



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

Commission Meeting 10/30/2020  
Agenda Item #3

To: Commission  
From: Michael Dunn, Esq., Committee Registrar  
Date: 10/22/2020  
Re: Maine First Project – Rebuttal to Independent Expenditure

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Independent expenditures (IEs) are payments for communications to voters expressly advocating for or against candidates. Most often, IEs are made by party committees and political action committees (PACs), but they may be made by individuals and organizations not registered with the Commission. Any person making an IE over \$250 per candidate must file a report disclosing the amounts spent on the communications and containing a statement under oath whether the expenditure was made independently of the candidate.

After Labor Day during an election year, any expenditure for a communication which names or depicts a clearly identified candidate is *presumed* to be an IE. The spender may attempt to rebut the presumption by filing a request with the Commission within 48 hours of disseminating the communication. The Commission must determine whether the spender incurred the costs of the communication with the intent to influence the election or defeat of the candidate.

Maine First Project is a non-profit organization founded by Rep. Lawrence Lockman. On October 19, 2020, Maine First Project began disseminating two communications, one in House District 128 and one in House District 130. The communications are substantially similar, only appearing to change the referenced candidates on the second page of the communication. The mailings encourage voters to contact both candidates in Districts 128 and 130 regarding Maine First Project's concerns on public education. Maine First Project contends that these mailings are not IEs because they do not endorse or recommend one candidate over the other; recipients of the mailings are only encouraged to contact both candidates to discuss the issues raised in the letter. Maine First Project made a timely request to rebut the presumption that applies to post-Labor Day communications naming specific candidates.

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

## **LEGAL REQUIREMENTS**

*Definition of Clearly Identified.* “Clearly Identified” means that (1) the name of the candidate appears; A photograph or drawing of the candidate appears; or the identity of the candidate is apparent by unambiguous reference. 21-A M.R.S. § 1012(1).

*Definition of Express Advocacy.* “Express Advocacy” means any communication that uses phrases such as: "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002;” or communications that are susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate. 94-270 CMR Ch. 1 § 10(2)(B).

*Definition of an Independent Expenditure.* An IE is defined as an expenditure for any communication that expressly advocates the election or defeat of a clearly identified candidate. From Labor Day through the general election, an independent expenditure is presumed when any communication names or depicts a clearly identified candidate. 21-A M.R.S. § 1019-B(1).

*Duty to File IE Report.* Any person that made an IE in excess of \$250 per candidate between September 4 and October 20, 2020 was required to file an IE Report within two calendar days. 21-A M.R.S. § 1019-B(4), 94-270 CMR Ch. 1, § 10(3).

*Opportunity to Rebut Presumption.* A person presumed to have made an IE may rebut the presumption by filing a signed written statement with the Commission within 48 hours of disseminating the communication. The statement must state that the cost was not incurred to influence the election of a candidate and may be supported by any additional evidence. The Commission may gather any additional evidence to assist it in determining, by a preponderance of the evidence, whether the expenditure was incurred with the intent to influence a candidate election. 21-A M.R.S. § 1019-B(2), 94-270 CMR Ch. 1, § 10(5).

*Late-filing procedures.* If a person is late in filing the IE Report, the amount of the penalty is set by a formula which takes into consideration the amount of the transaction, the number of prior violations within a two-year period, and the number of days the report is late. 21-A M.R.S.A. § 1020-A(4-A).

## **DISCUSSION AND STAFF RECOMMENDATION**

The communications disseminated by Maine First Project are presumed to be IEs because the communications include the names of Kevin O’Connell, Garrel Craig, Nicholas Delli Paoli, and Kathy Downes, all candidates for public office, and the communications were disseminated on October 19, 2020. The two communications do not include the typical phrases of express advocacy such as “vote for the Governor” or “reelect your Representative.” Accordingly, the issue before the Commission is whether Maine First Project has, by a preponderance of evidence, shown that the costs of the communications were not incurred with the intent to influence the election of any of the candidates in House Districts 128 and 130.<sup>1</sup>

It is the opinion of the Commission staff that Maine First Project has rebutted the presumption. The letters raise concern regarding the education in public schools and encourages the public to contact the candidates in the district to discuss those concerns. The communication also solicits contributions for Maine First Project and includes a brief survey regarding public education and the recipient’s involvement in their local school board. All candidates that appear in the communication are treated substantially similar to their opponents; the communication lists their names and contact information and encourages the recipient to contact both candidates to discuss the issues raised in the communication.

The purpose of this communication would be fairly categorized as policy advocacy. The communication attempts to persuade the recipient to the viewpoint of the sender and then encourages the recipient to contact the candidates for their district regarding that policy. This kind of speech is generally entitled to First Amendment protections.

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<sup>1</sup> Preponderance of the evidence means that the party making a claim has provided evidence sufficient to believe that the claim is more likely to be true than not.

For these reasons, it is the Commission staff's recommendation that the Commission find that the costs of Maine First Project's two communications were not incurred with the intent to influence the election of any of the candidates in House Districts 128 and 130. The staff accepts Maine First Project's described purpose of policy advocacy.

If the Commission disagrees and finds that the purpose of the communication was to influence an election, then Maine First Project has failed to file two independent expenditure reports, which would trigger an enforcement process. The penalties would be based on a set formula which takes into consideration the amount of the transactions, the number of prior violations, and the number of days that the report is late. 21-A M.R.S. § 1020-A(4-A).

Thank you for your attention in this matter.



## Statement to Rebut Presumption of Independent Expenditure

*Instructions: Under 21-A M.R.S.A. §1019-B, an expenditure to design, produce, or disseminate a communication that names or depicts a clearly identified candidate and that is disseminated during the 28 days, including election day, before a primary election; during the 35 days, including election day, before a special election; or from Labor Day to a general election day is presumed to be an independent expenditure. The individual or organization making the expenditure may attempt to rebut the presumption by filing this form with the Ethics Commission. Any documents, statements, or other evidence (e.g., a copy of a printed communication or a script of a recorded communication) supporting the rebuttal may be attached to this form. The form is required to be filed with the Ethics Commission within 48 hours of disseminating the communication, including weekends and holidays. The form may be filed by faxing it to (207) 287-6775 or by sending a scanned copy to [ethics@maine.gov](mailto:ethics@maine.gov), provided that the Commission receives the original within 5 days.*

Individual/Organization making the expenditure:

MAINE FIRST PROJECT

Contact person:

LAWRENCE LOCKMAN

Contact's mailing address:

PO BOX 623

BREWER ME 04412

Contact's telephone number(s):

(207) 460-6518

Candidate(s) named or depicted:  
(use additional pages if necessary)

KEVIN ~~AID~~ O'CONNELL

GARREL CRAIG

Type of communication:  
(e.g., mailer, television or radio ad, online ad)

MAILER

Date(s) of dissemination:

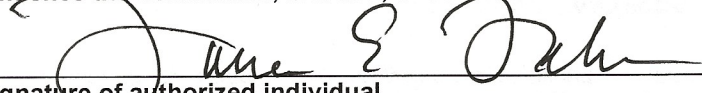
OCTOBER 19, 2020

Payee or creditor (including address):

BANGOR LETTER SHOP

99 WASHINGTON ST. BANGOR ME

The costs for the communication referred to above were not incurred with the intent to influence the nomination, election, or defeat of a candidate.

  
 Signature of authorized individual

10/21/20  
 Date

LAWRENCE LOCKMAN  
 Printed name of authorized individual

# MAINE FIRST PROJECT

PO Box 623, Brewer, ME 04412

mainefirstproject@gmail.com

MaineFirstProject.org

Dear fellow Mainer,

## **Are you as concerned as I am about the rising tide of political indoctrination in Maine's K-12 public schools?**

I've heard from many parents and grandparents who are alarmed at the left-wing bias that dominates public-school classrooms from Maine to California. **The toxic brew of identity politics and "critical race theory" has spilled over from the universities into K-12 classrooms.** And it's gotten worse, much worse, in this election year.

Many school districts here in Maine have adopted blatantly racist curricula condemning America as a bigoted nation and white people as inherently racist. **Racial stereotyping and racial scapegoating are now a fact of life in too many Maine classrooms.**

Portland schools have gone even further, openly embracing the mob violence of the Marxist, anti-American domestic terrorist group **Black Lives Matter.**

Closer to home, **teachers in the Bangor school district are quizzing 7th graders about their various "identities," including their sexual orientation and whatever gender identity they choose.** Then the kids are asked to rank which of their various identities are "privileged" and which are "targeted."

Teachers are trained to weave discussions of race and gender into every subject area, from math to history to English. **Students are being immersed in the monstrous lie that America is plagued with "systemic racism,"** and that white people benefit from "white privilege" even while they are afflicted with "white fragility."

Enough already!

Let's make education in Maine great again, preparing Maine students for productive lives and livelihoods, and giving them a solid foundation in civics. Simply put, teach them how to think, not what to think.

**Maine First Project is asking all legislative candidates to pledge support for adopting a teachers' Code of Ethics banning political indoctrination in K-12 public-school classrooms.**

Our **Maine First Agenda** is aimed at making education great again, and holding lawmakers accountable for their votes on education issues.

Neither of the candidates for the Maine House of Representatives in your House district has signed the pledge. I'm asking you to call both of them, and politely **ask that they commit to ridding K-12 classrooms of these destructive ideologies that are tearing America apart.**

**You can reach Democrat candidate Kevin O'Connell at (207) 735-6978 or kevinocconnell1978@gmail.com.**

**You can reach candidate Republican candidate Garrel Craig at (207) 745-0210 or mainecraigs@gmail.com.**

In closing, **it's vitally important that we all show up to vote on November 3rd!** If you haven't voted already by mail, make sure you cast a ballot on Election Day. And please encourage everyone in your circle of influence to be an informed voter.

**The stakes for our state and nation couldn't be higher this year.**

Sincerely,

Rep. Lawrence E. Lockman  
Co-founder & President  
Maine First Project

**PS Did you know that 7th graders in some of Maine's biggest public schools are being quizzed by teachers about their sexual orientation and their "white privilege"?**

And not just schools in urban centers like Bangor and Portland. Radical leftist indoctrination is a malignancy that's spread even to rural school districts.

**Some schools have even embraced the Marxist ideology of the Black Lives Matter movement that advocates violence in the streets and the destruction of the nuclear family.**

Please call both of your legislative candidates in this House district, and ask them to commit to banning political indoctrination in Maine's K-12 classrooms.

**Our children and grandchildren deserve better than what they're getting in too many Maine schools!**

**MAINE FIRST PROJECT**  
***Fighting to put Mainers first!***

To: Rep. Lawrence Lockman  
Maine First Project  
PO Box 623  
Brewer, ME 04412

From: \_\_\_\_\_ Email: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
\_\_\_\_\_

**I agree, Larry, it's time to ban political indoctrination in the classroom,** and get back to basic instruction that will prepare students for productive lives and livelihoods.

I'm ready to take action:

\_\_\_\_\_ I will call the House and Senate candidates in my legislative district, and ask them to support the **Maine First Agenda**, banning political indoctrination of any sort in Maine's K-12 public schools.

\_\_\_\_\_ I want to support the work of **Maine First Project** with a financial contribution so you and your team can reach more Mainers with the facts about what's going on in public education.

\$25     \$50     \$100     \$500     \$1000     Other \$ \_\_\_\_\_

\_\_\_ My check is enclosed, payable to *Maine First Project*

\_\_\_ Please charge my VISA    Mastercard    American Express    Discover

Card Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Signature: \_\_\_\_\_ CVC Code: \_\_\_\_\_

\_\_\_ Each month, please charge the following amount on the credit card listed above: \$ \_\_\_\_\_

\_\_\_ **I'll be glad to respond to some survey questions on the flip side.**

*Maine First Project is a 501(c)(4) non-partisan, non-profit organization.  
Contributions are confidential but not tax deductible. There is no limit on how much you may contribute.*

\*\*\*\*\*



MAINE FIRST PROJECT...fighting to put Mainers first!

1. Do you have children or grandchildren in a Maine K-12 public school?
2. Do you know of instances of political or religious indoctrination in your local school district?
3. Do you attend local school board meetings?
4. Have you ever served on a school board?
5. comments:



## Statement to Rebut Presumption of Independent Expenditure

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Contact person:

LAWRENCE LOCKMAN

Contact's mailing address:

PO BOX 623

BREWSTER ME 04412

Contact's telephone number(s):

(207) 460-6518

Candidate(s) named or depicted:  
(use additional pages if necessary)

NICHOLAS DELLI PAOLI

KATHY DOWNES

Type of communication:  
(e.g., mailer, television or radio ad, online ad)

MAILER

Date(s) of dissemination:


OCTOBER 19, 2020

Payee or creditor (including address):

BANGOR LETTER SHOP

99 WASHINGTON ST. BANGOR ME

The costs for the communication referred to above were not incurred with the intent to influence the nomination, election, or defeat of a candidate.

  
Signature of authorized individual

10/21/20  
Date

LAWRENCE LOCKMAN  
Printed name of authorized individual

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mainefirstproject@gmail.com

MaineFirstProject.org

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Neither of the candidates for the Maine House of Representatives in your House district has signed the pledge. I'm asking you to call both of them, and politely **ask that they commit to ridding K-12 classrooms of these destructive ideologies that are tearing America apart.**

**You can reach Democrat candidate Nicholas Delli Paoli at (201) 572-6954 or nicholasdellipaoli@gmail.com.**

**You can reach candidate Republican candidate Kathy Downes at (207) 949-3593 or at kathydownes1952@gmail.com.**

**In closing, it's vitally important that we all show up to vote on November 3rd!** If you haven't voted already by mail, make sure you cast a ballot on Election Day. And please encourage everyone in your circle of influence to be an informed voter.

**The stakes for our state and nation couldn't be higher this year.**

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To: Rep. Lawrence Lockman  
Maine First Project  
PO Box 623  
Brewer, ME 04412

From: \_\_\_\_\_ Email: \_\_\_\_\_  
\_\_\_\_\_ Telephone: \_\_\_\_\_  
\_\_\_\_\_

**I agree, Larry, it's time to ban political indoctrination in the classroom**, and get back to basic instruction that will prepare students for productive lives and livelihoods.

I'm ready to take action:

\_\_\_\_\_ I will call the House and Senate candidates in my legislative district, and ask them to support the **Maine First Agenda**, banning political indoctrination of any sort in Maine's K-12 public schools.

\_\_\_\_\_ I want to support the work of **Maine First Project** with a financial contribution so you and your team can reach more Mainers with the facts about what's going on in public education.

\$25     \$50     \$100     \$500     \$1000     Other \$ \_\_\_\_\_

\_\_\_ My check is enclosed, payable to *Maine First Project*

\_\_\_ Please charge my VISA    Mastercard    American Express    Discover

Card Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Signature: \_\_\_\_\_ CVC Code: \_\_\_\_\_

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3. Do you attend local school board meetings?
4. Have you ever served on a school board?
5. comments:

## Title 21-A Maine Revised Statutes

Current with the Second Regular Session of the 129th Maine Legislature.

### § 1012. Definitions

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As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Clearly identified.** “Clearly identified,” with respect to a candidate, means that:
  - A. The name of the candidate appears;
  - B. A photograph or drawing of the candidate appears; or
  - C. The identity of the candidate is apparent by unambiguous reference.

...

### § 1019-B. Reports of independent expenditures

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**1. Independent expenditures; definition.** For the purposes of this section, an “independent expenditure”:

**A.** Is any expenditure made by a person, party committee or political action committee, other than by contribution to a candidate or a candidate’s authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and

**B.** Is presumed to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 28 days, including election day, before a primary election; during the 35 days, including election day, before a special election; or from Labor Day to a general election day.

**2. Rebutting presumption.** A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of disseminating the communication stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and shall determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

**3. Report required; content; rules.** [2009, c. 524, § 6 (RPR); MRSAT. 21-A, § 1019-B, sub—§ 3 (RP).]

**4. Report required; content; rules.** A person, party committee or political action committee that makes any independent expenditure in excess of \$250 during any one candidate’s election shall file a report with the commission. In the case of a municipal election, the report must be filed with the municipal clerk.

**A.** A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**B.** A report required by this subsection must contain an itemized account of each expenditure in excess of \$250 in any one candidate's election, the date and purpose of each expenditure and the name of each payee or creditor. The report must state whether the expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

**C.** A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. The commission may adopt procedures requiring the electronic filing of an independent expenditure report, as long as the commission receives the statement made under oath or affirmation set out in paragraph B by the filing deadline and the commission adopts an exception for persons who lack access to the required technology or the technological ability to file reports electronically. The commission may adopt procedures allowing for the signed statement to be provisionally filed by facsimile or electronic mail, as long as the report is not considered complete without the filing of the original signed statement.

**5. Exclusions.** An independent expenditure does not include:

**A.** An expenditure made by a person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents;

**B.** A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting;

**C.** A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and

**D.** A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate.



## Title 3 Maine Revised Statutes

Current with the Second Regular Session of the 129th Maine Legislature.

### **§ 317-A. Grassroots lobbying report [Effective December 1, 2020]**

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Except for a lobbyist filing a monthly report under section 317, subsection 1, paragraph E-1, a person who makes or incurs expenditures in excess of \$2,000 during a calendar month for purposes of grassroots lobbying shall file with the commission a report no later than 11:59 p.m. on the 15th day of the calendar month following the date on which that amount was exceeded. For purposes of this section, expenditures include payments of money made to independent contractors and other vendors to purchase goods and services such as advertising, graphic or website design, video or audio production services, telecommunications services, printing and postage. Salaries paid to the person's employees are not expenditures for the purposes of this section and are exempt from disclosure under this section.

**1. Report.** A grassroots lobbying report filed pursuant to this section must include:

- A. The name of the person required to file the report;
- B. The name of an individual serving as the contact for the person;
- C. The business address and other contact information for the person;
- D. A description of the business activity or mission of the person;
- E. The specific amount of expenditures for grassroots lobbying made or incurred during the month that is the subject of the report, with separate totals for expenditure categories as determined by the commission;
- F. The legislative actions that are the subject of the grassroots lobbying; and
- G. A list of all of the person's original sources and a statement of the amount paid by each original source. If an original source is a corporation formed under Title 13 or former Title 13-A, a nonprofit corporation formed under Title 13-B or a limited partnership under Title 31, the corporation, nonprofit organization or limited partnership, not the individual members, must be listed as the original source.

## CMR 94-270-001

This document reflects changes current through October 6, 2020

### 94 270 001. PROCEDURES

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#### SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. General. Any person, party committee, political committee or political action committee that makes any independent expenditure in excess of \$ 250 per candidate in an election must file a report with the Commission according to this section.
2. Definitions. For purposes of this section, the following phrases are defined as follows:
  - A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
  - B. "Expressly advocate" means any communication that
    - (1) uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"; or
    - (2) is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.
  - C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
3. Reporting Schedules. Independent expenditures in excess of \$ 250 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following schedule:
  - A. [Repealed]
  - B. [Repealed]
    - (1) 60-Day Pre-Election Report. A report must be filed by 11:59 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.

(2) Two-Day Report. From the 60 [th ] day through the 14 [th ] day before an election, a report must be filed within two calendar days of the expenditure.

(3) One-Day Report. After the 14 [th ] day before an election, a report must be filed within one calendar day of the expenditure.

For purposes of the filing deadlines in this paragraph, if the expenditure relates to a legislative or gubernatorial election and the filing deadline occurs on a weekend, holiday, or state government shutdown day, the report must be filed on the deadline. If the expenditure relates to a county or municipal election, the report may be filed on the next regular business day.

...

**5. Rebuttable Presumption.** Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and that is disseminated during the 28 days before a primary election, the 35 days before a special election or from Labor Day to the general election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

**A.** The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) Printed advertisements in newspapers and other media;
- (2) Television and radio advertisements;
- (3) Printed literature;
- (4) Recorded telephone messages;
- (5) Scripted telephone messages by live callers; and
- (6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.

**B.** The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate, the candidate's immediate family, or a political committee;
- (2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;
- (3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized

primarily for the purpose of influencing the nomination or election of any person for state or county office;

(4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and

(5) other communications and activities that are excluded from the legal definition of "expenditure" in the Election Law.

**C.** If an expenditure is covered by the presumption and is greater than \$ 250 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. Any independent expenditure of \$ 250 or less per candidate per election does not require the filing of an independent expenditure report or a rebuttal statement.

**D.** If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the applicable presumption period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.

**E.** For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.

**F.** An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.

**G.** If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.