



Minutes of the November 30, 2022 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William Schneider, Esq., Chair; Dennis Marble; David Hastings, Esq. and Stacey Neumann, Esq.

Participating via Zoom: Sarah LeClaire, Esq.

Staff: Jonathan Wayne, Executive Director; and Jonathan R. Bolton, Assistant Attorney General
Commissioner Schneider convened the meeting at 9:00 a.m., which was livestreamed on YouTube.

1. Ratification of the Minutes of the September 28, 2022 and October 26, 2022 Meetings

Mr. Marble moved ratification of the September 28, 2022 minutes. Ms. Neumann seconded the motion. Motion passed 5-0.

Ms. LeClaire moved ratification of the October 26, 2022 minutes. Ms. Neumann seconded the motion. Motion passed 5-0.

2. Public Hearing on Rulemaking

A member of the Maine Senate Republican caucus staff, Shawn Roderick, commented on the proposed rules regarding the period for replacement candidates to collect Maine Clean Election Act qualifying contributions (QCs). He recommended a change to allow candidates to collect QCs upon registering with the Commission. Currently, replacement candidates cannot collect QCs until they are nominated at a local political caucus, which is a significant time constraint. Mr. Roderick offered to work on suggested language for the Commission.

3. Request for Independent Expenditure Determination: Bruce Poliquin for Congress

The Bruce Poliquin for Congress Committee requested a determination that the cost of a television ad prior to the election was not an Independent Expenditure (IE) in support of former Governor Paul LePage. For a few seconds, the ad showed Mr. LePage walking with Mr. Poliquin, but neither mentioned him by name nor his candidacy. The Commission staff recommended that the Commission determine the ad was not an IE.

Mr. Joshua Tardy, Esq. appeared on behalf of the campaign and agreed with the staff recommendation. He suggested a change going forward to allow staff to make IE determinations. If an appeal were requested, it would be considered by the Commission.

Mr. Marble moved the Commission find the television ad in this case was not an IE. Mr. Hastings seconded. The motion passed 5-0.

4. American Leadership Committee – Maine PAC

Mr. Wayne recapped the October 26, 2022 Commission meeting, including the determination that the American Leadership Committee-Maine PAC (ALC) had violated the disclaimer requirements because the PAC distributed communications without any top funders. The Commission also determined that an IE report was not filed on time. The Commission decided to delay any further enforcement action until the November meeting to provide the PAC with an opportunity to submit additional information.

Ms. Kim Pettengill, one the complainants, stated ALC had changed its disclosure statement, but it did not mention the Democratic Legislative Campaign Committee (DLCC). Also, the PAC's video ads continued to run on YouTube and Facebook for at least five days without an updated disclaimer.

Mr. Jonathan Berkon, Esq., representing ALC, stated they were instructed after the last meeting that the disclaimers in future communications should list the three sources that provided the highest amount of funding to the DLCC since the November 4, 2020 election. The PAC applied this disclaimer to all future communications without exception. The amended disclaimer was included in a November 1 mailing that was sent to all voters who received the previous mailings. With respect to digital ads, they took remedial steps through the different platforms to correct the disclaimer. Each platform has different rules and processes that affect the timing of when changes take effect. Mr. Berkon asked for a waiver of the penalty for the top three funder violation because of the PAC's remedial actions.

Ms. Neumann inquired about previously assessed fines. Mr. Wayne responded that he presents historical penalty information at Commission meetings based on the types of issues to be discussed. Complaints concerning the top three funder disclosure are rare. He did not have historical penalty information ready to share. Previously, the Commission has received criticism that its fines were not high enough. In response, election reform advocates organized a citizen's initiative in 2015 that increased penalties for campaign finance violations.

Mr. Schneider moved to assess a \$10,000 fine against ALC for failure to disclose the top 3 funders in their communications. Mr. Marble seconded. The motion passed 4-1 (Ms. LeClaire opposed).

Mr. Schneider moved to assess a fine of \$679.88 against ALC for their late filing of the IE report. Mr. Hastings seconded. The motion passed 5-0.

Due to a misunderstanding, Ms. LeClaire asked to change her vote on the top 3 funder issue. Mr. Hastings, who was on the prevailing side of that vote, sought reconsideration of that matter, which was approved.

Mr. Schneider moved to assess a \$10,000 fine against ALC for failure to disclose the top 3 funders in their communications. Mr. Hastings seconded. The motion passed 5-0.

5. Complaint: Contribution Reporting by Maine Families First PAC

Mr. Wayne described a complaint filed by Sara Salley considered at the October meeting regarding the reporting of contributions by Maine Families First PAC (MFF). On October 7, 2022, MFF filed an IE for an October 5, 2022 expenditure of \$999,245 for television advertising opposing Governor Janet Mills. Ms. Salley's concern was that as of September 30 there had been no contributions reported sizable enough to cover that expenditure, which suggested to her that a pledge from an existing donor that had not been reported.

Mr. Wayne described two declarations from Mr. Terry Schilling, which stated that Thomas Klingenstein was the PAC's only donor, MFF had not received a pledge or promise of his contribution before October 1, and Mr. Klingenstein contributed \$1,000,000 on October 3. On October 5, MFF placed the order for a television ad. The PAC but did not commit to pay for the ad until it had received Mr. Klingenstein's contribution on October 3.

Mr. Joseph Vanderhulst, Esq., representing MFF, provided a correction that Mr. Klingenstein's October 3 contribution was \$1,500,000, not \$1,000,000. The spending was committed on October 5, triggering a report due on October 7, which is when it was filed.

Mr. Schneider moved to suspend the investigation and take no further action on this matter. Mr. Marble seconded. The motion passed 5-0.

6. Proposed Legislation

The Commission members reviewed a proposal by staff for a bill to be submitted for the upcoming legislative session. The Commissioners directed staff to make changes to the legislation. Mr. Hastings expressed concern that the proposed changes regarding penalties collected by the

Commission would result in a fiscal note and could prevent the entire bill's final passage. He suggested that it should be considered as a stand-alone bill or folded into a budget bill by the Governor.

Mr. Schneider moved to empower Mr. Wayne to submit the legislation as amended on the behalf of the Commission. Mr. Marble seconded. The motion passed 5-0.

7. Request for Waiver of Late Filing Penalty: We the People PAC

Two IE reports made by We the People PAC were due on October 12 and 19, 2022, but were not filed until October 24. The preliminary penalties were \$5,000 and \$99.96, respectively. Mr. Wayne said that the reports were late due to two errors made in the filing of the report. The staff recommended reducing the \$5,000 penalty to \$1,000, and leaving the \$99.96 penalty as is.

Mr. Joshua Tardy, Esq. appeared on behalf of the PAC and stated the PAC agreed with the staff's recommendation. He stated PAC's treasurer was inexperienced, which was the reason for the errors.

Mr. Schneider moved to assess a \$1,000 penalty for the report that was 12 days late. Mr. Marble seconded. The motion passed 5-0.

Mr. Schneider moved to assess a \$99.96 penalty for the report that was 5 days late. Mr. Marble seconded. The motion passed 5-0.

8. Request for Waiver of Late Filing: Planned Parenthood Maine Action Fund

On August 24, 2022, Planned Parenthood Maine Action Fund made an independent expenditure of \$4,200 for campaign literature expressly advocating for Governor Janet Mills. The expenditure triggered an IE report due by September 9, 2022. The report was not filed until October 5. The preliminary penalty for the late filing is \$2,433.60.

Ms. Marni Maynard is the authorized agent for the PAC who was assigned to file campaign finance reports in Maine, New Hampshire and Vermont. She attempted to stay current on Maine's reporting requirements but was unaware of the report due on September 9, 2022. The report was filed on October 5, which was 26 days late. Ms. Maynard was an inexperienced filer who was sincerely trying to learn Maine's reporting procedures.

Mr. Schneider moved to reduce the penalty of \$2,433.60 to \$750. Mr. Hastings seconded. The motion passed 5-0.

9. Request for Waiver of Late Filing: Danielle Fienberg

State Senate candidate Danielle Fienberg was required to file an 11-Day Pre-General Report on October 28, 2022 but filed the report one day late. The preliminary penalty for the late filing is \$368.12. Mr. Wayne expressed that a substantially complete report could have been filed by the deadline to provide the public with access to the financial information. The staff recommendation was to make no waiver in this case.

Ms. Fienberg stated her campaign did its best to file the report on time. The campaign staffer who oversaw the social media expenditures was unavailable due to illness. Had they known filing an incomplete report would have been better than a late filing, they would have done that. Due to their inexperience, they were not aware of that.

Mr. Schneider moved to not reduce the penalty and assess a penalty of \$368.12. The motion failed due to lack of a second.

Mr. Marble moved to assess a penalty of \$300. Mr. Hastings seconded. The motion passed 5-0.

10. Request for Waiver of Late Filing: Stephen Hanrahan

Mr. Stephen Hanrahan was a first-time candidate who ran for House District 16 and was late filing a 24-hour report based on a \$2,353 expenditure to the Bangor Letter Shop on October 28, 2022. The report was not filed until November 6. In the thirteen days prior to an election, a report must be filed for contributions or expenditures of \$1,000 or more within 24 hours of the transaction. The Commission staff recommended a penalty reduction to \$300.

Mr. Hanrahan stated he and his wife were inexperienced filers and were confused by the filing requirements. He admitted he did something wrong. He said that in the decision for the Planned Parenthood PAC the Commission reduced the penalty by 70% of the initial fine, and an earlier waiver request resulted in a 30% reduction. He stated his campaign was financed by his retirement account and asked for a larger reduction. Mr. Hanrahan stated the Commission's literature is written by people who know exactly what is going on and are not easily interpreted by somebody that's not involved with the process. He was under the impression the 24-hour reporting could be done at any point during the 13-day window.

Mr. Schneider moved to reduce Mr. Hanrahan's penalty to \$300. Mr. Marble seconded. The motion passed 5-0.

11. Request for Waiver of Late Filing: David Thurston

Mr. David Thurston was a candidate for House District 78 and filed an 11-day Pre-General Report one day late. The preliminary penalty for the late filing was \$139.81. Ms. Lee Hughes, treasurer for Mr. Thurston's campaign requested a waiver.

Ms. Hughes stated she had a miscommunication with Candidate Registrar Lorrie Brann. She asked Ms. Brann to review the report to ensure data had been entered correctly. Ms. Brann didn't understand the expectation from Ms. Hughes was to file it on her behalf. Ms. Hughes was under the impression the report had been filed even though she had not personally filed it. The Commission staff recommended no reduction in the penalty.

Mr. Schneider moved to assess a penalty of \$139.82. Mr. Marble seconded. During their discussion, Ms. Neumann said Ms. Hughes followed the Commission's staff recommendation to call if concerned and file early, which she did and there was clearly a miscommunication. Ms. Neumann moved to amend the motion to reduce the penalty to \$100. Ms. LeClaire seconded. The motion passed 5-0.

12. Request for Waiver of Late Filing: Scott Gaiason

Mr. Scott Gaiason was a candidate for House District 97 and filed a 42-Day Pre-General Report on September 28, 2022. The staff found the report to be substantially non-compliant after Mr. Gaiason disclosed to Ms. Brann he had entered into an obligation to pay a political consulting firm, Frame Media, \$6,771. Based on this information, the Commission staff viewed the report as late because it was not substantially compliant. The preliminary penalty was \$135.43.

Mr. Gaiason stated it was his experience to report the expenditure when it is made. He said he had not received a bill, so he did not know the amount of the expenditure. He said that he had difficulty getting the information from Frame Media.

Mr. Schneider moved to assess a penalty of \$135.43. Mr. Marble seconded the motion. The motion passed 5-0.

Adjournment

Mr. Marble made a motion to adjourn. Ms. LeClaire seconded. The motion passed 4-0. The meeting adjourned at 12:23 p.m.

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