

Agenda

Item #1



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

Minutes of the October 28, 2010, Meeting of the
Commission on Governmental Ethics and Election Practices
Held at the Commission Office, 45 Memorial Circle,
2nd Floor, Augusta, Maine

Present: Walter F. McKee, Esq., Chair; Hon. Edward M. Youngblood; Margaret E. Matheson, Esq.,
Michael T. Healy, Esq. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 12:30 p.m., Chair Walter McKee convened the meeting.

The Commission considered the following items:

Agenda Item #1. Request by the Maine Democratic Party concerning Contributions to Paul LePage

Mr. Wayne explained that the Maine Democratic Party has filed a request that the Commission consider whether Paul LePage's campaign has received contributions from donors which exceed the \$750 limitation. He said the LePage campaign has submitted a preliminary response for the Commission's meeting and explained that most of the contributions in question relate to husband and wife contributions.

Benjamin Grant, Esq., counsel for the Maine Democratic Party, responded to the LePage campaign explanations by saying the campaign has not complied with the law and urged the Commission to take further action on the matter. He said the errors were in two categories of contributions, misallocating contributions by family members and counting contributions that were not actually made. He referred to the spreadsheet provided by the LePage campaign and noted some clerical discrepancies as well as tally errors.

Mr. McKee questioned the need for the Commission to be concerned over clerical errors.

Mr. Grant said the clerical errors are of concern because they were deleted and he suggested the Commission investigate whether those were in fact clerical mistakes or not. He said steps need to be taken to be sure this money was not received.

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Mr. Grant said regarding the joint checking accounts and contributions from husband and wife, he said the guidelines state that written documentation should be obtained from the family member who did not actually sign the check to be certain that he or she did in fact wish to make a contribution. He said the LePage campaign has admitted that their process was to shift any funds above the \$750 limit automatically over to the spouse named on the check. He said there is no documentation that proves this was the intent of the contributor named. He said the campaign knew the correct procedure for having documentation because they sought that proof for other contributions.

John Morris, Chief of Staff for the LePage campaign and Erin Sullivan, the deputy finance staff person for the campaign, reviewed the contributions in question. Mr. Morris said the campaign has received over 5,000 contributions. He said Ms. Sullivan has spoken to every person who was listed as husband and wife on the list of questioned contributions. He said when a check came in that was written on a joint bank account, for example, a check for \$200, it was recorded under one of the joint account holders name as a \$200 contribution. He said if that contributor sent another check from the same account, for example for \$600, it was recorded as a contribution from that same contributor/account holder.

Ms. Sullivan explained that if a check for an amount over \$750 was received, the amount would be divided evenly between the account holders that were named on the check. In one instance, a check was received from a couple for \$1,300 and it was divided evenly between the two account holders. That resulted in one contributor being over the contribution limit by \$100 because an earlier contribution for \$200 was attributed to only that contributor and was not divided between the two account holders. In most instances in which the campaign reallocated the contribution amount between a couple, both individuals had previously contributed to the campaign. There were two situations where a contribution was attributed to an individual who had not previously contributed but the campaign contacted those individuals to make sure that they intended to make the contribution.

Mr. Wayne handed out a spreadsheet created by the Commission staff that represented all the contributions from spouses in question.

Mr. McKee asked Ms. Sullivan whether when a check for an amount over \$750 came in, the campaign made an assumption that the contribution was intended to be from both account holders. He asked whether the campaign took any steps to verify whether each contributor intended to make the contribution.

Ms. Sullivan said that in the instance that Mr. McKee was asking about, the campaign knew that each spouse intended to make the contribution because the campaign made the solicitation directly.

Mr. McKee said he wanted to understand the process used by the campaign for accepting contributions. Mr. McKee said his concern was that the campaign just made an assumption that because two names were on the check, each person must have intended to make a contribution. Whereas, it is possible that one spouse may learn that a contribution was made in their name without their consent and they may not have ever had the intention of making a contribution. He asked who the other party was that made calls to contributors to verify.

Mr. Morris said Ms. Sullivan had called every one of the couples listed on the spreadsheet to verify their intent to be honest. He said there have been 5,000 contributions and it appears that the campaign made mistakes on a few. The mistakes were honest, not calculated, he said. Mr. Morris said Kim Lindlof was also helping with the calls.

Mr. McKee clarified that the calls were made by Ms. Sullivan and Kim Lindlof. He asked which people Ms. Sullivan called herself.

Ms. Sullivan said she called most of the people on the spreadsheet and Ms. Lindlof called probably five. She said she spoke to contributors personally.

Ms. Matheson asked if most of the contributions were through online giving.

Ms. Sullivan said some were online, but most of the contributions in question were made by check to the campaign.

Mr. McKee asked if the campaign had a method to track when the amount from a single contributor was getting near the limit.

Ms. Sullivan said the treasurer receives all the contributions that come in through the mail and he makes phone calls when he notices a duplicate contribution. She said the campaign has caught a few that are over the maximum amount and have returned the check to the contributor. She said some were missed.

Ms. Healy asked which document was prepared by Ms. Sullivan and how much time she had to review all the information provided.

Ms. Sullivan said she had 24 hours.

Mr. Healy asked Ms. Sullivan whether, of the contributions she reviewed, there were any contributions that came in by a check drawn on a joint account that exceeded \$1500 and when was the discovery made.

Ms. Sullivan said there was one such contribution discovered when the report was given to them yesterday. She said it was a case where an online contribution had been made as well as a check sent in. She said the Dwight contribution was over the contribution limit by \$550 and it will be refunded.

Mr. Healy asked how many times the campaign had to refund contributions because they were over the limit.

Ms. Sullivan said she did not know.

Mr. Morris said it has not happened very often. He stated that the campaign has done nothing dishonest. He said they have been truthful with the Commission. He said what had been a problem in the past was when a contributor uses PayPal and also a check with a different address, it has not been caught as a duplicate contribution.

Mr. McKee said the issue was the incomplete disclosure of contributors. Mr. McKee said the report filed by the campaign appears as one person making an over-the-limit contribution. He said the public does not have accurate information looking at the report.

Ms. Sullivan said when the campaign receives an RSVP card from a couple for a fund raising event with both names on the card and a check for \$1500, they assume that amount is for both people on the card.

Ms. Matheson asked how and who checks the contributions for accuracy and whether someone has gone over the limit, and she also asked how the ones in question were missed.

Ms. Sullivan said in the past someone scrolled down the pdf file downloaded from the Commission's website to see if anyone was over the \$750. She said it was difficult to be certain using that method, however. She said since she has come onboard, she has been downloading the reports into an excel file and sorting by name. She said some of these errors were made when she was new in her position and she was not sure what to be looking for. Ms. Sullivan said the timeframe between reporting periods was extremely short this time and she does all the checking manually with excel. She said she did not spend enough time reviewing the report this time because of the short turnaround time for filing the last report before the election.

Benjamin Grant expressed concern over the contributions that allegedly did not occur. He said some contributions listed have been deleted without knowing for sure whether money came in to the campaign. He said with regard to the spousal issue, using the Dwight family as an example, the campaign's explanation is where the problem lies. He said it appears that three payments of \$750 were made and the family requested that one installment be put under the daughter's name. He said that is a violation under Maine law to make a contribution in the name of someone else. He said moving funds from one column to another does not show what the contributor's intent was. He said the Commission should not leave it up to the LePage campaign to ascribe intent to the contributors. He said an e-mail or a note from the contributor would be preferred.

Mr. Healy asked whether there was a presumption under the law that when a contribution is made by check from a joint account belonging to a husband and wife, the contribution is intended to be from both spouses.

Mr. Grant said he did not believe that to be the case. He said looking at the Commission's guidebook, it is advised that candidates "*receive something in writing from the non-signing spouse confirming that it was their intent to make part of the contribution.*"

Mr. Morris explained that there is a notation on the spreadsheet provided by the campaign that the \$550 Dwight contribution will be refunded and the campaign is not going to allocate that to the daughter.

Ms. Matheson asked Ms. Sullivan if she did make all calls on the duplicate contributions.

Ms. Sullivan reviewed the names of the people she did contact personally.

Mr. McKee asked what the Commission's past practice had been with regard to the written intent on joint contributions.

Mr. Wayne explained that the staff has written guidance which expresses what the staff view as the best practice in this situation, but there are no requirements to use that procedure. Mr. Wayne said he believed the campaign's intentions were honorable; however, the bookkeeping could have been better. He also said there were three contributions received after the primary election with no explanation in the Commission's e-filing system as to what they were for. They did not have any record of these contributions. However, he acknowledged that, despite the best intentions, mistakes do happen. He said overall the campaign is complying with the requirements, but the recordkeeping could be better.

Mr. Wayne said that the campaign did have a good argument that most of the questioned contributions were in fact correctly allocated to each spouse because each spouse had previously made contributions to the campaign. It was not simply a matter of redistributing the contribution solely to avoid an over the limit contribution.

Mr. Youngblood said in the best interest of the Commission, he thought it would be advisable for the staff to contact a random sample of the donors.

Mr. McKee said that an investigation process would mean any action would be deferred until the next meeting.

Mr. Wayne referred to the statute language regarding filed complaint requirements be decided within 24 hours of filing. He said, however, when additional fact finding is required that is impractical.

Mr. McKee suggested that the Commission make a final determination that there is no violation but that if the staff's investigation found that there were other potential violations, the staff would bring that to the Commission at another meeting.

Mr. Wayne said that would be acceptable, procedurally. However, he said that he believed there was a violation regarding the Dwight contribution.

Mr. McKee moved that the Commission find no violations except regarding the Dwight contribution. Ms. Matheson seconded.

Motion passed unanimously (4-0).

Mr. McKee moved that the Commission find a violation with respect to the Dwight contribution which was in excess of \$750. Ms. Matheson seconded.

Motion passed unanimously (4-0).

Ms. Matheson moved the Commission assess no penalty with regard to the Dwight violation. Mr. McKee seconded.

Motion passed unanimously (4-0).

2. Request by the Maine Democratic Party concerning the Republican State Leadership Committee

By phone, Craig Engle, Esq., national counsel to the Republican State Leadership Committee, and colleague Brett Kappel, Esq., both of Arent Fox, Washington, D.C.

Mr. Wayne explained that on Saturday, October 23, 2010, the Republican State Leadership Committee (RSLC) filed an independent expenditure report just before 1:00 p.m. reporting an expenditure of almost \$400,000 that was made relating to five State Senate races. He said the expenditures were all dated the previous day and if accurate the report was filed on time within 24 hours. However, the Maine Democratic Party filed a complaint challenging the reported dates. He said the party contends that the mailers and television ads required expenditures to be made before the Friday, October 22 reported date in order to produce the ads on the days which they appeared. He said the mailers required printing and postage fees to be reported earlier than the RSLC reported date as well since they were delivered in mailboxes as early as Saturday, October 23. He said the party also requests that the Commission assess civil penalties against the RSLC for the late filing.

Mr. Healy asked whether any new information had been obtained by the Commission staff since the Commission authorized an investigation at the October 26 Commission Meeting.

Mr. Wayne explained that on the evening of October 26 he sent a letter by e-mail to Scott Ward at the RSLC posing five questions regarding the timing of the television ads and mailers as well as payment dates. Mr. Wayne said he had not had any response back from Mr. Ward. He said his letter also put the RSLC on notice that the Commission may consider whether a violation had occurred and assess a penalty if determined so.

Daniel Walker, Esq., counsel for the Maine Democratic Party and Andrew Cashman, Esq., both from Preti Flaherty, represented the Maine Democratic Party. Mr. Walker reviewed the statute requiring the Commission to make a decision within 24 hours of a complaint being filed. He said there is evidence in this matter to determine that a prima facie violation had occurred. He asked the Commission to take time for investigation if necessary, but find in violation immediately.

Mr. McKee said the basis for the 24 hour statute requirement was for decisions to be made quickly. He said a further investigation can take place later if needed. He said otherwise the perpetrator of the violation is rewarded.

Mr. Healy asked what the date of filing should have been, in the party's view.

Mr. Walker said fully-produced TV ads were at stations on Friday morning at 11:00 a.m. He said the report was filed at 1 p.m. the next day which was two hours late, at minimum. He said, also, Target Point Communications conducted polling in September for the RSLC in the same Senate races. The RSLC reported that it had no activity in the October Quarterly and the 11-Day Pre-General Reports. So it is possible that those reports were filed late because they were substantially non-conforming because it is obvious that the RSLC did make expenditures in those reporting periods.

Mr. Healy said Mr. Walker made a good case that there is probable cause that the RSLC filed the report late. He said, however, Mr. Walker was also asking the Commission to adjudicate when the RSLC should have filed the report.

Mr. McKee said that he understood Mr. Walker to be saying that there was no possible way that a television ad could be produced and delivered immediately to the station, and that the production had to occur some time before the station got the ad. He said that the actual date of when the report should have been filed can be determined later when more facts have been developed. But at present, the Commission can decide that a violation had occurred. However, the issue that Mr. Healy brought up is whether the Commission should or must adjudicate the entire matter immediately.

Mr. Walker said the party has sufficient evidence for the Commission to determine the entire matter including the penalty today. He said it takes at least a week to produce a TV ad and three or four days to produce direct mail.

Mr. McKee asked what was in the record to prove those assertions and for the Commission to base its determination, if the entire matter had to be decided today.

Mr. Walker said that the RSLC could provide that information.

Mr. Healy asked Mr. Walker what the purpose was in finding a violation and then having another hearing to determine the penalty.

Mr. Walker said the purpose of the provision for meetings within 24 hours of a complaint is to give information to the public that a violation of Maine law has occurred. It creates a disincentive to those who would try to circumvent campaign finance laws if the Commission has the ability to decide quickly whether there has been a violation of those laws. He said the violation determination needs to be dealt with as soon as possible but assessing the penalty can wait until later.

Mr. Walker reviewed the materials he provided the Commission which he said clearly indicated that the stations had received the fully produced ads on Friday morning and that the RSLC made media buys starting on Friday morning as early as 10:30 a.m. Generally speaking, it takes a week to produce an ad. Therefore, the RSLC made its first reportable expenditure at least a week before October 22.

Mr. Walker reviewed the materials regarding the direct mail sent by the RSLC. He said according to information received by the MDP, the mailers were delivered as early as Saturday, October 23. There was no way the expenditure could have been made on Friday. He said it takes three or four days to produce a mailer, although that may not be the determining factor as to when the report should have been filed but the cost does need to be reflected in the report. But it does take time to print the mailers and since they were sent with a bulk mail permit, it had to take at least a few days after the expenditure for the mailers to be delivered. He said the expenditure should have been reported much earlier. He also reviewed the Target Point polling expenditure and explained that this poll could have been done as early as September. The RSLC did not report the Target Point experience in either of the two regular campaign finance reports that were due since September. In fact, the RSLC affirmatively stated that it had no financial activity in those reporting periods. Mr. Walker also stated that he did not think that it was a coincidence that the filing happened the day after the U.S Supreme Court decided not to take up the plaintiffs' motion to enjoin matching funds in the *Respect Maine PAC v. McKee* case.

Mr. Walker summarized by saying it was clear a violation had occurred although the exact date the report or reports should have been filed is still not clear. He said the late reporting did delay matching funds to candidates and therefore delayed their ability to respond to these negative ads by RSLC. If the Commission did not find a violation in this case, it would create an incentive for others to file independent expenditure reports late.

Mr. Youngblood asked where can someone find information about what triggers the requirement to file an independent expenditure report and how would someone know what the Commission decided at a meeting two years before.

Mr. Walker said the statute and the Commission's rules provide a definition of an expenditure.

Mr. Healy asked Mr. Walker what the date of filing should have been for the television ads.

Mr. Walker said at least by 11 a.m. on Saturday, October 23, two hours earlier.

Mr. Engle said this was the first independent expenditure done in Maine and the process was new to RSLC. He said in response to Mr. Walker's comment that the RSLC engaged in a willful, intentional delay is incorrect. He said the RSLC does not act in willful disregard of any law nor would it intentionally delay any report for any reason. He said the political committee has been active for many years and takes its obligations very seriously. If one looked at its record from across the United States, you would never find any allegation that it operated in any manner that willfully or intentionally disregarded any law. He said the majority practice in other states defines an independent expenditure as being made at the date of the release or payment of an ad or mailer because at any point before that, the expenditure may not occur. He said from looking at the Maine law, it is possible an expenditure which may not happen could trigger matching funds for the opposing candidate before the expenditure actually was made.

Mr. McKee explained this was the Maine law and entities doing political business in this state need to be aware of the laws and the risks when doing business in Maine.

Mr. Engle said his experience has been that no ad or mailer is final until the actual expenditure had been made and that means when the piece has gone. He said that was what the RSLC was trying to do when filing, however, it was two hours over the 24 hour requirement.

Mr. McKee said the Commission understands that other states do things differently than Maine and that relates to whether the RSLC's actions were willful or negligent. At this point, the Commission was more interested in the specifics of when the expenditures were made.

Mr. Engle said the RSLC filed the reports in Maine in what they believed was a timely fashion. He also said the timing of the projects had nothing to do with the *Respect Maine PAC vs. McKee* lawsuit. He said these were done on the schedule set by RSLC and with no regard to any Supreme Court case. He explained that he was not currently in a position to provide exculpatory or explanatory evidence beyond what he has already stated and will have to take his lumps.

Mr. Healy asked if the dates of the contracts could be provided by RSLC.

Mr. Engle said the only dates he had were the actual payment dates to the vendors.

Ms. Gardiner asked the purpose of the polling expenditure and if it had anything to do with the mailings of television advertisements.

Mr. Engle stated knowing the RSLC's past practice, the polling did not relate to the ads. He said polling is done for a variety of reasons but he did not have the actual questions used or what the results were. He said he did not have an expenditure date for the polling.

Mr. Walker said that it was still important and necessary to determine the actual dates on which the orders were placed and when the mailers were mailed.

Mr. McKee asked if that information could be gathered going forward when dealing with the penalty phase.

Mr. McKee reviewed the procedure the Commission would follow with this matter. He said the first matter would be to make a determination whether a violation had occurred and at a later time determine what the appropriate penalty would be. He asked Ms. Gardiner whether the motion should specify each expenditure that was reported late.

Ms. Gardiner said the issue was whether the independent expenditure report was filed late and it was not necessary to go through each expenditure listed.

Mr. McKee moved that the Commission find there was a violation due to the late filing by RSLC of Independent Expenditure #142 and defer the penalty decision until the next regularly scheduled meeting. Ms. Matheson seconded.

Mr. Healy stated that he would vote for the motion because Mr. Engle admitted that RSLC was two hours late getting the report filed. He said the factual record is not clear enough to make a determination beyond that.

Motion passed unanimously (4-0).

Mr. McKee confirmed that the investigation into this matter was on-going.

Ms. Matheson moved to adjourn. Mr. McKee seconded. The motion passed unanimously.

Meeting adjourned at 2:50 p.m.

Respectfully submitted,

Jonathan Wayne, Executive Director



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04333-0135

Minutes of the December 20, 2010, Meeting of the
Commission on Governmental Ethics and Election Practices
Held at the Commission Office, 45 Memorial Circle,
2nd Floor, Augusta, Maine

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

At 9:00 a.m., Chair Walter McKee convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the October 20 and November 30, 2010 Meetings

Ms. Matheson moved to accept the meeting minutes as drafted. Mr. Duchette seconded.

Motion passed unanimously (5-0).

In consideration of the Commission's practice to address agenda items out of order to accommodate the attendance of public participants regarding particular items, the following agenda item was taken out of order:

Agenda Item #4. Investigation of Cutler Files Website

The Commission considered whether to continue the investigation of the Cutler Files website and whether to take action on a complaint filed by Eliot Cutler's 2010 gubernatorial campaign alleging a violation of the disclaimer requirement and other statutes.

Mr. McKee explained that the procedure will be for the Commission to hear from counsel for each party and then the Commission will go into executive session to receive advice from Commission counsel.

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Mr. Daniel I. Billings, Esq., counsel for Cutler Files, stated that since this issue was discussed at the previous meeting, the staff has conducted its investigation and the results support the conclusion that less than \$100 was spent on the website. He said the claim that much more money had been spent on research and consultants for the website was false. He said looking over the relevant court decisions on the issues in this matter, they all can be traced back to *Buckley vs. Valeo* where the Supreme Court determined that the State does have an interest in regulating money involved in political campaigns in order to avoid corruption and the appearance of corruption. Even when reference is made to the state's informational interest to support disclosure laws, that informational interest arises from the fact that money is being spent on political campaigns. The State has no interest if there is no money involved. Maine campaign finance laws recognize this because the laws relate to the fact that money is being spent on campaigns. The State has no interest in knowing who is involved in political campaigns when there is no money involved. He said there are no disclosure requirements for individuals who design websites or conduct research unless they are being paid to do that work. He also said it was unfortunate his clients did not seek counsel before the website went online in order to develop other means of getting their research out to the public. The reason they did not do so was because they never thought it was necessary because they felt they were engaged in citizen journalism and had a right to speak. He said had the material been given to an existing political website that covers issues on a regular basis, this matter would have been viewed differently. He said they could have created a legal entity such as an LLC or corporation which would have been listed as the organization making the expenditure, and thus avoided disclosing their personal identities. He said the only reason the Commission has jurisdiction over this matter is because his clients did not choose one of these alternate avenues.

Mr. Billings said, with regard to the staff memo, he took issue with the statement that the readers of the website could not adequately judge the credibility of the material on the website without knowing who the individuals behind it were. He said there were several links within the materials which backed up the research. He said his clients wanted the credibility of the website to be based on the material, not on the creators of the website.

Mr. Billings said he disagrees with the contention of the Cutler campaign's counsel that the *Citizens United* decision effectively overruled the *McIntyre* decision. *Citizens United* dealt with the federal law that required on-message disclaimers. That law has a much higher dollar threshold compared to Maine's law

which has none. In addition, the law at issue in *Citizens United* dealt with broadcast communications which is very different from Maine's law. In fact, if the correct federal law were applied to the Cutler Files, the disclaimer would not be required due to the minimal money involved in this matter. Mr. Billings said that it was interesting to note that the Supreme Court said in *Citizens United* that the Court should look at whether the disclosure of contributors' name would subject them to threats or reprisals. Mr. Cutler's attorney has already threatened the company that registered the domain name of the website with a lawsuit if it did not reveal the name of the purchaser. He also disagreed with the argument that public figures have less of a right to anonymity than others. To make that argument, the Cutler campaign relied on defamation cases. Those cases used the concept of the public figure to protect the rights of individuals to speak. The Cutler campaign takes those cases out of context and turns them on their head in order to limit free speech rights.

Mr. Billings said in closing that the Commission has discretion on whether and how to take enforcement action. He said, first, the statutes and rules have not considered the issue of the Internet and how to deal with matters that arise involving the Internet. Secondly, he said, the amount of money involved is less than \$100 which is minimal and no independent expenditure report was required. He said the disclaimer requirement is there to make it more difficult for people to avoid disclosing expenditures. If a communication has a disclaimer on it, then people will know to look to see whether a report of that expenditure has been filed with the Commission. He said in this case the investigation proved there was no requirement to report. He said also this particular statute is the most violated one but is seldom brought before the Commission. He said quite often during elections the disclaimer is left off or incorrectly reported and rarely results in enforcement action. He referred to some videos produced by the Cutler campaign which were posted on YouTube that had no disclaimer as well.

Mr. Billings also noted that what has driven the most traffic to the website and created its promotion was Mr. Cutler's complaint to the Commission. Mr. Billings said this was part of an intentional campaign strategy on behalf of the Cutler campaign and not because of a significant legal issue or concern over the content of the site.

Mr. Richard Spencer, Esq., counsel for the Cutler campaign, said this was a clear, deliberate and facial violation of the disclaimer requirements in § 1014. He said the people responsible were not just trying to

remain anonymous but tried to mislead the electorate by lying on the site about who they were. He said this material was character assassination through innuendo and demeaning characterization. He said the Commission must apply the exacting scrutiny standard, not strict scrutiny, in assessing the constitutionality of this statute. The state does have a sufficiently important governmental interest in making sure that voters had information about who was speaking about a candidate in the time leading up to an election. He said the Legislature has directed the Commission to enforce the law and it was up to the courts to decide whether the law is unconstitutional. If the Commission were to consider an as applied challenge to the statute, the statute would survive. The website bore no resemblance to Mrs. McIntyre's leaflets. He said the anonymous speakers on this website were public figures who were actively involved in the gubernatorial race and had a reduced privacy interest because of that. He discounted the contention that the website cost less than \$100. He said the payments to a paid political consultant would easily go over \$100. He said one of the creators, he understands, tried to sell the research to another campaign for \$30,000. He also said this candidate involved signed the Commission's Code of Fair Campaign Practices pledge and wondered how the Commission could administer the pledge while protecting the anonymity of the creators of this site. He stated that the reason for wanting anonymity is because the creators do not want to be associated with the misrepresentations on this site. He stressed the importance for the Commission to stand up for transparency and ethical conduct in campaigns.

Mr. McKee moved to go into executive session in accordance with Title 1, Section 405, subsection 4, to discuss information contained in the investigative working papers made confidential by statute pursuant to Section 405(6)(F), and to consult with Commission counsel concerning the legal rights and duties of the Commission and contemplated litigation pursuant to Section 405, subsection 6(E). Ms. Matheson seconded the motion. The motion passed unanimously.

Mr. McKee explained that the Commission will identify two individuals, not by name, using John Doe I and John Doe II in order to preserve the anonymity of those involved.

Mr. McKee moved, with respect to John Doe I, that the Commission find there was no violation of 21-A M.R.S.A. §§ 1014 or 1019-B; and with respect to John Doe II, that there was no violation of 21-A M.R.S.A. § 1019-B, but that the Commission find a violation of 21-A M.R.S.A. § 1014(2) based on the information provided in the investigative report. Mr. Healy seconded.

Ms. Gardiner brought up the question of whether the Commission would also make a finding with respect to subsection 2(A).

Mr. Wayne explained that there could be greater challenges in defending this section, however, said he felt that there was a violation of this provision of the statute.

Mr. McKee asked if the motion should include section 2(A) as well.

Mr. Healy moved to amend the motion that the Commission find with respect to John Doe I, that there was no violation of 21-A M.R.S.A. §§ 1014 or 1019-B; and with respect to John Doe II, that there was no violation of 21-A M.R.S.A. § 1019-B, but that the Commission find a violation of 21-A M.R.S.A. § 1014(2) and (2-A) based on the information provided in the investigative report. Ms. Matheson seconded.

Motion passed unanimously (5-0).

Mr. McKee moved that the Commission take enforcement action with respect to John Doe II. Mr. Healy seconded.

Motion passed unanimously (5-0).

Mr. Healy asked for clarification regarding the penalty phase.

Ms. Gardiner said it could be considered an enhanced penalty which would mean a maximum of \$5,000 for misrepresentation.

Mr. Duchette said more discussion needed to take place regarding the type of misrepresentation and how narrowly the statute is interpreted. He said even though there were no names or address disclosed, it could be determined there was misrepresentation, perhaps, through affiliation.

Mr. Healy said the misrepresentation of the affiliation of John Doe II as an agent for the campaign was misleading to voters.

Mr. McKee noted the language in the statute refers to misrepresenting the name or address, however in this case there was no name or address provided on the website.

Mr. Healy said it was also constructed in a manner to mislead people as to who could be the sponsor.

Mr. Healy moved that the Commission assess a civil penalty of \$200 against John Doe II. Mr. Youngblood seconded.

Motion passed unanimously (5-0).

Mr. Healy moved that the Commission find that the statements made on the website misrepresented the name and address of John Doe II. Mr. McKee seconded.

Mr. McKee said although the website was produced to make people believe it was done by someone when in fact it was produced by another, he expressed concern that it was actual misrepresentation of the “name or address” of the person.

Mr. Youngblood said because the website indicated that more than one person was involved, that part of the statement would not be a misrepresentation. He said that he did not see a basis to conclude that anyone misrepresented a name or address.

Mr. Duchette read two sections of the disclosure statement from the website which he found particularly concerning, “we are a group of researchers, writers and journalists,” and “we are not authorized by or affiliated with any candidate or political party and have not been compensated in any way for our effort.” He said these statements are troubling because they are misleading as to the identity of the creators of the website and questioned whether they would be considered misrepresentation under the statute. He said the Commission view on how narrowly this statute should be read makes a difference in determining the outcome. He said he believed the intent was to mislead and to throw people off the trail of the responsible

parties. He said for the purpose of interpreting the statute, he believed that identity was the same as name and address.

Ms. Matheson said she disagreed and thought the statute should be interpreted more narrowly. She said the Legislature specifically mentioned “name and address” and if it intended the statute to be broader, the Legislature would have used different language.

Motion failed (2-3). Yeas: Mr. Duchette, Mr. Healy. Nays: Mr. Youngblood, Mr. McKee, Ms. Matheson.

The Commission resumed the scheduled order of agenda items at this point.

Agenda Item #2. Preliminary Consideration of Statute Changes Proposed by Staff

Under 1 M.R.S.A. § 1009, the Ethics Commission may submit a bill to the Legislature by February 2, 2011. Following the December 20 meeting, the staff will conduct outreach to interested persons and will submit a final proposal at the Commission’s January 27, 2011 meeting.

Ann Luther, Maine Citizens for Clean Elections, made the following comments:

- They support the changes in § 1015(4), chapter 13, regarding a candidate participating in fundraising for political action committees which has the sole purpose of working on behalf of that candidate.
- They were troubled by the changes to § 1018 regarding recounts that would expressly allow candidates to receive funds without limits from any source for the purpose of conducting a recount. Raising funds after an election does raise the appearance of possible corruption.
- They support the change to § 1053(3) to require political action committees to file the statement of intent more rigorously and updated regularly. They would even support strengthening this section even more.
- They were troubled by § 1125(6)(d), chapter 14, regarding legislative candidates purchasing personal computers. Legislative candidates should not be allowed to purchase equipment for themselves for later use that they would not otherwise be able to afford with their own resources; however, she cautioned against government regulation of a candidate’s choice of campaign strategy.

- They were concerned that the changes in § 1125, chapter 14, did not address the issue of whether unenrolled candidates had to be certified by the Secretary of State as candidates in the district in which they are running by April 20, which is the end of the qualifying period for all MCEA candidates. She said that she believed that was the intent of the Legislature when it established the April 20 deadline, but because of a conflict with another section of the Act, there is some ambiguity.

Agenda Item #3. Initiation of Rule-Making

Mr. Wayne proposed that the Commission postpone consideration of the proposed rule changes for one month.

Ms. Matheson moved to adjourn and Mr. McKee seconded the motion.

Respectfully submitted,

Jonathan Wayne, Executive Director