



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

Commission Meeting 6/22/2022
Agenda Item #5

To: Commissioners
From: Emma Burke, Political Committee & Lobbyist Registrar
Date: June 10, 2022
Re: Request by Planned Parenthood Maine Action Fund for Independent Expenditure
Determinations

On May 24, 2022, the Planned Parenthood Maine Action Fund PAC (PPMAF) began disseminating a video communication in Maine asking Mainers to thank Governor Janet Mills for supporting abortion rights. On May 26, 2022, PPMAF began disseminating a similar radio advertisement naming and using the voice of Governor Janet Mills. On May 25, 2022 and June 1, 2022 PPMAF filed requests seeking rebuttals of the independent expenditure presumption with the Commission.

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. In the last 60 days before an election, IE reports must be filed within one or 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 (attached). 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 during the 28 days prior to a primary election, and between Labor Day and the general election. During those two time periods, if a communication merely names or depicts a clearly identified candidate, an IE report must be filed unless the spender demonstrates to the Commission that the communication 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 that 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. 448.¹

Requesting a Commission Determination. A person disseminating a communication naming or depicting a candidate during these time periods may request a determination by the Commission that the payment for the communication is not an IE by submitting 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 made

¹ From 2003-2021, paragraph 1(B) imposed a “presumption” of an IE, but the presumption terminology was removed from the paragraph in a rewrite of the IE statute in P.L. 2021, ch. 132. The procedure is essentially the same, but there is no longer a presumption in the law. The Commission staff is in the process of updating its forms, guidance, and rules to reflect this 2021 law change.

an IE in excess of \$250 per candidate between April 15 and May 31, 2022 was 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. The full definition in the Commission’s rules is attached. 94-270 CMR Ch. 1 § 10(2)(B).

DISCUSSION AND STAFF RECOMMENDATION

On May 24, 2022, PPMF began disseminating a video communication asking Mainers to thank Governor Janet Mills for supporting abortion rights, which has been sent to you via email in advance of the Commission meeting. Two days later, PPMF began disseminating a similar communication on the radio, the transcript of which is included with Kate Knox’s letter. On May 25, 2022 PPMF filed a Statement to Rebut Presumption of Independent Expenditure for the video communication, and on June 1, 2022 filed another Statement for the radio communication.

The communications disseminated by PPMF are presumed to be IEs because they include the name and image or voice of Maine Governor Janet Mills, who is running for reelection, though she is unopposed in the primary election, and were disseminated within the 28 days before the June 14th primary. Accordingly, the issue before the Commission is whether PPMF has, by a preponderance of evidence, shown the costs of the communications were *not incurred with the intent to influence the election of any of the candidates* named previously. 21-A M.R.S. § 1019-B(4)

It is the opinion of the Commission staff PPMF's request should be successful, and the Commission should determine PPMF has *not* made any IEs. The candidate named and depicted on these communications is the current Governor of Maine, a public figure, and she is not opposed in Maine's June 14th primary election. The communications do not mention Governor Mills is running for reelection or that she is a candidate. The content of the communications is solely focused on the upcoming U.S. Supreme Court decision on *Dobbs v. Jackson Women's Health Organization*, where a draft decision, leaked on May 2, 2022, appears to show that abortion rights will be shifted entirely back to the states. PPMF also plans to stop disseminating the communications by the end of June, which is when the *Dobbs* decision will be announced. Considering the stated mission of PPMF is "advance access to sexual health care and defend reproductive rights," and Governor Mills has publicly stated she will defend abortion rights in Maine, it is understandable why PPMF would issue a public request for Mainers to thank Governor Mills for her support of abortion rights while the country awaits the official *Dobbs* decision.

The Commission staff finds it plausible PPMF's communications were not intended to influence the election or defeat of a candidate, because the communications:

- are in response to a very specific and timely policy issue;
- will stop being disseminated once the *Dobbs* decision has been made;
- do not mention Governor Mills is running for reelection or is a candidate in any capacity;
and
- instead named Governor Mills in her role as Governor of Maine and lead policy maker in Maine.

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

Thank you for your consideration of this matter.



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station, Augusta, Maine 04333

Office: 45 Memorial Circle, Augusta, Maine

Website: www.maine.gov/ethics

Phone: 207-287-4179

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Statement to Rebut Presumption of Independent Expenditure

Under 21-A M.R.S. § 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. 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. To rebut the presumption, this form must be filed with the Ethics Commission within 7 days of disseminating the communication. 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:

Planned Parenthood Maine Action Fund

Contact person:

Marni Maynard

Contact's mailing address:

443 Congress Street, 3rd Floor, Portland, Maine 04101

Contact's telephone number(s):

207-274-3111 or 207-687-3289

Candidates named or depicted: (use additional pages if necessary)

Janet Mills

Payee or creditor (including address):

GMMB, 3050 K Street, NW, Suite 100, Washington, D.C. 20007

Type of communication:

Electronic Communication

Date of dissemination:

May 24, 2022

The above expenditure was not incurred with the intent to influence the nomination, election, or defeat of a candidate.

DocuSigned by:

5/24/2022

Signature of authorized individual

Date

* See Addendum A attached to Statement to Rebut Presumption of IE

Unsworn falsification is a Class D crime. 17-A M.R.S.A. § 453.

21-A M.R.S. § 1019-B – Reports of Independent Expenditures

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

- A. Is any expenditure made by a person, party committee, political 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 7 days of making the expenditure 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 must determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

Commission’s Rule on Rebuttable Presumption – Chapter 1, Section 10(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 *[disseminating the communication]*¹ 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.

...

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.

¹ The period to submit a rebuttal statement was changed to be based on when the communication was disseminated rather than when the expenditure was made. (P.L. 2019, c. 323) The rule has not yet been updated to reflect that change.

Addendum A
to
Statement to Rebut Presumption of Independent Expenditure

Per conversations with the Maine Ethics staff these ads do not qualify as an IE. The ads timing aligns with the current goings on with the Supreme Court Decision *Dobbs. v. JWHO*. The Governor does not have an opponent and the ad does not mention that she is a candidate or running, and the ad is aligned with her role as the governor, not a candidate for governor.

PPMEAF May 24, 2022



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

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443 Congress Street, 3rd Floor, Portland, Maine 04101

Contact's telephone number(s):

207-274-3111 or 207-687-3289

Candidates named or depicted: (use additional pages if necessary)

Janet Mills

Payee or creditor (including address):

GMMB, 3050 K Street NW, Suite 100, Washington, D.C. 20007

Type of communication:

Radio

Date of dissemination:

May 26, 2022

The above expenditure was not incurred with the intent to influence the nomination, election, or defeat of a candidate.

DocuSigned by:

Made Clegg

6/1/2022

Signature of authorized individual

Date

*SEE ADDENDUM A ATTACHED

Unsworn falsification is a Class D crime. 17-A M.R.S.A. § 453.

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- 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 7 days of making the expenditure 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 must determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

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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):

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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.

...

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.

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PPMEAF May 26, 2022



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June 9, 2022

Emma Burke
Political Committee and Lobbyist Registrar
Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333

RE: Planned Parenthood Maine Action Fund – Rebuttal to the Presumption of Independent Expenditures

Dear Ms. Burke:

I write on behalf of my client, Planned Parenthood Maine Action Fund (“PPMEAF”), to respond to your request for additional information concerning the “Statement to Rebut Presumption of Independent Expenditure” submitted by PPMEAF for communications disseminated during the presumption period in the 2022 primary election. The communications were not produced or disseminated with the intent to influence the nomination, election, or defeat of Governor Janet Mills and as such, should not be considered independent expenditures.

Independent Expenditures Presumed

Independent expenditures, defined as communications which expressly advocate for the election or defeat of a clearly identified candidate, must be disclosed and reported to the Maine Ethics Commission (the “Commission”). 21-A M.R.S. § 1019-B(1), (4) (2021). In addition, expenditures for communications that name or depict clearly identified candidates are assumed to be independent expenditures in the 28-days prior to a primary election. 21-A M.R.S. § 1019-B(1)(B) (2021). Communications not designed to influence the election may be exempted from that presumption if the distributing organization files a “Statement to Rebut Presumption of Independent Expenditure” with the Commission and receives a determination the intent of the communication is not to influence the election. 21-A M.R.S. § 1019-B(2) (2021).

Planned Parenthood Maine Action Fund/Legal Landscape

PPMEAF is an independent, nonpartisan, not-for-profit organization formed as the local advocacy arm of Planned Parenthood of Northern New England in Maine. Among other things, PPMEAF engages in educational, non-electoral activity including voter education campaigns, grassroots organizing and

legislative advocacy. Its primary purpose is to educate the public on the importance of access to reproductive health care and sexuality education so that all people can make informed, voluntary choices about their reproductive and sexual health.

While legal access to abortion has been available for almost fifty years, that right is now under direct challenge. The U.S. Supreme Court is currently considering the constitutionality of a Mississippi state law which bans abortions after the first 15 weeks of pregnancy. The case, *Dobbs v. Jackson Women's Health Organization* rose to the Supreme Court after lower courts issued injunctions based on the ruling in *Planned Parenthood v. Casey* – which holds that a woman's right to abortion before fetal viability is a protected right of privacy under the 14th amendment of the United States Constitution. See *Dobbs v. Jackson Women's Health Organization*, 141 S. Ct.2619 (2021); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). Oral arguments in *Dobbs* took place in December 2021. On May 2, 2022, Politico published a leaked majority opinion authored by Justice Samuel Alito which would overturn the right to abortion entirely and shift the issue of abortion access over to individual states. A final opinion is expected to be issued by the Supreme Court at the end of June 2022. If the leaked opinion holds, the issue of abortion access will revert to the individual states for consideration.

Currently, Maine law provides that “it is the public policy of the State that the State not restrict a woman's exercise of her private decision to terminate a pregnancy before viability...” 22 M.R.S. § 1598(1). Thirteen states have already adopted “trigger laws” which will ban abortion if the Supreme Court upholds *Dobbs* and many other states are actively considering restrictions significantly limiting access these procedures.ⁱ

Communications

On May 24, 2022, in anticipation of the *Dobbs* decision and the directive to individual states to determine abortion rights, PPMEAF disseminated an electronic communication reminding Mainers that current Governor Janet Mills pledged to be the “backstop” to protect a woman's right to an abortion and urging viewers to thank the Governor for her pledge. The communication linked to a landing page where viewers could send a direct message to Governor Mills thanking her for her support of abortion rights. (Link to electronic media was sent to the Commission by staff).

On June 6, 2022, in anticipation of the *Dobbs* decision and the directive to individual states to determine abortion rights, PPMEAF disseminated a radio ad. (Full transcript of the radio advertisement is attached as Appendix A).

Prior to running the communications (May 20, 2022), I corresponded with Commission staff and shared a copy of the electronic communication explaining the non-electoral purpose of the content. Staff viewed the communication and agreed that they did believe it met the requirements for the rebuttal of the presumption.

Both communications, which will stop running on June 30, 2022, include a quote from Governor Mills talking about her support for abortion rights and urge viewers/listeners to reach out to the Governor

June 9, 2022

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and thank her for her support to date. The purpose of both ads is to highlight the importance of the current Maine Governor's stance on abortion and to urge her to maintain that support using all existing executive powers and resources in anticipation of a push for a rollback of those rights through legislative and executive action.

Costs Not Incurred with the Intention to Influence the Nomination, Election or Defeat of a Candidate

The costs incurred to develop and distribute the radio advertisement and electronic communication were not incurred with the intention to influence the nomination, election or defeat of a candidate. While the expenditures fall within the primary presumption window, their timing, content and purpose are connected to the *Dobbs* decision, the anticipated fallout of that decision, and the Governor's vital role as chief executive.

First, the timing of the ads is entirely dictated by, and in alignment with, the leaked *Dobbs* opinion on May 2 and the anticipated actual decision at the end of June. It just so happens that our Maine primary is nearly in the middle of this period during which PPMEAF would, under any circumstances, be communicating about *Dobbs* and the widely anticipated shift of the policy fight around abortion to the states. Second, the content of the expenditures is geared towards the policy issue and the Governor's role in it. Specifically, the expenditures do not mention her as a candidate and focus on her existing powers as Governor. Third, PPMEAF's mission and primary purpose, to educate the public on the importance of access to reproductive health care and sexuality education so that all people can make voluntary choices about their reproductive and sexual health, dictates that they communicate with the public at this moment in time. The expenditures are straightforward communications exemplifying PPMEAF's purpose to educate the public on the importance of access to reproductive health care.

Finally, Governor Mills does not have a primary opponent and her name does not appear as a candidate on ballots in the primary election.

The costs incurred to develop and distribute the radio advertisement and electronic communication were not incurred with the intention to influence the nomination, election or defeat of a candidate. For the reasons stated above, the timing, content and purpose of the expenditures are connected to the *Dobbs* decision, the anticipated fallout of that decision, and the Governor's role as chief executive and therefore should not be presumed to be Independent Expenditures in support of Janet Mills' reelection.

For those reasons, I respectfully request that the Commission determine that the intent of the communications was not to influence an election.

Sincerely,



Katherine Knox

June 9, 2022

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ⁱ There has been extensive press coverage on this issue of abortion rights reverting to states, including:

<https://www.newscentermaine.com/article/news/politics/national-politics/maine-abortion-law-before-and-after-roe-v-wade-supreme-court-draft-opinion/97-a0906aa0-cfc3-447d-88ec-deb41f790513>

Planned Parenthood Maine Action Fund Radio Buy Script

Broadcaster: We begin tonight with the future of Roe vs. Wade amid this unprecedented leak from the Supreme Court.

Narrator: It's a devastating blow. One we hoped would never come.

Broadcaster: The leaked documents showing those five justices supporting overturning Roe.

Narrator: The Supreme Court now poised to overturn Roe v. Wade ending 50 years of federal protections for abortion rights. Rights our parents and grandparents fought for. But we can protect abortion here in Maine. Governor Mills will keep abortion legal for Mainers, no matter what the Supreme Court does.

Mills: I pledge to the people of Maine, so long as I am Governor, access to abortion care will be safe and legal in Maine. Just as it is now. We will not go backwards.

Narrator: Tell Governor Mills thank you for protecting reproductive freedom for all Mainers. Paid for by Planned Parenthood Maine Action Fund.

§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).

Chapter 1: PROCEDURES

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 60th day through the 14th day before an election, a report must be filed within two calendar days of the expenditure.
- (3) **One-Day Report.** After the 14th 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.

- C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate.
 - D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.
 - E. An independent expenditure report may be provisionally filed by facsimile or by electronic mail to an address designated by the Commission, as long as the facsimile or electronic copy is filed by the applicable deadline and an original of the same report is received by the Commission within five calendar days thereafter.
4. **Multi-Candidate Expenditures.** When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.
- A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

[NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]

- B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]

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;

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- (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.