



Minutes of the September 30, 2020, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William A. Lee III, Esq., Chair; David R. Hastings, Esq.; Meri N. Lowry; Dennis R. Marble; and William J. Schneider, Esq.

Staff: Jonathan Wayne, Executive Director, and Phyllis Gardiner, Assistant Attorney General

Commissioner Lee convened the meeting at 9:10 a.m. The meeting was conducted by Zoom videoconferencing and livestreamed via YouTube. Mr. Lee said he was pleased to announce that, after two and half years, the Commission finally has five members and introduced the three new Commissioners: William Schneider, David Hastings and Dennis Marble.

The Commission considered the following items:

1. Ratification of Minutes of the June 24, August 11 and September 18, 2020 Meetings.

Mr. Lee said they would start with the September 18 meeting minutes because all of the Commissioners were present for that meeting. Mr. Schneider made a motion to adopt the Minutes as written. Mr. Marble seconded the motion. Motion passed 5-0.

Mr. Lee said it was his understanding that the three new Commissioners would be recusing themselves from consideration of the June 24 and August 11 Minutes because they were not present for those meetings. Mr. Hastings, Mr. Marble and Mr. Schneider confirmed they were recusing themselves. Ms. Lowry made a motion to adopt the June 24 Minutes as written. Mr. Lee seconded the motion. Motion passed 2-0; Mr. Hastings, Mr. Marble and Mr. Schneider abstained from voting. Mr. Lee noted that the motion may not be valid because there must be three confirming votes. Ms. Gardiner suggested that Mr. Hastings, Mr. Marble and Mr. Schneider were abstaining from voting on the Minutes and not recusing themselves. Mr. Lee asked the three Commissioners if they agreed with the suggestion; all three agreed. Ms. Lowry made a motion to adopt the August 11 Minutes. Mr. Lee seconded the motion but noted that he had sent an email to everyone suggesting a couple of minor changes to the Minutes and asked Mr. Wayne if the changes had been made. Mr.

Wayne said he believed they had been made. Motion passed 2-0; Mr. Hastings, Mr. Marble and Mr. Schneider abstained from voting.

2. Complaint – 2018 Facebook Ads – Hon. Sara Gideon

Ms. Lowry made a statement that she had chosen to recuse herself from this matter because she had contributed to Sara Gideon’s federal campaign, which according to statute, did not constitute the type of close relationship that required a recusal; however, she had also supported and continued to support Benjamin Grant’s campaign for a legislative seat in her district. Therefore, she was recusing herself from this matter. Ms. Lowry left the meeting and was not present while this matter was under consideration.

Mr. Wayne said the complaint was brought by Dr. Demi Kouzounas in January, but the Commission had not been able to consider this matter due to the vacancies on the Commission and the recusal of one of the Commissioners. Mr. Wayne said Dr. Kouzounas’ complaint raised two compliance issues: the completeness of Speaker Gideon’s leadership political action committee (PAC) campaign finance reports and whether some Facebook ads were unreported contributions to Speaker Gideon’s 2018 campaign. Mr. Wayne said Speaker Gideon’s response was that the credit card on file with Facebook failed and Facebook started to charge the other credit card on file, which belonged to the House Democratic Campaign Committee (HDCC). He said HDCC did report these expenditures to Facebook. Speaker Gideon said the Facebook ads in question were not to support her 2018 campaign and did not contain any information about the election or Speaker Gideon as a candidate. The ads were meant to support her work as Speaker of the House by providing legislative updates, official statements and press releases.

Colton Gross, Esq., on behalf of Dr. Kouzounas, and Dr. Kouzounas appeared before the Commission. Dr. Kouzounas said she was the current Chair of the Maine Republican Party and had, in the past, been a candidate for the Legislature. Dr. Kouzounas alleged the Facebook ads were a major statewide ad campaign meant to smear Senator Collins, done just prior to Speaker Gideon announcement of her intention to run for the US Senate. She said the Gideon Leadership PAC had a \$3,200 discrepancy in its account and expressed concern about the precedent that would be set if the Maine Ethics Commission allowed this type of discrepancy to go unaddressed and the impact this would have on future elections.

Mr. Hastings asked if Dr. Kouzounas was stating that neither the Gideon Leadership PAC nor the HDCC reported the payment for the Facebook ads and that the \$3,200 discrepancy in the Gideon Leadership PAC's campaign finance reports was an unreported expenditure for those ads. Dr. Kouzounas said she believed it was. Mr. Hastings asked if Dr. Kouzounas was questioning the finding of the Commission staff that the Facebook ads were accounted for by the two PACs and they had matched the payments and bills. Dr. Kouzounas said she was going by the disclosure on the ads and she thought it was not clear which PAC actually paid for the ads.

Mr. Lee asked Dr. Kouzounas if she would agree that, between the two PACs and the expenditures reported in their campaign finance reports, the total sum of the Facebook ads appeared accounted for. Dr. Kouzounas said it appeared the ads had one disclosure, but another entity had paid for the ad. Mr. Lee asked if Dr. Kouzounas' complaint was, not about the amount paid for the ad, but who paid for the ads. Dr. Kouzounas said that was correct.

Mr. Hastings asked what race Dr. Kouzounas believed these ads were intended to influence. Dr. Kouzounas said she believed it was the U.S. Senate race because Senator Collins was in one of the ads. Mr. Lee said he was under the impression from the complaint that these ads were meant to influence Speaker Gideon's re-election to the Maine House. He asked if Dr. Kouzounas believed the ads were meant to influence both elections. Dr. Kouzounas said she did. Mr. Lee asked if, except for the ad with the video, Dr. Kouzounas believed the ads were appropriate to what a party leader or Speaker of the House would publish. Dr. Kouzounas said, chronologically, the ads went from Speaker Gideon's accomplishments, to her family, to including a video against Senator Collins, which showed up just before Speaker Gideon announced her run for the US Senate. Mr. Lee asked if she would agree that none of the ads had any express advocacy. Dr. Kouzounas said they appeared to be a preparation for her announcement to run for U.S. Senate. Mr. Lee asked if the last ad were not there, if Dr. Kouzounas would have filed this complaint. Dr. Kouzounas said she believed the last two or three ads were a lead up to Speaker Gideon's announcement to run for U.S. Senate.

Mr. Lee said another issue raised was that the Gideon Leadership PAC campaign account had a discrepancy of over \$3,000 that had to be adjusted in the PAC's final campaign finance report. Mr. Lee said this was a PAC that had 455 contributions totaling \$272,289 over a six-year period, which made this a just over 1% discrepancy. Dr. Kouzounas said if the Commission looked at just the

reports for 2019, the total of the PAC's expenditure was around \$42,000 and that would make this a 7% discrepancy. Mr. Lee asked if she wanted this investigated too. Dr. Kouzounas said she did and wanted to be informed of the outcome so she could let her candidates and committees know what the acceptable level of financial discrepancy was.

Mr. Gross said, based on the statutory standard for initiating an investigation, he suggested the Commission ought to err on the side of caution and move forward with an investigation, especially in light of the significant discrepancies raised today.

Benjamin Grant, Esq., appeared before the Commission on behalf of Speaker Gideon and the Gideon Leadership PAC. Mr. Grant said nothing had been said today about whether any of these ads met the definition for an expenditure (“[a] purchase [or] payment...made for the purpose of influencing the nomination or election of any person to state, county or municipal office”). He said it was their position that the payments for these ads were not expenditures within the definition of the law and therefore, the ads were not subject to disclosure requirements. Mr. Grant said this type of communication was commonly done by the leadership of the party caucuses. The content of the ads did not contain any of the words designed to influence an election and the ads continued after the election. Mr. Grant said the threshold issue was whether the ads were intended to influence an election. Since they clearly were not, a disclosure statement was not required. He said based on this information, there was no need for an investigation.

Mr. Lee said there were several issues the Commission had to review: whether or not the Facebook ads fit within the definition of an expenditure, which required that their express purpose was the election of particular candidate; who paid for the Facebook ads; and the adjustment that was made to the PAC account in order for the PAC to close.

Mr. Grant said there had not been any explanation made today of how these ads fit the definition of an expenditure which would require the disclosure statement. Mr. Lee clarified that Mr. Grant was saying that even if there was a wrong disclaimer on the ad, that would not be a violation unless it could be shown that the ad fit within the statutory definition of an expenditure. Regarding the staff adjustment, Mr. Grant said the adjustment was an action taken by the Commission staff as part of the PAC shutting itself down, which the Commission staff had done in many other cases.

Mr. Hastings asked if these expenditures were intended to influence a U.S. Senate race or election, would that come under the Commission's purview or be a violation the campaign finance law it

enforces. Mr. Grant said they did not concede the ads were an expenditure to influence any election including a federal election, but if they were intended to influence a federal election, the Commission would not have jurisdiction.

In response to a question from Mr. Lee, Ms. Gardiner said it was correct that the Commission did not have jurisdiction over the campaign finance reporting in a U.S. Senate race; however, it did have jurisdiction over the campaign finance reporting of PAC registered with the Commission. She said she thought Dr. Kouzounas had indicated that Speaker Gideon was not a candidate for the U.S. Senate at the time the ads were run. She said she did not see how, from a legal perspective, it could be considered an expenditure to influence the nomination or election of a candidate who had not declared her candidacy unless the argument being made was that she had not registered as soon as she ought to have. Even if that were the case, it would still be in the purview of the Federal Election Commission (FEC), not this Commission. Mr. Lee asked if it would be a violation under state law if Speaker Gideon had announced she was running for U.S. Senate and these Facebook ads appeared in an attempt to influence the election. Ms. Gardiner said she would like to think about that while the Commission continued asking questions. Mr. Wayne said it would not violate any state laws for a state PAC to spend money to support a federal election, but that PAC would have to be careful to be in compliance with federal election laws. Mr. Wayne said he believed the primary point of Dr. Kouzounas' complaint was that most of the ads were intended to influence Speaker Gideon's re-election and that there were several violations of campaign finance law connected with those expenditures, but the Commission staff did not agree with that position.

Mr. Schneider said he understood how most of this could have happened but expressed concern about the accounting discrepancy. Mr. Grant said if the Commission staff had concerns, it would have contacted the PAC to request additional information or action. He said people were supposed to be able to rely on the Commission's guidance and suggested that, if there was a problem with how the Commission staff processed adjustments to terminate a PAC, the Commission should provide better guidance.

Mr. Lee asked if the Commission was bound to the parameters of the complaint, as filed. Ms. Gardiner said the Commission can investigate a matter on its own initiative, whether it was prompted by a complaint or by its own review. Mr. Lee asked Mr. Wayne why the Commission staff had not followed-up on the accounting discrepancy. Mr. Wayne said there was no legal

requirement for PACs to have a zero balance when they terminate but the Commission staff viewed that as best practice. He said, over the course of six years, the PAC had had several different treasurers. The current treasurer reviewed all of the PACs approximately 740 transactions in an attempt to identify the discrepancy and then contacted the Commission staff about it. The Commission staff decided to make a staff adjustment to facilitate the closure of the PAC. He said the Commission staff had done staff adjustments on nine occasions for committees in both parties. He said a PAC that had been in existence for six years, had a lot of transactions to report and a discrepancy could build up. Mr. Schneider said he understood the situation but was still troubled by the accounting discrepancy. Mr. Wayne said the Commission staff was open to suggestions for changing this process in the future.

Mr. Lee followed up with Ms. Gardiner on his earlier question about a possible violation under state law if Speaker Gideon had announced she was running for U.S. Senate and these Facebook ads appeared in an attempt to influence the election. Ms. Gardiner said she agreed with Mr. Wayne that it was not a violation for the PAC to spend money in that manner and the reporting of expenditures to influence a U.S. Senate race would be a matter under the FEC's jurisdiction. Mr. Lee asked about the language in section 1014 and in particular the word "election" and if that was related to state elections only. Ms. Gardiner said that was true because the Commission does not have jurisdiction over federal candidate elections.

Mr. Lee said the question before the Commission was whether there were sufficient grounds to believe that the Facebook ads were made for the purpose of influencing the election of a candidate to state, county, or municipal office. If the Commission were to find there was not sufficient evidence to support that claim, there was no need to get into the issue of the disclaimer statement because there would not have been an expenditure to influence an election.

Mr. Marble said the time in question when the ads ran was when Speaker Gideon was running for re-election for her House seat, before Speaker Gideon had declared her candidacy for the U.S. Senate. The Commission's jurisdiction did not extend to federal elections. For those reasons, he did not see support for the complainant's position that the ads were to influence the U.S. Senate race based on the timing of the ads.

Mr. Hastings said the bulk of the Facebook ads did not appear to be advocating for anyone's election but were predominantly focused on building recognition for the Speaker's Office and its

business. Even assuming that the ad that mentioned Senator Collins was for the purpose of influencing that election, the matter was outside the Commission's jurisdiction. He did not find that the payments for the Facebook ads met the definition of expenditure in the statute because they were not intended to influence Speaker Gideon's House race or any other race.

Mr. Schneider said the ads were typical legislative leadership communications and did not advocate for anyone's election. Legislative leaders frequently made those kinds of communications.

Mr. Lee made a motion that while the expenditures made by the Gideon Leadership PAC and the House Democratic Campaign Committee PAC for the Facebook ads exceeded \$400, they were not made for the purpose of influencing the election of a candidate to a state, county, or municipal office. Mr. Schneider seconded the motion. Motion passed 4-0; Ms. Lowry had recused herself from consideration of this matter and was not present during the discussion.

Mr. Lee said, as a result of the vote on the motion, the Commission would not undertake an investigation of the complaint that there were expenditures exceeding \$400 for the purpose of influencing a local, county, or state election.

Mr. Lee said he believed they should discuss the handling of the accounting discrepancy for the Gideon Leadership PAC. He said he was not interested in the Commission staff spending an inordinate amount of time trying to figure out the discrepancy, but it would be helpful if someone in the Gideon Leadership PAC could provide an explanation for the cause of discrepancy. Mr. Schneider, Mr. Marble and Mr. Hastings said they supported this.

Mr. Marble said it appeared the staff adjustment was a well-intentioned, neutral attempt to be reasonable regarding a discrepancy of around 1%. He said a review of the staff's internal process should be done.

Mr. Hastings said, like Mr. Schneider, he was somewhat alarmed by the amount of the discrepancy. However, when he considered that a discrepancy of a similar proportion for a publicly funded House or Senate candidate would be in the range of \$50 to \$150, he probably would not be as concerned. He was bothered by the amount of the PAC's discrepancy, but it was not out of scale for the kind of innocent mistakes that a layperson serving as a PAC treasurer would make. Mr. Hastings said he was not suggesting that an investigation or audit be undertaken over that amount.

Mr. Grant reiterated his prior comments that an internal review of the staff adjustment process would be helpful, but it should be done prospectively. He said he was unsure if or how such a review could be accomplished by the Gideon Leadership PAC because it had been shut down and therefore did not have any staff or assets.

Mr. Lee asked if it would be possible for the Commission staff to have a discussion with a representative for the PAC to ask that they initiate a review of their account and the reports filed. Mr. Wayne said the Commission staff could initiate a discussion, but he was unclear how far the conversation would go in light of Mr. Grant's response. He said if the Gideon Leadership PAC signed an authorization to allow the staff to request its bank account statements, the Commission staff could review the bank statements in conjunction with the PAC campaign finance reports in an effort to find the source of the discrepancy. Mr. Lee asked Mr. Grant if his client would sign the release for the Commission staff to obtain these records. Mr. Grant suggested this approach should be applied to all the committees that had received a staff adjustment but agreed to follow-up with his client about this request.

Mr. Marble said he supported this but believed it was more important to review suggestions from the Commission staff for changes to this practice in order to prevent this type of situation in the future. Mr. Hastings said he did not have a problem with the staff review but was in favor of a more general look at the process. Mr. Schneider agreed with Mr. Hastings that this would be a good first step.

Mr. Wayne asked for clarification about whether the Commission was asking the Commission staff to reach out to all of the other PACs about their discrepancies or if they were seeking a policy review and recommendations. He said, depending on what the Commission was seeking, it could be very time consuming and the Commission staff was going to be very busy with post-election reviews.

Ms. Gardiner said she believed Mr. Wayne had pointed out an important distinction. If the Commission was reviewing a staff policy and was just providing direction to staff, she said it was not necessary to do this by a motion, but that it would make a very clear determination if they did. A review of the PACs in recent past that have had this kind of staff adjustment performed may be useful information for the Commission in determining a policy going forward. However, if the Commission were to seek bank records and undertake an audit-like review of particular PACs, the

Commission should have the staff identify the PACs and vote to undertake a review of those PACs. She said they would want to give the PACs notice and an opportunity respond.

Mr. Lee said perhaps they would ask the Commission staff to review the adjustment in this case and any others made within the last year. Mr. Wayne said there had been an increase in these adjustments within the last year because of the follow-up the Commission staff had been doing after each report filing. Michael Dunn, Political Committee and Lobbyist Registrar, explained the balance review process and why it had resulted in an increase of staff adjustments. Mr. Lee asked how many adjustments had been made. Mr. Dunn estimated there had been 10-15 adjustments made. Mr. Lee asked if it would be feasible to ask the staff to conduct a review of adjustments made starting January 1, 2019 to the present and to report back to them with recommendations within 90 days. Mr. Wayne said it was.

Mr. Lee made a motion to have the Commission staff review PACs from January 1, 2019 on, that had requested an adjustment to resolve a discrepancy between their balance and what in fact they had in funds, and report back to the Commission with results and recommendations in 90 days. Mr. Hastings seconded the motion. Motion passed 4-0; Ms. Lowry had recused herself from consideration of the complaint brought by Dr. Kouzounas and did not participate in the discussion regarding staff adjustments to reporting discrepancies.

Mr. Dunn asked for clarification if they were seeking a policy review or to find the source of the discrepancies. Mr. Lee said the Commission staff should use their discretion; they could make a preliminary report when they were ready or ask Commission for further direction as needed.

3. Complaint against Hon. Harold “Trey” Stewart

Mr. Wayne said this complaint was made by Rommy Haines against Rep. Stewart and the Star City PAC. He said Mr. Haines would not be participating in the meeting. He said there were four expenditures made by Rep. Stewart that were reimbursed to him by the Star City PAC, which was his leadership PAC. Mr. Haines alleged the reimbursements were a violation of section 1054-B, which prohibited a PAC to compensate a legislator for any work done for the PAC or pay any money to the legislator’s business. The PAC may reimburse a legislator for expenses incurred in the proper performance of the duties of the legislator and associated travel expenses related to work for the PAC. The statute does allow the Commission to determine whether or not there was personal enrichment. The four reimbursed expenditures were for clothing and tires, which Mr.

Haines believed were a personal enrichment for Rep. Stewart. Rep. Stewart said the clothing purchases were related to his duties as a legislator and he travels a great deal as a legislator.

Mr. Lee noted the Commission staff had not made any recommendation on this complaint. He asked Mr. Wayne if the recently received documentation regarding the purchases enabled the Commission staff to make a recommendation on this matter. Mr. Wayne said he believed they still needed more information, gathered during the course of the meeting, to make a decision on whether or not to conduct further investigation. He said the law was passed in 2017 because the public was concerned by the way some legislators were using their leadership PACs and gave the Commission the authority to enforce it. He said these expenditures were not regular expenses that the Commission staff sees associated with leadership PACs but that did not mean they did not fit into the allowable categories. He said the Commission had the discretion to interpret the law and apply it to these facts.

Joshua Tardy, Esq., appeared before the Commission on behalf of Rep. Stewart. He said Star City PAC's reporting was complete and accurate. He said Rep. Stewart asserted the expenditures were related to the proper performance of his duties as a volunteer to the PAC. Mr. Tardy said the expenses were reasonable and, at no time, was Rep. Stewart personally enriched. Mr. Tardy said the political duties of someone in leadership, or running for leadership, were extraordinarily intensive. He said Rep. Stewart had not maintained a travel log to track the mileage related to his leadership duties but had reviewed his political calendar in order to provide a conservative estimate of the miles incurred during the dates in question. Mr. Tardy said legislators involved in recruiting go all over the state and Rep. Stewart had not sought reimbursement for his mileage. Mr. Tardy said the fact that Mr. Haines was not present at the meeting did not surprise him because Mr. Haines's objective had been accomplished simply by filing the complaint. The Maine Democratic Party ran opposition ads against Rep. Stewart referring to the allegations of campaign finance violations.

Mr. Lee said the documents on Rep. Stewart's mileage were not very clear, for example, one listing was travel to Gorham but did not list where he had started. Mr. Tardy said that, without an actual travel log, this was a best guess estimate on the number of miles incurred. Rep. Stewart said it was more than likely he was traveling to and from Augusta for the trip Mr. Lee referenced.

Ms. Lowry said what she saw was someone who had gone above and beyond in his commitment to the work he was doing as a legislator and as a leader of his caucus. She said she did not believe there was anything here to discuss and that this did not rise to the level necessary to conduct an investigation.

Mr. Schneider asked for confirmation that Rep. Stewart had not sought reimbursement for his mileage from his PAC. Mr. Tardy and Rep. Stewart confirmed he had not sought reimbursement for the bulk of his travel.

Mr. Hastings said he agreed with Commissioner Lowry on this matter. Mr. Marble said he thought the claims were honest and modest. Mr. Schneider said he agreed with the other Commissioners.

Mr. Lee made a motion to conduct no further investigation as there were insufficient grounds. Mr. Marble seconded the motion. Motion passed 5-0.

4. Complaint against Annalee Rosenblatt and Dan Warren

Mr. Wayne said this complaint was filed by Rachel Hendrickson, Chair of the Scarborough Town Democratic Committee and was related to the race in House District 29. In May, Dan Warren mailed a letter to Democrats in the district to encourage them to run as a write-in candidate against the incumbent, Representative Shawn Babine, who was seeking re-election. In the letter, Mr. Warren provided the reasons why he did not support Rep. Babine and believed him to be unfit for office. Mr. Warren had served as treasurer for the Republican candidate in this race, Annalee Rosenblatt. The Scarborough Town Democratic Committee believed that, based on Ms. Rosenblatt's campaign finance report, Ms. Rosenblatt had paid the postage for Mr. Warren's letter and that there should have been a disclosure by Ms. Rosenblatt on the letter. Mr. Warren's response was that he had initially supported Ms. Rosenblatt but ultimately decided to try to find another Democrat to run for this office and he resigned as Ms. Rosenblatt's treasurer. He denied Ms. Rosenblatt had any involvement in the letter. Ms. Rosenblatt denied any knowledge of the letter.

Rachel Hendrickson, Chair of the Scarborough Town Democratic Committee, appeared before the Commission. Ms. Hendrickson said Mr. Warren had put out a press release announcing Ms. Rosenblatt's candidacy; announced on Facebook that he would be working for her campaign; and became the treasurer for her campaign. She said on April 25th, Mr. Warren sent out an email announcing he was stepping back/suspending himself from Ms. Rosenblatt's campaign, but he was

still officially her treasurer and an agent of her campaign until May 15th. She said the letter Mr. Warren mailed was express advocacy because it accused Rep. Babine of being unfit for office, attacked Rep. Babine's character and, by innuendo, accused him of crimes.

Mr. Lee asked whether a reasonable interpretation of the language of the letter would be that it was a request for a replacement candidate rather than advocating against Rep. Babine. Ms. Hendrickson said the Commission's rule indicated that the entire context of the communication should be considered. She said the letter was a pre-text for all of Mr. Warren's other activities to oppose Rep. Babine. She said he did not take the one option he should have taken, which was to contact the Scarborough Democratic committee to voice his concerns and request a replacement.

Ms. Lowry asked if Ms. Hendrickson believed Mr. Warren sent the letter to ensure Ms. Rosenblatt's election. Ms. Hendrickson said she believed he sent the letter to defeat Rep. Babine.

Mr. Hastings asked if Ms. Hendrickson believed Ms. Rosenblatt, in spite of her denial, was responsible for the letter simply because Mr. Warren was still officially her treasurer at the time the letter mailed. Ms. Hendrickson said Ms. Rosenblatt, as the head of her campaign, was responsible for her campaign and any activities associated with it.

In response to a question from Mr. Marble regarding Mr. Warren's party affiliation, Ms.

Hendrickson said he was a registered Democrat but had not been involved in any party activities.

Mr. Marble asked whether Ms. Hendrickson may have believed that Mr. Warren had resigned as her treasurer despite the fact that she had not informed the Commission of that. Ms. Hendrickson said after their meeting, Ms. Rosenblatt may have thought Mr. Warren had resigned, but Mr. Warren was a lawyer and would know that the words "suspend" and "resign" had different meanings and suspending his role as treasure was not the same as resigning.

Joshua Tardy, Esq., appeared before the Commission on behalf of Annalee Rosenblatt. He said they concurred with the Commission staff's summary and legal analysis. He said the evidence was clear, by Mr. Warren's actions, that he was no longer a part of Ms. Rosenblatt's campaign after their meeting.

Dan Warren appeared before the Commission. He said it was clear at his meeting with Ms. Rosenblatt that he was no longer her treasurer, but she did not remove him until she found a replacement. He said he had approached leaders of the Democratic party to request their assistance

in finding a suitable replacement candidate for Rep. Babine, but he did not obtain the result he wanted. It was at that point that he decided to write a letter to Scarborough Democrats asking for someone to step forward as a replacement candidate. Ms. Rosenblatt did not know anything about the letter, and he did not see any reason to inform her because he had resigned as her treasurer.

Mr. Hastings asked Mr. Warren what other reasonable interpretation of his letter there was other than expressly advocating against Rep. Babine. Mr. Warren said it would not have been sufficient to simply send a letter asking someone to come forward to replace Rep. Babine without providing the reasons why he thought Rep. Babine should be replaced. His goal was to find someone with good values to run as a Democrat.

Mr. Lee asked why Mr. Warren used the word suspend, which implies something temporary, instead of resign in his email to Ms. Rosenblatt. Mr. Warren said he did that out of courtesy to Ms. Rosenblatt, but he had made it clear to Ms. Rosenblatt when they met that he was finished as her treasurer. In emails he sent to other people, he used the word suspend to allow Ms. Rosenblatt to make the announcement of his resignation herself.

In response to a question from Mr. Lee, Ms. Rosenblatt said it was clear to her when she and Mr. Warren met that he would no longer be her treasurer and that he was looking for someone to defeat Rep. Babine. She said it took some time to find a replacement treasurer, but she had assumed he was done after their meeting.

Mr. Marble said he had a hard time interpreting the letter as something other than express advocacy to defeat Rep. Babine. However, he did not hear or see any evidence to support the claim that Ms. Rosenblatt or her campaign were aware of Mr. Warren's letter. Mr. Schneider agreed and said it was clear to him that Ms. Rosenblatt and Mr. Warren understood that he had resigned as her treasurer and that Mr. Warren paid for the letter with his own funds. Mr. Schneider recommended no further action be taken on this matter.

Mr. Lee said he was inclined to not conduct further investigation into the complaints against Ms. Rosenblatt or Mr. Warren. He said the letter was certainly not favorable towards Rep. Babine, but the standard was whether there was a reasonable interpretation of the letter other than as an appeal expressly advocating for or against a candidate. He said there was enough evidence to support the interpretation of the letter as an appeal for someone to oppose Rep. Babine. There was also sufficient evidence that Ms. Rosenblatt was unaware of the letter Mr. Warren sent out.

Mr. Hastings agreed and said he did not think there were grounds to support an investigation into the complaints against Ms. Rosenblatt or Mr. Warren. The only tenuous connection to Ms. Rosenblatt's campaign was the \$127 expenditure for a letter sent by Dan Warren but it was clear that referred to a different letter and not the one that was the subject of these complaints. Mr. Hastings also thought it was reasonable to interpret the letter as an appeal to find someone to challenge Rep. Babine and not an appeal to vote against him.

Ms. Lowry said she also supported no further investigation of Ms. Rosenblatt or Mr. Warren.

Mr. Lee made a motion to find insufficient grounds to authorize an investigation of the complaint against Ms. Rosenblatt. Mr. Schneider seconded the motion. Motion passed 5-0.

Ms. Lowry made a motion to find insufficient grounds to authorize an investigation of the complaint against Mr. Warren. Mr. Schneider seconded the motion. Motion passed 4-1; Mr. Marble opposed.

5. Complaint: Telephone Calls and Text Messages in State Senate, District 13

Mr. Wayne said this complaint was filed by the Lincoln County Democratic Committee. The complaint related to telephone calls to voters in Senate District 13 purported to be a survey but several questions seemed intended to portray Representative Chloe Maxmin, the Democrat running for this seat, in a negative light and to make a positive statement about Senator Dana Dow, the incumbent Republican Senator, who was running for re-election. In addition, some voters had received text messages with a hyperlink that directed them to a series of pages on the SurveyMonkey website that asked the same questions. The only identifier in the telephone calls and website was Public Opinion Research but the Commission staff had been unable to find any information about this entity. He said there were a lot of unknown facts: the total cost; whether the people who made the calls were volunteers or paid employees; whether the SurveyMonkey page was a paid account or free; text message fees; etc. The Commission staff agreed with the parties requesting the investigation that there were sufficient grounds to believe a violation may have occurred such as: no statement about who paid for the calls; possible financial activity that was not reported; possible late PAC registration; and the possibility that this was a push poll. He said the Commission had an important role in enforcing disclosure statements to ensure the public knew who made the communications.

Chris Johnson, Chair of the Lincoln County Democrat Committee, appeared before the Commission. He said he became aware of this matter when Rep. Maxmin's campaign contacted the Committee. Mr. Johnson said it was important for voters to know the identity of those responsible for the polls in order to judge for themselves the credibility of the information in the poll.

Canyon Woodward, appearing on behalf of Rep. Maxmin's campaign, said they agreed with the Commission staff's recommendation to initiate an investigation. He said the Commission staff had stated the poll in question may have met the push poll criteria in sections 1, 2 and 5 of section 1014-B, and that further investigation would be necessary to make a determination on section 3, but the staff was unsure if the criteria in section 4 had been met. Mr. Woodward said the criteria in section 4 had been met because the statement in the push poll about Rep. Maxmin was obviously untrue. Mr. Woodward said the statement in the poll described Rep. Maxmin as being "in lock step with radical liberals who want to bring burdensome California and New York policies to Maine." Mr. Woodward said during her time in the legislature, Rep. Maxmin had sponsored a number of bills and none of them were copies of legislation from California or any other state. He said her legislation was based on the needs of her district, which was why she had bipartisan support. He said when copycat California legislation on the red flag gun control issue was introduced, Rep. Maxmin voted against it after she heard overwhelming opposition from her constituents and did her own research on the bill.

Mr. Johnson said he was aware that this poll, or a similar poll, had been conducted in at least six other Senate districts. He said he believed it was urgent to resolve this matter as soon as possible so the public would know who was conducting this poll because early voting had begun.

Mr. Schneider said he believed an investigation should be conducted because this was clearly illegal or improper activity, but he was unsure the Commission would be able to resolve this prior to the election. Ms. Lowry agreed there was sufficient evidence to initiate an investigation. Mr. Marble also agreed. Mr. Hasting agreed and said he shared Mr. Schneider's concern about how quickly the Commission staff could investigate this matter without further information.

Mr. Lee made a motion to find there were sufficient grounds to conduct an investigation and that an investigation be conducted as recommended on page 11 of the Commission staff report. Mr. Marble seconded the motion. Motion passed 5-0.

6. Request for Waiver of Late-Filing Penalty – Don't Tread on Maine PAC

Mr. Lee noted that this matter had been withdrawn because the PAC paid the penalty.

Adjournment

Ms. Lowry made a motion, seconded by Mr. Lee, to adjourn. The motion passed. The meeting adjourned at 2:07 p.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director