



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

Commission Meeting 10/16/2020
Agenda Item #8

To: Commissioners
From: Michael J. Dunn, Esq., Committee Registrar
Date: October 14, 2020
Re: Complaint against Sen. Dow / Maine Prosperity Alliance for Coordinated Expenditure

On 10/09/2020, the Commission received a complaint against Sen. Dana Dow and the Maine Prosperity Alliance PAC (collectively, the “Respondents”) from the Lincoln County Democratic Committee. ETH – 1-2. The complaint alleges that the Maine Prosperity Alliance PAC (“MPA”) produced an online advertisement in coordination with Sen. Dow, a Maine Clean Election Act (“MCEA”) candidate. ETH – 1-2. A coordinated expenditure is treated as an in-kind contribution to a candidate’s campaign, which an MCEA candidate, like Sen. Dow, may not accept.

The advertisement sponsored by the MPA started to run on 09/02/2020, and featured short video images of Sen. Dow walking on a lawn, a furniture store, sitting down at a table in a kitchen, and standing in an apparent living room. This advertisement ran between 09/02/2020 – 09/08/2020, and between 09/22/2020 – 09/27/2020. The first run of this advertisement cost between \$100 – \$199 and resulted in approximately 15k – 20k impressions¹ on Facebook. The second run of the advertisement also cost between \$100 – \$199 and resulted in approximately 10k – 15k impressions.

Senator Dow’s advertisement features what appears to be the same clips of him walking in a furniture store and standing in a living room-type setting. This advertisement first ran from 09/05/2020 – 09/14/2020. A substantially similar advertisement from Sen. Dow

¹ Facebook’s Business Center describes Impressions as follows:
“An impression is counted as the number of times an instance of an ad is on screen for the first time. (Example: If an ad is on screen and someone scrolls down, and then scrolls back up to the same ad, that counts as 1 impression. If an ad is on screen for someone 2 different times in a day, that counts as 2 impressions.) This method of counting video impressions differs from industry standards for video ads. With the exception of ads on Audience Network, impressions are counted the same way for ads that contain either images or video. This means that a video is not required to start playing for the impression to be counted.” <https://www.facebook.com/business/help/675615482516035>

also ran from 09/11/2020 – 09/17/2020. Each advertisement cost between \$200 – \$299. The initial run of the advertisement generated between 20k – 25k impressions, while the companion advertisement had between 10k – 15k impressions.

The Respondents contend that Sen. Dow and the MPA did not coordinate on the MPA’s Facebook ad. ETH – 5-6. The footage was in fact captured from Flickr and repurposed to produce the independent expenditure. ETH – 10-11. Senator Dow states that he filmed the video earlier in the year and did nothing with it following the dissemination of the advertisement. ETH – 6. The Respondents also contend that Mr. Roderick is not the Chief of Staff for Sen. Dow. ETH – 5-6.

LEGAL REQUIREMENTS

Standard for Opening a Requested Investigation. The Election Law authorizes the Commission to receive requests for investigation and to conduct an investigation “if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred”:

A person may apply in writing to the commission requesting an investigation as described in subsection 1. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

21-A M.R.S. § 1003(2).

Independent Expenditure Defined. An “Independent Expenditure” is any expenditure made by a person, other than by contribution to a candidate or a candidate’s committee, for any communication that expressly advocates for the election or defeat of a clearly identified candidate. ETH – 13-15. An expenditure that is made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate or the candidate’s committee is not an independent expenditure. Id.

Cooperation, Consultation, or in Concert with defined. In cooperation, consultation, or in concert with includes, but is not limited to: discussion between the candidate and the

creator, producer or distributor of a communication, or the person paying for that communication, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of place of that communication, and participation by the candidate in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication. ETH – 16. A communication is presumed to be in cooperation, consultation, or in concert with the candidate when that a communication was made by any person who in the preceding year was the candidate’s treasurer, officer, manager, or received compensation from the candidate’s campaign. Id. The expenditure is also presumed to be made in cooperation, consultation, or in concert with when the communication replicates, reproduces, republishes, or disseminates in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate. Id. The candidate or spender may rebut the presumption by submitting sufficient contrary evidence. Id.

Maine Clean Election Act Contribution Prohibition. A candidate may not accept contributions prior to certification except for seed money contributions. 21-A MRS § 1125(2). After the candidate has been certified the candidate may not accept any contributions unless specifically authorized by the Commission. ETH – 15. A contribution includes: a gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office or for the purpose of liquidating any campaign deficit of a candidate, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included. ETH – 12.

DISCUSSION AND STAFF RECOMMENDATION

The issue before the Commission is whether the MPA made the expenditures for the Facebook advertisement in cooperation, consultation, or in concert with Sen. Dow, his political committee, or their agents. The Commission staff recommends considering whether evidence has been presented that establishes the presumption that Sen. Dow

coordinated with the PAC because the Facebook ad “replicates, reproduces, republishes, or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate.” ETH – 16. The MPA’s advertisement featured short video images of Sen. Dow walking on a lawn, in his furniture store, sitting down at a table in a kitchen, and standing in an apparent living room. These clips were taken from the Mainesenategop Media page on Flickr and were paid for by Sen. Dow. ETH – 10-11. The audio component of the MPA’s advertisement is unique; however, all of the video images were paid for by Sen. Dow. The Commission staff cannot recall a previous enforcement item in which the Commission had occasion to determine whether a PAC’s or party committee’s repackaging of video or photographic elements paid for by a candidate constituted a “republishing” of a “campaign material” or a “communication” prepared by the candidate. 21-A M.R.S. § 1015(5); 94-270 Ch. 1, § 6(9)(B)(3).

The Lincoln County Democrats assert that Mr. Roderick is the campaign manager for Sen. Dow. The Lincoln County Democrats do not offer any evidence on this point and it is denied by both MPA and Sen. Dow. For these reasons staff does not believe that sufficient evidence has been presented to establish the presumption as to Mr. Roderick’s involvement in Sen. Dow’s Campaign.

If the Commission were to find that the presumption applies, the Commission should consider whether MPA and Sen. Dow have supplied sufficient evidence to rebut that presumption. Both MPA and Sen. Dow deny any coordination. ETH – 5-6. Senator Dow explains that he authorized the videos earlier in the year. ETH – 6. The videos were made public on Flickr² and were subsequently captured by MPA’s vendor and repurposed for the advertisement that is the subject of this complaint. Commission staff believes that the Commission, and not staff, is in the best position to evaluate the presentation of the Lincoln County Democrats and the Respondents.

² The videos on the Flickr page are all clean short recordings with no sound. Flickr, unlike the majority of video and picture sharing applications, has an easy download feature available. It would seem odd for a vendor to take the time to remove audio and cut small segments of video for upload to Flickr. The Commission staff does not know the purpose of establishing such an account, but one could speculate that the reason for the activity is to create a repository of clips to be used in independent expenditures. We presume that many candidates have a general understanding that photographic or other visual elements may be taken from their campaign website or Facebook page by a PAC or party committee for use of an independent expenditure communication.

If the Commission finds that there are sufficient grounds to believe that a violation occurred, the Commission staff could certainly gather additional information through an investigation. Currently, the Commission has only had the opportunity to receive brief statements from the respondents and the evidence has only just begun to be developed. The staff would look to develop evidence by interviewing Sen. Dow and Mr. Roderick, reviewing documents from the vendors, and following up as needed.

Staff would recommend that the Respondents have not yet had a full opportunity to present their case and it would be fundamentally unfair to impose a penalty at this stage. If the Commission were to determine that Sen. Dow had accepted a contribution, the Commission could assess a penalty for violating the terms of the MCEA program. 21-A M.R.S. § 1127. An alternative approach that has been used by Commission staff to reconcile accidental acceptance of in-kind contributions has been for the candidate to reimburse the purchaser of the communication for the costs attributable to their campaign; in this case \$600. 21-A M.R.S. § 1014.

Thank you for your attention in this matter.



Lincoln County Democratic Committee



P.O. Box 675
Damariscotta, ME 04543
chair@lincolncountydemocrats.com
https://lincolncountydemocrats.com

9th October 2020

Jonathan Wayne
Executive Director, Maine Ethics Commission
135 State House Station
Augusta, Maine 04333

Dear Mr. Wayne,

I am writing to file a complaint regarding an improper coordinated expenditure by the Maine Prosperity Alliance PAC and Senator Dow. As an MCEA candidate, Sen. Dow cannot accept an in-kind contribution. The PAC began running a paid [video advertisement](#) on September 2nd featuring footage of Dow. Dow posted a new [video advertisement](#) on September 4th featuring some, but not all, of the same footage. Therefore, the PAC could not have pulled the footage from his ad to use in theirs. None of the footage of Dow that was shot for the PAC advertisement appears to be available publicly online. Searches of Google, Facebook, YouTube, and Vimeo, etc., do not return any results containing this footage. Therefore, it appears that in all likelihood Dow and the PAC coordinated to shoot the video to produce an independent expenditure. Dow’s chief of staff, Shawn Roderick, is listed as the principal officer of the Maine Prosperity Alliance PAC. This kind of coordinated expenditure is illegal for MCEA candidates.

<p>Inactive Sep 5, 2020 - Sep 14, 2020 ID: 3621177767933074</p> <p>Senator Dana Dow Sponsored - Paid for by Dow for Senate</p> <p>As a legislator, I put to use my experience as a small business owner and educator every day to help me work for you and your families. When tough decisions have to be made, this practical experience helps me determine the right path forward, always keeping the needs of people of Lincoln and Kennebec Counties as my priority.</p>  <p>WWW.DOWFORSENATE.COM Senator Dana Dow - Experienced, Practical Leadership</p> <p>Learn ...</p>	<p>Inactive Sep 2, 2020 - Sep 8, 2020 ID: 1085501108534360</p> <p>Maine Prosperity Alliance Sponsored - Paid for by Maine Prosperity Alliance</p> <p>Maine's families need an ally in Augusta. As your Senator, Dana Dow is a strong advocate for the hardworking families and small businesses of Lincoln and Kennebec County.</p>  <p>DOWFORSENATE.COM Senator Dana Dow Common Sense Leadership</p> <p>Learn ...</p> <p>Amount spent (USD): \$100 - \$199 Potential Reach: 10K - 50K people</p>
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I urge the Commission to pursue this example of a likely illegal coordinated expenditure with the full force and authority of the great state of Maine. MCEA candidates have an obligation to adhere to the law's requirements, as their campaign funding is given as a measure of the public's trust. If and when this trust is broken, the infraction should be exposed and penalized.

Sincerely,

A handwritten signature in black ink that reads "Christopher K. Johnson". The signature is written in a cursive style with a large, prominent initial 'C'.

Christopher K. Johnson
Chair, Lincoln County Democratic Committee

From: [Wayne, Jonathan](#)
To: [Shawn Roderick: danadow2050@gmail.com](#)
Cc: [Lavin, Paul](#); [Dunn, Michael](#); [Gordon, Erin](#)
Subject: New Complaint - Maine Prosperity Alliance Facebook Ad
Date: Friday, October 9, 2020 6:10:36 PM
Attachments: [SD13 10-9-2020 Ethics Complaint.pdf](#)

Sen. Dow and Shawn,

I am sorry to pass on bad news just before a three-day weekend, but one hour ago our office received the attached complaint from the Lincoln County Democratic Committee about a Facebook ad by the Maine Prosperity Alliance PAC. This is an ad in which Sen. Dow and his son are walking on a lawn and sitting in a kitchen. The gist of the complaint is that the ad amounts to an in-kind contribution to Sen. Dow's campaign (not allowed under the Maine Clean Election Act) due to these circumstances:

- Sen. Dow participated in the filming of the PAC's ad.
- Some of footage in the PAC's ad is the same as in an ad paid for by Sen. Dow.
- Shawn Roderick is both Sen. Dow's legislative chief of staff and a principal officer of the Maine Prosperity Alliance.

The argument is that the ad by the Maine Prosperity Alliance PAC is an in-kind contribution because Sen. Dow and/or Shawn Roderick cooperated with the ad or because the PAC has financed the dissemination of a campaign material prepared by the candidate. 21-A M.R.S. § 1015(5). The Commission's rule concerning coordinated expenditures may also be relevant. 94-270 C.M.R. Ch. 1, §6(9).

Because the complaint alleges a campaign finance violation, the Commission will need to consider the complaint at a public meeting. Because we are in the last 28 days before election, the Commission is required by 21-A M.R.S. § 1002(1) to meet within two business days for the filing of a complaint, unless the complainant and respondent agree otherwise. For your information, the next scheduled meeting of the Commission is Friday, October 16. That is the earliest date at which the Commission could consider this complaint.

Could you please let me know how long it would take Josh Tardy or you to submit a letter explaining the facts of the situation and argue (if you take this view) this is not a contribution to Sen. Dow's campaign. Please respond any way you believe is appropriate, but please include a list of the paid services associated with the PAC's ad and please indicate who paid these costs.

I'll be checking my email over the weekend in case you have any questions. Thank you.

Jonathan Wayne
Executive Director
Maine Ethics Commission
135 SHS
Augusta, ME 04333

287-4179

From: lcdc chair <chair@lincolncountydemocrats.com>

Sent: Friday, October 9, 2020 4:51 PM

To: Wayne, Jonathan <Jonathan.Wayne@maine.gov>

Subject: Another SD13 Ethics Complaint

This is to bring to your attention a likely Dow campaign in-kind coordination with a PAC. See attached pdf with details, including image based evidence of ads containing the videos and who ran them.

Chris

October 13, 2020

Mr. Jonathan Wayne, Executive Director
Maine Ethics Commission
135 State House Station
Augusta, Maine 04333

Mr. Wayne:

This letter is in response to the electronic message received from you on October 9, 2020. I am happy to address the points outlined in the complaint.

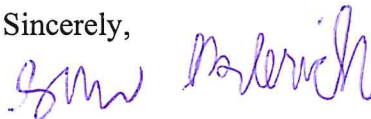
Christopher Johnson, Chair of the Lincoln County Democratic Committee, is alleging an illegal coordinated expenditure by the Maine Prosperity Alliance PAC to benefit Senator Dana Dow. As reflected in the PAC's September 4, 2020 Independent Expenditure Report, \$600 was expended to produce the digital ad Christopher Johnson cites.

I can assure you and the Commission that there was not, nor has there ever been, any coordinated effort between the Maine Prosperity Alliance PAC and Senator Dow. The footage in question is located on a public site and was captured by the vendor used by the PAC to produce the independent expenditure.

Furthermore, to address another point in the complaint, I am not Senator Dow's Chief of Staff, a piece of information that is readily apparent by looking at the 129th Legislative Register.

I look forward to appearing before the Commission and clearing up the matter in a timely manner so that we can move away from these frivolous distractions.

Sincerely,



Shawn Roderick
Campaign Coordinator
Maine Senate Republicans

From: [Wayne, Jonathan](#)
To: [Dana Dow](#)
Cc: [Lavin, Paul](#); [Dunn, Michael](#)
Subject: Re: Response to inquiry
Date: Tuesday, October 13, 2020 12:48:58 PM

Thank you, Senator. We received your response.

Jonathan

From: Dana Dow <danadow2050@gmail.com>
Sent: Tuesday, October 13, 2020 12:20 PM
To: Wayne, Jonathan <Jonathan.Wayne@maine.gov>
Subject: Response to inquiry

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning, Mr. Wayne~

I write in response to your email of Friday, October 9, 2020 regarding a new complaint from the Lincoln County Democratic Committee. As far as the allegations in your message about a Facebook ad by the Maine Prosperity Alliance, I have not coordinated with Shawn Roderick on any efforts on behalf of my campaign. Earlier this year I did film footage with my son to be used in campaign advertising, which was done. Following the dissemination of that ad, I have not done anything else with the footage, nor have I talked with anyone about it being used for anything else.

Furthermore, as anyone can see by looking in the 129th Legislative Register, Shawn Roderick is not my Chief of Staff.

I would be happy to discuss this matter further with you at any time.

Thank you.

Dana Dow



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
 Fax: 207-287-6775

2020 INDEPENDENT EXPENDITURE REPORT

COMMITTEE		TREASURER
The Maine Prosperity Alliance P.O. Box 1 Augusta, ME 04332 PHONE: (207) 458-2973 EMAIL: shawnroderick@hotmail.com		Heather Priest P.O. Box 1 Augusta, ME 04332 PHONE:(207) 458-5980 EMAIL: hezjrp@gmail.com
REPORT	DUE DATE	REPORTING PERIOD
60-Day Pre-General Report	09/04/2020	09/03/2020-09/03/2020

FINANCIAL ACTIVITY SUMMARY

EXPENDITURES	
Total independent expenditures greater than \$250 per candidate	\$3,600.00
Total independent expenditures of \$250 or less per candidate	\$0.00
Total independent expenditures for all candidates	\$3,600.00

AFFIDAVIT

STATE OF _____

COUNTY OF _____

Heather Priest, being duly sworn, attests that each of the expenditures listed in the attached report was made independently of, and not in cooperation, consultation, or concert with, or at the request or suggestion of, the candidate(s) named in the report, the political committee of the candidate(s), or their agents.

 (Signature of Affiant)

Sworn to before me this _____ day of _____ 2020

 (Notary Public/Attorney at Law)

Making a false statement under oath is punishable by law.

REPORT FILED BY: Michael Dunn on behalf of Heather Priest
 REPORT FILED ON: 9/9/2020 2:46:10 PM
 LAST MODIFIED:
 COMMITTEE ID: 355905
 REPORT NUMBER: 34255

**SCHEDULE B-IE-1
CANDIDATE(S) SUPPORTED/OPOSED**

Expenditure Date	Support / Oppose	Candidate Name	Office	District / County	Payee	Expenditure Amount
9/3/2020	SUPPORT	Hon. Scott Wynn Cyrway	Senator	16	Red Maverick Media	\$600.00
9/3/2020	SUPPORT	Hon. Dana L Dow	Senator	13	Red Maverick Media	\$600.00
9/3/2020	SUPPORT	Mr. Duncan Milne	Senator	11	Red Maverick Media	\$600.00
9/3/2020	SUPPORT	Dr. Sara L Rivard	Senator	30	Red Maverick Media	\$600.00
9/3/2020	SUPPORT	Mr. Mark L Walker	Senator	14	Red Maverick Media	\$600.00
9/3/2020	SUPPORT	Hon. Trey L Stewart	Senator	2	Red Maverick Media	\$600.00
Total itemized independent expenditures greater than \$250 per candidate						\$3,600.00
Total unitemized independent expenditures of \$250 or less per candidate						\$0.00
Total independent expenditures for all candidates						\$3,600.00

**SCHEDULE B-IE-2
EXPENDITURES**

EXPENDITURE TYPES				
APP	Apparel (t-shirts, hats, embroidery, etc.)	CON	Contribution to party committee, non-profit, other candidate, etc.	
EQP	Equipment of \$50 or more (computer, tablet, phone, furniture, etc.)	EVT	Campaign and fundraising events (venue or booth rental, entertainment, supplies, etc.)	
FOD	Food for campaign events or volunteers, catering	HRD	Hardware and small tools (hammer, nails, lumber, paint, etc.)	
LIT	Printed campaign materials (palmcards, signs, stickers, flyers, etc.)	MHS	Mail house and direct mail (design, printing, mailing, and postage all included)	
NEW	Newspaper and print media ads only	OFF	Office supplies, rent, utilities, internet service, phone minutes and data	
ONL	Social media and online advertising only	OTH	Other and fees (bank, contribution, and money order fees, etc.)	
PER	Personnel and campaign staff, consulting, and independent contractor costs	PHO	Phones (phone banking, robocalls and texts)	
POL	Polling and survey research	POS	Postage for U.S. Mail and mail box fees	
PRO	Professional services (graphic design, legal services, web design, etc.)	RAD	Radio ads, production costs	
TKT	Entrance cost to event (bean suppers, fairs, party events, etc.)	TRV	Travel (fuel, mileage, lodging, etc.)	
TVN	TV/cable ads, production, and media buyer costs only	WEB	Website and internet costs (website domain and registration, etc.)	
Date of expenditure	Payee	Remark	Expenditure type	Net Amount
9/3/2020	Red Maverick Media 1426 N. 3rd Street, Suite 310 Harrisburg, PA, 17102	Digital Production	ONL	\$3,600.00
Total Expenditure				\$3,600.00



Mainesenategop Media

+ Follow

99 views

0 faves

0 comments

Taken on August 19, 2020

All rights reserved



Mainesenategop Media

+ Follow

A005_07290004_C011_17

128 views

0 faves

0 comments

Uploaded on August 17, 2020

All rights reserved



Mainesenategop Media
A005_07290004_C011_3

+ Follow

126
views

0
faves

0
comments

Uploaded on August 17, 2020

© All rights reserved



Mainesenategop Media
202008 Dana Dow B-roll 2

+ Follow

169
views

0
faves

0
comments

Uploaded on August 25, 2020

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21-A Maine Revised Statutes

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

§ 1012. Definitions

...

2. **Contribution.** The term “contribution:”

A. Includes:

- (1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office or for the purpose of liquidating any campaign deficit of a candidate, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- (2) A contract, promise or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;
- (3) Funds received by a candidate or a political committee that are transferred to the candidate or committee from another political committee or other source; and
- (4) The payment, by any person other than a candidate or a political committee, of compensation for the personal services of other persons that are provided to the candidate or political committee without charge for any such purpose; and

B. Does not include:

- (1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;
- (2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the individual on behalf of any candidate does not exceed \$ 250 with respect to any election;
- (3) The sale of any food or beverage by a vendor for use in a candidate’s campaign at a charge less than the normal comparable charge, if the charge to the candidate is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed \$ 100 with respect to any election;
- (4) Any unreimbursed travel expenses incurred by an individual in the course of providing voluntary personal services to a candidate and paid for by that individual, if the cumulative amount of these expenses does not exceed \$ 350 with respect to any election;
- (4-A) Any unreimbursed campaign-related travel expenses incurred and paid for by the candidate or the candidate’s spouse or domestic partner;

- (5) The payment by a party's state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution of a party candidate listing;
- (6) Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this Title, lists of registered voters and voter identification information, created, obtained or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;
- (7) Compensation paid by a state party committee to its employees for the following purposes:
 - (a) Providing no more than a total of 40 hours of assistance from its employees to a candidate in any election;
 - (b) Recruiting and overseeing volunteers for campaign activities involving 3 or more candidates; or
 - (c) Coordinating campaign events involving 3 or more candidates;
- (8) Campaign training sessions provided to 3 or more candidates;
- (8-A) Costs paid for by a party committee in connection with a campaign event at which 3 or more candidates are present;
- (8-B) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes;
- (8-C) The use or distribution of any communication, as described in section 1014, obtained by the candidate for a previous election and fully paid for during that election;
- (9) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider;
- (10) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate; or
- (11) A purchase of apparel from a commercial vendor with a total cost of \$ 25 or less by an individual when the vendor has received a graphic or design from the candidate or the candidate's authorized committee.

...

§ 1015. Limitations on contributions and expenditures

...

5. Other contributions and expenditures. 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.

The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees or their authorized agents is considered to be a contribution to that candidate.

...

§ 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 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.

§ 1125. Terms of participation

...

6. Restrictions on contributions and expenditures for certified candidates. After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for post-election parties. This section does not prohibit a candidate from using personal funds for post-election parties as governed by rules of the commission. The commission shall publish guidelines outlining permissible campaign-related expenditures.

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CMR 94-270-001

This document reflects changes current through September 10, 2020

94 270 001. PROCEDURES

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SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS

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9. If an expenditure is made to promote or support the nomination or election of a candidate, or to oppose or defeat the candidate's opponent(s), and the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate, the expenditure is considered to be a contribution from the spender to the candidate. As used within this subsection, the term "candidate" includes a committee authorized by the candidate to promote or support his or her election, and all agents of the candidate or the authorized committee.

A. In cooperation, consultation or in concert with includes, but is not limited to:

(1) discussion between the candidate and the creator, producer or distributor of a communication, or the person paying for that communication, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, and

(2) participation by the candidate in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication.

B. An expenditure is presumed to be made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, when

(1) the expenditure is made in cooperation, consultation or in concert with any person who, during the twelve months preceding the expenditure, has been the candidate's treasurer or an officer of the candidate's authorized committee, has had a paid or unpaid position managing the candidate's campaign, or has received any campaign-related compensation or reimbursement from the candidate;

(2) when the candidate has directly shared the candidate's campaign plans, activities, or needs with the spender for the purpose of facilitating a payment by the spender on a communication to voters to promote or support the candidate; or

(3) the communication replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate.

The candidate or spender may rebut the presumption by submitting sufficient contrary evidence.

C. If a candidate requests that a party committee, political action committee, or other potential spender not make any expenditure to promote or support the candidate, or oppose or defeat the candidate's opponent(s), the request does not constitute cooperation or coordination.

D. An expenditure will not be presumed to have been made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, solely because:

- (1) the spender has obtained a photograph, biography, position paper, press release, logo, or similar material about the candidate from a publicly available source;
- (2) the person making the expenditure has previously provided advice to the candidate on suggested communication strategies, budgets, issues of public policy, or other campaign plans or activities;
- (3) the person makes an expenditure in response to a general, non-specific request for support by a candidate, provided that there is no discussion, cooperation or consultation with the candidate prior to the expenditure relating to the details of the expenditure;
- (4) the spender has also made a contribution to the candidate, or has discussed with the candidate his or her campaign plans or activities as part of the candidate's solicitation for a donation;
- (5) the expenditure is made by a for-profit or non-profit organization for invitations, announcements, food and beverages and similar costs associated with an event to which the candidate has been invited by the organization to make an appearance before the organization's members, employees, shareholders and the families thereof; or
- (6) the expenditure is made by an individual who spends \$ 100 or less for costs associated with a sign that is lettered or printed individually by hand and that reproduces or replicates a candidate's campaign-related design or graphic.

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