



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: December 13, 2022  
Re: Recommended Adoption of Rule Amendments

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Thank you for your consideration of potential amendments to the Commission's rules. During the comment period, the Commission received the attached comments from staff of the Senate Republican and House Democratic caucuses and the Maine Citizens for Clean Elections. The comments were generally positive, except that the caucuses suggested a different approach on Chapter 3, Section 9, which relates to the period when replacement candidates may collect qualifying contributions to receive Maine Clean Election Act funding.

When a candidate on the primary or general election ballot dies, withdraws, or becomes disqualified, Maine Election Law allows other candidates to replace them under some circumstances. (The rules vary at different times of the election year.) Typically, there are a few dozen replacement candidates in July. For your reference, I have attached the Secretary of State's online record of withdrawals and replacements after this year's primary election.

The original amendment proposed by staff provided the Commission with general discretion to set the beginning and end of the qualifying period. In their comments, the combined suggestion from the legislative caucuses was that the rule should specifically allow candidates to begin collecting qualifying contributions once the Secretary of State receives a notice of withdrawal or announces the vacancy.

In order to be responsive to the campaign organizations of the Legislature's caucuses, the staff has re-written the amendment to reflect their point of view. The new language for Chapter 3, Section 9 recommended by staff is in the attachments.

The only administrative downside to the caucuses' approach that I can see is that, during July-August of an election year (when the staff is moderately busy), there could be an increase in the number of candidates that register, collect qualifying contributions, but who fail to become their party's nominee at their local party caucus. The time spent by agency staff assisting and monitoring these would-be nominees will reduce time available to be prompt in administering our duties with respect to the actual legislative and county candidates in the general election (*e.g.*, responding to questions quickly, reviewing their QCs and making payments efficiently, conducting compliance reviews of campaign finance reports). Speaking for myself, I hope this will be manageable and believe it is important to be responsive to the legislative caucuses.

To refresh on the rationale for the amendments, the Commission staff's October 20, 2022 memo is attached.

If adopted, the amendments would be "major substantive," which means that the amendments would need to be submitted to the Maine Legislature for its consideration. Thank you again for your consideration of these amendments.

Sean Smith, Director  
Maine House Democratic Campaign Committee  
P.O. Box 2021  
Augusta, ME 04338

Jonathan Wayne, Executive Director  
Maine Commission on Governmental and Election Practices  
45 Memorial Circle  
Augusta, ME 04330

December 11, 2022

Dear Mr Wayne and Commission Members:

On behalf of the Maine House Democratic Campaign Committee, which oversees the elections in all 151 House Districts on behalf of Maine House Democratic leadership and House members, I am writing to express our strong support for expanding the qualifying period for replacement candidates using the Maine Clean Elections program.

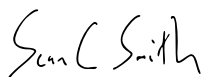
We believe that the qualifying period for replacement candidates should begin immediately once the Secretary of State's Office declares a vacancy and the candidates register with the Ethics Commission. There is no reason to make these candidates wait weeks (often several) for nominating caucuses to occur before they are permitted to begin collecting qualifying contributions. Oftentimes these nominating caucuses are uncontested and mere formalities, and the caucuses are not scheduled until weeks after the official vacancy is declared. Candidates are forced to wait to begin collecting qualifying contributions well into July, several weeks after the primary has occurred and the primary candidate has withdrawn.

We believe that replacement candidates should be governed by similar rules used for special election candidates, which allows candidates who have registered with the Ethics Commission, to begin collecting qualifying contributions once a vacancy has been declared in a district. We believe that this rule change brings consistency and fairness to the system, and does not arbitrarily force replacement candidates, who have registered as official candidates, to delay their already-late-starting campaigns by several more weeks.

We also feel that implementation of this rule should not be at the discretion of Ethics staff. In cases where vacancies have been declared and candidates have registered with the Commission as Clean Elections candidates, we feel that the rules should permit these candidates to begin collecting qualifying contributions immediately.

We appreciate the Ethics staff proposing this rule change and we are grateful for the Commission considering its adoption and submission to the Legislature for approval.

Sincerely,



Sean Smith  
Maine House Democratic Campaign Committee, Director

**From:** Shawn Roderick <roderickshawn@gmail.com>  
**Sent:** Saturday, December 10, 2022 9:54 PM  
**To:** Wayne, Jonathan <Jonathan.Wayne@maine.gov>  
**Cc:** Currier, Martha <Martha.Currier@maine.gov>  
**Subject:** Re: Rule Amendments

Hi Jonathan,

Sorry for the delay in getting this in, things have been a little crazy. Below is my attempt at writing the rule that I spoke at the Commission meeting about. As I said, what I would like to see happen is once you register with the Commission you are able to start collecting \$5 contributions. Right now, as you are aware you are able to register and collect seed money but not \$5 contributions until you are the candidate at the caucus. I do not see this change any different as you are able to collect \$5 contributions on January 1 as long as you are registered with the Commission before you turn in your signatures to the Secretary of State to be the official candidate on the ballot. I attempted to write the rule below to reflect this change.

Please let me know if you have any clarifying questions and thanks for the opportunity.

Shawn Roderick

Maine Senate Republicans

207-458-2973

A. ~~Death, Withdrawal, or Disqualification Before Primary Election.~~ **Qualifying Periods for Replacement Candidates.** If a candidate dies, withdraws, or is disqualified before the primary an election, any replacement candidate will become a participating candidate once registered with the Commission. Once registered a participating candidate may begin to collect qualifying contributions immediately. The deadline to apply for certification will be established by the Commission.



November 29, 2022

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

RE: Comment on Proposed Rule Amendments

Dear Director Wayne:

We appreciate the opportunity to address the Commission on proposed amendments to Commission Rules governing hearing procedures and Clean Elections participation.

Maine Citizens for Clean Elections has been the leading campaign finance organization in Maine for over twenty-five years and one of the nation's most respected state-based organizations advocating for democratically funded elections. We are proud of our national reputation. But we are all Mainers, and our nonpartisan mission has always been with and for the people of this state.

We appreciate the work that Director Wayne and Commission staff have put into these proposed amendments and we support their adoption.

### **Amendments to 94-270, Chapter 2**

These amendments relate to how the Commission provides notice of public hearings and to the admission of evidence in an adjudicatory proceeding before the commission. The changes conform to the provisions of the Administrative Procedures Act. We understand the value of the current regulation which states that notice is provided through newspapers, but in the era of internet communications we also believe other means of notification are appropriate, so we support the change. Also, we believe that the changes to the regulation regarding admission or exclusion of evidence will be helpful for all those who participate in Commission proceedings, especially members of the general public who may not have the assistance of legal counsel.

### **Amendments to 94-270, Chapter 3**

The first addition in the proposed regulations for Chapter 3 relates to the return of qualifying contributions. We support the Commission's approach. We recognize that for many households

every dollar counts. But there is a substantial administrative burden to unwind one or more five dollar qualifying contributions. Where a five dollar qualifying contribution was duly made and all the administrative steps were taken to accept that contribution, we believe the need for finality and the conservation of scarce administrative resources outweighs any interest in possibly making those contributions “refundable” to the person who made them. Similarly, given the procedures required for making a qualifying contribution, it is not clear to us what kind of error might occur with any frequency. In any event, the proposed regulation seems to strike the right balance between the contributors’ interest in the return of five dollars with the need for clear and efficient administration of the program, and we support it.

Finally, we also support the provisions simplifying the circumstances for death, withdrawal, or disqualification of a candidate. Section 9(2)(A) of the proposed regulation provides that “If a candidate dies, withdraws, or is disqualified before an election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate. . . .” It isn’t immediately clear whether this will result in one single qualifying period for each election, or whether each time a candidate dies or withdraws the Commission will create a separate qualifying period for that particular race. That is the only question that arose for us when reviewing this change.

Thank you for considering our comments. We look forward to continuing to work with you and the Commission on this and all other matters relating to the Clean Election Act.

Sincerely yours,

A handwritten signature in black ink that reads "John Brautigam". The signature is written in a cursive, flowing style.

John Brautigam, Esq.  
MCCE Legal Counsel

**SECTION 1. SCOPE**

These procedures shall be applicable to hearings before the Maine Commission on Governmental Ethics and Election Practices which have been called to consider any matter within the Commission's statutory authority. They shall be construed to secure the just, speedy and inexpensive determination of such matters in the public interest.

**SECTION 2. NOTICE**

1. Due notice of public hearings shall be ~~given by publishing such notice in appropriate newspapers and notifying those whose conduct or report is the subject of the hearing at least 10 days prior to the hearing~~ provided as set forth in the Maine Administrative Procedure Act, 5 M.R.S. § 9052.
2. ~~The notice shall specify the time and place of the hearing and matters to be considered at the hearing.~~

...

**SECTION 6. GENERAL EVIDENCE**

1. ~~Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible. However, the Maine Rules of Evidence shall apply to the introduction of verbal hearsay evidence in the same manner as at a civil trial. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded.~~ Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Commission may exclude irrelevant or unduly repetitious evidence.
2. Commission Evidence. Any results of Commission investigations or data gathered during Commission investigations may be introduced into the record by the Commission. The Commission may also present such other evidence as it deems appropriate.
3. Official Notice. The Commission may, at any time, take official notice of relevant laws, official regulations and transcripts of other Commission hearings, judicially recognizable facts, generally recognized facts of common knowledge to the general public and physical, technical or scientific facts within its specialized knowledge. The Commission shall include in any final written decision those facts of which it took official notice unless those facts are included in the transcript of the record.

4. Documentary and Real Evidence. All documents, materials and objects offered in evidence as exhibits shall be numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available.
5. Objections. All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefor shall be timely stated during the course of the hearing. If during the course of or after the close of the hearing and during its deliberations the Commission determines that the ruling of the presiding officer was in error, it may reopen the hearing or take such other action as it deems appropriate to correct such error.
6. Offer of Proof. An offer of proof may be made in connection with an objection to a ruling of the presiding officer excluding or rejecting any testimony or question on cross-examination. Such offer of proof shall consist of a statement of the substance of the proffered evidence or that which is expected to be shown by the answer of the witness.

...



**SECTION 2. PROCEDURES FOR PARTICIPATION**

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4. **Qualifying Contributions**

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**N. Returns of qualifying contributions.** Qualifying contributions submitted to the Commission in the form of check or money order are not returnable nor refundable. If the Commission receives a request from a contributor for the return of an online qualifying contribution because the contributor made a duplicate contribution or some other error, the Commission may, in its sole discretion, forward the request to the contractor that supports the online service if the return would be feasible within the timing and other constraints of the contractor.

**SECTION 7. LIMITATIONS ON CAMPAIGN EXPENSES**

A certified candidate shall:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts;
2. not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§1125(2) and §1125(13)];
3. use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use;
4. not use revenues distributed from the Fund to purchase goods to sell for profit;
5. not spend more than the following amounts of Fund revenues on ~~post-election parties,~~ thank you notes, or advertising to thank supporters or voters:
  - A. \$250 for a candidate for the State House of Representatives;
  - B. \$750 for a candidate for the State Senate; and
  - C. \$2,500 by a gubernatorial candidate.

The candidate may also use his or her personal funds for these purposes;

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission; and
7. not make any payment of more than \$50 in cash. Payments of more than \$50 in *Maine Clean Election Act* funds must be made by check, debit or credit card or wire transfer.

## SECTION 9. RECOUNTS, VACANCIES, WRITE-IN CANDIDATES, SPECIAL ELECTIONS

### 2. Death, Withdrawal, or Disqualification of a Candidate During Campaign

- A. **Death, Withdrawal, or Disqualification Before Primary Election. Qualifying Periods for Replacement Candidates.** If a candidate dies, withdraws, or is disqualified before the primary an election, ~~the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate~~ the qualifying period will begin when the Secretary of State receives a notice of withdrawal or declares a vacancy. The Commission will establish the end of the qualifying period.
- B. ~~**Death, Withdrawal, or Disqualification after the Primary Election and before 5:00 p.m. on the 2nd Monday in July Preceding the General Election.**~~ If a candidate dies, withdraws, or is disqualified before 5:00 p.m. on the 2nd Monday in July preceding the general election, any replacement candidate will have a qualifying period from the time of the candidate's nomination until 30 days after the 4th Monday in July as a participating candidate to collect qualifying contributions and request certification.
- C. ~~**Death, Withdrawal, or Disqualification after 5:00 p.m. on the 2nd Monday in July Preceding the General Election.**~~ If a candidate dies, withdraws, or is disqualified after 5:00 p.m. on the 2nd Monday in July preceding the general election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
- D. **Replacement Candidates Who Are Participating Candidates.** Any replacement candidate choosing to become a participating candidate must otherwise comply with the requirements of this chapter and the Act including, but not limited to, seed money limits and qualifying contribution requirements. The Commission will notify any replacement candidates of the opportunity to participate in the Act and the procedures for compliance with this chapter during a special election.

## Candidate Withdrawals and Replacement Candidate Nominations for the November 8, 2022 General Election

*Prepared by the Office of the Secretary of State -- As of September 19, 2022*

Ofc.	Dist.	Pty	Withdrawn Candidate	Date Withdrawn	Replacement Candidate	Residence	Mailing Address	Date Received
SS	2	D	Laura A. Farnsworth	6/21/22	Danielle A. Fienberg	Presque Isle	36 Turner Street, Presque Isle, ME 04769	7/25/22
SS	9	R	James D. Plowman	6/21/22	Suzette Furrow	Bangor	200 15 <sup>th</sup> Street, Bangor, ME 04401	7/22/22
SS	19	D	Timothy A. Carter	7/11/22	Matthew R. Bean	Andover	551 S. Main Street, Andover, ME 04216	7/22/22
SS	28	R	Ryan McMann	7/7/22	Susan M. Abercrombie	Portland	48 Malilly Road, Portland, ME 04103	7/22/22
SR	1	D	Toby D. Jandreau	6/27/22	Dana Marie Appleby	St. John Plantation	2432 St. John Road, St. John Plt., ME 04743	7/20/22
SR	7	D	Michael E. Carpenter	7/11/22				
SR	13	D	Barbara W. Reeve	7/8/22	J. Mark Worth	Ellsworth	34 Sterling Street, Ellsworth, ME 04605	7/25/22
SR	17	D	Pamela W. Person	7/6/22	Ronald B. Russell	Verona Island	PO Box 353, Bucksport, ME 04416	7/21/22
SR	21	D	Barbara A. Cardone	7/9/22	Ambureen Rana	Bangor	124 West Broadway, Bangor, ME 04401	7/25/22
SR	23	R	David J. Pece	9/12/22	No replacement allowed-withdrew after deadline	Candidate's name will remain on the ballot pursuant to Title 21-A, section 374-A(3), which states if a candidate withdraws less than 70 days before the General Election, the candidate's name will not be removed from the ballot.		
SR	27	D	Julie Vaillancourt	6/23/22	Peter A. Crockett	Argyle Township	2782 Edinburg Road, Argyle Twp., ME 04468	7/20/22
SR	28	R	Jeffery Allen Gifford (Deceased)	6/12/22	Irene A. Gifford	Lincoln	346 Frost Street, Lincoln, ME 04457	7/20/22
SR	35	D	Candace Augustine	7/12/22	No replacement allowed-withdrew after deadline			
SR	40	R	Tricia M. Harrington	6/24/22	Joseph M. McLaughlin	Lincolnvile	36 Lily Lane, Lincolnvile, ME 04849	7/21/22
SR	49	R	Richard H. Tetrev	7/11/22	Kelly James	Georgetown	47 Snowman Lane, Georgetown, ME 04548	7/22/22
SR	52	D	Seth A. Berry	7/8/22	Sally Jeane Cluchey	Bowdoinham	15 Brickyard Way, Bowdoinham, ME 04008	7/20/22
SR	63	D	Phillip Bloomstein	7/8/22				
SR	78	R	Josanne C. Dolloff	7/11/22	Rachel Ann Henderson	Rumford	87 Holyoke Avenue, Rumford, ME 04276	7/14/22
SR	79	D	Don R. Berry	7/11/22				
SR	88	R	Patrick W. Munsell	7/11/22	James W. Sorcek	Auburn	31 Pinnacle Drive, Auburn, ME 04210	7/19/22
SR	90	D	Amy Dieterich	7/11/22	Thomas Fogarty	Auburn	368 W. Auburn Road, Auburn, ME 04210	7/25/22
SR	90	D	Thomas Fogarty	8/18/22	No replacement allowed-withdrew after deadline			
SR	95	R	Fred O. Sanborn-Silvers	8/18/22	No replacement allowed-withdrew after deadline			

**Candidate Withdrawals and Replacement Candidate Nominations for the November 8, 2022 General Election**

*Prepared by the Office of the Secretary of State -- As of September 19, 2022*

<b>Ofc.</b>	<b>Dist.</b>	<b>Pty</b>	<b>Withdrawn Candidate</b>	<b>Date Withdrawn</b>	<b>Replacement Candidate</b>	<b>Residence</b>	<b>Mailing Address</b>	<b>Date Received</b>
SR	96	D	John V. Myrand	7/11/22	Michel A. Lajoie	Lewiston	279 Old Greene Road, Lewiston, ME 04240	7/22/22
SR	100	R	Angela D. Lallier	7/11/22				
SR	103	R	William C. Gardiner	6/21/22				
SR	106	D	Jonathan Priest	7/7/22	Dana Reed	Windham	25 Underwood Way, Windham, ME 04062	7/22/22
SR	107	D	Paul C. Fullam	7/8/22	Jane Pringle	Windham	3 Great Falls Road, Windham, ME 04062	7/22/22
SR	108	R	Stephanie R. Cressey	7/11/22				
SR	111	R	Christopher Mark Storms	6/21/22	Jeffrey York	Falmouth	129 Mast Road, Falmouth, ME 04105	7/25/22
SR	114	R	Daniel L. Merrill	8/30/22	No replacement allowed-withdrew after deadline			
SR	115	R	Andrew T. Mahaleris	7/11/22				
SR	120	D	Victoria Morales	6/22/22	Deqa Dhalac	South Portland	10 Red Oak Drive, Apt 2A, South Portland, ME 04106	7/18/22
SR	125	R	Christopher A. Bolduc	6/22/22	Alan R. Livingston	Scarborough	15 Plaza Drive, Suite 302, Scarborough, ME 04074	7/25/22
SR	125	D	Christopher J. Caiazzo	7/8/22	Kelly Noonan Murphy	Scarborough	5 Woodfield Drive, Scarborough, ME 04074	7/20/22
SR	126	R	Leslie Eugene Smith, Jr.	7/8/22				
SR	135	R	Todd DiFede	7/7/22	Jared Hayes Hirshfield	Kennebunk	10 Laurel Circle, Kennebunk, ME 04043	7/22/22
SR	140	D	Kirstan L. Watson	9/19/22	No replacement allowed-withdrew after deadline	Candidate's name will remain on the ballot pursuant to Title 21-A, section 374-A(3), which states if a candidate withdraws less than 70 days before the General Election, the candidate's name will not be removed from the ballot.		
SR	142	D	Joseph Robert Hanslip	6/28/22	Anne-Marie Mastraccio	Sanford	23 Lebanon Street, Sanford, ME 04073	7/22/22
SR	143	R	Matthew J. Toth	6/17/22	Ann Marie Fredericks	Sanford	PO Box 102, Acton, ME 04001	7/12/22
SR	151	R	Howard L. Patten	7/11/22				
SH	KNO	D	Timothy Carroll	7/7/22	Patrick W. Polky	Saint George	19 Caddy Road, Saint George, ME 04860	7/22/22
CT	PEN	D	Stephen S. Stanley	6/29/22	Kimberly A.G. Boucher	Bangor	44 Munroe Street, Bangor, ME 04401	7/25/22
CC	ARO 1	R	Kristy L. Swallow	7/6/22	William Dobbins	Houlton	PO Box 70, Houlton, ME 04730	7/21/22



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: Proposed Rulemaking

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The Commission staff recommends commencing a rulemaking at the October 26, 2022 meeting to invite public comment on proposed amendments to the Commission's rules. The proposed amendments are attached and are marked for your reference with a star in the left margin. If adopted, the amendments would be "major substantive," which means that the amendments would need to be submitted to the Maine Legislature for its consideration. Our proposal is that the Commission would invite comments from interested persons in early November, hold a public hearing as part of your regular November 30, 2022 meeting, and consider whether to adopt the amendments at your December 21, 2022 meeting in time for the Legislature's deadline of January 13, 2023. The rule changes relate to three topics that are discussed in this memo. We intend to propose another rulemaking later in the year to consider amendments that do not require legislative approval.

### **Chapter 2, §§ 2 & 6(1) – Procedures for Commission Hearings**

The Commission is authorized by statute to hold hearings on complaints concerning legislative ethics and appeals of staff determinations on Maine Clean Election Act funding. 1 M.R.S. § 1013(2), 21-A M.R.S. § 1125(14)(B). In addition, when facts are disputed or a witness's credibility is in question, the Commission has sometimes held hearings on matters of campaign finance compliance.

Hearings by the Commission qualify as an "adjudicatory proceeding," as defined in the Maine Administrative Procedure Act (APA). 5 M.R.S. § 8002(1). Consequently, the hearing procedures in the APA apply to the Commission hearings. 5 M.R.S.

§ 9051(1). These provisions cover notice to interested parties, the type of evidence to be admitted, and other topics. 5 M.R.S. §§ 9051-A - 9064.

In 1987, the Commission adopted Chapter 2 of its rules, which sets out the Commission's own procedures for holding a hearing. These rules have not been amended by the Commission since 1998. The Commission staff proposes updating the rules to conform to the Maine APA.

*Notice to interested persons.* Under the Maine APA, when an agency holds a hearing, it is required to provide notice by U.S. Mail to persons "whose legal rights, duties or privileges are at issue." 5 M.R.S. § 9052(1)(A). If the hearing is "of substantial public interest" the agency is required by the APA to publish a notice in a newspaper of general circulation and any relevant trade or professional publication. 5 M.R.S. § 9052(1)(B)&(4).

The Commission's rule requires newspaper publication for all hearings. The Commission staff proposes eliminating this mandatory newspaper publication for all hearings, and instead conforming our notice procedures to the APA.

*Evidence.* Under the APA, agency hearings are not required to follow the Maine Rules of Evidence. 5 M.R.S. § 9057. Rather, the standard for admission of evidence in an agency hearing is:

Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.

Agencies may exclude irrelevant or unduly repetitious evidence.

5 M.R.S. § 9057(2). Agencies may accept into evidence a statement made outside of the hearing that meets this standard, even though the statement would constitute hearsay if offered in a court proceeding.

Chapter 2, § 6(1) of the Commission rules contains a standard for admissibility that is slightly different. The Commission proposes replacing it with the language in the APA. This will eliminate the potential argument in future hearings that the Commission intentionally adopted a standard that is different from the APA

Adopting the APA language would provide the Commission the latitude to accept verbal hearsay into evidence, which is permitted under the APA. For reasons of expediency or to expand the scope of information that may be considered, there are

situations in which the Commission may wish to admit verbal hearsay. For example, in an MCEA appeal hearing, the Commission may wish to consider testimony by a candidate concerning a statement made to them by a \$5 contributor without calling the contributor as a witness. In these cases, Commission members would have the discretion to discount the reliability of the statement as appropriate, since the statement was made outside of the hearing.

### **Chapter 3, § 2(4) – Return of Qualifying Contributions Received by the Commission**

Candidates collect \$5 qualifying contributions (QCs) and submit them to the Commission in order to qualify for the Maine Clean Election Act (MCEA) program and to receive initial and supplemental payments for their campaigns. The candidates may receive the QCs by check or money order (payable to the Maine Clean Election Fund), or cash. Cash QCs must be converted to an aggregate money order payable to the Maine Clean Election Fund. Candidates may also encourage supporters to make a \$5 QC electronically through the Commission’s online QC service.

A QC is not a general campaign donation to the candidate. Rather, it is a payment by a Maine voter to the Maine Clean Election Fund to demonstrate the voter’s support for the candidate’s qualification to receive MCEA funding. The QCs are deposited in the Maine Clean Election Fund to partially underwrite the costs of the program. The Maine Clean Election Fund is also authorized in law to receive voluntary donations.

The Commission staff reviews the QCs, the Receipt & Acknowledgement forms, and the cash QC affirmation forms to make sure they meet technical requirements to be considered valid. Most QCs are found to be valid, but some are invalid for a variety of reasons. Several of these defects can be cured by the candidate, often by fixing shortcomings in the documentation submitted for the QC.

Every election year, the Commission’s two Candidate Registrars review around 35,000 QCs submitted by legislative candidates. In order to keep the quality and consistency of these staff reviews of QCs high, the Commission relies on these two employees rather than hiring temporary staff. Some candidates submit just one batch in April to qualify for MCEA funding, but it is more common for candidates to submit them in batches throughout the election year to receive both initial and supplemental payments.

From March to October there is steady time pressure on the Candidate Registrars to conduct these reviews efficiently. During the peak periods of April and October, the time pressure can be very high.

As soon as a Candidate Registrar reviews a candidate's submission of QCs, the Commission staff delivers the checks and money orders to the State's central accounting staff for deposit into the Maine Clean Election Fund. Many Maine residents balance their checkbooks. We have learned that if the Commission holds on to checks too long, we receive inquiries from the candidates why we have not deposited their supporters' checks. Also, we believe it is responsible practice not to have the checks and money orders in our custody too long.

Currently, about 200 legislative candidates participate in the MCEA program every election year. Almost all of them submit the checks and money orders to the Commission and do not see any reason to ask for them to be returned.

Every election year, however, a few candidates request that the checks or money orders be returned to them if these payments are not going to be counted toward MCEA funding. In 2022, we received exactly two such requests. One candidate, who did qualify for MCEA funding in April and was unsuccessful in his appeal, asked for the QCs to be returned to him so that he could give them to the contributors. Another candidate submitted several QCs that did not meet the requirements to be considered valid. He asked for them to be returned so that he could give them back to the contributors.

Because the Commission staff arranges for the prompt deposit of the checks and money orders after our review, our internal policy has been that we are unable to return the checks or money order to the candidates. The Commission staff proposes to adopt a rule amendment that would formalize this policy. The current practice of promptly depositing checks and money orders maximizes our efficiency. All checks and money orders submitted to the office follow the same path: they stay in our office briefly, are reviewed, and then deposited by the State. This helps us get through the job of reviewing QCs and making payments more quickly. Every election year, the Commission's two Candidate Registrars review 35,000 QCs. To hold a subset of checks or money orders within the office after the staff's review for possible return to candidates would add a layer of administrative burden that would reduce our efficiency in our performing our



core duties. Given the tens of thousands of QCs we receive, it would be a large investment of effort to hold checks or money orders in the Commission office. That investment of time would not be justified by a few requests from candidates for the return of their QCs.

Also, while we recognize that \$5 is a meaningful amount to some contributors, it is still a small amount compared to the staff time of holding QCs within our office for possible return to candidates. We believe a rule formalizing our past practice would strengthen our position in case we receive arguments on this issue and would reduce any expectation by candidates and contributors that these payments to the Maine Clean Election Fund could be returned after they are received by the State.

The proposed rule allows for more flexibility for QCs that contributors make directly to the Maine Clean Election Fund through the Commission's online qualifying contribution service. Some contributors make duplicate QCs on the Commission's website, whether through user error, forgetfulness, or other reasons. It is a small number but it happens regularly. The website is administered by a private company, InforME. Currently, InforME can return online payments within 30 days of the payment, although it requires administrative work for the InforME staff. In order to allow the State of Maine to return duplicate online QCs, the rule allows for the Commission to forward return requests to InforME.

### **Chapter 3, § 9(2) – Qualifying Period for Replacement Candidates**

Candidates for State Representative must collect at least 60 QCs to receive MCEA funding. Candidates for State Senator must collect 175. Candidates may begin collecting QCs as soon as they register with the Commission, but no earlier than January 1. The deadline for submitting the QCs is April 20, which allows candidates up to 3½ months to qualify, depending when they register with our office

After qualifying for the ballot through petitioning, some candidates withdraw due to health, family, or other reasons. Depending on the reasons for the withdrawal and the timing, Maine Election Law sometimes allows for another person to replace the withdrawing candidate on the election ballot. For example, there is a limited period after the June primary election when local party activities may hold a caucus to nominate a

replacement for a party nominee who has withdrawn. The nominating caucus must occur by the fourth Monday in July. In some cases, a nominating caucus is not competitive because only one candidate wishes to become the replacement candidate. Party leaders in Maine rely on this limited post-primary replacement procedure in July. In a typical year, 25-30 individuals become their party's nominee in July through replacing a candidate who has withdrawn. A majority of these July replacement candidates seek MCEA funding.

After the enactment of the MCEA in the late 1990s, the Commission adopted a rule, Chapter 3, § 9(2), allowing for the Commission to establish a qualifying period for replacement candidates. Section 9(2) has three subparts (A, B, and C) that relate to different time periods during the election year.

The Commission staff proposes simplifying the rule so that the Commission has the discretion to select a qualifying period during all parts of the election year. In particular, there could be valid reasons for adopting an earlier qualifying period for the July replacement candidates. The current language in § 9(2)(B) specifies that candidates may not collect QCs until they are nominated at their party caucus. The Commission has received inquiries from the House Democratic and Republican caucuses asking why the replacement candidates have to wait until their nomination. The House Democratic caucus has proposed that candidates be allowed to collect QCs as soon as they register with the Commission in June or July because some of the replacement candidates are unopposed and some are eager to get started with the process of qualifying for MCEA funding. The Commission staff would like to explore whether this can be accommodated without any undue burden on the Commission, so we propose modifying the rule to provide the Commission with greater discretion during this July period.

Thank you for your consideration of these amendments.