funding and prevent tax increases during recessions (fund max – 10% of budget)
- Applies to all levels of government - state, counties, schools and municipalities

We the people of Maine...

The Maine View

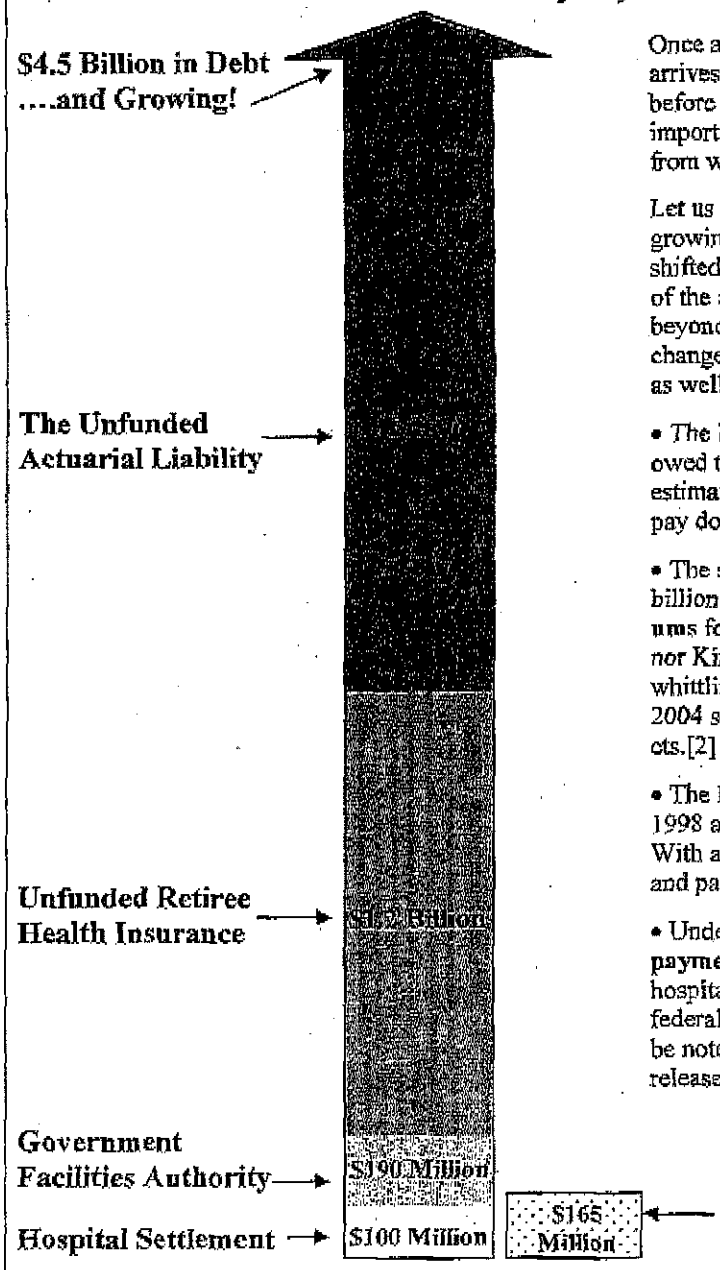
Published by The Maine Heritage Policy Center

Vol. 4, Issue No. 4 March 29, 2006

Beyond the Supplemental Budget:

What About State Debt, Per Capita Tax Burden, Future Reserves, and the Structural Gap?

by Roy Lenardson



*This is the "**surplus**" driving the current supplemental budget*

Once again the legislature is busy spending the "surplus" that arrives miraculously each year sometime after Christmas, but before the sap flows from Maine's maple trees. There are a few important points that need to be made about the alleged surplus, from which the Supplemental Budget is derived.

Let us be clear, **there is no surplus**. Ignored hospital bills, growing unfunded liabilities of the retirement system, and shifted costs to future budgets are more than sufficient evidence of the absence of any surplus. Hopefully, policymakers will look beyond the alleged surplus, and instead, make significant policy changes to stem the expanding structural gap forecast for 2008, as well as the **growing mountain of debt**.

- *The largest state debt is the* ***unfunded actuarial liability*** owed to the **Maine State Retirement System.** The short fall is estimated to be $3 billion, with a constitutional requirement to pay down the unfunded liability no later than June of 2028.[1]

- The state of Maine is currently carrying approximately $1.2 billion in an **unfunded obligation for health insurance premiums** for retired teachers and state employees. In 1999, Governor King created the Retiree Health Insurance Fund to begin whittling away at the unfunded obligation. However, during the 2004 session, this entire fund was spent in supplemental budgets.[2]

- The **Maine Governmental Facilities Authority** was started in 1998 and allows lawmakers to avoid voter approval for bonding. With a simple majority vote, the Legislature can borrow at will and pass the debts on to future legislatures.[3]

- Under **Medicaid**, hospitals are paid a **provisional interim payment** ("PIP") every month. The backlog of money owed to hospitals at this time is approximately $300 million in state and federal funds. The state share is about $100 million. It should be noted, that the federal funds are available now, but cannot be released until state funds are committed.[4]

Vol. 4, Issue No. 4 The Maine View March 29, 2006

Table 1

Year	National Avg.	Maine's State and Local tax Burden	Maine's Rank
2002	10.2%	12.7%	1
2003	[illegible]	[illegible]	[illegible]
2004	10.2%	13.0%	1
2005	[illegible]	[illegible]	[illegible]

Source: Tax Foundation.

Tax Burden

Another issue often lost in the budget debate is the actual consequence of passing budgets—the resulting tax burden. Recall in 2004, with the introduction of L.D. 1, Governor John E. Baldacci and the Legislature indicated that they were willing to address Maine's tax burden. The legislation even went so far as to statutorily state the policymakers' tax burden reduction goal with the passage: "*. . . that by 2015 the State's total state and local tax burden be ranked in the middle 1/3 of all states . . .*"[5]

Well, it stands to reason that if we are currently among the highest in the nation in terms of tax burden, the Governor and the Legislature would need to enact budgets that have the effect of lowering that burden. So, that begs the question—How did they do? Not so well, according to the Tax Foundation, a nationally recognized organization. Table 1 shows that in the first year of Governor Baldacci's term Maine ranked number 1 in terms of state and local tax burden. At 12.7 percent, Maine was 24 percent higher than the national average of 10.2 percent. In 2005, the last year of complete data, Maine ranked number 1 again at 13 percent, or 28 percent higher than the national average of 10.1 percent.[6]

*This year, Maine's tax burden ranked **number 1 again** at 13%. That's 28% higher than the national average of 10.1%.*

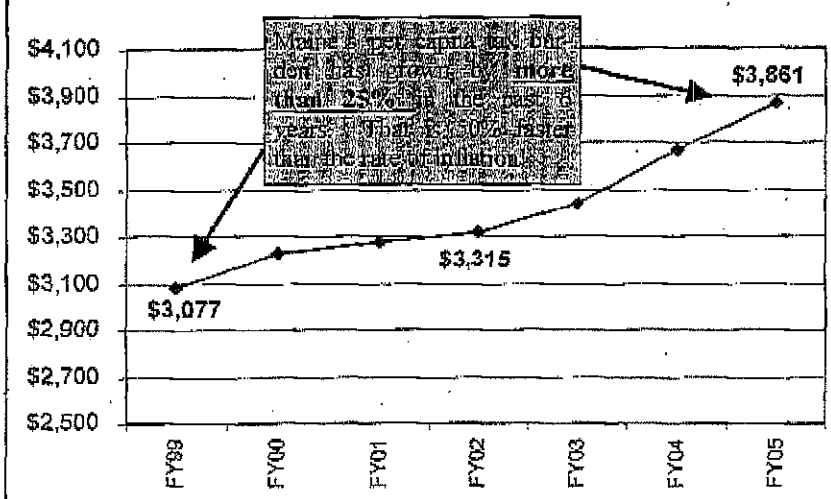
If the goal was a lower tax burden, then we are moving in the **wrong direction.**

It's not necessary to use national data. One can look right here in Maine at the figures provided by the Maine State Legislature's *Office of Fiscal and Program Review*. Maine's *per capita* total tax burden continues to increase at a rate significantly greater than inflation. In fact, Chart 1 indicates that since 1999 the Maine tax burden has grown more than 25 percent, or about 50 percent faster than the rate of inflation.[7]

The question is very simple: How does the Governor and the Legislature plan to move Maine's tax burden to the middle of the pack? The follow three budget line items will add to, not lower, the Maine tax burden.

Chart 1

Maine State and Local Taxes Per Capita 1999-2005



Source: Maine State Legislature. Office of Fiscal and Program Review.

1. **More Positions.** The Supplemental Budget adds **46.5 more state employee positions** paid for in the General Fund. Another 29 state employee positions are financed by Other Special Revenues.[8]

2. **More Mainecare/Medicaid Spending.** The supplemental budget continues to feed the state's fastest growing welfare program, Medicaid/Mainecare, **by adding another $86.7 million in additional spending.**[9] This increased funding creates future problems down the road because it postpones the inevitable expansion of eligibility to the next biennium, as opposed to making the structural changes needed today. In fact, the structural gap analysis prepared by the Legislature's fiscal office, indicated that spending is projected to grow by almost 25 percent in the next biennium. This growth is a direct result of the failure to make long term adjustments to the program.

3. **More Education Spending.** On the education front, the continued ramp up of school funding to 55 percent of the full costs of essential program and services (EPS) will result in double digit increases, ranging from 17-20 percent, in both the FY06-

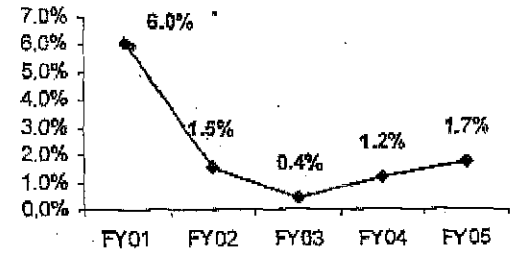
biennial budget, and the FY08-FY09 budget (projected).[10] While the additional school aid will undoubtedly be welcome at the local level, the evidence of a lowered tax burden as a result of the infusion of cash remains questionable, and will remain that way until the Governor and the Legislature implement meaningful controls on spending at all levels of government.

Future Reserves

In 2003, the Governor and the Legislature replaced the Maine Rainy Day Fund with the Maine Budget Stabilization Fund. The amended fund is primarily used for the prepayment of General Fund bonds or for major construction (projects greater than $500,000).[11] In the last session of the Legislature (2005), the Legislature further amended the Maine Budget Stabilization Fund so that it's primary purpose is to address revenue shortfalls.

Chart 2

Ending Balance of the Maine Budget Stabilization Fund as a % of General Fund Revenue



Source: Maine State Legislature. Office of Fiscal and Program Review, Compendium of State Fiscal Information, Jan. 2006.

In 2005, the ending balance was just 1.7 percent of General Fund Revenue, down from the high and statutory cap of 6 percent, in 2001 (see Chart 2). The Governor's Supplemental Budget proposes to place $35 million in the Budget Stabilization Fund, in 2007. Of course, the same budget also proposed to undo a budget gimmick from 2005, in which the Legislature in essence, created money out of thin air to balance the books in 2006. The Legislature achieved this by loaning some money to the 2006 budget from the 2007 resources.[12]

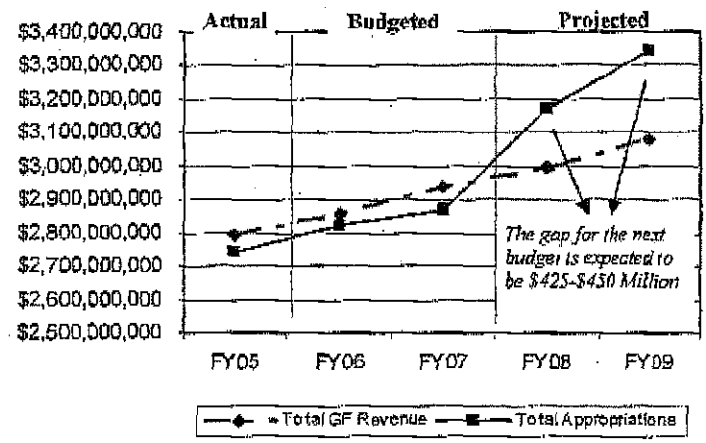
Unfortunately, that plan backfired. The state coffers swelled, making the loan unnecessary. Here comes the best part: as a result of the legal requirements governing budget resources, a law was triggered that would automatically move the "loan" money to the Maine Budget Stabilization Fund.[13] Unfortunately for Maine taxpayers, that money will likely never make it to the Maine Budget Stabilization Fund. The Governor proposed to "undo" the "loan," which triggered the transfer. At the end of the day, he can claim $35 million more for the Maine Budget Stabilization Fund, but in truth, more than **$7 million** was cut in reserve revenue from what would have transpired if the dubious borrowing never happened.[14]

The Structural Gap

What about the next biennium? Will Maine be on the right track to move toward the middle of the pack in the next budget? One excellent barometer of future budget stability can be found in the structural gap analysis provided by the Office of Fiscal and Program Review in the ***Structural Gap Estimate: March 2006.***

Chart 3

General Fund Structural Gap



Source: Maine State Legislature. Office of Fiscal and Program Review.

> *"Despite revenue revisions increasing 2008-2009 General Fund revenue projections by almost $50 million, updated estimates of the costs of General Purpose Aid for Local Schools and Medicaid/ MaineCare programs result in virtually no net change in the General Fund structural gap estimate of* ***$425 to $450 million*** *released after the 1st Regular and 1st Special Sessions of the 122nd Legislature.*
>
> *The extent of the future imbalances will depend largely on the decisions regarding the use of the current biennium budgeted ending balance of $113.1 million and the initiatives used to address the 2008-2009 General Fund structural balance. Even assuming that GPA growth declines dramatically in the 2010-2011 biennium and that the methods to balance the 2008-2009 biennium do not exacerbate the gap further,* ***the 2010-2011 structural gap may exceed $600 million*** *based on longer term projections of revenue growth and spending needs."*[15]

It is not difficult to pinpoint the drivers in the structural gap. MaineCare spending is projected to grow nearly 25 percent in FY08-FY09 and education spending is expected to grow by almost 20 percent.[16] Fiscal restraint seems highly unlikely if the past decade is any indication of future performance.

Conclusion

In the end, whether it is the **ballooning debt**, the **expanding per capita tax burden**, the **anemic reserves** for rainy days, or the **ominous structural gap** forecast, there is little hope that Maine will ever see a lower tax burden as long as these four fiscal challenges continue to plague the Maine taxpayer.

Methodology

The total state debt number was calculated based on state debt incurred by the Maine State Legislature. General Obligation Bonds were not included in the calculation because those bonds were not only approved by the Legislature, but also, approved by the Maine voters. The voter approval legally obligates Maine government to issue the debt. However, all other outstanding debt is the direct result of legislative action. Currently, Maine has $487 million in outstanding General Obligation Bonds.[17]

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2. IBID.
3. Maine State Legislature, Office of Fiscal and Program Review, *Compendium of State Fiscal Information*, Jan. 2006.
4. Maine Hospital Association, *Testimony in Support of LD 1968.* http://www.themha.org/advocacy/2006supplementalbudget.htm
5. MRSA, section 7301.
6. Tax Foundation, *Tax Freedom Day Report*, 2002-2005.
7. Maine State Legislature, Office of Fiscal and Program Review, *State and Local Tax Burden.* http://www.maine.gov/legis/ofpr/taxinfomain.htm.
8. Maine State Legislature, Office of Fiscal and Program Review, *LD 1968, Governor's 2006 - 2007 Supplemental Budget 122nd Legislature. 2nd Regular Session.*
9. IBID.
10. Maine State Legislature, Office of Fiscal and Program Review, *Compendium of State Fiscal Information*, Jan. 2006.
11. Maine State Legislature, Office of Fiscal and Program Review, *Structural Gap Estimate: March 2006.*
12. State of Maine, Bureau of the Budget, *2006-2007 Biennium Budget.*
13. Maine State Legislature, Office of Fiscal and Program Review, *Compendium of State Fiscal Information*, Jan. 2006.
14. Maine State Legislature, Office of Fiscal and Program Review, *Overview of the Governor's 2006-07 Supplemental Budget*
15. Maine State Legislature, Office of Fiscal and Program Review, *Structural Gap Estimate: March 2006.*
16. IBID.
17. Maine State Legislature, Office of Fiscal and Program Review, *Compendium of State Fiscal Information*, Jan. 2006.

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The Maine View is a publication of The Maine Heritage Policy Center that provides research, historical perspective, updates and commentary on current public policy issues. All information is from sources considered reliable, but may be subject to inaccuracies, omissions, and modifications.

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Bangor Daily News

Thursday, July 07, 2005

TABOR tames runaway spending

Writing about Colorado's Taxpayer Bill of Rights (TABOR), the Bangor Daily News recently editorialized that Coloradans find our tax limitation measure "difficult to accept." Hardly. TABOR was passed by a vote of the people in 1992 and has proven effective in putting the brakes on runaway government spending.

I have been, and remain, a strong supporter of TABOR. I have strongly encouraged taxpayer leaders in other states, including the good folks at The Maine Heritage Policy Center, to work for the enactment of similar measures. TABOR works because it prevents the kind of government spending - and higher taxes - that have plagued Maine and other states for years. Moreover, TABOR requires that we ask taxpayers first before government can spend more of their money, or increase their taxes.

Far from a fiscal strait jacket, TABOR is an economic bulletproof vest. And it has served Colorado well, despite the unrelenting attacks from those who seek unfettered government spending. For example, forecasters at "Economy Dot Com" project Colorado job growth in 2005 at 2.8 percent - one percentage point higher than the national average. The FDIC believes 2005 will be the best year in Colorado for new jobs since 2000.

We expect robust income growth, too. Colorado's per capita personal income ranks eighth in the nation. We're in the top ten states for personal income growth, with an expected growth rate of 5.6 percent, up from under 1 percent in 2002.

So, if TABOR is working so well, why am I joining a bipartisan group of Colorado legislators in asking our voters for permission to keep all the excess funds the state will collect over the next five years?

The answers are simple, and straightforward. First, Colorado, like most states, was hit hard by the recent recession and the 9-11 terrorist attacks. As a result, our state suffered an unprecedented two-year, 17 percent drop in revenue. The TABOR spending caps matter only when there is excess revenue - revenue that we then rebate to taxpayers. We lacked the revenue to hit the TABOR caps, so - until this year - TABOR has not been an issue. We did cut upward of $1 billion from our budget, but that was to have spending match our lesser revenue because we are Constitutionally required to balance our budget.

Secondly, Colorado voters in 2000 approved a Constitutional amendment that requires substantial increases in public education spending - regardless of whether our revenue is up or down. This narrow and difficult requirement, coupled with soaring expenses on the federal Medicaid mandate, deepened our fiscal challenges. Again, TABOR wasn't the problem.

This unprecedented revenue drop did, however, expose an unforeseen flaw in the design of TABOR: it prevents the state budget from recovering in the wake of a recession. While Colorado government was required to cut during the downturn, we have no way to more appropriately fund programs and services now that the economy is stronger. This "ratchet down" effect should be avoided, and Maine's version of TABOR now being considered will include a 20 percent budget stabilization fund that will eliminate the "ratchet down" effect, while still returning 80 percent of revenue over allowable spending to the taxpayers.

So, in order to complete our recovery from the recession, we are asking our voters to allow government to use the additional dollars over the next five years. This isn't due to a problem with TABOR. We're using a key provision of TABOR that allows for flexibility to respond to challenges - provided taxpayers agree. Colorado has seen more than 600 successful TABOR overrides in municipalities, counties, school districts and special districts. This November voters will decide whether the state can retain such revenue for the next five years.

As happened in Colorado when TABOR was originally passed, the big spenders in Maine are out in force predicting all sorts of calamity if your state caps spending and empowers taxpayers. The fact is, TABOR has been a key component in protecting Colorado jobs and our economy, and it could do the same for Maine.

Bill Owens is governor of Colorado.

http://www.bangornews.com/news/templates/?a=116148&z=35

Sun Journal

TABOR will pay dividends for Maine
Sunday, March 26, 2006

A similar adoption in Colorado provided backbone when office-holders felt tempted to overspend.

"Get under the hood and fix the problem."

In 1992 that can-do approach made Ross Perot a presidential contender. Today he is little remembered, while the federal government still has big problems. But the same reforming spirit, the same year, produced a fix-it solution for state government that keeps looking better as time goes by.

It's a powerful idea called the Taxpayer Bill of Rights, or TABOR. Colorado voters, in 1992, fed up with a bloated budget and a lagging economy, tired of the broken promises of politicians, got under the hood and installed TABOR in our state's constitution. The results have been great ever since, for everyone except the special-interest spending lobbyists.

The Taxpayer Bill of Rights has paid dividends in Colorado for job creation, family finances, leaner government, and lower taxes. Its fiscal restraint has provided backbone when office-holders felt tempted. Its flexibility has allowed overrides when special needs arose. No wonder TABOR-type proposals are on the table here in Maine, along with a dozen other states and Washington, D.C. Quite simply, TABOR works.

Colorado's amendment isn't complicated. It requires voter approval before state or local government can impose a tax, increase a tax, or go into debt. It limits this year's increase of government spending to the sum of last year's actual spending, plus inflation and population growth. Any revenue above the limit becomes a tax refund, unless voters approve spending it. These do's and don'ts, along with a 3 percent emergency reserve, are TABOR in brief.

Now about those dividends: Start with more than $3 billion in tax refunds to hard-working Coloradans since the 1990s, mandated by the TABOR formula. Add another half-billion dollars in permanent tax cuts, passed by the legislature to avoid collecting revenues we couldn't constitutionally keep. Include the halt in runaway state spending, which grew at exactly the rate of inflation and population in the decade after TABOR, after growing at twice that pace in the decade before.

Colorado's private-sector jobs, conversely, increased faster than government jobs in the decade after TABOR, after trailing badly in the decade before. Gross state product per capita expanded 20 percent more than the national average in the decade since. Our state now ranks at or near the top in nearly every index of economic vitality and business climate.

As for the flexibility and overrides that I mentioned, those were illustrated in the 2005 election.

As the state rebounds from weak revenues after the dot-com bust and the 9/11 recession, Coloradans at the ballot box said "no thanks" to their scheduled TABOR refund through 2011, and "yes" to a bipartisan legislative plan for extra budget breathing room.

Roads, schools, college and low-income health care will see extra dollars as a result, making up for the recent squeeze. As a budget hawk and former senate leader, I didn't support the plan. But some prominent Republicans, including my fellow conservative, Gov. Bill Owens, did - and 52 percent of the people saw it their way.

Let the record be clear, however. Even though Gov. Owens and I disagreed on this ballot issue, we agree as TABOR supporters. We're both glad that in Colorado these tax and spending decisions are up to all the people, not just a few politicians as in other states. Last year's statewide vote was an example of how the Taxpayer Bill of Rights lives up to its name - letting the folks who rightfully earned the money direct its use - and of this the governor and I feel proud.

So is TABOR perfect? Obviously not. Adam himself, some say, was only a rough draft. Colorado's emergency reserve provision could be improved. Our formula basing each year's new budget on the previous year's actual amount was deemed overly restrictive in tough economic times, so the 2005 vote revised it. A loophole in our spending limit, obtained by teacher unions in an earlier 2000 vote, cries out for revising as well.

Yet our amendment has clearly made all Coloradans better off, and it's logical that something similar, adapted for differing circumstances, could do the same for our friends in Maine.

Thomas Jefferson said that the natural progress of things is for government to increase and liberty to decrease. A good way to fight that tendency, so alarming today, is get under the hood and install a Taxpayer Bill of Rights.

John Andrews was president of the Colorado Senate from 2003-2005. He is now a fellow of the Claremont Institute, a conservative think tank.

http://www.sunjournal.com/opinion/letters/20060326075.php#

January, 2006

Comparing Maine & Colorado

	Maine	Colorado	Data Source
1990 Est. Population	1,227,928 (Rank 40th)	3,294,394 (Rank 24th)	U. S. Census
2005 est. Population	1,321,505 (Rank: 40th)	4,665,177 (Rank 22nd)	U. S. Census
US Census Projections for 2000-2030 Population Growth (U. S. Average 29.2%)	1,411,097 – 10.7% growth (Rank: 33rd in growth)	5,792,357 – 34.7% growth (Rank: 14th in growth)	U. S. Census
% Growth 90-05	7.62%	41.6%	U. S. Census
Median Age	40.7	34.5	U. S. Census
% of population under 5 years old (U.S. Average 7.0%)	5.4% (rank: 50th)	7.5% (Rank: 20th)	U. S. Census
Birth Rate (U. S. Average 14.1)	10.2 (Rank: 50th)	15.2 (Rank 7th)	National Center for Health Statistics
Total Sq. Miles (Land & Water)	33,741 (Rank: 39th)	104,100 (Rank: 8th)	U. S. Census
Total persons per square mile, 1990	40 (30,861 sq. land miles)	32 (103,676 sq. land miles)	U. S. Census
Total Persons per square Mile, 2005	43 (30,861 sq. land miles)	45 (103,676 sq. land miles)	U. S. Census
%age of population in labor force over age 16	66.9% (Rank 24th)	70.7% (Rank 7th)	U.S. Census
Personal Income per Capita	$29,973 (Rank: 34th)	$36,109 (Rank: 9th)	Bureau of Economic Analysis
Median Household Income	$42,163	$48,198	U. S. Census
Poverty Rate	12.30%	11.10%	U. S. Census
Personal Income Growth 2004-2005 (U. S. Avg. 7.7%)	6.7% (Rank 43rd)	8.4% (Rank 15th)	Bureau of Economic Analysis
Top Marginal Income Tax Rate and Top Tax Bracket for Single Filers	8.5% >$18,250	4.63% of federal taxable income	Tax Foundation
State Tax Collections Per Capita	$2,199.51	$1,532.59	U. S. Census
State Sales Tax Rate	5.0%	2.90%	Tax Foundation
Property Tax as a Share of Personal Income	5.27%	2.74%	N.H. Office of Business and Economic Development
Gasoline (Fuel) Tax	$0.252	$0.220	Tax Foundation
Tax Burden (combined State & Local as a % of personal income)	13.0%	9.5%	Tax Foundation

Demographic	Maine	Colorado	Data Source
Unemployment Insurance Tax (per employee)	$174	$252	N.H. Office of Business and Economic Development
Unemployment Rate	4.9%	5.5%	Bureau of Labor Services
Worker's Comp as a %age of Covered Wages	2.30%	2.73%	N.H. Office of Business and Economic Development
Total Gross State Product in 2004 in millions of dollars	$43,336	$199,969	Bureau of Economic Analysis
Growth Rate in Real Gross State Product 1997-2004	2.2% (Rank: 33rd)	4.4% (Rank: 5th)	Bureau of Economic Analysis
Small Business Survival Ranking	49th	9th	Small Business & Entrepreneurship Council
SAT Scores	1006	1107	The College Board
SAT Participation Rate	76%	27%	The College Board
ACT Scores	22.6	20.3	ACT
ACT Participation Rate	9%	100%	ACT
Percent with HS Diplomas (25+ years old)	88.3%	88.1%	U. S. Census
Percent with Bachelor's Degree or higher (25+ years old)	25.9%	34.7%	U. S. Census
Average Teacher Salary 02-03	$38,518 (Rank: 35th)	$42,679 (Rank: 22nd)	American Federation of Teachers
Students enrolled per teacher (US Avg. : 15.7)	12.8 (Rank: 4th fewest)	16.6 (Rank: 38th fewest)	National Education Association
Percentage Change in Public School Enrollment '01-'02 (US Avg. 0.9%)	-0.6% growth (42nd highest)	1.3% growth (10th highest)	National Education Association
Health Care Cost Relative to US Average	1.1	0.9	N. H. Office of Business and Economic Development
Medicaid Enrollment	258,686	378,416	Centers for Medicare and Medicaid Services
Percent on Medicaid	19.64%	8.22%	Centers for Medicare & Medicaid Services & U.S. Census
***Percent not covered by* Health Insurance**	10.4%	17.2%	U. S. Census

March 25, 2005

An Analysis of Misleading Attacks on Colorado's Taxpayer Bill of Rights

by Chris Atkins

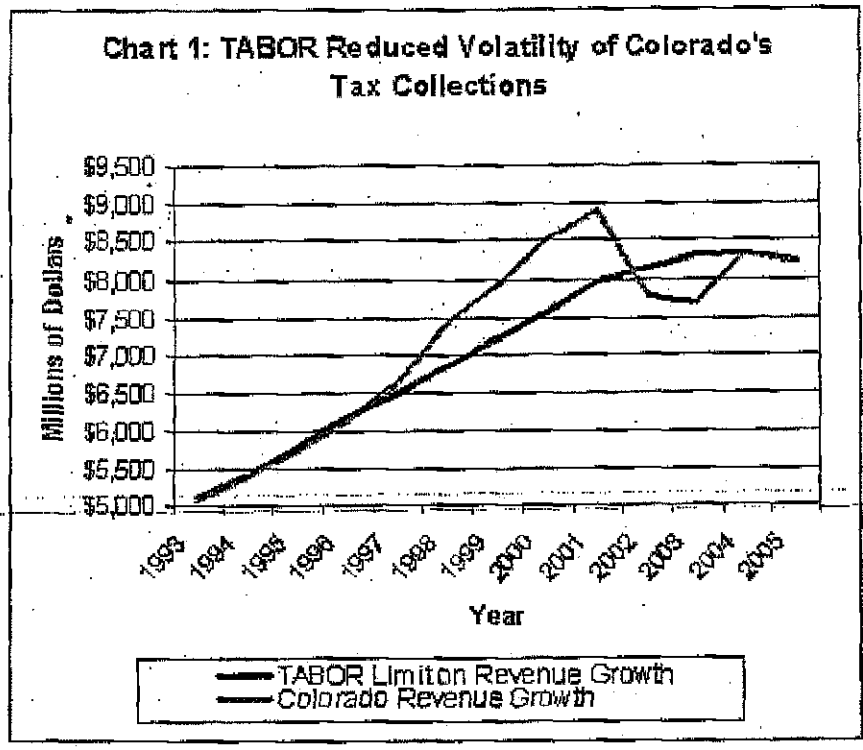
I. Introduction

The state of Colorado is under assault. Opponents of Colorado's Taxpayer Bill of Rights (TABOR) are waging a well coordinated but misleading attack on Colorado's reputation. This attack takes the form of a number of rankings and statistics that purport to show that the Taxpayer Bill of Rights has decimated Colorado. These rankings and statistics are based on the assumption that if Colorado ranks poorly on things like the adequacy of prenatal care and education spending, then Colorado is failing to adequately care for and educate its citizens, and that the Taxpayer Bill of Rights must be to blame. A closer look at the attacks shows that they fail to prove that the amount a state spends on health care and education determines quality, and they also fail to tell the whole truth about the rankings and statistics of the state of Colorado.

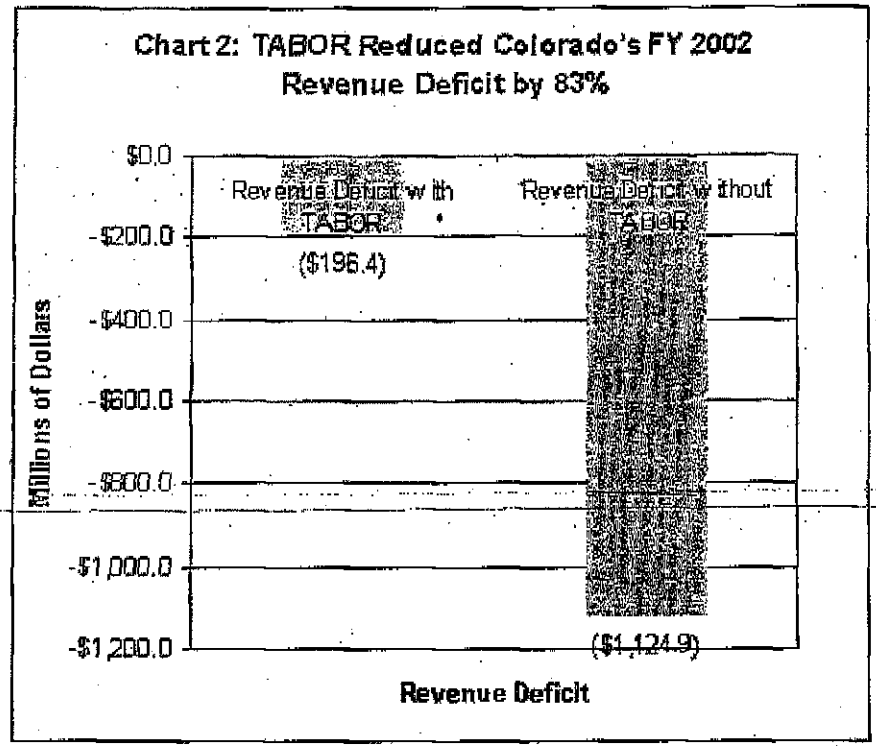
II. Budget Problems

The claim: The Taxpayer Bill of Rights magnified the effect of the recession on the Colorado budget, forcing more than $1 billion in cuts.1

The facts: The Taxpayer Bill of Rights allows Colorado revenues to grow at the same rate as population plus inflation, requiring revenues in excess to be returned to the taxpayers. When revenue growth dips below the allowed rate, the budget must "ratchet down" its spending to the level of revenues, unless tax increases are approved. This happened in every state where revenues declined, since all states except Vermont are constitutionally required to balance their budgets. What makes Colorado different, though, is that the impact of the revenue decline was mitigated by the Taxpayer Bill of Rights in the good years (see chart 1). Where most states spent all or nearly all available revenues, Colorado had to return surplus revenues to the taxpayers. Thus, the revenue decline in Colorado did not hurt as much because the state was not allowed to spend all the money it collected during the good times. In fact, had Colorado spent all surplus revenues, the deficit would likely have been much worse.



In 2001, Colorado received $8.9 billion in revenues, but had to return over $1 billion because TABOR only allowed the state to keep and spend $7.9 billion.2 Thus, when revenues dropped to $7.8 billion in 2002, the state's revenue deficit was actually $196.4 million (the difference between actual revenues in 2002 and the TABOR limit in FY 2001) instead of $1.124 billion (the difference between actual revenues in 2002 and 2001). (See chart 2.). States without tax and spending limits would have spent almost the entire $8.9 billion the previous year, making the revenue decline much more painful (by forcing the states to cut spending). TABOR saved Colorado from a more severe revenue shortfall and smoothed Colorado's spending over the business cycle.



The charge that the Taxpayer Bill of Rights magnified the effect of the budget crisis also overlooks the role that mandated spending increases played in worsening Colorado's deficit. Amendment 23, passed by voters in 2000, requires the state to increase education spending by the rate of population growth plus one percent every year from 2001-2011—regardless of whether the state's revenues increase or decrease. It carves out a special source of funds for education—7.2 percent of personal income tax revenues—and places those funds in a special education trust.3 Amendment 23 puts a major squeeze on other parts of Colorado's budget, like higher education, which are funded from the part of the budget still subject to the limits of the Taxpayer Bill of Rights.Even if we grant the claim that the Taxpayer Bill of Rights somehow can be blamed for starving Colorado of needed revenues, it allows state lawmakers to spend above and beyond its limits if the voters approve. The voters can even approve statutory tax increases to raise revenues above and beyond Colorado's current revenue stream. All lawmakers have to do is ask permission to raise taxes.

The claim: Because TABOR required very large tax refunds in the boom years, the state was unable to put money into a rainy day fund or make other investments that could have eased the crisis when it arrived.4

The facts: The Taxpayer Bill of Rights did not stop Colorado from saving money in a rainy day fund. Colorado already has several reserve funds at its disposal, including a statutory reserve equal to 4 percent of appropriations, to be used in case of revenue shortfalls (though the money has to be replaced in the future).5 Lawmakers spent a large portion of this reserve on capital construction, an unsustainable course during a revenue shortfall.6 The Taxpayer Bill of Rights also requires the state to set aside an emergency reserve fund, to be used in case of natural disasters. Finally, the Taxpayer Bill of Rights allows Colorado lawmakers to ask the voters to keep surplus revenues to use in a rainy day fund.

III. Health

The claim: *Colorado ranks 48th in prenatal care.*7

The facts: Colorado ranks as the 13th healthiest state in the country, according to a 2004 survey conducted by United Health Foundation.8 Prenatal care was one of 18 sub-rankings used to compile the total ranking, and the only area where Colorado was cited for needing improvement.9 In every single other area of health measured by the rankings—obesity, smoking, crime, disease, poverty, etc.— Colorado ranked in the upper or middletier of all states. If you accept these rankings as adequate measures of a state's health, then Colorado is a healthy state. Furthermore, nothing indicates that the Taxpayer Bill of Rights caused the low ranking on prenatal care, or that a low ranking means that Colorado is failing to provide adequate prenatal care.

The claim: *The share of low-income individuals enrolled in Medicaid is lower than in all but five other states.*10

The facts: To the extent that the level of Medicaid enrollment and payment per enrollee connote high quality health care (and there are serious questions about whether they do), Colorado overall compares favorably to other states. Colorado had the second-fastest increase in Medicaid recipients (45 percent) of any Rocky Mountain state between 1996 and 2001.11 Colorado's increase in Medicaid recipients was also well above the national average of 27 percent.12 Furthermore, Colorado's payment per Medicaid recipient was third among Rocky Mountain states in 1990 ($2,705) but rose to first among Rocky Mountain states in 2001 ($4,969).13

The claim: The percentage of low-income Colorado children who lack health insurance rose *from 15 percent in 1991-92 to 27 percent in 2002-03.*14

The facts : While the percentage of low-income children without insurance did rise in Colorado over the period, studies by both the Centers for Medicare and Medicaid Services (CMS) and the Kaiser Commission have concluded the rise has nothing to do with tax and spending restrictions in the Taxpayer Bill of Rights. CMS attributes the rise of uninsured children in the 1990s to the fact that employers are dropping their coverage.15 The Kaiser Commission says that many children are uninsured simply because their parents are not aware they are eligible for Medicaid coverage.16 Neither reason has anything to do with the Taxpayer Bill of Rights in Colorado. Furthermore, Colorado has respectful rankings on other measures of covering the uninsured. Colorado's number of persons under 65 that lack health insurance is 17.8 percent, just above the national average of 17.2 percent.17 Among Rocky Mountain states, Colorado has the second-lowest number of uninsured persons under 65, up from the third-lowest number in 1987.18 Assuming that these rankings have anything to do with the quality of health care received by Colorado's citizens, or that the Taxpayer Bill of Rights has any impact on these rankings, Colorado compares favorably to other states.

IV. K-12 Education

The claim: Colorado teachers make less than the national average, and are paid poorly relative to the private sector.19

The facts: Colorado ranked 22nd in average teacher salary in 2003, with salaries up 5 percent from 2002.20 Colorado also had the highest average instructional salary of any state in the Rocky Mountain region during 2003-2004.21 While there is little evidence that average teacher salary correlates with education outcomes, Colorado teachers are not underpaid by any reasonable standard.

The claim: Colorado ranks 47th in K-12 education spending as a share of personal income.22

The facts: In a study by the National Education Association (NEA) on nineteen different measures of school expenditures, Colorado ranked, on average, 27th in school spending.23 The measure of education spending as a share of personal income is only one of these nineteen rankings, which include measures such as education spending per student enrolled and per capita education spending. Colorado's ranking of 4th is its lowest ranking in any of the nineteen separate ranking tables. Colorado averages 27th in all nineteen tables, doing very well in per capita state and local capital spending for higher education (6th) and per capita state and local capital spending for K-12 (7th). Colorado is, by these measures, an average state when it comes to education spending, not near the bottom.

Furthermore, the amount a state spends does not guarantee a quality education. Research by the American Legislative Exchange Council (ALEC) shows that there is virtually no correlation between how much a state spends on education and the scores achieved by its students on standardized tests.24 For instance, the District of Columbia ranks second in per-pupil expenditures, but ranks last in test scores on the NAEP, ACT and SAT.25 If one only looks at per-pupil expenditures, one could erroneously conclude that the District of Columbia is providing a good education for its students.

The claim: Colorado's high school graduation rate fell from 76 percent in 1990 to 70 percent in 2004.26

The facts: Looking at graduation rate data provided by the Colorado Department of Education (CDE) paints a different picture. According to data collected and reported by CDE, Colorado's graduation rate in 1997 (the year Colorado taxpayers started receiving automatic tax refunds under the Taxpayer Bill of Rights) was 78.5 percent.27 In 2000, the graduation rate reached 80.9 percent.28 In 2003, the graduation rate was measured at 83.6 percent.29 Thus, looking at graduation rates as measured by Colorado's own education agency, Colorado is steadily graduating more students under the Taxpayer Bill of Rights, not fewer.30

It is true that Colorado's high school graduation rate fell by 6 percent from 1990 to 2004, as reported by the United Health Foundation, which relied on the National Center for Education Statistics for its graduation rate data. However, the rate was as low as 68 percent in 1998 and has been edging back up in recent years (to the current 70 percent).31 Furthermore, United Health Foundation reports that the overall graduation rate in the United States is declining, and has been declining since 1990—two years before the Taxpayer Bill of Rights was enacted.32 Colorado is following the national trend, and no evidence is presented to suggest that the Taxpayer Bill of Rights is to blame, or that a high graduation rate necessarily implies that the state is educating its students well. Colorado compares favorably to other states in other graduation statistics. Colorado's 70 percent graduation rate in 2004 (up from 69.3 percent in 2003), according to the United Health Foundation, ranked 30th among all states, down only two spots from 28th in 1990.33 Colorado also ranked 2nd in the percentage increase in high school graduates (59.3 percent) from 1992-1993 (the school year during which the Taxpayer Bill of Rights became law) to 2002-2003.34 Furthermore, Colorado overall ranks well in test scores: 13 th on NAEP, 42nd in ACT, and 19th on SAT.35 To the extent that these measures allow us to say that Colorado is educating its students well, it appears that Colorado compares favorably to other states.

V. Higher Education

The claim: Colorado ranks 48th in the nation for state funds for higher education per $1,000 of personal income.36

The facts: Colorado does rank 48th among states in funds spent on higher education as a share of personal income. It is misleading, however, to use this ranking to suggest that Colorado has a poor higher education system, and even more misleading to suggest that it has anything to do with the Taxpayer Bill of Rights. Colorado also ranks 2nd in total higher-ed instruction staff per 10,000 students.37 Colorado ranks 12th in total higher-ed instructional staff per 10,000 population.38 Colorado also had very high growth in per capita personal income from 1993-2003 (4.6 percent), exceeding the national average of 4.0 percent.39 The Taxpayer Bill of Rights has also kept tuition increases at Colorado universities in check.40 According to information from the University of Colorado, Colorado residents pay $1,200 less in tuition than residents of other states at comparable institutions.41 Residential tuition, according to the University of Colorado, has been falling steadily since 1991, the year before the Taxpayer Bill of Rights was enacted.42

VI. Conclusion

Contrary to the assertions of its opponents, the Taxpayer Bill of Rights has not decimated Colorado. In other measures of fiscal standing, not mentioned by the opponents of the Taxpayer Bill of Rights, Colorado compares very favorably to other states. Colorado's per capita tax burden is the tenth lowest in the nation,43 ranks as the 8th friendliest business-tax climate (the highest ranking of any state with a sales tax and a corporate and personal income tax),44 and ranks as the state with the 2nd highest level of economic freedom.45 It is simply inaccurate to say that Colorado is a sub-standard state based on selectively cited statistics and national rankings, and even more inaccurate to blame the Taxpayer Bill of Rights for any perceived inadequacies.

Footnotes

1. *See* Nicholas Johnson and David Bradley, *Public Services and TABOR in Colorado*, Center on Budget and Policy Priorities (January 2005), located at http://www.cbpp.org/1-13-05sfp2.htm.
2. *See The TABOR Surplus and TABOR Refund Mechanisms*, Colorado Office of State Planning and Budget (September 2004), located at http://www.state.co.us/gov_dir/govnr_dir/ospb/specialreports/taborsurplus-sep2004.pdf.
3. *See* Mike Coffman, *The Budget and the Constitution: Amendment 23*, 4 Tresur E-Notes 16 (April 23, 2002), located at http://www.treasurer.state.co.us/news/enotes/2003/budget__the_constitution_Amendment23.htm.
4. *See* Nicholas Johnson and Karen Lyons, *Is Colorado's TABOR Creating Jobs?*, Center on Budget and Policy Priorities (1/13/2005), located at http://www.cbpp.org/1-13-05sfp.htm.
5. *See* Chris Ward, *The Big Picture—An Overview of State Finances*, Colorado Legislative Council Issue Brief Number 98-4 (1/30/1998), located at http://www.state.co.us/gov_dir/leg_dir/lcsstaff/research/issuebrf-bigpic.htm.
6. *See TABOR Legislative Handbook*, at 2, Independence Institute (January, 2000).
7. *See* Johnson and Bradley, supra note 1.
8. http://www.unitedhealthfoundation.org/shr2004/states/Colorado.html
9. Incidentally, Colorado ranked 16 th in infant mortality even though it was 48 th in providing pre-natal care.
10. *See* Johnson and Bradley, supra note 1.
11. Calculations based on data on Medicaid recipients published by Centers for Disease Control, National Center for Health Statistics, Health, United States, 2004, Table 151.
12. *See* Id.
13. Id.
14. *See* Johnson and Bradley, supra note 1.
15. *See* CMS website, located at http://www.cms.hhs.gov/schip/default.asp?.
16. *See The Uninsured: A Primer*, at 5, Kaiser Commission on Medicaid and the Uninsured (November, 2004), located at http://www.kff.org/uninsured/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=50811.
17. *See* CDC statistics, supra note 11, at table 153.
18. Id.
19. *See* Johnson and Bradley, supra note 1.
20. *See* American Federation of Teachers' salary statistics, located at http://www.aft.org/salary/2003/download/2003Table1.pdf.
21. *See* National Education Association statistics on teacher salary, summary table G, located at http://www.nea.org/edstats/images/04rankings.pdf.
22. *See* Johnson and Bradley, supra note 1.
23. Author's calculation of average rankings in NEA study on school expenditures, infra note 34.
24. *See* ALEC Report Card on Education, infra note 35.
25. *See* Id. at 17.
26. *See* Johnson and Bradley, supra note 1.
27. http://www.cde.state.co.us/cdereval/download/pdf/4YearTrendGradRates.PDF.
28. *See* id.
29. http://www.cde.state.co.us/cdereval/rv2003GradLinks.htm.

30. CDE does not analyze where Colorado ranks among other states in graduation rates. For the purposes of this analysis, however, this is irrelevant, since TABOR opponents are trying to show that TABOR is leading to lower graduation rates in Colorado.
31. *See* Jay P. Greene, *High School Graduation Rates in the United States*, Black Alliance for Educational Options, Table 1 (November, 2001), located at http://www.manhattan-institute.org/html/cr_baeo.htm.
32. http://www.unitedhealthfoundation.org/shr2004/components/hsgrad.html ("The national average is 68.3 percent, up 1.0 percent from the past year but lower than the 1990 rate of 72.9 percent."). *See also* graphic on lower left corner of page.
33. *See* United Health rankings, supra note 8.
34. *See* National Education Association statistics on graduation, located at http://www.nea.org/edstats/images/04rankings.pdf.
35. *See* ALEC Report Card on Education, located at http://www.alec.org/meSWFiles/pdf/2004_Report_Card_on_Education.pdf.
36. *See* Johnson and Bradley, supra note 1.
37. NEA educational statistics, supra note 34, at table C-3.
38. *See* id. at table C-4.
39. *See* Bureau of Economic Analysis BEARFACTS 1993-2003, located at http://www.bea.doc.gov/bea/regional/bearfacts/stateaction.cfm.
40. *See Owens Threatens Veto of Proposed College Tuition Hikes*, Associated Press (3/5/2005, located at http://news4colorado.com/colorado/CO-XGR--HigherEducati-dn/resources_news_html ("The Taxpayers Bill of Rights, a constitutional amendment capping taxes and spending, has previously limited tuition increases because any extra tuition might trigger a refund required if those caps are exceeded.").
41. *See* Question and Answer with Chancellor of the University of Colorado, located at http://www.colorado.edu/chancellor/quality4colo/quality4coloQA.html.
42. *See* id.
43. http://www.taxfoundation.org/colorado/statelocal-co.html
44. *See* Scott Hodge and Scott Moody, *2004 State Business Tax Climate Index*, Tax Foundation (2004), at table 2. 45. *See* Ying Huang, Robert McCormick, and Lawrence J. McQuillan, *Economic Freedom Index: 2004*, Pacific Research Institute for Public Policy (2004).

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ATTORNEYS AT LAW

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May 12, 2009

Jonathan Wayne, Executive Director
State of Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333-0135

RE: Carl Lindemann's March 5, 2007 Complaint & April 28, 2009 Complaint

Dear Mr. Wayne:

As stated in my letter of March 21, 2008, I believe the appropriate procedure for consideration of Mr. Lindemann's March 5, 2007 complaint is for the Commission to make a preliminary determination as to whether or not the complaint satisfies the requirements of 21-A M.R.S.A. §1003. As a result, I do not wish to provide any additional written materials at this time and refer the Commission and Commission staff to my March 21, 2008 letter and the comments that I made at the March 30, 2008 Commission meeting, a transcript of which Mr. Lindemann included as part of his April 28, 2009 submission.

As to Mr. Lindemann's new complaint alleging that the Maine Heritage Policy Center ("MHPC") has made material false statements to the Commission, the Commission should take no action on the matter because (1) the Commission has already considered the allegations; (2) the complaint is not timely; and (3) the statutes governing the Commission's activities do not anticipate that investigations of such matters will result from a citizen's complaint.

The Commission considered Mr. Lindemann's initial complaint against MHPC in 2006. At the Commission meetings held on December 12, 2008 and December 20, 2006, Mr. Lindemann and his then counsel repeatedly accused MHPC of lying to the Commission. Mr. Lindemann's allegation of MHPC presenting false information to the Commission was one of his central arguments for the Commission to conduct a further investigation into MHPC's activities, including issuing subpoenas and taking testimony under oath. The request for a further investigation failed on a 2-2 vote. The transcript of the December 20, 2006 meeting shows that Commissioner Friedman specifically asked Mr. Lindemann's counsel about the alleged lies and misrepresentations by MHPC. A review of the transcripts of the two meetings shows that Mr. Lindemann's claim of material misrepresentations by MHPC have previously been presented to the Commission and the Commission decided to take no action after being presented with such information. Having previously dealt with the same issue, the Commission should not now take up the matter again more than 26 months later.

Even if the Commission wants to consider Mr. Lindemann's complaint a new matter, it should not be considered because it is untimely. The statements that form the basis for Mr. Lindemann's complaint are from 2006, but Mr. Lindemann's complaint was not filed with the Commission until April 28, 2009. It is unreasonable to expect the Commission to consider, and for parties to respond to, claims about statements that were made more than two years ago. In addition, the alleged evidence that Mr. Lindemann relies on to support his claims was available to him in 2006. In fact, some of the alleged evidence that he now relies on was presented to the Commission by Mr. Lindemann in 2006. As a result, he could have presented his complaint long ago and simply chose not to do so. This alone justifies the Commission taking no action.

21-A M.R.S.A. §1003 governs the Commission's consideration of requests for investigations:

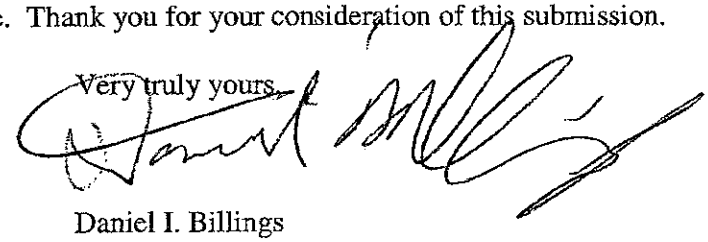
> *A person may apply in writing to the commission requesting an investigation concerning the registration of a candidate, treasurer, political committee or political action committee and contributions by or to and expenditures by a person, candidate, treasurer, political committee or political action committee. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.*

This statute anticipates that investigations concerning registrations, contributions, and expenditures may result from citizen complaints. The statute does not anticipate that investigations concerning alleged material representations will be initiated as a result of a citizen complaint. The Commissions rules governing complaints are consistent with this approach.

The statute cited by Mr. Lindmann does give the Commission authority, on its own, to initiate proceedings regarding material misrepresentations. It would be inappropriate in this case for the Commission to do so now when the Commission was previously presented with allegations of lies and misrepresentations and decided to take no further action. It would also be inappropriate for a Commission that now includes only two of the four members who considered the initial complaint against MHPC to judge whether or not the cited statements were material to the issues considered by the Commission in 2006.

I will be present at the Commission's May 28, 2009 meeting and will be prepared to address these issues at that time. Thank you for your consideration of this submission.

Very truly yours,



Daniel I. Billings

Wayne, Jonathan

From: Carl Lindemann [carl@cyberscene.com]
Sent: Monday, July 13, 2009 12:25 PM
To: Wayne, Jonathan; Dan Billings
Cc: Lavin, Paul; Gardiner, Phyllis
Subject: RE: MHPC Matters
Attachments: Lindemann_MHPC_1056B_2006_E&F.pdf; Lindemann_MFS_Citizens-Guide&Advocacy_Compilation.pdf

Dear Executive Director Wayne,

Thank you for the opportunity to send additional material. As we discussed on the phone, I am sending this along now so as to provide Attorney Billings every opportunity to respond in time for inclusion in the packet going out next week. That would NOT allow me time to respond in time for the packet, but I can do that as needed at the July 30 meeting. Please confirm receipt - I will also send you copies via USPS certified mail.

I have attached two files - one for each of the separate outstanding complaints:

#1 is for the first, the material false statements item (Lindemann_MFS_Citizens-Guide&Advocacy_Compilation.pdf). The first part are files just received from the Secretary of State's office with the application from MHPC's Bill Becker to provide comments in the "Citizen's Guide to the referendum Election" dated August 29, 2006. Note that in TWO separate places Mr. Becker unequivocally indicates that his comments are expressly advocating "in SUPPORT of Question 1." Please note that his comments are included for publication for a $500 fee. The Commission should decide whether this should be treated any differently than any other paid political advertising expressly advocating for a ballot initiative. The files from the Secretary of State's office include the text of Mr. Becker's ad as well as the payment receipts. I also include the Chapter 520 rules governing this publication. Note that it stipulates that only comments that express advocacy can be included. Please note that Mr. Becker did include this expenditure in his organization's 1056-B report.

Also, I include a compilation of Attorney Billings and Mr. Becker's testimony both written and oral where they repeatedly made categorical, blanket denials asserting unequivocally that MHPC had not expressly advocated for TABOR. You may wish to review this for accuracy and completeness. The oral citations are from the original UNCORRECTED transcripts with the exception of some comments from October 31, 2006 that include corrections, for clarity, that are marked.

#2 is for the complaint regarding the accuracy and completeness of MHPC's 1056-B report (Lindemann_MHPC_1056B_2006_E&F.pdf). This includes three documents:

a.) A posting on the "As Maine Goes" website describing a fundraiser for Taxpayerbillofrights.com where Mr. Becker participating "...with one aim in mind - getting the Taxpayer Bill of Rights enacted this November!" This activity appears to be a different kind of expenditure from what is reported on MHPC's 1056-B. It is an in-kind donation to the PAC.
b.) Another posting on "As Maine Goes" that suggests that MHPC's Jason Fortin's activities included media training for volunteers to "clone" Mr. Becker's express advocacy for TABOR at the Cape Elizabeth town council. Such media training appears to be in addition to Mr. Fortin's "Staff Time Allocated To Press Activities" reported.
c.) A excerpt from the Cato Institute's IRS Form 990 for 2006 reporting a $50,000 contribution to MHPC. I also include the list of the organization's Directors including Howard ("Howie") Rich, known to have funded TABOR campaigns across the country that year through numerous organizations. The Commission should determine if this falls under the category of "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 the ballot question."

You may also wish to include Cato's complete Form 990 available here:
http://www.guidestar.org/FinDocuments/2006/237/432/2006-237432162-02d95084-9.pdf

Again, thank you for the opportunity to include these materials. I look forward to Mr. Billings' response.

Sincerely,

-CL

At 09:12 AM 7/13/2009, Wayne, Jonathan wrote:

> It would be fine for you to submit the materials no later than 5:00 p.m. on Thursday, July 16th with the understanding that the attorney for the MHPC will respond to the new information orally or in writing at the July 30th meeting. I was planning on sending the packet to the Commissioners on Tuesday, July 21st, which would not give the MHPC enough time to submit a written response by then.
>
> For your information, the Commission staff is not planning on scheduling anything in connection with Maine Leads for the July 30th meeting. That matter will be scheduled for September 24, 2009 or an alternative date.

From: Carl Lindemann [mailto:carl@cyberscene.com]
Sent: Friday, July 10, 2009 3:53 PM
To: Wayne, Jonathan; Dan Billings
Cc: Lavin, Paul; Gardiner, Phyllis
Subject: Re: MHPC Matters

Dear Executive Director Wayne,

I just want to confirm that I am planning on being in Augusta on the 30th in anticipation of the items I've brought forward being on the agenda.

Also, I was wondering if it were still possible to submit additional documentary evidence that has come forward since May. I believe these are of compelling interest to the Commission.

Sincerely,

-CL

At 08:14 AM 5/19/2009, Wayne, Jonathan wrote:

> This is to confirm that Mr. Lindemann's two requests on the Maine Heritage Policy Center will be postponed until the July 30, 2009 meeting of the Commission because of Mr. Lindemann's inability to travel to Maine for the May meeting. The MHPC's current director, Tarren Bragdon, is unavailable to attend the July meeting, but that's a constraint we will just have to live with.

Carl Lindemann
P.O. Box 74
Austin, TX 78767
http://www.cyberscene.com
(512) 495-1511

"Who seeks gold
digs much earth
and finds little"

-Heracleitus

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TABOR Fundraiser at the Kport Nonantum Resort

Login to post comments No replies

Wed, 08/09/2006 - 8:05pm

Naran
Offline
Joined: 10/06/2004

We had a swell time at the Taxpayer Bill of Rights fundraiser early this evening - it was a gorgeous afternoon, and the setting was enchanting. On the water and surrounded by beauteous gardens; we had nice dwinkies, swanky 'hors-dorvies,' and best of all, Mary Adams and Bill Becker made wonderful presentations to the assembled company.

So good seeing our friends and the assembled faithful from York County in attendance, and all with one aim in mind - getting the Taxpayer Bill of Rights enacted this November!

Thank you, Mary and Bill, for attending, and speaking this evening. Thanks to Jack Wibby for organizing the event, and especially the Nonantum Resort, for hosting us.

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As Maine Goes
Serving Maine Since 1998

Cape forms TABOR task force

http://www.asmainegoes.com/content/cape-forms-tabor-task-force

- Login to post comments

8 replies [Last post]
Thu, 07/20/2006 - 6:03am
HardHat
Offline
Joined: 03/30/2001

CAPE ELIZABETH (July 20, 2006): The first meeting of the TABOR task force created in Cape Elizabeth will be Wednesday, July 26, at 7 p.m. in the Town Hall Chamber.

One of the chairs of the task force, Beth Currier, said the group will be an unbiased body charged with educating the town about pros and cons of the Taxpayer Bill of Rights, the citizen initiative Maine residents will vote on in November's election.

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Thu, 07/20/2006 - 6:10am
#1
Jack Wibby
Offline
Joined: 01/30/2004

"Unbiased" I'll cover all bets that the town council and the school department will take the stand that the Maine Taxpayer Bill of Rights, if enacted, will cut the school budget and devastate the schools.

And the truth will be ignored by those who wish to have unlimited spending on their kids.

The truth, however, is that this Bill does not cut spending, no matter what. The spending limitations apply only to increases in spending.

Jack

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Thu, 07/20/2006 - 6:15am
#2
Bob Stone
Offline
Joined: 06/08/2003

Well, at least they are willing to LISTEN to Bill, unlike a major newspaper in this state.

Currier is still "undecided"? I guess she is one of the 4%. :wink:

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Thu, 07/20/2006 - 7:42am
#3
eagleisland
Offline
Joined: 04/30/2005
Bob Stone wrote:

> Well, at least they are willing to LISTEN to Bill, unlike a major newspaper in this state.

Currier is still "undecided"? I guess she is one of the 4%. :wink:

Roger that. I was skeptical when I saw the header but it does look like these folks are at least trying to do their homework. Hat's off to 'em.

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Thu, 07/20/2006 - 9:06am
#4
Steven Scharf
Offline
Joined: 01/28/2002

There are friends planning to be part of this discussion.

The Cape School Board has already pased a resolution opposing the Taxpayer Bill of Rights.

There are at least three republicans on the Cape Council. We need to make sure they are educated.

Steven Scharf
SCSMedia@aol.com

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Thu, 07/20/2006 - 9:15am
#5
Naran
Offline
Joined: 10/06/2004

Paging Mr. Becker.... Paging Mr. Becker....

Sure wish we could clone him, and hand one out to every community in Maine until November.

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Thu, 07/20/2006 - 9:23am
#6
Steven Scharf
Offline
Joined: 01/28/2002

Were working on it. If you are free for lunch.

The next meeting of the Maine Heritage Policy Center's Maine Issues Forum will be Thursday, July 20 at 12:00 noon, at DiMillo's Floating Restaurant, off Commercial Street in Portland.

The Guest Speaker will be Jason Fortin, Director of Communications for The Maine Heritage Policy Center.

Topic: Communicating the Conservative Message.

If you will be attending, please RSVP by either calling 321-2550 or by sending an e-mail to jfortin@mainepolicy.org. The cost for lunch will be $13 per person, including meal, beverage, tax, and gratuity and is payable at the door.

Steven Scharf
SCSMedia@aol.com

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Thu, 07/20/2006 - 9:35am
#7
Roger Ek
Offline
Joined: 11/18/2002

If they ever have one of these north of the Volvo line with more than 2.5 hours notice let us know.

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Thu, 07/20/2006 - 9:40am
#8
Steven Scharf
Offline
Joined: 01/28/2002

You need to start one. This group is an outgrowth of a monthly lunch meeting that has been happening in South Portland for the last couple of years. MHPC recently took over management of it.

I am sure Jason would love to come up your way to do his talk.

Steven Scharf
SCSMedia@aol.com

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CATO INSTITUTE

23-7432162

FORM 990, PART II - GRANTS AND ALLOCATIONS PAID DURING THE YEAR

RECIPIENT NAME AND ADDRESS	RELATIONSHIP TO SUBSTANTIAL CONTRIBUTOR AND FOUNDATION STATUS OF RECIPIENT	PURPOSE OF GRANT OR CONTRIBUTION	AMOUNT
GRANTS PAID			
AGENCIA INTERAMERICANA 7172 MONTRICO DRIVE BOCA RATON, FL	NONE FOREIGN	TO HELP FUND STUDY ON S.A. CORRUPTION	30,000.
PHILANTHROPY ROUNDTABLE 1150 17TH STREET, NW #503 WASHINGTON, DC 20036	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	5,000.
MANHATTAN INSTITUTE FOR POLICY RESEARCH 52 VANDERBILT AVENUE NEW YORK, NY 10017	NONE 501(C)(3)	TO HELP FUND LIKE MINDED 501(C)(3) ORGS	5,000.
AEI 1150 17TH STREET, NW WASHINGTON, DC 20036	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	10,000.
FUND FOR AMERICAN STUDIES 1706 NEW HAMPSHIRE AVENUE, NW WASHINGTON, DC 20009	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	10,000.
GRANT FOR JIM POWELL 81 GREENS FARMS ROAD WESTPORT, CT 06880	NONE INDIVIDUAL	HOILES FELLOWSHIP	25,000.

FORM 990, PART II - GRANTS AND ALLOCATIONS PAID DURING THE YEAR

RECIPIENT NAME AND ADDRESS	RELATIONSHIP TO SUBSTANTIAL CONTRIBUTOR AND FOUNDATION STATUS OF RECIPIENT	PURPOSE OF GRANT OR CONTRIBUTION	AMOUNT
BLUEGRASS INSTITUTE 400 EAST MAIN STREET, SUITE 306 P.O. BOX 51147 BOWLING GREEN, KY 42102	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	50,000.
CASCADE POLICY INSTITUTE 813 SW ADLER, SUITE 450 PORTLAND, OR 97205	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	25,000.
ETHAN ALLEN INSTITUTE 4836 KIRBY MOUNTAIN ROAD CONCORD, VT 05824	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	50,000.
EVERGREEN FREEDOM FOUNDATION P.O. BOX 552 OLYMPIA, WA 98507	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	100,000.
GRASSROOT INSTITUTE OF HAWAII 1314 SOUTH KING STREET, SUITE 116 HONOLULU, HI 96814	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	40,000.
ILLINOIS POLICY INSTITUTE 718 SOUTH 7TH STREET, SUITE 305 SPRINGFIELD, IL 62703	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	50,000.

FORM 990, PART II - GRANTS AND ALLOCATIONS PAID DURING THE YEAR

RECIPIENT NAME AND ADDRESS	RELATIONSHIP TO SUBSTANTIAL CONTRIBUTOR AND FOUNDATION STATUS OF RECIPIENT	PURPOSE OF GRANT OR CONTRIBUTION	AMOUNT
JAMES MADISON INSTITUTE P.O. BOX 37460 TALLAHASSEE, FL 32315	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	100,000.
JOHN LOCKE FOUNDATION 200 WEST MORGAN STREET, SUITE 200 RALEIGH, NC 27601	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	20,000.
MAINE HERITAGE POLICY CENTER P.O. BOX 7829 PORTLAND, ME 04112	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	50,000.
MARYLAND PUBLIC POLICY INSTITUTE P.O. BOX 195 GERMANTOWN, MD 20875	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	40,000.
NEVADA POLICY RESEARCH INSTITUTE 1700 EAST DESERT INN ROAD, SUITE 405A LAS VEGAS, NV 89109	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	50,000.
OKLAHOMA COUNCIL OF PUBLIC AFFAIRS 1401 NORTH LINCOLN BOULEVARD OKLAHOMA CITY, OK 73104	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	50,000.

FORM 990, PART II - GRANTS AND ALLOCATIONS PAID DURING THE YEAR

RECIPIENT NAME AND ADDRESS	RELATIONSHIP TO SUBSTANTIAL CONTRIBUTOR AND FOUNDATION STATUS OF RECIPIENT	PURPOSE OF GRANT OR CONTRIBUTION	AMOUNT
RIO GRANDE FOUNDATION P.O. BOX 2015 TIJERAS, NM 87059	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	50,000.
SHOW-ME INSTITUTE 7777 BONHOMME AVENUE, SUITE 2150 ST. LOUIS, MO 63105	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	50,000.
SOUTH CAROLINA POLICY EDUCATION 1323 PENDLETON STREET COLUMBIA, SC 29201	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	90,000.
SUTHERLAND INSTITUTE 15 WEST SOUTH TEMPLE STREET SALT LAKE CITY, UT 84101	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	40,000.
TENNESSEE CENTER FOR POLICY P.O. BOX 121331 NASHVILLE, TN 37212	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	50,000.
TEXAS PUBLIC POLICY FOUNDATION 900 CONGRESS AVENUE, SUITE 400 AUSTIN, TX 78701	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	100,000.

FORM 990, PART II - GRANTS AND ALLOCATIONS PAID DURING THE YEAR

RECIPIENT NAME AND ADDRESS	RELATIONSHIP TO SUBSTANTIAL CONTRIBUTOR AND FOUNDATION STATUS OF RECIPIENT	PURPOSE OF GRANT OR CONTRIBUTION	AMOUNT
VIRGINIA INSTITUTE FOR PUBLIC POLICY 7326 EASY MARKER COURT GAINESVILLE, VA 20155	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	25,000.
YANKEE INSTITUTE P.O. BOX 260660 HARTFORD, CT 06126	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	68,000.
THE INDEPENDENT INSTITUTE 13952 DENVER WEST PARKWAY, SUITE 400 GOLDON, CO 80401	NONE 501(C)(3)	TO HELP FUND LIKE-MINDED 501(C)(3) ORGS	60,000.
		TOTAL CONTRIBUTIONS PAID	1,243,000.

FORM 990, PART V-A - CURRENT OFFICERS, DIRECTORS, AND TRUSTEES

NAME AND ADDRESS	TITLE AND TIME DEVOTED TO POSITION	COMPENSATION	CONTRIBUTIONS TO EMPLOYEE BENEFIT PLANS	EXPENSE ACCT AND OTHER ALLOWANCES
FRANK BOND 1000 MASSACHUSETTS AVE., N.W. WASHINGTON, DC 20001-5403	DIRECTOR 3 HRS/WK	NONE	NONE	NONE
RICHARD J. DENNIS 1000 MASSACHUSETTS AVE., N.W. WASHINGTON, DC 20001-5403	DIRECTOR 3 HRS/WK	NONE	NONE	NONE
JOHN C. MALONE 1000 MASSACHUSETTS AVE., N.W. WASHINGTON, DC 20001-5403	DIRECTOR 3 HRS/WK	NONE	NONE	NONE
DAVID H. PADDEN 1000 MASSACHUSETTS AVE., N.W. WASHINGTON, DC 20001-5403	DIRECTOR 3 HRS/WK	NONE	NONE	NONE
LEWIS E. RANDALL 1000 MASSACHUSETTS AVE., N.W. WASHINGTON, DC 20001-5403	DIRECTOR 3 HRS/WK	NONE	NONE	NONE
HOWARD S. RICH 1000 MASSACHUSETTS AVE., N.W. WASHINGTON, DC 20001-5403	DIRECTOR 3 HRS/WK	NONE	NONE	NONE
FREDERICK W. SMITH 1000 MASSACHUSETTS AVE., N.W. WASHINGTON, DC 20001-5403	DIRECTOR 3 HRS/WK	NONE	NONE	NONE
JEFF YASS 1000 MASSACHUSETTS AVE., N.W. WASHINGTON, DC 20001-5403	DIRECTOR 3 HRS/WK	NONE	NONE	NONE