



## Candidate PACs: Maine State Law and Enforcement By the LWVME PAC Study Committee:

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### PACs Defined

The laws governing political action committees in Maine were amended during the 123<sup>rd</sup> Legislature. New law will take affect June 30, 2008.

Through the first half of 2008, different kinds of entities qualified under the definition of a political action committee (PAC). In general, under Maine law, a PAC could be any of the following:

- (1) A special fund established by any organization for the purpose of influencing the outcome of an election;
- (2) A person, corporation, committee, or organization that serves as a fundraiser or transfer agent and who spends money to influence a political campaign or promote a political party; or
- (3) An organization that has as its major purpose advocating the passage or defeat of a ballot question and that makes expenditures for that purpose or to influence any other political campaign or promote a political party.<sup>1</sup>

A political action committee was required to register with the Ethics Commission if it raised or spent in excess of \$1,500 in any single calendar year to influence an election.<sup>2</sup> Note that some PACs were not required to register if they stayed below the \$1,500 threshold.

On the other hand, lots of organizations that played an active role in political campaigns were not considered to be PACs, no matter how much money they raised or spent. Candidates, candidate committees, and political parties are obvious examples. Less obviously, other organizations that worked on elections did not qualify as PACs if their major purpose was not the passage or defeat of a ballot question. For example, during the 2006 campaign for the Taxpayer Bill of Rights (TABOR), the Heritage Policy Center

<sup>1</sup> "Legal Definition of a Political Action Committee," Maine Commission on Governmental Ethics and Election Practices, 21 March 2008 <<http://www.maine.gov/ethics/pacs/pacdefined.htm>>.

<sup>2</sup> "Registration of Political Action Committees," Maine Ethics Commission, 21 March 2008 <<http://www.maine.gov/ethics/pacs/registration.htm>>.

## Candidate PACs: Maine State Law and Enforcement

raised money and worked in support of the TABOR initiative, but because its work on that ballot initiative was not the major purpose of the organization, it was not deemed a PAC.<sup>3</sup> The Ethics Commission did mandate that the Heritage Policy Center file a 1056-B Report, which was the disclosure required of non-PAC organizations that spent more than \$1,500 to influence ballot questions. Other organizations, such as the Maine chapter of the American Association of Retired Persons (which had previously filed a 1056-B Report), spent money in opposition to the TABOR initiative and were also not considered PACs because their major purpose was not influencing TABOR.<sup>4</sup>

Similarly, organizations that weren't "major purpose PACs" might spend money to influence candidate elections without qualifying as PACs since the organizational definition of a PAC was limited to those organizations intent on ballot questions.

### New Law

Partly in response to questions raised about the disclosures of pro- and anti-TABOR groups in the 2006 election, the Maine State Legislature revised the definition of PACs in 2008.<sup>5</sup> Under the new definition, which goes into effect after the 2008 primary election, a PAC is any of following:

- (1) A special fund established by any organization for the purpose of influencing the outcome of a candidate or ballot issue election ("segregated fund PAC");
- (2) An organization whose major purpose is influencing a candidate or ballot issue election and that spends more than \$1,500 in a calendar year to do so ("major purpose PAC"); or
- (3) Any other organization whose major purpose is not to influence a candidate election but that nevertheless spends more than \$5,000 in a calendar year to do so ("non-major purpose PAC").

We also now have something called a "ballot question committee." This is an entity whose major purpose is not to influence candidate or ballot issue campaigns but that nevertheless receives contributions or makes expenditures in excess of \$5,000 to influence a ballot issue.

This new definition clarifies the reporting and disclosure required from established organizations that raise and spend money on candidate and ballot issue elections when their major purpose is not to influence a ballot question.

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<sup>3</sup> "Heritage Policy Center ordered to file form," *Kennebec Journal*, December 21, 2006, 21 March 2008 <<http://kennebecjournal.mainetoday.com/news/local/3444958.html>>.

<sup>4</sup> "Minutes of the March 9, 2007 Meeting of the Commission on Governmental Ethics and Election Practices," 13-21, 13 May 2008, <<http://mainegov-images.informe.org/ethics/pdf/meetings/20070309/20070309minutes.pdf>>.

<sup>5</sup> Changes to the definition and disclosure requirements for PACs were passed and signed into law in February 2008 under LD 1394 to go into effect 90 days after the adjournment of the 123<sup>rd</sup> Legislature. "State of Maine Legislature: Summary of LD 1394," 21 March 2008 <<http://janus.state.me.us/legis/LawMakerWeb/summary.asp?LD=1394>>.

## **Candidate PACs: Maine State Law and Enforcement**

Under the new definition, any entity that meets the definition of a PAC must register as soon as it crosses the expenditure threshold: \$1,500 over any period for type 1 PACs; \$1,500 in a calendar year for type 2 PACs; and \$5,000 in a calendar year for type 3 PACs. Ballot question committees must also register as soon as they raise or spend \$5,000 for their work on a ballot issue.<sup>6</sup>

### **Contributions and Expenditures<sup>7</sup>**

There is no limitation on the amount of money a contributor may give to a PAC. Unions and corporations may make contributions to PACs from their general treasuries.

PACs may make a contribution directly to candidates as long as the candidate is not a Maine Clean Election Act candidate. PACs may contribute to traditionally financed candidates within the normal contribution limits for those candidates: up to \$250 per election for legislative candidates and up to \$500 per election for gubernatorial candidates. Note that these limits are “per election,” so that a PAC could give \$500 to a gubernatorial candidate in the primary and another \$500 to the same candidate for the general election. PACs may also make contributions to other PACs and to party committees, and those contributions are not subject to any contribution limit.

PACs may make unlimited expenditures to support or oppose candidates as long as the expenditure is made independently of the candidate or the candidate’s campaign committee. PACs that spend money in coordination or in consultation with a candidate are considered to have made a contribution to the candidate.

### **Disclosure Requirements**

As noted above, political action committees organized in Maine must register with the Ethics Commission within seven days of qualifying as a PAC, and they must keep their registration information current until the PAC is terminated.<sup>8</sup>

Political action committees organized outside the State of Maine that have raised or spent more than \$1,500 in Maine must also file with the Ethics Commission. They are required to file a copy of whatever report the PAC has filed with the Federal Election Commission or with the state in which the PAC is organized.<sup>9</sup>

Every political action committee that has registered with the Ethics Commission is required to file quarterly campaign finance reports according to strict deadlines. These

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<sup>6</sup> See Appendix 2 for fuller explanation of how the new law applies.

<sup>7</sup> “Contributions and Expenditures,” Maine Ethics Commission, 21 March 2008 <<http://www.maine.gov/ethics/pacs/contexp.htm>>.

<sup>8</sup> “Registration: Political Action Committees,” the registration form available online from the Ethics Commission, 22 March 2008 <[http://mainegov-images.informe.org/ethics/pdf/forms/2007/pac/pac\\_registration.pdf](http://mainegov-images.informe.org/ethics/pdf/forms/2007/pac/pac_registration.pdf)>.

<sup>9</sup> “Out of State PACs,” Ethics Commission web site 22 March 2008 <<http://www.maine.gov/ethics/pacs/oospacs.htm>>.

## Candidate PACs: Maine State Law and Enforcement

are called the **January Quarterly**, the **April Quarterly**, the **July Quarterly**, and the **October Quarterly**.<sup>10</sup> PACs that file late are subject to civil penalties.

In addition, all PACs participating in primary or general elections must file the following additional reports:

- **11-Day Pre-Election Report**, due 11 days before Election Day covering roughly the calendar month before the election. (Note that in 2006, this was the 6-Day Pre-Election Report.)
- **42-Day Post-Election Report**, due 42 days after Election Day covering roughly the period from two weeks before Election Day thru five weeks after Election Day.
- **24-Hour Reports**. During the last 13 days before Election Day, a special report must be filed to disclose any expenditure of \$500 or more. The report is due within 24 hours after the expenditure is made.

All of these reports contain the following standard schedules:

- **Schedule A** – Cash Contributions
- **Schedule B** – Contributions & Expenditures To or On Behalf of Candidates, Committees, and Parties
- **Schedule B1** – Operating Expenses
- **Schedule C** – In-kind Contributions/Expenditures
- **Schedule D** – Loans/Loan Repayments
- **Schedule E** – Unpaid Obligations
- **Schedule F** – Summary

Expenditures must be reported for the period when they are obligated, not when they are paid.

All of these disclosures are publicly available as reported on the Ethics Commission web site.<sup>11</sup> In addition, the Ethics Commission website provides a basic search capability that allows citizens to retrieve contribution and expenditure data based on given criteria: name, amount, date range, etc.<sup>12</sup>

The fact that reported data are fully disclosed does not necessarily mean that useful information is readily available. It is difficult to answer questions that require combining data. It is hard to ascertain, for example, the total amount donated to a single PAC by a single contributor, much less the total donated by that contributor to all PACs. Although PACs are required to disclose which issue, candidate or group of candidates it supports or

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<sup>10</sup> “2008 Filing Schedule for Political Action Committees,” on the Ethics Commission website, 22 March 2008 <[http://mainegov-images.informe.org/ethics/pdf/forms/2008/pac/filing\\_schedule.pdf](http://mainegov-images.informe.org/ethics/pdf/forms/2008/pac/filing_schedule.pdf)>.

<sup>11</sup> “Political Action Committee List,” Ethics Commission, 22 March 2008 <[http://www.mainecampaignfinance.com/public/entity\\_list.asp?TYPE=PAC](http://www.mainecampaignfinance.com/public/entity_list.asp?TYPE=PAC)>.

<sup>12</sup> “Reported Contribution Search,” Ethics Commission, 22 March 2008 <[http://www.mainecampaignfinance.com/Public/contribution\\_search.asp](http://www.mainecampaignfinance.com/Public/contribution_search.asp)> and “Reported Expenditure Search,” Ethics Commission, 22 March 2008 <[http://www.mainecampaignfinance.com/Public/expenditure\\_search.asp](http://www.mainecampaignfinance.com/Public/expenditure_search.asp)>.

## **Candidate PACs: Maine State Law and Enforcement**

opposes, this information is often quite general, as in “supports all Democratic candidates for legislative office;” and this information is not easily linked to expenditures, making it difficult to ascertain what spending from which PAC is intended to influence which campaign. Also, because PACs may make contributions to other PACs, a single donor’s contribution may change hands many times before it is actually spent to influence an election, making it difficult to link the source to the effect.

### **Independent Expenditures**

An independent expenditure is the purchase of any communications to voters, typically media or print advertising, that expressly advocate the election or defeat of a clearly identified candidate and that is made without the knowledge or coordination of the candidate. Any expenditure made in cooperation with a candidate or his or her campaign would be considered a contribution to the candidate.

In addition, in candidate races involving Maine Clean Election Candidates, any expenditure that names or depicts a clearly identified candidate and that is disseminated during the 21 days before a primary election or during the 35 days before a general election in a candidate race is presumed to be an independent expenditure. This is regardless of whether the message expressly advocates the election or defeat of either candidate. The person making the expenditure may rebut the presumption within 48 hours by filing a written statement that the cost was not intended to influence the election. (Note that in election year 2006, the rebuttable presumption period for the general election was 21 days. It was expanded to 35 days in the next legislative session.)<sup>13</sup>

Any individual or organization making an independent expenditure aggregating more than \$100 per candidate must file an Independent Expenditure Report. If the independent expenditure is greater than \$250, it must be reported to the Ethics Commission within 24 hours.<sup>14</sup>

Independent expenditures are taken into account when determining whether a Maine Clean Election Act (MCEA) candidate is entitled to matching funds. For example, an independent expenditure made to benefit a candidate may cause matching funds to be paid to the candidate's MCEA opponent.

### **Other Ways PACs Help Candidates**

A PAC can help candidates in some ways that don’t count as either a contribution to the candidate campaign or as an independent expenditure. For example, a caucus PAC can set up an office with telephone, computers, etc., and make those available to candidates

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<sup>13</sup> “Political Action Committees,” Ethics Commission, 25 March 2008  
<<http://www.maine.gov/ethics/pacs/index.htm>>.

<sup>14</sup> “Political Action Committees,” Ethics Commission, 25 March 2008  
<<http://www.maine.gov/ethics/pacs/index.htm>>.

## Candidate PACs: Maine State Law and Enforcement

as long as the candidate's use of the facility does not result in any additional cost to the caucus.<sup>15</sup>

### Political Parties

Many of the rules regarding contributions, expenditures and disclosure that govern PACs in Maine also apply to statewide political parties. As do PACs, parties must file campaign finance reports with the Ethics Commission if they raise or spend more than \$1,500 in a calendar year.<sup>16</sup> As with PACs, there are no restrictions on the amount or source of contributions to political parties. The rules regarding independent expenditures and disclosures are similar for parties and for PACs.<sup>17</sup>

However, there are some things that political parties can do to help their candidates that are not permitted for PACs:<sup>18</sup>

- Campaign Events. A party committee can sponsor campaign events for three or more candidates without it counting as a contribution to the candidate campaign.
- Party Slate Cards. A party committee can produce and distribute slate cards that feature three or more candidates, as long as it treats all the candidates the same.
- Voter Lists. Party committees can provide voter lists to candidates free of charge regardless of whether the party paid to obtain them.
- Staff Support. Party Committees can provide up to 40 hours of paid staff time to a candidate campaign.<sup>19</sup>

### Maine Commission on Governmental Ethics and Election Practices

The Maine Commission on Governmental Ethics and Election Practices is an independent state agency that administers Maine's campaign finance laws, the Maine Clean Election Act, and the lobbyist disclosure law. It also issues advisory opinions and conducts investigations regarding legislative ethics.

The Commission consists of five members jointly appointed by the Governor and Legislative Leaders for three-year terms. The Commission is bipartisan, and no more than two members may be enrolled in the same political party. The Commission elects the Chair, who serves a two-year term in that office.

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<sup>15</sup> Maine Revised Statutes, Title 21-A, Chapter 13, §1012, 25 March 2008 <<http://janus.state.me.us/legis/statutes/21-A/title21-Asec1012.html>>.

<sup>16</sup> "Party Committees," Ethics Commission, 25 March 2008 <<http://www.maine.gov/ethics/party/index.htm>>.

<sup>17</sup> "Contributions and Expenditures," Ethics Commission, 25 March 2008 <<http://www.maine.gov/ethics/party/contributions.htm>>.

<sup>18</sup> "Political Party Guidebook," State of Maine Commission on Governmental Ethics and Election Practices, May 1, 2006, 17-20, 25 March 2008 <[http://mainegov-images.informe.org/ethics/pdf/party\\_booklet.pdf](http://mainegov-images.informe.org/ethics/pdf/party_booklet.pdf)>.

<sup>19</sup> Maine Revised Statutes, Title 21-A, §1012, 25 March 2008 <<http://janus.state.me.us/legis/statutes/21-A/title21-Asec1012.html>>.

## **Candidate PACs: Maine State Law and Enforcement**

The Commission meets monthly at the Commission's office, 242 State Street, Augusta, Maine. In the last 60 days before an election, the Commission meets every two weeks.

The mission of the Commission is to guard against corruption and undue influence of the election process. Members are appointed for their probity, judgment, and objectivity by the Governor and confirmed by the Legislature. Commission meetings and hearings are open to the public.

Appointments to the Ethics Commission are made by the Governor from a list of nominees provided by party leadership from each house of the Legislature:

- Seat 1 – Senate Republicans
- Seat 2 – House Republicans
- Seat 3 – Senate Democrats
- Seat 4 – House Democrats
- Seat 5 – All

When a vacancy occurs on the Commission, the responsible leadership has 60 days to provide the Governor with a list of three candidates for the vacancy. The Governor has 30 days to make an appointment, which is then subject to review by the Joint Standing Committee on Legal and Veterans Affairs and confirmation by the Legislature.

Commissioners may serve no more than two three-year terms.

Four of the five sitting commissioners were appointed in 2007, a busy year. All of the current commissioners are either lawyers or former legislators or both.

### **Recent Cases and Decisions by the Ethics Commission**

Most of the recent cases before the Ethics Commission relating to political action committees have been for minor penalties stemming from late filings. The more important case of “major purpose” PACs, which came up regarding the Heritage Policy Center and its work on the TABOR campaign of 2006, was outlined above and resulted in new legislation during the 123<sup>rd</sup> Legislature. (See page 1.)

There were some other cases of interest that arose during the 2006 election season. The LaMarche for Governor campaign requested matching funds based on television ads featuring Republican gubernatorial candidate Chandler Woodcock that were sponsored by the Republican Governors Association (RGA). The ads ran outside the 21-day rebuttable presumption period, but the LaMarche campaign argued that the advertisements were express advocacy in support of Mr. Woodcock and that they were coordinated with the Woodcock campaign. The Commission found that the ads were not express advocacy and were not coordinated with the Woodcock campaign.<sup>20</sup>

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<sup>20</sup> “Amended Minutes of the September 22, 2006 Meeting of the Commission on Governmental Ethics and Election Practices,” Ethics Commission, 27 March 2008 <<http://maine.gov-images.informe.org/ethics/pdf/meetings/old/20060922minutes.pdf>>.

## Candidate PACs: Maine State Law and Enforcement

The LaMarche for Governor Committee appealed the decision to the Supreme Judicial Court of Maine, which affirmed the judgment of the Ethics Commission.<sup>21</sup> This case highlighted the subjective nature of determining “express advocacy,” and reformers argued for extending the rebuttable presumption period all the way back to Labor Day to avoid the question altogether during the active campaign season. Legislation did pass during the 123<sup>rd</sup> Legislature to extend the rebuttable presumption period from 21 days to 35 days.

Also during the 2006 gubernatorial election, the Ethics Commission considered a question regarding “earmarking” candidate contributions and single-candidate PACs. In order to avoid circumvention of contribution limits, Maine law requires that contributions made by a particular donor to a particular candidate that are directed through an intermediary (perhaps a PAC) must be considered and reported as contributions by that donor to that candidate.<sup>22</sup>

During the gubernatorial primary campaign in 2006, a single-candidate PAC called Maine for Mills was formed to support Republican Peter Mills. Questions arose whether such single-candidate PACs were effectively “earmarking,” and whether they might be ruled contributions to the candidate campaign. If so, such single-candidate PACs would be effectively prohibited. The Ethics Commission issued an advisory opinion that earmarking should be narrowly defined to mean “the practice ... by which a contributor gives funds to an intermediary with the direction that the intermediary contribute the funds directly to the candidate.”<sup>23</sup> The opinion indicated that single-candidate PACs would be allowed.

As a final example, in October 2006, the Merrill for Governor campaign requested an Ethics Commission investigation following an article that appeared in the *The Phoenix* raising questions about whether consulting services paid for by the Democratic Governors Association PAC (DGA) were being donated to the Baldacci for Governor campaign and whether the consultant in question was coordinating with the Baldacci campaign for advertising paid for by the DGA.<sup>24 25</sup>

Under Maine law, anyone can volunteer on a campaign, and no matter how highly qualified they are, it does not count as a contribution to the campaign. If someone were paid by a third-party to provide “free” services to a campaign, it would count as a

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<sup>21</sup> *LaMarche For Governor Committee v. Commission On Governmental Ethics And Election Practices*, Supreme Judicial Court of Maine, 2006 ME 126, 27 March 2008 <<http://www.courts.state.me.us/opinions/2006%20documents%20/06me126la.pdf>>.

<sup>22</sup> Maine Revised Statutes, Title 21-A, §1015, 1 April 2008 <<http://janus.state.me.us/legis/statutes/21-A/title21-Asec1015.html>>.

<sup>23</sup> Advisory Letter of the Ethics Commission to Daniel P. Riley, Esq., Counsel to the Maine Republican Party, and Michael Mahoney, Esq., Counsel to the Maine Democratic Party, September 14, 2006, 5, 1 April 2008 <<http://mainegov-images.informe.org/ethics/pdf/meetings/old/20060922materials.pdf>>.

<sup>24</sup> “Under Maine’s campaign-finance system, Clean Election candidates get screwed,” Lance Tapley, *The Phoenix*, October 25, 2006, 1 April 2008 <<http://thephoenix.com/Article.aspx?id=26001&page=2>>.

<sup>25</sup> “Agenda, Meeting of October 31, 2008,” Ethics Commission 1 April 2008 <<http://mainegov-images.informe.org/ethics/pdf/meetings/old/20061031agenda.pdf>>.



## Candidate PACs: Maine State Law and Enforcement

contribution. The Ethics Commission investigation found that the consultant provided volunteer services to the Baldacci campaign, and they found that the consultant had been compensated for independent services by the DGA, but they found no evidence that the compensated services were provided to the candidate campaign.<sup>26</sup>

### Summary

Today, Maine's PAC laws are focused on disclosure. Campaign finance disclosure is important, to be sure. To be effective, however, disclosure depends on diligent observation by interested citizens and timely public scrutiny during the campaign cycle. Disclosure alone has few meaningful consequences unless questionable practices are widely noted in time to have political or electoral effects. Citizen and media engagement is essential.

Any further regulation of PAC activity must find the right balance in both law and enforcement. When the law is overly complex or restrictive, it may hinder legitimate activity by ordinary citizens, leaving the arena to those with extensive resources and professional advice. When the law depends on subjective judgment (as many contend is the case today regarding express advocacy), it may lend itself to inconsistent or overly narrow interpretation. Any new reforms in Maine law will be enforced by the Ethics Commission and prospective reformers must take into account the strengths and weakness of this institutional body when crafting new regulation.

There is a continuing tension between political freedom, encouraging people to be active in the political process, and regulating money to curtail corruption and undue influence. In order for any future reform of PAC law to be successful, it will need to balance these tensions, as well.

*The League of Women Voters of Maine has prepared this paper for the information and education of its members and the general public. This paper is not intended to provide legal guidance to political activists, candidates, PAC sponsors or anyone else. Readers should not substitute the information presented here for the applicable provisions of Election Law.*

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<sup>26</sup> "Minutes of the October 31, 2006 Meeting of the Commission on Governmental Ethics and Election Practices," 5-13, 1 April 2007 <<http://mainegov-images.informe.org/ethics/pdf/meetings/old/20061031minutes.pdf>>.

## Candidate PACs: Maine State Law and Enforcement

### Appendix 1

#### The Current Members of the State of Maine Commission on Governmental Ethics and Election Practices

Seat 1 is held by **Edward M. Youngblood** (R) of Bangor. Commissioner Youngblood was appointed on September 20, 2007 to fill a vacancy. His first term expires on April 16, 2008. He is eligible to be reappointed. Commissioner Youngblood is a Retired Senior Vice President with Bangor Savings Bank. He served in the Maine State Senate in the 120<sup>th</sup> and 121<sup>st</sup> Legislatures, 2000-2004. He is a graduate of Milo High School and Husson College.

Seat 2 is held by **Francis C. Marsano** (R) of Belfast. Commissioner Marsano was appointed on September 20, 2007 to fill a full term which expires on April 16, 2010. He is eligible for reappointment to another three-year term. Commissioner Marsano is a retired Justice of the Maine Superior Court. Prior to that, he was in private law practice in Belfast with the firm Eaton, Glass, Marsano, and Woodward. He served in the House of Representatives in the 113<sup>th</sup>, 114<sup>th</sup>, and 115<sup>th</sup> Legislature, 1986 – 1992, and as Assistant House Minority Leader in the 114<sup>th</sup> & 115<sup>th</sup>, 1988-1992. Commissioner Marsano is a graduate of North Quincy High School (North Quincy, MA) and of Bowdoin College. He received his JD from University of Michigan.

Seat 3 is held by **A. Mavourneen Thompson** (D) of Peaks Island. She was appointed to her second term on April 28, 2006. Her term expires on April 1, 2009. She is not eligible for reappointment. She is co-owner of Policy One Research, Inc. Prior to that, she was a public policy analyst with the Maine Education Policy Research Institute at USM and a Portland High School Teacher. She served two terms in the Maine House of Representatives, in the 110<sup>th</sup> and 111<sup>th</sup> Legislatures (1980-1984). She is a graduate of Linton High School (Schenectady, NY) and of Eastern Baptist College. She received her M.Ed. from the University of Maine Orono.

Seat 4 is held by **David C. Shiah** (D) of Bowdoinham. He was appointed to a full term on May 24, 2007. His term expires on April 16, 2010; and he is eligible for reappointment. Currently, he works as a consultant, assisting states to take action on climate change. In the past, he has worked for various nonprofit organizations, including as Executive Director of the Dirigo Alliance, 1990 – 1994. He served three terms in the Maine House of Representatives in the 117<sup>th</sup>, 118<sup>th</sup>, and 119<sup>th</sup> Legislatures 1994-2000, including one term as Assistant House Majority Leader. He subsequently served as Assistant Clerk of the Maine House of Representatives (2001-2004). He is a graduate of LaSalle High School (Niagara Falls, NY) and of the State University of New York at Buffalo.

Seat 5 is held by **Michael P. Friedman** (Unenrolled) of Bangor. He was appointed to his second term on May 24, 2007. His term expires on October 4, 2009. (His first term lasted only a matter of weeks, from September to October

## **Candidate PACs: Maine State Law and Enforcement**

2006.) He is not eligible for reappointment. Commissioner Friedman currently serves as Chair of the Commission. He is an attorney in private practice with the firm Rudman & Winchell. Prior to that, he worked in the legal departments of Kemper Insurance Group in Chicago and Liberty Mutual Insurance Company in Boston, and as a legal advisor to the United States Civil Service Commission in Washington, D.C. He is a graduate of Brewer High School and the University of Maine. He received his J.D. from Northeastern University School of Law.

## **Candidate PACs: Maine State Law and Enforcement**

### **Appendix 2**

#### **Application of the New PAC and 1056-B Reporting Law, Chapter 477**

The registration and disclosure requirements for PACs and Ballot Question Committees changed under new law enacted by the 123<sup>rd</sup> Legislature. The new law goes into effect on June 30, 2008.

Under the new definition, a PAC is any of following:

- (1) A special fund established by any organization for the purpose of influencing the outcome of a candidate or election (“segregated fund PAC”);
- (2) An organization whose major purpose is influencing a candidate or ballot issue election and that spends more than \$1,500 in a calendar year to do so (“major purpose PAC”); or
- (3) Any other organization whose major purpose is not to influence a candidate election but that nevertheless spends more than \$5,000 in a calendar year to do so (“non-major purpose PAC”).

We also now have a “ballot question committee,” which is an entity whose major purpose is not to influence a candidate or ballot issue campaign but that nevertheless receives contributions or makes expenditures in excess of \$5,000 to influence a ballot issue. Ballot question committees replace the old "1056-B organizations."

If an organization whose major purpose is not to influence candidate or ballot issues gets involved in a ballot issue campaign with more than \$5,000 raised or spent, that organization must register as a ballot question committee IF that organization has not already registered as a PAC. 1056-B ballot question committee reporting is reserved for organizations that are not PACs. If it hasn't already formed a PAC, then it must register as a ballot question committee.

If an organization gets involved in both candidate elections and ballot issues, and if it crosses the \$5,000 threshold for candidate elections BEFORE it crosses the \$5,000 threshold for the ballot issue campaign, the organization must register as a PAC. If that organization subsequently crosses the \$5,000 threshold in its ballot issue work in addition to its candidate activity, it would not register as a ballot question committee because it is already a PAC. It would report its ballot issue contributions and expenditures through its existing Type 3 PAC, along with its contributions and expenditures for candidate elections.

If the sequence is reversed, where the organization's ballot question activity crosses the \$5,000 threshold BEFORE its candidate activity, it must first register as a 1056-B ballot question committee. If it then subsequently crosses the threshold for candidate activity as well, it must also register as a Type 3 PAC.

## **Candidate PACs: Maine State Law and Enforcement**

The reporting requirements for a Type 3 PAC include the contributions and expenditures and transfers from the organization's general treasury made for the purpose of influencing a ballot question and/or a candidate election. The same is not true for ballot question committees. They only report contributions and expenditures and transfers made for the purpose of influencing a ballot question. If the committee got involved in a candidate election and spent more than \$5,000, it wouldn't report those expenditures on its ballot question committee report. It would have to form a PAC. If the amount spent was under \$5,000, it would not be reported on a PAC or ballot question committee report.

Alternatively, an organization has the option of creating a segregated fund PAC that has a major purpose of influencing elections. As a segregated fund PAC, it must report all of the activity engaged in by and through that fund using the \$1,500 threshold, including both candidate election and ballot issue activity.

The reporting requirements for segregated fund PACs are a little broader than those for Type 3 PACs or ballot question committees. The reporting requirements for Type 3 PACs and ballot question committees are limited to only contributions and expenditures specifically made for the purpose of influencing an election. Segregated funds PACs and Type 2 PACs have to report all contributions, regardless of whether the contribution was given to influence an election, and all expenditures, including all operational expenditures even if the purpose was not to influence an election. If an organization sets up a segregated fund, it would seem very likely (but not certainly so) that all the contributions and expenditures are made for the purpose of influencing an election.

## **Candidate PACs: Maine State Law and Enforcement**

### **Key Sources**

The State of Maine Commission on Governmental Ethics and Election Practices' web site at [www.maine.gov/ethics/](http://www.maine.gov/ethics/) contains a lot of information on PACs and political activity, as well as disclosure current and previous years' campaigns. Their page at <http://maine.gov/ethics/laws/index.htm> offers a plain-language summary of election law.