



Minutes of the October 31, 2012, Meeting of the
Commission on Governmental Ethics and Election Practices
Held at the Commission Office, 45 Memorial Circle,
Augusta, Maine

Present: Walter F. McKee, Esq., Chair; André G. Duchette, Esq.; Margaret E. Matheson, Esq.; Michael T. Healy, Esq.; Hon. Jane A. Amero
Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:05 a.m., Chair Walter McKee convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the July 25, 2012 Meeting

Ms. Matheson moved to accept the minutes as drafted. Ms. Amero seconded. The motion passed (5-0).

Agenda Item #2. Request for Investigation of Sen. Nichi Farnham/Coordination on Television Spending

Mr. Wayne explained that the Maine Democratic Party (MDP) contends that State Senator Nichi Farnham accepted a contribution by cooperating with a large expenditure by a political action committee (PAC) for television advertising against her opponent. Dr. Geoffrey Gratwick. He said in March 2012 the leaders of the Maine Senate Republican Majority PAC withdrew in order to run for federal office. The leaders contacted the Commission to have their names removed from the registration but did not name any replacements for officers and decision makers. When the Commission staff contacted the PAC weeks later to ascertain who would be the new officers, the treasurer of the PAC said Senator Farnham and Senator Tom Saviello would be the new officers. The registration form remained on the Commission's website listing these two senators until October when the MDP noticed that the PAC started spending money on Senator Farnham's campaign. The MDP's view is that the PAC's expenditure on advertising affected Senator Farnham's race while she was an officer of the PAC which would constitute a contribution to her campaign. Mr. Wayne explained that the Commission staff conducted interviews and preliminary fact-finding to determine whether Sen. Farnham cooperated with the PAC on the advertising against her opponent.

Mr. McKee disclosed that while he was formerly a partner with Senator Roger Katz up until January 31, 2012, he did not see any reason to recuse.

Ms. Kate Knox, Esq., on behalf of the MDP, stated that they strongly disagree with the staff recommendation that no further investigation is warranted. She listed several unanswered questions.

She said Sen. Farnham was listed as a principal decision maker and fund raiser for the PAC for a seven month period during the height of fundraising and expenditure activity by the PAC. The registration is the most compelling piece of evidence that Sen. Farnham was a decision maker because she made an affirmative statement by agreeing to be listed as the responsible party for the decisions of the PAC. The registration is more than an administrative document and there is no “placeholder” role provided on the form or in the statute. Sen. Farnham assumed the responsibility and limitations of the role. Claiming retrospectively that she did not intend to be in charge does not create a defense to breaking the rules. Election laws are designed to provide the public with transparency and accountability of those seeking to impact elections. The public deserves to be able to trust that what a public document says to be accurate is in fact accurate. Ms. Knox explained that it appears that, as a matter of law, Sen. Farnham was involved in all decisions of the PAC during this seven month period (handout provided by Ms. Knox) in which the PAC raised over \$200,000 and made independent expenditures of over \$100,000. She said the independent expenditure at issue represented almost 70% of the expenditures by the PAC while Sen. Farnham was a principal officer. This expenditure amount appears to be the top priority of the PAC since there were only three races in which the PAC was involved and Sen. Farnham’s campaign was one of those three. It is unlikely that Sen. Farnham did not know about this expenditure since she was a principal officer at the time. It is unfathomable that the PAC and Sen. Farnham did not realize what a major conflict this would create. Ms. Knox said this PAC is a very sophisticated player, handles large amounts of money from national sources, and uses seasoned campaign staff. Sen. Farnham is an incumbent Legislator and chair of the committee which oversees the Ethics Commission, so she should know the law. Ms. Knox explained that other evidence showing Sen. Farnham did participate in the PAC was a letter in June 2012 from the Commission notifying the PAC it had failed to file a report. PAC Treasurer Sara Vanderwood copied Sen. Farnham and Sen. Saviello on the letter suggesting both parties were still active at that time. Ms. Knox said that the fundraising records are also of concern because they indicate that Sen. Farnham’s husband and

their business made two large contributions totaling \$2,500. Although lawful, these contributions appear to contradict Sen. Farnham's claim that she had nothing to do with the PAC. At the very least, this evidence shows that she was aware and participating in fundraising efforts. Ms. Knox said the PAC has provided no evidence to prove that Sen. Farnham did not know about the expenditure, no evidence of a firewall policy between the candidates and the consultant making the expenditures, and no evidence of exactly how Sen. Farnham disassociated herself from the PAC. The MDP has provided as evidence the registration form filed by the PAC, contribution records and a letter from the Commission that Sen. Farnham received as a principal of the PAC. This evidence shows that Sen. Farnham has been involved in the operations and governance of the PAC.

Ms. Knox said the Commission possesses enough information to believe that a violation may have occurred. At the very least, this evidence warrants further investigation and the Commission should request more evidence from the PAC and the individuals involved to support their claims. She said this issue goes to the very heart of our campaign finance system and vague denials and contradictory statements are not enough of a defense.

Mr. McKee said the first question to deal with is whether there was per se coordination simply because Sen. Farnham is listed on the form. He said it is common for people to remain associated with a board or organization only because no one took them off their list. In his view, it does not appear that Sen. Farnham knew she was still listed on the registration form during this period of time. He asked whether there was any evidence that Sen. Farnham did know she was still listed on the PAC form and also whether she knew about the expenditure.

Ms. Knox said it was difficult for the MDP to know what Sen. Farnham knew and when she knew it. The evidence that is available is the letter from June on which she was copied that should have been a reminder to her that she was still listed on the PAC. She explained that the MDP does not have access to further evidence such as emails, meeting minutes, or correspondences with vendors, so the Commission should request this information from the parties. She said the parties should be asked to show more evidence than just saying "I didn't do it." It is possible that is true. If the weight of the evidence is not enough for the Commission to find that a violation occurred, the Commission should seek more evidence especially in light of the contradictions in the evidence and the parties' statements.

Regarding the per se coordination issue, Ms. Knox said that as a matter of law if someone holds themselves out as a principal decision maker of a PAC and that person is also a candidate, there is something inherently conflictual about that situation. The PAC registration form in and of itself should provide substantial evidence that there is some level of coordination. She said it was impossible for someone who is a real principal of a PAC not to know about the decisions the PAC is making.

Mr. Healy asked with regard to Sen. Farnham's affidavit claiming that since March she has not had anything to do with the PAC and disassociated herself, whether there was any evidence that her statement is not true.

Ms. Knox said the letter from June shows she had notice that she was still involved with the PAC. Even though there are repeated assertions of disassociation from the PAC, no one had provided any evidence of disassociation. She said there is no detail about how this disassociation happened; was it an email, phone call, or did she just say it to herself? There are too many questions that the Commission needs to be asking about what disassociation means and provide evidence that it happened.

Mr. McKee stated that in his view the larger issue was the failure of the PAC to correct its records which gave the public incorrect information. He said he can see if someone were to receive several letters or notices from a board that person was formerly on, it may prompt the person to ask why they are still getting notices from the board and to look into it. However, he can understand that one piece of correspondence may not make anyone pay attention.

Ms. Knox agreed and said the responsibility lies with the PAC to make those corrections and update their registration form. However, she said it was especially dangerous for the Commission to allow retroactive corrections when the stakes are this high. The parties involved are very sophisticated and know the law. She said Sen. Farnham is the Chair of the Veterans & Legal Affairs Committee, someone who knows and writes the ethics laws. There were only three races the PAC was spending money on and one of them was Sen. Farnham's. Taking all these factors into consideration, it becomes very difficult to say that it was just an administrative error or just something that was overlooked.

William P. Logan, Esq., on behalf of Sen. Nichi Farnham and the Maine Senate Republican Majority PAC, stated for clarification that Ms. Knox asserted that Trevor Bragdon stated in his affidavit he did not have contact with the PAC treasurer, Sara Vanderwood, which is actually to the contrary. Mr. Bragdon had limited conversations with Ms. Vanderwood.

Mr. Logan explained that when U. S. Senator Olympia Snowe unexpectedly decided not to seek re-election, the PAC's long time principal officers and decision makers resigned to run for federal elections. In addition, the PAC's long-time treasurer left and Sara Vanderwood took the position, which was the first time she was a treasurer for a caucus PAC. Sen. Thomas Saviello and Sen. Nichi Farnham agreed to serve as interim officers until the dust settled. In the span of one month, there was a complete turnover of the top officials of the PAC. Sen. Farnham made it known to everyone that she did not want to be involved and did not want to remain on the PAC. She did not consult with the PAC and the PAC did not consult with her after March. Other members of the PAC, Sen. Saviello, Sen. Roger Katz and Sen. Mike Thibodeau confirmed that Sen. Farnham was not involved in the PAC. Mr. Logan said there is no per se coordination in the statute, it has to be active coordination and cooperation with a candidate. He said it is possible to have a firewall and have someone who is a principal not be involved with the decisions, admitting it may not be advisable but it is within the law. Coordination, he said, requires communication and participation in the spending decisions of the PAC which was not the case with Sen. Farnham.

Mr. Logan explained that the coordination claimed by the Democratic Party should not include donations from a spouse. Sen. Farnham's husband can contribute to whomever he wishes, he said an example is Donald Sussman who contributes to many Democratic candidates but is not viewed as coordinating with his wife's, U.S. Rep. Chellie Pingree, campaign. The registration statement shows no evidence that Sen. Farnham was actively involved with the PAC, it only lists her name. The PAC made a mistake and neglected to update the registration form.

Mr. McKee asked Mr. Logan for his explanation as to why Sen. Farnham would not have responded to the June letter she received about the PAC late filing.

Mr. Logan said the letter was copied to Sen. Farnham, not directed to her. He said he has received copies of letters inadvertently on several occasions and if it happens on a repeated basis he might look further into

it, however, a one-time copy of a letter would not inspire him to ask questions. He said, in Sen. Farnham's case, she did not do anything further at that time because she was not involved with the PAC.

Mr. Duchette asked why Sen. Katz was not copied on the letter and Mr. Logan said he assumed Ms. Vanderwood simply went by who was listed on the registration form. He said from his own experience, the treasurer does not have a lot to do with the internal discussions and decision making of the PAC but is mostly involved with the bookkeeping aspects of the PAC.

Mr. Healy asked whether Mr. Logan knew who authorizes the treasurer to issue a check for a PAC.

Mr. Logan said in general it runs through the principals, in this case Sen. Saviello, Sen. Katz and Sen. Thibodeau, either jointly or separately among them make that authorization. Generally, he said, the treasurer does not have the authority to issue checks without the direction of someone else.

Mr. Healy asked if there was any evidence that Sen. Farnham authorized a check to be issued at any time during 2012. Mr. Logan said no, she had not.

Mr. Healy asked when Sen. Farnham became a certified Maine Clean Election Act candidate. Mr. Logan was not certain but he believed it was after March 16. Mr. Healy asked also, if there was any evidence of Sen. Farnham making decisions or doing any fundraising from March 16 through the end of March.

Mr. Logan explained that in his experience PACs do not keep detailed meeting minutes but usually discussions take place over the phone or in person. Mr. Logan said Sen. Farnham had not been in attendance at any such discussions. He said if there are any emails between the principals he would not receive them, but Sen. Farnham was not copied on them either.

Mr. Duchette asked if Mr. Logan was involved with the PAC during the time of the resignation of Sen. Jon Courtney and Sen. Debra Plowman. Mr. Logan said he became involved in May. He said at that time he never thought to look at the registration form.

Ms. Gardiner, in follow up, asked what process Sen. Courtney and Sen. Plowman, the two resigning leaders, followed to resign from the PAC and how they communicated their intentions.

Mr. Logan said no formal letter or document was submitted to the PAC as far as he knew. He said it was verbal, most likely to the treasurer.

Mr. Healy stated that Mr. Wayne has informed him that Sen. Farnham was certified as a Clean Election Act candidate on April 20, 2012. He asked whether this PAC made any expenditures or received any contributions from March 16 to April 20.

Mr. Logan said he did not have that information.

Sen. Nichi Farnham was asked by Mr. McKee whether she recalled seeing the June 14 letter in which she was copied.

Sen. Farnham stated she did not remember the letter and, after the session in June, was in full-time “mom mode” again. She explained that her sons are in Little League baseball and she was devoting full time to that and her campaign. She said there was probably a stack of mail sitting on her kitchen counter and she may have looked at it quickly but probably tore it up because she was out of that mode.

Mr. McKee asked Sen. Farnham when it was that she realized she was still on the registration form.

Sen. Farnham responded that she became aware of it when she received a call from a Bangor Daily News reporter at the beginning of October. In response to Mr. McKee’s question regarding her activity with the PAC between March 16 and early April or May, Sen. Farnham explained that the Legislature was still in session and she was working on legislation. She said she was not at all interested in being involved in the PAC’s activity which is probably why she was asked to be put on the form.

Mr. McKee asked what Sen. Farnham’s role was after the session ended. Sen. Farnham explained that the day her name went on the form, she told the people who asked her to be listed on the form that she was not interested and did not have time because she had kids in baseball and needed to get back to Bangor. She

said she agreed to be on there so others could pursue opportunities. They all knew on the very same day they asked her it would be a short time thing, just until they could find someone else after sorting it all out.

Mr. Duchette asked Sen. Farnham who she had that discussion with and she said whoever would listen. She did not remember exactly who the people were but they knew she would not be actively involved with the PAC. She said this was something she never would have been involved with by her own choice. She said she agreed only to be a placeholder until the party could sort out who would fit the role on a permanent basis.

Mr. McKee asked whether, even as a placeholder, she ever asked if anyone was coming to take her place. Sen. Farnham said she did not even think about it because once the session ended she went home and became a full time mom and in that role she never gave the PAC a thought again. She said she does not care for fundraising or whatever these PACs do and that was why she ran as a Clean Election Act candidate. She said it was unfortunate she agreed to have her name on there and that she said yes to her friends and colleagues in the Senate. It was unfortunate that her name was not taken off within two or three days or whenever they did their sorting out.

Mr. McKee said the public could look at that information and ask what was going on.

Senator Farnham agreed and said logically she would not want to be involved in anything like this especially since money was spent on her race. She said she was just as disappointed as everybody else.

Ms. Matheson asked who approached her and asked her to be listed on the PAC's registration. Sen. Farnham said there were a lot of people milling around in the chamber and the Senate offices trying to sort things out. They looked at her as a neutral senator because she was not looking for a leadership position or to have her own PAC.

Mr. Healy asked Sen. Farnham if she ever solicited any contributions for this PAC and she said no.

In response to a question from Mr. Healy, Senator Thomas Saviello explained the PAC's process for making expenditures was for Sen. Katz, Sen. Thibodeau and Sen. Saviello to decide when and which races

to make an independent expenditure and then authorize the treasurer to make the expenditure. He said Sen. Farnham was never in the room. Mr. Saviello said he came on board with the PAC at the same time as Sen. Farnham and in the same way –he was approached with the same understanding that someone else would be found to step in and take his place. However, he got more involved with the PAC and stayed on.

Ms. Matheson asked who contacted the treasurer regarding expenditures. Sen. Saviello said it could be any of the three senators or James Cody, the campaign person for the PAC, who contacted the treasurer. He explained that this year there happened to be three senators who wanted to be involved in the process with the PAC expenditures.

Mr. Duchette asked Sen. Saviello when he learned that Sen. Farnham had disassociated with the PAC. Sen. Saviello said the newspaper article was his first knowledge. He said he never saw Sen. Farnham after the day they agreed to be listed on the registration form. It never occurred to him to check the registration form because they never saw her, she just was not involved. He said he made a mistake by not thinking of it sooner. He should have checked the registration form but they never saw her so he did not think of it. He said he did not remember getting the June letter that he was copied on.

Mr. McKee stated that he saw no need to receive additional information by way of further investigation.

Mr. Duchette asked whether the statute contemplate a scenario where a candidate could be involved with a PAC but insulate themselves enough from the PAC's spending decisions for there to be an uncoordinated expenditure.

Mr. Wayne said it would be difficult for a candidate to claim he was involved with a PAC as an officer and not be involved with decisions made to spend money on his own race. He said PACs claim there are so-called firewalls set up for this type of scenario, however it would be hard to do. Mr. Wayne said in this case, Sen. Farnham is denying that she was involved in anything at all.

Mr. McKee said it appears that the Commission will not undertake any additional investigation into this matter. He said the issue should be decided today. It was unfortunate that Sen. Farnham's name was left on the PAC's registration. Although additional information was gathered to find out whether there was

something more indicating Sen. Farnham's involvement, from what he has seen and heard, he does not think that there is any basis to find a violation.

Ms. Amero said she has confidence in the Commission's staff's preliminary investigation and does not see a need for additional investigation. She said she agrees with the staff's recommendation.

Mr. McKee stated that he does not fault the complainant and would question the spending while the name is on the registration also, just as the MDP did. However, upon further review he does not feel the information provided so far shows grounds for further investigation.

Mr. Healy said he too understood the reason for the complaint but in view of the staff's information and testimony heard today he does not see any violation occurred.

Ms. Amero moved to take no further action regarding an investigation. Ms. Matheson seconded. The motion passed (5-0).

Agenda Item #3. Proposed Finding of Violation for not Amending Registration by Maine Senate Republican Majority PAC

The Commission staff proposed a finding that the Maine Senate Republican Majority PAC violated 21-A M.R.S.A. § 1053 by not amending its registration in 2012 to completely disclose all individuals who are the primary fund-raisers and decision-makers for the committee.

Ms. Kate Knox, Esq., on behalf of the Maine Democratic Party, said it is obvious that the PAC violated the statute by not amending the registration. She said there were people making decisions for the PAC that were not on the registration form and that is very concerning since without accurate information on the registration form it is impossible to know who is in charge of the PAC. She said Sen. Katz and Sen. Thibodeau, who are making decisions for the PAC, are not even listed on the registration form. She called the situation chaotic and said the PAC should be fined to the maximum penalty. She said the system of transparency in campaign finance falls apart if people do not take their responsibilities to provide complete and accurate information to the Commission seriously.

Mr. William P. Logan, Esq., said the Maine Senate Republican Majority PAC, does concede it was in error and is in violation. He said the Commission should consider the facts with regard to the timing of the issue - the end of session as well as the Republican convention period. He said updates and reminders about registrations are not normally provided by the Commission and the new treasurer who had just come on board was not familiar with the administrative paperwork requirements. He said this situation was unique in that the turnover period of leaders typically happens when a Legislator is termed out. He said he was not aware of any turnover of officers in the past during an election cycle. He said the Commission should consider these facts when determining the appropriate penalty.

Mr. Healy said if a lobbyist registration was not updated in time, there would be a civil penalty and asked why in this case the PAC should not be assessed a penalty.

Mr. Logan said it is part of a lobbyist's professional responsibilities to keep their information up to date so that they can continue to lobby. In addition, lobbyists receive a reminder from the Commission. He said the Commission does impose fines for late filings but it has also granted waivers or declined penalty assessments on several occasions based upon circumstances.

Mr. Duchette said in those circumstances it typically involves, for example, a candidate's mother who agrees to serve as treasurer because the candidate has never run for office and is using Maine Clean Election Act funds. He said this case involves a sophisticated PAC that receives almost a quarter million dollars from a national organization and is a significant player in this election. He said it's difficult for this PAC to fall back on the claim of having a new treasurer who lacks knowledge in response to this situation.

Ms. Matheson agreed and said there is an expected level of sophistication with an organization such as the Maine Senate Republican Majority PAC. They are assuming responsibility for a great deal of money flowing through the organization and they need to be paying attention to their legal responsibilities. She said setting up placeholders is not good policy in her view. She also suggested that at the next rulemaking the Commission consider making it a requirement that a signed statement from the principals of a PAC be submitted to the Commission when the registration is filed to avoid future misunderstanding like this.

Ann Luther, Director of Maine Citizens for Clean Elections, said she had two issues that she wanted to address. She said she had a similar view as Ms. Matheson about placeholders as principals on PAC registration forms. She said that if someone other than the placeholder is making decisions and authorizing expenditures, that person's name should be listed on the PAC registration. She said the public has a right and interest in this important information about who is raising and spending money to influence elections. Maine has excellent disclosure laws but the idea of allowing a placeholder to be listed as a principal for a PAC is not consistent with Maine's disclosure laws and is not in the interest of the public. She said another troubling idea is that of a firewall. The idea that a firewall between a principal and the PAC could shield the principal from the major spending decisions the PAC is making muddies an already difficult area of coordination on these campaigns. She said coordination needs to be cleared up, not made murkier.

Mr. Duchette moved to find the Maine Senate Republican Majority PAC in violation of 21-A M.R.S.A. § 1053. Ms. Matheson seconded. The motion passed unanimously (5-0).

Mr. Duchette moved to assess the maximum penalty of \$250. Ms. Matheson seconded. The motion passed unanimously (5-0).

Agenda Item #4. Request for Investigation of Hon. Thomas Martin and Hon. Nichi Farnham (unreported video costs) and Bradford Littlefield (incomplete disclaimer on mailing)

The Maine Democratic Party (MDP) requested an investigation into whether State Senators Thomas Martin and Nichi Farnham each failed to report the cost of a professionally produced video done by Strategy Maine in their campaign finance reports due September 25, 2012 which should have contained all their expenditures as of September 18. Mr. Wayne explained that when a candidate enters into an agreement with a vendor to make a payment in the future, this activity is required to be reported as an unpaid debt or obligation on their campaign finance report. He said although candidates have guidance on how to report this activity in the Candidate's Guidebook, quite often they are not aware of this and fail to report these types of expenditures. Senator Farnham acknowledged that she did not report a debt for production costs, due to an error. Senator Martin responded that he was not required to disclose an obligation. The MDP also urges a finding of violation against Senate candidate Bradford Littlefield because a mailing did not include the candidate's name in the printed disclaimer statement.

Mr. Wayne said in Sen. Martin's case, Strategy Maine produced a video for him and made it available to Sen. Martin on what was described as a private website for his review. Sen. Martin stated that under the arrangement he had with Strategy Maine, he was not obligated to pay for the production costs until he gave his final approval of the video. He requested that certain changes be made to the video and did not give his approval until after September 18. Mr. Wayne said it seems unusual there would be an agreement between a candidate and the production company to produce a campaign video but the candidate would not be under any obligation to pay any of the production costs if the candidate did not approve the video.

Mr. Wayne said Bradford Littlefield neglected to put the full disclaimer on a campaign flyer. The flyer included the phrase "paid for and authorized by" but did not include the candidate's name. It seems that there was an attempt to comply with the disclaimer requirement but it was not fully executed.

Kate Knox, Esq., on behalf of the Maine Democratic Party, said these were technical violations and agreed with the staff's recommendation. She said with regard to Sen. Martin's production cost claim, in her experience she has never known vendors to produce a video without demanding partial payment or promise of payment upfront. She noted that Sen. Martin and Sen. Farnham used the same vendor and it does not seem logical that Sen. Farnham would have a different agreement with the vendor regarding her payment obligations. His explanation of why the cost was not reported at the time when the agreement was entered into does not make sense. The Commission's guidance to candidates on what constitutes an obligation and when to report it is very clear.

William Logan, representing Sen. Martin, Sen. Farnham and Mr. Littlefield, explained that with regard to Mr. Littlefield, he provided the full disclaimer to the vendor and the vendor made a printing error. He said although in violation, he agreed with staff recommendation to assess no penalty.

Mr. Logan explained that with respect to the issue of production costs for Senators Martin and Farnham there were two different issues going on. In Sen. Farnham's case, the video was approved on the 16th of September and the obligation was final at that point but the invoice did not arrive until later. Regarding Sen. Martin, his video was still being finalized on September 19 and the obligation was not incurred until the video was finalized, which happened after the reporting period. Mr. Logan explained that the vendor

did not consider it an obligation until the work was finalized. Mr. Logan said he agreed with the staff recommendation that Sen. Martin be found in violation but assess no penalty.

Mr. McKee stated that the production costs absolutely are obligations and that should be crystal clear to anyone who has been involved with campaigning. With regard to Mr. Littlefield it appears to be an obvious mistake, so no penalty should be assessed.

Mr. McKee moved to take no further action regarding investigation but find Sen. Martin, Sen. Farnham and Mr. Littlefield in violation with no financial penalties assessed. Ms. Amero seconded. The motion passed (5-0).

Agenda Item #5. Request for Investigation/Senate Candidate Colleen Lachowicz

Colleen Lachowicz is the Democratic candidate for the Maine Senate District #25. The Maine Republican Party (MRP) requests that the Commission investigate whether she violated the Maine Clean Election Act by authorizing two PACs to accept contributions on her behalf. Mr. Wayne explained that Ms. Lachowicz received tremendous local and national media notice as a result of a website and a mailing created and paid for by the MRP to advocate against her election by drawing attention to, and criticizing her for, her involvement with a popular online game called World of WarCraft. A fundraising page was created on ActBlue to show support for Ms. Lachowicz by making donations to like-minded PACs. The Lachowicz campaign was told about the website but did not know who created it. The campaign was receiving calls and e-mails from people who wanted to support Ms. Lachowicz by making contributions. The campaign contacted the Commission to get some advice as to how she could direct people who wanted to contribute to the ActBlue website, realizing that she was not permitted to accept any contributions since she was a Clean Election Act candidate. On the basis of the information available at the time, the staff advised her that she could put a link on the campaign website and Facebook page directing people to the ActBlue website so that they could make contributions to like-minded political organizations and the campaign did so. After providing the initial advice to the campaign, the staff became aware that the wording on the Act Blue website indicated that the contributions would be dedicated to political action committees that would help to get Ms. Lachowicz elected. At that point, the staff became concerned that it may appear that the campaign was actively involved in raising funds to be used on its behalf and recommended that the link be taken down. The campaign immediately complied with the revised staff advice. Mr. Wayne emphasized

that the campaign took the initiative to seek out the advice of the staff in order to make sure that it would not be in violation of the Maine Clean Election Act and rightfully relied on that advice. Mr. Wayne explained that the legal theories put forth by the MRP that the contributions made to the PACs should be deemed to be contributions to Ms. Lachowicz are not supported by the language and intent of the statute and the staff would argue that the statute should not be interpreted in the manner suggested by the MRP.

Mr. William Logan, on behalf of the Maine Republican Party, explained that Ms. Lachowicz is a Clean Election Act candidate and cannot accept any contributions.

Mr. McKee pointed out that Ms. Lachowicz stated right on her web page specifically that while money may not go to her, it will go to help people reach elected offices that will stand up for the same issues she finds important.

Mr. Logan agreed but said the problem is that the wording on the ActBlue website appears to ask for contributions that would be used directly to support her election and Ms. Lachowicz is actively referring potential contributors to the ActBlue website. He said candidates should not be allowed to direct donors to political action committees so that they can make contributions to support those candidates' campaigns. It is not enough for the Lachowicz campaign to say that the contributions may or may not be used for her campaign. The Commission needs to look at Ms. Lachowicz's statement on her website in conjunction with the explicit language on the ActBlue website. Even though there may not have been direct face-to-face coordination between Ms. Lachowicz and the PACs, there is a degree of coordination that results from the campaign's directing individuals to the ActBlue website which indicates the contributions raised would be used to benefit her campaign. While Ms. Lachowicz did not know who created the website or how the money will be spent, coordination can happen simply by candidates directing donors to PACs who will spend the money to support her campaign.

Mr. Healy noted that more than \$6,000 was raised by ActBlue and asked if any organization that received these funds had spent any of them in support or opposition to Ms. Lachowicz's campaign.

Mr. Logan stated that he was not aware of whether funds had been spent specifically on Ms. Lachowicz's campaign.

Ms. Kate Knox, representing Ms. Colleen Lachowicz, said she was unclear what the Maine Republican Party's evidence was that supported this complaint. She said they do not know who created the page, where the money has gone or how much money was raised or if it was spent on a race. She said the argument appears to be there is some sort of inherent coordination because she directed folks to that page.

Mr. McKee stated the irony is not lost.

Ms. Knox said this was an incredibly chaotic time for Ms. Lachowicz. She was receiving an enormous amount of national and international media attention as well as having to withstand and defend herself against a personal attack on her character which had nothing to do with politics. She said despite the personal attacks and the media frenzy, Ms. Lachowicz had the wherewithal to exercise due diligence by contacting her Candidate Registrar at the Commission to request advice on whether, as a Maine Clean Election candidate, she would be able to direct people to the ActBlue website as a means of managing the tremendous influx of calls and e-mails supporting her as a result of the MRP's attacks. After receiving the advice from the staff, the wording went up on the campaign's website and Facebook directing folks to ActBlue. The campaign had nothing to do with the ActBlue website and the language used on that website and merely posted the link. Anyone who went to the ActBlue website by clicking on the link on the campaign's website or Facebook page read the disclaimer stating that the contribution may or may not be used to support Ms. Lachowicz's candidacy. At that point, if they made a contribution to the PACs, they did so with that knowledge. The claims of coordination are very tenuous. The campaign had nothing to do with the ActBlue website and does not even know who created the website. There is no evidence that the PACs spent any of the money raised on Ms. Lachowicz's election, and simply putting the link up on the campaign's website and Facebook page does not rise to any level of coordination.

Mr. McKee asked if there was any evidence that showed Ms. Lachowicz knew the link would go to something with her name on it and that contributions would be used to help her campaign.

Ms. Lachowicz stated that she does not know who created the Act Blue page and did not see it until a few days after it was created. Ms. Lachowicz said she was deluged with phone, email and Facebook messages

from all over the world and also was trying to work her job and campaign, so she felt she had to do something to respond to people so they would stop calling and messaging her.

Mr. Healy asked Ms. Lachowicz what the MPA Campaign Vote was.

Ms. Lachowicz replied that she had no idea.

Ms. Knox stated she assumed it was a registered PAC.

Mr. Healy asked if a Clean Election candidate under the Clean Election Act could solicit a constituent for a \$100 contribution to be donated to a particular PAC.

Ms. Knox said that happens a lot. She explained that if the solicitation is not related to that candidate's own race, it is not a problem. She explained MCEA candidates who have leadership PACs are allowed to raise money for their own leadership PAC. She said an MCEA candidate is not allowed to raise funds for their own race or direct money to their own race.

Mr. Duchette said the ActBlue page does have a disclaimer that Ms. Lachowicz cannot accept direct contributions which lets people know that she will not receive the contributions directly as a Clean Election Act candidate.

Mr. Healy moved that the Commission take no further action regarding an investigation. Mr. Duchette seconded.

Mr. Healy said that the motion should not be viewed as an endorsement of the staff's interpretation of earmarked contribution on page 9 of the staff's memo. He said he was not sure that he agreed with that interpretation.

The motion passed (5-0).

Agenda Item #6. Request for Waiver of Late-Filing Penalty/Candidate Arthur Kyricos

Arthur Kyricos is a candidate for Maine Senate District #1 in York county. He filed the post-primary campaign finance report one day late on July 25, 2012. The amount of the preliminary penalty is \$181.24. Mr. Kyricos requested a waiver because he is a first-time candidate, was confused by the different disclosure and reporting requirements, and erroneously believed no report was due. Mr. Wayne explained that Mr. Kyricos confused the statement of sources of income form which was not due until August and the campaign finance report which was due on July 25.

Mr. McKee moved to reduce the penalty by 75% and assess a penalty of \$45.31 because of the level of experience of the filer and minimal harm to the public. Ms. Matheson seconded.

The motion passed (5-0).

Agenda Item #7. Request for Waiver of Late-Filing Penalty/Candidate David E. Dutremble

David E. Dutremble is a candidate for Maine Senate District #4. He was required to file a campaign finance report at 11:59 p.m. on Tuesday, July 24, 2012 and he filed the report 24 minutes late. The amount of the preliminary penalty is \$181.24. Mr. Dutremble requested a waiver because of an ongoing problem with his internet connection.

Mr. McKee moved to reduce the penalty by 75% and assess a penalty of \$45. Ms. Amero seconded.

The motion passed (5-0).

Agenda Item #8. Request for Waiver of Late-Filing Penalty/Candidate Lee Goldsberry

Lee Goldsberry is a candidate for the Maine House District 99. He was one day late filing a campaign finance report due September 25, 2012. The only transaction in the late report was his receipt of \$3,930.96 in Maine Clean Election Act funds. The preliminary penalty for the late filing is \$39.31. He requested a waiver due to minimal harm to the public, and because the late filing was an oversight caused by his inexperience.

Mr. McKee moved to assess a penalty of \$39.31. Ms. Amero seconded.

The motion passed (5-0).

Agenda Item #9. Request for Investigation/Candidate Katherine Cassidy & Geoffrey Gratwick

The Maine Republican Party (MRP) requested that the Commission consider whether House candidate Katherine Cassidy accepted a \$25 seed money contribution from an improper source (a political action committee) and whether pre-printed notes mailed by Senate candidate Geoffrey Gratwick did not include the required disclaimer statement. Preliminary information received by the Commission staff suggested that violations occurred but they were not intentional. The Party's request had additional requests for investigation but has withdrawn those requests in response to preliminary information received by the Commission staff. Mr. Wayne said Ms. Cassidy accepted the contribution because she thought it was from personal funds of the contributor and was an unintentional violation of the seed money restrictions.

Mr. William Logan stated that the MRP agrees there was a violation but understands the basis of the facts that it was unintentional.

Mr. William Logan said the Geoffrey Gratwick issue is similar to the Bradford Littlefield case in agenda item #4. He said the same approach is the right result here as well.

Ms. Knox said this is a common mistake made by candidates and agreed no penalty is warranted.

Ms. Matheson moved to find each candidate in violation but assess no financial penalties. Mr. Healy seconded.

The motion passed (5-0).

Mr. Duchette moved to adjourn and Ms. Matheson seconded the motion, which passed unanimously. The meeting adjourned at 11:40 a.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director

Attachments: Vanderwood June 14 letter
Farnham expenditure tables from Kate Knox

October 31 Handout

Nichi Farnham and the Maine Senate Republican Majority PAC activity (2012)

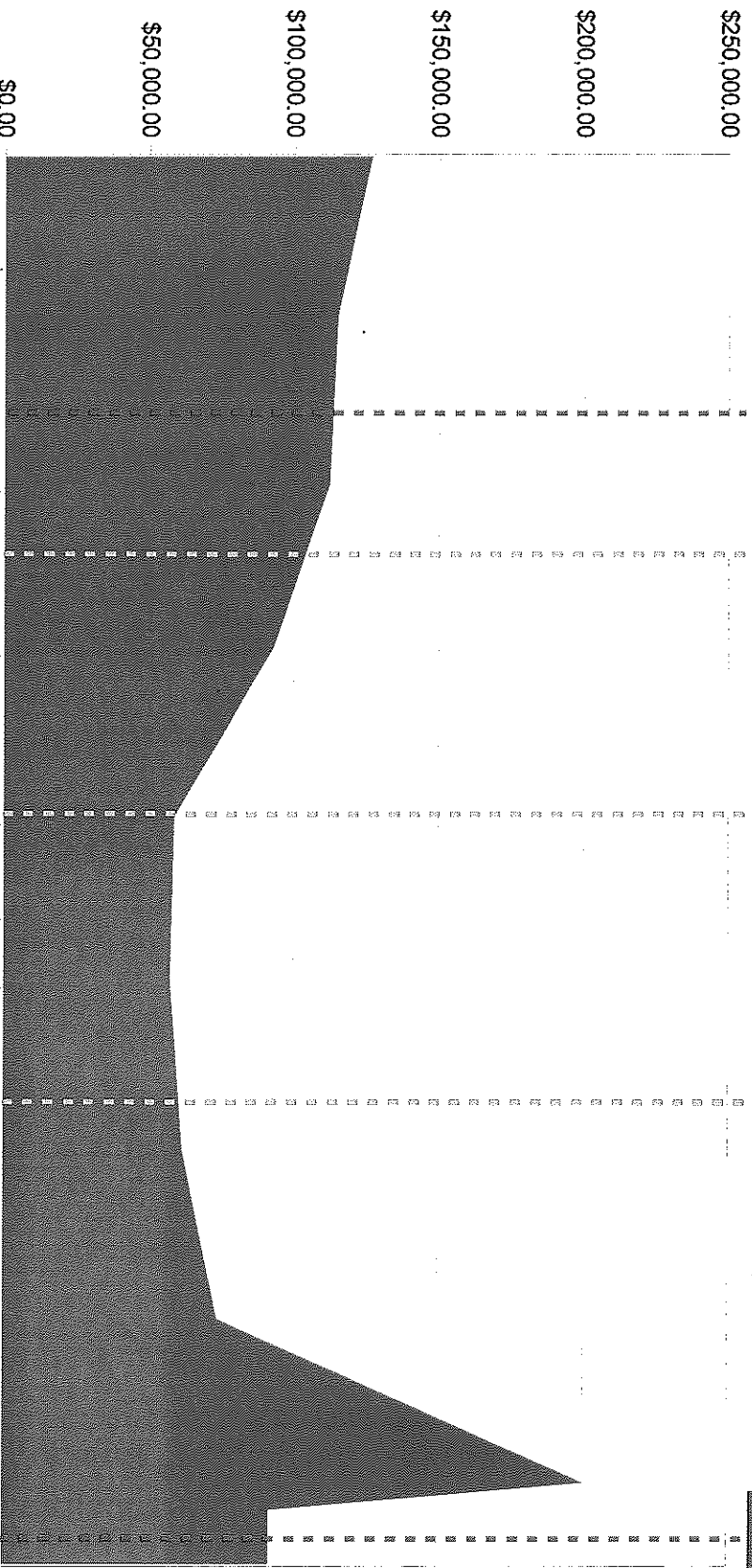
3/16 - Sen. Farnham is registered as "Primary Fundraiser and Decision Maker" of the Maine Senate Republican Majority (MSRM) PAC

4/10 - MSRM PAC files Report

5/30 - MSRM PAC files Report

7/24 - MSRM PAC files Report

10/5 - Sen. Farnham is removed as "Primary Fundraiser and Decision Maker" from MSRM PAC



MSRM PAC Contributions and Expenses

2/21 - Sen. Farnham files for re-election as a clean election candidate

6/14 - Sen. Farnham, as "Primary Fundraiser and Decision Maker," is copied on letter from MSRM PAC Treasurer to Maine Ethics Commission

8/31 - Doug Farnham, husband of Sen. Farnham, contributes \$1,000 to MSRM PAC, and Getchell Ice, Doug Farnham's business, contributes another \$1,500

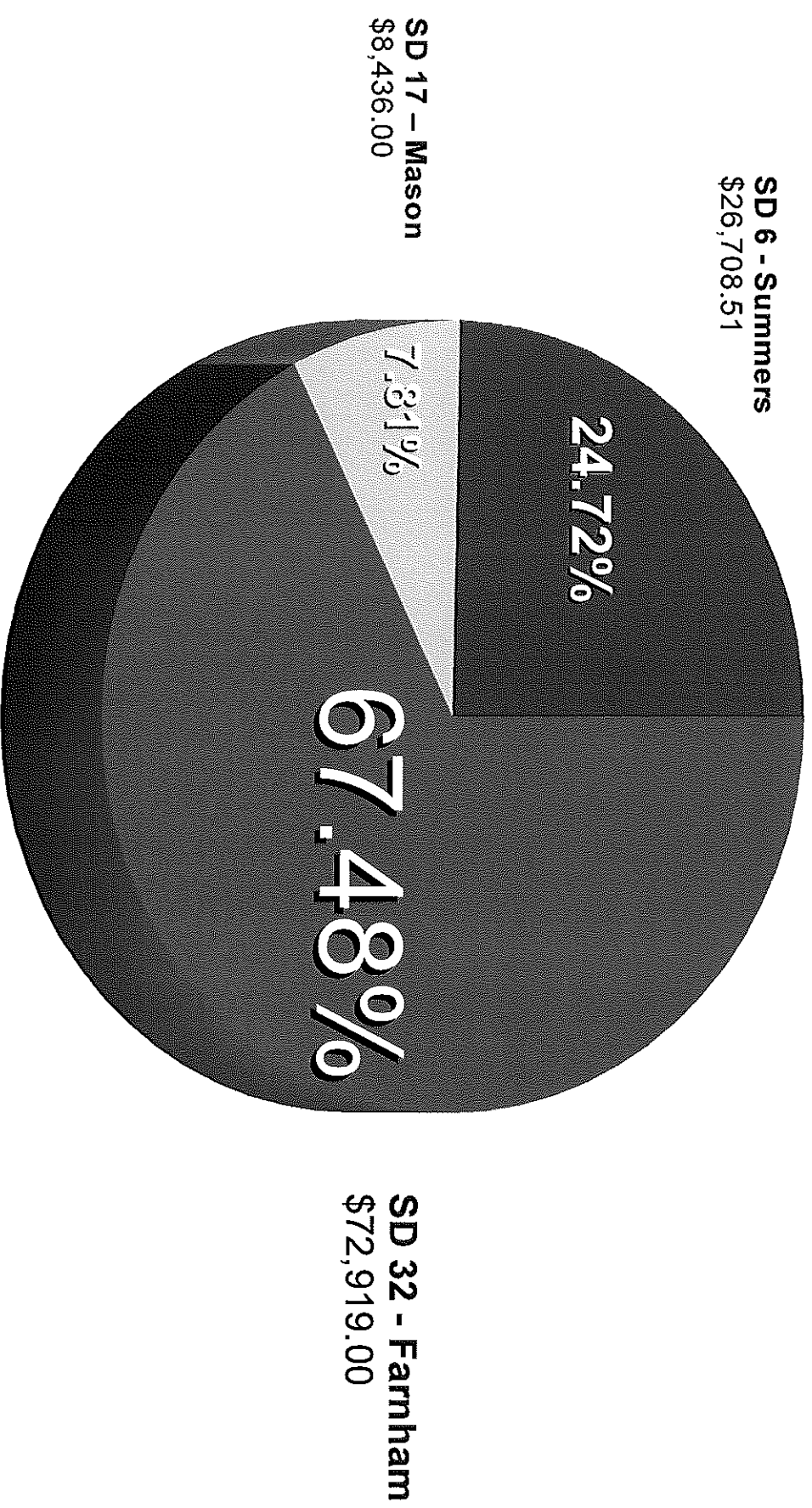
9/28 - MSRM PAC accepts \$222,300 from national GOP group

10/3 - MSRM PAC spends \$72,919 against Sen. Farnham's opponent

10/4 - Maine Democratic Party files Ethics Complaint against Sen. Farnham for breaking campaign finance law

October 31 Handout

Nichi Farnham and the Maine Senate Republican Majority PAC Independent Expenditures from 3/16 to 10/5



More than 2/3's of money spent by the MSRM PAC while Sen. Farnham was, "Primary Fundraiser and Decision Maker," was spent on her race.

October 31 Handout

July 17

Sara Vanderwood
65 French Road
Oxford, Maine 04270
(c) 207-485-4945

RECEIVED
JUN 14 2012
Maine Ethics Commission

June 14, 2012

State of Maine
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333-0135

Re: Late Filing 24 Hour Report

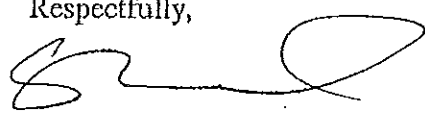
Dear Ethics Commission Staff:

On June 7, 2012 I received notification that the PAC I am treasurer of, the Maine Senate Republican Majority PAC, was assessed a fine of \$317.80 for failure to file a 24 hour campaign finance report. The notice further states that I may make written request that the Commission waive the violation or penalty in whole or in part within 14 days of the notification. Please consider this letter as such.

As I am new to the position of treasurer, I was not fully aware of what triggered a 24 hour report and therefore did not file the report in a timely manner. The expenses made were for operating costs only and in my opinion did not influence the outcome of the primary election(s). I filed the report as soon as I realized my error and spoke with Commissioner staff member, Matthew Marrett, about my mistake. It is also noted in the notice that "the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report."

Given the reasons above, I respectfully request that the Commission waive the penalty assessed, in whole or in part. I would be happy to answer any questions you may have regarding this issue. I look forward to receiving a positive outcome to this request.

Respectfully,



Sara Vanderwood
Treasurer, Maine Senate Republican Majority PAC

Cc: Thomas Saviello, State Senator
Nichi Farnham, State Senator