Agenda Item #11

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: July 21, 2009

Re: Carl Lindemann's Request for an Investigation into Alleged Material Misrepresentations

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On April 28, 2009, the Ethics Commission received a request from Carl Lindemann that the Commission immediately investigate whether the Maine Heritage Policy Center (MHPC) has made material false statements to the Commission in responding to Mr. Lindemann's complaints. He specifically asks the Commission to find that the MHPC has violated 21-A M.R.S.A. § 1004-A(5) (attached) by making material false statements to the Commission.

In the view of the Commission staff, this section of statute was enacted to encourage respondents to provide truthful information to the Commission. Any enforcement action under this statute, however, would most appropriately be initiated by the Commission, not by a source outside the Commission. In our view, enforcement actions brought under 21-A M.R.S.A. § 1004-A(5) should be reserved for the most stark, serious instances of misrepresentations to the Commission.

The Commission is required by 21-A M.R.S.A. § 1003(2) to consider requests that the Commission investigate registrations or financial activity by candidates or political committees. It is not required to consider requests that the Commission investigate allegations of false statements.

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The Commission staff recommends taking no action on this request by Mr. Lindemann. By making this recommendation, the staff does not mean to excuse or minimize any misstatements made by representatives the MHPC that could bear on the organization's credibility. Nevertheless, we do not believe that consideration of whether MHPC violated 21-A M.R.S.A. § 1004-A(5) in 2006 by making material false statement to the Commission benefits your consideration of Agenda Item #10 or any other matter before the Commission.

3. Other meetings. The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

4. Office hours before election. The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election, and from 8 a.m. until at least 8 p.m. on election day.

21A § 1003. Investigations by commission

1. Investigations. The Commission may undertake audits and investigations to determine the facts 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. For this purpose, the Commission may subpoena witnesses and records and take evidence under oath. A person or political action committee that fails to obey the lawful subpoena of the Commission or to testify before it under oath must be punished by the Superior Court for contempt upon application by the Attorney General on behalf of the Commission.

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.

2-A. Confidentiality. (REPEALED)

3. State Auditor. The State Auditor shall assist the Commission in making investigations and in other phases of the Commission's duties under this chapter, as requested by the Commission, and has all necessary powers to carry out these responsibilities.

3-A. Confidential records. Investigative working papers of the commission are confidential and may not be disclosed to any person except the members and staff of the commission, the subject of the audit or investigation, other entities as necessary for the conduct of an audit or investigation and law enforcement and other agencies for purposes of reporting, investigating or prosecuting a criminal or civil violation. For purposes of this subsection, "investigative working papers" means documents, records and other printed or electronic information in the following limited categories that are acquired, prepared or maintained by the commission during the conduct of an investigation or audit:

A. Financial information not normally available to the public;

B. Information belonging to a party committee, political action committee, ballot question committee, candidate or candidate's authorized committee, that if disclosed, would reveal sensitive political or campaign information;

C. Information or records subject to a privilege against discovery or use as evidence; and

D. Intra-agency or interagency communications related to an audit or investigation.

4. Attorney General. Upon the request of the Commission, the Attorney General shall aid in any investigation, provide advice, examine any witnesses before the Commission or otherwise assist the Commission in the performance of its duties. The Commission shall refer any apparent violations of this chapter to the Attorney General for prosecution.

21A § 1004. Violations

The violation of any of the following subsections is a Class E crime.

1. Contributions and expenditures. A person, candidate, treasurer, political committee or political action committee may not knowingly make or accept any contribution or make any expenditure in violation of this chapter.

2. False statements. No person, candidate, treasurer or political action committee may make a false statement in any report required by this chapter.

3. Contributions in another's name. No person may make a contribution in the name of another person or knowingly permit his name to be used to accomplish such a contribution, and no person may knowingly accept a contribution made by one person in the name of another person.

4. Registration; political action committees. No political action committee required to be registered under section 1053 may operate in this State unless it is so registered.

21-A § 1004-A. Penalties

The commission may assess the following penalties in addition to the other monetary sanctions authorized in this chapter.

1. Late campaign finance report. A person that files a late campaign finance report containing no contributions or expenditures may be assessed a penalty of no more than $100.

2. Contribution in excess of limitations. A person that accepts or makes a contribution that exceeds the limitations set out in section 1015, subsections 1 and 2 may be assessed a penalty of no more than the amount by which the contribution exceeded the limitation.

3. Contribution in name of another person. A person that makes a contribution in the name of another person, or that knowingly accepts a contribution made by one person in the name of another person, may be assessed a penalty not to exceed $5,000.

4. Substantial misreporting. A person that files a campaign finance report that substantially misreports contributions, expenditures or other campaign activity may be assessed a penalty not to exceed $5,000.

5. Material false statements. A person that makes a material false statement or that makes a statement that includes a material misrepresentation in a document that is required to be submitted to the commission, or that is submitted in response to a request by the commission, may be assessed a penalty not to exceed $5,000.

When the commission has reason to believe that a violation has occurred, the commission shall provide written notice to the candidate, party committee, political action committee, committee treasurer or other respondent and shall afford them an opportunity to appear before the commission before assessing any penalty. In determining any penalty under subsections 3, 4 and 5, the commission shall consider, among other things, the level of intent to mislead, the penalty necessary to deter similar misconduct in the future and the harm suffered by the public from the incorrect disclosure.

21-A § 1005 Restrictions on commercial use of contributor information

Information concerning contributors contained in campaign finance reports filed by candidates, political action committees and party committees and reports filed under section 1056-B may not be used for any commercial purpose, including, but not limited to, the sales and marketing of products and services, or for solicitations of any kind not directly related to activities of a political party, so-called "get out the vote" efforts or activities directly related to a campaign as defined in section 1052. Any person obtaining contributor information from the reports is prohibited from selling or distributing it to others to use for commercial purposes and also is prohibited from making publicly available the mailing addresses of contributors. This section does not prohibit a political party, party committee, candidate committee, political action committee or any other organization that has obtained contributor information from the commission from providing access to such information to its members for purposes directly related to party activities, so-called "get out the vote" efforts or a campaign as defined in section 1052. A person who violates this section is subject to a fine of up to $5,000. A person who knowingly violates this section commits a Class E crime.

Carl Lindemann

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Austin, Texas 78767

Phone 512-495-1511
Email Carl@cyberscene.com

RECEIVED
APR 29 2009
MAINE ETHICS COMMISSION

April 28, 2009

Dear Executive Director Wayne,

Pursuant to 21-A M.R.S.A. § 1004-A(5), I hereby request an immediate investigation by the Maine Commission on Governmental Ethics & Election Practices into whether Maine Heritage Policy Center ("MHPC") has made material false statements to the Commission since I first brought a complaint about them to the Commission in 2006. These false statements are core assertions made by the entity and are different than those that the Commission had been asked to address at its meeting on December 20, 2006.Some are oral misrepresentations by MHPC and its representatives at that meeting. Addressing these material false statements is crucial if the Commission is to properly process the issue of whether or not MHPC's 1056-B reporting is accurate and complete.

The false statements constitute a clear violation of 21-A M.R.S.A. § 1004-A(5):

> 5. Material False Statements. A person that makes a material false statement or that makes a statement that includes a material misrepresentation in a document that is required to be submitted to the commission, *or that is submitted in response to a request by the commission*, may be assessed a penalty not to exceed $5000.
>
> ***
>
> In determining any penalty under subsections 3, 4 and 5, the commission shall consider, among other things, *the level of intent to mislead*, the penalty necessary to deter similar conduct in the future and the harm suffered by the public from the incorrect disclosure.

The egregious nature of these false statements is disturbing. The following list is not exhaustive, but should suffice to initiate a thoroughgoing and comprehensive examination of the accuracy and truthfulness of MHPC's statements to the Commission. These statements made by MHPC and its associates are false:

1.) MHPC did not expressly advocate for the Taxpayer Bill of Rights;
2.) MHPC does not "take any pro or con stance on any issue."
3.) MHPC did not file a 1056-B due to a good-faith misunderstanding
4.) Taxpayerbillofrights.com was not involved in MHPC's activities.
5.) The "thank you" letter sent to TABOR donors was not a form letter
6.) Promoting TABOR was not part of MHPC's mission in 2006
7.) MHPC did not solicit contributions in connection with the TABOR initiative.

1.) MHPC did not expressly advocate for the Taxpayer Bill of Rights

In over ten separate instances in testimony to the Commission on October 31, 2006 and December 20, 2006, MHPC repeatedly declared that the organization had not engaged in express advocacy for TABOR. Here is one example from the October 31 meeting:

> 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 turn 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.
>
> MR. BECKER: Because I haven't expressly advocated. As a matter of fact what Dennis Bailey said at the end of that interview yesterday (on WGAN-AM) was, could Becker keep his — I said specifically I said, Maine voters would be wise to look at this issue I said, and if they like the current status quo then they should vote against it. If they think that we need a new direction and a new opportunity then there is much about the Taxpayer Bill of Rights that they might want to study. (transcript, p. 53-54)

The following is a transcript of what Mr. Becker said on WGAN-AM:

> 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.

The term "reasonable and effective" was the slogan for the pro-TABOR PAC. According to Ethics Commission rules, Section 10, 2-B, express advocacy is defined to include

"...communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning.." than express advocacy.

Mr. Becker also engaged in express advocacy on numerous other occasions including in statements published in the "Maine Citizen's Guide to the Referendum Election":

PUBLIC COMMENT IN SUPPORT

Comment submitted by:
Bill Becker, President and CEO
The Maine Heritage Policy Center
P.O. Box 7829
Portland, ME 04103

The Taxpayer Bill of Rights: A Reasonable and Effective policy solution.

With the Taxpayer Bill of Rights Maine voters have the opportunity to lower their tax burden, have a greater say over how much money politicians spend, and have the final approval of new, or increased, taxes and fees.

Currently, Mainers pay some of the highest—the highest by some measures—taxes in the entire United States. This level of taxation not only affects people's ability to provide for their families, but limits the level of economic and job creation activity in Maine.

The first step in addressing the high level of taxation is to control the growth in government spending because the level government of spending determines the level of taxation. The Taxpayer Bill of Rights provides the spending restraint necessary to lower taxes while allowing for a reasonable growth allowance for state and local governmental spending based on inflation plus population growth. However, it is important to note that the growth allowance is simply a target and if they choose, the voters of a town, or the state, can exceed that growth allowance by simply approving any increase above the growth allowance.

In addition to providing for annual growth allowances, the Taxpayer Bill of Rights gives voters the final say over what new, or increased, taxes and fees are imposed by politicians. This provision provides taxpayers with the added security of knowing what tax is being raised or created. It is a reasonable for voters, not politicians, have the final say over what new taxes or fees are imposed on them.

The Taxpayer Bill of Rights is a reasonable and effective tool to begin lowering Maine's tax burden, which will allow for the emergence of strong and vibrant local economies that provide good paying jobs for Mainers.

Note the repeat use of the campaign slogan "reasonable and effective".

Another example is from Mr. Becker's presentation to the Town of Cape Elizabeth Taxpayer Bill of Rights Task Force on July 26, 2006. His "powerpoint" presentation (see attached) features the campaign slogan in a slide that is almost identical to ads from Taxpayerbillofrights.com.

Could Mr. Becker and his attorney, Mr. Billings, somehow be mistaken about this, or did they deliberately make these material false statements?

After the July 26, 2006 presentation, MHPC board member Michael Duddy, who served on the Cape Elizabeth TABOR Task Force wrote up the minutes for the meeting and summed up Mr. Becker's presentation as follows:

> Mr. Becker presented a one-hour long power point presentation in favor of the Taxpayer Bill of Rights.

Duddy also served as the attorney of record for MHPC, and so claims that the organization was not aware of its advocacy are not credible.

I include several other examples of MHPC's use of the campaign slogan in fundraising solicitations as well as other promotional materials. This is not an exhaustive compilation. Given the close relationship between MHPC and the leadership of taxpayerbillofrights.com, it is a distinct possibility that the choice of the campaign slogan was developed with the intention of concealing MHPC's express advocacy. A proper investigation should attempt to uncover whether MHPC was involved in crafting this marketing phrase.

2.) MHPC does not "take any pro or con stance on any issue."

During the Commission's October 31st session, Commissioner Thompson asked Mr. Becker if MHPC had expressly advocated for LD 2075, the pre-TABOR bill before it became a ballot issue:

> MAVOUREEN THOMPSON: Did Andrews or Adams get your participation from the Center when in fact their bills were debated before the legislative committee?
>
> MR. BECKER: We were called to testify, by the Tax Committee primarily.
> MAVOUREEN THOMPSON: And were pros and cons indicated in that? Sometimes the legislature will ask for people who are pro legislation and con.
> MR. BECKER: Yes.
> MAVOUREEN THOMPSON: And either to sign up and indicate or just to take turns and so forth for the thing. Has there been a testimony?
> BILL BECKER: We represented basically the authors of the model legislation. That's the way we were represented.
> MAVOUREEN THOMPSON: So you didn't — you were not like on the pro side or the con side in terms of -
> BILL 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. (transcript P. 42-43)

Later in his testimony, Becker reiterates this point saying that it is part of MHPC's general policy:

MAVOUREEN THOMPSON: Do you take any pro or con stance on any other public issues?

Mr. Becker: We don't take any pro or con stance on any issue. (p. 59)

However, the sign-in sheet for LD 2075 shows that Mr. Becker signed in as a representative of MHPC and identified himself as a proponent of the measure. In his testimony, he thanked the Joint Standing Committee on taxation "for the opportunity to testify in full support" of the measure (see attached).

Mr. Becker's false statement is material because it sought to deceive the Commission about the very essence of the investigation – what kind of entity is MHPC? Mr. Becker promoted the false impression that his organization is akin to academic institutions. That they purportedly did not take "any pro or con stance on any issue" was offered as evidence of that.

3.) MHPC did not file a 1056-B due to a good-faith misunderstanding

In his memo to Executive Director Wayne dated March 21, 2008, Daniel Billings, attorney for MHPC, disputes the claim that he has been a fact witness in these matters:

> 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.

However, an examination of Mr. Billings' testimony shows otherwise. At the December 20, 2006 meeting, under questioning by Executive Director Wayne, Mr. Billings gives an eyewitness account of how he formed his opinion that his client had not advocated for the ballot initiative and so did not need to report under 1056-B:

> WAYNE: So, I mean, if you're aware, as you said, that donors give contributions to support different aspects of your work, why be—I'm just want to see that the Commission—you—you undertake to file a 1056 report, um, I just want the Commission and—and the public to know that you've shown the proper care in submitting accurate information to the Commission. So, um, why would you—I just don't understand, um, why it would never occur to you that when people say… great work on TABOR, or mention TABOR in any way, isn't that a contribution that's being given to your organization well to—in connection with TABOR-- ?
>
> MR. BILLINGS: [i] Well.
>
> JONATHAN WAYNE: --Well why wouldn't you just be a little bit more—you haven't done a necessary investigation or… almost [Coughing], I mean I just don't understand.
>
> MR. BILLINGS: Well—well first I wrote the letter and—and influencing the outcome

> of a referendum to me has—has meaning that may not have the same meaning to you. But the kind of questions that I asked, in preparing that letter, was what did you do. What have you been involved in, uh, related to TABOR? Uh, and the kind of things that Bill described to me… in my opinion didn't meet the definition of trying to influence the outcome of an election. Because I—I take the view and… and that—that was telling people how to vote, and um, specifically trying to influence the vote. Um, and I did specifically ask at the time, um, have you done, uh, you know, fund raising specifically to support your TABOR activities? Do you have a segregated fund to promote TABOR. Um, then this issue of the Briney contribution came up, I said okay. Hold on. You know, we weren't looking at it the same way that others were apparently looking at. Um, you know, why don't you go back through all your records and see if anybody else's donations were kind of promised. And that's what we've done. (p. 152-154)

However, prior to this testimony, Mr. Billings made a public statement that directly contradicts this testimony. On August 19, 2006, Mr. Billings made the following statement on *As Maine Goes*, an online forum:

> Maine Heritage wrote TABOR and Bill Becker certainly advocates its passage.

This statement stands alongside MHPC attorney Duddy's summation of Mr. Becker's Cape Elizabeth TABOR Task Force presentation as being "in favor" of the ballot initiative. Also noteworthy is an item listed in the Taxpayerbillofrights.com PAC report. On October 20, 2006, Mr. Duddy's law firm, Kelly Remmel & Zimmerman, reported an in-kind donation of "October 12 & 19 Speaking Engagements" valued at $1,365. This likely refers to Mr. Duddy engaging in the same "speaking engagements" that the MHPC staff was conducting at the time. It is a disturbing, distinct possibility that on the very same day that Mr. Billings first argued before the Commission that these activities were not reportable, Mr. Duddy had the opposite opinion and was reporting such activities. It seems unimaginable that there would be no communication between the new attorney for MHPC and the previous attorney of record/board member.

It would seem that Mr. Billings' account of how he formed his opinion is, at best, incomplete and misleading.

4.) Taxpayerbillofrights.com was not involved in MHPC's activities.

At the December 20, 2006 meeting of the Commission, MHPC had Roy Lenardson speak on its behalf. Lenardson was presented as a senior official of the taxpayerbillofright.com organization. Though it was not mentioned, Lenardson had been featured as senior management of MHPC only months earlier, and may even have been receiving financial compensation from the organization at that time or not long before.

At the meeting, Lenardson provided the following testimony:

MR. ROY LENARDSON: Uh, my name is Roy Lenardson. And I was involved with the Taxpayer Bill of Rights.com PAC and I just simply wanted to, um, lay out what did—did occur, um, just to give you a little bit of perspective. We had a little over 900 donors about—raised more than $400,000. We maintain an office, website, phone numbers. We hired staff, one full-time, two part-time. We have about 250 active volunteers that regularly participated in what we did. We hired TV ad producers, we produced six TV ads. We hired a buyer for the TV ads. We paid a designer and paid a mail house for the, um, mailings that we did. We did several, uh, targeting mail features. We paid a design shop for newspaper ads and placement. We had our own treasurer who maintained all the bank records and transactions and specifically for the purpose, we did fund raising letters. Um, and our staff and volunteers participated in more than 100 debates and other speaking engagements. From our perspective we were all about the campaign, um, and I just wanted to make it a little bit more clear while the activities of MHPC participating in forums is really interesting, uh, it was horrifying to people in the campaign because it was an endless chat and we were all about raising money to get TV, newspaper ads, and out to the public and the debates were touching but that wasn't really what we found to be helpful for the campaign and… we did lose and I'm here celebrating that—

Lenardson's testimony gives the false impression that taxpayerbillofrights.com did not work with MHPC in its efforts to carry out its activities as a speaker bureau for the TABOR campaign. This posting at the "As Maine Goes" website on October 11, 2006 shows this to be false:

> In my town, Mt. Vernon, one of my fellow Selectmen suggested that the Selectmen sponsor an informational forum on the Taxpayer Bill of Rights starring her friend Geoff Herman, who happens to be from Mt. Vernon. I immediately contacted Mary Adams to see if she could recommend someone to present the pro TABOR position at this forum and she put me in touch with Tarren Bragdon of the ME Heritage Policy Center. Mr. Bragdon was glad to appear on behalf of the Taxpayer Bill Rights.
>
> I would STRONGLY suggest that you also contact Mary Adams and let her know what is going on at Lakes Region High School. I also suggest that you contact the Superintendent of that school district and DEMAND a balanced presentation. You can reach Mary Adams by email at mga@tdstelme.net or by phone at (207) 924-3835…
>
> Bruce Inch, Selectman
> Town of Mt. Vernon

5.) The "thank you" letter MHPC sent to TABOR donors was not a form letter

In his December 4,2006 reply to the Commission's request for additional information, Mr. Billings unequivocally stated that the "thank you" letter sent to a TABOR donor was not a form letter. However, in Mr. Becker's testimony of December 20, 2006, he said that an unknown number of identical "thank you" letters went out. These are irreconcilably contrary assertions.

6.) Promoting TABOR was not part of MHPC's mission in 2006

In his December 4,2006 reply to the Commission's request for additional information, Mr. Billings quotes the mission statement purportedly contained in the entity's "application for 501(c)(3) status" as proof that the mission stated in the TABOR "thank you" letter did not reflect MHPC's mission in 2006. However, MHPC's IRS Form 1023 application does not contain the text he quotes. The facts he provides to substantiate his assertion is absent.

However, shortly after filing this document, MHPC made its first public statements in an opinion piece published in the Lewiston Sun Journal on February 13, 2003 authored by Mr. Becker. In it, he states:

> ...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.

"TELs" are the generic term for legislation and/or ballot initiatives like TABOR. So MHPC, from its first public statements, has had passing TELs as a major purpose.

7.) MHPC did not solicit any contributions or other funds in connection with the TABOR initiative.

In his December 4,2006 reply to the Commission's request for additional information, Mr. Billings unequivocally denied that MHPC had "solicited any contributions or other funds in connection with the TABOR initiative." He provided what he said was a failed fundraising letter. Later, another fundraising letter appeared that was offered in my complaint challenging the accuracy of MHPC's § 1056-B report. On closer examination, this document contains the campaign slogan of the pro TABOR PAC – and so crosses the line over into express advocacy:

> 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. (emphasis added).

MHPC cannot reasonably claim it did not solicit TABOR contributions when its fundraising materials expressly advocated for TABOR.

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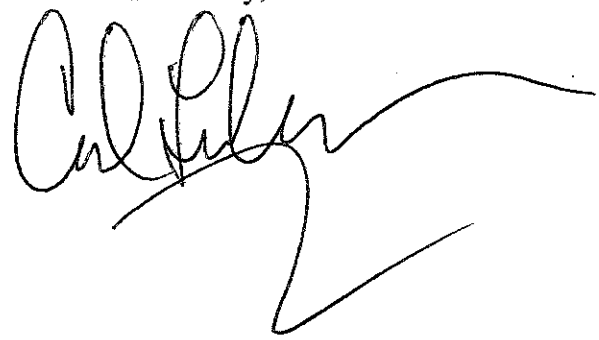
Again, this is simply a sampling of the multitude of false statements made by MHPC and its associates. It is not an exhaustive list of all the material false statements or the number

of times they were made. If you like, I can provide additional examples. However, it seems that this should suffice for triggering the Commission's own investigation to arrive at a comprehensive, exhaustive list of these offences.

Please let me know how I might be of service to help this proceeding move forward.

Sincerely,



MHPC EXPRESS ADVOCACY IN 2006 "Maine Citizen's Guide to the Referendum Election"

Maine Citizen's Guide to the Referendum Election

Tuesday, November 7, 2006

In Accordance with the September 1, 2006 Proclamation of the Secretary of State and with the Resolution Passed by the 122nd Legislature at the Second Regular Session

Matthew Dunlap
Secretary of State

Appropriation 010-29A-4213-012

Dear Fellow Citizen,

This information is intended to help voters learn about the questions that will appear on the November 7, 2006 General Election ballot. Referendum elections are an important part of the heritage of public participation in Maine. I hope you will help keep our democracy strong by reviewing this information and then casting your ballot.

For information about how or where to vote, please contact your local municipal clerk or call Maine's Division of Elections at 624-7650. Information is also available online at www.maine.gov/sos.

Below you will find:

- each of the two referendum questions;
- the legislation each question represents;
- a summary of the intent and content of the legislation;
- an explanation of the significance of a "yes" or "no" vote;
- an estimate of the fiscal impact of each referendum question on state revenues, appropriations and allocations; and
- public comments filed in support or in opposition to each ballot measure.

The Department of the Secretary of State, the Attorney General and the Office of Fiscal and Program Review have worked together to prepare this information. We hope you find it helpful and we encourage you to vote.

Sincerely,

Matthew Dunlap
Secretary of State

New Features in this Guide

The Maine Citizen's Guide to the November 7, 2006 Referendum Election contains several new features to assist Maine voters in becoming knowledgeable about the questions that will appear on November's ballot.

Chapter 316 of the Public Laws of 2005, passed by the First Special Session of the 122nd Legislature, added several new features to the Guide.

In addition to the Intent and Content summaries prepared by the Office of the Attorney General, this Guide also includes an estimate of the fiscal impact of each constitutional resolution or statewide referendum on state revenues, appropriations and allocations. The fiscal impact estimate must summarize the aggregate impact that the ballot measure will have on the General Fund, the Highway Fund, Other Special Revenue Funds and the amounts distributed by the state to local units of government.

In addition, beginning with this election and every election thereafter, the Guide will also include public comments in support of or in opposition to each ballot measure. As required by this new law, a person filing a public comment for publication must pay a fee of $500 to the Secretary of State. Fees filed with public comments will be deposited in the Public Comment Publication Fund. The money in this fund must be used for the purpose of publishing the Secretary of State's Guide to the Referendum Election.

Pursuant to Chapter 316 of the Public Laws of 2005, the Secretary of State adopted rules regarding the publication of public comment by proponents and opponents of ballot measures. Chapter 520, Rules Regarding Publication of Public Comments on Statewide Referenda, are available on the Secretary of State's web site at: http://www.maine.gov/sos/cec/elec/2006elec.html.

These rules provide, in part, that:

- Any individual, corporation, political action committee or other organization may file only one public comment per ballot measure.
- Public comments for publication will be limited in number to three public comments in support and three public comments in opposition to each ballot measure.
- Public comments are limited to 300 words or less.
- Public comments will be published in the Citizen's Guide verbatim; no grammatical, spelling or textual changes will be made to the public comments.
- The Secretary of State shall reject any public comments which contain any obscene, profane or defamatory language; incite or advocate hatred, abuse or violence toward any person or group; or contain any language which may not be legally circulated through the mail.
- A disclaimer in substantially the following form:

  "The printing of this public comment does not constitute an endorsement by the State of Maine, nor does the State warrant the accuracy or truth of any statements made in the public comment."

STATE OF MAINE

Referendum Election, November 7, 2006
LISTING OF REFERENDUM QUESTIONS

Question 1: Citizen Initiative

Do you want to limit increases in state and local government spending to the rate of inflation plus population growth and to require voter approval for all tax and fee increases?

Question 2: Constitutional Amendment

Do you favor amending the Constitution of Maine to state that a citizens' initiative or people's veto petition must be submitted to local or state officials by the constitutional deadline in order to be certified and, in the case of a citizens' initiative, must be filed with the Secretary of State within 18 months?

Question 1: Citizen Initiative

Do you want to limit increases in state and local government spending to the rate of inflation plus population growth and to require voter approval for all tax and fee increases?

STATE OF MAINE

"An Act to Create the Taxpayer Bill of Rights"

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

Sec. 1. 5 MRSA §1507, last ¶, as enacted by PL 1997, c. 24, Pt. C, §2, is repealed.

Sec. 2. 5 MRSA §1511, as amended by PL 2003, c. 451, Pt. X, §1, is repealed.

Sec. 3. 5 MRSA §1513, as amended by PL 2003, c. 451, Pt. X, §§ 2 to 4, is repealed.

Sec. 4. 5 MRSA §1517, as amended by PL 2003, c. 451, Pt. X, §6, is repealed.

Sec. 5. 5 MRSA §§1521 and 1522 are enacted to read:

§1521. Maine Budget Stabilization Fund

1. Establishment. The Maine Budget Stabilization Fund, referred to in this section as "the fund," is established and must be administered for the purposes identified in this section.

2. Transfers to fund; limits. The fund may receive transfers by the State Controller of unappropriated surplus at the close of a fiscal year as provided in section 1995 and any other funds identified by law. The fund may not exceed 10% of

the total General Fund revenues received in the immediately preceding fiscal year and may not lapse, but remains in a continuing carrying account to carry out the purposes of this section. The limit at the close of a fiscal year is based on the total General Fund revenues received in the fiscal year being closed.

3. Use of fund. The Legislature may authorize transfers, appropriations and allocations from the fund only to fund the costs of State Government up to the expenditure limit calculated under section 1994 in years when state revenues are less than the amount necessary to finance the level of expenditure permitted under section 1994.

4. Investment of funds; proceeds. The money in the fund may be invested as provided by law, with the earnings credited to the fund. At the close of every month during which the fund is at the 10% limitation described in subsection 2, the State Controller shall transfer the excess to the Tax Relief Reserve Fund established under section 1995.

§1522. Maine Highway Budget Stabilization Fund

1. Establishment. The Maine Highway Budget Stabilization Fund, referred to in this section as "the fund," is established and must be administered for the purposes identified in this section.

2. Transfers to fund; limits. The fund may receive transfers by the State Controller of unallocated Highway Fund surplus at the close of a fiscal year as provided in section 1996 and any other funds identified by law. The fund may not exceed 10% of the total Highway Fund revenues received in the immediately preceding fiscal year and may not lapse, but remains in a continuing carrying account to carry out the purposes of this section. The limit at the close of a fiscal year is based on the total Highway Fund revenues received in the fiscal year being closed.

3. Use of fund. The Legislature may authorize transfers, appropriations and allocations from the fund only to fund the costs of the Highway Fund budget up to the expenditure limit calculated under section 1994 in years when Highway Fund revenues are less than the amount necessary to finance the level of expenditures permitted under section 1994.

4. Investment of funds; proceeds. The money in the fund may be invested as provided by law with the earnings credited to the fund. At the close of every month during which the fund is at the 10% limitation described in subsection 2, the State Controller shall transfer the excess to the Highway Fund Reserve Fund established under section 1996.

Sec. 6. 5 MRSA §1664, last ¶, as enacted by PL 2003, c. 451, Pt. X, §8, is amended to read:

The total General Fund appropriation for each fiscal year of the biennium in the Governor's budget submission to the Legislature may not exceed the General Fund appropriation of the previous fiscal year multiplied by one plus the ~~average real personal income growth rate, as defined in section 1665, subsection 1, plus the average forecasted inflation rate. For purposes of this paragraph, "average forecasted inflation rate" means the average forecasted change in the Consumer Price Index underlying the revenue projections developed by the Revenue Forecasting Committee pursuant to chapter 151-B. This appropriation limitation may be exceeded only by the amount of the additional costs or the lost federal revenue from the following exceptional circumstances: unfunded or under-funded new federal mandates; losses in federal revenues or other revenue sources; citizens' initiatives or referenda that require increased state spending; court orders or decrees that require additional state resources to comply with the orders or decrees; and sudden or significant increases in demand for existing state services that are not the result of legislative changes that increased eligibility or increased benefits. The Governor may designate exceptional circumstances that are not explicitly defined in this paragraph but meet the intent of this paragraph. For purposes of this paragraph, "exceptional circumstances" means an unforeseen condition or conditions over which the Governor and the Legislature have little or no control. Exceptional circumstances do not apply to new programs or program expansions that go beyond existing program criteria and operation~~ population adjustment factor plus the inflation adjustment factor as those terms are defined in section 1992, subsections 5 and 3, respectively.

Sec. 7. 5 MRSA §1665, sub-§1, as amended by PL 2003, c. 451, Pt. X, §9, is further amended to read:

1. Expenditure and appropriation requirements. On or before September 1st of the even-numbered years, all departments and other agencies of the State Government and corporations and associations receiving or desiring to receive state funds under the provisions of law shall prepare, in the manner prescribed by and on blanks furnished them by the State Budget Officer, and submit to the officer estimates of their expenditure and appropriation requirements for each fiscal year of the ensuing biennium contrasted with the corresponding figures of the last completed fiscal year and the estimated figures for the current fiscal year. The total General Fund appropriation requests submitted by each department and agency for each fiscal year may not exceed the General Fund appropriation of the previous fiscal year multiplied by one plus the ~~average real personal income growth rate. For purposes of this subsection, "average real personal income growth rate" means the average for the prior 10 calendar years, ending with the most recent calendar year for which data is available, of the percent change in personal income in this State for a calendar year, as estimated by the United States Department of Commerce, Bureau of Economic Analysis, less the percent change in the Consumer Price Index for that calendar year. For purposes of this subsection, "Consumer Price Index" has the same meaning as in Title 36, section 5402, subsection 1~~ inflation adjustment factor as defined in section 1992. The expenditure estimates ~~shall~~ must be classified to set forth the data by funds, organization units, character and objects of expenditure. The organization units may be subclassified by functions and activities, or in any other manner, at the discretion of the State Budget Officer.

Sec. 8. 5 MRSA c. 165 is enacted to read:

CHAPTER 165

THE TAXPAYERS' BILL OF RIGHTS

§1991. Expenditure and revenue requirements; construction of chapter

The following provisions of this section apply, notwithstanding any other provision of law.

1. Expenditure limitations. Annual state and local expenditures may not exceed the limits provided in this chapter.

2. Revenue increases. An increase in revenue may only be adopted as provided in section 1993.

3. Construction. It is the intent of the Legislature that this chapter be interpreted liberally to restrain excess growth of state and local government.

§1992. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Election officer. "Election officer" means:

A. In a statewide, county or municipal election, the municipal registrar of voters; or

B. In an election by the voters of a local district that is not a municipality, the official with responsibility for managing the list of voters of the local district.

2. Increase in revenue. "Increase in revenue" means any legislation, local ordinance or tax levy that causes a net gain in revenue and:

A. Enacts a new tax or fee;

B. Increases the rate or expands the base of an existing tax or fee;

C. Reduces benefits or eligibility under the Business Equipment Tax Refund program established in Title 36, chapter 915 without providing the same level of benefits and eligibility under a comparable program or without providing a 100% property tax exemption for property eligible for reimbursement under Title 36, chapter 915;

D. Repeals or reduces any tax exemption, credit or refund; or

E. Extends an expiring tax or fee increase.

3. Inflation adjustment factor. "Inflation adjustment factor" means the increase in the Consumer Price Index for the most recently available calendar year as calculated by the United States Department of Labor, Bureau of Labor Statistics.

4. Local district. "Local district" means any county, municipality or other substate governmental entity with the authority to collect revenue.

5. Population adjustment factor. "Population adjustment factor" means the increase or decrease in population for the preceding calendar year over the prior calendar year as determined annually by the Executive Department, State Planning Office statewide and for each municipality based on federal census estimates.

6. Quasi-governmental agency. "Quasi-governmental agency" means any separate legal entity for which the State is financially accountable and that is included in the financial statements of the State for financial reporting purposes under guidelines established by generally accepted accounting principles mandated by a governmental accounting standards board.

7. Revenue. "Revenue" means taxes and fees collected by the State, a quasi-governmental agency or a local district pursuant to the statutes of the State, including those collected under Title 36, Part 2. It includes money received from the sale of goods and services only to the extent that the receipts exceed the cost of providing the goods or services.

§1993. Approval of revenue increases

1. Approval of increases. The following forms of approval are required to adopt an increase in revenue:

A. The measure must be approved by a vote of 2/3 of all the members of each House of the Legislature or 2/3 of the members of the legislative body of a quasi-municipal agency or a local district; and

B. Except as provided in subsection 2, the measure must be approved by a majority of the voters in the jurisdiction as described in subsection 3.

2. Exceptions. Voter approval under subsection 1, paragraph B is not required if:

A. Annual state or local revenue is less than annual payments on general obligation bonds, required payments related to pensions and final court judgments;

B. The measure is an emergency tax and the provisions of section 1999 are followed; or

C. The increase in revenue applies to a quasi-governmental agency that does not have a body of voters.

For the purposes of this subsection, "emergency" does not include economic conditions, revenue shortfalls or district salary or fringe benefits increases.

3. Approval by voters; emergency approval. The question of whether to adopt legislation to impose an increase in revenue of the State must be submitted to the voters for approval at the next general election as defined in Title 21-A, section 1. If the Legislature determines by a 2/3 vote that legislation to increase taxes or fees should take effect sooner than the next general election, the Legislature may provide for submission of the question to the voters at any regular or special election as

defined in Title 21-A, section 1. The question of whether to adopt an increase in revenue of a local district must be submitted to the voters of the district at the next general or special districtwide election.

4. Revenue estimates. A measure submitted to the voters under this section must include an estimate of the amount to be raised by the measure for the first 4 fiscal years of its implementation.

5. Notice. At least 30 days before an election required under this chapter, the election officer shall mail at the least cost a titled notice or set of notices addressed to "All Registered Voters" at each address of every active registered voter. Notices must include the following information and may not include any additional information:

A. The election date, hours, ballot title and text and local election office address and telephone number;

B. For each proposed revenue increase, the estimated or actual total of fiscal year spending for the current year and each of the past 4 years and the overall percentage and dollar change;

C. For the first full fiscal year of each proposed revenue increase, estimates of the maximum dollar amount of each increase and of fiscal year spending without the increase; and

D. Two summaries, up to 500 words each, one in support of and one in opposition to each proposal, of written comments filed with the election officer by 45 days before the election. A summary may not mention names of persons or private groups, nor any endorsements of or resolutions against the proposal. Measure representatives following these rules shall write this summary for their proposal. The election officer shall maintain and accurately summarize all other relevant written comments.

Except by later voter approval, if an increase in revenue exceeds any estimate prepared under paragraph C for the same fiscal year, the tax increase is thereafter reduced in proportion to the amount of the excess, and the excess revenue that was collected must be refunded in the next fiscal year. Ballot questions for revenue increases must begin: "Shall (specify district) revenues be increased (amount of first or, if phased in, full fiscal year dollar increase) annually...?"

6. Costs. The State shall reimburse municipalities for the following costs:

A. The costs of any election under this section and providing the notice required under subsection 5 if the election provides for a state tax increase; and

B. The cost of one local district election per year under this section if that election occurs during a regular election.

§1994. Expenditure limitations

1. State expenditure limitation. Beginning with the first fiscal year that begins after this section takes effect, the maximum annual percentage change in state fiscal year spending in the categories specified in this subsection equals the inflation adjustment factor plus the population adjustment factor and any increases attributable to measures approved under section 1993. This limitation must be calculated separately for the following categories:

A. General Fund;

B. Highway Fund;

C. Quasi-governmental agencies and Other Special Revenue funds, for which separate individual limitations must be applied. For quasi-governmental agencies whose primary purpose is providing educational programs, the limitation must be calculated by substituting for the population adjustment factor a factor based on changes in student enrollment.

2. Local expenditure limitation. Beginning with the first fiscal year that begins after the effective date of this section, the maximum annual percentage change in fiscal year spending for a local district that is a school administrative unit equals the inflation adjustment factor plus the change in its student enrollment and any increases attributable to measures approved under section 1993. The maximum annual percentage change in fiscal year spending for a local district that is not a school administrative unit for a fiscal year may not exceed:

A. The amount of revenue for the local district for the previous fiscal year adjusted by the change in the assessed value of taxable real and personal property in the local district, or the amount of revenue for the local district for the previous fiscal year adjusted by the inflation adjustment factor plus the population adjustment factor, whichever is lower; plus

B. Any increases attributable to measures approved under section 1993.

3. Exceptions. The following may not be counted in calculating expenditure limitations under this section:

A. Amounts returned to taxpayers as refunds of amounts exceeding the expenditure limitation in a prior year;

B. Amounts received from the Federal Government;

C. Amounts collected on behalf of another level of government;

D. Pension contributions by employees and pension fund earnings;

E. Pension and disability payments made to former government employees;

F. Amounts received as grants, gifts or donations that must be spent for purposes specified by the donor;

G. Amounts paid pursuant to a court award; or

H. Reserve transfers or expenditures.

4. Exceeding expenditure limitation. If revenues are projected to exceed the expenditure limitations in this section, the amount of revenues exceeding the expenditure limitations may be spent if approved in the same manner as required for a revenue increase under section 1993.

§1995. Transfers and refund of unappropriated General Fund surplus

1. Fund created. The Tax Relief Reserve Fund, referred to in this section as "the fund," is created for the purposes set forth in this chapter. The fund may not lapse, but remains in a continuing carrying account to carry out the purposes of this section.

2. Transfer. At the close of each fiscal year, the State Controller shall identify the amount of General Fund unappropriated surplus and make the following transfers:

A. Eighty percent of the unappropriated surplus must be transferred to the fund; and

B. Twenty percent of the unappropriated surplus must be transferred to the Maine Budget Stabilization Fund established in section 1521.

3. Notification. By September 15th annually, the State Controller shall notify the Legislature and the State Tax Assessor of the amount in the fund as a result of the transfers required by subsection 2.

4. Refund through legislative action. If the amount in the fund exceeds $25,000,000, the Legislature shall, by October 15th, enact legislation to provide for the refund to taxpayers of amounts in the fund. Refunds may take the form only of temporary or permanent broad-based tax credits, rebates or rate reductions.

5. Refund in case of legislative inaction. If the Legislature does not enact legislation by October 15th to provide refunds pursuant to subsection 4, then the State Controller shall, by October 30th, notify the State Tax Assessor of the amount in the fund. The State Tax Assessor shall calculate a one-time bonus personal exemption refund. The amount of the personal exemption refund must be calculated by dividing the amount in the fund identified by the State Controller under subsection 3 by the number of personal exemptions claimed on income tax returns filed for tax years beginning in the previous calendar year and rounded down to the nearest $5 increment. The State Tax Assessor shall issue a refund by November 30th to a taxpayer who filed an income tax return by April 15th of the same calendar year based on the number of personal exemptions claimed on the taxpayer's return without regard to the taxpayer's tax liability for the year.

§1996. Transfers and refund of unallocated Highway Fund surplus

1. Fund created. The Highway Fund Reserve Fund, referred to in this section as "the fund," is created for the purposes set forth in this chapter.

2. Transfer. At the close of each fiscal year, the State Controller shall identify the amount of Highway Fund unallocated surplus and make the following transfers:

A. Eighty percent of the unallocated surplus must be transferred to the fund; and

B. Twenty percent of the unallocated surplus must be transferred to the Maine Highway Budget Stabilization Fund established in section 1522.

3. Notification. By September 15th annually, the State Controller shall notify the Legislature of the amount in the fund as a result of the transfers required by subsection 2.

4. Refund through legislative action. If the amount in the fund exceeds 10% of Highway Fund expenditures for the previous fiscal year, the State Tax Assessor shall calculate, based on the amount in the fund, a proportional reduction in the taxes on motor fuels under Part 5 to become effective the following January 1st and remain in effect for one calendar year.

§1997. Revenues of quasi-governmental agencies and Other Special Revenue funds accounts

By September 15th annually, each quasi-governmental agency or state agency that manages an Other Special Revenue funds account shall submit an annual report to the Legislature identifying revenues received in the preceding fiscal year that exceed the expenditure limitation established in section 1994 and any other uncommitted revenues received during the previous fiscal year and proposing a plan for refunding the amount identified that exceeds 10% of the previous fiscal year's expenditure.

§1998. Refund of excess local revenues

If a local district receives revenues in a fiscal year in excess of the expenditure limitation under section 1994, the local district must use the amount of the unprotected excess to reduce the amount of property tax assessed in the succeeding year. For purposes of this section, "unprotected excess" means the amount in excess of an amount set aside in a reserve account for unanticipated contingencies, which may not exceed 10% of the previous fiscal year's expenditure.

§1999. Emergency taxes

1. Emergency taxes permitted; conditions. The State or a local district may impose emergency taxes only in accordance with this section:

A. The tax must be approved for a specified time period by a 2/3 majority of the members of each House of the Legislature or by a 2/3 majority of the legislative body of a local district;

B. Emergency tax revenue may be spent only after other available reserves are depleted and must be refunded 180 days after the emergency ends if not spent on the emergency; and

C. The tax must be submitted for approval by the voters at the next statewide or districtwide election.

2. Absence of approval. If not approved by the voters as provided in this section, an emergency tax expires 30 days following the election.

Individual or class action lawsuits may be filed to enforce this chapter and must be given the highest civil priority for resolution. Successful plaintiffs are allowed costs and reasonable attorney's fees, but a district is not unless a suit against it is ruled frivolous. Revenue collected, kept or spent in conflict with this chapter for 4 full fiscal years before a suit is filed must be refunded with 10% annual simple interest from the initial conduct.

Sec. 9. 36 MRSA §3321, sub-§5 is enacted to read:

5. Voter approval. Beginning on the July 1st following the effective date of this subsection, a change in the rate of excise tax resulting from the adjustment required in subsection 1 may only take effect if approved by a majority of the voters at a regular or special election.

Sec. 10. Maine Budget Stabilization Fund. The Maine Budget Stabilization Fund established in the Maine Revised Statutes, Title 5, section 1521 is the successor in every way to the Maine Budget Stabilization Fund established under Title 5, section 1513 that is repealed in this Act. All funds in the Maine Budget Stabilization Fund established under Title 5, section 1513 are transferred to the Maine Budget Stabilization Fund established in Title 5, section 1521 on the effective date of this Act.

Sec. 11. Legislative intent; relationship to private and special laws. It is the intent of the Legislature that the provisions of this Act supersede any conflicting provisions of private and special law relating to the determination of revenue, fees and expenditures.

Sec. 12. Legislative intent; relationship to county tax and budget laws. It is the intent of the Legislature that the provisions of this Act supersede any conflicting provisions of the Maine Revised Statutes, Title 30-A, chapter 3 relating to the assessment of county taxes and county expenditures.

SUMMARY

The bill proposes to restrain the growth in state and local government by imposing expenditure limitations on state and local government and by requiring a procedure of voter approval of tax and fee increases.

Under this bill, growth in annual expenditures of the General Fund, the Highway Fund, quasi-governmental organizations, Other Special Revenue funds and local district governments are limited according to increases in population and inflation. Growth in budgets of school administrative units and state-level educational institutions is limited according to increases in inflation and student enrollment. For the General Fund and Highway Fund budgets, revenues exceeding the expenditure limitation must be distributed by directing 20% of that excess to a budget stabilization fund and 80% of that excess to a tax relief fund. The budget stabilization funds may be used only in years when revenues are not sufficient to fund the level of expenditure permitted by the growth limits. The tax relief funds must be used to provide tax relief through refunds proportional to individual income tax personal exemptions claimed in the previous tax year or a decrease in motor fuels taxes. For quasi-governmental agencies and state agencies that manage Other Special Revenue funds, the managers of those funds must report excess surpluses to the Legislature with a plan for refund of those revenues.

Under this bill, an increase in revenue would be possible only by a 2/3 vote of each House of the Legislature or the legislative body of a local district or the governing body of a quasi-governmental agency and the approval of the voters of the jurisdiction, if applicable.

Intent and Content
Prepared by the Office of the Attorney General

This citizen-initiated legislation would establish revenue and expenditure limits for state and local government. It also specifies conditions under which those limits could be exceeded.

State government: At the state level, any increase in revenue would require the approval of 2/3 of the members of each body of the Legislature, as well as the approval of a majority of the voters at a statewide election. Voter approval would not be required, however, if annual state revenue were less than the sum of payments on general obligation bonds, required payments related to pensions and final court judgments. An increase in revenue is defined to include legislation that causes a net gain in revenue and enacts any new tax or new fee, increases or expands the base of an existing tax or fee, extends an expiring tax or fee increase, repeals any tax exemption, credit or refund, or reduces benefits or eligibility under the Business Equipment Tax Refund program. An emergency tax could take effect after enactment by a 2/3 vote of each body of the Legislature, but it would remain in effect only if approved by a majority of the voters at the next statewide election. If disapproved by the voters, the tax would expire 30 days after the election. Revenues from an emergency tax could be spent only after available reserves were depleted, and would have to be refunded 180 days after the emergency ended if not spent on the emergency. Emergency, for these purposes, does not include economic conditions or revenue shortfalls.

Expenditures from the General Fund, the Highway Fund, and Other Special Revenue funds would be limited to the

"maximum annual percentage change in state fiscal year spending" in each of these fund categories, plus any revenue increases that were approved by 2/3 of each body of the Legislature and by a majority of the voters in the manner described above. The "maximum annual percentage change in state fiscal year spending" equals the increase in the Consumer Price Index for the most recently available calendar year plus the increase or decrease in the population of the state for the preceding calendar year over the prior calendar year. These spending limits may be exceeded only if approved by the Legislature and the voters in the same manner as for an increase in revenue.

If there is an unappropriated surplus in the state General Fund at the close of the fiscal year, 80% of it would be transferred to a newly created Tax Relief Reserve Fund. In the event the amount in the Tax Relief Reserve Fund reached a level exceeding $25,000,000, the Legislature would be directed to enact legislation to provide for a refund to taxpayers of amounts in the Fund. If the Legislature failed to do so, the State Tax Assessor would be required to calculate a one-time personal exemption refund to distribute the funds.

Similarly, 80% of any unallocated surplus in the Highway Fund would be transferred to a new Highway Fund Reserve Fund. If the amount in that reserve fund exceeded 10% of Highway Fund expenditures in the previous fiscal year, the State Tax Assessor would be directed to calculate a proportional reduction in motor fuel taxes for the following calendar year.

The remaining 20% of any unappropriated General Fund surplus would be transferred to the Maine Budget Stabilization Fund, while the remaining 20% of the unallocated surplus in the Highway Fund would go into a Maine Highway Budget Stabilization Fund. Monies held in these two stabilization funds could be used to finance expenditures up to the spending limits applicable to the General Fund and Highway Fund, respectively, when revenues in those funds are insufficient.

Each quasi-governmental agency or state agency that manages an Other Special Revenue funds account would be required to submit an annual report to the Legislature identifying revenues that exceeded the spending limit, together with any uncommitted revenues received during the previous fiscal year, and to propose a plan for refunding the amount that exceeded 10% of the previous fiscal year's expenditure. Quasi-governmental agencies affected by this legislation include: the Child Development Services System, the Finance Authority of Maine, the Governor Baxter School for the Deaf, the Loring Development Authority, the Maine Community College System, the Maine Educational Loan Authority, Maine Maritime Academy, the Maine Port Authority, the Maine Municipal Bond Bank, the Maine State Housing Authority, the Northern New England Passenger Rail Authority, the University of Maine System, the Maine State Retirement System, the Maine Health and Higher Educational Facilities Authority and the Maine Governmental Facilities Authority.

Local government: A local ordinance or tax levy that increases revenue (using the same definition of increase in revenue as described above for state government) may not be enacted by a county, municipality, school administrative unit, or other governmental unit with authority to collect revenues unless it is approved by 2/3 of the members of the legislative body of that local governmental entity as well as by a majority of the voters at a local election in that jurisdiction. Voter approval is not required if annual revenue is less than the sum of payments on general obligation bonds, required payments related to pensions, and final court judgments, or if the local governmental unit does not have a body of voters. The provisions for enacting emergency taxes are the same as at the state level, except that approval by a majority of the voters refers to voters within the relevant local district. Emergency is defined to exclude economic conditions, revenue shortfalls and increases in district salary or fringe benefits.

This initiative would limit local government spending to the "maximum annual percentage change in fiscal year spending." For *local school districts*, that is calculated to be the Consumer Price Index for the most recently available year, plus any increase or decrease in student enrollment, plus any increases in revenue approved by 2/3 of the district's legislative body and by a majority of the voters in the manner described above.

For *local governmental units other than school districts*, the "maximum annual percentage increase in fiscal year spending" is defined as the amount of revenue for the local district for the previous fiscal year, adjusted by *either* the change in assessed value of taxable real and personal property in the local district *or* by the Consumer Price Index for the most recently available year plus any increase or decrease in population for the preceding calendar year over the prior calendar year, whichever produces the lower number, plus any increases in revenue approved by 2/3 of the local unit's legislative body and by a majority of the voters in the manner described above.

Exceeding these spending limits would require approval by the local legislative body and the voters in the same manner as for an increase in revenue.

If a local district received revenues in a fiscal year in excess of this spending limit, the local district would be allowed to set aside in a reserve account for unanticipated contingencies an amount up to 10% of the previous fiscal year's expenditures and would be required to use the remainder of that excess to reduce the amount of property tax assessed in the succeeding year.

The initiative requires election officials to mail notices containing certain specified information to all active registered voters in advance of any statewide or local election to consider exceeding applicable spending limits or approving an increase in revenue. It also requires the state to reimburse municipalities for certain costs associated with those elections.

A "YES" vote approves the initiated legislation.

A "NO" vote disapproves the initiated legislation.

Fiscal Impact Statement
Prepared by the Office of Fiscal and Program Review

If approved by the voters in November of 2006, it is assumed that this measure would take effect and apply to State

fiscal year 2007-08.

Using current estimates of inflation and population change, the State spending limit is estimated to allow growth of approximately 3.4% from the prior fiscal year's expenditures in both fiscal year 2007-08 and fiscal year 2008-09. Based on the assumption that the spending limit will use fiscal year 2006-07 spending, which is assumed to equal appropriations and allocations, the General Fund spending limit is projected to be below projections of General Fund revenue. For the Highway Fund, the spending limit based on current projections and fiscal year 2006-07 allocations would be above projections of Highway Fund revenue in each year of the 2008-09 biennium. The actual spending limitations for fiscal year 2007-08 will not be established until final expenditures for each of the funds are determined after the close of fiscal year 2006-07.

Based on the projected growth under current law of some of the General Fund major programs including General Purpose Aid for Local Schools, Teacher's Retirement and Medicaid/Maine Care, the 123rd Legislature will need to reduce funding from current projections and implement the statutory program changes necessary to adjust funding needs to stay within the spending limits.

This initiative has the effect of suspending the annual indexing of certain fuel taxes. The total revenue loss is estimated to be $7,130,000 in fiscal year 2007-08 and $14,260,000 in fiscal year 2008-09. The impact by fund is expressed in the table below.

	Projections 2007-08	**Projections 2008-09**
General Fund	($7,778)	($15,570)
Highway Fund	($6,985,960)	($13,971,670)
Other Special Revenue Funds	($136,262)	($272,760)

This initiative amends the year-end transfers from the unappropriated surplus of the General Fund. It repeals the transfers to the State Contingent Account of up to $350,000 and the Loan Insurance Reserve within the Finance Authority of Maine of up to $1,000,000. It also repeals transfers to the Retirement Allowance Fund within the Maine State Retirement System and the Reserve for General Fund Operating Capital. For the General Fund and the Highway Fund, it requires at the close of each fiscal year that 80% of any state surplus must be transferred to a fund for the exclusive purpose of tax relief, and the remaining 20% must go to General Fund and Highway Fund Budget Stabilization Funds and only be used if revenues are not sufficient to fund the level of expenditure permitted by the spending limits.

This initiative requires a 2/3 vote of legislative bodies for all tax and fee increases followed by a majority approval by voters in a referendum election. The cost of preparing ballots and conducting a statewide referendum election on any tax or fee increase is estimated to be $139,560 per election. Each such election would also require the expenditure of approximately $824,547 to mail out required notices to each active registered voter in the state. The State would also be required to reimburse municipalities for the cost of administering any statewide referendum election on a state tax increase, as well as for the cost of one local election per district that occurs during a regular election. Local election costs will depend on the size of the district involved and could range from $150 to $41,000. There would be additional costs ranging from $19 to $48,562 associated with mailing notices to active registered voters for each local election as well.

The impact of this measure on the amount of funding available to individual school administrative units to support the cost of providing education cannot be determined at this time. It is also not clear how the required approval of the legislative body and the voters in a jurisdiction, in order to raise additional revenue or exceed the expenditure limitation, will affect a local unit's ability to meet its required local share of funding K-12 education. Current law requires that, if a local school administrative unit does not raise its required local share, its State subsidy will be proportionately reduced.

PUBLIC COMMENT IN SUPPORT

Comment submitted by:
Tom Zimmerman
141 William Street
Portland, ME 04103-4840

FIVE REASONS TO VOTE YES ON QUESTION 1

1. **High taxes – Maine has ranked #1 in the nation every year since 1997.**

   2005: Mainers paid $130 of every $1000 in earnings for state and local govt.
   The US average was $101.

2. **Young people are leaving Maine.**

   Maine's median age of 40.7 is the oldest in the US.
   18-20 year-olds declined by 13% in the '90s... 21-34 year-olds by 23%.
   Maine's 2005 birth rate ranked 50th in the US.
   Maine schools had over 225,000 K-12 students in 1996; now less than 200,000.

3. **High taxes have created a poor job climate - Parent-age adults can't get decent jobs, so they leave – The remaining population is comprised more and more of grandparents.**

   Forbes Report of Best States For Business ranks Maine 46th.
   Federal Reserve Bank of Boston: Maine and Louisiana only states to lose jobs 2005.

4. **The Taxpayer Bill of Rights breaks the stranglehold that high taxes have on Maine by limiting the growth of spending at each level of government.**

   Spending can increase by population and inflation, about 3 to 3.5% each year. **CUTS NEVER REQUIRED!** Increases beyond this annual limit require a 2/3 approval by the legislative body and simple majority voter approval at the next election.

5. **This Bill of Rights does not "devastate" any services.**

   CUTS ARE NEVER REQUIRED. It's a "velvet glove" that simply nudges the growth of government toward the mainstream of spending levels that the rest of the US enjoys.

   The rest of the states have fire, police, schools, and aid for the needy and elderly. It's not reasonable that we spend almost 30% more to do these things, all the while strangling our ability to have a decent tomorrow in this beautiful state.

   Vote "YES" on Question 1.

The printing of this public comment does not constitute an endorsement by the State of Maine, nor does the State warrant the accuracy or truth of any statements made in the public comment.

PUBLIC COMMENT IN SUPPORT

Comment submitted by:
Bill Becker, President and CEO
The Maine Heritage Policy Center
P.O. Box 7829
Portland, ME 04103

The Taxpayer Bill of Rights: A Reasonable and Effective policy solution.

With the Taxpayer Bill of Rights Maine voters have the opportunity to lower their tax burden, have a greater say over how much money politicians spend, and have the final approval of new, or increased, taxes and fees.

Currently, Mainers pay some of the highest—the highest by some measures—taxes in the entire United States. This level of taxation not only affects people's ability to provide for their families, but limits the level of economic and job creation activity in Maine.

The first step in addressing the high level of taxation is to control the growth in government spending because the level government of spending determines the level of taxation. The Taxpayer Bill of Rights provides the spending restraint necessary to lower taxes while allowing for a reasonable growth allowance for state and local governmental spending based on inflation plus population growth. However, it is important to note that the growth allowance is simply a target and if they choose, the voters of a town, or the state, can exceed that growth allowance by simply approving any increase above the growth allowance.

In addition to providing for annual growth allowances, the Taxpayer Bill of Rights gives voters the final say over what new, or increased, taxes and fees are imposed by politicians. This provision provides taxpayers with the added security of knowing what tax is being raised or created. It is a reasonable for voters, not politicians, have the final say over what new taxes or fees are imposed on them.

The Taxpayer Bill of Rights is a reasonable and effective tool to begin lowering Maine's tax burden, which will allow for the emergence of strong and vibrant local economies that provide good paying jobs for Mainers.

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PUBLIC COMMENT IN SUPPORT

Comment submitted by:
Brian Parke, Treasurer
TaxPayerBillofRights.com PAC
P.O. Box 5271
Augusta, ME 04332

Why do we need THE TAXPAYER BILL OF RIGHTS now?

We need THE TAXPAYER BILL OF RIGHTS now because for years elected officials have increased spending faster than our ability to pay for it. In fact, Maine "enjoys" the reputation of being one of the highest taxed states in the union. Not only does this put a burden on taxpayers, but it also discourages business growth in Maine, which translates into fewer jobs. THE TAXPAYER BILL OF RIGHTS puts politicians on a budget and puts more money in your pocket. And because THE TAXPAYER BILL OF RIGHTS makes it more difficult to raise taxes, government will be encouraged to become more efficient and better utilize the funds it does have.

What are the four most important things you should know about the Taxpayer Bill of Rights?

1. **REASONABLE SPENDING LIMITS AND NO CUTS REQUIRED:** Government spending will still be able to grow at a **reasonable** rate, around 3% a year, **BUT** any money above the limit will be used to help reduce taxes.
2. **VOTERS HAVE THE FINAL SAY ON TAXES AND FEES:** The Taxpayer Bill of Rights will require **a 2/3 vote of any governing body to raise a tax or fee AND** a **majority vote of the voters.**
3. **RAINY DAY FUND FOR EMERGENCIES:** The Taxpayer Bill of Rights creates a **Budget Stabilization Fund**—which is a savings account designed to make sure that the bureaucracy will be forced to save money for a rainy day to help governments get through difficult financial times.
4. **RETURNS MONEY BACK TO YOU:** The Taxpayer Bill of Rights creates a **Taxpayer Relief Fund** to make sure excess tax dollars are returned BACK to the taxpayer

To learn more go to: www.TaxpayerBillofRights.com

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PUBLIC COMMENT IN OPPOSITION

Comment submitted by:
Donald Strout, Town Manager
P.O. Box 309
Corinth, Maine

My name is Donald Strout, I am the Town Manager for Cornith, a former State Representative and a Republican and I am voting no on Question 1.

I've been involved in Maine Politics for a very long time. I've seen all kinds of quick-fix ideas come and go. The best solution to Maine's problems is Maine's people. Mainers are a very resilient lot. We know how to weather any kind of storm.

I understand that some people feel that taxes are too high and need to be controlled. The issue is who should be in control. Question 1 puts a state law in charge of these decisions.

I'd rather trust Mainers in their town meetings to make good choices on the things that matter to their communities and their pocketbooks. I believe they know best how to balance the need to make sound public investments and the need to manage taxes.

TABOR is artificial. It cuts where there shouldn't be cuts and it allows too much growth where there should be restraint. That is what happens when you put a formula in charge and not Maine people.

Trust Maine People - Please Vote No on Question 1.

The printing of this public comment does not constitute an endorsement by the State of Maine, nor does the State warrant the accuracy or truth of any statements made in the public comment.

PUBLIC COMMENT IN OPPOSITION

Comment submitted by:
Donnell P. Carroll, Executive Director
Southern Maine Emergency Medical Services Council
496 Ocean Street
South Portland, ME 04016

"Public Comment In Opposition" to Question 1

Question 1 hurts public safety, schools, and seniors – Vote No.

Question 1 will lead to cuts in education for our children, our public safety network and the health care services we need.

Question 1 is a mandate from Augusta. Instead of allowing each community to make decisions for themselves, Question 1 imposes a one-size-fits-all restriction on everybody. Local communities are prohibited from changing or amending TABOR's restrictions.

Question 1 gives the politicians in Augusta all the control to make changes, including making the restrictions tougher – home rule will suffer.

Question 1 is a copy of a Colorado law, which hurt Colorado's communities so much that the voters suspended it last year.

Question 1 is worded in a misleading way. Of course taxes are too high and need to be controlled but Question 1 doesn't do what we want. It doesn't force the politicians to spend more wisely. Also, Question 1 wouldn't cut taxes, close a single loophole nor eliminate exemptions.

Question 1 will make tax reform impossible – and real tax reform should be our highest priority.

Are you willing to risk the communities we've built to educate our future generation; care for our parent's generation; and assure public safety preparedness in an ever more unpredictable world?

Protect Schools, Seniors and Public Safety - Vote No on Question 1.

Signed,
Donnell P. Carroll
Executive Director,
Southern Maine Emergency Medical Services Council

The printing of this public comment does not constitute an endorsement by the State of Maine, nor does the State warrant the accuracy or truth of any statements made in the public comment.

PUBLIC COMMENT IN OPPOSITION

Comment submitted by:
Jud Dolphin, State Director
AARP-Maine
1685 Congress Street
Portland, ME 04102

AARP opposes Question 1 and urges Mainers to vote NO.

Maine's ability to meet the needs of its citizens depends upon a strong economy and wise tax and spending decisions. AARP opposes arbitrary tax and spending limits that cannot maintain health and educational services or respond to emergency needs.

AARP rejects TABOR:

- **TABOR's inflation-plus-population formula is flawed**. It does not account for rapidly increasing energy and health care costs that are growing much faster than the rate of inflation. And it does not account for the 50+ population growing three times faster than the general population.
- **TABOR starves the things we care about.** Each year, the TABOR formula produces a maximum expenditure level and state and local priorities must compete within this inadequate level of funding. The effect of annual reductions over a number of years is devastating to educating our young, providing emergency services and caring for our older citizens.
- **TABOR limits the flexibility of the state to deal with an economic downturn or natural disaster.** The process of having the citizenry vote on any tax or fee increase is extremely cumbersome, expensive, and in the case of emergencies, potentially fatal.

Maine needs leaders who will spend our tax dollars wisely and provide essential state and local services. TABOR is not the answer.

- TABOR is 13 pages of legal fine print containing details that will not work for Maine. It sounds too good to be true because it is.
- TABOR doesn't deliver what we want—lower taxes, efficient government and control over wasteful spending.
- TABOR will hurt the things we care about like health care, public safety, and education.
- TABOR will burden voters with an expensive and cumbersome referendum process.

AARP urges you to Vote NO on Question 1.

The printing of this public comment does not constitute an endorsement by the State of Maine, nor does the State warrant the accuracy or truth of any statements made in the public comment.

Question 2: Constitutional Amendment

Do you favor amending the Constitution of Maine to state that a citizens' initiative or people's veto petition must be submitted to local or state officials by the constitutional deadline in order to be certified and, in the case of a citizens' initiative, must be filed with the Secretary of State within 18 months?

STATE OF MAINE

CHAPTER 2

CONSTITUTIONAL RESOLUTION OF 2006

APPROVED MAY 25, 2006
S.P. 782 - L.D. 2033

RESOLUTION, Proposing an Amendment to the Constitution of Maine Regarding Procedures for the People's Veto and Direct Initiative

Constitutional amendment. Resolved: Two thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of Maine be proposed:

Constitution, Art. IV, Pt. Third, §18, sub-§1 is amended to read:

1. Petition procedure. The electors may propose to the Legislature for its consideration any bill, resolve or resolution, including bills to amend or repeal emergency legislation but not an amendment of the State Constitution, by written petition addressed to the Legislature or to either branch thereof and filed in the office of the Secretary of State by the hour of 5:00 p.m., on or before the 50th day after the date of convening of the Legislature in first regular session or on or before the 25th day after the date of convening of the Legislature in second regular session, except that the written petition may not be filed in the office of the Secretary of State later than 18 months after the date the petition form was furnished or

approved by the Secretary of State. If the ~~50th or 25th day, whichever applies, is~~ applicable deadline falls on a Saturday, Sunday, or legal holiday, the period runs until the hour of 5:00 p.m., of the next day which is not a Saturday, Sunday, or legal holiday.

Constitution, Art. IV, Pt. Third, §18, sub-§2 is amended to read:

2. Referral to electors unless enacted by the Legislature without change; number of signatures necessary on direct initiative petitions; dating signatures on petitions; competing measures. For any measure thus proposed by electors, the number of signatures shall not be less than 10% of the total vote for Governor cast in the last gubernatorial election preceding the filing of such petition. The date each signature was made shall be written next to the signature on the petition~~, and no signature older than one year from the written date on the petition shall be valid~~. A signature is not valid if it is dated more than one year prior to the date that the petition was filed in the office of the Secretary of State. The measure thus proposed, unless enacted without change by the Legislature at the session at which it is presented, shall be submitted to the electors together with any amended form, substitute, or recommendation of the Legislature, and in such manner that the people can choose between the competing measures or reject both. When there are competing bills and neither receives a majority of the votes given for or against both, the one receiving the most votes shall at the next statewide election to be held not less than 60 days after the first vote thereon be submitted by itself if it receives more than 1/3 of the votes given for and against both. If the measure initiated is enacted by the Legislature without change, it shall not go to a referendum vote unless in pursuance of a demand made in accordance with the preceding section. The Legislature may order a special election on any measure that is subject to a vote of the people.

Constitution, Art. IV, Pt. Third, §20 is amended to read:

20. Meaning of words "electors," "people," "recess of Legislature," "statewide election," "measure," "circulator," and "written petition"; written petitions for people's veto; written petitions for direct initiative. As used in any of the 3 preceding sections or in this section the words "electors" and "people" mean the electors of the State qualified to vote for Governor; "recess of the Legislature" means the adjournment without day of a session of the Legislature; "statewide election" means any election held throughout the State on a particular day; "measure" means an Act, bill, resolve or resolution proposed by the people, or 2 or more such, or part or parts of such, as the case may be; "circulator" means a person who solicits signatures for written petitions, and who must be a resident of this State and whose name must appear on the voting list of the city, town or plantation of the circulator's residence as qualified to vote for Governor; "written petition" means one or more petitions written or printed, or partly written and partly printed, with the original signatures of the petitioners attached, verified as to the authenticity of the signatures by the oath of the circulator that all of the signatures to the petition were made in the presence of the circulator and that to the best of the circulator's knowledge and belief each signature is the signature of the person whose name it purports to be, and accompanied by the certificate of the official authorized by law to maintain the voting list or to certify signatures on petitions for voters on the voting list of the city, town or plantation in which the petitioners reside that their names appear on the voting list of the city, town or plantation of the official as qualified to vote for Governor. The oath of the circulator must be sworn to in the presence of a person authorized by law to administer oaths. Written petitions for a people's veto pursuant to Article IV, Part Third, Section 17 must be submitted to the appropriate officials of cities, towns or plantations, or state election officials as authorized by law, for determination of whether the petitioners are qualified voters by the hour of 5:00 p.m., on the 5th day before the petition must be filed in the office of the Secretary of State, or, if such 5th day is a Saturday, a Sunday or a legal holiday, by 5:00 p.m., on the next day which is not a Saturday, a Sunday or a legal holiday. Written petitions for a direct initiative pursuant to Article IV, Part Third, Section 18 must be submitted to the appropriate officials of cities, towns or plantations, or state election officials as authorized by law, for determination of whether the petitioners are qualified voters by the hour of 5:00 p.m., on the 10th day before the petition must be filed in the office of the Secretary of State, or, if such 10th day is a Saturday, a Sunday or a legal holiday, by 5:00 p.m., on the next day which is not a Saturday, a Sunday or a legal holiday. Such officials must complete the certification of ~~such~~ only those petitions submitted by these deadlines and must return them to the circulators or their agents within 2 days for a petition for a people's veto and within 5 days for a petition for a direct initiative, Saturdays, Sundays and legal holidays excepted, of the date on which such petitions were submitted to them. Signatures on petitions not submitted to the appropriate local or state officials by these deadlines may not be certified. The petition shall set forth the full text of the measure requested or proposed. Petition forms shall be furnished or approved by the Secretary of State upon written application signed ~~in~~ and notarized and submitted to the office of the Secretary of State by a resident of this State whose name must appear on the voting list of the city, town or plantation of that resident as qualified to vote for Governor. The full text of a measure submitted to a vote of the people under the provisions of the Constitution need not be printed on the official ballots, but, until otherwise provided by the Legislature, the Secretary of State shall prepare the ballots in such form as to present the question or questions concisely and intelligibly.

;and be it further

Constitutional referendum procedure; form of question; effective date. Resolved: That the municipal officers of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a general election, at the next general election in the month of November following passage of this resolution, to vote upon the ratification of the amendment proposed in this resolution by voting upon the following question:

> "Do you favor amending the Constitution of Maine to state that a citizens' initiative or people's veto petition must be submitted to local or state officials by the constitutional deadline in order to be certified and, in the case of a citizens' initiative, must be filed with the Secretary of State within 18 months?"

The legal voters of each city, town and plantation shall vote by ballot on this question and designate their choice by a cross or check mark placed within the corresponding square below the word "Yes" or "No." The ballots must be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns and, if it appears that a majority of the legal votes are cast in favor of the amendment, the Governor shall proclaim that fact without delay and the

amendment becomes part of the Constitution of Maine on the date of the proclamation; and be it further

Secretary of State shall prepare ballots. Resolved: That the Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this resolution necessary to carry out the purposes of this referendum.

Effective pending referendum.

Intent and Content
Prepared by the Office of the Attorney General

This proposal would authorize an amendment to the Constitution of Maine to clearly establish certain time frames applicable to the direct citizens' initiative and people's veto referendum process. The first change contained in this amendment specifies that signed petitions for a direct initiative must be filed with the Secretary of State's office within 18 months after the date the petition is approved by the Secretary for circulation. The second change clarifies that, to be valid, signatures on initiative petitions may not be older than one year at the time the petitions are filed with the Secretary of State. The one-year requirement exists in the Constitution now, but the amendment clarifies that the one-year period runs from the date the petition is filed with the Secretary.

The amendment also provides that signatures on petitions for a direct initiative or people's veto referendum must be submitted to local registrars (or state election officials, if authorized by law to perform certification) by the existing deadlines set forth in the Constitution, for a determination as to whether the signatures on the petitions are those of registered voters. Under this amendment, local and state officials would have no authority to make that determination with respect to any petition signatures after the deadlines currently specified in the Constitution, which are: 5:00 p.m. on the 5th day before the petition must be filed with the Secretary of State, for a people's veto referendum, and 5:00 p.m. on the 10th day before the petition must be filed with the Secretary of State for a direct initiative.

A "YES" vote approves the constitutional amendment.

A "NO" vote disapproves the constitutional amendment.

Fiscal Impact Statement
Prepared by the Office of Fiscal and Program Review

Passage of this constitutional amendment will not affect state and local expenditures.

Public Comments

No Public Comments were filed in support or in opposition to Question 2.

Secretary of State
Elections Division
101 State House Station
Augusta, ME 04333-0101
(207) 624-7650

Election information is also available on the Division of Elections' web site at:

http://www.maine.gov/sos/cec/elec/

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MHPC EXPRESS ADVOCACY IN 2006

CAPE ELIZABETH PRESENTATION & PAC AD

The Taxpayer Bill of Righ
Reasonable. Effective.

Reasonable

Provide reasonable growth of government at all level

- Growth rate- inflation plus population growth

Allow additional spending increases with voter approv

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 t
#39 in income
#45 in small business climate

July 26, 2006

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

Reasonable. Effective

TAXPA

BILL O

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 n
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Help out

Paid for and authorized by TaxpayerBillofRigh
Brian Parke – Treasurer, P.O. Box 5271, Augusta,

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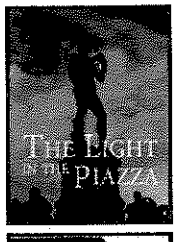

Opinion

High taxes hurt economic performance

letters@TimesRecord.Com

10/25/2006

By J. Scott Moody

Do taxes affect economic development?

While it is a popular conversation amongst political scientists, a quick analysis of the economic indicators of population growth, income growth, and job growth, settles the long-standing dispute; taxes do matter.

In a recent Times Record op-ed (Sept. 22, "Economic development trouble? Get advice from the experts"), Lisa Pohlmann and Ed Cervone argued that taxes do not matter. They made their assertion based on the results of a business leader survey that revealed those business folks did not believe taxes to be an impediment of growth, not through an economic analysis.

While political scientists like Lisa and Ed contend that a survey of business folks holds the secret to economic development, an analysis of high-tax states versus low-taxes states tempers the claims. An examination of economic indicators of population growth, income growth and job growth in high-tax states and low-tax states reveals a stark contrast in the economic performances between the two groups.

Imagine the effect of taxation on the economy as the equivalent of throwing sand into the cogs of a great machine. The sand does not stop the machine; however, it does reduce its efficiency and output. Correspondingly, taxation reduces the efficiency and output of the economy.

The 50 states provide economic researchers with a great opportunity to determine policies that work and policies that do not in terms of generating greater economic prosperity. One highly regarded study from the Federal Reserve Bank of Atlanta found: "... that relative marginal tax rates have a statistically significant negative relationship with relative state growth averaged for the

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period from 1961 to 1992."

Put simply, high taxes lower economic performance.

Another important aspect when studying taxation is that the full negative effects do not immediately appear. As illustrated by the Federal Reserve Bank of Atlanta's report, the negative effects of taxation often take a decade or more to fully impact the economy. Such a lengthy time-period is analogous to when one turns up the temperature on their thermostat. The temperature does not rise immediately, but instead rises slowly over time.

The interactive relationship between taxation and economic performance is seen in an analysis of the 10 lowest tax states and the 10 highest tax states between fiscal years 1994 to 2004. The 10 lowest tax states had an average tax burden of 9.5 percent, while the 10 highest tax states averaged 13 percent. The lowest tax states level of taxation was 27.2 percent lower than the highest tax states. Correspondingly, the low tax states had population growth that was 172.1 percent higher, personal income growth that was 31.9 percent higher, and employment growth that was 78.6 percent higher.

However, cynics may dismiss this as a "coincidence." Perhaps these 20 high/low states are somehow unrepresentative of the entire sample. Such a claim is fair, but unsubstantiated.

An examination of the difference in taxation and economic performance of the 25 lowest tax states and the 25 highest tax states, thus examining all 50 states, reveals that the trend remains. The lowest tax states had an average tax burden of 9.9 percent, while the highest tax states averaged 11.5 percent. The lowest tax states level of taxation was 13.7 percent lower than the highest tax states. Correspondingly, the lowest tax states had population growth that was 74.4 percent higher, personal income growth that was 15 percent higher, and employment growth that was 32.6 percent higher.

While social scientists like Lisa and Ed attempt to ignore these economic measures, this convincing evidence remains. A state with a high level of taxation also has a large economic disadvantage.

So where did Maine rank during this time-period? Maine averaged the second highest level of taxation as a percent of income at 13 percent. Unfortunately, Mainers did not experience the same level of economic growth as residents of low tax states.

Maine policymakers must recognize the consequences that high taxes have on Maine's economy. A solution like the Taxpayer Bill of Rights is a policy direction that can help Maine achieve the same, if not better, job creation and wage growth that citizens from other lower tax states enjoy.

The Taxpayer Bill of Rights is a reasonable and effective tool to begin lowering Maine's tax burden. Lowering taxes will allow for the emergence of strong and vibrant local economies that provide

good paying jobs for Mainers.

J. Scott Moody is vice president of policy and chief economist at the Maine Heritage Policy Center. The author can be reached at jsmoody@mainepolicy.org.

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Sunday, October 08, 2006

E-mail this story to a friend

COLUMN: By JASON A. FORTIN

Passing it means lower taxes, more economic opportunity

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This November, Maine voters will have the Taxpayer Bill of Rights proposal before them. The proposal provides Mainers with the opportunity to lower their taxes, an action that will promote an environment for greater economic growth and job creation.

Having grown-up in Oakland, I have seen firsthand the economic struggles Central Maine has faced over last decade. Whether it was the Scott Paper Mill Closing in Winslow, or the Dexter Shoe Company closing its Dexter plant, Mainers know the sting of losing good-paying jobs.

While the Central Maine region, just like other areas of the state, has made some progress in rebounding from specific job losses, the state economy continues to fall below its potential.

Consider these facts:

n According to the latest U.S. Census Bureau data, Maine's level of taxation is almost 25 percent higher than the national average; making it the third highest in the nation.

n More Mainers are on Medicaid than the total number of students in the K-12 education system.

n The Federal Reserve Bank of Boston said recently that in 2005, only two states in the nation saw a decline in economic activity: Maine and hurricane-ravaged Louisiana.

While sobering, these statistics are by no means carved in stone. Mainers can and will overcome these challenges, and in doing so, unleash Maine's economic potential. The key catalyst for overcoming these challenges is the Maine Taxpayer Bill of Rights.

The first step in addressing the high level of taxation is to control the growth in government spending because that determines the level of taxation. The Taxpayer Bill of Rights provides the spending restraint necessary to lower taxes while allowing for a reasonable growth allowance for state and local governmental spending based on inflation plus population growth.

In fact, the Maine Taxpayer Bill of Rights would provide significant state and local growth allowances worth an estimated $191 million per fiscal year. Such a growth allowance ensures your roads are plowed; firefighters, policemen, and teachers are provided pay raises; and programs to protect the needy are appropriately funded.

If lawmakers want to exceed the growth allowance, all they have to do, as they already do with bonds, is ask for the voters to approve the additional spending.

In addition to providing for annual growth allowances, the Taxpayer Bill of Rights gives voters the final say over what new, or increased, taxes and fees are imposed by politicians. This provision provides taxpayers with the added security of knowing what tax is being raised or created. It is reasonable for voters, not politicians, to have the final say over what new taxes or fees are imposed on them.

A portion of tax dollars collected that exceed the growth allowance are put into a budget stabilization fund. Even more excess revenue is returned to the taxpayer in the form of rebates or tax rate reductions. That budget stabilization fund establishes a significant cash reserve in the event of a budget crisis.

Leveling Maine's tax burden is vitally important to allowing Maine employers to be economically competitive with the rest of the nation, or the world for that matter.

A multitude of academic studies have shown that high levels of taxation are a serious impediment to economic growth, and such an impediment is especially great in Maine, where taxes are nearly 25 percent higher than the national average.

The Taxpayer Bill of Rights is a reasonable and effective tool to begin lowering Maine's tax burden. Lowering taxes will allow for the emergence of strong and vibrant local economies that provide good paying jobs for Mainers.

Jason A. Fortin, a graduate of Waterville High School and Bowdoin College, is the director of communications for The Maine Heritage Policy Center.

Reader Comments
Share your thoughts about this story.

MHPC'S DUDDY MINUTES OF CAPE ELIZABETH PRESENTATION IN 2006

Town of Cape Elizabeth
Taxpayer Bill of Rights Task Force
Minutes of July 26, 2006 Meeting

Present: David Backer, Chair, Town Council; Beth Currier, Co-Chair; Janet McLaughlin, Co-Chair; Kevin Sweeney; Ann Swift-Kayatta, Town Council; Carol Fritz, Town Council; Rebecca Millet, School Board; Alan Hawkins, School Superintendent; William DeSena; Matthew Sturgis, Town Assessor; Michael Duddy; William Gross; Christy Rabasca; James Hanson; Lynda Breary; Bob Goettel; Kyle Parrish; Kevin Stilphen. Several individuals were also present in the audience, but did not appear to request membership on the Task Force.

Mr. Backer opened the meeting by welcoming the participants, and then introducing the co-chairs for the task force.

Ms. Currier and Ms. McLaughlin made a joint presentation, during which they explained that the purpose of the Task Force is educational. The Task Force will discuss how the proposed Taxpayer Bill of Rights would effect the Town of Cape Elizabeth, and discuss how transition might be accomplished if the initiative passes. They also explained the ground rules for the Task Force. They explained that the Tax Force would use a consensus method. They then circulated a spreadsheet of task force members, and invited others present who wished to participate to add their names to the spreadsheet. They explained that membership on the Task Force would also be open to individuals who attended either of the first two meetings of the Task Force.

The co-chairs introduced Matthew Sturgis, Town Assessor, and indicated that Matt was the staff person assigned to the Task Force. They indicated that questions raised during the course of the Task Force would be forwarded to Mr. Sturgis for collection.

The co-chairs then introduced Mr. Becker, who is the President and CEO of the Maine Heritage Policy Center. The Maine Heritage Policy Center drafted the model legislation.

Mr. Becker presented a one-hour long power point presentation in favor of the Taxpayer Bill of Rights. Mr. Becker was presented with several questions during the presentation. After one hour, at the request of the co-chairs and participants of the Task Force, Mr. Becker continued with his presentation for another 20 minutes. Mr. Becker's complete power point presentation is currently shown online on the Town website.

Members of the Task Force asked several questions that appear to need further review and response. Questions included the following:

1. During the past several years, statewide student enrollment has decreased, but statewide educational employees have increased by over 5,000. What specific positions constitute the increase in employment, and to what extent are those positions paid for by federal funds?

2. The Town Manager had prepared a spreadsheet calculating the Taxpayer Bill of Rights growth limit for the past year as 1.4%. Mr. Becker responded that the growth allowance for the preceding year would have been 3.4%. A question was raised to clarify the appropriate growth target.

3. Mr. Sturgis asked the question about whether two votes or only one would be required to perform a re-valuation.

4. A member of the Task Force asked whether the Colorado Taxpayer Bill of Rights had been interpreted in such a manner as to require budget cuts from year to year.

The co-chairs thanked Mr. Becker for his presentation.

The co-chairs then explained that the Task Force would meet every other Wednesday until the general election. Accordingly, the meeting dates for the Task Force would be August 9, August 23, September 6, September 20, October 4, October 18 and November 1.

The meeting was adjourned.

Respectfully submitted,

Michael A. Duddy

J:\Mad\Taxpayer Bill of Rights Task Force\Minutes of 7-26-06 meeting.doc

MHPC'S BECKER LEGISLATIVE TESTIMONY 2006

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 / Waterboro	✓		
Bill Becker	Portland / MHPC	✓		
PEM SCHAEFFER	BRUNSWICK	✓		
John W Trang	FARMINGTON	✓		
TOM GLEASON	WINDHAM	✓		
Lane Hittinger	Windham	✓		
Frank Morrison	HARRISON	✓		
RC Howell	BRISTOL	✓		
Jan Howell	BRISTOL	✓		
Edson Lowe	Yarmouth	✓		
Sarah Lowe	Yarmouth	✓		
Fred Cornfield	Yarmouth	✓		
Thomas Rodgers	Yarmouth	✓		
Mark Leger	Sabattus	✓		
Tom Morton	Jefferson	✓		
Dawn Blake	Belfast	✓		
Rose 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.

PRO-TABOR PRE 6-DAY IN-KIND DONATION REPORT 2006

TAXPAYERBILLOFRIGHTS.COM

Name of PAC

SCHEDULE C

IN-KIND CONTRIBUTIONS/EXPENDITURES

In-kind CONTRIBUTIONS

With respect to all items and services received and expended, enter the date received, a descripton of the item or service, and the fair market value. Enter contributor information if the fair market value of donated item or service is more than $50.

Date Received	Contributor's name, address, zip code	Description of goods, services, discounts or facilities received/expended	Fair market value
10/11/2006	TONY OBERLEY 62 HAWTHORNE DR WINDHAM ME 04062	CAMPAIGN MATERIALS	75.00

In-kind CONTRIBUTIONS

With respect to all items and services received and expended, enter the date received, a descripton of the item or service, and the fair market value. Enter contributor information if the fair market value of donated item or service is more than $50.

Date Received	Contributor's name, address, zip code	Description of goods, services, discounts or facilities received/expended	Fair market value
10/20/2006	KELLY, REMMEL & ZIMMERMAN 53 EXCHANGE STREET PORTLAND ME 04112-0597	OCTOBER 12 & 19 SPEAKING ENGAGEMENTS	1,365.00

In-kind CONTRIBUTIONS

With respect to all items and services received and expended, enter the date received, a descripton of the item or service, and the fair market value. Enter contributor information if the fair market value of donated item or service is more than $50.

Date Received	Contributor's name, address, zip code	Description of goods, services, discounts or facilities received/expended	Fair market value
10/24/2006	AMERICANS FOR LIMITED GOVERNMENT 20 N. WACKER DR. SUITE 3330 CHICAGO IL 60606	VIDEOS	11,962.50

In-kind CONTRIBUTIONS

With respect to all items and services received and expended, enter the date received, a descripton of the item or service, and the fair market value. Enter contributor information if the fair market value of donated item or service is more than $50.

Date Received	Contributor's name, address, zip code	Description of goods, services, discounts or facilities received/expended	Fair market value
10/17/2006	MARY ADAMS PO BOX 10 GARLAND ME 04939	1/2 PAGE NEWSPAPER AD	375.00

In-kind CONTRIBUTIONS

With respect to all items and services received and expended, enter the date received, a descripton of the item or service, and the fair market value. Enter contributor information if the fair market value of donated item or service is more than $50.

Date Received	Contributor's name, address, zip code	Description of goods, services, discounts or facilities received/expended	Fair market value
10/25/2006	ROGER KNOWLTON 112 EVERETT ROAD POLAND ME 04274	ADVERTISING	150.00

MHPC RESPONSE TO COMMISSION REQUEST FOR INFORMATION 12-4-2006

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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.

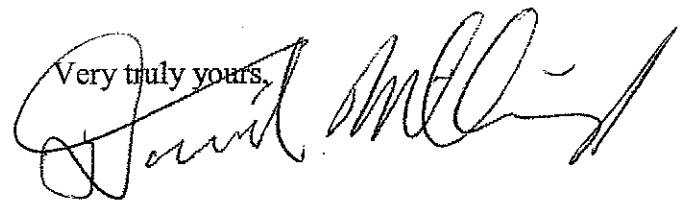
Allegations contained in Carl Lindemann's November 27th letter

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.

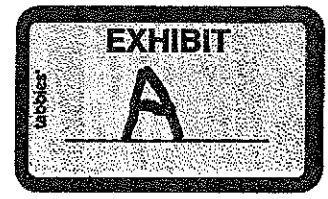
Mr. Lindemann's complaints to the Commission are just one part of his long running campaign against MHPC. Previously, he has filed complaints against MHPC with the Internal Revenue Service which were dismissed. His more recent actions, which include what appears to be an attempt to entrap MHPC into accepting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

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

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

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

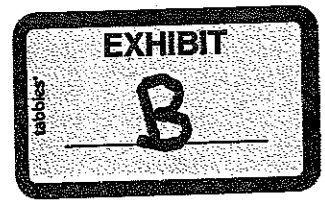
THE TAXPAYER BILL OF RIGHTS is the only public policy in front of Maine voters or our legislators that is guaranteed to reduce Maine's tax burden and ensure that government does not grow faster than the peoples' ability to pay. It is a reasonable solution for Maine citizens and I thank you for being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

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

Sincerely,

Bill Becker

President and Chief Executive Officer



November 29, 2006

Name
Address
City, State Zip

Dear Name,

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

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

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

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

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

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

Yours truly,

Bill Becker
President and Chief Executive Officer

MHPC IRS FORM 1023 APPLICATION FOR 501(C)(3) STATUS

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(e) b ☐ 501(f) 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, 9 Ledgewater Drive, Kennebunk, Maine 04043	0
William Becker, Executive Director and Secretary, ADDRESS TK	$65,000

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

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

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

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

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

Part VII Activities and Operational Information *(Continued)*

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

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

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

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

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

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

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

If "Yes," complete the following:

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

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

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

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

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

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

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

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

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

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

If "Yes," explain fully.

Part III Technical Requirements

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

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

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

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

☐ a Is a church, interchurch organization of local units of a church, a convention or association of churches, or an integrated 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 VII 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		

Part V 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

MHPC BECKER OPINION PIECE LSJ 2/13/2003

Sun Journal

Significant changes sought in economic policies

Sunday, February 16, 2003 12:00 am

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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.

MARDEN, DUBORD,
BERNIER & STEVENS

ATTORNEYS AT LAW

Daniel I. Billings, Esq.
dbillings@mardendubord.com

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

PHONE (207) 873-0186
FAX (207) 873-2245

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:

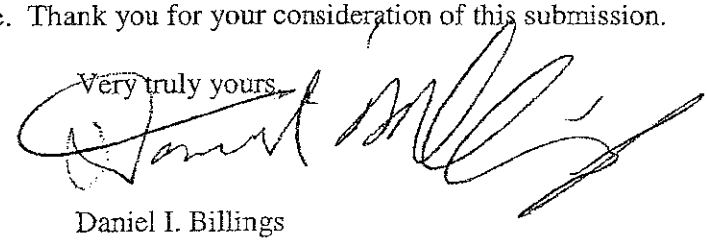
> *A person may apply in writing to the commission requesting an investigation concerning the registration of a candidate, treasurer, political committee or political action committee and contributions by or to and expenditures by a person, candidate, treasurer, political committee or political action 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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P.O. Box 74
Austin, TX 78767
http://www.cyberscene.com
(512) 495-1511

"Who seeks gold
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and finds little"

-Heracleitus

We the people of Maine...

THE MAINE HERITAGE POLICY CENTER

RECEIVED
2006 AUG 29 P 2:22
OFFICE OF
THE SECRETARY OF STATE

Matt Dunlap
Secretary of State
Augusta, Maine

www.mainepolicy.org
Portland, Maine 04112

Tel: 207.321.2550
Fax: 207.773.4385

August 29, 2006

HAND DELIVERED

Dear Secretary Dunlap:

Please accept the following submission for inclusion in the Citizen's Guide to the Referendum Election in SUPPORT of Question 1. I have included the required information for the application below. Please don't hesitate to contact me if you have any questions or need additional information.

Board of Directors

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

1. ***DATE OF ELECTION***: November 7th 2006
2. ***BALLOT ORDER***: Question # 1
3. ***POSITION TAKEN:*** The attached Comments are in SUPPORT OF Question 1
4. ***TYPE OF ENTITY:***
   The Comments are submitted on behalf of the The Maine Heritage Policy Center
5. ***NAME AND POSITION OF SUBMITTER:***
   Bill Becker, President and CEO, The Maine Heritage Policy Center
6. ***ORGANIZATION***: The Maine Heritage Policy Center
7. ***CONTACT INFO:*** Bill Becker, President and CEO
   The Maine Heritage Policy Center
   P.O. Box 7829
   Portland, ME 04103
   207/321-2550

Sincerely,

Bill Becker

Bill Becker
President and CEO
The Maine Heritage Policy Center

Attachments: 2 copies of submission, check and one CD with document.

We the people of Maine...

THE MAINE HERITAGE POLICY CENTER

The Taxpayer Bill of Rights: A Reasonable and Effective policy solution.

With the Taxpayer Bill of Rights Maine voters have the opportunity to lower their tax burden, have a greater say over how much money politicians spend, and have the final approval of new, or increased, taxes and fees.

Currently, Mainers pay some of the highest—the highest by some measures—taxes in the entire United States. This level of taxation not only affects people's ability to provide for their families, but limits the level of economic and job creation activity in Maine.

The first step in addressing the high level of taxation is to control the growth in government spending because the level government of spending determines the level of taxation. The Taxpayer Bill of Rights provides the spending restraint necessary to lower taxes while allowing for a reasonable growth allowance for state and local governmental spending based on inflation plus population growth. However, it is important to note that the growth allowance is simply a target and if they choose, the voters of a town, or the state, can exceed that growth allowance by simply approving any increase above the growth allowance.

In addition to providing for annual growth allowances, the Taxpayer Bill of Rights gives voters the final say over what new, or increased, taxes and fees are imposed by politicians. This provision provides taxpayers with the added security of knowing what tax is being raised or created. It is a reasonable for voters, not politicians, have the final say over what new taxes or fees are imposed on them.

The Taxpayer Bill of Rights is a reasonable and effective tool to begin lowering Maine's tax burden, which will allow for the emergence of strong and vibrant local economies that provide good paying jobs for Mainers.

DUPLICATE TO BE KEPT IN FILE OF DEPT OR INST. MAKING COLLECTION

STATE OF MAINE

RECEIPT FOR DEPARTMENTAL COLLECTIONS

№ 714004 G

RECEIVED FROM Maine Heritage Policy Ctr DATE 8-29-06
NAME

five hundred and no/100 DOLLARS

CASH ☐ CHECK ☑ MONEY ORDER ☐

FOR
SPECIFY FULLY PURPOSE FOR WHICH PAYMENT WAS MADE

Public Comment

Elec.
NAME OF DEPARTMENT OR INST. MAKING COLLECTION

V Melson
SIGNATURE OF PERSON MAKING COLLECTION

Bank of America

Cashier's Check

No. 0052248

Notice to purchaser: In the event this check is lost, mislaid or stolen, a written statement and 90-day waiting period will be required prior to replacement. This check should be negotiated within 90 days.

Date AUGUST 29, 2006

30-1/1140
NTX

Banking Center ONE CITY CENTER

0002311 00900 00005224 8

THE MAINE HERITAGE POLICY CENTER
Remitter (Purchased By)

Pay **FIVE HUNDRED DOLLARS AND 00 CENTS**

$**500.00**

To The Order Of **SECRETARY OF STATE/STATE OF MAINE**
****

Jessi R Stin
Authorized Signature

Bank of America, N.A.
San Antonio, Texas

VOID AFTER 90 DAYS

19-14-3774B 106-2003

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29 **SECRETARY OF STATE**

250 **BUREAU OF CORPORATIONS, ELECTIONS AND COMMISSIONS**

Chapter 520: RULES REGARDING PUBLICATION OF PUBLIC COMMENTS ON STATEWIDE REFERENDA

SUMMARY: These rules describe the procedures and requirements for submitting public comments for or against statewide referenda, including citizen initiatives, people's veto referenda, constitutional resolutions and bond issues, for publication by the Secretary of State in the *Citizen's Guide to the Referendum Election* (in both printed form and on the agency's web site).

---

§1. Requirements for Public Comment Submission

1. Any individual, corporation, political action committee or other organization may file public comments in support of or in opposition to a ballot measure for publication in the *Citizen's Guide to the Referendum Election* ("*Citizen's Guide*"). Ballot measure public comments must be accompanied by a completed application on a form designed by the Secretary of State. The application must contain, but is not limited to the following information:

A. Date of the election that the ballot measure will be voted on;

B. Ballot order assigned to the measure;

C. Position taken – e.g. public comments in support or public comments in opposition;

D. Name of the person submitting public comments;

E. Name of the organization the person represents (if applicable);

F. Contact information for the person submitting the public comments; and

G. Original signature of the person submitting the comments:

i) For public comments filed and paid for by an individual, only the signature of the individual is required.

ii) For public comments sponsored by an organization or corporation, the application must be signed by an executive officer and must include the officer's title and the name of the organization or corporation.

iii) For public comments sponsored by a political action committee, the application must be signed by the committee's chairperson or treasurer, and must be identified by committee name.

2. All applications must be accompanied by a cashier's check or money order in the amount of $500.

3. Any individual, corporation, political action committee or other organization may file only one (1) public comment per ballot measure.

4. Public comments must be filed with the Secretary of State no later than 5 p.m. on the 70th day prior to the date of the election at which the ballot measure is being voted on.

5. Public comments must be submitted electronically (MS Word or compatible format) on a floppy disk or CD along with a paper copy.

6. Public comments for publication will be limited in number to three (3) public comments in support and three (3) public comments in opposition to each ballot measure. The determination of which public comments will be published in the *Citizen's Guide* will be based upon the date (and time, if applicable) that the public comments were filed in the Secretary of State's office. If public comments beyond the allowable number are received at the same time, a random drawing will be held to determine which public comments will be published. The document filing date shall be the date the document is received by the Secretary of State in proper filing order with the appropriate filing fee.

7. All submissions should be designed for printing on 8 ½ by 11 inch pages, portrait orientation.

8. Only "Public Comments in Support" and "Public Comments in Opposition" will be accepted. Public comments that are "Neither For Nor Against" will not be accepted for publication.

9. All submitted public comments must be written in plain English with plain text. No graphics or pictures will be accepted for publication.

10. Public comments are limited to 300 words or less. Public comments longer than 300 words will not be accepted for publication.

11. The public comments must be submitted exactly as the filer wants the public comments to appear in the *Citizen's Guide*. Public comments will be published in the *Citizen's Guide* verbatim; no grammatical, spelling or textual changes will be made to the public comments, except as corrected under Section 3 of these Rules.

12. The Secretary of State shall reject any public comments submitted which:

    A. Contain any obscene, profane or defamatory language;

    B. Incite or advocate hatred, abuse or violence toward any person or group; or

    C. Contain any language which may not legally be circulated through the mails.

13. Nothing in this chapter shall exempt the author of any public comments from any civil or criminal action because of any defamatory statements offered for printing or contained in the *Citizen's Guide*.

§2. Rejection of Comments

1. Not later than three (3) business days following the deadline for filing public comments, the Secretary of State shall review each submission and reject any public comments filed for publication in the *Citizen's Guide* that do not meet the requirements of Section 1 or that violate the provisions of Section 1.12 of these Rules. The Secretary of State shall notify the filer of the rejection in the following manner:

   A. By telephone; or

   B. If unable to contact the person by telephone, and if there is sufficient time prior to the publication of the *Citizen's Guide*, by certified mail immediately upon rejection.

2. The Secretary of State shall attempt to contact the person not later than the fifth business day following the deadline for filing public comments. Notification of a rejection shall identify the reason for rejection. A person contacted by the Secretary of State under this subsection may file a revised comment pursuant to paragraph 3 of this subsection not later than the seventh business day following the deadline for filing the public comments.

3. Any individual, corporation, political action committee or other organization notified by the Secretary of State of a rejection may revise the public comments only to the extent necessary to bring it into conformance. The revised public comments must meet the following requirements:

   A. The revised public comments must be in compliance with all provisions of Section 1 of these Rules;

   B. The revised public comments shall be returned to the Secretary of State, Elections Division by the deadline specified in these rules; and

   C. The revised public comments shall be resubmitted in electronic format.

4. If the Secretary of State is unable to contact any person submitting public comments regarding the rejection or if the person fails to respond to the Secretary of State's notification, that person's comments will not be published in the *Citizen's Guide*.

5. The Secretary of State shall notify by mail any individual, corporation, political action committee or other organization whose comments were rejected due to the Secretary of State already receiving the maximum numbers of public comments allowed.

6. Upon final rejection of a filing, the Secretary of State will return the comment filer's payment for publication of the comments.

§3. Secretary of State to review public comments for errors in identification of measure number or designation of support or opposition to measure; corrections allowed

1. Not later than three (3) business days following the deadline for filing public comments, the Secretary of State shall review each submission to determine whether the person filing the public comments made an error in:

   A. Identifying the measure number to which public comments pertain; or

   B. Designating the public comments as in support of or in opposition to the ballot measure.

2. If the Secretary of State determines that the person filing the public comments may have made an error described in subsection 1 of this section, the Secretary of State shall attempt to contact the person not later than the fifth business day following the deadline for filing public comments. A person contacted by the Secretary of State under this subsection may file a correction to the identification of the measure number or the designation of the public comments not later than the seventh business day following the deadline for filing the public comments.

3. If a person files a correction to public comments under subsection 2 of this section, the comments shall be printed in the *Citizen's Guide* as corrected under subsection 2 of this section. If the Secretary of State is unable to contact a person under subsection 2 of this section or the Secretary of State contacts the person and the person does not file a correction to the public comments, the public comments shall be printed in the *Citizen's Guide* as originally filed, but with a disclosure stating that Secretary of State notified the person filing the public comments of a possible error.

§4. Guidelines for Secretary of State's *Citizen's Guide*

1. The Secretary of State's *Citizen's Guide* will be printed in an 8 ½ by 11 size, on stock to be determined by the Secretary of State.

2. The Secretary of State shall include the following items in the *Citizen's Guide* for each public comment submitted and printed:

   A. The name of the person who submitted the public comments;

   B. The name of the organization the person represents, if applicable;

   C. Whether the public comments support or oppose the measure; and

   D. A disclaimer in substantially the following form:

   "The printing of this public comment does not constitute an endorsement by the State of Maine, nor does the State warrant the accuracy or truth of any statements made in the public comment."

3. Each public comment will be labeled "Public Comment in Support" or "Public Comment in Opposition".

4. Information and public comments for each question will be presented in the following order: 1) brief explanatory statement prepared by the Attorney General; 2) estimate of the fiscal impact prepared by the Office of Fiscal and Program Review; 3) public comments submitted in support of the ballot measure, if any; and 4) public comments submitted in opposition to the ballot measure, if any. All public comments in support, up to a maximum of three, will be printed first, followed by public comments in opposition, up to a maximum of three.

5. Standard formatting attributes, such as boldface, all caps, centering, underlining and bulleted or numbered lists may be used with the following exceptions:

   A. Italic text may be used only when identifying publications. Improperly used italic text will be changed to plain text.

   B. Names of court cases should be underlined, not italicized. Court cases submitted in a different format will be changed.

STATUTORY AUTHORITY: 1 M.R.S.A. §354, as enacted by P.L. 2005, c. 316.

EFFECTIVE DATE:
July 13, 2006 – filing 2006-261

MHPC'S EXPRESS ADVOCACY DENIALS

Oct. 20, 2006

Attorney Billings' Oral Testimony:

I do think it is important to address just what the role of the Maine Heritage Policy Center has been on this . . . on this matter. The Maine Heritage Policy Center is not acting as political action committee on behalf of the Tax Bill . . . Taxpayer's Bill of Rights [phonetic]. There is another committee that is raising and spending money on behalf of the passage of the bill. That organization is filed as a PAC. The Maine Heritage Policy Center **unlike the [unintelligible] . . . the organization represented by the previous speaker is not running advertisements in newspapers advocating for the Taxpayer's Bill of Rights. They have not solicited funds to support it. There is no . . . there is no money being spent on TV ads through the organization or anything like that.** What they have done is first they drafted the legislation as model legislation and it made that model legislation available to people who are interested in it. It went forward both as a legislative document sponsored from the Legislature by a member of the Legislature and also went forward as. . . as a referendum and an initiative. Again, the Maine Heritage Policy Center wrote the initiative another group actually filed it as an initiative and collected the signatures and so forth. And they have obviously been vocal about the measure. And I would have to, you know, we can go into, you know, the factual determination where the line starts on advocacy or simply education on the matter. But I do think that it is important to note that **this isn't an issue where someone is doing mailings, running advertisements, anything like that.** What is happening is people who work for this organization are vocal in the public on an issue of public concern. And they do, as has been said, they have reviewed it at forums and presented information about the . . . about the, about the referendum. And we have offices in both [unintelligible]. But we are talking about people

speaking on an issue as representatives of the group, and I think it is important to recognize that. **It is not a matter of someone running ads or that kind of thing.** Looking at 1056—B the language of the . . . of the statute is very broad. It talks about you are in excess of $1,500 for the purposes of initiating, promoting, defeating, or influencing in any way a valid question you must file a report. So there is not a direct advocacy testing here that's [phonetic] defeating and influencing in any way.
(pgs 11-13, **EMPHASIS ADDED**)

In the headlines the last few days the Maine Chamber has put this group together having a series of meetings. From what I have seen in the press so far I haven't been able to [unintelligible] from that. But then you have to act very carefully in this area. **I think there is no question that someone is spending money running ads, that kind of thing they need to report.** (pg. 15, **EMPHASIS ADDED**)

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October 26, 2006
Attorney Billings' Memo:

In 2003, MHPC authored its first-ever policy report on tax-and-expenditure limits (TELs). MHPC identified TELs as a potential solution to Maine's high tax ranking, researching the make-up of the 25+ states that had some form of TELs. **MHPC has continued to promote TELs as a policy solution since that first report.** (pg. 1, **EMPHASIS ADDED**)

The Maine Heritage Policy Center has not distributed or produced political literature that specifically advocates a "Yes on 1" or "Vote Yes on TABOR" position. In their remarks, MHPC's staff does not tell people to vote one way or the other. The materials submitted by Mr. Lindemann and Democracy Maine show this to be the case. MHPC has not purchased television, radio, or newspaper advertisements to

influence the outcome of the referendum. MHPC has not purchased nor distributed lawn signs, bumper stickers, or other types of campaign material. (pg. 3)

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Oct. 31, 2006

Attorney Billings' Oral Testimony:

So I would – I would suggest to you that you read the law with an express advocacy test in mind and that MHPC or any organization only be required to file a directive expressly advocating the passage that could be a referendum. And the people who are supporting the complaint are coming forward with all sorts of information which I've gone through and other people involved in the center have come through and certainly illustrates that MHPC has been active talking about that matter. We certainly recognize that. But I haven't seen anything that says that MHPC has been telling people how to vote. Certainly you can read – **you know they've made comments that may influence people's vote but they are not specifically advocating a certain vote.** So with that, I don't believe they should be required to file a 1056-B report.
(pgs. 31-32, **EMPHASIS ADDED**)

MAVOUREEN THOMPSON: -Why would you not fill out a 1056?

MR. BILLINGS: Well I think there's two things. The first is, what is the purpose of the center's activities and the purpose of the center's activities are not for advocating the passage of a referendum. Everything that the center is involved in is within its non profit purpose. The second point is, **the center stops short of directly advocating passage of the referendum. And what we're asking is, that's where you should draw the line. That unless somebody is spending money telling voters how they should vote, using the magic words, vote for or support that, that's where the line should be drawn.**

So there's two points, number one that the center

believes that its activities, the purpose of its activities and the statute as written does say, does use the word purpose and they are saying that their purpose is not for promoting the referendum. It's in their general non profit purpose that existed before there was a referendum and [Unintelligible} after the referendum.

But the second part is, is – is looking at what their actual activities have done and nobody has come forward with anything that shows an MHPC or any of their representatives who said directly, people should vote for this referendum.

MICHAEL FRIEDMAN: People are too smart for that though. Let me just – I don't disagree -

MAVOUREEN THOMPSON: (Interposing) I didn't hear what you said.

MICHAEL FRIEDMAN: I said people are too smart for that. (pgs 45-46, **EMPHASIS ADDED**)

Attorney Billings:
…What the cases have gone on to say is, you draw the line in the direct advocacy and **we are saying MHPC has not directly advocated** so we don't fall under these regulations. (pg. 50, **EMPHASIS ADDED**)

Attorney Billings:
I think the first problem would be drawing lines. What type of activities – I guess it's first, even if you read this broadly, **MHPC hasn't spent any money on ads, television ads, mailings, radio ads or anything else. So there's not, there are certain invoices they can go to and say, yes, this was an ad we ran on Tabor that needs to be reported. This is – it didn't do any of that.** (pgs. 56-57 **EMPHASIS ADDED**)

MHPC's Mr. William Becker's Oral Testimony:

MR. BECKER: I think we went to through the question earlier as well. Couple points, one comparison with voting is not really an appropriate comparison. The

more accurate comparison might be with a Muskie School or a Margaret Chase Smith center for public policy. **Both are research and educational organizations as are we, they happen to be affiliated with a college or a university. We happen not to be affiliated with a college or university.**

This past fall, a large grant was given to the Margaret Chase Smith Center and to the Muskie School to do exactly what we did, which was to research and to study the Taxpayer Bill of Rights initiative that is now of course the citizens initiative and then to publish and disseminate the results of that report.

That is a different – that is a different beat than creating an African Studies program. **Those are research and educational organizations as are we. They are a 501C3, we are a 501C3. We are all engaged in public policy, research analysis and education. That's the business that we are in. That's what we do as an organization.**

Secondly, on the constitutional issue, I do agree with staff's conclusion that the states may constitutionally require – that they are not clear however, **as to whether a state may constitutionally impart disclosure, of expenditures and initiatives and referendums that fall short of express advocacy.**

The third is, you have distinction between what we do. You've got an example of our work. I mean we have PhDs economists, masters economists that we have [Unintelligible} {coughing] on a regular basis, on a daily basis. Our reports talk about the economic benefits that their reports do computer generated models. **Mr. Crasnick's organization puts out stuff like that. That's what he's filing about tomorrow. That's not stuff that we do. We don't put out that sort of material, never have, never will. That requires a 1056-B and appropriately so.**

Our role is as a public policy, research and educational organization which studies issues and as long as [Unintelligible} [coughing] much after these organization is not. (pgs. 50-12 **EMPHASIS ADDED**)

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JONATHAN WAYNE: I wanted to ask, how can you be so sure that you haven't engaged in express advocacy and I just wondered [Unintelligible} (*about Mr. Lindemann's example when Mike Violette turns*) (turn) to you and said, give us a yes on you know, one statement and then you replied [Unintelligible}. (*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.**

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

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

(pgs. 53-54 **EMPHASIS ADDED, *text corrected***)

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December 4, 2006
Attorney Billings' Memo:

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.** (pg. 3, **EMPHASIS ADDED**)

December 8, 2006
Attorney Billings' Memo:

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 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**.
(pg. 3 **EMPHASIS ADDED**)

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December 20, 2006
Attorney Billings' Oral Testimony:

Attorney BILLINGS:
Right. From the Maine Center for Economic Policy, Mr. St. John, um, and the extent of my knowledge about the organization is what I see in the media and um, I certainly do not judge by going through that filter. But the thing I noticed in—during the discussion of the Taxpayer Bill of Rights, um, is they were often one of people speaking out against the, um… against the proposal. They were often put up as a counterweight to the Maine, uh, Center—Maine Heritage Policy Center, um. They appeared, um, at forums as Bill did and other representatives of MHPC. Um, so I think in that way

they were similar. I think if one… significant difference is that, um… **Maine Center for Economic Policy, uh, expressly advocated a position on the bill. They told people that thought tax—TABOR should be defeated and people should vote no. And MHPC stopped short of that. I certainly understand the staff and maybe even some of the Commissioners don't see that as an important distinction but I—from our point of view it is important.** (pgs. 128-129 **EMPHASIS ADDED**)

Attorney BILLINGS: Well my problem is I don't know [Coughing] where to draw that line. **Um, I do think someone could—I mean we've been forthcoming about what MHPC has done.** And I think it—it, I mean—I think someone could look at that and—and reach that conclusion. Um, that's not the conclusion that we reach because MHPC sees all—all its activities in 2006 for the purpose of advancing its, um, overall mission. Um… **but I think that's—um, somebody else could, um… look at those activities and reach a different conclusion. But it wasn't the purpose of MHPC activities to try to influence the way people voted on the referendum.**

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

MR. BILLINGS: Obvious—obviously Bill said that he thought was a good idea. They continue to think it's a good idea but **they stopped short of telling people how to vote.** (pg. 166, **EMPHASIS ADDED**)

MHPC's Mr. William Becker's Oral Testimony:

MR. BECKER (prepared remarks):
…Mr. Lindemann claims to be interested in broader issues, but his complaints have all been made against the Maine Heritage Policy Center. He wrote—raised no questions about similar organizations such as the Ken-Katahdin Institute or the Maine Center for Economic Policy which **both were engaged in express advocacy**

against the Taxpayer Bill of Rights, unlike the Maine Heritage Policy Center. Let me address the recent allegation of MHPC's accepting TABOR contributions specifically. MHPC accepts donations that support our overall mission, to research, analyze and promote conservative and free-market public policy solutions that will benefit the people of Maine. We do not have segregated funds for any public policy about which we are researching. As an educational and research organization we have donors who on their own free will, will support different aspects of our work. Some support our healthcare analysis. Some support our data collection. Some will come to support our education reform efforts. This is very similar to a school that accepts money from a donor that sends it in and says please use this to support your music program, or your athletic program, or your science program. That's a similar situation at MHPC. We have donors who support different aspects of our work. When we were first asked about our contributors, we answered quickly and accurately that we do not take any contributions that are contingent upon any action on the Taxpayer's Bill of Rights. I did not, nor do I believe that any of the donors who referenced TABOR in their donation or notes, thought that they were getting a lawn sign, a bumper sticker, or a political ad. **They were not getting express advocacy. Instead they were supporting our ongoing work on spending limits including research, analysis and speaking publicly about Maine's economy and the positive role that TABOR could play.** In fact, and not surprisingly, there were a number of donors who knowingly support MHPC's overall mission and who at the same time made separate political contributions to the Taxpayer Bill of Rights campaign. We have never claimed that we do not talk about TABOR. Of course we do. We wrote the model legislation. We believe that it would be a good policy solution for Maine. We were in the media in 2004 talking about this model legislation about the same time that other organizations were expressly advocating a known position on the tax gap, otherwise known as the Pulaski [phonetic] position, without filing the necessary 1056(b) forms. **So even if four donors referenced TABOR on their donations, they were not supporting the**

There was a separate PAC organization, organized to advocate the passage of the TABOR referendum. Donors to MHPC were supporting our research, our analysis and yes our educational efforts regarding this specific spending reform proposal. We just received a publication from, uh, an organization that was writing about the Maine Heritage Policy Center and I'll just read this sentence to you. It says MHPC, and this was a few months ago, is the principal author and information source for a pending citizen's initiative referendum that would create a statutory Taxpayer's Bill of Rights for Maine. And I think that's a fair, accurate representation. We wrote it. We were considered to be the experts on it. (pgs. 106-110 **EMPHASIS ADDED**)

…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. (pg. 157 **EMPHASIS ADDED**)

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