

Minutes of the August 23, 2006 Meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Chair Jean Ginn Marvin; Hon. Vinton E. Cassidy; Hon. Andrew Ketterer; Hon. A. Mavourneen Thompson. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:12 A.M., Chair Ginn Marvin convened the meeting. The Commission considered the following items:

Agenda Item #1 – Ratification of Minutes of the July 19, 2006 Meeting and Public Workshop on Legislative Communications

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (4-0) to ratify the minutes of the July 19 meeting.

Agenda Item #2 – Request to Investigate Possible Seed Money Violation by Barbara E. Merrill

Mr. Wayne said that the Commission staff received a request for investigation from John Michael. Mr. Wayne said that Mr. Michael was not present, though representatives from the Merrill campaign were and possibly others who may wish to comment. Mr. Wayne said that Mr. Michael's complaint alleged that Jim Webster and Dick Dyer were paid with Maine Clean Election Act funds for work done in the qualifying period, although this work could only be paid for with seed money. Mr. Wayne said that a 2005 amendment to the statute clarified that the campaign could have obligated more than it raised in seed money as long the value of the goods and services received within the qualifying period did not exceed the amount paid to a vendor. In this case the campaign had already received services from Mr. Webster and Mr. Dyer during the qualifying period. Mr. Wayne said that Mr. Michael argued that he could have qualified for

public financing if he had the ability to pay for work done during the qualifying period with MCEA funds. Mr. Wayne said that the Merrill campaign responded that Mr. Webster and Mr. Dyer were volunteers who did not expect to be paid. Mr. Wayne said that the Merrill campaign considered the payment to be advances for future work to be done in the general election. Mr. Wayne said that he received sworn affidavits from Phil Merrill, Mr. Dyer, and Mr. Webster the previous day. Mr. Wayne said that the staff recommendation was that the issue was not a seed money violation if the expenditure was not considered to be a payment for a prior obligation.

Ms. Thompson asked if Barbara Merrill's 42-day post-primary report had undergone a routine review by Commission staff. Mr. Wayne said that John Michael filed his complaint two days after the report was filed, so the staff had not yet reviewed the report at that time. Ms. Thompson asked what the procedure would have been if John Michael had not filed a complaint. Mr. Wayne said that the staff would probably notice the expenditure in question, although new staff members may not have been aware of past issues involving obligations during the qualifying period. Ms. Thompson said that she was not criticizing the staff, but wished to determine what its course of action may have been. Mr. Wayne said that the staff would have called the candidate to obtain an explanation and then bring the matter before the Commission if there appeared to be a violation.

Phil Merrill introduced himself as the deputy treasurer for Barbara Merrill's campaign. Mr. Merrill said that the treasurer was not available when the 42-day post-primary report had to be filed, so he was responsible for filing the report. Mr. Merrill said that he did not dispute the law and was careful not to violate it. Mr. Merrill said that he told his campaign workers that he couldn't obligate payment for their work during the qualifying period. Mr. Merrill said that he postponed discussions with a vendor until after the campaign had qualified for public financing for that reason. Mr. Merrill said that the campaign did not wish to raise a large amount of seed money in keeping with the candidate's views on the Maine Clean Election Act and limiting the impact of private contributions in her campaign. Mr. Merrill said that many campaigns pay workers to collect \$5 qualifying contributions, but the Merrill campaign offered no incentives for the volunteers who collected its contributions. Mr. Merrill said that after the qualifying period, he offered to provide money up front to Mr. Webster in recognition that Mr. Webster was behind

at his regular job due to working for the campaign. Mr. Merrill said that he was not obligated to pay Mr. Webster up front. Mr. Merrill said that the campaign began paying Mr. Webster at \$500 a week and increased the payment to \$650 a week. Mr. Merrill said that Mr. Dyer's usual hourly fee was above what the campaign could afford and he had performed *pro bono* work for the campaign during the qualifying period. Mr. Merrill said that the campaign offered to give Mr. Dyer half of his total payment up front and renegotiate if the campaign received more than \$400,000 in Clean Election funds. Mr. Merrill said that before the report was filed, he went over the numbers with Mr. Webster but not the specific wording of the remarks. Mr. Merrill said that it was not unusual for a payment amount to reflect past work by a campaign staff member without the campaign having an obligation to do so. Mr. Merrill said that Barbara Merrill noticed the remark a day after the report was due. Mr. Merrill said that the campaign would have amended the report and offered an explanation to Commission staff if Mr. Michael had not already sent his complaint.

Ms. Thompson asked what Mr. Merrill would have chosen to include under "remark" on the report. Mr. Merrill said that the expenditure should have been listed as an advance on pay. Mr. Merrill said he might also have included a note that the advance was for financial reasons and because both recipients were in need of the money up front. Mr. Merrill said that such practices were not unusual for campaigns, since they sometimes run out of money to pay workers late in the election cycle.

Ms. Thompson said that Mr. Merrill stated in his affidavit that there was no formal agreement to pay Mr. Dyer and Mr. Webster, but that the advances were given because of volunteer work done in the qualifying period. Mr. Merrill said that the payments did not result from an obligation.

Mr. Cassidy asked if Mr. Merrill thought the comments made on the report were unusual. Mr. Merrill said that they did raise legitimate questions. Mr. Merrill said that the comments incorrectly described the payments. Mr. Merrill said that Mr. Webster wrote the comments but later regretted it.

Mr. Ketterer asked if Mr. Merrill brought any witnesses to provide additional testimony. Mr. Merrill said that Mr. Dyer and Mr. Webster were present, as well as his attorney, Peter Roy. Mr. Ketterer said it would be helpful to have them present even though they already submitted affidavits.

Ms. Thompson asked who actually wrote the remarks for the expenditures in question. Mr. Merrill replied that he did not get a chance to view the report before it was submitted and it was Mr. Webster who actually filled it out.

Ms. Ginn Marvin said that the remarks on the report were clear and that “reimbursement for work done” was not an ambiguous phrase. Ms. Ginn Marvin said that since the campaign submitted the report early, it had extra time to review the report before filing it. Ms. Ginn Marvin said that there seemed to be an agreement that the workers would be paid after the qualifying period. Mr. Merrill said that the campaign had set its own early deadline to submit the report. Mr. Merrill said that he gave the advance to Mr. Webster due to him being behind at his regular job at Webster Heating. Mr. Merrill said that it was understandable that Mr. Webster included that remark on the report.

Jim Webster said that he started volunteering for the campaign shortly after Barbara Merrill decided to run. Mr. Webster said that he had known the family for some time. Mr. Webster said that he took 2 days off per week from his regular job in order to collect qualifying contributions. Mr. Webster said that he had no expectation that he would be paid or hired for his work. Mr. Webster said that his wife wanted him to be made whole for the wages he lost from working on the campaign and so he negotiated an advanced payment after the qualifying period. Mr. Webster said that he recognized after he filed the report that “reimbursement” may have been the wrong term for the payment.

Mr. Ketterer asked what Mr. Webster did as a volunteer for the Merrill campaign. Mr. Webster said that he coordinated phone calls, collected signatures and qualifying contributions, and attended town meetings to circulate nominating petitions. Mr. Webster said that it was more difficult to get qualifying contributions than signatures on the nominating petitions.

Mr. Ketterer asked why Mr. Webster took time off from work instead of working for the campaign on the weekends. Mr. Webster said that he worked for the campaign on the weekends in addition to the 2 days each week.

Mr. Ketterer said that Mr. Webster's comment about receiving payment to be made whole for the money lost from his regular job during the qualifying period sounded like an obligation. Mr. Webster said that there were other volunteers during the qualifying period who were not hired by the campaign or compensated for their time. Mr. Webster said that the advance payment helped him with his family's financial situation.

Ms. Thompson asked if the law prevented campaigns from hiring volunteers after the qualifying period. Ms. Gardiner replied that it did not. Ms. Thompson said that it followed that the law did not prevent a campaign from considering paying a volunteer after the qualifying period with public funding.

Ms. Gardiner said that the Commission must gauge the credibility of the witnesses and their explanations. Ms. Gardiner said that the Commission should consider whether there was an understanding between the campaign and its workers that they would be paid for work during the qualifying period. Ms. Gardiner said it was a factual matter as to whether an obligation arose. Ms. Gardiner said that there was no staff recommendation because the Commission had not heard from the witnesses.

Mr. Cassidy said that the issue was not whether the law should be changed. Mr. Cassidy said that if the wording of the remarks was correct, there was a violation of the law. Mr. Cassidy said that the issue was a question of why the remarks were there and worded as they were. Mr. Webster said that the wording of the remarks was his mistake and that he should have asked the Commission staff for advice prior to filing the report.

Mr. Ketterer said that the expenditures could have been reimbursements and that the Commission assumes that what campaigns report is accurate information. Mr. Webster said that he did not assume that the payments were reimbursements.

Alison Smith said that she was speaking on behalf of Maine Citizens for Clean Elections. Ms. Smith said that it was important for candidates to comply with seed money rules and to file accurate reports. Ms. Smith said that the law allows for gubernatorial candidates to raise up to \$50,000 in seed money, in recognition of the fact that qualifying for public financing requires significant resources. Ms. Smith said that it would set a bad precedent if the Commission allowed for obligations during the qualifying period to be paid with public funds. Ms. Smith said that even without an obligation, campaigns should not be able to use public funds for expenses that were incurred during the qualifying period. Ms. Smith said that if there was not enough seed money to pay for workers, they should not have been paid. Ms. Smith said that since he was filing reports, Mr. Webster should have known what the payments were for.

Dick Dyer of Dyer Associates said that he never intended to work for a political candidate since there was a history in public relations of not getting paid for work done for political campaigns. Mr. Dyer said that he primarily assisted the Merrill campaign with signature-gathering during the qualifying period and less as a public relations consultant. Mr. Dyer said that there was no obligation on the part of the campaign to hire him, but that his work during the qualifying period warranted a consideration of hiring him once the campaign received Clean Election funds.

Mr. Wayne asked Mr. Dyer how much he was going to be paid for his work for the general election. Mr. Dyer said it was around \$16,600 total, \$2,000 a month, with the option to renegotiate if more Clean Election funds were received.

Ms. Gardiner asked when Mr. Dyer first discussed being hired by the Merrill campaign. Mr. Dyer said that he had hoped during the qualifying period that he would be hired, and the discussions began as soon as the Clean Election funds were first available. Ms. Gardiner asked when Mr. Dyer reached a definitive agreement with the campaign. Mr. Dyer said that they reached an agreement the day before he was first paid.

Ms. Ginn Marvin asked what he did working for Dyer Associates. Mr. Dyer said that Dyer Associates was a full service public relations and marketing firm that basically consisted of himself and a part-time employee. Mr. Dyer said that he did research and evaluation on public relations campaigns.

Ms. Ginn Marvin asked if Mr. Dyer was working full time on the Merrill campaign. Mr. Dyer said that the Merrill campaign was one of several clients. Mr. Dyer said that he was spending at least 40 hours on the Merrill campaign.

Ms. Thompson asked Mr. Dyer how he responded to the remark on the finance report that he was paid for "consultations during the \$5 contributions phase." Mr. Dyer said that the remark was inaccurate, as he was also involved in the signature gathering campaign and there was never an obligation to hire him. Mr. Dyer said that he was frustrated that the Merrill campaign took so long to reach a decision on when to hire him and for how much. Mr. Dyer said that although he wanted to be hired for the general election, there was no agreement or expectation that he would be.

Mr. Cassidy asked how much seed money was raised by the Merrill campaign. Mr. Wayne said that the campaign raised \$6,255 and spent all of it before being certified to receive Clean Election funds. Mr. Wayne said that the campaign could have raised up to \$50,000 in seed money.

Ms. Ginn Marvin asked for copies of the report so that the Commission members could see who contributed seed money.

Ms. Gardiner said that the Commission needs to determine as a factual matter whether an obligation was incurred during the qualifying period or whether the payment was a reimbursement as opposed to a payment in recognition of the volunteer work done during the qualifying period. Ms. Gardiner said that recognition differs from reimbursement. Ms. Gardiner

said that the law does not sanction use of Clean Election funds to pay for work done during the qualifying period.

Mr. Wayne said that it was a difficult decision due to the lack of an adequate explanation for why the remarks were entered incorrectly on the report. Mr. Wayne said that the sworn affidavits explained that the payments were advances for work to be done for the general election. Mr. Wayne said that it was hard to discount the accuracy of those affidavits.

Ms. Thompson asked what the Commission staff's response would have been if they had discovered the remarks before Mr. Michael's complaint was filed. Mr. Wayne said that the staff would call the Merrill campaign and ask for an explanation. Mr. Wayne said that if the staff concluded that there was a seed money violation, it would be placed on the agenda of the next Commission meeting.

Mr. Ketterer said that the expenditures appeared to be payments for services provided during the qualifying period. Mr. Ketterer said that if the remarks were a mistake, they should have been reviewed by someone else in the campaign. Mr. Ketterer said that if the remarks were not a mistake, then there was a seed money violation. Mr. Ketterer said that payment up front does not in itself indicate a reimbursement. Mr. Ketterer said that people may volunteer for a campaign with the expectation of being hired later. Mr. Ketterer said that some weight must be given to the sworn affidavits.

Mr. Cassidy said that changing the remarks would not be a minor amendment to the report that would resolve the issue.

Ms. Thompson asked for clarification on the legal weight of the sworn affidavits.

Mr. Ketterer said that the affidavit is equivalent to sworn testimony and so carries more weight than a simple letter. Mr. Ketterer said that Phil Merrill was a member of the Maine Bar and was familiar with the legal importance of the affidavits.

Mr. Cassidy asked how someone looking at the finance reports would know what the reimbursements were for. Mr. Wayne said that the staff prefers that campaigns list the original payee, but often they only include the person being reimbursed.

Ms. Thompson asked when the Merrill campaign was certified to receive Clean Election funds. Mr. Wayne said that they were certified on June 9, so any expenditures after that date were paid with Clean Election funds.

Ms. Thompson said that the law did not prohibit the campaign from hiring someone who volunteered during the qualifying period.

Mr. Cassidy said that he thought that the seed money violation was serious.

Mr. Ketterer asked Mr. Cassidy if his opinion changed due to the testimony heard at the meeting.

Mr. Cassidy said that the comments made the payment seem like a reimbursement rather than recognition of past work.

Ms. Ginn Marvin moved, and Mr. Cassidy seconded, that the Commission find the Merrill campaign in violation of seed money restrictions. Ms. Ginn Marvin said that comments from Mr. Dyer and Mr. Webster made it seem like they wished to be paid back for work done during the qualifying period. Mr. Cassidy said that he agreed.

Ms. Gardiner asked if Ms. Ginn Marvin's motion would find the campaign in violation for both expenditures. Ms. Ginn Marvin said yes and that the campaign had an extra day to discuss the report before filing it. Ms. Ginn Marvin said that the Commission staff did not receive the affidavits until the day before the meeting.

Mr. Cassidy said that when the campaign realized immediately after filing the report that a mistake had been made, no one amended the report or asked the Commission staff for guidance.

Ms. Thompson said according to his affidavit, Mr. Webster was not careful in filling out the finance report. Ms. Thompson said that mistakes may be made and the treasurer was not experienced. Ms. Thompson said that she believed the affidavits.

Mr. Ketterer said that it was not necessary to believe everything in the affidavits. Mr. Ketterer said that the spoken testimony should also be considered, even though it was not sworn.

Ms. Ginn Marvin said that she had not heard of campaigns paying their workers up front. Mr. Ketterer said that many consultants require payment up front.

Mr. Ketterer said that it was troubling that the campaign did not immediately try to remedy the situation if they realized its severity.

Mr. Cassidy asked why Mr. Webster was paid up front if he was friends with the family rather than a consultant. Mr. Ketterer said it could have been due to personal financial circumstances or because the campaign was afraid it wouldn't have any money left to pay him later on.

Ms. Ginn Marvin said that the accuracy of finance reports was important. Ms. Ginn Marvin said that fairness was difficult when the Commission had to judge the intent of a report's contents. Ms. Ginn Marvin said that both Barbara and Phil Merrill were attorneys and could have received advice from the Commission staff if they had questions about the language on the report.

Mr. Cassidy asked if the Commission staff gave adequate notice of the requirements relating to obligating money during the qualifying period. Mr. Wayne said that a memo was sent to all gubernatorial candidates and the information was also included in the Candidate's Guide.

The Commission voted 3-1 to find the Merrill campaign in violation of seed money restrictions. Mr. Cassidy, Ms. Ginn Marvin, Mr. Ketterer voted for the motion; Ms. Thompson voted against the motion.

Mr. Merrill said that the law was clear and that the campaign was informed of the seed money restrictions by Commission staff. Mr. Merrill said that the evidence suggested that the campaign did not qualify for public funding based on the promise of future money to its workers, as Mr. Michael alleged. Mr. Merrill said that more seed money would not have aided the campaign in becoming certified. Mr. Merrill said that Barbara Merrill made a deliberate decision not to raise large amounts of seed money and pay campaign staff. Mr. Merrill said that mistakes were made in filling out the report.

Ms. Ginn Marvin asked Mr. Merrill what he thought should be the remedy for the violation. Mr. Merrill proposed a \$1,000 fine, but said that he found it difficult to come up with a penalty amount since he did not agree with the Commission's determination.

Ms. Ginn Marvin asked for the range of options available to the Commission. Mr. Wayne said that the Commission could disqualify Barbara Merrill from public funding or assess a civil penalty. Mr. Wayne said that any civil penalty could not be paid with Clean Election funds. Mr. Wayne said that the Merrill campaign could possibly collect contributions to pay the penalty, but this was questionable under the law. Mr. Wayne said that a disqualification from public funding was not something mentioned in the statute, but adherence to the seed money restrictions are a requirement for certification. Mr. Wayne said that the Merrill campaign did collect more than the minimum of 2,500 qualifying contributions needed for certification. Mr. Wayne said that the Merrill campaign was the most organized gubernatorial campaign in regard to the certification process. Mr. Wayne said that the error may have been based on a misunderstanding of the law. Mr. Wayne said that it was unclear what would be done with the Clean Election funds that have already been spent if the campaign was disqualified from public funding.

Mr. Ketterer asked about the range of penalty amounts. Mr. Wayne replied that the campaign could be fined up to \$10,000 per violation.

Ms. Gardiner said that the Commission did not have to disqualify the Merrill campaign after finding it in violation, although that was within its discretion. Ms. Gardiner said that, based on the Commission's discussion on the motion, it appeared that the Commission did not find that

the campaign had incurred an obligation during the qualifying period. Ms. Gardiner said that if there was no obligation at the time of certification, the Commission could find that the campaign was not in violation of the seed money requirements at the time of certification. Ms. Gardiner said that a penalty of between \$0 and \$10,000 could be assessed per violation or the campaign could be disqualified, requiring the return of Clean Election funds. Ms. Gardiner said that the Commission could also require the campaign to return the amount of spent public funds in addition to the unspent funds.

Mr. Cassidy said that the Commission should consider each violation separately.

Ms. Ginn Marvin said that the violation occurred after certification. Ms. Ginn Marvin said that the Merrill campaign met the requirements for certification otherwise. Ms. Ginn Marvin recommended a civil penalty.

Mr. Ketterer said that decertification would be an unfair penalty.

Ms. Thompson said that decertification should not be considered, even though it was an option to the Commission. Ms. Thompson said that she had no advice on a penalty amount. Ms. Thompson cited the examples of Peter Cianchette receiving a penalty of \$12,000 and Edward Dugay receiving a penalty of \$4,000.

Ms. Gardiner said that the penalty toward Edward Dugay was for a late filing. Mr. Cassidy said that there was more involved in that case than just a late filing. Ms. Gardiner said that the Peter Cianchette penalty was based on the amounts that were unreported by the campaign.

Mr. Cassidy moved, Mr. Ketterer seconded, and the Commission voted 3-1 to fine Barbara Merrill \$5,000 for each of the two seed money violations. Mr. Cassidy, Ms. Ginn Marvin, and Mr. Ketterer voted for the motion. Ms. Thompson voted against the motion.

Agenda Item #3 – Request to Investigate Merrill-Woodcock Qualifying Contributions

Mr. Wayne said that Benjamin Dudley, on behalf of the Maine Democratic State Committee, filed a complaint concerning Barbara Merrill and Chandler Woodcock exchanging \$5 qualifying contributions. Mr. Wayne said that Mr. Dudley argued that this exchange violated the Maine Clean Election Act, which forbids the exchange of anything of value for a qualifying contribution. Mr. Wayne said that the Woodcock and Merrill campaigns said that they had adjacent booths at a sportsman's show in March. Mr. Wayne said that the two candidates said that they gave each other qualifying contributions as a token of good will. Mr. Wayne said that Rep. Merrill stated in her letter that this exchange was within the spirit of the Maine Clean Election Act. Mr. Wayne said that the Woodcock campaign added that the exchange was an act of generosity in recognition of the difficulty in collecting qualifying contributions. Mr. Wayne said that the staff recommended that the exchange was not prohibited and the Commission should take no action.

Mike Mahoney introduced himself as an attorney with Preti Flaherty on behalf of the Maine State Democratic Committee. Mr. Mahoney said that a qualifying contribution was something of value since it aided the candidate in becoming certified for public funding. Mr. Mahoney said that the definition of a qualifying contribution in the statute stated that it was "in support of the candidate." Mr. Mahoney said that the state party's opinion was that the qualifying contributions were made to support a candidate's election, not just his or her candidacy. Mr. Mahoney said that if Merrill and Woodcock were not giving contributions in support of each other's elections, why else would they exchange contributions? Mr. Mahoney said that the definition of qualifying contribution was an ambiguity in the law.

Dan Billings, attorney for the Woodcock for Governor campaign, said that Sen. Woodcock qualified for public funding in April and Rep. Merrill qualified in June. Mr. Billings said that the Democrats did not raise the issue until later, indicating that the complaint was politically motivated. Mr. Billings said that people gave qualifying contributions to qualify candidates for public funding, not to support that candidate's election.

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation and take no action. Mr. Ketterer said that there were many reasons to give a qualifying contribution other than to support the candidate's election. Mr. Ketterer said that there was no apparent violation in the exchange of qualifying contributions.

Agenda Item #4 – Request to Investigate Alleged Push Poll/Maine Democratic Party

Mr. Wayne said that Barbara Merrill filed a request for an investigation into a telephone survey that was conducted by a Boston firm on behalf of the Maine State Democratic Party. Mr. Wayne said that Rep. Merrill was contacted by a Brunswick resident, who was bothered by the questions in the survey. Mr. Wayne said that Rep. Merrill found the questions to be negative, so she filed a request for the Commission to determine whether the survey was a push poll. Mr. Wayne said that push polls were defined under the law but were not forbidden. Mr. Wayne said that push polls were surveys that were not intended to gather information from the respondents, but to influence the respondent's vote. Mr. Wayne said that the Maine Democratic Party responded to his request for information by providing a portion of the questions asked in the survey. Mr. Wayne said that based on this information, he was confident that the survey was not a push poll. Mr. Wayne said that at least three of the five required elements defining a push poll were not present in the survey. Mr. Wayne said that he received the wording of 12 out of the 63 questions in the survey, tabulated responses from three of the questions, and an affidavit signed by the president of the polling firm. Mr. Wayne said that one of the required elements defining a push poll was that the poll did not tabulate results. Mr. Wayne said that another element was that push polls did not make demographic inquiries of the respondents. Mr. Wayne said that one of the respondents he interviewed told him that the polling agency asked questions about age and income. Mr. Wayne said that in order to be a push poll, the survey must select respondents based on demographic information. Mr. Wayne said that the sworn affidavit indicated that respondents were randomly selected from likely voters. Mr. Wayne said that based on the evidence, the survey was not a push poll and no further action needed to be taken.

Mr. Cassidy asked why Mr. Wayne only received 12 of the 63 questions. Mr. Wayne said that the party may not have wanted to reveal its strategic decisions about future advertising. Mr.

Wayne said that what the Commission staff received was enough to determine that the survey was not a push poll. Mr. Cassidy asked whether any of the unknown questions could have resulted in the survey falling within the definition of a push poll. Mr. Ketterer said that negative and misleading questions would not necessarily have made it a push poll. Ms. Thompson said that all five criteria had to be met in order to define the survey as a push poll, and three of those criteria were already known not to have been met. Mr. Ketterer said that there may have been strategic reasons for why the remaining questions were not released.

Mr. Wayne said that many people may come to the Commission complaining about political advertisements and techniques. Mr. Wayne said that the Commission could only do what was authorized under the statute, and it may be troublesome if the Commission begins evaluating the truth and accuracy of political speech.

Mike Mahoney said that he was available for questions and agreed with the staff analysis.

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation that the survey was not a push poll and to make no further inquiry.

Agenda Item #5 – Proposed Penalty for Late Report/Maine Democratic Party

Mr. Wayne said that on July 26, the day after the parties filed a campaign finance report, the Commission staff received a complaint from Roy Lenardson. Mr. Wayne said that Mr. Lenardson had reviewed the report filed by the Maine Democratic Party and noticed that it did not include an expenditure relating to a legislative update mailing on behalf of Senator Lynn Bromley that had been paid for by the party committee.

Ms. Thompson recused herself from Item #5 due to a potential conflict of interest because she had provided policy consulting services in the past to Se. Bromley.

Mr. Wayne said that Commission staff sent a letter to the Maine Democratic Party stating that the expenditure for the mailing did not appear on its report. Mr. Wayne said that Mr. Lenardson also mentioned other literature mailed in support of Walter Ash and Janet Mills, incumbent legislators running for reelection. Mr. Wayne said that the party's response was that the lack of reporting was due to an oversight and miscommunication within the party. Mr. Wayne said that the party amended its July 25 report on Schedule E, which is used for unpaid obligations, reporting that the party had three obligations totaling approximately \$22,000 to Bridge Communications in Connecticut. Mr. Wayne said that the staff view was that the entire report did not substantially comply with the disclosure requirements. Mr. Wayne said that the law was clear that the party had a duty to report unpaid obligations as well as expenditures. Mr. Wayne said that more than 20% of expenditures were missing from the report, resulting in the entire report being considered late. Mr. Wayne said that according to the formula, the maximum preliminary penalty would have been \$5,000, which is what the staff recommends. Mr. Wayne said that the party committee filed a letter taking issue with how the penalty was calculated.

Mike Mahoney, on behalf of the Maine Democratic Party, said that the party was not opposing the \$5,000 penalty amount but had issues with the matrix used to calculate penalties. Mr. Mahoney said that the maximum penalty amount should be reserved for egregious violations. Mr. Mahoney said that while the party's error was statistically significant, it was less than egregious. Mr. Mahoney said that the penalty matrix leaves the staff with little discretion in determining penalties. Mr. Mahoney said that perhaps the Commission could take up his suggestion at a later meeting.

Jayne Crosby Giles introduced herself as a candidate for House in district 43. Ms. Crosby Giles said that she filed an inquiry in July over a mailing on behalf of Representative Ash in her district. Ms. Crosby Giles said that she was a candidate in 2004 running against Representative Ash. Ms. Crosby Giles said that in the final days of that campaign, the House Democratic Party sent out a postcard mailer that was not reported within 24 hours. Ms. Crosby Giles said that the lack of reporting delayed her receipt of matching funds until the Friday night before the election. Ms. Giles said that there was a \$1,500 fine assessed six months after the election. Ms. Giles asked that the Commission impose the full \$5,000 fine. Ms. Crosby Giles said that the Maine

Democratic Party made two mailings so far on behalf of her opponent in the general election. Ms. Crosby Giles said that under current rules, those mailings were not considered campaign materials since they did not contain express advocacy, so she did not receive matching funds. Ms. Crosby Giles said that she did not have the resources to counter the mailings.

Mr. Ketterer thanked Ms. Crosby Giles for coming to the meeting and said that he felt powerless to take any action before the 2004 election in regard to the unreported mailing. Mr. Ketterer said that the Commission was very concerned about such conduct, particularly when it involves close elections.

Roy Lenardson said that it was difficult to determine on whose behalf payments were made when they are listed as lump sum expenditures or obligations. Mr. Lenardson said that it would be useful to know which districts were affected by party expenditures. Mr. Lenardson recommended that anyone found in violation should be required to attend a refresher course on filing accurate reports rather than just receiving a monetary penalty.

Mr. Cassidy moved, Mr. Ketterer seconded, and the Commission voted unanimously (3-0) to adopt the staff recommendation and assess a fine of \$5,000.

Ms. Ginn Marvin thanked everyone who spoke on the issue and said that the Commission would take their suggestions under advisement.

Agenda Item #6 – Complaint against Maine Economic Research Institute

The Commission decided to take up Item #8 out of order and return to Item #6.

Agenda Item #6 – Complaint against Maine Economic Research Institute

Mr. Wayne said that John Hanson, who was the executive director of the Maine State Building and Construction Trades Council, filed a complaint against the Maine Economic Research

Institute (“MERI”) regarding a publication called “Roll Call 2006” that MERI distributed as a newspaper insert in July.

John Hanson said that he was a resident of Bangor and an employee of the Maine State Building and Construction Trades Council. Mr. Hanson said that the Council was not in itself a labor union, but instead an umbrella organization representing 14 local trade unions and between 5500-6000 Maine craftspeople. Mr. Hanson said that he spoke with Commission staff several weeks ago regarding the complaint process. Mr. Hanson said that he saw “Roll Call 2006” in the Bangor Daily News and noticed that more than 90% of legislators from one party received above a 50% rating, with some of them receiving a star. Mr. Hanson said the highest rating achieved by the other party was 54%. Mr. Hanson said that the publication included references to legislation but no indication of how the ratings were determined. Mr. Hanson said the publication included quotations from unidentified Maine senators and a quotation from a Bowdoin College professor complimenting the ratings. Mr. Hanson said that he later discovered that the publication was distributed not only in the Bangor Daily News but in major newspapers throughout the state. Mr. Hanson said that the publication was political in nature rather than a legitimate survey. Mr. Hanson said that MERI’s website included commentary by Professor Douglas Hodgkins. Mr. Hanson said that comments by lobbyists supposedly accounted for 50% of a legislator’s total rating. Mr. Hanson said that Professor Hodgkins’ comments indicated that 75% or more of the total rating came from lobbyists’ comments. Mr. Hanson said that it was common practice for labor unions to distribute ratings of legislators to their members, but a widespread distribution of ratings to the general public would fall under the category of political activity. Mr. Hanson referred to an opinion column written by David Vail, a professor at Bowdoin College, and Mike Hillard of the University of Southern Maine. Mr. Hanson said that the column considered MERI’s study not to be a comprehensive survey. Mr. Hanson displayed a copy of “Roll Call 2006” that included a handwritten note reading, “see how Walter Wheeler voted, district 151.” Mr. Hanson said that Walter Wheeler provided him with the copy and said that it was being distributed in his district. Mr. Hanson said that Representatives Faircloth, Bryant, Duchesne, Gerzofsky, Miller, Piotti, and Smith also reported that “Roll Call 2006” was being distributed in their districts with handwritten headings. Mr. Hanson asked that MERI release a list of its members. Mr. Hanson said that the survey was clearly advocating the election

or defeat of candidates. Mr. Hanson said that MERI should be required to register as a political action committee and disclose how much was paid on the newspaper inserts. Mr. Hanson said he questioned whether MERI had authorization to use the state seal on their publication. Mr. Hanson said that the Commission has the authority to address his complaint based on the sections of statute governing political action committees.

Phyllis Gardiner left the meeting due to another obligation.

Ms. Ginn Marvin asked Mr. Hanson what specific requirement was violated by MERI's mailing. Mr. Hanson cited the definitions of "campaign" and "expenditure" in 21-A M.R.S.A. §1052. Mr. Hanson said that 21-A M.R.S.A. §1055, titled "Publication or distribution of statements," was also applicable to MERI's activity. Mr. Hanson estimated that the newspaper inserts in the Portland Press Herald, Bangor Daily News and Lewiston Sun-Journal cost \$187,000. Mr. Hanson said that those were political expenditures and that MERI fit the definition of a political action committee.

Ms. Thompson said that the Commission determined in 2004 that MERI's activities did not qualify it as a PAC. Ms. Thompson asked if anything had changed since that decision that might result in MERI falling within the definition of a PAC. Mr. Wayne said that MERI met with the Commission staff beginning in 1999. Mr. Wayne said that there had been an expansion in MERI's activities since his meeting with the group in 2004. Mr. Wayne said that MERI's original intention had been to conduct research in order to inform its paying members. Mr. Wayne said that MERI began publishing a voter guide in 2004, distributing 50,000 copies that year. Mr. Wayne said that he was aware that MERI was going to publish a voter guide, but did not know how many copies would be distributed. Mr. Wayne said that the content of "Roll Call 2006" was similar to the voter guide.

Ms. Thompson asked if, according to Mr. Hanson's testimony, MERI qualifies as a PAC. Mr. Wayne said that Mr. Hanson did not address the question in his original letter to the Commission staff. Mr. Wayne said that the Commission may want to ask Mr. Hanson and MERI to submit further letters on whether or not the group qualifies as a PAC. Mr. Wayne said that the definition

of a PAC was ambiguous, containing four scenarios. Mr. Wayne said only the second scenario, relating to a “funding and transfer mechanism,” could possibly apply to MERI.

Mr. Hanson said that a determination could not be made until the Commission gains further information from MERI on its activities. Mr. Hanson said that since 2002, MERI board members contributed, personally or through their companies, \$85,259 to PACs and candidates. Mr. Hanson said that 96% went to Republican candidates and PACs, 3.9% went to Democratic candidates and PACs, and less than 1% went to independent candidates. Mr. Hanson said that this information merits further investigation into whether MERI was a political advocacy organization.

Ms. Thompson asked if there were any issues the Commission should consider other than whether MERI was a PAC. Mr. Wayne said there were no other issues at that time. Mr. Wayne said that if “Roll Call 2006” or a voter guide was distributed within 21 days of the election, they could be considered independent expenditures that must be reported to the Commission.

Ms. Thompson said that she was concerned that the Commission’s counsel was not present and the Commission did not have time to review all of the information that Mr. Hanson had just provided.

Mr. Ketterer said that the Commission should hear from the MERI representatives and then decide whether to take any action.

Mr. Hanson said that he would provide a copy of his testimony and other exhibits that he did not discuss at the meeting.

Ed McLaughlin introduced himself as president of MERI. Mr. McLaughlin said that MERI did not distribute “Roll Call 2006” directly to households or provide any copies with hand-written notation. Mr. McLaughlin said that anyone purchasing copies of “Roll Call 2006” receives a disclaimer asking them to follow all necessary rules and regulations and to identify who was distributing the copies. Mr. McLaughlin said that all copies of the publication contained a

disclosure statement indicating that the publication was paid for by MERI. Mr. McLaughlin said that MERI was a non-profit, non-partisan organization governed by a board of directors representing a diverse array of Maine businesses. Mr. McLaughlin said that MERI's goal was to improve Maine's business environment by providing objective information to enhance economic policymaking, which includes conducting non-partisan research. Mr. McLaughlin said that MERI did not operate to influence elections or act as a political action committee. Mr. McLaughlin said that MERI's legal counsel met with William Hain, who was then the executive director of the Commission, to go over MERI's planned activities. Mr. McLaughlin said that the response from the Commission staff was that MERI was not a PAC. Mr. McLaughlin said that MERI had grown since 1999, but its reports remain essentially the same. Mr. McLaughlin said that MERI met with the Commission staff whenever it anticipated a change in its activity. Mr. McLaughlin said that other organizations, such as the Maine AFL-CIO, publish similar ratings of legislators. Mr. McLaughlin gave several examples of organizations that gave disproportionately high ratings to legislators from one political party and not another. Mr. McLaughlin said that the rating methodologies were not designed to favor one party or another, but were based on issues important to each organization. Mr. McLaughlin said there was nothing inherent in MERI's ratings that would prevent a Democrat or independent from scoring highly. Mr. McLaughlin said that MERI was about promoting economic opportunity, but was not a political organization. Mr. McLaughlin said that Mr. Hanson's testimony did not reveal any violations of the laws and rules by MERI. Mr. McLaughlin said that MERI's board of directors was made up of Democrats, Republicans, and independents. Mr. McLaughlin said that MERI also works with a company to conduct a scientific study of business concerns.

Mr. Ketterer said that he did not give much weight to the notion that MERI's scoring unfairly disadvantages Democrats over Republicans. Mr. Ketterer said that he suspected that MERI had a set of bills during the legislative session representing the concerns of MERI's members and watched how each legislator voted on those bills. Mr. Ketterer said that a legislator who voted for most of those selected bills would thus score highly in MERI's ratings.

Mr. Ketterer asked Mr. McLaughlin if his group was concerned that legislators with high ratings were reelected while legislators with low ratings were defeated. Mr. McLaughlin said that MERI

was concerned about the public being informed on what was happening in the legislature. Mr. McLaughlin said that MERI was satisfied with the public communicating with legislators about their concerns without necessarily voting for or against them in the next election. Mr. McLaughlin said that MERI wishes to bring more attention to economic issues.

Mr. Ketterer asked if it was true that MERI would urge the reelection of people who received high scores on the “Roll Call 2006” survey and would be dissatisfied if legislators who received low scores were reelected. Mr. McLaughlin said that MERI did not suggest that people vote for or against any legislators. Mr. McLaughlin said that MERI did not advocate for elections and instead was focused on research analysis and reporting.

Kathryn Weare introduced herself as the owner and manager of the Cliff House and the vice chair of MERI’s board of directors. Ms. Weare said that MERI had been careful to advance its policies within the boundaries of the law. Ms. Weare said that despite the private activities of its members, MERI was not a political organization.

P.D. Merrill said that he had done business in Maine since 1979. Mr. Merrill said that he founded Merrill’s Marine Terminal with his father in Portland. Mr. Merrill said that he became involved with MERI due to the potential for long-term action to promote business. Mr. Merrill said that MERI provided information to the public, but it was up to the individuals to decide what to do with that information. Mr. Merrill said that MERI was based on organizations that previously existed in other states.

Michael McNamara said that he recently retired from the banking industry. Mr. McNamara said that a survey of 500-700 businesses in Maine was used to determine which bills influenced the “Roll Call 2006” rankings. Mr. McNamara said that the rankings were unbiased and that MERI never intended to be a PAC.

Ms. Thompson asked if anything discussed by Mr. Hanson and the MERI representatives fell under the Commission’s jurisdiction. Mr. Wayne replied that from Mr. Hanson’s testimony, there were no violations of the law. Mr. Wayne said that whether MERI’s activities were

political would be a subjective determination. Mr. Wayne said that some of MERI's activities, such as the voter guide, were political and had the intent of influencing elections. Mr. Wayne said that it would be possible for the Commission staff to gather additional information to present to the Commission so that it could determine at a later meeting whether MERI constituted a PAC.

Mr. Cassidy said that it was difficult to determine the reaction of those reading "Roll Call 2006." Mr. Cassidy said that MERI's intent seemed to be to show the public which issues were important to candidates.

Mr. Ketterer said that Mr. Hanson raised some legitimate issues, such as the question of whether MERI's activities define it as a PAC. Mr. Ketterer said that if this was the case, the issue would fall under the Commission's jurisdiction. Mr. Ketterer said that further inquiry was needed. Mr. Ketterer said that he found it difficult to believe that MERI had no interest in seeing certain legislators be re-elected.

Ms. Ginn Marvin said that MERI met with Commission staff to ensure that it did not become a PAC. Ms. Ginn Marvin said that the Commission staff could review MERI's activities again and determine if anything it has done would cause it to fall under the definition of a PAC. Ms. Ginn Marvin said that the PAC issue was not mentioned by Mr. Hanson in his letter requesting a Commission determination. Ms. Ginn Marvin said that the Commission should therefore only take action on Mr. Hanson's original complaint in regard to the "Roll Call 2006" publication.

Ms. Ginn Marvin moved, Mr. Ketterer seconded, and the Commission voted unanimously (4-0) to dismiss John Hanson's complaint against MERI with regard to "Roll Call 2006."

Mr. McLaughlin said that all groups similar to MERI should be evaluated to see if their activities qualify them as PACs.

Agenda Item #8 – Dates for Commission Meetings in September and October

The Commission decided to hold its next regular meetings on September 22, October 3, and October 20.

Agenda Item #7 – Complaint by Anne Jenness

Mr. Wayne said that Ms. Jenness called him to complain about unethical mistreatment of her as a candidate by Michael Mowles, a legislative candidate; Rep. Kevin Glynn, a Senate candidate; and Ben Chipman, an organizer for the Green Independent party. Mr. Wayne said that he had examined Ms. Jenness's petitions which took some time and she filed a letter a week prior to the meeting. Mr. Wayne said that Ms. Jenness wrote that she had known Mr. Mowles previously due to his job as a mortgage broker in Cape Elizabeth. Mr. Wayne said that Ms. Jenness wrote that Mr. Mowles came to her one week before the deadline to submit petition signatures to be a candidate and proposed to her that she run as a Green Independent candidate for House district 121. Mr. Mowles was running in the Republican primary for the same district and, if he won, would have been Ms. Jenness' opponent. Mr. Wayne said that Ms. Jenness explained that Mr. Mowles drove her around to collect signatures. Mr. Wayne said that after qualifying for the ballot, Ms. Jenness decided to withdraw as a candidate, while Mr. Mowles and Mr. Chipman tried convincing her to stay in the race. Mr. Wayne said that Ms. Jenness said that Mr. Mowles made two loans of \$7,000 each to her and offered her cash in an effort to keep her in the race until after the primary election, at which time she could have been replaced with another Green Independent candidate. Mr. Wayne said that Rep. Glynn and Mr. Mowles submitted responses. Mr. Wayne said that Mr. Mowles said that he lent Ms. Jenness some money and asserted that their financial dispute was the rationale behind her complaint. Mr. Wayne said that if what Ms. Jenness said was true, it was not a violation of any laws administered by the Commission. Mr. Wayne said that the Secretary of State's office administers the petition process to become a candidate. Mr. Wayne said that there were laws regarding people being offered money to be candidates or to influence candidates to run for office. Mr. Wayne said that the Commission may wish to consider referring the matter to another state agency for consideration.

Ms. Thomson asked if Ms. Jenness could bring her complaint to another agency if the Commission did not take action. Mr. Wayne said that she could. Mr. Wayne said that the only part of Ms. Jenness's complaint that may have been a violation of the law was her statement that she was offered a loan in order to become a candidate.

Ms. Jenness said that Mr. Mowles came to her house and asked her to run as a Green Independent candidate. Ms. Jenness said she was not interested in politics and had not previously met Rep. Glynn. Ms. Jenness said that she had planned to move to Boston.

Ms. Ginn Marvin asked if Mr. Mowles offered Ms. Jenness additional mortgage money to remain in the race. Ms. Jenness said that he had offered her a \$7,000 check to pay for her debts after she told him she was withdrawing. Ms. Ginn Marvin asked where the check came from. Ms. Jenness said it came from White Horse, Mr. Mowles' mortgage company. Ms. Jenness said that the second payment of \$7,000 came in the form of cash. Ms. Jenness said that Mr. Mowles collected the signatures and managed everything involved with her campaign.

Ms. Ginn Marvin said that while Ms. Jenness had a legitimate complaint, it did not appear to fall within the Commission's jurisdiction. Ms. Ginn Marvin asked where else Ms. Jenness might take her complaint. Mr. Wayne said that it would probably be the Maine State Attorney General's office.

Ms. Thompson asked if there were any violations of the Maine Clean Election Act that the Commission may be able to reach a determination on. Mr. Wayne said that recruiting opponents may have resulted in a greater payout of Clean Election funds than if the race was uncontested in the primary, but Mr. Mowles was already facing primary opposition. Mr. Wayne said that the issue could result in a lack of confidence in the administration of the Maine Clean Election Act. Ms. Thompson asked if there was any misuse of the Clean Election rules specific to Ms. Jenness's complaint. Mr. Wayne said that that was not the case, as Ms. Jenness did not attempt to qualify for Clean Election funds.

Ms. Jenness said that she was not interested in taking her complaint to another agency.

Other Business

Philip Morris Napier said that the Secretary of State's office refused to place his name on the ballot as "Philip Morris Napier – Thu Peoples Hero." Mr. Napier said that the Secretary of State's office also refused to list his party designation as "Pissed-Off Patriots." Mr. Napier said that the term was not obscene as the Secretary of State's office has claimed. Mr. Napier said that every candidate should have to gather their own signatures and should all be given the same amount of money once they qualify for the ballot. Mr. Napier said that his campaign strategy was his uniqueness, including his name, and that by having his name on the ballot as he wanted, it would level the playing field in regards to his opponents. Mr. Napier said that he included his party designation on all 322 ballot petition pages submitted to the Secretary of State's office.

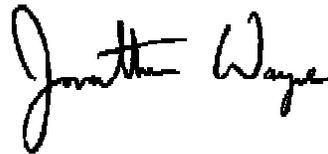
Ms. Ginn Marvin said that the Commission was unable to help Mr. Napier with his complaint. Mr. Napier said that Julie Flynn in the Secretary of State's office told him that herself, the Secretary of State, and the Attorney General made the decision to disallow his ballot name requests and that there was no provision for appeal. Mr. Napier said that going to the Commission was the only other appeal process he knew of without going to court.

Mr. Wayne said that it was not the business of the Commission how Mr. Napier's name appeared on the ballot. Ms. Ginn Marvin said that the Commission primarily oversaw elections and how they were financed. Mr. Napier said that his issues were just as important as any financing matter. Ms. Ginn Marvin recommended that he go to private counsel. Mr. Napier said that he could not get a lawyer. Mr. Napier said that if the Commission really wished to be fair, it should provide him with \$1.2 million so that he has equal financing with the other gubernatorial candidates. Ms. Ginn Marvin said that he could receive public funding if he qualifies for it in the next election cycle. Mr. Napier said that if the Secretary of State's office has no appeal process, the Commission should develop one. Ms. Ginn Marvin thanked Mr. Napier for coming, but said that she disagreed with his suggestion and that there was nothing the Commission could do.

Mr. Wayne said that there was legislation requiring the Commission to issue a report to its oversight committee by September 1 regarding financial reporting on ballot questions. Mr. Wayne said that under current law, in order to register as a PAC, an organization has to raise or spend \$1,500 relating to a candidate election or ballot question. Mr. Wayne said that the staff was fine with the current law and he would include that recommendation with the report if the Commission agreed. The Commission members all stated that they agreed with the staff view. In addition, the report was to address the issue of whether PACs should be required to report more frequently. Mr. Wayne said that the filing schedule was satisfactory and would not need to be changed. The Commission members agreed.

There being no further business, Mr. Ketterer moved, Mr. Cassidy seconded, and the Commission unanimously voted (4-0) to adjourn.

Respectfully submitted,

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

Jonathan Wayne
Executive Director