



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

To: Commission
From: Jonathan Wayne, Executive Director
Date: October 20, 2022
Re: Complaint – Mailing in Support of State Senate Candidate Susan Bernard

Rep. Susan Bernard of Caribou is a candidate for State Senate, District 1. Mr. Rommy Haines filed a complaint stating that a mailing expressing support by Fort Fairfield resident Kerby Doughty did not contain the required “paid for and authorized by” disclosure.

Rep. Bernard has responded that the campaign paid for multiple mailings and made an effort for all of them to contain the required disclosures, but something was overlooked in this particular mailing. She will participate in the October 26 meeting by Zoom to provide further details. The campaign’s costs will be reported in the October 28 campaign finance report next week.

Since the campaign paid for the mailings, the preliminary view of the staff is that the mailings should have included a disclosure statement of “Paid for and authorized by the candidate” or something similar. 21-A M.R.S. § 1014(1).

Thank you for your consideration of this memo.

October 14

Submitted via Email

Mr. Jonathan Wayne

Executive Director

Maine Commission on Governmental Ethics & Election Practices

135 State House Station

Augusta, ME 04333

RE: Complaint Against Sue Bernard for Maine Senate Regarding Campaign Expenditures

Dear Mr. Wayne,

I am a resident of Fort Fairfield, which has recently been included in Maine State Senate District #1 following redistricting. I am writing to file a formal complaint with the Maine Ethics Commission against Sue Bernard and her campaign for violating campaign finance law and making campaign expenditures without including requisite ethics disclaimers.

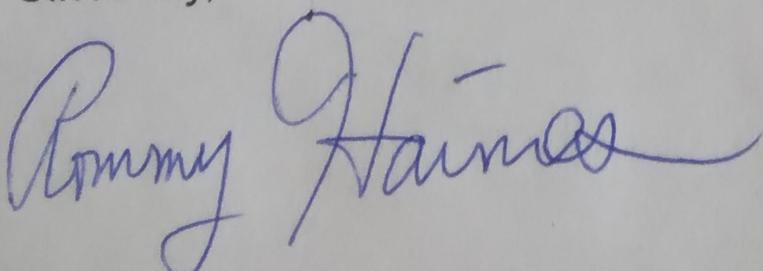
Attached to this email you will find images of the front and back of a letter that numerous Fort Fairfield residents received, signed by a local resident. As you will see, neither the front or back sides of the letter include an ethics statement clarifying this is a campaign expenditure by the Bernard campaign.

However, it appears quite likely it was indeed a campaign expenditure based on photos posted by the Bernard campaign's Facebook page on 10/9/22, showing a 10/6/22 letter stuffing volunteer night. I have also included photos of that event, where materials like envelopes, paper, and postage are visible and represent expenses incurred by the Bernard campaign.

My understanding is Maine statute requires expenditures made by a campaign to include a clear and visible ethics disclosure, and I find it concerning these campaign communications neglected to do so. Without a statement clarifying this letter as an expense of Sue Bernard's campaign, she has made it appear to Fort Fairfield residents that an individual took it upon themselves to author, finance, and distribute this piece of campaign communications.

I would urge the Maine Ethics Commission to address this apparent violation that has occurred here in my hometown of Fort Fairfield. Thank you.

Sincerely,



Rommy Haines

From the Desk of Kerby Doughty
37 Brown Street
Fort Fairfield, ME 04742

October 1, 2022

Friends and Neighbors,

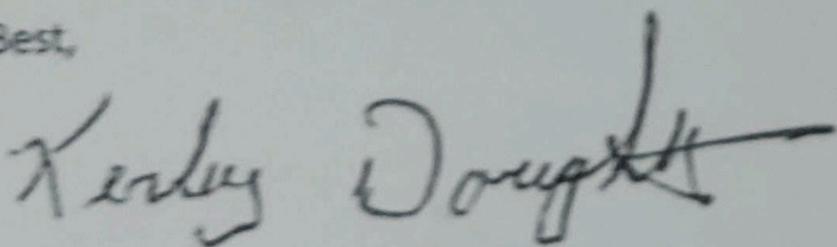
Hi there. I'm not much for politics, but I decided to write you this note today because a friend of mine is running for office, and I feel like I've got a duty to tell you how exceptional she is. I've known Sue Bernard since our days at Fort Fairfield Junior High and I can tell you that in all the years we've known each other, I've always found Sue to be honest, hardworking, capable, thoughtful, and trustworthy.

I'm a registered Democrat, but the party letters next to a name don't mean all that much to me—I vote for the person who I know will do the job and make us proud. That's Sue Bernard in a nutshell.

You might remember Sue from her days on TV with WAGM News. I believe that she was always accurate and fair-minded, delivering the news like we used to receive it—straightforward and respectful that the audience could listen and form our own opinions.

Thanks for taking a minute to read my note. I hope you consider voting for my friend, Sue Bernard, on November 8th.

Best,

A handwritten signature in black ink that reads "Kerby Doughty". The signature is written in a cursive style with a long horizontal stroke at the end.

Kerby Doughty

Fort Fairfield



Intro

Proudly Serving House District 149
Running for Maine Senate District 1
#BernardForME

Page · Political candidate

Susan Bernard
is responsible for this Page

Caribou, ME, US · New Sweden, ME, US

[BernardforME](#)

[BernardforME](#)

[BernardforME.com](#)

Travelling Indoor Gardening

Vegetable Gardening Writing

Photos

[See All Photos](#)



9 October at 20:44 ·

Our Meet, Greet and Volunteer Night at the VFW in Fort Fairfield was a great success this week! Many thanks to all the supporters, friends and neighbors who turned out to talk about issues, and roll up their sleeves for some old fashioned envelope stuffing! Special shout-out to my colleagues from downstate who traveled north to help organize the event.

It will be these grassroots gatherings and renewed enthusiasm of voters that will make all the difference on Election Da... [See more](#)





October 20, 2022

Jonathan Wayne
Maine Ethics Commission
135 State House Station
Augusta, ME 04333

Dear Mr. Wayne,

As a follow-up to our phone call, please accept this letter as my response to your letter dated October 17, 2022 regarding a complaint filed by Rommy Haines.

You asked if my campaign was aware of the letter and if the letter was paid for by my campaign. The answer to both questions is “yes.” The postage and all materials to put the letter together have been or will be fully reported once my latest campaign finance report is filed by October 28th.

As part of this project there were multiple letters that were sent out and it was a large undertaking to get all of it done. Somehow, between getting signatures and sending the letters to the printer, the disclaimer did not get added to the Kerby Doughty letter that is in question. This was truthfully an honest mistake, and in no way was I trying to deceive anyone.

In full disclosure, I also noticed when letters were being returned as “not deliverable” that there was a disclaimer left off the Geri Nadeau letter as well, even though it was clearly sent to the printer with the disclaimer on it. That letter was sent to some homes in Caribou, and I regret that it also failed to include a disclaimer.

Please let me know if you have any further questions.

Sincerely,

Susan Bernard
Candidate for Senate District 1

[21-A M.R.S. § 1014](#)

§ 1014. Publication or distribution of political communications



1. Authorized by candidate. Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, cable television systems, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. A communication financed by a candidate or the candidate's committee is not required to state the address of the candidate or committee that financed the communication. If a communication that is financed by someone other than the candidate or the candidate's authorized committee is broadcast by radio, only the city and state of the address of the person who financed the communication must be stated.

2. Not authorized by candidate. If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. If the communication is in written form, the communication must contain at the bottom of the communication in print that is no smaller in size than 12-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

2-A. Other communications. Whenever a person makes an expenditure to finance a communication that names or depicts a clearly identified candidate and that is disseminated during the 28 days, including election day, before a primary election, during the 35 days, including election day, before a special election or during the period of time from Labor Day to the election day for a general election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. The disclosure is not required if the communication was not made for the purpose of influencing the candidate's nomination for election or election.

2-B. Top 3 funders; independent expenditures. A communication that is funded by an entity making an independent expenditure as defined in section 1019-B, subsection 1 must conspicuously include the following statement:

"The top 3 funders of (name of entity that made the independent expenditure) are (names of top 3 funders)."

The information required by this subsection may appear simultaneously with any statement required by subsection 2 or 2-A. A communication that contains a visual aspect must include the statement in written text. A communication that does not contain a visual aspect must include an audible statement. This statement is required only for communications made through broadcast or cable television, broadcast radio, Internet audio and video programming, direct mail or newspaper or other periodical publications.

A cable television, broadcast television or Internet video communication must include both an audible and a written statement. For a cable television, broadcast television or Internet video communication 30 seconds or less in duration, the audible statement may be modified to include only the single top funder.

The top funders named in the required statement consist of the funders providing the highest dollar amount of funding to the entity making the independent expenditure since the day following the most recent general election day.

A. For purposes of this subsection, “funder” includes:

(1) Any entity that has made a contribution as defined in section 1052, subsection 3 to the entity making the independent expenditure since the day following the most recent general election day; and

(2) Any entity that has given a gift, subscription, loan, advance or deposit of money or anything of value, including a promise or agreement to provide money or anything of value whether or not legally enforceable, except for transactions in which a fair value is given in return, since the day following the most recent general election day.

B. If funders have given equal amounts, creating a tie in the ranking of the top 3 funders, the tie must be broken by naming the tying funders in chronological order of the receipt of funding until 3 funders are included in the statement. If the chronological order cannot be discerned, the entity making the independent expenditure may choose which of the tying funders to include in the statement. In no case may a communication be required to include the names of more than 3 funders.

C. The statement required under this subsection is not required to include the name of any funder who has provided less than \$1,000 to the entity making the independent expenditure since the day following the most recent general election day.

D. If only one or 2 funders must be included pursuant to this subsection, the communication must identify the number of funders as “top funder” or “top 2 funders” as appropriate. If there are no funders required to be included under this subsection, no statement is required.

E. When compiling the list of top funders, an entity making an independent expenditure may disregard any funds that the entity can show were used for purposes unrelated to the candidate mentioned in the communication on the basis that funds were either spent in the order received or were strictly segregated in other accounts.

F. In any communication consisting of an audio broadcast of 30 seconds or less or a print communication of 20 square inches or less, the requirements of this subsection are satisfied by including the name of the single highest funder only.

G. If the list of funders changes during the period in which a recurring communication is aired or published, the statement appearing in the communication must be updated at the time that any additional payments are made for that communication.

H. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, forms and procedures for ensuring compliance with this subsection. Rules adopted pursuant to this paragraph must ensure that the information required by this subsection is effectively conveyed for a sufficient duration and in a sufficient font size or screen size where applicable without undue burden on the ability of the entity to make the communication. The rules must also provide an exemption for types of communications for which the required statement would be impossible or impose an unusual hardship due to the unique format or medium of the communication.

3. Broadcasting prohibited without disclosure. No person operating a broadcasting station or cable television system within this State may broadcast any communication, as described in subsections 1 to 2-A, without an oral or written visual announcement of the disclosure required by this section.

3-A. In-kind contributions of printed materials. A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a ballot question. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include the name or title of that candidate, political committee or political action committee as the authorizing agent for the printing and distribution of the in-kind contribution.

3-B. Newspapers. A newspaper may not publish a communication described in subsections 1 to 2-A without including the disclosure required by this section. For purposes of this subsection, "newspaper" includes any printed material intended for general circulation or to be read by the general public, including a version of the newspaper displayed on a website owned or operated by the newspaper. When necessary, a newspaper may seek the advice of the commission regarding whether or not the communication requires the disclosure.

4. Enforcement. A violation of this section may result in a civil penalty of no more than 100% of the amount of the expenditure in violation, except that an expenditure for yard signs lacking the required information may result in a maximum civil penalty of \$200. In assessing a civil penalty, the commission shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it. If the person who financed the communication or who committed the violation corrects the violation within 10 days after receiving notification of the violation from the commission by adding the missing information to the communication, the commission may decide to assess no civil penalty.

5. Telephone calls. Prerecorded automated telephone calls and scripted live telephone communications that name a clearly identified candidate during the 28 days, including election day, before a primary election, during the 35 days, including election day, before a special election or during the period of time from Labor Day to the general election day for a general election must clearly state the name of the person who made or financed the expenditure for the communication and whether the communication was authorized by a candidate, except for prerecorded automated telephone calls paid for by the candidate that use the candidate's voice in the telephone call and that are made in support of that candidate. Telephone surveys that meet generally accepted standards for polling research and that are not conducted for the purpose of influencing the voting position of call recipients are not required to include the disclosure.

6. Exclusions. The requirements of this section do not apply to:

A. Handbills or other literature produced and distributed at a cost not exceeding \$100 and prepared by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;

B. Campaign signs produced and distributed at a cost not exceeding \$100, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;

C. Internet and e-mail activities costing less than \$100, as excluded by rule of the commission, paid for by one or more individuals who are not required to register or file campaign finance reports with the



commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;

D. Communications in which the name or address of the person who made or authorized the expenditure for the communication would be so small as to be illegible or infeasible, including communications on items such as ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section and in electronic media advertisements where compliance with this section would be impractical due to size or character limitations; and

E. Campaign signs that are financed by the candidate or candidate's authorized committee and that clearly identify the name of the candidate and are lettered or printed individually by hand.