

payment law, which would provide for treble damages and attorney fees, or under California wage payment law, which would provide for a small amount of liquidated damages.

Patrick Bedard, of Bedard & Bobrow in Eliot, represents the plaintiff, Michael Dinan. According to Dinan, this choice of law issue was "an issue from the beginning of the case, but based on the jury verdict, it became even more of a critical issue."

Bedard stated that his client is very happy and "thrilled to have the case over with." He noted that the case has had a lengthy history, with the U.S. (add period after S) District Court certifying a question to the Maine Supreme Judicial Court at one point to see if

perspective, was that the jury rejected the argument that the contract still controlled the parties' relationship for the last two years of Dinan's employment. The Court found that "The question of what fair compensation is due Dinan under a quasi-contract theory calls for no construction or enforcement of the terms of that letter."

After determining that the contract could not control what statutory remedies applied, the Court looked to Maine law on the choice-of-law issue, which, according to the Court, "provides no certain answer." The Court, although noting that Maine has not

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Election Contribution Limits Pose Constitutional Problem

On August 22, 2014, U.S. District Court Judge D. Brock Hornby granted a motion for preliminary injunction that will effectively increase the contribution limits that individuals can make to independent gubernatorial candidates in the upcoming November election.

Four supporters of independent gubernatorial candidate Eliot Cutler contributed \$1,500 each to his campaign, which is the maximum contribution amount for the general election. The supporters complained, however, that they should be permitted to contribute more because supporters of party candidates — in this case, Michael Michaud and Paul LePage — are able to contribute \$1,500 for the party primary elections and another \$1,500 for the general election.

Independent candidates do not have to contend with primary elections. This year, however, both party candidates faced uncontested primaries. Because existing law allows the candidates to use money collected during the primary on the general election, each contributor to a party candidate is essentially able to give \$3,000 to the candidate for the general election.

The four supporters filed a complaint in U.S. District Court, as well as a motion for preliminary injunction, seeking a ruling that imposing a \$1,500 contribution limit for independent candidates vio-

lates their constitutional rights. Plaintiffs sought an order enjoining the Maine Commission on Governmental Ethics and Election Practices from enforcing that limit, allowing them to contribute up to \$3,000.

Melissa Hewey, of Drummond Woodsum in Portland, represents plaintiffs in the case. While she stated that the uncontested primaries this year were not necessarily "unique" because "it has happened before and will happen again," those circumstances did bolster their "as applied" challenge to the contribution limit.

Judge Hornby granted the preliminary injunction, finding that plaintiffs have a likelihood of success on the merits of their claim. Judge Hornby noted that he had previously dealt with this issue in a 2000 case where minor party candidates also challenged the contribution limits. In that case, the court found that the challenge was only a "theoretical debate" because the record showed that contributors seldom made the maximum contribution to minor party candidates and it was justifiable to expect that a candidate competing in a primary election would have to spend more than a candidate that did not have to contend with a primary.

This case presented more than a theoretical debate, however. Judge

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Melissa Hewey

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Hornby found that, under the circumstances, there was no legitimate reason for the state to impose different caps on contributions. Although the State tried to frame it as a "prevention of corruption" issue, the court found that "The only plausible reason for having different contribution standards (other than an effort to favor party candidates over independents) is that a primary requires a party candidate to spend more money than an independent candidate who has no primary. That is not a corruption issue at all."

As a result, the State's treatment of contributors was not narrowly tailored enough to "avoid unnecessary abridgment of associational freedoms" of plaintiffs.

According to Hewey, after Hornby's ruling, the State "voluntarily agreed to provide the relief" that they were seeking in the lawsuit and change its enforcement of the contribution limits for this election year. Indeed, shortly after the order was release, the Maine Commission on Governmental Ethics and Election Practices issued a new enforcement policy. The new policy states as follows: "In response to the District Court's Decision and Order of August 22, 2014, and after consultation with its legal counsel, the Commission has determined that it will not enforce the contribution limits in 21-A M.R.S. § 1015(1) & (2) against any of the four candidates for Governor in 2014, provided the candidates receive no more than \$3,000 in the aggregate from any single donor in this election cycle.

"The Commission also will not enforce the contribution limits in section 1015(1) or (2) against any contributor to one of the four candidates for Governor in 2014, provided the contributor gives no more than \$3,000 to that candidate in this election cycle." Phyllis Gardiner, of the Maine Office of the Attorney General, represented the Commission, but was working under a deadline and unavailable for comment.

Hewey believes that this issue will ultimately be addressed by the Legislature. She stated that her clients likely will not continue with the lawsuit after prevailing at the preliminary injunction stage. "It makes sense to let the Legislature do what is best, given Judge Hornby's ruling," she said.

The opinion in *Woodhouse v. Maine Commission on Governmental Ethics and Election Practices*, MLR #246-14, is summarized in this issue at page 14.

—Sean Ocieпка,
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TYPICAL DUTIES:

- Reviews and analyzes requests for interpretative opinions and no action letters and drafts responses.
- Drafts administrative orders, consent agreements, subpoenas and other legal documents.
- Represents the hearing officer in administrative hearings. Responds to his/her requests for assistance and research. Prepares memos and orders for his/her review.
- Provides legal advice regarding interpretations of statutes, rules, and bulletins and conducts necessary research in developing that advice. Provides advice on complicated corporate finance, investigative, examination, and licensing issues.
- Conducts rulemaking and participates in the legislative process including: review of proposals; drafting of rules, bills and testimony; and attendance and testimony at rulemaking and legislative hearings and work sessions.
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Questions regarding this position should be directed to Judith M. Shaw, Securities Administrator, Maine Office of Securities, at 10079 204th Street, Yarmouth, ME 04097.

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