



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

To: Commissioners
From: Emma Burke, Political Committee & Lobbyist Registrar
Date: September 20, 2022
Re: Request by Maine First Project for Independent Expenditure Determination

On September 19, 2022, the Maine First Project PAC (MFP) disseminated a mailer to South Portland residents discussing immigration concerns and requesting donations. The mailer mentions Governor Janet Mills, who is running for reelection, several times. Also on September 19, 2022, MFP filed a request seeking a Commission determination the mailer is not an independent expenditure.

LEGAL REQUIREMENTS

Independent expenditure reports generally. Independent expenditures (IEs) are payments for communications to voters (e.g., mailings, advertisements, and digital or telephone messages) advocating for or against candidates made by political parties, political action committees (PACs), and other organizations or individuals. Any person making a single IE over \$250 per candidate must file an IE report disclosing the amounts spent on the communications, which specific candidate(s) were supported or opposed, and an affidavit confirming the expenditure was made independently of any candidate. From the 60th day through the 14th day before an election, IE reports must be filed within two calendar days of making the expenditure. The law requiring independent expenditure reports is set out in 21-A M.R.S. § 1019-B and Chapter 1, § 10 of the Commission Rules. 94-270 CMR Ch. 1, § 10.

Definition of an IE. During most parts of an election year, an IE is a payment made to design, produce, or disseminate a communication that “expressly advocates” the election or defeat of a candidate. 21-A M.R.S. § 1019-B(1)(A). As described below, the definition of express advocacy is narrow and must include explicit phrases such as “Vote for Smith!” or “Re-Elect Jill Scott.”

Under paragraph (1)(B) of the IE statute, the IE definition is much broader between Labor Day and the general election. During this period, if a communication merely names or depicts a clearly identified candidate, an IE report must be filed unless the spender demonstrates to the Commission it was not intended to influence the nomination, election, or defeat of a candidate. 21-A M.R.S. § 1019-B(1)(B). In 2003, the Legislature expanded the IE definition by inserting a version of paragraph (1)(B), recognizing it is easy for political organizations to design positive or negative communications about a candidate that will influence voters but do not contain express advocacy phrases such as “Vote for Smith!” P.L. 2003, Ch. 448.

Requesting a Commission Determination. A person seeking a determination by the Commission the payment for the communication is not an IE by submits a signed statement 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. 21-A M.R.S. § 1019-B(2). The statement must be submitted within seven days of disseminating the communication. The Commission may gather any additional evidence it determines relevant 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.” 21-A M.R.S. § 1019-B(2).

Deadline to File IE Report. The deadlines for filing IE reports are set out in the Commission’s Rules. 21-A M.R.S. § 1019-B(4), 94-270 CMR Ch. 1, § 10(3). This year, any person that makes an IE more than \$250 per candidate between September 9th and October 25th is required to file an IE report within two calendar days.

Definition of Clearly Identified. “Clearly Identified” means the candidate’s name, or a photograph or drawing of a candidate, appears in a communication 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).

DISCUSSION AND STAFF RECOMMENDATION

On September 19, 2022, MFP disseminated a letter in South Portland discussing immigration concerns and Portland being a “sanctuary city.” The letter is presumed to be an IE because it includes the name of Governor Mills, who is running for reelection, and it was disseminated after Labor Day of an election year. Accordingly, the issue before the Commission is whether MFP has, by a preponderance of evidence, shown the cost of the mailer was *not incurred with the intent to influence the election of the candidate* named previously. 21-A M.R.S. § 1019-B(4)

It is the opinion of the Commission staff MFP’s request should be successful, and the Commission should determine MFP has *not* made an IE. The candidate named and depicted on these communications is a public figure as the current Governor of Maine. The content of the letter mainly focuses on creating legislation in the future and fundraising for MFP. The November election is mentioned three times in the letter:

- a reference to “all 186 seats in the Legislature up for grabs this fall”;
- a fundraising request stating “Your support today will ensure that we have the resources to inform voters about what’s at stake in time to make a difference. Will you help us cut through the blizzard of propaganda coming at us every day between now and Election Day?”; and
- a fundraising request stating “your contribution TODAY of \$25, \$100, \$500 or whatever you can afford, will ensure Maine First Project can double down on our efforts to hold far-left legislators accountable, both during the legislative session and the election cycle.”

The Commission staff finds it plausible MFP’s letter was not intended to influence the election or defeat of a candidate, because it:

- is specifically discussing an issue that is a subject of current policy debates;
- does not mention Governor Mills is running for reelection or is a candidate in any capacity;
- named Governor Mills in her role as Governor and lead policy maker in Maine; and

- the action requested of the recipient is to join or donate to MFP, not to vote for or against any candidate.

The Commission staff recommends finding the costs of MFP's communication *did not* incur with the intent to influence the election of Governor Mills.

Thank you for your consideration of 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, provided that the Commission receives the original within 5 days.

Individual/Organization making the expenditure:

MAINE FIRST PROJECT

Contact person:

LAURENCE 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)

JANET MILLS

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

MAILER

Date(s) of dissemination:

SEPTEMBER 19, 2022

Payee or creditor (including address):

BANGOR LETTER SHOP

99 WASHINGTON ST BANGOR 04401

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

Lawrence E. Lockman

Date

9/19/22

Printed name of authorized individual

LAURENCE E. LOCKMAN

MAINE FIRST PROJECT

PO Box 623, Brewer, ME 04412 (207) 460-6518 MaineFirstProject@gmail.com MaineFirstProject.org
Standing Up For The Forgotten Mainers

September 15, 2022

Dear [first name],

Ever since Portland, Maine declared itself a “sanctuary city” for violent criminal aliens, it was only a matter of time before the limousine liberals in Portland city government offloaded their crime problem onto neighboring communities.

That day has arrived.

With hundreds of Portland’s illegal immigrants now being housed at taxpayer expense in area hotels, South Portland has been walloped with a dramatic increase in criminal activity – including theft, trespassing, drug use, and harassment.

So far, thankfully, there haven’t been any reports of Mainers in South Portland being beaten or shot to death by the border-crashers -- as happened twice in Portland in 2015.

<<FNAME>>, I’m writing to you today to let you know that Maine First Project is working to pass legislation outlawing these so-called “sanctuary city” policies. The legislation I sponsored in 2016 and again in 2018 would impose harsh financial penalties on any Harboring Haven municipality – such as Portland – that protects violent criminal aliens from deportation.

The bills didn’t pass because we don’t have enough legislators in Augusta who put Mainers first. Now, with all 186 seats in the Legislature up for grabs this fall, we can change that. Together, we can begin the process of reclaiming our beloved state from the open-borders radicals and the “Foreigners First” lobby.

Your contribution of \$25, \$100, \$500, or whatever you can afford to Maine First Project, using the enclosed form, will enable our team to bypass the Fake News media filter and reach more Mainers with the truth about illegal immigration’s life and death consequences.

49-year-old Freddie Akoa of Portland was beaten to death in his Cumberland Avenue apartment on the evening of August 9, 2015. His three assailants unleashed a ground-and-pound assault on him for hours. The thugs even bashed Akoa in the head with furniture.

He had 22 rib fractures from the savage attack, cuts and bruises all over his head and torso, and a lacerated liver when his assailants left him to die on the living room floor of his apartment.

Four days after the deadly assault, three men aged 23, 31, and 36 were arrested and charged with murder.

The three killers were all illegal immigrants – with 68 prior arrests between them before Akoa's murder.

Unfortunately, because the killers were Portland residents protected by the “sanctuary city” ordinance adopted in 2003, police and prosecutors were not allowed to inform federal immigration authorities about the killers’ lengthy rap sheets.

Were it not for Portland's Harboring Haven city ordinance that protects violent criminal aliens from deportation, the career criminals who beat Freddie Akoa to death would have been deported long before they had a chance to kill anyone.

Over the past year, another 1,500 illegals who crashed the southern border in Texas have arrived by bus in Portland. In response, Gov. Janet Mills has tapped into \$22-million worth of emergency funds to develop housing in Portland, South Portland, and Brunswick – *exclusively* for the most recent influx of border-crashers.

According to the Governor's senior housing advisor Greg Payne, the state – that's you and me – will pay the rent for these non-citizens for the next two years. So, while you work hard to pay your own rent or mortgage, the Swamp Queen in the Blaine House and her minions in the Legislature are forcing you to foot the bill to house non-citizens.

Meanwhile, an estimated 27,000 Maine households are on waitlists for Section 8 housing assistance. These families typically wait for years for a home.

But our Governor and our Legislature have different priorities. Their “Foreigners First” agenda is letting foreign nationals cut in line ahead of life-long Mainers.

<<FNAME>>, Maine First Project will not stand idly by while Mainers are kicked to the curb to make way for wave after wave of illegal immigrants coming here to be fed and housed at taxpayer expense. That's why your generous gift, using the attached form, TODAY is so important.

The message from the Mills administration and woke Democrats is clear: If you're a Mainer on a Section 8 waitlist, or a homeless veteran, you better get used to it, because your rulers in Augusta see these big families of border-crashers as a gold mine of reliable votes and cheap labor.

Since June of last year, the South Portland school district has hired five additional ESL (English as a second language) teachers to accommodate the 200 non-English speaking students being housed at the Quality Inn & Suites.

In Saco, the estimated cost to the school district of providing services to 125 newly-arrived non-citizen students is \$1.2 million.

The unvarnished truth is that Maine people cannot afford to provide free housing, free health care, and free education for wave after wave of border-crashers who wade across the Rio Grande and file bogus asylum claims before boarding buses for Portland.

Filing an asylum application after entering the country illegally was never intended to be a fast track to getting a job in the United States while your application is pending.

The fact is, according to President Joe Biden's own Justice Department, more than 80% of the asylum applications filed by these "new Mainers" will ultimately be rejected. At which point the border-crashers become immediately deportable as illegal immigrants. But Janet Mills doesn't care and Maine's lying, dying Fake News media will NEVER blow the whistle on this scandal.

Does anyone seriously believe that any of the thousands of non-citizen "new Mainers" who re-settled here over the past few years will voluntarily self-deport when they're ruled ineligible for asylum in a year or two?

Of course not!

<<FNAME>>, I'm writing to you today because I know you share my concern about the impact of illegal immigration on Maine – and because you, as a resident of South Portland, are in the crosshairs of the open-borders crisis. Your contribution of \$25, \$50, \$100, or \$1000, or whatever you can afford will enable our team at Maine First Project to reach and mobilize more Mainers to be on the frontlines of this battle.

Joe Biden's wide-open southern border, coupled with Portland's policy of welcoming violent criminal aliens, has contributed to a huge spike in drug overdose fatalities all across Maine, from Caribou to Kittery. The deadly synthetic opioid fentanyl, coming primarily from Mexico and China, has been involved in 75% of the confirmed Maine overdoses so far in 2022.

One thing we know for sure: we can't count on the politicians and the political parties in Augusta to figure out what needs to be done. They won't budge until they're subjected to relentless pressure from Mainers who know that we won't have a state or a country if we don't secure our borders.

As Ronald Reagan advised, "When you can't make politicians see the light, make them feel the heat."

The Maine First Project team has taught many hundreds of Mainers how to fight fire with fire in the culture wars that rage around us. Those Maine patriots are having an impact,

but we're still outnumbered and outspent by the San Francisco-values crowd that rules the roost at the Statehouse.

Your support today will ensure that we have the resources to inform voters about what's at stake in time to make a difference. Will you help us cut through the blizzard of propaganda coming at us every day between now and Election Day?

We owe it to the next generation of Mainers to leave them a state that's at least as good as the one that we have enjoyed: Maine, the Way Life Should Be.

Sincerely,



Hon. Lawrence E. Lockman
Maine House of Representatives, 2012-2020
Co-founder & President
Maine First Project

P.S. - Who could have imagined, just a few years ago, that Maine would be overrun by thousands of illegal immigrants arriving by bus from 2,400 miles away? Or that the Governor and the Legislature would shove life-long Mainers aside and shower the border-crashers with free housing, health care, and education?

Now is the time to act, before the "Foreigners First" politicians in Augusta steal more of your freedom and prosperity.

<<FNAME>>, your contribution TODAY of \$25, \$100, \$500 or whatever you can afford, will ensure Maine First Project can double down on our efforts to hold far-left legislators accountable, both during the legislative session and the election cycle.

MAINE FIRST PROJECT
Restoring Maine to The Way Life Should Be

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

From:

Email: _____
Telephone: _____

Larry, I agree, Portland shouldn't be allowed to roll out the welcome mat for illegal aliens, and then offload them to neighboring communities. And no way should Maine taxpayers be forced to provide free housing, medical care, and education for the influx of border-crashers who have made their way here over the past three years.

_____ I want to support the work of **Maine First Project** with a financial contribution, so you and your team can bypass the Fake News media filter and alert more Mainers to the life and death consequences of open borders.

_____ \$25 _____ \$100 _____ \$500 _____ \$1,000 _____ \$2,500 \$ _____ Other
--

_____ Please charge my:
_____ VISA _____ Mastercard _____ American Express _____ Discover

Card Number: _____

Expiration Date: _____ CVC Code: _____

Signature: _____

_____ My check is enclosed, payable to *Maine First Project*

*****ATTENTION ALL FORGOTTEN MAINERS*****

Become an OFFICIAL **Maine First Patriot** with a recurring monthly investment in Maine's Future!

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

_____ I'm interested in making a bequest to Maine First Project. Please send me information on Legacy Giving.

Maine First Project is a 501(c)(4) non-partisan, non-profit organization (EIN 47-3312935). Contributions are confidential but not tax deductible. There is no limit on how much you may contribute.

MAINE FIRST PROJECT

P.O. Box 623

Brewer, ME 04412

[RETURN ENVELOPE]

§1019-B. Reports of independent expenditures

1. Independent expenditures; definition. For the purposes of this section, an "independent expenditure" means any expenditure made by a person, party committee or political action committee that is not made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized political committee or an agent of either and that:

A. Is made to design, produce or disseminate any communication that expressly advocates the election or defeat of a clearly identified candidate; or [PL 2021, c. 132, §7 (AMD).]

B. Unless the person, party committee or political action committee making the expenditure demonstrates under subsection 2 that the expenditure was not intended to influence the nomination, election or defeat of the candidate, is 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. [PL 2021, c. 132, §7 (AMD).]

[PL 2021, c. 132, §7 (AMD).]

2. Commission determination. A person, party committee or political action committee may request a determination that an expenditure that otherwise meets the definition of an independent expenditure under subsection 1, paragraph B is not an independent expenditure by filing a signed written statement with the commission within 7 days 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, party committee or political action committee chooses to submit. The commission may gather any additional evidence it determines 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.

[PL 2021, c. 132, §8 (AMD).]

3. Report required; content; rules.

[PL 2009, c. 524, §6 (RPR); MRSA T. 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. [PL 2011, c. 558, §2 (AMD).]

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. [PL 2015, c. 350, §6 (AMD).]

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. [PL 2013, c. 334, §16 (AMD).]

[PL 2019, c. 323, §17 (AMD).]

5. Exclusions. An independent expenditure does not include:

A. [PL 2021, c. 132, §9 (RP).]

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; [PL 2011, c. 389, §21 (NEW).]

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 [PL 2011, c. 389, §21 (NEW).]

D. A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate. [PL 2011, c. 389, §21 (NEW).]

[PL 2021, c. 132, §9 (AMD).]

SECTION HISTORY

PL 2003, c. 448, §3 (NEW). PL 2007, c. 443, Pt. A, §20 (AMD). PL 2009, c. 366, §5 (AMD). PL 2009, c. 366, §12 (AFF). PL 2009, c. 524, §§6, 7 (AMD). PL 2011, c. 389, §§20, 21 (AMD). PL 2011, c. 389, §62 (AFF). PL 2011, c. 558, §2 (AMD). PL 2013, c. 334, §§15, 16 (AMD). IB 2015, c. 1, §§5, 6 (AMD). PL 2015, c. 350, §6 (AMD). PL 2019, c. 323, §§15-17 (AMD). PL 2021, c. 132, §§7-9 (AMD).