



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: February 21, 2024
Re: October 29, 2022 Mailing about Candidate Sally Cluchey

This memo reports back on an investigation that the Commission authorized at its October 25, 2023 meeting. On or around October 29, 2022, some residents of Richmond, Bowdoin, Bowdoinham and nearby communities received a newspaper-style mailing entitled the Maine Anchor that included a one-page insert that was critical of Sally Cluchey, the Democratic nominee for the House of Representatives in District 22. The flyer included a disclaimer statement that it was “Paid For By Concerned Parents of MSAD75.”

On August 26, 2023 (roughly 10 months later), Ms. Jennifer Small filed a complaint concerning the flyer. The compliance issues raised by the complaint are: (1) whether the disclaimer statement complied with legal requirements, and (2) whether the people involved should have filed an independent expenditure report with the Commission.

Relevant Laws

Required Disclaimer. When a person “makes an expenditure to finance a communication” that names a candidate and is distributed to Maine voters after Labor Day, the following requirement applies:

the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate [exception for radio ad omitted]. The disclosure is not required if the communication was not made for the purpose of influencing the candidate's nomination for election or election.

21-A M.R.S. § 1014(2-A). The statute contains an exception for handbills or other literature costing \$100 or less that were prepared by individuals who are acting independently of candidates and political committees. § 1014(6)(A).

If a communication does not contain the required disclaimer, the Commission may assess a penalty of up to the communication’s cost. § 1014(4). When a penalty is assessed, the

Commission is directed to “consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it.” § 1014(4).

Independent expenditure reporting. An expenditure to design, produce or disseminate a communication distributed after Labor Day that names or depicts a clearly identified candidate is an independent expenditure (presuming no candidate in the race authorized the communication), unless the person that spent the money demonstrates to the Commission that the expenditure did not have a purpose or effect of influencing the candidate’s election. 21-A M.R.S. § 1019-B(1)(B). If more than \$250 is spent, the spender must file an independent expenditure report with the Commission. § 1019-B(4). If a report is filed late, the Commission sends a notice of a preliminary penalty and the person may request a waiver from the Commission. 21-A M.R.S. § 1020-A(6).

Factual Background

Maine Anchor. The October 29, 2022 Maine Anchor mailing is a newspaper-style publication consisting of eight large pages printed on two sides. An image of the first page is attached. Much of the content seems to be reprinting of commentary and news from other sources. Commission staff has not confirmed the frequency of its publication. An Androscoggin County resident who called the Commission on other business told me he had received two mailings of the Maine Anchor in 2022, but that is unconfirmed.

Flyer. The flyer did not expressly advocate against Ms. Cluchey’s election, but it did refer to her as a candidate and suggested she was untrustworthy or dangerous on issues such as vaccines and books in schools. In the opinion of the Commission staff, it would be difficult to argue this was not intended to oppose her election. The flyer states that it was “Paid For By Concerned Parents of MSAD75.” The disclaimer does not include an address or a statement whether any candidate authorized it.

Information from Guy Lebida. After the Commission authorized an investigation, Commission staff tried multiple times to reach Guy Lebida, because we understood he was responsible for the Maine Anchor. A Commission employee tried twice in November and spoke to him one time but, because he was sick, the conversation was cut short without him providing substantive information. Two attempts were made to reach him by phone in January and

February but were unsuccessful. Commission staff was coming to the conclusion he did not want to provide information, but he called me on February 14, 2024 in response to a letter I emailed him the previous day. The conversation was constructive but was conducted under time constraints.

Mr. Lebida confirmed he is the owner and editor of the Maine Anchor. A friend, Brian Roy, helps him. He does not live in House District 22. In 2022, he ran in the Republican primary election in another district but lost the primary election. He was not a candidate in the 2022 general election.

With regard to the flyer, Mr. Lebida said he spent about \$200 of his own money as a private citizen to publicize “what people stand for.” He is part of a loose-knit group of people who are concerned about issues in the school district and who attend school board meetings to voice their concerns. He said lots of parents are concerned about pornography being used in schools. Mr. Lebida is both a parent and grandparent. Mr. Roy is also in the group.

Mr. Lebida believes in October 2020 he mailed about 6,000 copies of the Maine Anchor. It went to towns inside House District 22, but also to other towns such as Topsham, Pownal, or Durham. No candidates were involved in the flyer. Ms. Cluchey’s general election opponent did not know about or authorize the flyer.

Mr. Lebida said the cost of the flyer was about \$200 for printing or photocopying. Mr. Lebida paid for the entire cost except that he thinks that Brian Roy contributed about \$5.

Mr. Lebida said he put down Paid For By Concerned Parents of MSAD75 at the bottom of the flyer because he and Mr. Roy are part of the loose group of concerned parents. He offered to make a correction if the “paid for” disclaimer is incorrect. For example, he said he could insert another version of the flyer in the next mailing of the Maine Anchor that included a correct disclaimer. I told him another option would be to include a clarifying statement in the next issue of the Maine Anchor confirming who paid for the October 26, 2022 flyer and that no candidate authorized it.

We discussed the independent expenditure reporting requirement that applies to communications referring to specific candidates that cost more than \$250. Mr. Lebida said no independent expenditure report was due because the cost was only around \$200, which was for printing/copying. I asked him how much was spent to distribute the flyer. He said there was no cost because inserting the flyer did not add any cost to mailing the Maine Anchor. Mr. Lebida said he includes inserts in his newspapers and there is no additional cost. I told him I would

share that view with the Commissioners, but they may not accept it and might take the view that a fraction of the total mailing cost should be attributed to the flyer.

I told Mr. Lebida that I would be reporting back to the Commission at a meeting on February 28. I suggested that he participate because the Commission might view the flyer as a violation and assess a penalty. He responded that he works as a contractor and would be on a project that day. He said if I specified a time to participate by telephone, he would try to call in.

Staff Analysis

Cost of flyer. At present, the Commission staff's knowledge of the flyer's cost is limited to what Mr. Lebida told me during our February 14, 2024 telephone conversation. He said that the printing costs were around \$200, he thought Mr. Roy had pitched in five dollars, and about 6,000 copies of the Maine Anchor were mailed. He stated the cost of distributing the flyer was zero because the flyer was inserted inside the Maine Anchor.

During the February 14 conversation, I did not inquire about what cost records would be available due to a combination of factors: the time limitations on the call; Mr. Lebida may not have a professional record-keeping system; the expenditures were made roughly 16 months earlier; and I had concerns that future follow-up might be challenging based on my colleague's past difficulties with contacting him. In a letter mailed yesterday, I requested that he have available at the February 28, 2024 meeting the costs of printing/copying the flyer and the cost to mail the Maine Anchor in October 2022.

Disclaimer. The "paid for" disclaimer requirement assists members of the public in evaluating and giving weight to paid messages they receive about candidates in mailings and in broadcast or digital media. The Commission staff believes sufficient evidence has been received to find that the flyer did not comply with the disclaimer requirement in 21-A M.R.S. § 1014(2-A). That subsection applies because expenditures were made for the flyer, which referred to a clearly identified candidate and was disseminated after Labor Day.

According to Mr. Lebida, he and Mr. Roy financed the communication. If true, Commission staff would recommend the view that the disclaimer should have stated "Paid for Guy Lebida and Brian Roy," because they are the persons who made or financed the communication. If Mr. Lebida is contending that the disclaimer "Paid For By Concerned Parents of MSAD75" was compliant, the Commission should hear him out at the February 28 meeting. The Commission staff's current view is that the disclaimer did not comply because it did not

state the names of the persons who made or financed the communication (Mr. Lebida and Mr. Roy). The flyer also is in violation because it contained no address of the persons who paid for the flyer and a statement whether the flyer was authorized by any candidate.

Independent expenditure report. There is certainly an argument that Mr. Lebida and Mr. Roy were required to file an independent expenditure report for the flyer. The communication names a clearly identified candidate and was distributed after Labor Day. No demonstration has been made that the flyer was not intended to influence the 2022 general election.

The only question is whether there is sufficient evidence available from which to conclude the total printing and distribution costs of the flyer exceeded \$250. Mr. Lebida has already acknowledged that he and Mr. Roy spent around \$200 on printing/copying, which is \$50 less than the \$250 threshold. If the Commission is inclined to attribute a fraction of the overall mailing cost of the Maine Anchor to the flyer, the Commission staff would recommend the fraction of one-seventeenth (1/17) based on the ratio of text/graphics space of the flyer compared to the overall mailing. For example, if hypothetically the mailing cost of the Maine Anchor and insert was \$850, one-seventeenth of that amount would be \$50.

Over the years, the Commission has occasionally received an argument that there was no “expenditure” to distribute an election-related communication because it was distributed as part of another, non-electoral communication. Staff does not have a clear recollection of these cases. Although there could be isolated cases in which this would be a convincing argument, in general the Commission staff suggests skepticism because accepting the argument could lead to less disclosure to the public. Determining whether an expenditure (as defined in law) occurred rests on the specific purposes for which payments of money were made. An expenditure is defined as: “A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office” 21-A M.R.S. 1012(3)(A)(1).

Staff Recommendation

Disclaimer violation. Because the flyer was prepared 16 months earlier, Commission staff is unsure whether the February 14, 2024 explanations by Mr. Lebida should be accepted as 100% reliable (*i.e.*, the \$200 printing cost, Mr. Roy’s contribution of \$5, the mailing of 6,000 copies). We do think, however, there is a firm basis for concluding that Mr. Lebida made *some* expenditure on the flyer. We therefore recommend a finding that Mr. Lebida violated 21-A

M.R.S. § 1014(2-A). The flyer did not name the persons who made or financed the flyer, did not provide their address(es), and did not include a statement that no candidate authorized the flyer.

If the Commission is inclined to assess a penalty for the violation, Commission staff recommends \$200, based on the number of copies that were distributed and the fact the name used (Concerned Parents of MSAD75) had the effect of obscuring who actually paid for the flyer. The recommended penalty is consistent with two Commission enforcement actions from December 2022 described below.

Independent expenditure report. At the present time, the Commission staff does not recommend finding that Mr. Lebeda or Mr. Roy violated the independent expenditure reporting requirement, unless Commission receives a more specific cost for mailing the Maine Anchor. It may be possible that Mr. Lebeda will be able to provide that mailing cost at the February 28, 2024 meeting. Alternatively, this matter could potentially be extended to the March meeting, but Commission staff questions whether that is worth the additional investment of staff and Commission time.

Also, Commission staff has doubts whether the Commission may assess a penalty with respect to the independent expenditure report. The Commission is authorized to assess a penalty under 21-A M.R.S. § 1020-A(6) *when a report is filed late*. In this case, no independent expenditure report has been filed. In a situation where an independent expenditure report is required but never filed, the Commission staff finds it ambiguous whether the Commission may assess a penalty under the language in §§ 1020-A(6)-(8-A).¹

In the interest of efficiency and taking a conservative approach to enforcement, it may make the most sense to reinforce the value of disclosure through a finding of violation and penalty for the disclaimer and to take no action on the independent expenditure reporting issue. In the opinion of the Commission staff, the “paid for” message in the disclaimer had greater informational value for residents of House District 22 than the filing of an independent expenditure report with the Commission.

Similar cases. This matter has some similarities to two enforcement matters that the Commission considered at a meeting in December 2022. Both matters involved campaign signs supporting or opposing Governor Mills’s re-election. The signs did not include the required statements of who had paid for them and no independent expenditure reports had been filed on

¹ The Commission staff has put a clarification of this issue on a list of possible statutory proposals for 2025.

time. In response to informal complaints, after the election Political Committee and Lobbyist Registrar Emma Burke contacted the responsible parties, who filed independent expenditure reports late and requested waivers of the preliminary late-filing penalties:

- A group of people in York County supporting Governor Mills' re-election spent \$764 on signs to support Governor Mills. The disclaimer consisted of "York Citizens Alliance." The preliminary penalty owed for filing an independent expenditure report late was \$673.
- Steve LaFreniere and his partner purchased signs opposing Governor Mills for \$2,478. The signs contained no disclaimer. The preliminary penalty owed for filing an independent expenditure report late was \$1,099.

In both situations, the Commission reduced the late-filing penalty for the independent expenditure report to \$200. The Commission did not take any enforcement action on the lack of complete disclaimers.

Notice of February 28, 2024 Meeting to Guy Lebida and Brian Roy

In case Mr. Lebida and Mr. Roy decide not to join the Commission's February 28 meeting, I wanted to confirm Commission staff sent the following notices concerning the meeting:

- Mr. Lebida received actual notice of the February 28 meeting through my February 14 telephone conversation with him. He said he would try to participate by phone.
- On February 20, 2024, Commission staff mailed the attached letter of the same date to Mr. Lebida and Mr. Roy, notifying them of a potential finding of violation and penalty, and inviting their participation. We suggested Mr. Lebida call in at 10:00 a.m.
- Today, the February 20, 2024 letter will be emailed to both Mr. Lebida and Mr. Roy, along with a link to the agenda and written materials published on www.maine.gov/ethics.
- In keeping with meeting procedures we use with all respondents, Commission staff is mailing today a standard cover memo and agenda to both gentlemen.
- One or two days before the meeting, Julie Aube will send both Mr. Lebida and Mr. Roy an email that will describe how they can participate in the February 28 meeting by zoom or by phone.

August 26, 2023

Emma Burke
Maine Ethics Commission
45 Memorial Circle
Augusta, ME 04330

Dear Emma,

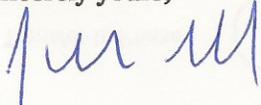
I am writing to file a formal complaint and request a Maine Ethics Commission investigation regarding a political mailing I received last fall which I believe is in violation of state statute.

On or about October 29, 2022, I received a copy of a newspaper called "The Maine Anchor" in my mailbox. I know that my neighbors received it, too, along with many other people in Richmond, Bowdoin, and Bowdoinham. I believe it was delivered by the U.S. postal carrier. Inside the newspaper was a very troubling flyer that attacked Sally Cluchey, a candidate for Maine House District 52.

Photos of the newspaper and flyer are attached. The flyer included disclosure language reading, "Paid for by Concerned Parents of MSAD75." This was clearly a political expenditure, with costs for printing and distribution, but I don't believe any reports were filed. My understanding is that the newspaper is printed by Guy Lebida of Bowdoin, and the flyer was created by Brian Roy of Bowdoin (brianroy01@hotmail.com). It is also my understanding that a report must be filed for expenditures exceeding \$250.

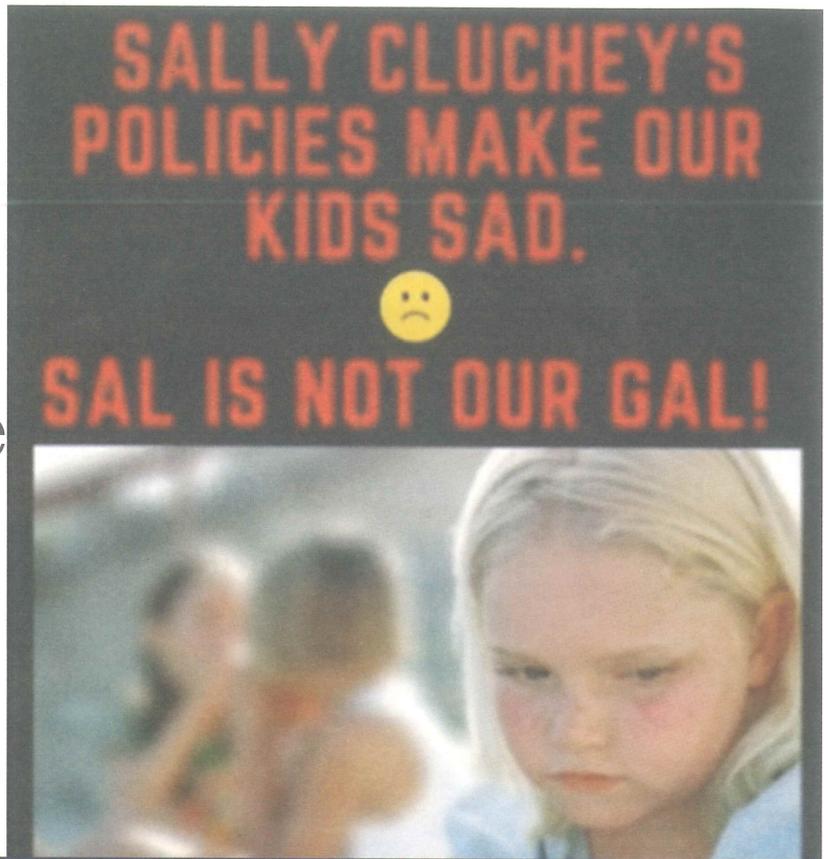
Please consider investigating this issue. Thank you for your time.

Sincerely yours,



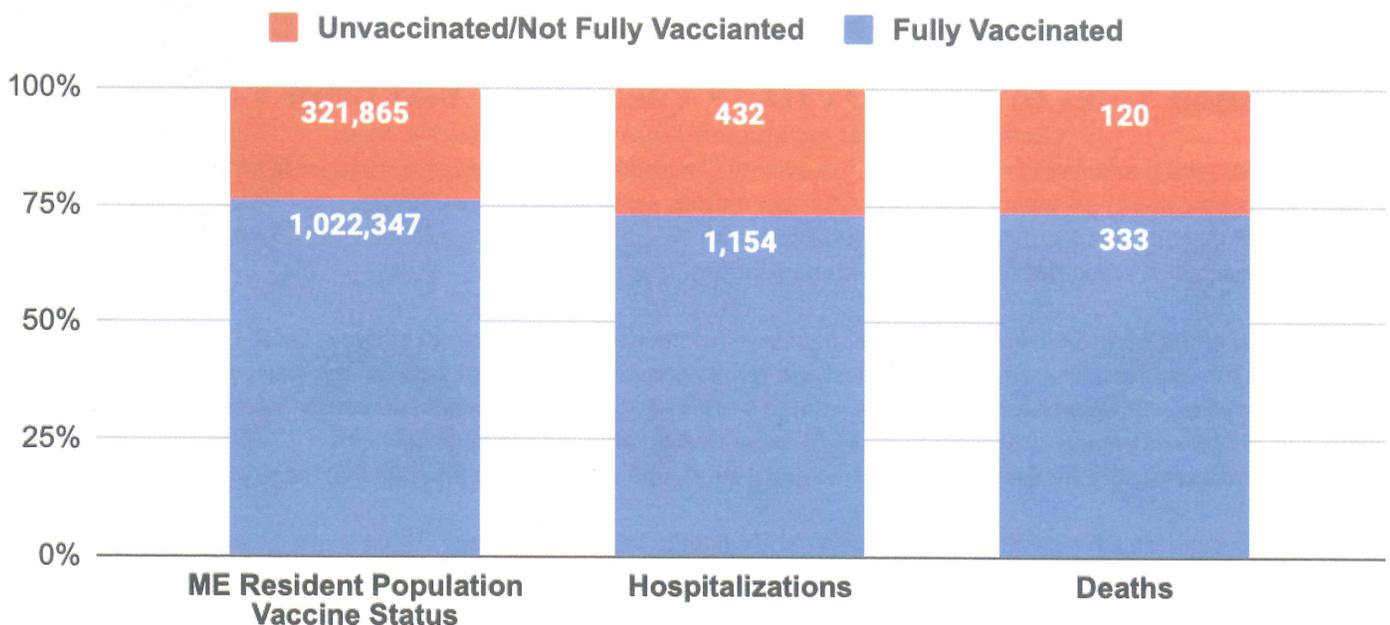
Jennifer Small

Elections have consequences and a vote for candidates like Sally Cluchey is dangerous for our kids.



Why does Sally endorse mandated “medicine” despite the failure of the MRNA jabs?

Hospitalizations and Deaths Associated with COVID-19 by Vaccine Status, from 3/4/22 to 10/16/22

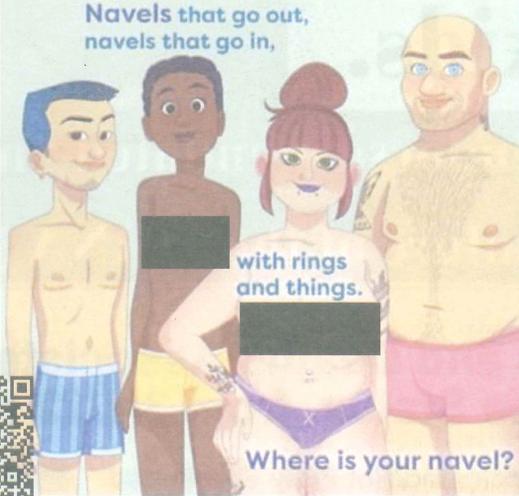
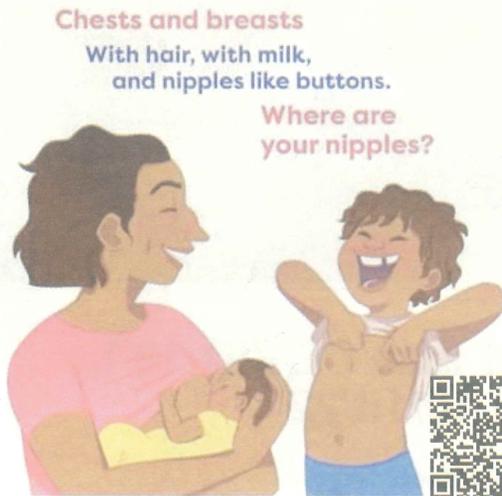


Source: ME CDC Breakthrough Data Updates

Can we trust candidate Sally Cluchey if she thinks this is “joyful and innocuous”?
Do we want our schools teaching this confusion?
This is a gateway to child indoctrination and abuse.

“I attended the school board meeting on May 19'th where this topic was discussed... I found them to be appropriate and joyful books with fitting illustrations.”

-Sally Cluchey Bowdoinham- Letters, Portland Press May 31



Shouldn't we be teaching our children the three Rs and history instead of this controversial and divisive material?
Shouldn't we let parents teach morality at home?
Concerned Parents of MSAD75

Dr. Shah Votes to Add COVID-19 Vaccine to Childhood V-Schedule

Gives Clear Signal for Maine's Future under Governor Mills

Meet the newest voting member of the The CDC's Advisory Committee on Immunization Practices (ACIP) - Maine's own Dr. Nirav Shah. He is now one of 15 voting members of this committee, set to serve a 4 year term.

In his first ACIP meeting, Dr. Shah cast his vote in concert with 14 other members to add the COVID-19 Vaccines to the recommended schedules for childhood immunizations.

Maine has some of the harshest laws in the nation regarding vaccines required for school entry. In 2019, Governor Mills signed LD 798 into law, removing philosophical and religious exemptions for all schools - private and public. This all removed any flexibility for parents who want to work with their pediatrician to create an "alternative schedule." LD 798 passed on party lines on the backs of every Democrat in the Maine legislature.

Why would he recommend it for the schedule on a national stage, and not do so for the state that employs him as the CDC Director?

It is all too clear what his advice will be for Governor Mills and the Maine Legislature. What is also clear is that his opinion is the minority view among Maine parents. Only 44% of children ages 5-11 and less than 6% of children 0-4 years of age have received a COVID-19 vaccine in Maine.

If the Democrats continue to control the Governor and Maine's Legislature after the November 8 election, there is little doubt that they will use education and childcare to coerce parents into injecting their children with these experimental, dangerous and ineffective shot. Vote accordingly.



Video of Dr Shah lying under oath

Welcome To The Conversation

We value your opinion and want to hear what you have to say—even if it is an opposing view. Please limit your letter to 400 words. We will print one opinion piece per edition. Do you feel called to write an article for this paper on any subject that will help build a better Maine? We look forward to that as well.

Please send your letters to TheMaineAnchor@protonmail.com or visit our website TheMaineAnchor.news/share-your-letter

Wasn't it bad enough they developed Covid-19 in a lab at Wuhan China Now they've developed another virus with a much higher kill rate. The Government is totally out of control.

Boston University researchers claim to have developed new, more lethal COVID strain in lab

By Louis Castano - Fox News

Researchers at Boston University say they have developed a new COVID strain that has an 80% kill rate following a series of similar experiments first thought to have started the global pandemic that began in China. The variant, a combination of omicron and the original virus in Wuhan, killed 80% of the mice infected with it, the university said. When mice were only exposed to omicron, they experienced mild symptoms. The research was conducted by a team of scientists from Florida and Boston at the school's National Emerging Infectious Diseases Laboratories.



Researchers at Boston University's National Emerging Infectious Diseases Laboratories created a new COVID strain virus. (Google Maps)

They extracted the spike protein from omicron and attached it with the strain first detected at the onset of the pandemic that began in Wuhan, China. They then documented how the mice reacted to the hybrid strain.

"In...mice, while Omicron causes mild, non-fatal infection, the Omicron S-carrying virus inflicts severe disease with a mortality rate of 80 percent," they wrote in a research paper.

The new strain has five times more infectious virus particles than the omicron variant, researchers said. In a statement, the university stressed that the replicated strain was less dangerous than the original strain.

"First, this research is not gain-of-function research, meaning it did not amplify the Washington state SARS-CoV-2 virus strain or make it more dangerous. In fact, this research made the virus replicate less dangerous," the statement read. "Secondly, the research was reviewed and approved by the Institutional Biosafety Committee (IBC), which consists of scientists as well as local community members. The Boston Public Health Commission also approved the research. Furthermore, this research mirrors and reinforces the findings of other, similar research performed by other organizations, including the FDA. Ultimately, this research will provide a public benefit by leading to better, targeted therapeutic interventions to help fight against future pandemics."

COVID-19 was first believed to have come from a wet market in Wuhan, though many believe the virus was engineered at the Wuhan Institute of Virology. The World Health Organization continues to face criticism for its handling of the crisis in its early, most pivotal, days.

The omicron variant is highly transmissible, even in those who are fully vaccinated. The spike protein is responsible for rates of infectivity, according to researchers, other changes to the virus' structure determine its deadliness.

maine

STANDS UP

Mainers standing up for freedom, family, and community.

OCTOBER 29TH 7PM DR NORTHRUP AT SKY HY CONFERENCE CENTER
 Come and learn more about Covid-19 experimental gene therapy shots
 32 Sky-Hy Drive, Topsham, ME 04086

Accountability

Our current debt/GDP ratio stands at 143.82%, which means we are insolvent as a nation. Despite this, Susan Collins once again voted to spend money we as nation do not have. Her vote to support the Chips-Bill is another progressive deficit spending scheme. At the very least it will add \$52B to our already crushing debt. Estimates place the final tally of the bill to exceed \$200B. The Maine GOP web-page continues to run a picture of Susan Collins next to a statement claiming, "responsible fiscal policy." Is there any self-awareness within the Maine GOP?

Collins voted to impeach Trump, voted for a CRT promoting justice, was silent during BLM riots throughout 2020, supports the Jan 6 show trials, spoke out against SCOTUS when they overturned Roe v. Wade, and continues to support reckless deficit spending schemes. When does someone within the Maine GOP call Susan Collins out for what she is...a useful idiot of the progressive left? The distinction between Collins and the progressive left is one without a difference on every major substantive issue. It's hard to take a party seriously that continues to defend the indefensible by not holding Collins accountable.

"Inflation is when you pay fifteen dollars for a ten-dollar haircut you used to get for five dollars when you had hair."

The Maine Anchor

Long Live Print

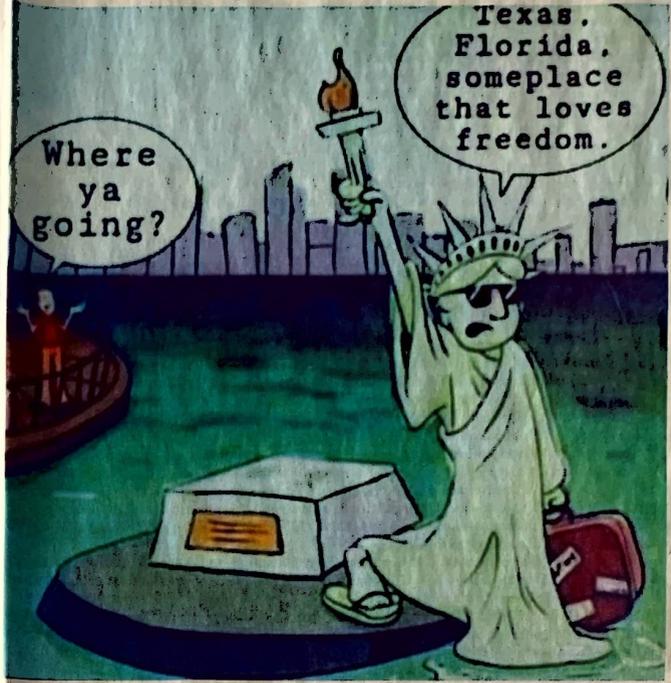
Suggested Retail: \$1.25

Issue 3

PRST STD
 US Postage Paid
 Permit #11
 Newcastle, Maine

ECRWSS
 Postal Customer

I Hope Maine Can Become Free



Silver Linings



"It's the economy stupid." In 1992, James Carville, political strategist and advisor for Bill Clinton urged the campaign to focus on that message as the recession was on the minds of voters across the country. Today that message is ever more relevant, and the woes of a recession are increasingly being replaced by the fear of a depression, or even a complete meltdown of the entire financial system. Adding to the confusion, are the never-ending debates from both sides of the political spectrum, and how we should invest in this, or cut spending on that. At the end of the day, nothing seems to change, and the people are left helpless as our national debt escalates into the stratosphere. According to U.S. National Debt Clock : Real Time (us-debtclock.org), you, me, and every single American are on the hook for over 92k. I don't know about you, but I don't remember signing a contract for such a loan, and quite frankly straddling our children into this kind of debt is downright immoral. The scene that is playing out now is nothing new, and ancient writers have told us that "The rich rule over the poor and the borrower is servant to the lender." (Proverbs 22:7) It's a hard pill to swallow, but the glaring reality is, we are broke. Of course, delivering an unpopular message is hard to do for politicians, and most likely even harder to take for the people. At one time our nation understood these central banking woes, and even Andrew Jackson ran under the slogan, "Jackson and no Bank."

It's a dire situation indeed, but it's always darkest just before the dawn, and the silver linings of this mess can indeed still echo "the best is yet to come." What good can be found in such a broken system you might ask? Well, for one, just like you and me, a bankrupt nation can no longer borrow currency to fund endless wars, corruption, and greed. That is a huge win, and its only just the start! The rebuilding of this broken system might also recognize constitutional money once again, thus rewarding savers as it should be. Of course, real money does not lose value over time, and being a store of value is a critical component in money's very role and function. Putting an end to the easy borrowing and spending will also reduce moral hazard, and just might finally free us from the chains of unpredictable inflation, boom and bust business cycles, and the perpetual debt slavery that is modern day serfdom. It's cash on the barrel, and a stable money supply would actually lend itself to decreasing prices over time. In a truly free economy these price decreases would mean more wealth for everyday people, and shopping carts might be full again instead of sticker shock or choosing between food and medicine. Honest and stable money would also mean the government would only be able to spend what it secures in taxes, and our children would not be born into a world of debt slavery from day one. The moral dilemma of taxing our labor might also be examined, and a principled taxing mechanism might take its place. Perhaps the most exciting prospect of the fiscal calamity at hand is that we may finally end the decades old grip of the private banking establishment on our sovereignty and independent nation. For it was Mayer Amschel who said "Give me control of a nation's money and I care not who makes its laws." So let us not be troubled, but rather marvel at the solid and unbroken foundation in the declaration "In God We Trust." And in so doing we can lift each other up, and weather any storm. Perhaps even new faces will adorn America's money, and we may render unto Caesar what is Caesar's, and we will render unto God what is God's.

-Anna Nimos

"Here is something to remember and think about when voting time comes around. Ask yourself, thousands are responsible for the mandatory lockdowns and shutdowns, business closings, runaway inflation, thousands of permanent injuries and deaths from an experimental gene therapy shot, unfordable fuel, food, heating, electrical rates. I say the blame goes to the Rinos, and Democrat politicians who did nothing to stop our state and federal government from their fascist and communist tyranny."

-a God-fearing, Veteran Patriot

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135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

February 20, 2024

By Email and Regular Mail

Guy Michael Lebida
54 Bowdoin Pines
Bowdoin, ME 04287

Brian Roy
165 Adams Rd
Bowdoin, ME 04287

Dear Mr. Lebida and Mr. Roy:

The Maine Ethics Commission will be considering the October 2022 flyer against Sally Cluchey at its meeting on February 28, 2024. The Commission will be determining whether the flyer included a full disclaimer stating the names and addresses of the persons who paid for the flyer and whether it was authorized by any candidate. If the Commission finds the flyer was in violation, it could assess a penalty of up to the cost of the flyer. The Commission may also consider whether you were required to file an independent expenditure report with the Commission in connection with the flyer.

The Commission requests that Mr. Lebida participate in the meeting by telephone. Please call in at 10:00 a.m. and the Commission will get to this item as soon as it can. Commission Assistant Julie Aube will send you an email invitation one or two days before the meeting that will contain a phone number you can use. Mr. Roy is welcome to participate in the meeting by phone, by Zoom, or in person to respond to the possible enforcement actions.

If possible, please look up how much you paid for printing the flyer and the total cost of mailing the October 2022 issue of the Maine Anchor and have that information ready at the meeting. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Wayne".

Jonathan Wayne
Executive Director



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

September 14, 2023

By Email and Regular Mail

Guy Michael Lebida
54 Bowdoin Pines
Bowdoin, ME 04287

Brian Roy
165 Adams Rd
Bowdoin, ME 04287

Dear Mr. Lebida and Mr. Roy:

This letter is to advise you that the Maine Ethics Commission received a complaint about a flyer critical of 2022 House candidate Sally Cluchey distributed in mailboxes in Richmond, Bowdoin, and Bowdoinham, Maine on or around October 29, 2022. The flyer was included inside another communication named The Maine Anchor.

Communications naming candidates close to a general election may be required to include information concerning who paid for the communication and whether it was authorized by any candidate. Sometimes, the communication requires the filing of a financial report with our office. At a meeting on October 25, 2023, the Commission will consider whether to take any action on the complaint, such as directing its staff to conduct an investigation.

The Commission has drawn no conclusions concerning whether the complaint is accurate or whether you are involved. Because you are mentioned in the complaint, you are invited to respond or provide any information you would like for purposes of the Commission's October 25 meeting (please see details on next page).

Potential Compliance Issues

Disclosure statement. If a person pays for a communication (such as a flyer) to voters after Labor Day during an election year and the communication names a clearly identified candidate, the communication must state the name and address of the person who paid for the communication and whether it was authorized by any candidate. 21-A M.R.S. §§ 1014(1)-(2-A).

Guy Lebida and Brian Roy

Page 2

September 14, 2023

Independent expenditure reporting. A paid communication advocating for the election or defeat of a candidates may require the filing of a campaign finance report with the Commission. 21-A M.R.S. § 1019-B. This “independent expenditure report” is required only if more than \$250 is spent per candidate and the expenditure for the communication is made independently of the candidates in the race and their political committees.

Contribution to candidates. If a candidate, his political committee, or their agents request or suggest that another person makes an expenditure to influence the candidate’s race, or cooperates or consults on the expenditure, the expenditure is a contribution to the candidate. 21-A M.R.S. § 1015(5). In 2022, a source could make a contribution of no more than \$425 per election to a legislative candidate. § 1015(1). Candidates are required to report cash or in-kind contributions they have received.

Your Opportunity to Respond

The Commission staff has scheduled the complaint for preliminary consideration by the members of the Commission at a meeting on October 25, 2023. The meeting will begin at 9:00 a.m. at our office at 45 Memorial Circle. If you would like to provide any information in advance of the meeting, within two weeks of your receipt of this letter please email the information to Jonathan.Wayne@maine.gov or mail it to our office at 135 State House Station, Augusta, Maine 04333. You are also welcome to participate in the meeting in person or remotely through zoom. The meeting will be streamed to our YouTube channel. Thank you.

Sincerely,



Jonathan Wayne
Executive Director

cc: Ms. Jennifer Small (by email)

21-A M.R.S. § 1012. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. ...

3. Expenditure. The term “expenditure:”

A. Includes:

- (1)** A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- (2)** A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure;
- (3)** The transfer of funds by a candidate or a political committee to another candidate or political committee; and
- (4)** A payment or promise of payment to a person contracted with for the purpose of influencing any campaign as defined in section 1052, subsection 1; and

B. Does not include: [exclusions omitted] ...

21-A M.R.S. § 1014. Publication or distribution of political communications

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

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

2-A. Other communications. Whenever a person makes an expenditure to finance a communication that names or depicts a clearly identified candidate and that is disseminated during the 28 days, including election day, before

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a primary election, during the 35 days, including election day, before a special election or during the period of time from Labor Day to the election day for a general election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. The disclosure is not required if the communication was not made for the purpose of influencing the candidate's nomination for election or election.

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

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

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

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

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

A. For purposes of this subsection, "funder" includes:

- (1) Any entity that has made a contribution as defined in section 1052, subsection 3 to the entity making the independent expenditure since the day following the most recent general election day; and
- (2) Any entity that has given a gift, subscription, loan, advance or deposit of money or anything of value, including a promise or agreement to provide money or anything of value whether or not legally enforceable, except for transactions in which a fair value is given in return, since the day following the most recent general election day.

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

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

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

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

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

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

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

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

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

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

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

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

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5-A. Text messages. Text messages sent with the assistance of mass distribution technology that is paid for by a person must clearly and conspicuously state the name of the person who made or financed the expenditure if:

- A. The text message expressly advocates the election or defeat of a candidate; or
- B. The text message contains a link to a website that expressly advocates the election or defeat of a candidate.

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

- A. Handbills or other literature produced and distributed at a cost not exceeding \$100 and prepared by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;
- B. Campaign signs produced and distributed at a cost not exceeding \$100, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;
- C. Internet and e-mail activities costing less than \$100, as excluded by rule of the commission, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;
- D. Communications in which the name or address of the person who made or authorized the expenditure for the communication would be so small as to be illegible or infeasible, including communications on items such as ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section and in electronic media advertisements where compliance with this section would be impractical due to size or character limitations; and
- E. Campaign signs that are financed by the candidate or candidate's authorized committee and that clearly identify the name of the candidate and are lettered or printed individually by hand.

21-A M.R.S. § 1020-A. Failure to file on time

1. Registration. A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$100. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 7,

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the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;
- B. An error by the commission staff;
- C. Failure to receive notice of the filing deadline; or
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service.

3. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

4. Basis for penalties. [MRSA T. 21-A §1020-A, sub-§4 (RP).]

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 2%;
- B. For the 2nd violation, 4%; and
- C. For the 3rd and subsequent violations, 6%.

Any penalty of less than \$25 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

5. Maximum penalties. [MRSA T. 21-A §1020-A, sub-§5 (RP).]

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed:

- A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; and section 1017, subsection 4, except that if the dollar amount of the financial activity that was not timely filed or did not substantially conform to the reporting requirements of this subchapter exceeds \$50,000, the maximum penalty is 100% of the dollar amount of that financial activity;
- A-1. Five thousand dollars for reports required under section 1019-B, subsection 4, except that if the dollar amount of the financial activity that was not timely filed or did not substantially conform to the reporting requirements of this subchapter exceeds \$50,000, the maximum penalty is 100% of the dollar amount of that financial activity;
- B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E, except that if the dollar amount of the financial activity that was not timely filed or

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did not substantially conform to the reporting requirements of this subchapter exceeds \$50,000, the maximum penalty is 100% of the dollar amount of that financial activity;

C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; or

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B.

E. [PL 2011, c. 558, §5 (RP).]

6. Request for a commission determination. If the commission staff finds that a candidate or political committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the candidate or political committee within 3 business days following the filing deadline informing the candidate or political committee that a report was not received. If a candidate or a political committee files a report required under this subchapter late, a notice of preliminary penalty must be sent to the candidate or political committee whose registration or campaign finance report was not received by 11:59 p.m. on the deadline date, informing the candidate or political committee of the staff finding of violation and preliminary penalty calculated under subsection 4-A and providing the candidate or political committee with an opportunity to request a determination by the commission. Any request for a determination must be made within 14 calendar days of receipt of the commission's notice. A candidate or political committee requesting a determination may either appear in person or designate a representative to appear on the candidate's or political committee's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

7. Final notice of penalty. If a determination has been requested by the candidate or political committee and made by the commission, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the political committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

8. Failure to file report. The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. The notice must be sent by certified mail. If a candidate fails to file a report after 2 notices have been sent by the commission, the commission shall send a final notice by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the notices required by this subsection is guilty of a Class E crime.

8-A. Penalties for failure to file report. The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

9. List of late-filing candidates. The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

10. Enforcement. A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.