



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

Draft #3 – Changes made  
to item #8 (ALEC)

Minutes of the September 28, 2022 Meeting of the  
Commission on Governmental Ethics and Election Practices  
45 Memorial Circle, Augusta, Maine

Present: William J. Schneider, Esq., Chair; David R. Hastings, Esq.; Sarah E. LeClaire, Esq.;  
Dennis R. Marble; and Stacey D. Neumann, Esq.

Staff: Jonathan Wayne, Executive Director; and Jonathan R. Bolton, Assistant Attorney General

Commissioner Schneider convened the meeting at 9:02 a.m., which was livestreamed on YouTube.

The Commission considered the following items:

**1. Ratification of the Minutes of the July 27, 2022 Meeting**

Mr. Marble moved ratification of the July 27, 2022 minutes. Ms. Neumann seconded the motion.  
Motion passed 5-0.

**2. Request for Independent Expenditure Determination – Bruce Poliquin for Congress**

Mr. Wayne said the Bruce Poliquin for Congress committee requested a determination it is not required to make an Independent Expenditure (IE) report in connection with two television ads and one radio ad. The ads contain short references to former Governor Paul LePage and images of Mr. LePage and Mr. Poliquin together. Because the advertisements were broadcast after Labor Day, the Poliquin Committee requests a determination the advertising costs were not IEs in support of Mr. LePage's 2022 candidacy for Governor.

Mr. Joshua Tardy, Esq. appeared on behalf of Mr. Poliquin's campaign and agreed with the staff recommendation.

Mr. Schneider moved the television ad that starts "my heart is breaking" was not an IE. Ms. LeClaire seconded the motion.

During discussion of the motion, Mr. Marble said the ad referred to "Governor LePage," which suggested advocacy for Paul LePage. Ms. LeClaire asked if Mr. LePage was entitled to use the term Governor, having held that office. Mr. Bolton indicated that officials are sometimes referred to by their former title. Mr. Hastings viewed the advertisements as Mr. Poliquin riding on the coattails of another person but not an expenditure to promote Mr. LePage's candidacy. Therefore, he did not view it as an IE. Ms. LeClaire agreed with Mr. Marble, but did not feel it crossed the line to qualify as an IE. The motion passed 5-0.

Mr. Schneider moved the radio ad that starts “born and raised in central Maine” was not an IE. Mr. Marble seconded the motion. The motion passed 5-0.

Mr. Schneider moved the television ad that starts “Mainers work hard” was not an IE. Ms. Neumann seconded the motion. The motion passed 5-0.

**3. Request for Independent Expenditure Determination – Maine First Project**

Mr. Wayne said that the nonprofit corporation, Maine First Project, was requesting a determination that the cost of a mailing to South Portland residents was not an IE. The mailing criticized state and local immigration policy, Governor Janet Mills, Democratic Party officials generally, and the city government of Portland. It did not refer to Governor Mills as a candidate. The Commission staff recommended a determination that the mailer was not an IE.

Mr. Larry Lockman, representing Maine First Project, asked the Commission to adopt the staff recommendation.

During deliberations, Ms. Neumann said the mailing mentioned many officials and entities, was not targeted against Governor Mills, and was not an IE. Mr. Schneider stated there is a difference between criticizing current officials who are doing their jobs as public servants and criticizing candidates. He said the mailing falls on the side of criticizing current public servants.

Mr. Schneider moved the mailing from Maine First Project was determined not to be an IE. Ms. Neumann seconded the motion. The motion passed 3-2 (Mr. Marble and Ms. LeClaire opposed).

**4. Request for Waiver of Late Filing Penalty – John V. Chambers (David C. Burns, Treasurer)**

Mr. Wayne said Mr. David Burns, treasurer for House candidate, John Chambers, is requesting a waiver for a late filing penalty of \$34.90. Mr. Burns made a good-faith attempt at filing a campaign finance report due July 26, 2022 and believed he had successfully filed it one day before the deadline. Mr. Wayne stated the Commission’s eFiling website offers several opportunities to confirm reports have been filed. The staff recommended no reduction in the \$34.90 penalty.

Mr. Burns said that filing a campaign finance report on the Commission’s eFiling website is a difficult process. He filed an appeal of his preliminary penalty because one criterion of requesting a waiver is making a bona fide effort to file, which he felt he had done. After confirming his username and password, he entered the financial information in the report, pushed the file button, and assumed he had completed the process. On July 27, he received a notification the report was a day late. He

acknowledged that he is technologically challenged and finds the filing process challenging, but he made a bona fide effort to file the report.

In response to a question from Mr. Hastings, Mr. Wayne replied that if a report is not filed by 11:59 p.m. on the deadline, an email is sent to notify the campaign of the late filing after midnight and a penalty would be assessed. Mr. Burns confirmed he received that email.

Ms. Neumann said that Mr. Burns felt he had made a bona fide effort, and the Commission needed to think about how that standard should be applied in this case. Mr. Marble stated he does not question the effort made by Mr. Burns, yet the Commission has dealt with many similar issues. To enforce prior precedents, he believed some penalty was warranted in this matter. Completing the report ahead of time and checking is the only way to make sure the report is right.

Mr. Bolton indicated the statute gives the Commission discretion in terms of what is and is not a bona fide effort. The Commission may determine that there was a bona fide effort and still find that a full or partial penalty is warranted.

Ms. LeClaire stated she interprets bona fide effort as something out of the filer's control, such as an internet outage or car accident. She added the Commission has too many filers to manage to start going down the rabbit hole of considering bona fide efforts based on skill or effort.

Mr. Schneider moved to not waive the fine for late filing. Mr. Marble seconded the motion. The motion passed 5-0.

#### **5. Request for Waiver of Late Filing Penalty – Benjamin J. Meiklejohn**

Mr. Wayne stated Mr. Meiklejohn is a candidate for State Senate who filed the report due July 26, 2022 report one day late. Mr. Meiklejohn began filing the report after 11 p.m. on the deadline. He was using his phone to file the report and was having difficulty using the eFiling site. He relied on another computer and filed the report at about 1:30 a.m. on July 27. The preliminary penalty is \$18.03. The Commission's eFiling system is designed to be compatible with Safari, Google Chrome, Microsoft Edge and Mozilla Firefox, and was designed for desktop computers. The system will work with mobile browsers but is more challenging due to the small size of telephone screens and because some webpages contain sections that need to be minimized. The Commission staff recommended no waiver of the penalty.

Ms. LeClaire asked about the reporting window before the deadline. Mr. Wayne replied this report had a seven-day gap between the period end date and the reporting deadline. Political Committee and

Lobbyist Registrar Emma Burke stated data can be entered on an ongoing basis. The Commission discussed the provision allowing for fax submittal of paper reports and the staff's policy of not accepting excel spreadsheets of financial information. Mr. Hastings said that under section 1020-A(2) a campaign finance report is not timely filed unless the Commission receives a properly signed or electronic report that substantially conforms to the disclosure requirements. He did not feel an email qualifies, even if it listed all the expenditures and receipts.

Mr. Schneider moved to not waive the fine for late filing, Mr. Marble seconded the motion. The motion passed 5-0.

**6. Request for Waiver of Late Filing Penalty – Waldo County Democratic Committee**

The Waldo County Democratic Committee (WCDC) was required to file a semiannual report on July 15, 2022. The report was filed three days late, resulting in a \$181.21 penalty for which committee treasurer, Ms. Pamela Chase, has requested a waiver. Mr. Wayne stated Ms. Chase interacted with staff and believed she filed the report on time. The eFiling system did not record the report as filed. The following business day, staff discovered the report was not filed and filed it for the committee in order to stop the penalty from increasing. The system has a pop-up feature that appears when a report is filed, an email is sent automatically, and there are lists of filed and unfiled reports on the eFiling website that can be used to verify that a report has been filed. The Commission staff did not recommend a reduction of the \$181.21 penalty.

Ms. Sara Salley, Chair of the WCDC, confirmed that Ms. Chase was elected as treasurer in November 2021 and that the July report was her second filing with the Commission. Ms. Chase started early in filing and had been communicating with the Commission staff wishing to verify she had entered things accurately and had been told that could be addressed on Monday, but then received notification of a late filing. Ms. Salley asked the penalty to be reduced to \$100 due to the inexperience of the filer.

Ms. Neumann asked if there was an internet outage that caused Ms. Chase to be unable to file. Ms. Salley was not aware of an outage. Mr. Hastings said he would be willing to reduce the penalty to \$100 because of the level of experience of the treasurer.

Ms. Neumann moved to reduce the penalty to \$60.40 for, Mr. Marble seconded the motion. The motion passed 5-0.

**7. Request for Waiver of Late Filing Penalty – Lincoln County Republican Committee**

Mr. Wayne described a request from Mr. Ronald Cohen, the treasurer for the Lincoln County Republican Committee, for a waiver of the \$500 preliminary penalty for the late filing of the July 2022 semiannual report. The Commission staff recommended a reduction to \$100 due to the obstacles outside of Mr. Cohen's control.

Mr. Cohen said the entire executive committee resigned at the first meeting he attended, and he was elected treasurer. He was not able to access the bank records until July 15. He started entering transactions into the Commission's eFiling website and at 11:55 p.m. finished entering transactions only to realize there was no button to press to submit the report. Ms. Burke explained most local and county committees do not have to file until they reach a \$1,500 threshold. Committees then must notify Ms. Burke so she can manually add the report to their reporting schedule. Mr. Cohen was unaware of the need to communicate this to Ms. Burke, so it had not been added to the committee's schedule.

Mr. Schneider moved to reduce the penalty to \$100. Mr. Hastings seconded the motion. Mr. Hasting stated this fine was against the committee and not Mr. Cohen. The motion passed 5-0.

**8. Investigation of Software Provided by the American Legislative Exchange Council**

Mr. Wayne presented alternative draft motions prepared by Commissioners LeClaire and Schneider to conclude the investigation of the American Legislative Exchange Council. He described the educational mailing sent to candidates to alert them that receiving software to promote their election campaigns is an in-kind contribution unless the candidate has paid fair market value to the source of the software. Receipt of an in-kind contribution could violate the contribution limits or restrictions on Maine Clean Election Act candidates. He advised that the staff would be adding a section on this to future editions of the candidate guidebook.

Mr. Schneider moved that the Commission adopt his draft motion, which appeared on pages three and four of the packet (following the staff memo). He explained that he wanted to bring the investigation to a close and educate candidates. He removed parts of earlier draft motions that he did not support. Ms. LeClaire said that her draft motion was intended to make a historical record of the findings in the investigation and to explain the rationale for the Commission's actions. Mr. Hastings commented that he was perfectly satisfied with Ms. LeClaire's motion except for some language in paragraph seven. Mr. Schneider's motion was not seconded.

Ms. Neumann moved to adopt Ms. LeClaire's written motion with changes to paragraph seven to read:

The Commission cannot determine whether or not ALEC's purpose in providing the CARE software to its legislative members was campaign related and therefore directs the Commission to cease investigating this matter without prejudice.

Mr. Hastings seconded the motion. Ms. LeClaire said the proposed changes imply that the Commission could not make a determination after a full investigation. She believed the motion should state that the investigation was suspended or ceased without prejudice because the Commission made a value determination that its staff resources could be better spent elsewhere and the solution of educating candidates responded to the Commission's concerns.

Ms. LeClaire requested that paragraph seven be changed back to the language in the motion she submitted. The subsequent discussion clarified this was a motion to amend Ms. Neumann's motion. Mr. Marble seconded Ms. LeClaire's motion to amend. He sought a confirmation that the previous motions intended to change the language at the top of page three to "cease without prejudice." The other Commissioners agreed. They discussed additional changes to paragraph seven. Ms. LeClaire withdrew her motion.

Ms. Neumann moved to amend her original motion so that paragraph seven would read:

The Commission cannot determine without further investigation, which is not feasible due to scarce staff resources, whether or not ALEC's purpose in providing the CARE software to its legislative members was campaign related.

In response to a question from Commissioner Hastings, Ms. Neumann confirmed that the next paragraph would include "cease without prejudice" (rather than "suspend"). Mr. Marble seconded the motion.

The Commission voted on Ms. Neumann's original motion to adopt Ms. LeClaire's draft with changes to paragraph seven. The motion passed 4-1, with Mr. Schneider dissenting.

The Commission voted on Ms. Neumann's motion to amend her original motion. The motion passed 4-1, with Mr. Schneider dissenting.

After the amendments approved by the Commission, the final motion adopted by the Commission was:

The preliminary investigation by the Commission staff has shown the following:

1. The American Legislative Exchange Council (ALEC) provides its legislative members with access to software named ALEC CARE as a free membership benefit. ALEC asserts its purpose is to assist its members in managing their relations with constituents. ALEC CARE contains features that ALEC's members could use to record their contacts with constituents and communicate with them, although it does not contain some features found in other case tracking and management software.
2. ALEC CARE is rooted in Voter Gravity, which is a voter data management software marketed to political candidates by a for-profit corporation of the same name. The software provides voter data to the candidates and allows them to create campaign communications. It is designed as a tool to help candidates promote their nomination and election.
3. ALEC CARE and Voter Gravity contain some common features. When asked during a May 18, 2022 interview what changes had been made to Voter Gravity to develop ALEC CARE, ALEC's employee Aaron Gillham described two changes that are not substantial. During the 2020 election cycle, ALEC CARE contained several features that appear more useful in campaigning than constituent communications, such as providing voter history, party affiliation and turnout score for the constituents in the database, and creating walk lists and maps for legislators to use going door-to-door to meet district residents.
4. As of the time of the Commission staff's investigation, when ALEC members log in to use ALEC CARE, they see a message stating that ALEC CARE is a constituency management system and that, by signing in, the member agrees not to use the software for any campaign-related purpose.
5. (REMOVED)
6. If an ALEC member were to use the software for campaign purposes contrary to the agreement on the log-in page, which is possible without modification of the software, the software would have value to the member in providing relevant voter data that could be used in campaign communications. The constituent/voter data in the software demonstrated on May 18, 2022 contains their names and addresses, and demographic and other political information, but does not contain phone numbers or email addresses. It is noted that in a 1/7/21 email (6/15/22 ETH -77) ALEC asserts "This software would cost \$3,000 if bought

by a member, but is a member benefit.” However, based on the investigation to date, the Commission cannot determine a dollar amount value for the software as a tool for either constituent relations or campaigning.<sup>1</sup>

7. The Commission cannot determine without further investigation, which is not feasible due to scarce staff resources, whether or not ALEC’s purpose in providing the CARE software to its legislative members was campaign related.

Therefore, in consideration of making the best use of the Commission staff and resources, and in the interests of providing clarity on this issue going forward, I move that the Commission cease without prejudice the investigation into the provision of software by the American Legislative Exchange Council to its Maine members pending production by Commission staff of guidance and educational materials, communicated to candidates through whatever means Commission staff deems effective, that will:

- (a) inform candidates that receipt of, or access to, campaign assistive software provided to the candidate for less than fair market value is a contribution under 21-A M.R.S. §1012(2)(A)(1);
- (b) notify Maine candidates that receiving or accessing such campaign assistive software at a discounted cost constitutes acceptance of an in-kind contribution that violates the Maine Clean Election Act or may violate the contribution limits that are applicable to traditionally financed candidates; and

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<sup>1</sup> During the September 29, 2021 Commission meeting, ALEC’s counsel, Jason Torchinsky, made two comments about the value of ALEC CARE, but only as a tool for managing constituent relations. When asked by Commissioner Lee about the fair market value of the software, Mr. Torchinsky responded: “Commissioner, I am not sure that we have ever tried to commercially value it, because it’s not something that we have ever been asked to do before. This is a benefit of joining ALEC, that you get access to if you want to use it for constituent management. So, we’ve never gone out and tried to commercially value it. ALEC has, you know, thousands of members across the country. Everybody pays dues. I don’t know that I could put a finger on the particular value of it used by a particular member in a particular state for their constituent management purposes.” Commissioner Lee asked whether Mr. Torchinsky would acknowledge that it has some value. Counsel responded: “When it is used for constituent management, yes, it certainly has some value in terms of how it’s used to manage legislators’ communications with constituents. There is some value to that, yes. Whether it is an ascertainable value, I don’t know.” (Time stamp on recording of 9/29/21 Commission meeting: 2:01:52). SEE ALSO: The January 7, 2021 email from ALEC employee Will Davies to ALEC’s Arizona legislative co-chairs in which Mr. Davies wrote that the ALEC CARE software “would cost \$3,000 if bought by a member, but is a membership benefit.” (ETH. 77-78 of the July 27, 2022 packet).



- (c) clearly remind candidates that if they receive a contribution of campaign assistive software that they should comply with Maine laws and regulations governing in-kind campaign contributions.

**9. Failure to File Statements of Sources of Income by Legislative Candidates**

Mr. Wayne said that three candidates, Timothy Keenan, Daniel Merrill, and Nancy Piche, had not filed a Statement of Sources of Income (SOSOI) by the August 15, 2022 deadline in spite of several emails and letters advising them of the requirement. Mr. Merrill had withdrawn as a candidate after the August 15 deadline. The Commission staff recommended to find these candidates in violation of 1 M.R.S. §1016(C) and refer the matter to the Office of the Attorney General (OAG) for enforcement of a penalty of up to \$100.

Mr. Hastings stated he would recommend finding a violation for all three candidates but only refer Mr. Keenan and Ms. Piche to the OAG.

Ms. Neumann moved to find all three candidates in violation of the statutory requirement to file a SOSOI, and to refer Mr. Keenan and Ms. Piche to the OAG for enforcement of a penalty of up to \$100. Mr. Schneider seconded the motion. The motion passed (5-0).

**Adjournment**

Mr. Hastings made a motion, seconded by Mr. Marble, to adjourn. The motion passed 5-0. The meeting adjourned at 11:07 a.m.

Respectfully submitted,  
/s/ Jonathan Wayne  
Jonathan Wayne, Executive Director