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Dear Commission Chair Friedman, Commissioners Cassidy, Shiah, and Thompson:

Unusual circumstances necessitate that I contact you directly regarding Commissioner Ginn Marvin's conduct and qualifications to serve.

At the last Commission meeting on July 16, Executive Director Wayne expressed highly prejudicial summary conclusions regarding his boss apparently with the cooperation of Assistant Attorney General Gardiner. They must be disqualified for their potentially biased mediation.

How should this matter be processed? Assistant Attorney General Gardiner offered her novel "It Just Sits There" doctrine where Commissioners decide for themselves if they are fit to serve and if their conduct does not violate the statutes administered by the Commission. The Commission, without formal vote, apparently accepted this. The doctrine and the adoption "process" are unacceptable. Instead, the Commission must reject this and adopt an "Above Reproach" approach by formal vote instead.

The following document compares and contrasts the "It Just Sits There" doctrine and the "Above Reproach" approach as well as the actions that must follow either of their formal adoption. I request that a discussion of these and a formal vote to choose between them and these actions be included on the August 13 agenda.

Yours very truly,



cc Wayne, Gardiner, Lavin, AG Rowe, Gov. Baldacci, Sen. Pres. Edmonds, Speaker Cummings, *et alia*.

The Ethics Commission's Choice:

The “It Just Sits There” doctrine vs. an “Above Reproach” Approach

On July 16, Assistant Attorney General Phyllis Gardiner offered the entirely novel “It Just Sits There” doctrine regarding Commissioner Jean Ginn Marvin:

Just looking at the statute, title 1 section 1002, I don't see that it really is within the Commission's purview as a body to rule on the qualifications of any member or whether – the question of whether - any member is engaged in what's defined as prohibited activities under that statute....any commission member whose qualifications are challenged, or whose activities are challenged, can answer that individually as to their reasoning as to why they feel they're able to continue serving and have not engaged in prohibited activities and then it just sits there. I don't see that the remedy is with this Commission. [Assistant Attorney General Gardner, 7/16/07, Emphasis added.]

This erroneously suggests that there is nothing for the Commission to do in this matter. It is true that if the Commission should choose to formally accept this doctrine, then it is their decision that this matter “just sits there.”

However, the Commission must adopt an “above reproach” approach instead. These two principles are the foundation for this:

- a. That the conduct of Maine Ethics Commissioners needs to be beyond reproach, both in fact and in appearance.
- b. That Commissioners must be held to the highest possible standard of conduct – higher, even, than those they regulate.

Adopting this affords a very different outcome than the “It Just Sits There” doctrine. It necessitates significant actions by the Commission responding to Commissioner Ginn Marvin's failure to disclose and the subsequent challenges to her qualifications to serve as well as her conduct.

The following document compares and contrasts the difference between the “It Just Sits there” doctrine and “Above Reproach” approach applied to Ginn Marvin's:

1. pre-appointment failure to disclose her board membership on MHPC
2. engagement in “prohibited activities” as MHPC's treasurer
3. qualifications to serve on the Commission as an MHPC board member

1. Commissioner Ginn Marvin's pre-appointment failure to disclose to the Maine Legislature her Board Membership on Maine Heritage Policy Center:

Ethics Commissioner Ginn Marvin failed to disclose the material fact of her Maine Heritage Policy Center (MHPC) Board membership in her July 17, 2004 "Qualification-to-serve-as-Regulator" Legislative Staff Questionnaire for Gubernatorial Nominees form.

On November 29, 2006, Ethics Commission Executive Director Jonathan Wayne correctly emphasized the central importance of Commissioner Ginn Marvin's disclosure of her MHPC Board membership on her July 2004 "Qualification-to-serve" form.

...Ms. Ginn Marvin's membership on the MHPC board is not a conflict of interest that would require her to step down from the Commission. She was a member of the MHPC board when the Governor appointed her at the suggestion of the legislative leadership, so apparently the issue was not viewed as a disqualifying conflict at the time of her appointment. (response of Ethics Commission staff to Lindemann letter of Nov. 27)

This comment by the Ethics Commission Executive Director highlights the misapprehension by many that Ms. Ginn Marvin had been appropriately "cleared" to serve, as a result of her having filled out the 2004 "Qualification-to-serve" form. In addition, it also correctly suggests that her MHPC Board membership would, in fact, have been, and continues to be, a factor potentially "disqualifying" her from participation in Ethics Commission decision-making.

In the July 16, 2007 Portland Press Herald, a news report on this matter included numerous quotes from the Governor's office and members of the Maine legislature expressing dismay at Commissioner Ginn Marvin's omission. In this, she admitted her omission and claimed that it was "inadvertent."

The omission may have been intentional or, as she claims, "inadvertent." Is her claim not subject to objective review by some regulatory body? What mandates and options were available to the Maine Ethics Commission, under common principles of administrative and ethics law, upon first learning of Commissioner Ginn Marvin's failure to disclose, some three years after she began service on the Commission?

A. What did the Maine Ethics Commission do?

-- **Nothing.** The Ethics Commission "Just sat there," tacitly accepting Assistant Attorney General Gardiner's novel "It Just Sits There" doctrine.

There is the grave possibility that Ms. Ginn Marvin's appointment to the Ethics Commission was gained by intentional material misrepresentation on the "Qualification" form mandated for legislative appointment. Also, material misrepresentations made to the Commission by other MHPC officials (eg. no solicitations/donations or express advocacy for TABOR, never taking 'pro' or 'con' stances on any issue, etc.) raise fundamental doubts about whatever she asserts here. This history of offering what are at best factually inaccurate statements to the Commission should necessitate objective review. Yet, according to the novel "It Just Sits There" doctrine, the

subject of Ms. Ginn Marvin's admitted material misrepresentation must "just sit there," without further Ethics Commission action - substantive or even symbolic - or even any other "alternative" regulatory/enforcement review. Thus, Commissioner Ginn Marvin's claim of "inadvertence" is accepted without any objective review of its credibility.

B. What could the Maine Ethics Commission do with an "Above Reproach" approach?

-- At the outset of the July 16 meeting, it would have announced that questions have been raised about Ginn Marvin's conduct and then voted to ask the Commissioner to recuse herself until the Commission, without her presence, addresses the allegation.

-- Require Ethics Commissioner Ginn Marvin to immediately file an attested, revised and fully completed July 14, 2004 "Qualification to Serve" form, pertaining to her interests as of July 14, 2004, since there remains the possibility that other omissions occurred, either intentional or unintentional, and suspend her from further involvement with Commission affairs until that form is filed and reviewed.

-- Recognize that the mere fact that Ginn-Marvin's July 2004 failure to disclose predated her service on the Ethics Commission does not require or suggest that the Commission should "just sit there." Because the omission undermines the legitimacy – if not the legality – of her original appointment, the opposite conclusion applies: the Commission has a heightened duty to act.

-- Recognize that her current status as an Ethics Commissioner must not be a bar to regulatory and enforcement investigation and review of her conduct. Again, the opposite conclusion applies: Maine Ethics Commissioners must be subject to the highest standards of ethical conduct and the highest standards of ethical scrutiny.

-- Recognize that truthful, written disclosure forms are the lynchpin of all Maine Ethics Commission oversight and enforcement: The entire enforcement/regulatory function is founded on the EXPECTATION that all written reporting forms WILL be filled out completely and honestly, and affirmed as true with the signature of the filer.

-- Recognize the highly symbolic "enforcement" value generated by maintaining and enforcing the highest standards of conduct for Ethics Commissioners. If Ethics Commissioner Ginn Marvin can assert that mere "inadvertence" caused her failure to disclose on that form, and that excuse is accepted without objective review and investigation, then a fundamental question of fairness arises. Others required to file written affirmed forms with the Commission, upon witnessing this special treatment which – to date – has been granted to Ethics Commissioner Ginn Marvin, might now reckon for the first time that similar claims of "inadvertent failure to disclose" on their part will now 'just sit there' at the Commission, with no real threat of enforcement sanction.

-- Consider a vote of censure, reprimand, suspension, or expulsion of Commissioner Ginn Marvin, to send a message to other filers that claims of inadvertent omission on critical forms are unacceptable - especially for an Ethics Commissioner.

-- Immediately adopt a requirement that all Commissioners file attested annual “interest disclosure” affidavits, consistent with many similar periodic filing requirements enforced by the Ethics Commission.

-- Initiate Agency Rule making to require filing of such complete annual “interest disclosure” affidavits by Ethics Commissioners.

-- Alternatively, recognize that, because Ethics Commissioner Ginn Marvin has, since April 2007, been serving as a holdover “expired-term” Ethics Commissioner, thereby avoiding review for a second-term, she should be asked by the other Commissioners to step down from such temporary service, or at least be required to immediately file a new and attested form outlining her current qualifications to serve.

-- Recognize that Ginn Marvin’s failure-to-disclose may jeopardize not only her current fitness-to-serve, but also her past service, and – more importantly – may generate some claims that decisions rendered by the Ethics Commission since her appointment in 2004 may be subject to challenge, as being void or voidable.

-- Immediately move to establish a “beyond reproach” investigation and adjudication – by appointing an entirely independent person or body - to review and investigate Ethics Commissioner Ginn Marvin's relationship and offices held with MHPC, and her associated claim that her failure to disclose was “inadvertent.”

C. Conclusion – The Inaccurate Assessment of the “It Just Sits There” doctrine.

The above listing of options/mandates available to the Commission, to judiciously and ethically act upon Ethics Commissioner Ginn Marvin's failure to disclose on her Qualification to serve form does not pretend to be an exhaustive list. However, it does illustrate the fundamentally flawed nature of the “Just Sits There” Doctrine articulated by Assistant Attorney General Gardner. The claim that there is nothing for the Commission to do under these circumstances is simply false.

Surely no Commission statute or rule is required to allow a body to police itself in this manner, since each of these administrative/regulatory “self-policing sanctions” are commonplace at every level of government, in every legislative and administrative setting.

The point is that addressing Commissioner Ginn Marvin’s pre-appointment failure to disclose her membership on MHPC’s board falls within the purview of the Ethics Commission. However, circumstances demands that the Commission must immediately take formal action to cede that jurisdiction and authority to some other person or persons. Thus, the Commission should immediately act by formal vote to request that someone entirely removed from the scene (eg. the Governor, the Speaker of the House, the President of the Senate) appoint an independent Special Counsel, person or group to undertake a “beyond reproach” investigation and adjudication of Commissioner Ginn Marvin’s failure to disclose and the issues subsequent to it.

2. Ethics Commissioner Ginn Marvin, as an Officer and Treasurer of MHPC, has engaged in “prohibited activities” in violation of MSRA 1 § 1002 1A-6 through “political fund-raising to promote the election or defeat of a candidate, passage or defeat of a ballot measure....”

The call for an investigation addressed to the Governor and legislative leaders sent on July 2 stated that Ethics Commissioner Ginn Marvin, as Treasurer of MHPC, has engaged in “prohibited activities” in violation of MSRA 1 § 1002 1A-6 by partaking in “*political fund-raising to promote the election or defeat of a candidate, passage or defeat of a ballot measure....*”

Evidence that MHPC had engaged in fundraising for the Taxpayer Bill of Rights (TABOR) ballot initiative include a fundraising solicitation letter and “thank you” form letter for contributions “to advance our mission of promoting The Taxpayer Bill of Rights in Maine...” As Treasurer of the organization, Commissioner Ginn Marvin cannot reasonably claim that she did not participate in what are prohibited activities for a Commissioner. This meets the standard for the Commission to initiate an investigation as per 21-A M.R.S.A. § 1003 because it “shows sufficient grounds for believing that a violation may have occurred.”

A. What did the Maine Ethics Commission do?

-- **Nothing**. By embracing Assistant Attorney General Gardiner’s “It Just Sits There” Doctrine, Ethics Commissioners are, in effect, not subject to enforcement of MSRA 1 § 1002 1A-6.

B. What could the Maine Ethics Commission do with an “Above Reproach” approach?

Ascertaining the facts necessary to determine whether or not MHPC engaged in political fundraising for the ballot initiative is clearly within the Commission’s jurisdiction. In fact, the Commission staff has determined that there is cause for such an investigation into this matter. It is contained in the outstanding complaint regarding the accuracy and completeness of MHPC’s 1056-B report. However, the investigation and adjudication of this complaint has, for reasons which may or may not be related to the fact that the allegations directly pertain to the conduct of Commissioner Ginn Marvin, have been put on hold by the Commission.

Because of the direct relevance to a determination of Commissioner Ginn Marvin engaging in prohibited activities, an “above reproach” Commission would determine the following:

-- Announce that sufficient grounds for believing that a violation of MSRA 1 § 1002 1A-6 may have occurred and then voted to ask that Commissioner Ginn Marvin recuse herself until the allegation is addressed by the Commission without her presence.

--Immediately act by formal vote to cede jurisdiction over Ginn Marvin/MHPC’s TABOR fundraising and to request that someone entirely removed from the scene (eg. the Governor, the Speaker of the House, the President of the Senate) appoint an independent Special Counsel, person or group to undertake a “beyond reproach” investigation and adjudication.

-- Immediately act by formal vote to cede jurisdiction of the entire March 5th complaint against Ginn Marvin/MHPC to this independent Special Counsel, person or group. Ginn Marvin's dual identity as Treasurer for MHPC makes it impossible to effectively and fairly extricate the various elements. Also, in the interest of resolving the issue expeditiously, this case should be heard immediately *in toto* rather than to simply focus on elements regarding Ginn Marvin's alleged activities. This abides by the Commission's expressed interest in "agency economy" when it voted to put this investigation on hold.

C. Conclusion – Premises Behind the “It Just Sits There” doctrine.

Applying the “It Just Sits There” doctrine here instead of an “above reproach” approach reveals these premises behind this failure to act on the part of the Commission that ignores basic principles of administrative and conflict-of-interest law:

Premise No. 1: The “It Just Sits There” Doctrine must be immediately applied when any claim involving a Commissioner arises.

Premise No. 2: That pertinent Administrative law and conflict-of-interest legal precedents should be interpreted to mean that:

- a) when an allegation arises that an Ethics Regulator has engaged in prohibited acts, the only remedy is to have the Commissioner “*answer that individually as to their reasoning as to why they feel they’re able to continue serving and have not engaged in prohibited activities,*” and
- b) that the other Commissioners can and should do nothing.

Premise No. 3: That Ethics Commissioners are immune from Ethics Statute regulation: Appointment to a position on the Maine Ethics Commission frees that person from the bounds of the Maine Ethics statute, and from any oversight, investigation, or enforcement by the Maine Ethics Commission.

In sum, adopting the “It Just Sits There” Doctrine redefines the Ethics Commission where it becomes something fundamentally different than what the name suggests.

3. As an MHPC Board Member, Commissioner Ginn Marvin was/is disqualified to serve on the Ethics Commission.

Section 1 § 1002(2) of Governmental Ethics Law states:

Qualifications. The members of the commission must be persons of recognized judgment, probity and objectivity. A person may not be appointed to this commission who is a member of the Legislature or who was a member of the previous Legislature, who was a declared candidate for an elective county, state or federal office within 2 years prior to the appointment, who now holds an elective county, state or federal office, who is

an officer of a political committee, party committee or political action committee or who holds a position in a political party or campaign.

Two independent analyses show sufficient grounds for believing that Commissioner Ginn Marvin is disqualified for service on the Commission.

a. The governing principle is that regulated individuals and leadership of regulated entities are disqualified from service on the Commission.

The Commission did not determine what kind of entity MHPC actually is during the case brought against the organization last Fall,. At the October 31 meeting, MHPC's president, Bill Becker compared the organization to other educational or research institutions such as the Margaret Chase Center at the University of Maine or the Muskie School of Public Policy. However, the Staff Memo of December 6 disagreed with this self-assessment:

The promotional aspect of some of the MHPC's statements, however, seems to put it in a different category than the Margaret Chase Center or the Muskie School...

Whatever kind of entity MHPC is, it is not what Mr. Becker claimed – i.e. an entity not regulated by the Commission. This became explicit with the Commission's Final Determination ordering the organization to file a 1056-B report. What does MHPC's status as a regulated entity in 2006 say about 2004 when Commissioner Ginn Marvin was appointed to serve? MHPC repeatedly testified that its conduct and character in 2006 was unchanged from the founding of the organization in 2002. Therefore, it is reasonable to infer that since it was a regulated entity in 2006, it was also one in 2004.

b. MHPC is a “political committee” so Commissioner Ginn Marvin is specifically excluded from service on the Commission.

A “political committee” is defined under 21-A MRSA §1, sub-§30 as “2 or more persons associated for the purpose of promoting or defeating a candidate, party or principle.” Since as early as the organization's founding in 2002-2003, MHPC has been and continues to be a “political committee” promoting the principle of Tax and Expenditure Limitation (TEL) laws that include ballot initiatives such as TABOR (see addenda: MHPC as a “Political Committee”). Therefore, Commissioner Ginn Marvin's service on the MHPC Board of Directors disqualifies her from service on the Commission.

A. What did the Maine Ethics Commission do?

-- **Nothing.**

B. What could the Maine Ethics Commission do with an “Above Reproach” approach?

It may be appropriate for the Commission to determine whether the standard of 21-A M.R.S.A. § 1003 is satisfied, that there are “sufficient grounds for believing that a violation may have

occurred.” Based on this, they might decide that an investigation of some kind must ensue concerning the claim that the proper disclosure would disqualify her from service.

Note, however, that a “beyond reproach” Ethics Commission held to the highest possible standard of conduct, would **lower** the legal standard of 21-A M.R.S.A. § 1003 in the case of claims of statutory violation by an Ethics Commissioner. Here, that would require investigation if there are “any grounds for believing that a violation may have occurred.” One would think that any Commissioner worthy of service and with nothing to hide would welcome any such clearance after due process. This threshold for investigation applies to all of the issues here - Ginn Marvin’s “failure to disclose”, the claim that the proper disclosure would disqualify her from service, and whether she had engaged in “prohibited activities.” It also is pertinent to concerns over whether the Commission was improperly constituted with her presence, and whether that taints determinations and rule-making during her tenure.

Because of the broad issues raised by the distinct possibility that Commissioner Ginn Marvin was not qualified to serve either as a Director on MHPC’s board in 2004 or as that board’s Treasurer since 2005, an “above reproach” Commission would carry out the following:

-- Announce that sufficient grounds for believing that a violation of Section 1 § 1002(2) may have occurred and then vote to ask that Commissioner Ginn Marvin recuse herself until the allegation is addressed by the Commission without her presence.

--Immediately act by formal vote to cede jurisdiction over investigating and adjudicating Commissioner Ginn Marvin’s possible violation of Section 1 § 1002(2) and to request that someone entirely removed from the scene (eg. the Governor, the Speaker of the House, the President of the Senate) appoint an independent Special Counsel, person or group to undertake a “beyond reproach” investigation and adjudication.

-- Recognize that the Commission may have been and continues to be improperly constituted as the result of having an unqualified Commissioner. This may generate some claims that decisions rendered by the Ethics Commission since her appointment in 2004 may be subject to challenge, as being void or voidable.

C. Additional Concerns and Considerations: Need for Executive Director Wayne and Assistant Attorney General Gardiner to be recused from any participation in processing Ginn Marvin matter.

Before the Commission could consider the matter during the July 16 session, Executive Director Wayne (apparently with the advice and consent of In-House-Counsel Gardner) took an unusual and unexpected action. He boldly began his remarks by expressing a prejudicial and summary conclusion that, in effect, “cleared” the question of Commissioner Ginn Marvin’s qualification-to-serve:

Carl has raised an argument that Jean Ginn Marvin is disqualified from serving on the Commission because she’s an officer of the Maine Heritage Policy Center and that qualifies as a political committee. I’ve had a chance to talk it over with

Phyllis, about what her view is and we disagree with that point of view. [Executive Dir. Wayne, 7/16/07]

The Executive Director has worked closely with Commissioner Ginn Marvin for several years during her service as Chair reporting directly to her. That, on the face of it, makes his astonishing “there’s no wrongdoing and no legal issue” summary dismissal pronouncement inappropriate.

What premises lies behind this morally and procedurally bankrupt, and legally fatuous conclusion, which ignores all basic principles of administrative and conflict-of-interest law?

That - again, unlike the average citizen - when an allegation arises that an Ethics Commissioner has engaged in activity prohibited under the statute, that Commissioner is immediately entitled to specialized treatment, in the form of Ms. Ginn Marvin's immediate “clearance” by the Commission's Executive Director and the Assistant Attorney General, including apparently:

- expedited, instantaneous “process” which omits every common procedural due process element. Here, there was no “process” whatsoever proceeding Wayne’s bold and summary automatic “clearance” of Commissioner Ginn Marvin on this issue.
- no investigation (other than, possibly, input from only Ms. Ginn Marvin)
- no accumulation of evidence
- no hearing (at least with advance public notice, and held in public)
- failure to isolate Ms. Ginn Marvin from any adjudication or decision-making on the claim, through a firewall, and formal recusal/removal from the entire subject
- no public comment
- no vote by the Ethics Commission, or any other body
- no written decision, and no recitation of facts found to be true, legal standard applied, or legal conclusions made.

These statements by Executive Director Wayne and Assistant Attorney General Gardiner shows that they both have entirely “pre-judged” any claim of any statutory violation by Ethics Commissioner Ginn Marvin. However, the Commission “just sat there” in response.

This explicit “pre-judging” mandates that both Executive Director Wayne and Assistant Attorney General Gardiner be recused from any further involvement or contact with any issues having anything to do with claims of qualification, ethical or statutory violation by Commissioner Ginn Marvin.

This bold and summary adjudication and clearance is especially troubling in the Executive Director’s case because of what may be his pattern of biased conduct favoring Ethics Commissioner/MHPC Treasurer Ginn Marvin as pertains to charges of statutory violation.

Executive Director Wayne wrote a March 6, 2007 Memorandum to the Commission, which outlined for the Commissioners the alleged statutory standard to be applied by the Commission in judging the accuracy and completeness of a report which the Commission had previously ordered by filed by MHPC. This complaint concerns the organization’s fundraising and expenditures, a subject directly within the bailiwick of Ethics Commissioner/MHPC Treasurer Ginn Marvin. In that memo, Executive Director misstated the legal standard to be applied by the

Commission. He inaccurately quoted 21-A M.R.S.A. § 1003, the standard for having the Commission launch an investigation:

...if the reasons stated for the request show sufficient grounds for believing that a violation **has occurred.**” (emphasis added) .

This statement of the law, in a case directly calling into question the legality of actions undertaken by his boss, was fundamentally and entirely wrong. The obvious standard for determining when the Commission should undertake an investigation is:

...if the reasons stated for the request show sufficient grounds for believing that a violation **may have occurred.**” (emphasis added)

These two articulations of the statutory standard which lies at the very heart of the entire statutory and regulatory framework are fundamentally different. The statute means to mandate a Commission investigation when there is merely the possibility of violation. In startling contrast, Executive Director Wayne asserted a very different standard in writing in his legal memorandum on a case that named his boss in a claim of violation. He stated that only when there is a much larger element of certainty that a violation has occurred is an investigation warranted. The gross and fundamental nature of Executive Director Wayne's written misstatement of this legal standard raises several possible inferences:

- 1) it was merely “inadvertent”;
- 2) it was evidence of gross incompetence;
- 3) whether intentional or “inadvertent”, the Executive Director's recitation of such a baldly false legal standard, some three years into his tenure as Executive Director, calls into question every Commission decision – to investigate or not investigate - during his entire tenure prior to that March 2007 advice to the Commission;
- 4) it was part of a pattern of conduct of providing favorable treatment to his boss, Ethics Commissioner/MHPC Treasurer Ginn Marvin

It is difficult to tell, absent more information, which of the above inferences is accurate. However, the possibility of a pattern of Executive Director Wayne's unfairly favorable conduct toward Commissioner Ginn Marvin is heightened by the subsequent “summary clearance” he offered spontaneously on July 16 described above.

The “Above Reproach” approach necessitates a specific response. This apparent pattern, alone, makes it clear that Executive Director Wayne needs to be recused and separated by a firewall. In fact, the mere fact that Executive Director Wayne served directly under Commissioner Ginn Marvin mandates this same need for his recusal/firewall separation. Likewise, Assistant Attorney General Gardiner’s participation in such a “summary clearance on all charges” for Commissioner Ginn Marvin makes clear that she, too, needs to be removed from any further processing of any matters involving Commissioner Ginn Marvin.

4. Conclusions and Considerations: Is the Ethics Commission Ethical?

It is absurd for Assistant Attorney General Gardiner to maintain that all of the matters here concerning Commissioner Ginn Marvin are not “within the Commission’s purview.” In fact, much of this is well within the Commission’s jurisdiction. However, the self-evident conflict of interest involved in the Commission investigating or adjudicating any complaint involving a Commissioner makes it necessary to move the action to an appropriate venue. At the very least, the “It Just Sits There” doctrine must be repudiated if the Commission is to have any claims to “ethical” standing.

By asserting her novel “It Just Sits There” doctrine, Assistant Attorney General Gardiner has brought the Commission to a point of decision. This is an opportunity to publicly declare whether or not the Commission adheres and aspires to the highest ethical, moral and legal standards. By formally rejecting the “It Just Sits There” doctrine and also voting to carry out the appropriate actions to see to it that Commissioner Ginn Marvin’s apparent violations. This is the only way the Commission can properly carry out its mission as it:

...guards against corruption and undue influence of the election process...promptly, fairly, and efficiently...(with Commissioners that) investigate and advise on apparent violations of ethical standards.

Alternately, the Commission may wish to positively embrace the “It Just Sits There” doctrine by formal vote. If so, this should be a matter of great interest to Maine citizens and their elected representatives. Finally, the Commission may elect to tacitly accept the “It Just Sits There” doctrine by taking no formal action here whatsoever. That would be of grave concern. It might indicate that the Commission was unable to fulfill its statutory obligations and lacked the fundamental integrity necessary to even be clear about what standards it did embody.

Howsoever the Commission decides to act or to not act regarding Commissioner Ginn Marvin, it is a moment of truth.
