



Revised Minutes of the December 8, 2016, Meeting of the  
Commission on Governmental Ethics and Election Practices  
45 Memorial Circle, Augusta, Maine

Present: Margaret E. Matheson, Esq., Chair; William A. Lee III, Esq.; Meri N. Lowry, Esq.; Hon. Richard A. Nass; Bradford A. Pattershall, Esq.

Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Counsel

Commissioner Matheson convened the meeting at 9:05 a.m.

The Commission considered the following items:

**1. Ratification of Minutes of October 20 and 26, and November 7, 2016 Meetings**

Mr. Lee made a motion to accept the October 20, 2016 minutes. Ms. Lowry seconded the motion. Motion passed (5-0). Mr. Lee made a motion to accept the October 26, 2016 minutes. Mr. Nass seconded the motion. Motion passed (5-0)

Mr. Lee identified minor corrections in the November 7, 2016 minutes on pages 3, 5 and 7. Mr. Nass made a motion to accept the November 7, 2016 minutes with these corrections. Mr. Pattershall seconded the motion. Motion passed (5-0).

**2. Public Hearing on Proposed Rule Changes**

Mr. Wayne said the proposed rule amendments were to address changes resulting from the November 15, 2015 citizen initiative and some policy changes. He said today was the public hearing, the written comment deadline was December 19<sup>th</sup>, and the final adoption of these proposed rule changes would happen at the January 9<sup>th</sup> meeting.

Robert Howe appeared before the Commission on behalf of the Maine Citizens for Clean Elections (MCCE). Mr. Howe said the letter from MCCE does not contain much detail because they had provided comments the last time these rule changes were proposed and a link to those comments was at the bottom of the letter. He said MCCE supports the proposal and looks forward to its adoption.

The public hearing on the proposed rules concluded.

### **3. Incomplete Top-Donor Disclosure – Maine Democratic Party**

Mr. Wayne said this request for investigation was filed by the Senate Republican caucus on the same day as the special meeting of the Commission on the day before the election. The Commission had postponed consideration of this matter until its next meeting due to the short notice to the Maine Democratic Party (the Party). Mr. Wayne said the complaint alleged the Party aired a television ad that did not include the top three funders in the disclaimer statement on the ad. He said, because it was a 30 second ad, the law requires only the disclosure of the top funder in the audio but it does require the disclosure of the top three funders in the disclaimer statement that appears on screen.

Joshua Tardy, Esq., counsel for the Senate Republican caucus, appeared before the Commission. He said he believed the request for investigation letter documented the issue and he had nothing to add to it.

Katherine Knox, Esq., counsel to the Maine Democratic Party, appeared before the Commission. Ms. Knox said this is a factually straight forward case. This is the first election cycle with the top three funder disclosure requirement. She said the Party did its best to comply with the disclosure requirements which are different depending on the length of the ad, type of communication, etc., which makes this issue confusing. Ms. Knox said this was a mistake but there was no intent to disguise who paid for the ad and it did list the top donor in both the audio and written disclaimer statement.

In response to a question from Mr. Pattershall, Mr. Wayne said this is the first top three funder violation.

Mr. Lee asked how much of the \$19,161 was applied to this ad. Ms. Knox said all of it. Mr. Wayne said that total was based on two independent expenditure reports that had been filed. Ms. Matheson asked if a second ad was planned. Ms. Knox said she believed there was only one ad. Mr. Lee said the maximum penalty would be \$19,161, but there was a provision in the statute to assess no penalty if, within ten days of notice of violation, the missing information were added. He asked if this had aired before it could be corrected. Ms. Knox said by the time the mistake was discovered the ad had run. Mr. Lee said he was not clear about the cause of the error. Ms. Knox said the Party has a review process for advertising but this ad did not go through that process; she

did not know why. Mr. Lee said they could not assume this was a vendor error. Ms. Knox said it would not be fair to characterize this as only a vendor error.

Mr. Tardy said he would consider this a vendor error. This is a sophisticated vendor with a lot of experience and they make a lot of money during election seasons.

Mr. Lee asked who the top three funders were. Ms. Knox said they were the Senate Democratic Campaign Committee, the House Democratic Campaign Committee, and Democratic Legislative Committee. Ms. Knox said there were no individual donors among the top three funders and that list of top three funders stayed relatively consistent throughout this election cycle.

Mr. Lee said this is the first time they have seen this type of violation and asked what Mr. Tardy and Ms. Knox thought would be a fair penalty. Mr. Tardy said, in the past, the maximum penalty for this type of violation was \$200 and he thought that was a fair penalty. Mr. Wayne said \$200 was the maximum penalty in 2010, but in 2011 it changed to \$5,000. The 2015 citizen initiative raised the maximum to the amount of the expenditure. Ms. Knox said this was a relatively small error. There was no intent to conceal who paid for the ad and no time to correct the error due to the short timeframe that the ad ran. Based on these considerations, she thought the staff recommendation was fair.

Mr. Nass said he liked the staff recommendation to find a violation but to assess no penalty. Ms. Matheson said she thought the \$500 penalty recommendation was reasonable. She said this is a case of first impression. While she would not be comfortable assessing the maximum penalty, she thought they needed to be serious about enforcing the new law. Mr. Lee said this was a \$19,000 expenditure and he did not believe a \$500 penalty was excessive. He said he did not think that the fact that the law was new was an excuse, and he was concerned by the precedent the Commission might be setting if it did nothing in this case.

Mr. Lee made a motion to assess a civil penalty of \$500 for the violation of failing to list the top three donors in the ad. The mitigating circumstances are that this violation was not intentional; the vendor was supposed to be sophisticated and check to make sure nothing was dropped; and there is no indication that anybody was trying to avoid complying with the law. Mr. Pattershall seconded the motion. Motion passed (4-1); Ms. Lowry opposed.

#### **4. Missing “Paid for” Disclaimer – Hon. Andre Cushing and Hon. David Haggan**

Mr. Wayne said this matter had been continued from their November 7 special meeting to allow Sen. Cushing and Rep. Haggan the opportunity to respond.

Katherine Knox, Esq., counsel to the Maine Democratic Party, appeared before the Commission. Ms. Knox said it was evident there was no disclaimer on this mailer. She said this was a fairly common error, but she believed it was important for the Commission to maintain consistency in enforcing these matters.

Joshua Tardy, Esq., counsel to Sen. Cushing and Rep. Haggan, appeared before the Commission. Mr. Tardy agreed with Ms. Knox that this was a fairly common error. He said the content of the mailer had been approved by both campaigns. The vendor had contacted both campaigns about who would be paying for this mailer and both campaigns had responded they were splitting the costs.

Mr. Lee asked how many of these mailers were mailed. Mr. Tardy said he estimated 2,000 were mailed and believed they may have been sent to just unenrolled voters given the timing of the mailing.

Mr. Pattershall said it appears this happens all the time and they only come before the Commission when a complaint is filed. He said he would consider a modest penalty for consistency purposes.

Mr. Lee asked if the candidates had reviewed the mailer. Mr. Tardy said they had. Mr. Lee asked if they had seen and approved the mailer. Mr. Tardy said they had and that they had received an email from the vendor about payment. Mr. Lee said it appeared Rep. Haggan had not been involved in this process. Mr. Tardy said his treasurer had handled this matter.

Mr. Pattershall made a motion to find a violation for each candidate and assess a \$50 penalty each, which is a little bit more than 2.5% of each candidate’s expenditure. Ms. Lowry seconded the motion. Motion passed (5-0).

#### **5. Request for Waiver of Late-Filing Penalty – Hon. Amy Volk**

Mr. Wayne said Sen. Volk was running for re-election and her campaign was required to file the 11-Day Pre-General report on October 28. The report was filed on October 29, seven hours and 48

minutes late. Barry Lucier, Sen. Volk's treasurer, submitted a waiver request stating that he had had problems with his internet router and had filed the report as soon as he had an internet connection.

Ms. Matheson asked if the Commission staff could help if someone were having problems filing a report and it was during normal working hours. Mr. Wayne said they could and that Sen. Volk could have filed the report because she was a traditionally financed candidate.

Joshua Tardy, Esq., counsel for Sen. Volk, appeared before the Commission. Mr. Tardy said he agreed with staff recommendation.

Mr. Nass made a motion to adopt the \$150 penalty recommendation. Mr. Pattershall seconded the motion. Motion passed (5-0).

#### **6. Request to Rebut Presumption of Independent Expenditure and Waiver of Late Filing Penalty – New England Opportunity Project**

Mr. Wayne said this matter relates to a mailing sent out by the New England Opportunity Project (NEOP), a non-profit organization created by Rep. Lawrence Lockman. The mailing was primarily about Rep. Jeff McCabe, who was running for State Senate. He said this came to the Commission staff's attention because of news reports about it. The Commission staff contacted Rep. Lockman about filing an independent expenditure report because the mailing was done after Labor Day and it mentioned a clearly identified candidate. The expenditure happened on October 11 and the staff contacted Rep. Lockman shortly after that. Rep. Lockman submitted a letter to rebut the presumption on October 21. Rep. Lockman also filed an independent expenditure report at the same time as the rebuttal letter to stop the penalty clock. Mr. Wayne explained to the Commissioners that at the time he wrote the memo for this matter, the staff did not believe the mailer contained any information about how to make a donation to NEOP. However, it was brought to the staff's attention that the mailer did include instructions about how to make a donation and a copy of that insert was made available to the Commissioners at the meeting.

Mr. Wayne said the independent expenditure presumption applies to any paid communication distributed to voters after Labor Day that mentions or depicts a candidate unless the spending party files a written statement with the Commission within 48 hours of making the expenditure rebutting

the presumption that the expenditure was made to influence the election. In Rep. Lockman's October 21 letter, he stated the intent of the mailer was not to influence the election but to raise money for NEOP, to raise awareness on the issue of immigration, and to urge voters to contact their Legislator, Rep. McCabe. Mr. Wayne said the issues before the Commissioners were whether Rep. Lockman could rebut the presumption if his written statement was not received within 48 hours of the expenditure for the mailer; if he was allowed to rebut the presumption, whether he had successfully done so; and if they found he had not rebutted the presumption, whether to waive or reduce the penalty for the late-filed independent expenditure report.

Ms. Matheson said one of the first issues they had to deal with was whether they had the discretion to consider the rebuttal because it was submitted late. Mr. Pattershall asked if the spender had an affirmative duty to file the rebuttal statement within 48 hours if they believed the expenditure was not an independent expenditure. Mr. Wayne said that was correct. Ms. Gardiner said there were exclusions in the Commission's rules for what types of communications would not be considered an independent expenditure and directed the Commissioners to Chapter 1(5)(B) of the rules. Ms. Gardiner said the statute is explicit that the presumption can only be rebutted if something is filed within 48 hours. The requirement to file a rebuttal statement within 48 hours of making the expenditure came into being when Maine Clean Election Act candidates could get matching funds; therefore, the timing of filing independent expenditure reports or rebuttal statements was critical. She did not recall any past cases that involved the filing of a rebuttal statement outside of the 48 hour period.

Mr. Pattershall said it would appear that the first issue is whether the presumption applies in this case. Ms. Lowry agreed and said she did not believe there is any language in the statute about failure to rebut within 48 hours. Mr. Lee said if there is a presumption without any evidence to rebut it, the presumption stands, which is the nature of a presumption.

Mr. Lee said there may also be an issue of the failure to list the top three funders on the mailer. Mr. Wayne said that issue was not being raised today but agreed it was a possible compliance issue. Mr. Pattershall said he was reluctant to discuss a disclosure violation without there being a complaint in front of them. Mr. Lee said this issue was mentioned in the agenda material they had received; however, if they were going to consider this, notice should be given to Rep. Lockman.

Ms. Lowry asked if the staff letter to Rep. Lockman constituted notice. Mr. Lee said it raised the issue but did not notify Mr. Lockman that the Commission would be considering it at this meeting. Ms. Matheson said the deadline for filing a rebuttal statement was clearly past, so the presumption stands per statute and rule. Ms. Lowry asked whether Rep. Lockman successfully stopped the daily penalty accrual by filing the report late. Mr. Wayne affirmed he had.

Rep. Lawrence Lockman, president of NEOP, appeared before the Commission. He said in June NEOP's board members began discussing using a mailer on the issue of sanctuary cities to fundraise. It had drafted language by the end of July, which was sent to NEOP's legal counsel, who approved the mailer. Rep. Lockman said the board decided not to do the mailing in August because so many people are busy with summer activities and by Labor Day, he was busy with his re-election campaign, so the mailing was delayed again until October. Rep. Lockman said it was his error that the mailer had not been referred back to the attorney, who would have been aware of the presumption period.

Mr. Pattershall asked who the top three funders of the non-profit were. Rep. Lockman said that was not on the agenda today. Mr. Lee said it may not be on the agenda but it was not an improper question. Mr. Pattershall said Rep. Lockman was not compelled to answer. Rep. Lockman said he was declining to answer.

Mr. Nass said this was clearly an independent expenditure and he believed the only remaining issue was how much the penalty was. Mr. Pattershall agreed but said he did not believe that because the presumption stands that meant that the preliminary penalty automatically stands also.

Mr. Lee asked Rep. Lockman for his view on their discussion about the presumption. Rep. Lockman said it was his error not to refer this mailer back to the attorney when the decision was made to mail it after Labor Day. Mr. Lee asked if he agreed that the presumption applied. Rep. Lockman agreed that it did. Mr. Lee asked if Rep. Lockman agreed that the presumption rebuttal timeframe had passed. Rep. Lockman said he did. Mr. Lee said he would have to conclude that the purpose of the mailing was to influence the election given the content of the mailing and the fact that Rep. McCabe is mentioned 16 times in the mailer.

Mr. Nass made a motion to accept the staff recommendation. The motion was not seconded.

Ms. Gardiner asked whether the Commissioners should split the motion into two issues because they had not asked Rep. Lockman to address the late-filing penalty. Mr. Lee agreed that they should have a separate vote because Rep. Lockman had raised the issue of rebutting the presumption.

Mr. Lee made a motion that because the publication occurred after Labor Day and mentions a candidate by name, it raised the presumption that it was an independent expenditure; and since no information was sent to the Commission within the 48 hours after the expenditure that, both under statute and Commission rule, the presumption becomes conclusive and the mailer was an independent expenditure triggering a filing requirement. Mr. Nass seconded the motion. Motion passed (5-0).

Mr. Lee asked Rep. Lockman if he was requesting a waiver of the late-filing penalty. Rep. Lockman said he was requesting a waiver or reduction. Mr. Lee explained the standards for their consideration of a waiver: the penalty is disproportionate to the size of the campaign, the level of experience of the group, and the harm suffered by the public. He said there was also a mitigating factors section but he did not believe any of those applied. Rep. Lockman agreed that the mitigating factors did not apply. Mr. Lee asked Rep. Lockman to address the three standards. Rep. Lockman said, regarding the experience factor, he had formed the non-profit last year and this is his first time filing a financial disclosure report. He said there was no attempt at subterfuge or to hide who was responsible for this mailing because there had been publicity about it and Rep. McCabe did have an opportunity to respond to the mailer. Rep. Lockman said he believed that based on those two factors, it argued for a reduced penalty.

Mr. Lee asked what Rep. Lockman's title was with NEOP. Rep. Lockman said he was the president of NEOP. Mr. Lee asked if Rep. Lockman was a current Representative. Rep. Lockman said he was. Mr. Lee asked how long he had been a State Representative. Rep. Lockman said this would be his third term. Mr. Lee asked if he had had opponents in his primaries. Rep. Lockman said he had not. Mr. Lee asked if he had had opponents in the general elections. Rep. Lockman said he had. Mr. Lee asked if he was familiar with filing campaign finance reports. Rep. Lockman said he was. Mr. Lee asked if he talked with Commission staff when questions arose. Rep. Lockman said he did. Mr. Lee asked if NEOP had an attorney. Rep. Lockman said the attorney was not on retainer but was available to answer questions. Mr. Lee asked if this attorney had experience with election



matters. Rep. Lockman said they did. Mr. Lee confirmed that Rep. Lockman's experience at the state level began when he was elected as a state representative in 2012. Mr. Lee asked what the budget was for NEOP in 2016. Rep. Lockman said it was approximately \$16,000 and conceded that the \$672 penalty was not inordinate and would not break the organization. However, he reiterated that he does not have any experience filing reports for a non-profit, which he believed argued in favor of a reduction.

Mr. Nass made a motion to adopt the staff recommendation and assess a \$672.80 penalty. Mr. Lee seconded the motion.

Mr. Pattershall said he does not believe he has ever voted to adopt a preliminary penalty in full and would be comfortable with a reduction. Mr. Nass said the mailer and its timing were very effective. He said that the preliminary penalty is appropriate. Ms. Matheson said there were 10 days, within a month of the election, during which the public did not know who paid for this mailer. She said she viewed that as harm to the public. Ms. Matheson said she would support the motion. Mr. Lee said they typically have mitigating factors but in this case there is no mitigation of the harm to the public. Mr. Nass agreed and pointed out that the target of this mailer was Rep. McCabe, who was the Majority Leader for the House. Mr. Lee also said that Rep. Lockman did not lack experience with campaign finance laws.

Ms. Lowry asked what the normal disclosure requirements were for an independent expenditure. Mr. Wayne said the top three funders would have to be disclosed, unless they had not contributed more than \$1,000. He said this expenditure did not trigger the requirement for NEOP to register as a PAC, but they did not know if NEOP had spent any other money this election cycle.

Ms. Gardiner said they had voted unanimously that this was an independent expenditure. The independent expenditure report has been filed and there was no dispute about the number of days it was late, so they know what the statutory penalty is. She said the pending motion addresses the late-filing penalty. Ms. Lowry said she believed they had thoroughly discussed the standards for a reduction but she wondered there was a need to discuss the failure to disclose the top three funders. She did not want to have this matter concluded without having a discussion about this issue.

Ms. Matheson called for a vote on the motion. Motion passed (5-0).

Mr. Wayne said there was a separate violation for failing to list the top three funders but that violation had not been brought before them in a direct manner and Rep. Lockman had not been provided notice of this additional violation. Ms. Matheson asked if they could ask for a response and schedule this for January. Mr. Wayne said they could. Mr. Pattershall asked if NEOP had any other filing requirements. Mr. Wayne said it did not unless NEOP had spent more than \$5,000 in this election cycle. Mr. Pattershall said he was not in favor of pursuing the disclosure issue because a complaint had not been filed.

Joshua Tardy, Esq., sought clarification whether the Commission would be considering the non-profit tax status of the organization. Ms. Gardiner said the only additional issue the Commission was considering for the January meeting was the top three funders disclosure, not tax status.

Mr. Wayne asked if the Commissioners wanted to address the issue of the failure to list the top three funders at its January meeting. Mr. Nass and Mr. Pattershall said they did not. Ms. Matheson said she neither for nor against it. Mr. Lee agreed and said he was uncomfortable directing the Commission staff on whether they should or should not bring a matter before them. Ms. Lowry said this issue was raised several times and she had wanted to keep it in mind as she voted on the other issues but agreed it was best to leave it to the staff's discretion whether or not to bring this issue back to the Commission. Mr. Pattershall said the Commission staff should follow their usual procedures in handling a disclosure violation.

#### **7. Late Registration and Campaign Finance Report – Maine Matters Vote No BQC**

Mr. Wayne said the Maine Matters Vote No BQC (the BQC) registered late and was late filing its initial campaign finance report, which was due at the time of registration. Hillary Lister was working as an individual in opposition to the marijuana referendum, so she did not believe she had to register as a BQC. She started fundraising in July and one of her contributors advised her to look into whether she should register as a PAC or BQC. The BQC should have registered and filed an initial report on August 31 but did not do so until September 30.

Hillary Lister, appeared before the Commission. Ms. Lister said she registered the BQC as soon as she realized she needed to. The money she raised was spent on a radio ad and yard signs, which did have the appropriate disclosures.

Ms. Matheson asked if Ms. Lister had sought legal advice about registering. Ms. Lister said she had not. She had received the advice during an informal meeting with contributors. Ms. Matheson asked for confirmation that this conversation happened in July. Ms. Lister confirmed it happened at the end of July. Ms. Matheson asked if she had contacted the Commission between the end of July and when she registered in September. Ms. Lister said she had but only about the disclosure requirements for the yard signs. She did not talk with staff about registering as a BQC.

Mr. Nass asked Ms. Lister to describe her consulting and legislative experience. Ms. Lister said she had tracked legislation related to medical marijuana and learned the legislative process when she worked for Medical Marijuana Caregivers of Maine. She said she started her consulting business after she left Medical Marijuana Caregiver of Maine and she would visit towns that were looking into medical marijuana ordinances. Mr. Nass asked how many towns she visited. Ms. Lister said it was 8 or 9 towns.

Mr. Lee said he supported the Commission staff's recommendation and was inclined to place the entire penalty on the late-filing violation because the matters were linked. Mr. Nass said he was uncomfortable with \$500 penalties but these increased penalties are part of the 2015 citizen initiative. Mr. Lee agreed and said if Ms. Lister had more experience, they would be looking at a higher penalty. Ms. Matheson expressed concern about the amount of time between when Ms. Lister was advised to register and when she actually registered the BQC. Ms. Lowry raised the issue of proportionality and asked if the BQC had the funds to pay the penalty. Ms. Lister said the BQC had a negative balance and she was paying its bills out of her consulting firm's funds.

Mr. Lee made a motion that the preliminary penalty calculation for the late-filing be reduced to \$500 and that there be a finding of violation for a failure to register on time but there be no separate penalty assessment for that violation. Mr. Nass seconded the motion. Motion passed (5-0).

#### **8. Request for Waiver of Late-Filing Penalty – House Republican Majority Fund PAC**

Mr. Wayne said the House Republican Majority Fund PAC (the PAC) was required to file an independent expenditure report on October 23 for a \$6,000 mailing purchased on October 21. The PAC entered the expenditure on the October 21 but failed to complete the process and file the report. The report was filed on October 24.

Ms. Matheson asked if this was the first time this person had filed reports. Mr. Wayne said this is an active PAC and the report could have been filed on paper. Mr. Tardy, representing the PAC, said this person had been filing the reports throughout this election cycle. He said this is one of the many examples of the entry being made and not following through to click the button to actually file the report.

Ms. Matheson made a motion to accept the staff recommendation of assessing the entire preliminary penalty of \$120. Mr. Lee seconded the motion. Motion passed (5-0).

### **9. Request for Waiver of Late-Filing Penalty – Langley Leadership PAC**

Mr. Wayne said the Langley Leadership PAC (the PAC) is a leadership PAC formed by Sen. Brian Langley; Martha Currier is the treasurer for the PAC. The PAC was required to file the 11-Day Pre-General report on October 28 but the treasurer was busy with family obligations and forgot to file it until the next morning.

Martha Currier, treasurer for the PAC, appeared before the Commission. Ms. Currier said she has been the treasurer for several PACs, is familiar with the law and takes her treasurer responsibilities very seriously. She disclosed that she formerly worked for the Commission and currently works at the Attorney General's office.

Mr. Lee asked why she waited until the end of the filing period to file the report. Ms. Currier said it is her practice to file on the deadline for political reasons. Mr. Lee pointed out that it is a risk to wait until the deadline. Ms. Currier said this is the first time she has been late filing a report but acknowledged Mr. Lee's point.

Mr. Nass said that based on the lack of harm to the public, he would move to assess a \$120 penalty for a late-filing. Mr. Pattershall seconded the motion.

Ms. Matheson asked how Mr. Nass arrived at that penalty amount. Mr. Pattershall said the report was five hours late and there was no harm to the public. Mr. Lee said he needed a rationale for the proposed reduction. He could see a justification for a reduction because the report was filed only a few hours late on the early morning after the deadline. Ms. Matheson said Ms. Currier is an experienced treasurer.

Motion passed (3-2); Ms. Matheson and Mr. Lee opposed.

**10. Request for Waiver of Late-Filing Penalty – Leeds Municipal Democratic Committee**

Mr. Wayne said the Leeds Municipal Democratic Committee Chair made a commitment for a \$300 newspaper ad on October 11. The Committee is not usually politically active so the Chair did not know that the Committee needed to file an independent expenditure report for this expenditure. It was not until he received the independent expenditure reminder postcard from the Commission that he realized the Committee should have filed an independent expenditure report.

Ms. Matheson asked when the Commission staff found out about the late report. Mr. Wayne said staff found out when the Committee's Chair contacted the Commission. Mr. Lee said he has a hard time reducing a \$50.00 penalty. Mr. Pattershall and Ms. Lowry agreed. Mr. Lee said he believed it would take extraordinary circumstances for them to recommend a zero penalty.

Mr. Lee made a motion that the penalty for this late-filing be the statutory calculated \$50.41. Ms. Lowry seconded the motion. Motion passed (5-0).

**11. Request for Waiver of Late-Filing Penalty – York County Republican Committee**

Ms. Matheson said she believed this matter had been postponed until the January meeting. Mr. Lee asked if a motion to postpone had to be made in order for this matter to be removed from the agenda. Mr. Wayne said the Chair of the Committee had contacted the Commission to either postpone or participate via telephone because he could attend today but did want the opportunity to be present when this matter was heard. He said he had already told the Chair the matter would be postponed until their January meeting.

Mr. Lee made a motion to postpone this matter until the January 9<sup>th</sup> meeting. Ms. Lowry seconded the motion. Motion passed (5-0).

**12. Request for Waiver of Late-Filing Penalty – Androscoggin County Republican Committee**

Mr. Wayne said the Androscoggin County Republican Committee (the Committee) was one day late filing the 11-Day Pre-General campaign finance report due October 28, 2016. In his request for a waiver, Mr. Gibson, treasurer for the Committee, said he was home ill on the filing deadline and the medication he was taking caused him to sleep through the day, so he filed the report the next morning. Mr. Gibson had emailed the Commission staff to say he was unable to attend today's meeting and provided his contact numbers if the Commissioners had any questions. Mr. Wayne

said that, in light of not allowing the York County Republican Committee to participate via telephone, he was not sure the Commissioners would allow Mr. Gibson to participate via telephone. Ms. Matheson said this was the Committee's third violation this year. She asked if anyone else could have filed this report. Mr. Wayne said he did not believe anyone else on the Committee had e-filing login credentials.

Mr. Lee said he would prefer to have Mr. Gibson appear before them to present his argument for a waiver. Because this is the Committee's third violation, Mr. Lee said he did not want to consider reducing the penalty without Mr. Gibson appearing before them to provide more information about why he filed the report late.

Mr. Pattershall said that one of the reasons Mr. Gibson gave for the delay in filing the report was that he was waiting for some last minute expenditures to be reported. Mr. Pattershall asked whether the reporting period was already closed by the time the report was due, which would make this an invalid excuse. Mr. Wayne said that was correct. Mr. Nass said they could not be sure what Mr. Gibson understood about the reporting timeframe. Mr. Lee said this is one of the questions they could ask him if he were present.

Mr. Nass made a motion to postpone this matter until the January 9<sup>th</sup> meeting. Mr. Lee seconded the motion. Motion passed (5-0).

### **13. Legislation – Disclosure by Major Contributors**

Mr. Wayne said this proposal is a suggested improvement to campaign finance reporting laws. He said the system is working adequately but there is room for improvement in terms of providing disclosure to the public. He said the state party committees and groups that are active in Maine elections file regular reports with the Commission. Some of the largest donors to those organizations are out of state donors and are not required to file reports with the Commission. This proposal would largely impact out of state organizations that make contributions of \$100,000 or more and would require them to file a one-time report, per election year, identifying the form of their organizations, their purpose, their officers, and their top five donors. These reports would be posted on the Commission's website so that the public could easily access this information.

Mr. Nass said he thought this requirement could be challenged in court. Mr. Wayne said that was possible, but the proposal has a narrow scope to keep the burden on the donor in proportion to benefit to the public.

In response to a question raised by Mr. Nass, Ms. Lowry said the donors disclosed would have to be the top five donors to the national organization for any and all purposes. Mr. Wayne clarified that under existing law, if an organization solicits or receives more than \$5,000 specifically for a Maine campaign, it has to register and report as a BQC. Ms. Gardiner added that the goal of this proposal is to identify the top donors to organizations that are contributing more than \$100,000 to a Maine campaign even if those donors did not specifically designate that their donation be used in Maine.

Mr. Lee said a possible outcome may be to discover that the money came from various PACs and that may not provide any more information than the public has now. Ms. Gardiner agreed but said those PACs may be filing reports elsewhere, which could lead to disclosure of additional information. Mr. Lee asked what happens if the organization refuses to file this report. Ms. Gardiner said there could be litigation regarding enforcement, but the Commission sometimes has to deal with that under current law.

Ms. Matheson asked if there should be some sort of nexus to Maine for this to survive a court challenge. Ms. Gardiner referenced the language in the bill that authorizes the Commission, by rule, to permit major contributors to exclude sources of funds that are restricted to activities and purposes unrelated to elections. She said the rule could be more nuanced and specific. Ms. Gardiner noted that this language allows donors to be exempt from disclosure if the donor has specifically prohibited their donation from being used in Maine elections. Organizations also may choose to segregate funds for different campaigns. But if a donor gives unrestricted funds to an organization that gives more than \$100,000 in cash to spend on a Maine campaign, there is a nexus that supports disclosure. Mr. Wayne said many states are wrestling with this problem, but California had gone farther and required these major contributors to register as a PAC. He said this kind of disclosure is new territory and he could not rule out a possible constitutional challenge. Mr. Lee asked if there had been any litigation in California related to its law on this subject. Ms. Gardiner said she was not aware of litigation specific to California's major donor reporting requirement. She said this proposed legislation sets a high threshold for the reporting requirement and only requires disclosure. Courts have upheld disclosure provisions based on the established

governmental interest in informing voters about the organizations and individuals who are trying to influence elections. This proposal does not restrict what people can donate or spend; it only says if an organization spends more than \$100,000 in Maine, then it has to disclose. Ms. Matheson said she wanted to be responsive to the need for more disclosure but she has concerns about enacting something that would not withstand a constitutional challenge. Mr. Nass said he believed it was worth forwarding this to the Legislature for discussion. Mr. Lee said it does not infringe on anyone's right to express themselves with money; it only requires disclosure that they had made that contribution. Mr. Nass said they would be giving up their anonymity. Mr. Lee said if they could show significant governmental interest and a minimal or no intrusion on someone's First Amendment rights, this should withstand a challenge. Mr. Nass asked how the court viewed this argument in the NOM case. Ms. Gardiner said the Commission had established that NOM had been talking to donors about their Maine campaign in their fundraising solicitations. Mr. Nass asked why that mattered. Ms. Gardiner said funds that have been solicited specifically to influence an election in Maine would count in determining whether an organization had to register as a BQC. She said this proposal takes the disclosure issue one step further, but it only requires one report to be filed and does not require that an organization register with the Commission.

Ms. Matheson said she believed this proposal was a good start to address the perception about all the dark money being spent in Maine elections and to further the goal of transparency.

Mr. Lee said he would support this proposal. He said he did not find it to be an undue infringement on a person's First Amendment rights or the filing of a one-time report to be a deterrent to making these contributions. Mr. Nass said he did not know what the ramifications of this proposal would be, but he believed it was good to bring this to the Legislature. He said the Commission's job is to raise issues and present them to the Legislature for consideration. Ms. Matheson said she believed there was a benefit in providing the public with more information about these organizations. Ms. Matheson then raised a few technical drafting concerns about definitions, etc. in the proposed legislation.

Mr. Lee made a motion to support these proposed statutory amendments and to authorize Ms. Matheson to sit down with the Commission staff and go over any necessary technical drafting edits. Mr. Nass seconded the motion. Motion passed (5-0).



#### **14. Statistics on Maine Clean Election Act Program**

Ms. Matheson said she found the increase in participation interesting. Mr. Wayne said there was a 2011 court decision that removed matching funds from the Maine Clean Election Act and reduced participation in the program. The 2015 citizen initiative increased the amount of funds available and triggered higher participation in the program in 2016.

Mr. Wayne said the cost of the program went up to \$3.3 million in payments to candidates but some of that money will be returned and he believes the final amount will be closer to \$3 million. He said there had been some concern that the citizen initiative would triple the cost of the program because candidates would seek the maximum amounts but that did not happen.

Mr. Lee asked what was the total amount budgeted by the Legislature and what were the estimates on what the program would cost. Mr. Wayne said it was originally projected to cost approximately \$4.5 million. Mr. Lee said it ended up costing about two-thirds of the projected costs.

Ms. Matheson said this was a lot of work and asked if the third Candidate Registrar position would be filled next election cycle. Mr. Wayne said it would be. He attributed the success of this year to the two Candidate Registrars, who were diligent in ensuring candidates received the funds they were supposed to receive.

Ms. Matheson asked how this information helped the Commission staff. Mr. Wayne said it provided a basis for financial projections for the next election cycle. Mr. Nass asked if this would be presented to the Appropriations Committee. Mr. Wayne said it would. Ms. Matheson said it would be interesting to know how the candidates felt about the program. Mr. Wayne said a candidate survey had been done in the past and he was thinking of doing one this year.

Mr. Pattershall made a motion, seconded by Mr. Lee, to adjourn. The motion passed. The meeting adjourned at 1:44 p.m.

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