



To: Commissioners
From: Michael J. Dunn, Esq., Political Committee Registrar
Date: September 21, 2020
Re: Request for Waiver of Late-Filing Penalty by the Don't Tread on Maine PAC

During election years, political action committees registered with the Commission must file a report 42 days after the primary election. The Don't Tread on Maine PAC (the "PAC") was required to file its 42-Day Post-Primary report by 11:59 p.m. on August 25, 2020. The report was filed two days late on August 27, 2020. ETH – 5-7. On August 28th, Commission staff made a preliminary determination that the report was filed late and notified the PAC that the preliminary penalty was \$54. ETH 2-4. On September 9th, the PAC submitted a request for waiver of the preliminary penalty. ETH – 1.

LEGAL REQUIREMENTS

Reporting requirements. PACs are required to file campaign finance reports according to a schedule set in statute. 21-A M.R.S. § 1059(2). ETH – 9. According to this schedule, the PAC was required to file the 2020 42-Day Post-Primary campaign finance report by August 25, 2020. The time period of the report was July 1, 2020 through August 18, 2020.

Late-filing procedures. If a PAC is late in filing a campaign finance report, the amount of the preliminary penalty is set by a formula which takes the total contributions or expenditures for the report period (whichever is greater), multiplies that by the number of days the report was late, and then takes a percentage (2% for a first violation) of that value as the preliminary penalty. 21-A M.R.S. § 1062-A(3). ETH – 10.

Waiver Request. The Commission may waive the penalty in whole or in part if the penalty "is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure." 21-A M.R.S. § 1062-A(2). ETH – 10. The Commission may also waive the penalty if it determines the failure to file a timely report was due to mitigating circumstances: (1) a valid emergency of the committee treasurer determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the

penalty in whole or in part; (2) an error by the commission staff; or (3) other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. Id. ETH –10.

DISCUSSION AND STAFF RECOMMENDATION

When a PAC or other political committee registers with the Commission, each officer or authorized agent receives an email from the Commission’s e-filing system containing a user name and a link to establish a password for filing campaign finance reports. Similarly, when a PAC amends its registration to add a new officer, the Commission’s online reporting system sends an automated email with the new officer’s login credentials. These emails are sent in the name of ethics@maine.gov, even though they are generated by the Commission’s IT vendor. The officers’ email software sometimes sweeps these automated emails into a spam or junk folder. The Commission’s Assistant, Lorrie Brann, routinely sends follow-up emails to the PAC from her own email account to confirm that the e-filing system has sent the user name and password link to the new officer or authorized agent.

On July 27, 2020, the Commission Assistant, Lorrie Brann, received notice from the PAC’s principal officer, State Rep. John Andrews, that the PAC wished to replace its treasurer with Mr. Dylan Oliver. She amended the registration in the Commission’s e-filing system, which resulted in the e-filing system sending Mr. Oliver an email containing his user name and a link for his password. At 3:02 p.m. on July 27, Commission Assistant Lorrie Brann emailed Rep. Andrews to confirm that she had amended the registration which would result in an email to Mr. Oliver containing the user name and password link. She encouraged the PAC to contact the Commission staff if Mr. Oliver had any difficulty logging into the Commission’s e-filing system.

Leading up to the August 25 campaign finance deadline, the Commission’s e-filing system and staff sent their customary reminders of the deadline. On the evening of the filing deadline (10:28 p.m. on August 25), Mr. Oliver sent an email to Commission staff requesting his login information. Commission staff saw the email the following morning (around 8:27 a.m. on Aug. 26) and had the e-filing system re-send Mr. Oliver his login credentials. The PAC filed the report

the following day, on August 27, 2020, which was two days late. Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty totals \$54.00, calculated as follows:

Report Name	Activity Amount	Due Date	Days Late	Penalty Rate	Penalty
42-Day Post-Primary Report	\$1,350	08/25/2020	2	2%	\$54.00

ETH – 2-4. The PAC requests a waiver of the \$54.00 preliminary penalty because Mr. Oliver is a new treasurer with no campaign finance reporting experience. The PAC also contends that Mr. Oliver attempted to contact Commission staff before the filing deadline to obtain his credentials and only realized that the system’s automated email went to his spam folder after the deadline had passed. ETH – 1.

The Commission staff accepts that Mr. Oliver is a new treasurer and that this report is the first campaign finance report that he has had to file. The Commission staff does not agree with the PAC that Mr. Oliver’s attempt to obtain his login credentials prior to the filing deadline and that the fact that email with his login credentials went to his spam folder are mitigating circumstances. Mr. Oliver’s request for login credentials after business hours on the filing deadline did not provide Commission staff a reasonable opportunity to provide those to him. He had previously been emailed his login credentials, and the Commission’s Assistant had followed-up asking the PAC to contact the Commission if Mr. Oliver has trouble logging into the efilings system. The Commission staff accepts that there was no intent to conceal the PAC’s activity from the public and that this late filing was due to the difficulties that Mr. Oliver had accessing the online system.

Since mid-2018, the Commission has regularly assessed penalties of \$750 or more for late-filing violations by PACs. Representative penalties include:

- \$1,000 against Late Mainers PAC for a late 24-Hour Report,
- \$750 and \$1,250 against United Portland PAC for two late independent expenditure reports, and

- \$400 against Maine United Auto Workers PAC and Fecteau Leadership PAC for a late quarterly PAC report and late 24-Hour Report, respectively (the Commission declined to waive the \$400 preliminary penalties).

The Commission staff views the preliminary penalty of \$54.00 as adequately balancing the unintended harm to the public with the need to impress upon committees the importance of ensuring their reports have been filed on time. This penalty also does not appear to be disproportionate to the harm suffered by the public or the experience of the officers. For these reasons, the Commission staff recommends not waiving the \$54.00 penalty.

Thank you for your consideration of this memorandum.



Don't Tread on Maine PAC

P.O. Box 118
Paris, ME 04271
207-739-9075

Recipient Name Here

Commission on Governmental
Ethics and Election Practices
45 Memorial Circle
Augusta, ME 04330

**Commission on Governmental Ethics
and Election Practices,**

September 9th, 2020

I am requesting in writing that the Commission waive the violation and penalty in whole to the Don't Tread on Maine PAC. The mitigating circumstances are listed below:

- Dylan Oliver is a college student and a completely new Treasurer who has never filed a report before.
- Mr. Oliver contacted Registrar Dunn via email before the deadline attempting to locate login information to file the report on time.
- The login information had gone directly to Mr. Oliver's Spam folder and this was not discovered until after the deadline had passed.

Thank you for your time and consideration of waiving the violation and penalty in whole due to these mitigating circumstances.

Respectfully,

Representative John Andrews,

Principal Officer, DTOM PAC



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

August 28, 2020

Mr. Dylan Oliver
Don't Tread on Maine PAC
335 Calais Road
Hogdon, ME 04730

Re: Don't Tread on Maine PAC Late Filing of the 42-Day Post-Primary Report

Dear Mr. Oliver:

The Commission staff has made a finding that the Don't Tread on Maine PAC (the PAC) was late in filing its 42-Day Post-Primary campaign finance report. The report was due by 11:59 p.m. on 08/25/2020, but was not filed until 08/27/2020. Under the Commission's statutes, the late filing of a report triggers an enforcement process. (21-A M.R.S.A. § 1062-A). Based on the amount of financial activity in the report, the number of calendar days the report was late, and the PAC's history of violations, the Commission staff has determined that a penalty of \$ \$54.00 is owed. (Please see attached penalty matrix for the calculation.)

The PAC may make a written request that the Commission waive the violation or penalty in whole or in part. Any request for a waiver must be made within 14 calendar days of your receipt of this notice. The request must be in writing and contain a full explanation of the reasons the PAC filed late. Upon receiving your request, the Commission staff will schedule your appeal for an upcoming Commission meeting.

The Commission may waive the penalty if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; or (3) relevant evidence that the PAC made a bona fide effort to file the report on time. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure.

Please call me at (207) 287-4709 or send me an email at michael.dunn@maine.gov if you have questions.

Sincerely,

Michael J. Dunn

Michael J. Dunn, Esq.
Political Committee and Lobbyist Registrar

PAYMENT RECEIPT
(Please enclose with payment.)

Mail payment to:

Maine Ethics Commission
135 State House Station
Augusta, ME 04333

Make checks payable to: "Treasurer, State of Maine."

Dylan Oliver, Treasurer
Don't Tread on Maine PAC
335 Calais Road
Hogdon, ME 04730

Violation: 42-Day Post-Primary Report
Amount Due: \$54.00

Committee Name: Don't Tread on Maine PAC

Prior Violations:

Report Name	Activity Amount	Due Date	Days Late	Penalty Rate	Penalty
42-Day Post-Primary Report	\$1,350	08/25/2020	2	2%	\$54.00

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 2%

For the second violation, 4%

For the third and each subsequent violation, 6%

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

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

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

MAXIMUM PENALTIES

21-A M.R.S.A. Section 1062-A(4)

\$10,000 for Pre- and Post-Election Reports, Quarterly Reports and 24-Hour Reports, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late.



Commission on Governmental Ethics and Election Practices
 Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine
 Website: www.maine.gov/ethics
 Phone: 207-287-4179
 Fax: 207-287-6775

2020 CAMPAIGN FINANCE REPORT

FOR POLITICAL ACTION COMMITTEES

COMMITTEE		TREASURER	
DON'T TREAD ON MAINE PAC P. O. Box 118 Paris, ME 04271 PHONE:(207) 739-9075 EMAIL: andrewsedc@gmail.com		Dylan Oliver 335 Calais Road Hogdon, ME 04730 PHONE: EMAIL: dylanoliver1717@gmail.com	
REPORT	DUE DATE	REPORTING PERIOD	
42-Day Post-Primary Election Report	08/25/2020	07/01/2020 - 08/18/2020	

FINANCIAL ACTIVITY SUMMARY

RECEIPTS	TOTAL FOR PERIOD	TOTAL FOR YEAR
1. CASH CONTRIBUTIONS (SCHEDULE A)	\$100.00	\$140.00
2. OTHER CASH RECEIPTS (INTEREST, ETC.)	\$1,250.00	\$1,250.00
3. LOANS (SCHEDULE C)	\$0.00	\$0.00
4. TOTAL RECEIPTS (LINE 1 + 2 + 3)	\$1,350.00	\$1,390.00
EXPENDITURES		
5. EXPENDITURES TO SUPPORT OR OPPOSE (SCHEDULE B)	\$0.00	\$1,500.00
6. OPERATING EXPENDITURES (SCHEDULE B-1)	\$200.00	\$204.44
7. LOAN REPAYMENTS (SCHEDULE C)	\$0.00	\$0.00
8. TOTAL PAYMENTS (LINE 5 + 6 + 7)	\$200.00	\$1,704.44
CASH SUMMARY		
9. CASH BALANCE AT BEGINNING OF PERIOD	\$118.08	
10. PLUS TOTAL RECEIPTS THIS PERIOD (LINE 4)	\$1,350.00	
11. MINUS TOTAL PAYMENTS THIS PERIOD (LINE 8)	\$200.00	
12. CASH BALANCE AT END OF PERIOD	\$1,268.08	
OTHER ACTIVITY		
13. IN-KIND CONTRIBUTIONS (SCHEDULE A-1)	\$0.00	\$0.00
14. TOTAL LOAN BALANCE AT END OF PERIOD (SCHEDULE C)	\$0.00	
15. TOTAL UNPAID DEBTS AT END OF PERIOD (SCHEDULE D)	\$0.00	

I, Dylan Oliver, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: Dylan Oliver
 REPORT FILED ON: 8/27/2020 10:12:23 AM
 LAST MODIFIED:
 COMMITTEE ID: 354202

**SCHEDULE A
CASH CONTRIBUTIONS**

- For contributors who gave more that \$50, the names, address, occupation, and employer must be reported. If "information requested" is listed instead of occupation and employer, the candidate is waiting to receive that information.
- Cash contributions of \$50 or less can be added together and reported as a lump sum.
- Contributor Types

- | | |
|--|--|
| 1 = Individual | 9 = Candidate / Candidate Committee |
| 2 = Candidate/ Spouse/ Domestic Partner | 10 = General Treasury Transfer |
| 3 = Commercial Source | 11 = Transfer from Previous Campaign |
| 4 = Nonprofit Organization | 12 = Contributors giving \$50 or less |
| 5 = Political Action Committee | 13 = Contributors giving \$100 or less |
| 6 = Political Party Committee | 14 = Contributors giving \$200 or less |
| 7 = Ballot Question Committee | 15 = MCEA Payment |
| 8 = Other Candidate/ Candidate Committee | 16 = Financial Institution |

DATE RECEIVED	CONTRIBUTOR	EMPLOYER AND OCCUPATION	TYPE	AMOUNT
8/2/2020	General Treasury Transfer	Diane Johanson- Lobbyist	10	\$100.00
TOTAL CASH CONTRIBUTIONS				\$100.00

**SCHEDULE B-1
OPERATING EXPENDITURES**

EXPENDITURE TYPES				
APP	Apparel (t-shirts, hats, embroidery, etc.)	CON	Contribution to party committee, non-profit, other candidate, etc.	
EQP	Equipment of \$50 or more (computer, tablet, phone, furniture, etc.)	EVT	Campaign and fundraising events (venue or booth rental, entertainment, supplies, etc.)	
FOD	Food for campaign events or volunteers, catering	HRD	Hardware and small tools (hammer, nails, lumber, paint, etc.)	
LIT	Printed campaign materials (palmcards, signs, stickers, flyers, etc.)	MHS	Mail house and direct mail (design, printing, mailing, and postage all included)	
NEW	Newspaper and print media ads only	OFF	Office supplies, rent, utilities, internet service, phone minutes and data	
ONL	Social media and online advertising only	OTH	Other and fees (bank, contribution, and money order fees, etc.)	
PER	Personnel and campaign staff, consulting, and independent contractor costs	PHO	Phones (phone banking, robocalls and texts)	
POL	Polling and survey research	POS	Postage for U.S. Mail and mail box fees	
PRO	Professional services (graphic design, legal services, web design, etc.)	RAD	Radio ads, production costs	
TKT	Entrance cost to event (bean suppers, fairs, party events, etc.)	TRV	Travel (fuel, mileage, lodging, etc.)	
TVN	TV/cable ads, production, and media buyer costs only	WEB	Website and internet costs (website domain and registration, etc.)	
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
8/1/2020	Wyatt Ford 70 Crocker RD Belfast, ME, 04915	Funds to attend YAL Event in Dallas, Texas	TKT	\$100.00
8/1/2020	Blake Winslow 1821 Us Rte 1A Fort Fairfield, ME, 04740	Funds to attend YAL event in Dallas, Texas	TKT	\$100.00
TOTAL OPERATING EXPENDITURES				\$200.00

From: [Dylan Oliver](#)
To: [Dunn, Michael](#)
Subject: Don't Tread on Maine PAC Login Info
Date: Tuesday, August 25, 2020 10:28:36 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good evening,

I hope this email finds you well. My name is Dylan Oliver and I am the newly appointed treasurer of the Don't Tread on Maine PAC. I am reaching out because I need login info in order to file my PAC's report.

Respectfully,

Dylan Oliver

Title 21-A Maine Revised Statutes

§ 1059. Report; filing requirements

A committee required to register under section 1052-A, 1053-B or 1056-B shall file an initial campaign finance report within 7 days of registration and thereafter shall file reports in compliance with this section. All reports must be filed by 11:59 p.m. on the day of the filing deadline, except that reports submitted to a municipal clerk must be filed by the close of business on the day of the filing deadline.

1. Deleted. Laws 2007, c. 443, § A-35.

2. Reporting schedule. A committee shall file reports according to the following schedule.

A. A committee shall file quarterly reports:

- (1) On January 15th, and the report must be complete as of December 31st;
- (2) On April 10th, and the report must be complete as of March 31st;
- (3) On July 15th, and the report must be complete as of June 30th; and
- (4) On October 5th, and the report must be complete as of September 30th.

B. During any year in which primary and general elections are held, a committee shall file primary and general election reports in addition to the reports required under paragraph A:

- (1) On the 11th day before the date on which the election is held, which must be complete as of the 14th day before that date; and
- (2) On the 42nd day after the date on which the election is held, which must be complete as of the 35th day after that date.

A committee shall file primary and general election reports even if the committee did not engage in financial activity to influence the primary or general election.

C. In any election year other than a year described in paragraph B, if a committee has received contributions or made expenditures for the purpose of influencing a ballot question election, a special election or a municipal candidate or referendum election subject to Title 30-A, section 2502, the committee shall file preelection and post-election reports:

- (1) On the 11th day before the date on which the election is held, which must be complete as of the 14th day before that date; and
- (2) On the 42nd day after the date on which the election is held, which must be complete as of the 35th day after that date.

D. A committee that files an election report under paragraph B or C is not required to file a quarterly report when the deadline for that quarterly report falls within 10 days of the filing deadline established in paragraph B or C.

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§ 1062-A. Failure to file on time

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2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if it is disproportionate to the level of experience of the person filing the report or to the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, “mitigating circumstances” means:

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

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

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

Any penalty of less than \$ 10 is waived.

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

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

A required report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as an original of the same report is received by the commission within 5 calendar days thereafter.

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