



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

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: May 3, 2010
Re: Legal Materials for Appeal by Matthew Boucher

Matthew Boucher is a candidate for House of Representatives, District 38. On April 28, 2010, the staff of the Commission denied his application for Maine Clean Election Act (MCEA) funding. Mr. Boucher submitted his qualifying materials late (after 5:00 p.m.) on April 21, 2010, the last day of the qualifying period for legislative candidates. His attorney, Steven Juskewitch, submitted an appeal today (attached).

This memo outlines the relevant law and rules for the April 6 appeal hearing. A few samples of documents from the factual record for the staff determination are attached for your reference. The complete record has been provided to Mr. Juskewitch, and will be at your table at the April 6 hearing.

Statutory Deadline for Submitting Qualifying Materials

Under 21-A M.R.S.A. § 1125(4), a candidate seeking MCEA funding is required to submit the qualifying contributions and receipt and acknowledgment forms by the end of the qualifying period. The receipt and acknowledgement forms demonstrate that the Maine voters who made \$5 qualifying contributions in support of the candidate are registered to vote.

4. Filing with commission. A participating candidate must submit qualifying contributions, receipts and acknowledgment forms, proof of verification of voter registration and a seed money report to the commission during the qualifying period according to procedures developed by the commission, except as provided under subsection 11.

The term “qualifying period” is defined in statute. For legislative candidates, the period ends on April 20 (or the next business day if the Commission office is closed on April 20):

Qualifying period" means the following.

A. For a gubernatorial participating candidate, the qualifying period begins October 15th immediately preceding the election year and ends at 5:00 p.m. on April 1st of the election year.

B. For State Senate or State House of Representatives participating candidates, the qualifying period begins January 1st of the election year and ends at 5:00 p.m. on April 20th of that election year or the next business day following April 20th if the office of the commission is closed on April 20th.

(21-A M.R.S.A. § 1122(8)) In 2010, Maine state government was closed on April 20 for budget reasons, so the end of the qualifying period was Wednesday, April 21.

A 2010 candidate for the Maine House of Representatives must collect at least 60 qualifying contributions supporting his or her candidacy. (21-A M.R.S.A. § 1125(3)(C))

Commission Rule on Submitting Qualifying Materials

The Commission has a rule which addresses submission of qualifying materials (Chapter 3, Section 3(1)). Under the rule, the candidate must submit certain materials by 5:00 p.m. on the last day of the qualifying period, but the candidate may submit some materials late because they are administrative in nature:

- 1. Request for Certification.** A participating candidate may submit a completed request for certification to the Commission at any time during the qualifying period but not later than 5:00 p.m. on the last day of the relevant qualifying period. The request will be deemed complete and considered for certification only when the candidate has submitted to the Commission:

- A. the qualifying contributions attached to the corresponding original receipt and acknowledgement forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking;
- B. a list of all individuals making qualifying contributions and their town or city of residence, sorted alphabetically by the contributor's last name;
- C. for gubernatorial candidates, the following documentation for required seed money contributions as required by the Act ([1125(2-B)]: the acknowledgement forms signed by the contributors of seed money, list of seed money contributions, photocopies of checks or money orders received from seed money contributors, and bank or merchant account statements which list contributions made by credit or debit card; **[note: this subparagraph is not relevant for House candidates]**
- D. a seed money report of contributions, expenditures, and obligations made or incurred after becoming a candidate, including a report of any unspent seed money; and
- E. a signed request for certification on a form provided by the Commission which contains an affirmation by the candidate that he or she has complied with all seed money and qualifying contribution requirements, has established a separate federally-insured bank account for campaign purposes and, if applicable, that any person who circulated receipt and acknowledgement forms and collected qualifying contributions acted with the candidate's knowledge and consent, and any other information relevant to the certification process.
- F. A candidate may request an extension of time to comply with paragraphs B, D, and E. The Commission staff shall grant all reasonable requests or state in writing the reasons for denying the request. The Commission and the Commission staff may not grant an extension of time to comply with paragraph A or C.

(underscoring added) Please note the final sentence of the rule states that the Commission "may not grant an extension of time" to submit the qualifying contributions and the receipt and acknowledgement forms required by paragraph 1(A).

Under this rule, an application by a House candidate for MCEA funding must include:

- *Qualifying contributions (may not be submitted late).* These are the \$5 checks or money orders payable to the Maine Clean Election Fund (three sample checks are attached for your reference).
- *Receipt and Acknowledgement forms (may not be submitted late).* (Three sample forms submitted by Mr. Boucher are attached.)
- *Alphabetical list (may be submitted late).* This is a list of the Maine voters in the candidate's district who gave \$5 qualifying contributions.
- *Seed money campaign finance report (may be submitted late).* (The candidate must file this report electronically on the Commission's e-filing website. Mr. Boucher has not filed this report as of today.)
- *Request for certification form (may be submitted late).* (Mr. Boucher's request form is attached.)

Candidate's Right to Appeal

A candidate who has been denied MCEA funding by the staff may appeal the denial to the Commission:

14. Appeals. A candidate who has been denied certification as a Maine Clean Election Act candidate, the opponent of a candidate who has been granted certification as a Maine Clean Election Act candidate or other interested persons may challenge a certification decision by the commission or its executive director as follows.

A. A challenger may appeal to the full commission within 7 days of the certification decision. The appeal must be in writing and must set forth the reasons for the appeal.

B. Within 5 days after an appeal is properly made and after notice is given to the challenger and any opponent, the commission shall hold a hearing, except that the commission may extend this period upon agreement of the challenger and the candidate whose certification is the subject of the appeal, or in response to the request of either party upon a showing of good cause. The appellant has the burden of proving that the certification decision was in error as a matter of law or was based on factual error. The commission must rule on the appeal within 5 business days after the completion of the hearing.

C. A challenger may appeal the decision of the commission in paragraph B by commencing an action in Superior Court within 5 days of the date of the commission's decision. The action must be conducted in accordance with Rule 80C of the Maine Rules of Civil Procedure, except that the court shall issue its written decision within 20 days of the date of the commission's decision. Any aggrieved party may appeal the decision of the Superior Court by filing a notice of appeal within 3 days of that decision. The record on appeal must be transmitted to the Law Court within 3 days after the notice of appeal is filed. After filing the notice of appeal, the parties have 4 days to file briefs and appendices with the clerk of the court. The court shall consider the case as soon as possible after the record and briefs have been filed and shall issue its decision within 14 days of the decision of the Superior Court.

D. A candidate whose certification as a Maine Clean Election Act candidate is reversed on appeal must return to the commission any unspent revenues distributed from the fund. If the commission or court finds that an appeal was made frivolously or to cause delay or hardship, the commission or court may require the moving party to pay costs of the commission, court and opposing parties, if any.

Thank you for your consideration of this memo.

STEVEN A. JUSKEWITCH
ATTORNEY AT LAW
3 Franklin Street
Ellsworth, Maine 04605

Stephanie Fountaine, Paralegal

207-667-0483 (Office)
207-667-5139 (Fax)

May 3, 2010

Commission on Governmental Ethics
And Election Practices
45 Memorial Circle
Augusta, Maine 04330

Re: Appeal of Matthew Boucher – Maine Clean Election Applicant

Dear Commissioners:

This letter will confirm my understanding that the Commission will hear Candidate for House District 38, Matthew Boucher, at 1:00 pm on Thursday, May 6, 2010 with regard to whether on not there was a mistake of fact regarding late submission of his application materials.

The Commission records should reflect that Candidate Boucher filed fourteen (14) Qualifying Contributions – Receipts and Acknowledgement Forms (QC-RAF) with sixty-nine (69 signatures) at approximately 5:25 pm on Wednesday, April 21, 2009.

The filed QC-RAF starting with the crossed out name Gale Coughlin indicates that the Ellsworth Registrar on April 21, 2010 erroneously initially disqualified all of the names on that form. A review of that form indicates that the Registrar subsequently qualified all but Gale Coughlin¹ on the form.

The filed QC-RAF starting with the name Denice Thanen indicates that the Ellsworth Registrar on April 21, 2010 erroneously initially disqualified all of the names on that form. A review of that form indicates that the Registrar subsequently qualified all but one of the names on the form.

The filed QC-RAF starting with the name Rebecca Joy indicates that the Ellsworth Registrar on April 21, 2010 erroneously initially disqualified Lloyd Beal, Norma Beal and Terrence Pinkham. Attached hereto is a statement from the Ellsworth Assistant City Clerk confirming that those people are qualified contributors.

Candidate Boucher will corroborate the facts and circumstances surrounding the errors by the Ellsworth Registrar in the processing of his QC-RQF's and delaying his

¹ Gale Coughlin was certified on a Trenton QC-RAF

departure to file them in Augusta. He advised the Commission staff by telephone message of his delayed departure. He requested Jacqueline Spofford to contact the Commission staff in person and advise them of his predicament. Ms. Spofford told him a Commission staffer told her since he was on his way that a late filing would be accepted. Mr. Boucher erroneously relied upon the information provided to him and did not race against the clock to make sure that he met the five o'clock deadline. He arrived and filed his application approximately twenty-five minutes after five o'clock.

Commission staffer Gavin O'Brian will confirm that Candidate O'Brian left him a telephone message that he would be late.

Jacqueline Spofford will confirm that Candidate Boucher called her and asked her to check with a Commission staffer about the likelihood that he would be late. She spoke with a Commission staffer (Kevin?) and then told Candidate Boucher that his application could be filed late under the circumstances.

Under these circumstances, the delay was due to no fault of the candidate and his reliance upon the information regarding a late filing, albeit wrong, was reasonable. Had he known that the five o'clock deadline was in effect, he could have tried to meet that deadline. Because of the errors in processing his QC-RAF's and his mistaken reliance on the information provided to him, he should be certified clean election candidate.

Sincerely,

Steven A. Juskewitch, Esquire #272
Attorney for Matthew Boucher

May 3, 2010

After review of the Qualifying Contributions List for Matthew Boucher of the City of Ellsworth we did find that Lloyd Beal, Norma Beal and Terrence Pinkham are all residence of Ellsworth, Maine.

Thank you for your attention to this matter.

A handwritten signature in black ink that reads "Amanda Parsons". The signature is written in a cursive style with a large initial 'A' and a long, sweeping underline.

Amanda Parsons
Assistant City Clerk



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

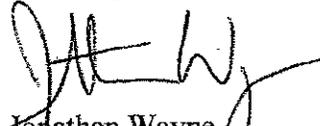
April 28, 2010

Matthew Boucher
428 Bangor Road
Ellsworth, Maine 04605

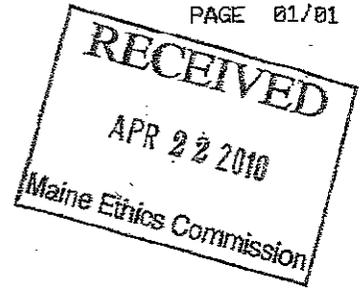
Dear Mr. Boucher:

The Ethics Commission staff has reviewed your application for Maine Clean Election Act funding. The application meets all of the requirements except that it was not submitted during the qualifying period as required by 21-A M.R.S.A. § 1125(4) and Chapter 3, Section 3(1) of the Commission Rules. Therefore, the staff is denying your request for certification as a Maine Clean Election Act candidate. As you know, the Commission members will consider this matter at its meeting tomorrow.

Sincerely,



Jonathan Wayne
Executive Director



MATTHEW BOUCHER FOR HOUSE DISTRICT #38
428 Bangor Road
Ellsworth, Maine 04605

Commission on Governmental Ethics April 22, 2010
and Election Practices
45 Memorial Circle
Augusta, Maine 04330

Re: Clean Election Funding Status

Dear Commissioners:

On April 20th, I had collected 66 checks and signatures for certification by the municipalities believing that each and every one was valid and was ready for certification and submission on April 21st.

However, a new clerk in Ellsworth improperly failed to certify an unusually large number (more than six) of my signature. I panicked and went immediately to collect more signatures and checks. On the way, I checked the so-called "failed-to-certify" people and realized that the clerk had made a mistake and that they were, in fact, qualified registered voters. I went back to city hall and, after some effort, was able to correct a number of the unqualified to qualified. This took some time and I started for Augusta.

I called Gavin (for District 28) and left a message that I was might be late due to the snafu. When I arrived, Gavin told me that he had received my message. I had also called Jacqueline Spofford, who was at the commission. She asked the staff if there was going to a problem if I was late. She was told it would be okay and then she called me and told me.

Accordingly, I did not get anxious through the several road construction stops on Route 1A and did not speed down the interstate to August to make sure that I got there before 5 pm. But I didn't take time to socialize or get anything to eat either. I arrived at 5:30 pm. I knocked on the door and was admitted. I met with Gavin and submitted my paperwork. Then I met with Gavin and his supervisor who told that I would have explain the circumstance in writing by 1 pm on Thursday, April 23, 2010 so that the Commission could approve my submission due to the circumstances.

Thank you. If further information is necessary, I am available to meet with the commission.

Sincerely,

Matthew Boucher, Candidate

Michael Dyndiuk
Kimberly Dyndiuk
46 Deane Street
Ellsworth, ME 04605

52-138/112
EZ/SEC® Check
Fraud Protection

2393

Date 4/19/10

Pay to the Order of Maine Clean Election Fund \$ 5

Five
UNION TRUST
A DIV. OF CAMDEN NATIONAL BANK
68 MAIN STREET
ELLSWORTH, ME 04605

00 Dollars
Jesus said to her, "I am the resurrection and the life. He who believes in Me, though he may die, he shall live." John 11:25
Kimberly Dyndiuk

For _____

0 Cindy M. L. Orcutt
Gerald W. Orcutt
428 Bangor Road
Ellsworth, ME 04605
207-667-9284

2151
EG-6806/2112
BRCHE

Date Feb 10, 210

Pay to the Order of Maine Clean Election Fund \$ 5.00

Five
Maine Savings

Cindy M. L. Orcutt

For Matt St. Clair fund

GERALD ORCUTT
428 BANGOR ROAD
ELLSWORTH ME 04605
207-667-9284

303
52-6806/2112
BRC-103

Date 02/09/10

Pay to the Order of Maine Clean Election Fund \$ 5.00

Five Dollars
Maine Savings

Gerald Orcutt

For _____



MAINE CLEAN ELECTION ACT
QUALIFYING CONTRIBUTIONS - RECEIPT AND ACKNOWLEDGEMENT

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
 135 State House Station
 Augusta, ME 04333
 207-287-4179
 www.maine.gov/ethics

CANDIDATE'S NAME: Matthew James Beckner

OFFICE: GOVERNOR HOUSE SENATE DISTRICT # 28

(Please check box above)

ALL CONTRIBUTORS MUST BE FROM THE TOWN OR CITY OF: Trenton

IMPORTANT NOTICE TO CONTRIBUTORS:

- Your signature and qualifying contribution of \$5 or more will help the candidate named above to be eligible for public funding from the State to pay for the candidate's campaign.
- By signing below, you affirm that you have used your personal funds to make this contribution and that you have received nothing of value in exchange for your signature and contribution.

Date	Check/M.O.#	Contributor's Name (Please Print)	Residential Address (No PO Box)	Contributor's Signature
4/20/10	7679	Gale S. Coughlin	32 Kelley Ln, Trenton, ME	<i>Gale S. Coughlin</i>
4/20/10	5776	Daphne Cullum	16 Bramble Ln	<i>Daphne Cullum</i>

Falsifying any information on this form is punishable by law. Please make checks and money orders payable to Maine Clean Election Fund. Money orders must be signed by the contributors.

Municipal Registrars: Please circle the number of each contributor who is registered to vote in the district of the candidate. Please complete the statement below by inserting the total number of contributors on this page who are registered in the district. Please also cross out any blank lines of contributors who are not registered in the candidate's district.

I have verified that 2 contributors circled above are registered to vote in the electoral division of the candidate.

Date: 4/21/10

Signature of Registrar: *James M. ...*

Circulators: You must complete and sign the statement below for the contributors collected on this form to be accepted by the Commission. This section does not apply to candidates.

(Please print)
 I affirm that: (1) I collected the qualifying contributions; (2) the contributor signed this form in my presence; (3) to the best of my knowledge and belief, the signature is the signature of the person whose name it purports to be; (4) the contribution came from the personal funds of the contributor; (5) I did not give anything of value to the contributor in exchange for their contribution and signature; and (6) I did not represent the purpose of collecting the contributions and signatures to be for any purpose other than obtaining public funds to finance the candidate's campaign.

Date: _____ Signature of Circulator: _____

Residential Address: _____ Mailing Address: _____ Phone #: _____



MAINE CLEAN ELECTION ACT
QUALIFYING CONTRIBUTIONS - RECEIPT AND ACKNOWLEDGEMENT

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
 135 State House Station
 Augusta, ME 04333
 207-287-4179
 www.maine.gov/ethics

CANDIDATE'S NAME: Matthew James Boucher

OFFICE: GOVERNOR HOUSE SENATE DISTRICT # 58
(Please check box above)

ALL CONTRIBUTORS MUST BE FROM THE TOWN OR CITY OF: Ellsworth

IMPORTANT NOTICE TO CONTRIBUTORS

- Your signature and qualifying contribution of \$5 or more will help the candidate named above to be eligible for public funding from the State to pay for the candidate's campaign.
- By signing below, you affirm that you have used your personal funds to make this contribution and that you have received nothing of value in exchange for your signature and contribution.

Date	Check/M.O. #	Contributor's Name (Please Print)	Residential Address (No PO Box)	Contributor's Signature
4/9/10	1115	Deviere Thomas	34 Sterling St	Marcie G. Thomas
4/9/10	4456	Charles Wellman	311 Beard Pond Rd.	Charles Wellman
4-18/10	1184	Sandra Devine	157 Shore Road	Sandra Devine
4/10-10	5886	John D Lindehan	49 School St. Gray	John D Lindehan
4/10/10	7597	Gabe Shea	37 Hill Dr.	Gabe Shea
4/10/10	7597	Phil Shea		Phil Shea
4-10-10	5875	Michael Norman		Michael Norman

Falsifying any information on this form is punishable by law. Please make checks and money orders payable to Maine Clean Election Fund. Money orders must be signed by the contributors.

Municipal Registrars: Please circle the number of each contributor who is registered to vote in the district of the candidate. Please complete the statement below by inserting the total number of contributors on this page who are registered in the district. Please also cross out any blank lines for contributors who are not registered in the candidate's district.

I have verified that all contributors circled above are registered to vote in the electoral division of the candidate.

Date: 4/21/10

Signature of Registrar: [Signature]

Circulators: You must complete and sign the statement below for the contributions collected on this form to be accepted by the Commission. **This section does not apply to candidates.**

I affirm that: (1) I collected the qualifying contributions; (2) the contributor signed this form in my presence; (3) to the best of my knowledge and belief, the signature is the signature of the person whose name it purports to be; (4) the contribution came from the personal funds of the contributor; (5) I did not give anything of value to the contributor in exchange for their contribution and signature; and (6) I did not represent the purpose of collecting the contributions and signatures to be for any purpose other than obtaining public funds to finance the candidate's campaign.

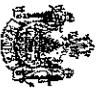
Date: _____

Signature of Circulator: _____

Residential Address: _____

Mailing Address: _____

Phone #: _____



MAINE CLEAN ELECTION ACT

QUALIFYING CONTRIBUTIONS - RECEIPT AND ACKNOWLEDGEMENT

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

136 State House Station
Augusta, ME 04333
207-287-4179
www.maine.gov/ethics

CANDIDATE'S NAME: McHues Bowker

ALL CONTRIBUTORS MUST BE FROM THE TOWN OR CITY OF: Ellsworth

OFFICE: GOVERNOR HOUSE SENATE DISTRICT # 38

IMPORTANT NOTICE TO CONTRIBUTORS:

- Your signature and qualifying contribution of \$5 or more will help the candidate named above to be eligible for public funding from the State to pay for the candidate's campaign.
- By signing below, you affirm that you have used your personal funds to make this contribution and that you have received nothing of value in exchange for your signature and contribution.

Date	Check/M.O.#	Contributor's Name (Please Print)	Residential Address (No PO Box)	Contributor's Signature
04/14/10	2002360064	Rebecca Jay	125 Nam St 1st Town Hill Rd. Ellswh	[Signature]
4/14/10	2002360064	Lloyd Bann	1st Town Hill Rd. Ellswh	[Signature]
4/14/10	2002360064	NEWMAN'S BEER	200 NEWMAN'S F. Hk. Hk	[Signature]
4/15/10	4412	GORDON WOLKMAN	3 WATSON DR.	[Signature]
4-15-10	20036000	C. DeRenger	516 Woodbriar Way	[Signature]
4-15-10	4083	B. Cousins	105 Summit Park Rd	[Signature]
4-15-10	20236000	William Starfield	14 Church St	[Signature]
4/15/10	2002360064	Tommy E. Williams	444 Bancroft Rd	[Signature]

Please make checks and money orders payable to Maine Clean Election Fund. Money orders must be signed by the contributors.

Municipal Registrars: Please circle the number of each contributor who is registered to vote in the district of the candidate. Please complete the statement below by inserting the total number of contributors on this page who are registered in the district. Please also cross out any blank lines of contributors who are not registered in the candidate's district.

I have verified that 5 contributors circled above are registered to vote in the electoral division of the candidate.

Date: 4/21/10

Signature of Registrar: [Signature]

Circulators: You must complete and sign the statement below for the contributors collected on this form to be accepted by the Commission. This section does not apply to candidates.

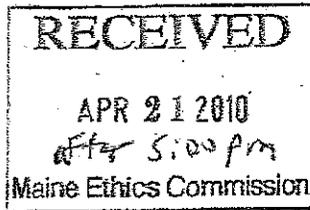
Signature of Circulator: Steve A. Juskevich
I affirm that: (1) I collected the qualifying contributions; (2) the contributor signed this form in my presence; (3) to the best of my knowledge and belief, the signature is the signature of the person whose name it purports to be; (4) the contribution came from the personal funds of the contributor; (5) I did not give anything of value to the contributor in exchange for their contribution and signature; and (6) I did not represent the purpose of collecting the contributions and signatures to be for any purpose other than obtaining public funds to finance the candidate's campaign.

Date: 4/15/10

Residential Address: 346 Peakes Hill

Signature of Circulator: Steve A. Juskevich
Phone #: 843-0424

2010 Election Year



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine
Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

2010 REQUEST FOR CERTIFICATION As a Maine Clean Election Act Candidate for the Legislature

2010 CERTIFICATION DEADLINE FOR
LEGISLATIVE CANDIDATES
April 21, 2010 by 5:00 p.m.

CANDIDATE'S NAME: Matthew J. Boucher

OFFICE SOUGHT: Representative DISTRICT # 38 PARTY: Republican

I hereby request to be certified as a Maine Clean Election Act candidate. I agree to comply with all requirements of the Act and the Commission's rules. I have:

- signed and filed a Declaration of Intent to participate in the Maine Clean Election Act;
- qualified as a candidate by petition or other means (confirmed by Secretary of State's Office);
- complied with seed money restrictions and otherwise met the requirements for participation in the Maine Clean Election Act;
- read the Commission's guidelines on permissible campaign-related expenditures;
- established a separate campaign account in a financial institution; and
- if applicable, any person who circulated my Receipt and Acknowledgement forms and collected qualifying contributions did so with my knowledge and consent.

With this Request for Certification, I have submitted (please check the appropriate boxes):

- at least the minimum number of qualifying contributions. I have submitted ___ qualifying contributions, which is the total collected on Receipt and Acknowledgement forms and on the Commission's website.
- for contributions made by check and money order, the original Receipt and Acknowledgement forms verified by the municipal clerks with the checks or money orders attached to the appropriate forms, in the order that the contributions are listed on the forms.
- for contributions made by credit or debit card on the Commission's website that were not verified by the online system, the printed Receipt and Acknowledgement forms verified by the municipal clerks.
- an alphabetical list of all qualifying contributors, which includes their towns and cities.
- a seed money campaign finance report filed electronically. (If no seed money was raised or spent, a "no activity report" must be filed. If you requested an electronic filing waiver, submit the completed paper report signed by you and your treasurer.)

Request for Extension. A candidate may request an extension of time to file the seed money report and the alphabetical list. The deadline for submitting the qualifying contributions and receipt and acknowledgement forms cannot be extended. I request an extension of time to file the following:

- Seed Money Report
- List of Contributors

Matthew J. Boucher
Candidate's Signature

4/21/10
Date