

# Memorandum

**To:** Jonathan Wayne

**From:** Kate Knox and Lisa Prosienski

**Date:** January 27, 2026

**RE: Maine Democratic Party/Ballot Questions – Supplemental Information**

Dear Mr. Wayne,

Prior to the Commission’s consideration of this matter on Wednesday, we felt it important to respond to Mr. Titcomb’s second filing and the staff memorandum – albeit briefly.

We strenuously object to the staff’s recommendation that an investigation be conducted into whether the Maine Democratic Party (“MDP”) should have registered and reported as a Ballot Question Committee (“BQC”). Our objections rest on two primary points:

- 1. Whether or not MDP should register as a BQC is a question of statutory interpretation, which is determined by examining the plain language of the statute, not the facts of a particular situation.***

The question of whether MDP should register as a BQC does not turn on MDP’s activities during the campaign, it turns on the Commission’s interpretation of the statutory definitions at issue. Courts have long held that statutory interpretation begins with the plain language of the statute, in context of the statute, to determine the meaning while avoiding absurd, illogical or inconsistent results. *Fair Elections Portland, Inc. v. City of Portland*, 2021 ME 32 § 22, 252 A.3rd 504.<sup>1</sup> While the statute states an investigation is appropriate if “the reasons state for the

---

<sup>1</sup> “We look first to the plain language of [a] statute to determine its meaning if we can do so while avoiding absurd, illogical, or inconsistent results.” *State v. Conroy*, 2020 ME 22, ¶ 19, 225 A.3d 1011. As part of the plain-language analysis, “we consider the [specific] language in the context of the whole statutory scheme,” *Chadwick-BaRoss, Inc. v. City of Westbrook*, 2016 ME 62, ¶ 11, 137 A.3d 1020

request show sufficient grounds for believing that a violation may have occurred,” it is also logical to assume that there must be information to be discovered which would be relevant to the determination. 21-A M.R.S. § 1003(2). In this case, the issue of whether a “violation may have occurred” has nothing to do with the specific activities of MDP, but rather whether the Commission supports the statutory interpretation laid out by MDP or by Mr. Titcomb. The Commission is in possession of all the facts it needs to make a determination.

As a reminder, we believe that MDP’s interpretation of the statute was reasonable based on the plain language of the statute and the related legislative history. In sum:

- Party Committees are unique entities who are treated differently than PACs and BQCs (i.e. different reporting deadlines, exceptions to contribution and expenditure rules, etc).
- Party Committee reporting requires disclosure and reporting of “all expenditures to influence a campaign” which includes any course of activities to influence a candidate or ballot question. That expectation is supported by Commission staff’s statement that there is a drop-down box in party filings which allow filers to choose if the expenditure was made in support or opposition to a ballot question.<sup>2</sup> There is simply no question that ballot question expenses are required on party reports.
- Because the statute requires MDP to report all its ballot question expenditures on its party committee reports, it is reasonable and logical to conclude it did not have to double report by forming a parallel entity to report the same expenditures. Determining otherwise would lead to “absurd, illogical and inconsistent results” *Id.*
- Legislative history also indicates that the intention of 21-A M.R.S. §1017-A is to explicitly state that MDP must disclose all expenditures for ballot questions. In 2019, that definition was amended to add “ballot question committee” to clarify that a party committee must report expenditures made in support of a ballot question. When testifying in support of the change, written testimony highlighted that “Party Committees are required to disclose all expenditures made to influence ‘a campaign’ (a candidate or ballot question election), including contributions to a candidate, another party committee or a PAC.” (*see attached testimony on LD 1721, pages 4 and 10*). Further, testimony stated “[t]he Commission proposes inserting the term “ballot question committees” and “[t]he term ‘ballot question committee’ should be added for completeness. It appears that the intention was to clarify that a party is required to disclose expenditures in support of a ballot question and to a ballot question committee, as the statute now currently reads.

---

(alteration omitted) (quotation marks omitted), and “examine the entirety of the statute, giving due weight to design, structure, and purpose as well as to aggregate language,” *Dickau v. Vt. Mut. Ins. Co.*, 2014 ME 158, ¶ 22, 107 A.3d 621 (quotation marks omitted). *Id.*

<sup>2</sup> That drop down menu does not appear if a filer is bulk uploading their data, which is how MDP files its reports.

- Finally, Maine election law does not require double reporting (two separate entities reporting the exact same information) in any other situation as it's confusing to the public and overly burdensome on filing organizations.

**2. *MDP reasonably relied on staff guidance, which while not binding on the Commission, should weigh heavily in favor of MDP.***

- In late September, MDP (through its attorneys) reached out to Commission staff to express concern about reporting advice given to the Sagadahoc County Democratic Committee (a registered county committee) regarding its potential involvement in Question 1. The advice given to SDCC was confusing and MDP responded with a lengthy email outlining its concerns and being very clear that *“as of right now, party committees are doing work to influence Question 1 and are reporting it on their regular party committee reports. If you continue to believe a BQC is required, it would be great to meet and talk about why.”* ETH 19 and 20.
- Staff responded by saying *“.... I did not see a question for me.”* ETH 18
- Staff goes on to state *“....although a group is not required to register...you may want to consider registering” I agree that the applicable statue does not require a party committee to separately establish a BQC for ballot question work.”*
- Staff then goes on to make a confusing statement stating the definition of a ballot question committee. When trying to assess the meaning of the email, MDP logically relied on the clear and direct statement from staff which said that MDP was not required to establish a BQC.
- MDP was always clear about its activities and asked staff to verify its reading of the statute. Despite a confusing exchange, it was appropriate for MDP to rely on the clear statement that *“....the applicable statute does not require a party committee to separately establish a BQC for ballot question work.”*
- While staff interpretations are not binding on the Commission, they are an indication of good faith on the part of MDP and combined with a logical reading of the statute – support not moving forward with an investigation related to BQC formation.

Thank you for the opportunity to provide additional information.



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

**Testimony of Jonathan Wayne, Executive Director of the  
Commission on Governmental Ethics and Election Practices  
before the Joint Standing Committee on Veterans and Legal Affairs  
May 15, 2019**

Senator Luchini, Representative Schneck, and distinguished members of the committee: my name is Jonathan Wayne, and I am the Executive Director of the Maine Commission on Governmental Ethics and Election Practices. Thank you for the opportunity to testify in support of L.D. 1721.

L.D. 1721 is the Commission's "agency" bill, which is intended to address some issues that have come up in the last few years. This written testimony highlights three issues in the bill for the public hearing. A two-column summary is attached (four pages), along with a longer section-by-section explanation of the bill.

**Authority to investigate complaints concerning residency of Maine Clean Election Act candidates. (Sec. 30-31)** The Commission seeks authorization to investigate complaints that a Maine Clean Election Act (MCEA) candidate for the Legislature is not a resident of the district which the candidate is seeking to represent.

**Payments of MCEA funds to a candidate's spouse or domestic partner, or a related business. (Sec. 32)** The Commission proposes that MCEA candidates could not use MCEA funds to purchase campaign goods or services from the candidate's spouse or domestic partner, or a business owned by the candidate or the candidate's spouse or domestic partner. Under current law, these payments are allowed if the goods or services are for a legitimate campaign-related purpose; the

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE  
WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)

PHONE: (207) 287-4179

FAX: (207) 287-6775

payee regularly provides the goods or services in the normal course of their occupation or business; and the cost is reasonable. The Commission is concerned that payments to the candidate's spouse or domestic partner, or businesses owned by them, could appear to be self-serving, even if the goods or services are legitimate and reasonably priced.

**Alternative procedure for collection of qualifying contributions in cash. (Sec.**

**28)** The Commission proposes an alternative procedure for candidates seeking MCEA certification to document that they received a \$5 qualifying contribution in cash. The Commission's proposal, which is based on a 2017 bill by Sen. David Miramant in the 128th Legislature (LD 585), is that the candidate could use the cash collected from multiple contributors to purchase *a single money order* or cashier's check for the amount collected to be submitted to the Commission.

Thank you for your consideration of this bill.

Short Summary of LD 1721 – Ethics Commission Agency Bill		
	Proposed Change in Law	Rationale for Proposal
1	Under current law, Commissioners may serve two terms. Each term has a maximum length of three years, suggesting an intention for Commissioners to be able to serve for six years. In practice, however, the first term of some Commissioners can be much shorter when they are filling a vacancy (sometimes just a few months). The Commission proposes that if a Commissioner's first term is less than two years, that period would <i>not</i> count as the Commissioner's first term for purposes of the two-term limitation.	The rationale is for each Commissioner to be able to serve at least five or six years in total, if they would like.
2	The bill would expand the definition of "election" in Maine's campaign finance law (Title 21-A, Chapter 13) to include ballot question elections – not just candidate elections.	Chapter 13 of the Election Law applies to both candidate and ballot question elections. The definition of "election" should correspond to the actual coverage of Chapter 13.
3	Current law requires the Commission to keep certain investigative documents confidential, but the Commission may release them if they are "materially relevant to a finding of fact, violation or other decision."	The proposed change would clarify that the Commission has the discretion to release a memorandum or report by the Commission staff <u>even before</u> the Commission makes a finding of fact, violation or other decision. Public access to a staff memo or report can be important to the public's understanding of the enforcement matter.
4	The bill would modify the information that state party committees must provide to the Commission every two years concerning municipal and county party committees (e.g., the Bangor Republican Committee or the York County Democratic Committee). The Commission proposes to receive the contact information in June after the caucuses, and to receive contact information specifically for the committee chair and treasurer.	Party committees organized at the town and county level are required to file two or three campaign finance reports per year, if they raise or spend more than \$1,500. The Commission sends reminder postcards to all local party committees of filing deadlines, even though most are exempt.
5-6	Section 1014 requires that certain paid communications to voters concerning candidates must include a statement of who paid for the communication and whether a candidate authorized the communication. The Commission proposes modifying the time periods before an election when communications that merely name or depict a candidate must contain this information.	The Commission proposes that the disclosure be required for any paid communication naming or depicting a candidate disseminated to voters within 28 days before a primary election and between Labor Day and the general election. These time periods are consistent with changes to the independent expenditure reporting statute that were approved by Maine voters in the 2015 citizen initiative.
7-8	The Commission proposes that candidates who are unopposed in an election would <i>not</i> have to file a 24-Hour Report of contributions or expenditures of \$1,000 or more during the 13 days before an election.	Because most general elections are opposed, this proposal (if enacted) is most likely to have an effect in <i>primary elections</i> for legislative and county office. The larger pre-election transactions in the regularly scheduled report due 42 days after the primary election.
9	Candidates would be required to include the addresses of their vendors in campaign finance reports – similar to the requirements for PACs, state and local party committees, and ballot question committees.	Under current law, candidates are required to report the name of their vendors, but not their addresses. Some candidates purchase goods and services from vendors in other parts of the United States, or from individuals or businesses that are hard to pin down by name only. Around 60% of legislative candidates participate in the Maine Clean Election Act program and it is important to understand how they have spent their public campaign funds.

10	After an election, a traditionally financed candidate could spend surplus campaign funds on a recount election.	Candidates may rarely need to spend their own campaign funds for a recount, but the question has arisen in questions from candidates. MCEA candidates could not spend campaign funds on a recount.
11	Party committees are required to disclose all expenditures made to influence "a campaign" (a candidate or ballot question election), including contributions to a candidate, another party committee or a PAC. The Commission proposes inserting the term "ballot question committees" and deleting	The term "ballot question committee" should be added to the statute for completeness. The Commission recommends deleting the term "political committee," because that term is not defined in campaign finance law.
12	Clarifies the filing schedule for state party committees. They must file quarterly campaign finance reports every year. In a candidate election year, the 11-day pre-election and 42-day post-election reports would be required for both the primary and general elections. In other years, the 11-day pre-election report and 42-day post-election report would be required for special elections and ballot question elections only if the state party committee received or spent money to influence that election.	These statutory changes are intended to codify current practice, and not change the current schedule.
13	Municipal and county party committees would not be required to file 24-Hour Reports during the 13 days before a <i>primary</i> election.	Local parties would continue to file 24-Hour Reports before a general election, if the committee received a contribution of \$5,000 or more or made an expenditure of \$1,000 or more.
14	In 2001, the Legislature adopted a requirement that if a membership organization (business association or trade union) spends more than \$50 to expressly advocate for or against a candidate, the organization needs to file a one-time financial report. The Commission staff recommends an incremental change in the spending threshold to \$100 per candidate.	The threshold of spending \$50 to influence a candidate's election is one of the lower thresholds for filing a campaign finance report, and significantly lower than the \$250 threshold for filing an independent expenditure report. Goods or services with a value of \$50 in September 2001 were worth \$72 in April 2019.
15	Under the current law, a paid communication to voters after Labor Day that names or depicts a clearly identified candidate is <i>presumed</i> to be an independent expenditure, which requires the filing of a campaign finance report. The spender may try to rebut the presumption within 48 hours of the expenditure by presenting evidence that the spender did not intend to influence the election.	To provide a more reasonable opportunity for this rebuttal procedure, the Commission proposes changing the deadline for submitting the rebuttal statement to within 48 hours of disseminating the communication – rather than within 48 hours of incurring an obligation or expenditure for the communication (which can occur days or weeks before the communication is disseminated to voters).
16	Increases the penalty for not registering as a candidate from \$10 to \$100.	It is reasonable to expect individuals seeking public office to file a simple form with contact information and identify a treasurer and any other officers. Some candidates do not register, even after multiple contacts by the Commission. The current penalty of \$10 has little punitive value.

17 & 24	Clarifies the maximum penalty if a PAC, party committee or ballot question committee does not submit a substantially correct campaign finance report on time containing more than \$50,000 in contributions or expenditures.	The maximum penalty under current law is 100% of the amount that was not reported on time. The Commission seeks to confirm that if a report that is not substantially complete (e.g., misstates the contributors), the maximum penalty is the same as though the report was filed late.
18-19	Fixes the description of coverage of Chapter 13, Subchapter 4 to relate to both political action committees and ballot question committees.	The description of coverage and definition should be updated to include ballot question committees. They are organizations that have a pre-existing purpose and that spend more than \$5,000 to influence a Maine election (e.g., a national advocacy organization, or Maine trade group or labor association).
20-21	Under current law, certain types of paid communications to voters to influence a ballot question must contain a statement of who financed the communication. The Commission proposes that paid telephone calls should be subject to this requirement and a penalty of up to \$5,000 for the missing disclosure.	When the statute was enacted in 2013, telephone calls were not covered by the statute, and no penalty was prescribed.
22	Current law contains an exception for donors that make contributions to a PAC or BQC. The Commission proposes to clarify this donor exception by moving it to its own sentence near the end of the first paragraph of the section.	The Commission seeks to avoid a legal interpretation that an organization is not required to register with the Commission even if it had raised contributions to influence a ballot question election as long as it donates those funds to a PAC or BQC.
23	Clarifies the filing schedule for PACs (please see section 12).	The filing schedule for PACs would be the same as for state party committees.
24	Please see description for sec. 17 above.	
25	Modifies the definition of qualifying contribution (QC) in the Maine Clean Election Act to acknowledge that candidates collect QCs in cash (in addition to check or credit card)	The Maine Clean Election Act (MCEA) and Commission procedures have allowed QCs by cash, since the program began in 2000.
26	The MCEA requires candidates to file a "declaration of intent" (a one-page form) once they decide to qualify for public campaign funding. Under current law, if a candidate were to collect QCs before filing the declaration of intent, the QCs are valid only if collected during a short window of time: five business days before the filing of the declaration of intent.	The Commission proposes that the same restriction apply to additional qualifying contributions collected to qualify for supplemental payments of MCEA funds.
27	Changes the term "participating candidate" to "certified candidate" in seed money statute.	Candidates who have qualified for MCEA funds ("certified candidates") may not use those funds to pay for goods and services received before they qualified for MCEA funding.
28	Reorganizes the subsection of the MCEA relating to qualifying contributions. Introduces an alternative procedure for collecting QCs in cash.	MCEA candidates could use cash collected from multiple contributors to purchase a single money order or cashier's check to submit to the Commission.
29	Clarifies that the same procedures for collecting qualifying contributions to receive <i>initial payments</i> MCEA funding also apply to collecting additional qualifying contributions to qualify for <i>supplemental payments</i> .	The procedures for collecting QCs and additional qualifying contributions are essentially the same.

30 (1 <sup>st</sup> ¶), 31	Directs the Commission to establish a receipt and acknowledgement form for voters to confirm that they made a QC. A QC would not be valid if someone other than the contributor signs the form, except under special conditions.	The Commission has used versions of this form since the MCEA program began in 2000.
32	Maine Clean Election Act candidates could not use MCEA funds to purchase campaign goods or services from the candidate's spouse or domestic partner, or a business owned by the candidate or the candidate's spouse or domestic partner.	Under current law, these payments are allowed if the goods or services are for a legitimate campaign-related purpose; the payee regularly provides the goods or services in the normal course of their occupation or business; and the cost is reasonable. The Commission is concerned that payments to the candidate's spouse or domestic partner, or a related business, could be viewed by the public as self-serving, even if the goods or services are for legitimate campaign goods and services.
33	The Commission proposes a change in terminology.	The statute which governs when additional qualifying contributions may be collected should refer to "certified candidates" in addition to "participating candidates."

**Section-by-Section Summary of LD 1721 –  
Ethics Commission Agency Bill**

**Sec. 1. Terms of Commissioners (1 M.R.S.A. § 1002(1-A)(D))**

Current law. Members of the Ethics Commission may serve two terms. Each term has a maximum length of three years, which suggests an intention that Commissioners should be able to serve for six years. In practice, however, the first term of some Commissioners (when they are filling a vacancy) can be much shorter – sometimes just a few months. The result is that Commissioners sometimes serve much less than six years. For example:

First Term	Second Term	Result
5 months	3 years	Commissioner serves total of 3 years, 5 months.

Commission proposal. The Commission proposes an amendment to make sure that Commissioners serve at least five years. The Commission's proposal is that if a Commissioner's first term is less than two years, that period would not count as the Commissioner's first term for purposes of the two-term limitation. For example:

Filling Vacancy	First Term	Second Term	Result
5 months	3 years	3 years	Commissioner serves total of 6 years, 5 months.

**Sec. 2. Correcting the definition of “election” to include ballot questions (21-A M.R.S. § 1001(2))<sup>1</sup>**

The Commission proposes modifying the definition of “election” for Chapter 13 of the Election Law. This is intended as a clarification and would not change the Commission's jurisdiction or activities.

Chapter 13 relates to both candidate and ballot question elections, but the definition of election in section 1001(2) refers only to “any … election for state or county office or municipal office” and excludes ballot questions. The Commission proposes expanding the term to include “any referendum”, which is defined in 21-A M.R.S. § 1(36) to mean

---

<sup>1</sup> Below, references to sections of the Maine Revised Statutes are to the Election Law (Title 21-A), unless otherwise noted.

"an election for the determination of a question." This would be more consistent with the duties currently assigned to the Commission under Chapter 13.

FYI – Under 30-A M.R.S. § 2502, the state's campaign finance law applies to towns and cities with a population of 15,000 or more. In those municipalities, candidates, PACs and ballot question committees (BQCs) must register and file campaign finance reports similar to legislative elections, except that the registrations and reports are filed with the municipal clerk, rather than the Commission.

**Sec. 3. Ensuring the Commission may release memos and reports by the Commission staff (§ 1003(3-A))**

Since 2008, the Commission has been authorized under § 1003(3-A) to keep certain documents confidential when conducting investigations in enforcement matters. The statute covers financial information of those outside the Commission (e.g., candidates, political parties, or PACs), but also "intra-agency communications" between employees and members of the Commission (e.g., memos, emails, reports).

When the Commission is conducting an enforcement matter at a public meeting, it is important for the public to have access to the facts and the law that the Commission is considering, which is typically laid out in a memo or report by the Commission staff to its members.

The Commission proposes a change in the confidentiality provision (§ 1003(3-A)) to clarify that the Commission has the discretion to release a staff memo or report (and related documents) *prior to* a finding of fact or conclusion of law by the Commission. The subject of the investigation whose information would be made public would be provided with an opportunity to see the memorandum before its release and to assert any claims of privilege or confidentiality. Any such claims could be addressed through redactions.

For years, the Commission assumed that it had this discretionary authority, but it was challenged in 2017 by the respondents in the York County casino matter.

**Sec. 4. Obtaining contact information for town and county party committees (§ 1013-A(3))**

Under current law, state party committees provide names and addresses of the officers of their municipal and county party committees to the Commission in April of the election year (e.g., the Falmouth Republican Town Committee, or the Kennebec County Democratic Committee). The Commission uses this list to send reminder postcards to the officers two or three times per year, before each filing deadline. Many

of these party committees have no idea they might have to file a campaign finance report if they raise or spend more than \$1,500 in a calendar year.

The Commission proposes moving the date of that annual list to June 15<sup>th</sup> to be after the caucuses and state conventions, and the party would specifically provide the contact information for the chair and treasurer of each committee.

**Sec. 5 & 6. Paid communications to voters close to an election (§§ 1014(2-A) & (5))**

Section 1014 requires that paid communications to voters concerning candidates must include a statement of who made the expenditure for the communication and whether a candidate authorized the communication. Subsections 1 and 2 relate to communications that expressly advocate for the election or defeat of a candidate. Subsections 2-A and 5 require the "paid for and authorized by" statement during limited time periods before a primary, special, or general election for communications that merely name or depict a clearly identified candidate.

The 2015 citizen initiative expanded similar time periods in the independent expenditure reporting statute (§ 1019-B(1)(B)) that control when non-express advocacy communications to voters are presumed to be independent expenditures and require a financial report to the Commission. The Commission proposes that the time periods in §§ 1014(2-A) and (5) be expanded to be consistent with § 1019-(1)(B).

**Sec. 7 & 8. Clarifies that a 24-Hour Report is not required for a candidate who is unopposed in an election (§ 1017(2))**

Some candidates find it burdensome to file 24-Hour Reports during the last 13 days before an election. A 24-Hour Report is required if a candidate receives a contribution of \$1,000 or more or makes an expenditure of \$1,000 or more during this period. If a candidate misunderstands or forgets this requirement, the candidate can be assessed a penalty for not filing a 24-Hour Report on time.

The Commission proposes that a candidate who does not have an opponent in an election would not be required to file 24-Hour Reports in the last 13 days before that election. The candidate would disclose these larger contributions or expenditures in the regular report due 42 days after the election. (Most often, this would apply in a primary election where a party candidate does not have an opponent.)

**Sec. 9. Requiring candidates to report an address for their payee (§ 1017(5))**

In campaign finance reports filed with the Commission, PACs, BQCs and party committees are required to disclose the name and the address of each payee. Candidates have not been required to report the address, only the name.

The Commission proposes that candidates be required to report the addresses of the payees that sold goods or services to the candidates. Around half of the candidates for the Legislature participate in the Maine Clean Election Act program, and it is important to understand how they have spent their public campaign funds. Some candidates purchase goods and services from vendors located outside Maine, or from individuals or businesses under assumed names that are hard to identify. Within Maine, there are dozens of post offices and retail stores with the same name but different locations.

Due to an update in the Commission's electronic filing system in 2014, the online forms used by candidates to enter contributions called for them to enter an address for their payees. Almost all candidates entered an address in 2014, 2016, and 2018 without questioning it.

#### **Sec. 10. Allowing traditionally financed candidates to use surplus funds for recount expenses (§ 1017(8))**

Section 1017(8) requires candidates to dispose of unspent campaign funds within four years of the election for which the funds were raised. This statute applies only to traditionally financed candidates who have raised campaign contributions and not to Maine Clean Election Act candidates.

The Commission proposes acknowledging that the candidate (rather than the campaign treasurer) will more often be the person making the post-election decision of how to dispose of surplus funds. In response to questions from candidates, the Commission proposes permitting candidates to spend surplus funds for recounts. This proposal may rarely be needed, because candidates do not necessarily need to incur any expenses for a recount, as legal representation is sometimes provided to candidates by their political parties.

#### **Sec. 11. Expenditures reported by party committees (§ 1017-A(2)(A))**

Party committees are required to disclose all expenditures made to influence "a campaign" (e.g., a candidate or ballot question election), including contributions made by the party committee to a candidate, PAC, or another party committee. The Commission proposes inserting the term "ballot question committees" in the list of payees that must be disclosed. The Commission suggests deleting the term political committee, which is not defined in the campaign finance law (Chapter 13 of the Election Law).

**Sec. 12. Filing schedule for state party committees (§ 1017-A(4-A))**

In sections 12 and 23, the Commission proposes statutory changes to clarify the filing schedule for state party committees and PACs. The Commission is not seeking to change the current filing schedules. Rather, we are attempting to clarify the statutory language to reflect current practice. These changes would also affect BQCs, which by statute are under the same filing deadlines as PACs.

Paragraph A – state party committees would need to file quarterly reports every year.

Paragraph B – in a candidate election year, state party committees would also file reports 11 days before and 42 days after the primary and general elections.

Paragraph C – in an odd-numbered year, state party committees would file the 11-day and 42-day reports only if the state party were raising or spending money to influence a special election, a ballot question election, or a municipal election in a town or city with a population of 15,000 or more.

Paragraph D – in a candidate election year, state party committees would file 24-Hour Reports before each primary and general election. (Please note that the reports would be required before a primary or general election even if the contribution or expenditure was not for the purpose of influencing the election.) During odd-numbered years, the 24-Hour Reports would be required only if the state party committee were spending money to influence an election in that year.

**Sec. 13. No 24-Hour Report for municipal and county party committees for a primary election (§ 1017-A(4-B))**

The Commission proposes a clarification that municipal and county party committees (e.g., the Cumberland County Democratic Committee, or the Bangor Republican Committee) would be required to file 24-Hour Reports only for the general election, and not for a primary election. (If these committees raise and spend less than \$1,500 per year, no reports are required whatsoever.)

**Sec. 14. Spending threshold to require a membership organization to file a campaign finance report (§ 1019-A)**

Some membership organizations, such as business associations, labor unions, and trade associations, communicate with their members concerning political candidates. Communications from a membership organization to its members are exempt from the definition of "expenditure" in the Election Law (21-A M.R.S.A. §§ 1012(3)(B)(3) & 1052(4)(B)(3)). That means that the organizations do not need to form PACs or file

independent expenditure reports based on their advocacy communications to their own members.

In 2001, the Legislature adopted a requirement that if a membership organization spends more than \$50 to expressly advocate for or against a candidate, the organization needs to file a one-time report. (The Commission receives relatively few membership communication reports – six were filed in 2018).

The threshold of spending \$50 to influence a candidate's election is one of the lower thresholds for filing a campaign finance report, and significantly lower than the \$250 threshold for filing an independent expenditure report. The Commission staff recommends an incremental change to \$100 per candidate. (Goods or services with a value of \$50 in September 2001 were worth \$72 in April 2019.)

#### **Sec. 15. Presumption period for independent expenditures (§ 1019-B(2))**

Between Labor Day and a general election, if an organization spends more than \$250 on a communication that names or depicts a clearly identified candidate, the communication is presumed to be an independent expenditure which requires filing a financial report with the Commission. The law provides an opportunity for the organization to rebut this presumption by presenting evidence to the Commission that the paid communication was not intended to influence the candidate's election.

To provide a more reasonable opportunity for this rebuttal procedure, the Commission proposes changing the deadline for submitting the rebuttal statement to within 48 hours of disseminating the communication – rather than within 48 hours of incurring an obligation or expenditure for the communication (which can occur days or weeks before the communication is disseminated to voters.) Independent expenditure reports no longer impact the payment of Maine Clean Election Act funds, which required a short deadline. Also, a single communication may involve multiple financial obligations or payments to different vendors. So, a deadline of 48 hours after the communication's dissemination is a simpler and more reasonable deadline for everyone to understand.

#### **Sec. 16. Increasing the penalty for not filing a candidate registration from \$10 to \$100 (§ 1020-A(1))**

Each election year, some candidates for legislative and county offices fail to register with the Commission, even after multiple attempted contacts by the Commission staff. In the late spring of the election year, the Commission sometimes needs to initiate an enforcement process in order to persuade some individuals to register. The Commission proposes increasing the penalty for failing to register from \$10 to \$100. The current penalty of \$10 is so small that it has little punitive value. Whether the office

is municipal, county, or legislative, the public deserves to have each candidate for public office file a simple form providing contact information and identifying a treasurer and other officers.

**Sec. 17. Maximum penalties when a campaign finance report is filed late or does not substantially conform to disclosure requirements (§ 1020-A(5-A))**

Under this proposal, the Commission seeks to clarify that if contributions or expenditures exceeding \$50,000 are disclosed in a campaign finance report, but the details of the transactions are incomplete or inaccurate, the maximum penalty is 100% of the amount that was reported incompletely or inaccurately. This clarification is intended to avoid a potential legal interpretation of current law argued for by respondents in the York County casino matter. They argued that, under current law, if the amount of contributions was correctly disclosed in a campaign finance report, the higher penalties would not apply, even though the reports did not correctly name the actual contributor.

**Sec. 18 & 19. Clarification of coverage of Chapter 13, Subchapter IV (§§ 1051 & 1052)**

Chapter 13, subchapter IV sets out the registration and campaign finance reporting requirements for both PACs and BQCs. The Commission proposes amendments to Sections 1051 and 1052 to clarify that certain provisions in this subchapter relate both to PACs and BQCs.

**Sec. 20. Pre-recorded phone calls to influence a ballot question (§ 1055-A(1))**

Section 1055-A requires a "paid for" disclosure statement in any communication to voters costing more than \$500 that expressly advocates for or against a ballot question. Enacted in 2013 at the suggestion of the Commission, this requirement is analogous to the "paid for" requirement in candidate election communications in Section 1014.

The Commission proposes broadening the requirement to cover telephone calls, which would be analogous to Section 1014(5). (The Commission staff is unsure why telephone calls were omitted from the statute, when originally enacted in 2013.) If members of the public are receiving a paid automated or scripted telephone call expressly urging them to vote for or against a ballot question, it could assist them in evaluating the message if the speaker disclosed which organization sponsored the communication. Because of time limitations in automated calls, we suggest omitting the address requirement (also analogous to Section 1014(5)).

**Sec. 21. Penalty for omitting the “paid for” message in ballot question communications (§ 1055-A(3))**

The Commission’s original 2013 proposal did not include a penalty provision. Although the Commission is aware of very few violations of this disclosure requirement, someday a violation could occur that is viewed as significant and the Election Law could appear ineffective if there is no penalty. This proposed penalty provision is based on Section 1014(4).

**Sec. 22. Clarifying the donor exception – ballot question committee statute (§ 1056-B)**

Under 21-A M.R.S. § 1056-B, individuals or organizations that do not qualify as a PAC, but that receive or spend more than \$5,000 for the purpose of initiating or influencing a ballot question are required to register with the Commission as BQCs and file campaign finance reports according to the same schedule as PACs.

Current law contains an exception for donors that make contributions to a PAC or BQC. This exception appears in the second line of §1056-B in the phrase “other than by contribution to a political action committee or a ballot question committee.” The rationale for the exception is that merely making a cash donation greater than \$5,000 to a PAC or BQC should not, in itself, require filing ongoing financial reports with the State of Maine. The public is adequately served if the PAC or BQC lists the donor in the campaign finance reports.

In two high-profile matters, advocates have stretched the current exception beyond its intended meaning to argue that an organization is not required to register with the Commission even if it had raised contributions to influence a ballot question election as long as it donates those funds to a PAC or BQC. To avoid this interpretation and to achieve greater clarity, the Commission proposes to move this donor exception to its own sentence near the end of the paragraph of the section (“A person whose only payments of money …”)

**Sec. 23. Filing requirements for PACs (§ 1059)**

In sections 12 and 23, the Commission proposes statutory changes to clarify the filing schedule for state party committees and PACs. We are not seeking to change the current filing schedules. Rather, we are attempting to clarify the statutory language to reflect current practice. These changes would also affect BQCs, which by statute are under the same filing deadlines as PACs.

Paragraph A – PACs would need to file quarterly reports every year.

Paragraph B – in a candidate election year, PACs would also file reports 11 days before and 42 days after the primary and general elections.

Paragraph C – in an odd-numbered year, PACs would file the 11-day and 42-day reports only if the PAC were raising or spending money to influence a special election, a ballot question election, or a municipal election in a town or city with a population of 15,000 or more.

Paragraph D – in a candidate election year, PACs would file 24-Hour Reports before each primary and general election. (Please note that the reports would be required before a primary or general election even if the contribution or expenditure was not for the purpose of influencing the election.) During odd-numbered years, the 24-Hour Reports are required only if the PACs were spending money to influence that election.

**Sec. 24. Maximum penalties when a campaign finance report is filed late or does not substantially conform to disclosure requirements (§ 1062-A(4))**

Under this proposal, the Commission staff seeks to clarify that if contributions or expenditures exceeding \$50,000 are disclosed in a campaign finance report, but the details of the transactions are incomplete or inaccurate, the maximum penalty is 100% of the amount that was reported incompletely or inaccurately. This clarification is intended to address a legal interpretation of current law proposed by respondents in the York County casino matter. They argued that, under current law, if the amount of contributions was correctly disclosed in a campaign finance report, the higher penalties would not apply even though the reports did not correctly name the actual contributor.

**Sec. 25. Collection of qualifying contributions in cash (§ 1122(7))**

To receive initial payments of Maine Clean Election Act (MCEA) funds, candidates must collect a minimum number of \$5 qualifying contributions (QCs) by check, online payment or cash. The Commission's past practice has been to allow a candidate to receive QCs in cash, provided that the candidate uses that cash to reimburse him- or herself or others for the purchase of a money order that is subsequently signed by the contributor and submitted to the Commission.

In § 1122(7)(A), the Commission proposes to change the definition of qualifying contribution to reflect that candidates may collect QCs in cash.

**Sec. 26. Filing declaration of intent before collecting additional qualifying contributions (§ 1125(1))**

The MCEA requires candidates to file a “declaration of intent” (a one-page form) once they decide to qualify for public campaign funding. Under current law, if a candidate were to collect QCs before filing the declaration of intent, the QCs are valid only if collected during a short window of time: five business days before the filing of the declaration of intent. QCs collected earlier than the five-business-day period are invalid and will not count toward qualifying to receiving initial payments of MCEA funds. The Commission proposes that the same restriction apply to additional qualifying contributions collected to qualify for supplemental payments of MCEA funds.

**Sec. 27. Change in terminology from “participating candidate” to “certified candidate” (§ 1125(2-A))**

This is a proposed change in terminology in the statute that governs the collection and spending of seed money by MCEA candidates. These are contributions of up to \$100 that MCEA candidates may collect from individuals to start their campaigns.

The last sentence of paragraph 2-A(A) prohibits an MCEA candidate from using MCEA funds retroactively to pay for goods and services that helped them qualify for MCEA funding. In this scenario, the term “certified candidate” (someone who has qualified for MCEA funding) would be more appropriate than “participating candidate” (someone who is attempting to qualify).

**Sec. 28. Collection of QCs in cash (§§ 1122(1) & 1125(3))**

Section 1125(3) sets out the procedures by which candidates collect QCs by check, online payment, or cash, in order to receive initial payments of MCEA funding. The Commission proposes breaking it down into paragraphs to make the subsection easier to digest, and also proposes an alternative to the current procedures for collecting QCs in cash (in paragraph F).

Paragraphs D and E restate current law, except that the second sentence of paragraph E clarifies that if a contributor erroneously makes a QC by writing a check payable to *the candidate*, the Commission may endorse the check to the proper payee (the Maine Clean Election Fund). This would reflect a current practice of the Commission.

Paragraph F relates to QCs made by cash. Under current law, the Commission’s past practice has been to allow a candidate to receive QCs in the form of \$5 in cash, provided that the candidate uses that cash to reimburse him- or herself or others for the purchase of a money order that is subsequently signed by the contributor and submitted to the Commission. This has required candidates to purchase dozens of

money orders (all at a fee), and to have the money orders available for the contributor to sign at the time of receiving a cash contribution (which can be unpredictable) or obtain a signature from the contributors after the contribution, which requires a second meeting.

In paragraph F, the Commission proposes an alternative procedure which we hope would be more efficient. This method was proposed in 2017 by Sen. David Miramant in LD 585 (128<sup>th</sup> Legislature). Under this procedure, the contributor would need to sign a special form affirming that they gave \$5 in cash. The Commission staff used a version of this form in 2018 when a candidate submitted a money order that was not signed by the contributor. The form is designed for one contribution only, so the affirmation is difficult for the contributor to miss or misunderstand.

After receiving \$5 in cash from multiple contributions, the candidate would use that cash to purchase a single money order that would be submitted to the Commission. The advantages of this proposal are that candidates would not need to visit a vendor such as the U.S. Post Office or Wal-Mart to purchase dozens of money order and have the money orders on hand when they might receive cash contributions, or purchase the money orders after the contributions and return to the contributors to obtain their signatures. The candidates would merely need to have the blank cash contribution forms with them anytime they are in public when someone might give them \$5 in cash. Another benefit is that the candidates would not need to pay for multiple fees for money orders, or account for those fees in campaign finance reports.

The Commission's proposal is that the candidate could use either procedure: (1) Sen. Mirmant's idea of combining the cash contributions into a single money order, or (2) the traditional method of submitting separate money orders signed by the contributors. The traditional method is described in paragraph G.

Paragraph H specifies how the candidate should report the fees paid to the vendor when money orders are purchased for this purpose. (Usually the money orders are purchased by the candidate, but not always.) The Commission proposes one accommodation to simplify the process for candidates: if a candidate purchased money orders with personal funds, the candidate would not need to account for the fees as an in-kind contribution in the candidate's seed money report. Fees paid by other people would be an in-kind contribution to the candidate.

Paragraphs I and J retain certain language currently in statute authorizing the Commission to establish a website for members of the public to make QCs electronically and forbidding the submission of fraudulent QCs.

**Sec. 29. Additional QCs (§ 1125(3-A))**

Section 1125(3-A) relates to the additional qualifying contributions that candidates may collect to qualify for supplemental payments. The last sentence is inserted to clarify that the same procedures and restrictions set out in subsection 3 for contributions collected to qualify for the initial payments of MCEA funds also apply to additional qualifying contributions.

**Sec. 30 (first paragraph). Receipt and Acknowledgment Forms (§ 1125(3-B))**

Part of the definition of QC in § 1122(7)(D) is that the contributor must acknowledge in writing that the contribution was made from the contributor's personal funds and was not given in exchange for receiving anything of value. Since 2000, the Commission has used a "Receipt and Acknowledgement Form" for this purpose. The proposed subsection 3-B directs the Commission to develop such a form and invalidates a QC if anyone other than the contributor signs the contributor's name to the form (with some exceptions for a contributor who is physically unable to sign). This reflects current practice. (If the spouse or domestic partner of a contributor signs the Receipt and Acknowledgement Form, the Commission does not count the QC as valid and we ask the candidate to obtain the contributor's signature on the form.)

**Sec. 30 (second paragraph) & 31. Residency requirements (§§ 1125(3-B), (3-C) & 1125(5-A))**

Typically, during an election year, the Commission staff receives concerns that a few candidates are running for the Legislature without meeting the requirements in the State Constitution to be a resident of the legislative district:

- (1) The candidate must be a resident in the legislative district for three months prior to the candidate's election.
- (2) The candidate must be a resident of the district at the time of their nomination for placement on a primary, general or special election ballot.<sup>2</sup>

---

<sup>2</sup> For example, Article IV, Part First, Section 4 states as follows (underlining added for emphasis)

No person shall be a member of the House of Representatives, unless the person shall, at the commencement of the period for which the person is elected, have been 5 years a citizen of the United States, have arrived at the age of 21 years, have been a resident in this State one year; and for the 3 months next preceding the time of this person's election shall have been, and, during the period for which elected, shall continue to be a resident in the district which that person represents.

No person may be a candidate for election as a member of the House of Representatives unless, at the time of the nomination for placement on a primary, general or special election ballot, that person is a resident in the district which the candidate seeks to represent.

The Commission believes it is not appropriate for a candidate to receive MCEA funding if they do not meet both requirements prior to their election – regardless of whether they win the election.

There is no process currently for a concerned voter in the legislative district (or a political opponent) to complain that a candidate who is receiving public campaign funds under the MCEA does not meet the residency requirements. A registered voter from the district has only a five-business-day period to challenge a candidate's nominating petition, and that period occurs in March (for party candidates) or June (for non-party candidates) of the election year. Relevant information about residency may not come to light until after those challenge periods have expired. Under the State Constitution, the Maine House of Representatives and the Senate judge the qualifications of their own members. This does not apply, however, to candidates who have lost the general election.

The Commission acknowledges that some of the concerns we hear from the public are based on incomplete knowledge of the candidate's circumstances and/or a misunderstanding of how residency is defined for voting purposes in 21-A M.R.S. § 112. If this provision is enacted, the Commission might receive only one or two complaints per election cycle relating to MCEA candidates that are worthy of investigation. Nevertheless, the Commission makes this proposal so that members of the public may have a forum in which to air their concerns effectively.

### **Sec. 32. Payments to family members (§ 1125(6-C))**

Under current § 1125(6-C)(A), an MCEA candidate is strictly prohibited from paying public campaign funds to compensate the candidate or a sole proprietorship of the candidate for campaign services. Under subsection 6-C(B), the candidate may compensate a member of the candidate's immediate family or household, but only if three conditions listed in the paragraph are met. The same conditions are required if the candidate wishes to compensate a business entity owned by the candidate, an immediate family member or household member.

The Commission proposes language that would extend the strict prohibition in subsection 6-C(A) to the candidate's spouse or partner, or a business entity owned by the candidate, or spouse or partner, to avoid any appearance that MCEA funds were used for self-serving reasons. As background, please be aware that the term "immediate family" is defined in 21-A M.R.S. § 1(20) more broadly than one might expect, and includes grandchildren and in-laws.

**Sec. 33. Fixing terminology (§ 1125(8-E))**

We propose inserting “or certified” to this subsection, because most additional qualifying contributions are collected by certified candidates.