



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

Special Commission Meeting: 11/07/2016

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: November 6, 2016
Re: Missing Disclaimer Statement in Postcard by House Candidate David Haggan and
Sen. Andre Cushing

Saturday evening, the Maine Ethics Commission received the attached request for investigation of a postcard mailing featuring State Sen. Andre Cushing and House candidate David Haggan. Sen. Cushing is running for re-election to the Maine Senate, District 10. Mr. Haggan is challenging the current State Representative for District 101. Both Sen. Cushing and David Haggan are financing their campaigns through traditional campaign contributions. Attorney Joshua A. Tardy, Esq. will be representing both candidates in this matter.

The postcard does not contain a statement of who paid for the mailing, which gave rise to the questions posed by the Maine Democratic Party.

In the course of completing a version of this memo, I received an email from Sen. Cushing stating that he and Mr. Haggan split the cost of the mailing and that the expenses have been disclosed in 24-Hour Reports already submitted to the Commission. (His email and the 24-Hour Reports are attached.) The 24-Hour Reports indicate that each candidate paid \$1,313.21 in campaign funds to the Snowman Group for printing. In the email, Sen. Cushing apologized for the missing disclaimer statement and indicated that he would check with the printer concerning why no disclaimer was included in the mailing.

Compliance Issues

Disclaimer Statement. The Maine Democratic Party asks the Commission to investigate whether the mailing violates 21-A M.R.S.A. § 1014 (attached), because of the missing disclaimer statement. Under § 1014(1), whenever a person makes an expenditure for a communication to voters that expressly advocates for the candidate's election and the candidate authorizes the communication, the communication is required to include

- a statement that the candidate authorized the communication, and
- the name and address of the person who made or financed the expenditure. (If the candidate paid for the communication, only the name is required – not the address.)

If two candidates (e.g., John Smith and Susan Thomas) jointly pay for a mailer or advertisement, the staff advises that the following disclaimer statement would be acceptable: “Paid for and authorized by John Smith and Susan Thomas.”

Possible Contribution to David Haggan

The Maine Democratic Party asks the Commission to consider whether the mailing constitutes an in-kind contribution to Mr. Haggan, if Sen. Cushing had paid for the mailing himself without any reimbursement by David Haggan. Since they split the cost of the mailing, this does not seem to be an issue.

Thank you for consideration of this item.



**Bernstein, Shur,
Sawyer & Nelson, P.A.**
100 Middle Street
PO Box 9729
Portland, ME 04104-5029

T (207) 774 - 1200
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Katherine R. Knox
(207) 228-7229 direct
kknox@bernsteinshur.com

November 5, 2016

Jonathan Wayne
Executive Director
Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333

RE: Request for Investigation into Mail Piece Sent by Andre Cushing

Dear Mr. Wayne:

On behalf of my client, the Maine Democratic Party (“MDP”), and pursuant to 21-A M.R.S.A. §1003(2), I write to request that the Commission investigate whether the attached mail piece violates 21-A M.R.S.A. §1014 which requires that political statements contain a disclosure making clear to voters who paid for the voter communication. Additionally, we request that the Commission investigate whether the attached communication constitutes a contribution to the campaign of David Haggan subject to contribution limits and reporting requirements.

Maine law requires that whenever a person makes an expenditure to finance a communication expressly advocating for a clearly identified candidate – that communication must clearly and conspicuously state the name and the address of the person paying for the communication. 21-A M.R.S.A. §1014. In addition, communications to voters which advocate for the election of clearly identified candidates are “contributions” to that named candidate and must conform to contribution limits and be reported accordingly.

David Haggan is the republican general election candidate for House District 101, Hampden and Newburgh. Senator Andre Cushing is the sitting senator in Senate District 10 and is currently running for re-election. On Friday, November 4, 2016, voters in both Hampden and Newburgh received the mail in piece at issue. Although, at first glance, it purports to provide voters information on the five ballot questions – it also contains photographs and campaign signs for both Candidate Haggan and Candidate Cushing – encouraging voters to support their election. The result of those

November 5, 2016

Page 2

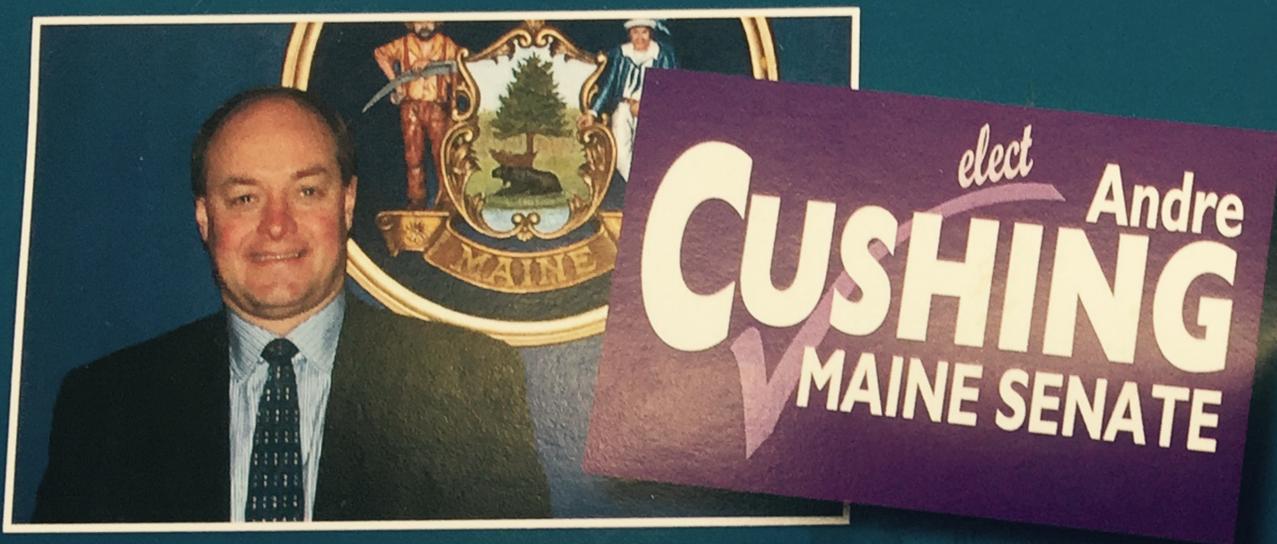
images is a mail piece which not only discusses referendum questions – but clearly advocates for the election of both named candidates.

Despite that clear advocacy, this voter communication contains no required disclaimer informing voters who paid for the mail piece and whether it was authorized (or not) by either named candidate. Further, the clear encouragement to voters to support both Candidate Haggan and Cushing should be considered a contribution to one or both of their campaigns. As such, that contribution must conform to contribution limits and both accelerated and standard candidate reporting.

We believe the evidence outlined above and attached to this request constitutes sufficient grounds for believing that a violation may have occurred and we ask that an investigation be commenced immediately.

Sincerely,

Katherine R. Knox



VOTER LOCATION INFORMATION:

For information about how and where to vote, please contact your local Municipal Clerk or call Maine's Division of Elections at 624-7650. Information is also available online at www.maine.gov/sos

Hampden Town Office
106 Western Ave, Hampden, ME 04444
(207) 862-3034

On November 8th, 2016 the polls will be open from 7:00 a.m. - 8:00 p.m.

Newburgh Town Office
2220 Western Ave, Newburgh, ME 04444
(207) 234-4151

On November 8th, 2016 the polls will be open from 8:00 a.m. - 8:00 p.m.

PLEASE NOTE: Thursday November 3rd is the last day to request an absentee ballot unless you have a special circumstance (as outlined by statute.)

Dear Fellow residents,

Election day is quickly approaching. In addition to casting votes for many federal, state, county and municipal officers, you will be seeing six questions before you on a diverse number of topics.

In an effort to help you prepare beforehand we are including the wording on the referendum issues and a link to the Maine Secretary of State's website where you can view more details on each of the questions. Here is the link to further information:

<https://www1.maine.gov/sos/cec/elec/upcoming/citizensguide2016.pdf>

We appreciate your taking the time to exercise your right to vote and would be honored to have earned your support.

Sincerely,

Andre Cushing

David Haggan

Andre Cushing
PO Box 211
Hampden, ME 04444

Presorted Std.
US Postage
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Snowman Group

POSTAL CUSTOMER
ECRWSS

BALLOT QUESTIONS THAT WILL APPEAR ON THE NOVEMBER 8, 2016 REFERENDUM

(in the order they will appear)

Question 1: Citizen Initiative

Do you want to allow the possession and use of marijuana under state law by persons who are at least 21 years of age, and allow the cultivation, manufacture, distribution, testing, and sale of marijuana and marijuana products subject to state regulation, taxation and local ordinance?

Question 2: Citizen Initiative

Do you want to add a 3% tax on individual Maine taxable income above \$200,000 to create a state fund that would provide direct support for student learning in kindergarten through 12th grade public education?

Question 3: Citizen Initiative

Do you want to require background checks prior to the sale or transfer of firearms between individuals not licensed as firearms dealers, with failure to do so punishable by law, and with some exceptions for family members, hunting, self-defense, lawful competitions, and shooting range activity?

Question 4: Citizen Initiative

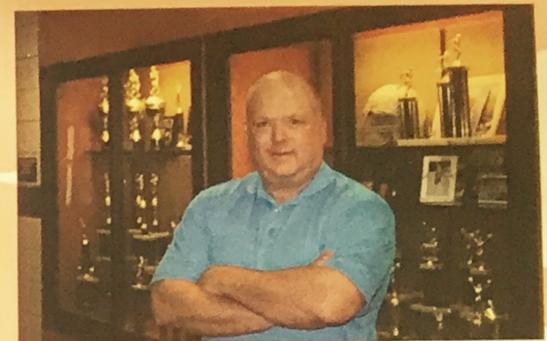
Do you want to raise the minimum hourly wage of \$7.50 to \$9 in 2017, with annual \$1 increases up to \$12 in 2020, and annual cost-of-living increases thereafter; and do you want to raise the direct wage for service workers who receive tips from half the minimum wage to \$5 in 2017, with annual \$1 increases until it reaches the adjusted minimum wage?

Question 5: Citizen Initiative

Do you want to allow voters to rank their choices of candidates in elections for U.S. Senate, Congress, Governor, State Senate, and State Representative, and to have ballots counted at the state level in multiple rounds in which last-place candidates are eliminated until a candidate wins by majority?

Question 6: Citizen Initiative

Do you favor a \$100,000,000 bond issue for construction, reconstruction and rehabilitation of highways and bridges and for facilities, equipment and property acquisition related to ports, harbors, marine transportation, freight and passenger railroads, aviation, transit and bicycle and pedestrian trails, to be used to match an estimated \$137,000,000 in federal and other funds?



Wayne, Jonathan

From: Andre Cushing <andre@andrecushing.com>
Sent: Sunday, November 6, 2016 1:53 PM
To: Wayne, Jonathan
Subject: information regarding joint mailer Haggan/Cushing
Attachments: Haggan 24 hour IE on joint mailer.pdf; IE for joint mailer.pdf

Jonathan,

Thank you for your email regarding the joint mailer that David Haggan & I approved to mail to Hampden and Newburgh voters, the cost was split jointly between our campaigns. Total design and printing cost were \$1962.02 postage total was \$664.39

My campaign portion was a total of \$1313.21 and Mr. Haggan's was \$1313.20.

I attach a copy of each of the 24 hour reports filed with the ethics Commission.

I apologize for the missing disclaimer and will contact the vendor to try and identify what occurred that it was not included.

--

Andre E. Cushing III
Assistant Majority Leader
State Senator- District 10
(15 communities in Southern Penobscot County- Carmel, Corinna, Corinth, Dixmont, Etna, Exeter, Glenburn, Hampden, Hudson, Kenduskeag, Levant, Newburgh, Newport, Plymouth, Stetson)
P.O. Box 211
Hampden, Maine 04444
office 207-358-9447
email andre@andrecushing.com



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

24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES

2016 CAMPAIGN YEAR

COMMITTEE		TREASURER	
ANDRE E CUSHING III P.O. BOX 211 HAMPDEN, ME 04444 PHONE: (207) 358-9447 EMAIL: ANDRE@ANDRECUSHING.COM		JOSH I TARDY P.O. BOX 211 HAMPDEN, ME 04444 PHONE: (207) 341-5858 EMAIL: JOSH@MITCHELLTARDY.COM	
REPORT	DUE DATE	REPORTING PERIOD	
24 Hour Report of Major Contributions and Expenditures	11/04/2016	11/03/2016 - 11/03/2016	

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$0.00
2. TOTAL EXPENDITURES	\$1,313.21
3. TOTAL DEBTS	\$0.00

I, HON. ANDRE E CUSHING III, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: HON. ANDRE E CUSHING III
REPORT FILED ON: 11/04/2016
LAST MODIFIED: 11/04/2016
PRINTED: 11/06/2016
COMMITTEE ID: 8619

24-HOUR EXPENDITURE AND PAYEE INFORMATION

EXPENDITURE TYPES				
<p>CNS Campaign consultants</p> <p>CON Contribution to other candidate, party, committee</p> <p>EQP Equipment (office machines, furniture, cell phones, etc.)</p> <p>FND Fundraising events</p> <p>FOD Food for campaign events, volunteers</p> <p>LIT Print and graphics (flyers, signs, palmcards, t-shirts, etc.)</p> <p>MHS Mail house (all services purchased)</p> <p>OFF Office rent, utilities, phone and internet services, supplies</p> <p>OTH Other</p> <p>PHO Phone banks, automated telephone calls</p>	<p>POL Polling and survey research</p> <p>POS Postage for U.S. Mail and mail box fees</p> <p>PRO Other professional services</p> <p>PRT Print media ads only (newspapers, magazines, etc.)</p> <p>RAD Radio ads, production costs</p> <p>SAL Campaign workers' salaries and personnel costs</p> <p>TRV Travel (fuel, mileage, lodging, etc.)</p> <p>TVN TV or cable ads, production costs</p> <p>WEB Website design, registration, hosting, maintenance, etc.</p>			
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
11/3/2016	SNOWMAN PRINTING & PRESORT EXPRESS 1 PRINTERS DR HERMON, ME 04401	PRINT & MAIL SERVICES	MHS	\$1,313.21
TOTAL EXPENDITURES FOR CANDIDATE:				\$1,313.21



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

24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES

2016 CAMPAIGN YEAR

COMMITTEE		TREASURER	
DAVID G HAGGAN 11 WESTBROOK TERRACE HAMPDEN, ME 04444 PHONE: (207) 944-7471 EMAIL: DHAGGAN@GMAIL.COM		DEBRA D PLOWMAN P.O. BOX 468 HAMPDEN, ME 04444 PHONE: (207) 461-1662 EMAIL: DEBRAPLOWMAN@CS.COM	
REPORT	DUE DATE	REPORTING PERIOD	
24 Hour Report of Major Contributions and Expenditures	11/04/2016	11/03/2016 - 11/03/2016	

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$0.00
2. TOTAL EXPENDITURES	\$1,313.21
3. TOTAL DEBTS	\$0.00

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

REPORT FILED BY: DEBRA D PLOWMAN
REPORT FILED ON: 11/04/2016
LAST MODIFIED: 11/04/2016
PRINTED: 11/05/2016
COMMITTEE ID: 9258

24-HOUR EXPENDITURE AND PAYEE INFORMATION

EXPENDITURE TYPES				
<p>CNS Campaign consultants</p> <p>CON Contribution to other candidate, party, committee</p> <p>EQP Equipment (office machines, furniture, cell phones, etc.)</p> <p>FND Fundraising events</p> <p>FOD Food for campaign events, volunteers</p> <p>LIT Print and graphics (flyers, signs, palmcards, t-shirts, etc.)</p> <p>MHS Mail house (all services purchased)</p> <p>OFF Office rent, utilities, phone and internet services, supplies</p> <p>OTH Other</p> <p>PHO Phone banks, automated telephone calls</p>	<p>POL Polling and survey research</p> <p>POS Postage for U.S. Mail and mail box fees</p> <p>PRO Other professional services</p> <p>PRT Print media ads only (newspapers, magazines, etc.)</p> <p>RAD Radio ads, production costs</p> <p>SAL Campaign workers' salaries and personnel costs</p> <p>TRV Travel (fuel, mileage, lodging, etc.)</p> <p>TVN TV or cable ads, production costs</p> <p>WEB Website design, registration, hosting, maintenance, etc.</p>			
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
11/3/2016	SNOWMAN PRINTING 1 PRINTERS DRIVE HERMON, ME 04444	MAILER PRINTING AND POSTAGE	MHS	\$1,313.21
TOTAL EXPENDITURES FOR CANDIDATE:				\$1,313.21

21-A MRSA § 1014. PUBLICATION OR DISTRIBUTION OF POLITICAL COMMUNICATIONS

★ **1. Authorized by candidate.** Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, cable television systems, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. A communication financed by a candidate or the candidate's committee is not required to state the address of the candidate or committee that financed the communication. If a communication that is financed by someone other than the candidate or the candidate's authorized committee is broadcast by radio, only the city and state of the address of the person who financed the communication must be stated.

[2013, c. 494, §1 (AMD) .]

2. Not authorized by candidate. If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. If the communication is in written form, the communication must contain at the bottom of the communication in print that is no smaller in size than 12-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

[2013, c. 362, §2 (AMD) .]

2-A. Other communications. Whenever a person makes an expenditure to finance a communication that names or depicts a clearly identified candidate and that is disseminated during the 21 days before a primary election or 35 days before a general election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. The disclosure is not required if the communication

was not made for the purpose of influencing the candidate's nomination for election or election.

[2013, c. 362, §3 (AMD) .]

2-B. Top 3 funders; independent expenditures. A communication that is funded by an entity making an independent expenditure as defined in section 1019-B, subsection 1 must conspicuously include the following statement:

"The top 3 funders of (name of entity that made the independent expenditure) are (names of top 3 funders)."

The information required by this subsection may appear simultaneously with any statement required by subsection 2 or 2-A. A communication that contains a visual aspect must include the statement in written text. A communication that does not contain a visual aspect must include an audible statement. This statement is required only for communications made through broadcast or cable television, broadcast radio, Internet audio programming, direct mail or newspaper or other periodical publications.

A cable television or broadcast television communication must include both an audible and a written statement. For a cable television or broadcast television communication 30 seconds or less in duration, the audible statement may be modified to include only the single top funder.

The top funders named in the required statement consist of the funders providing the highest dollar amount of funding to the entity making the independent expenditure since the day following the most recent general election day.

A. For purposes of this subsection, "funder" includes:

- (1) Any entity that has made a contribution as defined in section 1052, subsection 3 to the entity making the independent expenditure since the day following the most recent general election day; and
- (2) Any entity that has given a gift, subscription, loan, advance or deposit of money or anything of value, including a promise or agreement to provide money or anything of value whether or not legally enforceable, except for transactions in which a fair value is given in return, since the day following the most recent general election day. [2015, c. 1, §3 (NEW).]

B. If funders have given equal amounts, creating a tie in the ranking of the top 3 funders, the tie must be broken by naming the tying funders in chronological order of the receipt of funding until 3 funders are included in the statement. If the chronological order cannot be discerned, the entity making the independent expenditure may choose which of the tying funders to include in the statement. In no case may a communication be required to include the names of more than 3 funders. [2015, c. 1, §3 (NEW).]

C. The statement required under this subsection is not required to include the name of any funder who has provided less than \$1,000 to the entity making