



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

To: Commission  
From: Commission Staff  
Date: December 13, 2022  
Re: Statutory Proposal – Making Independent Expenditure Determinations

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Thank you for your consideration of proposed statutory changes at the November 30, 2022 meeting. Following the meeting, the Commission staff drafted one additional change to address how the Commission decides on a request that the cost of a communication naming or depicting a candidate is not an independent expenditure for or against that candidate. The new language is the last two sentences on the next page. Thank you for considering it.

## **21-A M.R.S. § 1019-B. Reports of independent expenditures**

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**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
- 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~~ for the purpose of influencing 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.

**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~~ for the purpose of influencing 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 ~~and shall~~. The commission shall determine by a preponderance of the evidence whether the cost was incurred with intent to influence for the purpose of influencing the nomination, election or defeat of a candidate. In order to make this determination, the commission shall consider whether the language and other elements of the communication would lead a reasonable person to conclude that the communication was for the purpose of influencing an election. The commission may consider other factors, including but not limited to, the timing of the communication or the recipients of the communication. The commission's executive director shall make an initial determination on the request, which will be posted on the commission's publicly accessible website. Any person may request an appeal, which will be considered by the commission members at the next public meeting that is feasible.

