

**Beth Edmonds**  
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## MEMORANDUM

TO: Commission on Governmental Ethics

FROM: Senate President Beth Edmonds *BE/rm*

DATE: April 1, 2005

SUBJECT: Comments on Proposed rule Amendments and Changes to Candidate Reporting Forms

I have reservations about a number of proposed changes to the rules governing Clean Elections. They are:

### Chapter 1, Section 6, Subsection 6

Our efforts in Maine to make the political process as transparent as possible have been largely successful. Our elections are remarkably "clean" in comparison to many other states – and, in part, it is due to our belief in making available to the public information about the components of our campaigns. For us to exempt recounts from reporting requirements flies in the face of the progress we have made in this area.

I do not object to the concept of creating a model for funding recounts, but I do object to exempting any entity from reporting.

### Chapter 1, Section 7, Subsection 4

This section would be made stronger by exempting items that serve a dual purpose – like a lawn sign or a palm card. As a practical matter, and considering the limitations of a typical campaign budget, this proposal would unduly burden a candidate by forcing them to spend additional dollars to produce a replica of an item used earlier in the campaign.

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### **Chapter 1, Section 7, Subsection 7**

See above (Chapter 1, Section 6, Subsection 6) for a discussion of my concerns about exempting recounts from reporting requirements.

### **Chapter 1, Section 10, Subsection 5, Paragraph B**

It is my opinion that Item #1, about "voting records" should not cover a communication that develops a "rating" based on voting records. To assemble a rating is to assign certain positive and negative value to votes in the legislature – and I differentiate that from a mere listing of votes. A comparison between a candidate with a 97% rating to a candidate with a 3% rating is a statement of express advocacy for the 97% candidate – and the communication should be treated as such.

### **Chapter 1, Section 10, Subsection 5, Paragraph E**

The proposal could be strengthened by further defining "the date of the mailing" as the "postmark date." This is the only unambiguous date that can be ascribed to the dissemination of a mailing and should be the date in question when it comes to making a determination about this type of communication.

### **Chapter 3, Section 5, Proposed Subparagraphs 3(B)(5) and (6)**

My most strenuous objection is to this proposed section. The Clean Elections program works, in all its complexities, because the level of detail in the rules is sufficient to guide political actors in making sound strategy decisions. This proposal is a direct affront to that ability, by removing clearly defined standards and replacing them with the whims of the Commissioners.

The intent is to give the Commissioners discretion to interpret any communication in any way they see fit – but look at it from the perspective of a group trying to legitimately produce a communication. How would they ever feel comfortable producing an issue advertisement, if they no longer benefit from rules governing that type of communication? The Commission is meant to be an unbiased interpreter of the Clean Election rules, not a political speech police force.

Think of it this way: how fast would you drive if, instead of speed limits, the state police were able to sit by the side of the road and decide if you were driving too fast?

*Commission of Governmental Ethics*

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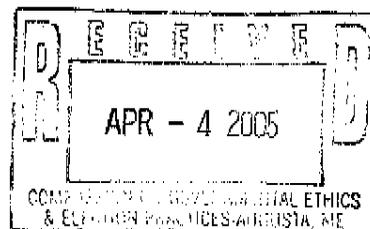
April 1, 2005

**Chapter 3, Section 5, Subsection 4**

See above (Chapter 1, Section 7, Subsection 4) for discussion of primary expenditure vs. general election expenditure.

**Chapter 3, Section 7, Proposed Subsection 4(D)**

Candidates already are required to file a lot of paperwork – and for good reason. This, however, is an unnecessary addition to that burden and serves little practical purpose. The financing of a staff person is nothing but a strategic decision each campaign must make based on that campaign's needs. Arbitrarily setting a limit on what requires reporting is another case of identifying a solution for a problem that doesn't exist.



April 4, 2005

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

RE: AMF Comments on Proposed Rules Changes, Chapters 1 and 3

Dear Commission Members:

Thank you for the opportunity to comment on the proposed Rule changes to Chapters 1 and 3 of the Ethics Commission's Rules. These written comments are intended to provide further discussion and follow-up to our oral comments provided to you on March 24, 2005.

Alliance for Maine's Future (AMF) is a non-partisan, non-profit organization for Maine citizens that conducts voter education programs. We are also an affiliate of a national organization, BIPAC, which has a similar mission.

First, we want to repeat our praise of the staff's effort in drafting these rule changes. It is a bold effort to make the rules more functional. Our comments below, however, will focus on questions or areas of concern with the proposed changes.

#### **CHAPTER 1 - Section 1 (Definitions)**

We understand the intent and desire to define membership of an association, but believe the proposed definition of "membership" should be changed. There are numerous types of associations and this proposed definition is written too narrowly to include them all. Many associations do not require a financial contribution, but rather an affirmative action to join. They may provide free membership through membership drives, through allowing board members to give away memberships, or to key clients or customers. The proposed definition would exclude these types of memberships.

AMF requires an affirmative act to join as a member. People can join several ways, including signing a written form or signing up through our website. We do not require that people pay dues because we think people's civic duty of voting is too important, thus we attempt to remove financial obstacles. Therefore, some members who voluntarily contribute help subsidize other members.

In a 30-minute review of websites of organizations associated with Maine, we found many associations that do not require a financial contribution but do appear to require an affirmative action to join:

Maine Citizens for Clean Elections – [www.maineclanelections.org](http://www.maineclanelections.org)  
 Maine Citizen Leadership Fund – [www.maineitizen.org](http://www.maineitizen.org)  
 Dirigo Alliance – [www.dirigoallaince.net](http://www.dirigoallaince.net)  
 CasinosNO – <http://lbcentral.com/ex/manage/subscriberprefs.aspx?custimerid=29000>  
 The League of Pissed Off Voters – <http://action.indyvoter.org/join/>  
 The Maine Mountain Heritage Network – [www.mainemountain.org/network](http://www.mainemountain.org/network)  
 Maine Coalition for Peace and Justice - [www.mcpj.org/join](http://www.mcpj.org/join)  
 Conservation Law Foundation – [www.clf.org/general/index.asp?id=351](http://www.clf.org/general/index.asp?id=351)  
 GrowSmart Maine - [www.growsmartmaine.org/Our\\_mission.htm](http://www.growsmartmaine.org/Our_mission.htm)  
 Coalition to Stop Gun Violence – <http://action.csgv.org/join>  
 Maine Citizens Against Handgun Violence – [www.mcahv.org](http://www.mcahv.org)  
 The Maine Plan – [www.maineplan.com/Call2Action.asp](http://www.maineplan.com/Call2Action.asp)

We suggest the definition be broadened so that it includes a new item, subsection D, (“D. requires an affirmative act to become a member.”)

13. Member. A “member” of a membership organization includes all persons who currently satisfy the requirements for membership in the membership organization, have affirmatively accepted the membership organization’s invitation to become a member, and either:

- A. pay membership dues at least annually, of a specific amount predetermined by the membership organization; or
- B. have some other significant financial attachment to the membership organization, such as significant investment or ownership stake in the organization; or
- C. have a significant organizational attachment to the membership organization that includes direct participatory rights in the

governance of the organization, such as the right to vote on the organization’s board, budget, or policies.

Members of a local union are considered to be members of any national or international union of which the local union is a part, of any federation with which the local, national, or international union is affiliated, and of any other unions which are members or affiliates of the federation. Other persons who have an enduring financial or organizational attachment to the membership organization are also members, including retired members or persons who pay reduced dues or other fees regularly to the membership organization.

#### CHAPTER 1 - Section 4 (Initiation of Proceedings)

The amendments proposed to Subsection D are an improvement. These new requirements will hopefully provide a valuable screen to ensure that complaints are in fact valid and not merely being made to harass lawful citizens.

- D. Reports of noncompliance with the provisions of the campaign registration and reporting laws that may come to the attention of the Commission staff from any source other than review of the reports filed will be reported to the Commission Chair. Any person (as defined in 21-A M.R.S.A. Section 1001) may make an official request for a Commission investigation or determination by filing a written request at the Commission's office, setting forth such facts with sufficient details as are necessary to specify the alleged violation. Statements should be made upon personal knowledge. Statements which are not based upon personal knowledge must identify the source of the information which is the basis for the request, so that respondents and Commission staff may adequately respond to the request. A copy of any such written request will be promptly mailed to the Commission Chair as well as to the candidate or organization alleged to have violated the statutory requirements. An official request will be placed on the agenda of the next Commission meeting.

#### CHAPTER 1 - Section 7 (Expenditures)

The proposed changes to Subsection 3 help provide clarity, but further direction to PACs is needed. This new requirement makes PACs account for expenditures on an accrual basis – before the PAC knows what the actual cash value/cost is for the expenditure. The rules are silent on when any adjustment needs to be reported to the Commission, when the accrual value is different than the cash value. And what level would be an appropriate level to trigger a report independent of the quarterly PAC reports?

- C. At the time the duty to report an expenditure arises, the person submitting the report is required to make a good-faith effort to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the exact value of the goods and services cannot be determined at that time, the person must make a good-faith effort to estimate the value of the goods and services. If the actual amount subsequently billed by or paid to the vendor differs from the amount initially reported, the difference must be immediately reported to the Commission so that the amount of the reported expenditure is accurate.

#### CHAPTER 1 - Section 10 (Reports of Independent Expenditures)

Subsection 3. Reporting Schedules – This section provides further definition of the 12<sup>th</sup> day, when a filing is required for independent expenditures in excess of \$100, but less than \$250. However, it needs greater detail in explaining to PACs when to file and what to file if they go over the defined threshold. What if you spend over \$250, but by only ¢.37 cents one day, and then the next week you spend \$10? What do you file and when? Do you file at each event after

you pass the threshold or when it aggregates to \$X amount? Within what timeframe must it be filed; e.g. within 24 hours?

3. **Reporting Schedules.** Independent expenditures must be reported to the Commission in accordance with the following provisions:
  - A. Independent expenditures aggregating in excess of \$100 per candidate per election but not in excess of \$250 made by any person, party committee, political committee or political action committee must be reported to the Commission no later than the 12<sup>th</sup> day before the election is held, or within 24 hours of the expenditure, whichever is later. ~~in accordance with the following reporting schedule.~~

Subsection 4 Multi-Candidate Expenditures. It was clear from the last election cycle that further definition is needed when an independent expenditure names multiple candidates. That said, we are assuming that anything that is not an independent expenditure will not be subject to this section's analysis.

The Commission must be careful that the laws as defined Supreme Court in Buckley v. Valeo and McConnell v. FCC are reflected in these new changes to the Commission's rules. (*Our comments here also apply to the amendments in Subsection 5 as well.*)

The Supreme Court's decisions recognize First Amendment rights, but allow for agency restrictions on speech if, and only if, certain tests are met. The McConnell decision reviewed the new FEC restrictions on certain activities and political speech that occur before an election – both “electioneering” (issue advocacy) and “express advocacy” (magic words – vote for/against). However, the Supreme Court was very specific in its findings - explaining the three-part determination of constitutionality – content, conduct and agent.

The Supreme Court found that the FEC's new restrictions on “Electioneering Communications” were constitutional because they were narrowly defined and there was no question of vagueness or ambiguity. The terms and restrictions narrowly defined the content, conduct and agent.

As stated by the Supreme Court majority opinion in McConnell, “Finally, we observe that the new FECA sec. 304(f)(3)'s definition of “electioneering communication” raises none of the *vagueness* concerns that drove our analysis in Buckley. The term “electioneering communication” applies only (1) to a broadcast (2) clearly identifying a candidate for federal office, (3) aired within a specific time period, and (4) targeted to an identified audience of at least 50,000 viewers and listeners. *These components are easily understood and objectively determinable. Thus the constitutional objection that persuaded the Court in Buckley to limit FECA's reach to express advocacy is simply inapposite here.*” (540 U.S. 2003, page 87)

Clearly, the Ethics Commission's proposed new reporting requirements lack the ability for an objective determination. The content, conduct and agent are not all clearly identified. How a determination is made is vague. Is a picture worth a thousand words? There is no definition of

the audience either. If it is not designed to reach X% of the people in a district, does it trigger a reporting restriction? The only clear standards in the Maine law are the date – 21 days before the election - and identifying a publicly funded candidate for office. As the Commission considers these new, more cumbersome regulations, it should keep in mind the constitutional requirement that there be no lack of clarity. In other words, if there is any ambiguity in who, what, where, how or when, then there is very likely constitutional concern.

4. Multi-Candidate Expenditures. When reporting an independent expenditure made to support the election of multiple candidates, the cost should be allocated among the candidates in proportion to the benefit received by each candidate.

A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. For example, if campaign literature naming Senate candidate X and House candidates Y and Z is mailed to 10,000 voters in X's district, and 4,000 of those voters reside in Y's district and 6,000 of those voters live in Z's district, the allocation of the expenditure

should be reported as: 50% for X, 20% for Y, and 30% for Z. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation. For example, if an expenditure on a legislative scorecard that names 150 Legislators is distributed to voters within a town in which only one Legislator is seeking re-election, 100% of the cost should be allocated to that Legislator's race.

C. If candidates are given disproportionate treatment in a print or broadcast communication, the individual or organization reporting the expenditure should allocate the cost accordingly. For example, if a Senate candidate is featured twice as prominently as a House candidate in a written communication, the amount allocated to the Senate candidate would be increased in proportion.

Subsection 5 – Rebuttable Presumption. Subsection 5 includes significant changes to the restrictions on Independent Expenditures that occur within 21 days of the election.

The Commission's proposed rules appear to have adopted some of the FEC's clear standards that are contained in FEC MUR 5342: "The term expenditure does not include 'nonpartisan activity designed to encourage individuals to vote or to register to vote.'" (Page 8) To trigger the requirements associated with "expenditures" regulated by the FEC however, it must be associated with "express advocacy communications," which is defined as "expressly advocating the election or defeat of any clearly identified candidate." 60 Fed. Reg. at 64,269. The Ethics Commission is broadening its reach to include effectively all "electioneering communications" as well. It is possible to fall within the web of the commission's speech regulations and restrictions by mentioning a candidate's name within 21 days of the election if other factors are present. There is clearly ambiguity in determining the other factors - how, what, and when.

The FEC decision also provides analysis on the use of voter guides in the nonpartisan process of encouraging people to vote. Costs associated with voters guides "even though they may not present the candidate's positions in a neutral manner" (MUR 5342, page 12), are not "expenditures." The FEC recognizes that voting records are not always neutral, but regardless of that, they do not include them as requiring reporting as expenditures. We read the Commission's rules as recognizing the same standard as the FEC's on voting records; however, the Commission appears to be differing on a few points and, in doing so, changing prior policy.

The Commission is setting no trigger for reporting. The threshold of spending more than \$100 per candidate mentioned or depicted will no longer be the standard. Instead, in subsection B(1) a communication, such as a voter guide that lists 25 candidates or more, will not be an independent expenditure if there is no express advocacy. Where the Commission's approach is different from the FEC's standards, it would be helpful for those differences to be clearly articulated.

5. Rebuttable Presumption. Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate in a race involving a Maine Clean Election Act candidate and that is disseminated during the 21 days before an election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) Printed advertisements in newspapers and other media;
- (2) Television and radio advertisements;
- (3) Printed literature;
- (4) Recorded telephone messages;
- (5) Scripted telephone messages by live callers; and
- (6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.

B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. Section 1019-B(1)(B):

- (1) voting records and legislative scorecards, if the communications do not expressly advocate the election or defeat of any candidate and the communication describes the voting records of 25 or more Legislators of more than one political party;
  
- (5) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;

Subsection 5C – When do you have to report over \$100? Do you report everyday if you go over \$100?

- C. If an expenditure is covered by the presumption and is greater, in the aggregate, than \$100 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate.

Subsection 5D – This subsection attempts to create new requirements for reporting material that may pass through several hands before and during the 21-day period. We have serious concerns with a standard that requires “who ever held it last” to have an obligation to report to the Commission. The proposed standard requires an “association” that distributes copies of printed literature to its members, and then those members distribute some or all of the material within the 21 day window must report the cost to the commission. We think this standard is unworkable and will lead to numerous errors and confusion in reporting. If the association reported the material to the Commission, and then a member who also distributes some of the material to citizens and also reports it to the commission, then you have a case of over-reporting – triggering matching “clean dollars” twice. It is also unrealistic to think that someone unsophisticated and who does not produce the material must nevertheless understand the rules or even know of the Commission’s requirements. A better approach is to simply require membership organizations or unions to report the information if the material is distributed within 21 days of the election and the total costs exceed \$X.

- D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the 21-day period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.
- E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the mailing, distribution, or broadcast of the communication, rather than the day on which it is received.
- F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed. If the actual costs of the communications cannot be determined, the organization must report the estimated fair market value.

Thank you for the opportunity to comment on the proposed changes. We hope are comments are helpful and informative.

Sincerely,

Abigail M. Holman

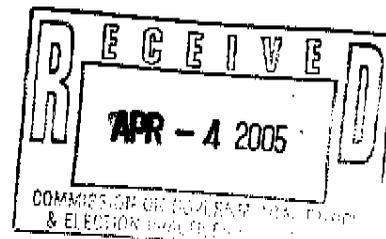
# PretiFlaherty

MICHAEL K. MAHONEY  
mmahoney@preti.com

April 4, 2005

## VIA HAND DELIVERY

James O. Donnelly, Chairman  
Maine Commission on Government Ethics & Election Practices  
135 State House Station  
Augusta, Maine 04333-0135



**RE: Maine Democratic Party's Comments on Proposed Rule Amendments and Changes to Candidate Reporting Forms**

Dear Chairman Donnelly:

Please accept on behalf of my client, the Maine Democratic Party (the "Party"), the following comments on Proposed Rule Amendments and Changes to Candidate Reporting Forms, provided to the Party in a memo dated February 23, 2005. The Party appreciates the efforts that the Commission staff has taken to ensure that the Party, and the public generally, has been granted adequate opportunity to review and offer substantive responses to the proposed rules.

The Party is supportive of the vast majority of the proposed rule changes, and applauds the Commission and its staff for its thoughtful consideration of the myriad of issues surrounding these proposed rules. The Party's written comments, therefore, are limited to those few areas where the Party has concern or requires clarification, which are as follows:

**Chapter 1:**

**Page 11: Ch. 1, § 4(2)(G):** The Party suggests that the certification signed by any person authorized to sign a report be the same as the *jurat* used in affidavits.

**Page 14, Ch. 1, § 7(3)(A):** The Party is concerned that requiring that every expenditure be reported as set forth in the proposed rule will lead to confusion and improper issuance of matching funds. As the Commission is aware, financing a political communication may involve multiple contracts. For example, financing a print communication in the final days before an election may require the person making the expenditure to contract separately for designing the communication, printing the communication and finally, distributing the communication. Under the proposed rule, a separate report would have to be filed for each of these separate expenditures within 24 hours, and matching funds would be issued in an expedited fashion. In the event that the communication is ultimately not distributed, the Commission would be faced with the situation of having to request that the matching funds be returned if not already expended, or of allowing the MCEA opponent to gain an unfair advantage by using the matching funds.

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James O. Donnelly, Chair  
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**Page 15, Ch. 1, § 7(4)(B):** As an alternative to the approach taken in this subsection, the Party recommends that the Commission require purchasers to allocate what portion of the goods/services purchased will be used during the primary election cycle versus the general election cycle, and report those portions separately. Should the Commission decide to stay with the approach in the proposed rule, the Party recommends that the term “preponderance” be struck and replaced with “majority.”

**Supplement to Proposed Rule, Ch. 1, § 10 (3)(C):** While it certainly appreciates the Commission’s effort to ensure timely disclosure of last-minute independent expenditures, the Party wonders how helpful some of the additional disclosures required by this proposed section will be. The Commission’s approach may be overlooking the fact that persons making expenditure may in some cases take preliminary steps to plan for communications that ultimately are never distributed publicly. For example, expenditures may be made in designing mail pieces for 30 legislative races but, because of a scarcity of resources, only 10 of the 30 pieces are actually re-produced and distributed to voters. The approach proposed by the Committee would appear to require these “design expenditures” to be separately reported, and matching funds to be issued, even if no communication is ultimately made.

Subsection (C)(1): The date on which a person contacts a vendor about providing goods and services in connection with a communication may be several months before an order is placed or any agreement regarding a particular communication is made. Preliminary contact may involve pricing estimates, the vendor’s availability and other general information, and in many cases, will not shed light on whether the report could have been made to the Commission earlier.

Subsection (C)(2): It is the Party’s understanding that the date on which the order was placed is the date on which the 24-hour reporting period would begin – or, put another way, the date immediately preceding the reporting date. The Party wonders how helpful requiring this information to be provided separately will be to the Commission.

Subsection (C)(3): In many cases with expenditures made in the final eight days before an election, “the period of time in which the vendor provided the goods or service” will post-date the reporting of the expenditure (since the reporting requirement will be triggered upon agreement, placement of an order, etc.).

Subsection (C)(4): As with subsection (C)(1), information regarding the date on which the person making the expenditure learned of the total amount of the expenditure may pre-date any agreement between the person and the vendor to move forward on a particular communication by a period of weeks or even months. As with (C)(1), having this information may not shed light on whether the report could have been made to the Commission earlier.

Subsection (C)(5): This subsection appears to articulate the issue that the proposed rule is attempting to address: i.e., why the expenditure could not have been reported earlier. The Party agrees that requiring persons making expenditures to justify the timing of their reporting will help improve compliance. The Party suggests that this subsection remain in the proposed rule.

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James O. Donnelly, Chair  
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**Page 19, Ch. 1, § 10 (4)(A):** In contrast to the testimony provided at the public hearing on the proposed rule changes, the Party supports the inclusion of examples in the proposed rules. These examples provide the public with easy-to-find clarity regarding the Commission's interpretations of its own standards. Such clarity can only serve to improve compliance.

**Page 20, Ch. 1, § 10 (4)(C):** This subsection appears to contradict the rule set forth in § 10(4)(A), which requires that multi-candidate expenditures be allocated among the named-candidates in rough proportion to the number of each candidate's voters receiving the communication. Subsection (C), in contrast, would appear to require that this methodology be abandoned or altered (to an unknown extent) where candidates are given disproportionate treatment within the communication.

**Page 21, Ch. 1, § 10(5)(B):** Again, in contrast to testimony provided at the public hearing, the Party supports the inclusion of the list of activities that are not covered by the "independent expenditure" presumption described in subsection (5). This list provides the public with much-needed clarity regarding what types of activities the Commission views as properly being considered "independent expenditures." However, subsection (B)(8) appears to propose to add the term "party candidate listing" – a term that is undefined in *current* law or rule. (The Party is aware that pending legislation seeks to introduce and define this term into Title 21-A and would have no objection to the use of the term in the rule in the event that the legislation is enacted.)

**Page 22, Ch. 1, § 10(5)(G):** The Party suggests that, in order for pre-publication screening of communications to be a viable option, the proposed rule include a provision that any communication submitted for early determination will be kept confidential by the Commission.

### **Chapter 3:**

**Page 13, Ch. 3, § 5(3)(B)(6):** The Party suggests that the Commission consider further specifying what other "relevant evidence", or what factors the Commission may weigh, in determining whether a particular communication is in support of or in opposition to a particular candidate. Setting forth these standards in advance will provide the Commission with a consistent framework from which to judge what it views to be the true intent of a particular communication, and will give the public added confidence that every communication will be treated in a fair, consistent manner.

**Page 14, Ch. 3, § 5(4)(A):** The Party recommends that the term "preponderance" be struck and replaced with "majority."

Thank you for the opportunity to provide these comments. Should the Commission have any questions regarding the above-comments, please feel free to contact me.

PRETI FLAHERTY  
James O. Donnelly, Chair  
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Sincerely,

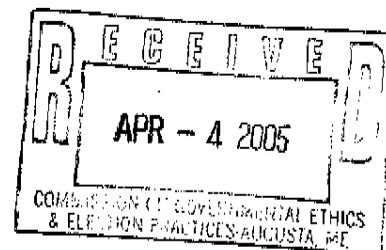
A handwritten signature in black ink, appearing to read 'M. Mahoney', with a stylized flourish at the end.

Michael K. Mahoney

cc: Commission Members

To: Commission on Governmental Ethics and Election Practices

From: Maine Citizen Leadership Fund  
Arn Pearson, Esq., Executive Director  
Doug Clopp, Democracy Project Director



Date: April 4, 2005

Re: Comments on Proposed Amendments to Ethics Commission Rules

Thank you for the opportunity to comment on the draft rules. The following summarizes the comments made at the public hearing, as well as a few responses to comments made by others. Unless otherwise indicated, we support the proposed amendments and congratulate the Commission for doing a fine job addressing difficult and important issues.

### Chapter 1

#### **Definition of a "member."** §1(13) on p. 2.

MCLF supports adopting this definition as drafted. The wording mirrors the Federal Election Commission's definition of a member, and it is important to keep all three elements – membership criteria, affirmative acceptance and significant monetary or organizational attachment – in order to prevent abuse of the exception from disclosure for membership communications.

#### **Recounts.** §6(6) on p. 14; §7(7) on p. 16

MCLF believes that removing recounts from the statutory definition of contributions and expenditures exceeds the scope of the Commission's rulemaking authority, and that any change should be made by statute. As a matter of statutory interpretation, we believe that raising or spending funds to win a recount is for the purpose of influencing an election, and that an election is not technically over until the results are certified by the Secretary of State. MCLF disagrees with these sections on policy grounds as well, as stated in previous Commission meetings. The effect of the rule change would be to exempt contributions for recounts from the state's contribution limits and to eliminate all public disclosure for what often are costly recounts. Public policy concerns about undue influence remain the same whether a contribution is made to support a candidate's pre-election campaign or to win a recount.

#### **Timing of reporting expenditures.** §7(3)(A) on p. 14.

MCLF supports the language of this subsection, but suggest the following changes (in bold font):

- A. Placing an order with a vendor for a good or service; reserving print space or broadcast time for advertising; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service. ~~Negotiations or discussions with a vendor do not constitute an expenditure, as long as no order has been placed and no agreement has been made.~~ Design, production and dissemination of a political communication may entail multiple expenditures triggering multiple reporting deadlines.

Adding the above phrase concerning advertising would clarify the timing for common, often large, expenditures. MCLF suggests striking the sentence about negotiations out of concern that attempting to define what is *not* an expenditure will encourage strategic behavior to avoid crossing the threshold of what is an expenditure. The last sentence proposed above would clarify that many common campaign activities entail multiple expenditures.

**Independent expenditure reporting schedule.** §10(3)(A) on p. 18.

Although we appreciate the Commission's effort to simplify the reporting schedule, you may want to revisit this subsection concerning independent expenditures between \$100 and \$250. The old language mirrored the PAC reporting schedule, on the theory that most independent expenditures are made by PACs. It may actually be simpler to leave it as is, and have PACs report these expenditures when they do their overall report.

**Multi-candidate independent expenditures.** §10(4) on p. 19.

MCLF supports the Commission's effort to tackle this issue and deal with creative strategic behaviors by PACs and parties. For example, paragraph C would prevent a person from reducing matching funds to a Senate candidate targeted by a direct mail piece by listing several House candidates somewhere on the piece. To minimize gamesmanship, the Commission may want to empower staff to decide how to allocate multi-candidate independent expenditures in races with a Clean Election candidate upon request or complaint, or at a minimum provide a worksheet on the Commission's website to help people with their calculations. MCLF also suggests deleting the examples in each subsection and using them in a guidance memo instead.

**What is not covered by the rebuttable presumption for independent expenditures.** §10(5)(B) on p. 21.

Attempting to define the negative in statute or rule usually creates more problems than it solves. MCLF therefore suggests deleting this subsection in its entirety and replacing it with a short paragraph that refers to the list of exemptions in statute, as follows:

- B. Communications that fall under the list of exceptions in 21-A MRSA §1012(3)(B) are not considered expenditures and therefore will not trigger the rebuttable presumption under §1019-B(1)(B).

If the Commission decides to keep the list under this subsection, MCLF urges you to delete paragraphs 1 and 2. Paragraph 1 conflicts with the referring section of the statute, §1019-B(1)(B), and §10(4) of the proposed rules by setting a new, arbitrary standard, regardless of whether the expenditure exceeds \$100 per candidate per election. Paragraph 2 is unnecessary and confusing, and sets up the potential for conflicts with subsection 5(A). For example, an “oral conversation between two individuals” would trigger a rebuttable presumption if one individual was being paid more than \$100 to talk to people about a candidate, be it in person or by telephone. Paragraphs 7 and 8 could be incorporated into a guidance memo, similar to the one the Commission has drafted to help candidates decide what is a legitimate “campaign related” expense. Paragraphs 3-6 come from the statutory list in §1012(3)(B).

### Chapter 3

**Limitations on campaign expenses.** §6 on p. 14.

The wording in paragraph 3 is awkward. We suggest changing it to read:

3. use revenues distributed from the Fund only for campaign-related purposes according to guidelines outlining permissible campaign-related expenditures as outlined in guidelines published by the Commission, and not for personal or any other use;

Paragraph 4 seems aimed at the resale of goods to generate campaign funds, but could be read as conflicting with rules about how to deal with equipment purchased with Clean Election funds at the end of a campaign.

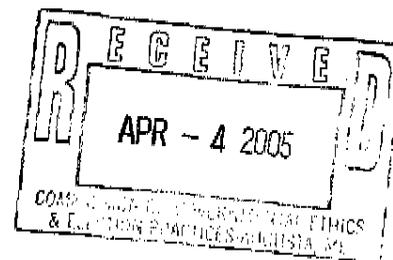
MCLF objects to paragraph 7 concerning recounts for the same reasons described about under Chapter 1, §6(6) and §7(7). In addition, paragraph 7 is inconsistent with paragraph 6 – i.e., funds spent for post-election thank you’s are considered “campaign related,” while funds spent to win a recount are not. MCLF recommends allowing participating candidates to use any remaining Clean Election funds for recount-related expenses.

Apr 04 05 11:56a

Eliza Townsend

207-373-1221

p.1



Mr. Jonathan Wayne  
Commission on Government Ethics  
& Election Practices  
135 State House Station  
Augusta, ME 04333-0135

April 4, 2005

Dear Mr. Wayne,

Thank you for the opportunity to comment on the proposed changes to the rules concerning implementation of state election law. Most of the proposed changes simply add clarity to current law and implementation of it.

However, the additional rule concerning Independent Expenditures prompts me to comment. Section 10-3(c) requires a five-part report in the case of independent expenditures filed after the eighth day preceding an election. All of the five questions seem to be designed to get at one answer: when the order was placed, the action which "starts the clock" on the 24-hour reporting requirement. Assuming that question is answered accurately, the others do not seem to me to be needed.

While questions 3-5 are redundant if #2 is answered accurately, question #1 would seem to require tracking the dates on which one researched and chose a suitable vendor. I don't see its value.

I think that working to educate PACs and others that reporting of independent expenditures is required when the obligation is incurred the most effective course.

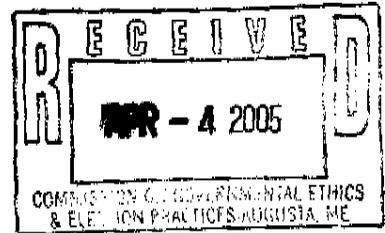
Sincerely,

A handwritten signature in cursive script that reads "Eliza Townsend".

Eliza Townsend  
Maine Conservation Voters Action Fund

104 Muskrat Farm Road  
 Stockton Springs, ME 04981  
 April 4, 2005.

State of Maine  
 Commission on Governmental Ethics  
 and Election Practices  
 135 State House Station  
 Augusta, ME 04333-0135



Dear Franklin Jonathan Wayne, Executive Director,

We are writing to you in regards to the public comments on Rulemaking. We are respectfully requested in the past during Board Meeting in October 2004 that all Maine Clean Elections primary and election candidates to use candidates full name, as stated on birth certificate, for all MCE forms and to enforce the MCE Act.

The clean elections act needs to be "clean". Under Chapter 1 Procedures, Section 1. Definitions; that the definition of "clean" be added and "candidates full name". When any candidate takes Clean Elections money for their candidacy, then they should be respectful to the citizens of Maine, by using candidates full name, so citizens know who they are electing for the Legislature.

Also, on Section 10 Reports of Independent Expenditures, page 19, we respectfully disagree with eliminating (1) Quarterly Reports and (2) Pre and Post Election Reports and suggest to reinstate these deadlines, otherwise it may be more confusing for candidates. All clean election money should be accounted for, since the public voted for this to make elections "clean" and it comes from taxpayer funds.

Thank you for opportunity to address our concerns to you.

Concerned Citizens and taxpayers  
 Michele + Joseph Dreenier

**Wayne, Jonathan**

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**From:** Clinton Collamore [cornfam@gwi.net]  
**Sent:** Tuesday, March 22, 2005 6:42 AM  
**To:** Jonathan.Wayne@maine.gov  
**Subject:** ce

Good morning Jonathan,  
I have look at the complete clean elections packet that you sent to me. I think the packet has covered just about everything. The only thing that I may question is, if we make clean elections to complicated people may not get involved in the process. In other words, if only legislators and politicians understand the language in the clean elections, it sort of defeats the whole purpose. I know there are people who like traditional funding, but we need to continue the clean elections process, and keep the big money politicians out of the process. Just my two cents worth. Keep up the great work. Clinton Collamore, Waldoboro

**Thomas B. Saviello**

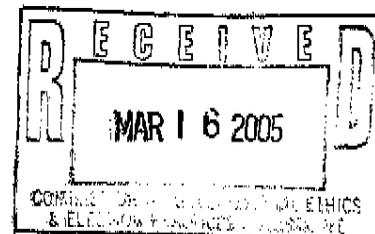
60 Applegate Lane  
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**HOUSE OF REPRESENTATIVES**

2 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0002

(207) 287-1400  
TTY: (207) 287-4469

March 14, 2005



Jonathan Wayne  
Executive Director  
State Commission on  
Government and Election Practices  
135 State House Station  
Augusta, ME 04333-0135

Dear Mr. Wayne:

Attached are my comments on the Proposed Rule Amendments and Changes to Candidate Reporting Forms. I appreciate you and the commission's efforts. I hope to be able to attend the hearing.

Sincerely,

A handwritten signature in dark ink, appearing to read 'TBS' followed by a stylized flourish.

Thomas B. Saviello  
Maine State House of Representatives  
District 90

TBS/kjt  
K:\TO\LE\050311.doc

District 90 Avon, New Vineyard, Phillips, Strong, Temple and Wilton,  
plus the unorganized territories of East Central Franklin (part, including Freeman  
Township and part of Salem Township) and Perkins and Washington Townships

**PROPOSED RULE AMENDMENTS AND CHANGES TO  
CANDIDATE REPORTING FORMS**

*Section 6:* The limit to report occupation and employer of each individual contributing more than \$50 during an election should not include seed money. Presently individuals are allowed to contribute up to \$100 seed money as seed money. Why set two different requirements? The limit to report occupation and employer when providing seed money should be \$100.

*Section 7, Subsection 3:* Any expenditure should only be recorded as such when the service is received, not when the agreement is made. What happens if the service, such as signs being made, is not done in time for an election? The candidate would be penalized and would not be able to find another vendor.

*Section 12:* The section is still unclear. Can contributions be solicited? If the legislature adjourns and goes immediately into special session, the section should be clear and state that any time the legislature is in session, contributions from lobbyists can not be solicited.

*Section 12:* Checks from lobbyists should be allowed if the check is from their personal accounts.

**Wayne, Jonathan**

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**From:** patricksaflood@adelphia.net  
**Sent:** Sunday, March 06, 2005 9:39 PM  
**To:** Jonathan.Wayne@Maine.gov  
**Subject:** Proposed Rule Amendments and Candidate Forms

Dear Mr. Wayne,

Thank you for the opportunity to comment on items within your February 23, 2005 memo seeking input on the Commission Rules and Campaign Forms.

I'd like to preface my comments by saying that as a first time candidate last year, I found the Commission to be very helpful, professional, and straightforward throughout the campaign; helping me with questions from time to time.

Having said that though, I would also say that toward the end of my campaign, when things were the busiest, it was difficult to keep up with all the required paperwork and deadlines. It seemed that there was actually an over-emphasis on reporting of information, and that detracted from what really mattered at the time; which was visiting with the people and going to all the various functions, etc. I would prefer to see us simplifying or eliminating some of our election campaign requirements but feel that we do not accomplish that when I review the proposal of February 23rd. I see where some of the electronic forms have been simplified. Yet other items seem even more confusing. I offer the following comments which I hope will be helpful.

1. Toward the back of the packet there is a form called "2006 Campaign Finance Report - Privately Financed Candidates." It lists 5 different reports that are required, but it does not list the one that caused me the most troubles last year - the 101% report. It is not listed. I would think that this should be listed too so it is always visible as a reminder to the candidate. Steady reminders of that would be helpful.
2. Section 7 - 3 c I understand what the Commission is attempting to do here, but this was also an area I found very hard to keep on top of; often having to guess what my advertising costs might be, and sometimes being off the mark. Although the Commission understandably wants accuracy to the greatest degree, the various vendors really don't seem to care that much sometimes, so it becomes a best guess regarding costs of services - and now being expected to true them up immediately upon being invoiced is quite a burden; especially during the last month of a campaign when the candidates thoughts are on other things; these kinds of things can understandably fall through the cracks.
3. All the other items in your proposed rule changes appear to try to correct a system that is generally very complicated to start with. Therefore my final suggestion is to seek further simplification, and along the lines of the following:
  - a. Given that 80% of the election candidates are clean election candidates, and given that it would be desirable to keep costs reasonable so as not to burden the State, I suggest that....
  - b. We give our Clean Election Candidates a slightly higher ...but one time and final...allocation - say \$6,000 for a House seat as an example...and c. Tell the Privately funded candidates, for House, that THEY too can not spend more than \$6,000 and....
  - d. NEITHER candidate for House, clean or traditional, can accept funds from any source that puts them over \$6,000 and....
  - e. No independent expenditures may be made except for the Governor's race or the Congressional or US Senate races. Independent expenditures in our State House and Senate races seem unnecessary to me.

This way, there's almost no accounting that needs to be done. Each candidate has a \$6000 cap - that's it. At the end, if a Clean candidate still has money left over, he or she would return it.

I'd suggest just a simplified reporting process whereby Privately funded candidates would only need to report contributions (with the same limits we have today) and expenditures,

with a report due at some predetermined intervals. Clean candidates would file at the same time, but would of course only have to report expenditures - and no expenditure report for either type of candidate would be needed if they had not reached their limit. This way, there is no last minute craziness of trying to do the math for your campaign while you are actually trying to DO your campaign. By eliminating independent expenditures, we eliminate the last minute rush of accounting, matching, reporting, and allocating, etc.

I hope this is helpful. I really would like to see this simplified. I am a strong supporter of publicly-funded campaigns; I think Maine has done some good things here. We probably lead the nation. But I do believe that we've gone overboard with the accounting and reporting processes - particularly as they relate to the final weeks of a campaign - and would encourage continued simplification of the process to help avoid that.

Thanks again for the opportunity to comment. Please do not take any of this as criticism of the Commission. I'm just trying to explain it from the standpoint of a freshman candidate.

Sincerely, Pat Flood HD 82

207 395 4915

**Wayne, Jonathan**

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**From:** Richard vB [vanbergen@gwi.net]  
**Sent:** Thursday, March 03, 2005 10:11 AM  
**To:** Jonathan.Wayne@Maine.gov  
**Subject:** Proposed Rule Amendments

Jonathan,  
Thanks for asking me to comment. For the most part I think these proposed changes are fine. They will not affect our committee in particular, as we are not candidate specific, except to the extent we would make a donation to a particular candidate's campaign. Only two items caught my eye in particular: the requirement to collect employment data for anyone contributing \$ 50 strikes me as a very cumbersome requirement. In my experience, we did receive quite a few donations of that magnitude. Following federal rules, we obtained employment information only for those who contributed in the aggregate more than \$ 250. Why could Maine not use the same cutoff?  
The other observation I would like to share concerns reporting requirements. Seems to me you are about to make them even more of a burden, by insisting on reporting donations in excess of \$ 250 within 24 hours. In an effort to streamline reporting, reduce paper, reduce cost, I would propose that this will be revisited from an efficiency point of view.  
Thanks again for asking for my input.  
Richard van Bergen  
Treasurer  
Kennebunkport Democratic Committee