



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

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Emma Burke, Candidate Registrar  
Date: August 16, 2016  
Re: Request for Waiver of Late-Filing Penalty for Non-Compliant Report filed by  
Ryan McDonald

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Ryan McDonald is a candidate for the Maine State Senate, District 26. On June 3, 2016, all candidates were required to file an 11-Day Pre-Primary Report. Mr. McDonald was required to disclose all financial activity since the inception of his campaign through May 31, 2016. Mr. McDonald filed the report on the filing deadline of June 3, but it stated inaccurately that he had received no contributions and made no expenditures. In fact, during May he had received one \$375 contribution from a PAC, which was not disclosed in the originally filed report. He attempted to amend the report three days later to include the contribution, but did not successfully file the report. He filed an amended version of the report on July 26, 2016, which was 53 days late.

### **LEGAL REQUIREMENTS**

Candidates are required to file a report on the eleventh day before the date on which an election is held and must be complete for the filing period as of the fourteenth day before that date. (21-A M.R.S.A. § 1017(3-A)(B)) A report is considered timely filed only if it is submitted by the deadline and *substantially conforms to the disclosure requirements of the Election Law*. (21-A M.R.S.A. § 1020-A(2)) If the candidate is late in filing a substantially conforming report, the amount of the penalty is set by a formula which takes into consideration a percentage of the total contributions or expenditures, whichever is greater, the number of prior violations within a two-year period, and the number of days the report is late. (21-A M.R.S.A. § 1020-A)(4-A))

**DISCUSSION**

The original version of Mr. McDonald’s 11-Day Pre-Primary Report was filed on time, on June 3, 2016. An amended version, which increased the amount of contributions from \$0.00 to \$375.00, was filed on July 26, 2016. Commission staff received notice of the filing of an amended report via the e-filing system, which led to a routine review of the amended version of the report. The staff has preliminarily viewed the originally filed report as substantially non-conforming, because the candidate failed to disclose the single transaction that he was required to report. Overall, the pre-primary report (as originally filed) suggested that the candidate was not financially active when, in fact, he had begun accepting campaign contributions.

Based on the statutory formula for calculating late-filing penalties, the preliminary penalty amount totals \$397.50, calculated as follows:

<b>Report</b>	<b>Date</b>	<b>Financial Activity</b>	<b>Penalty Rate</b>	<b>Days Late</b>	<b>Preliminary Penalty</b>
11-Day Pre-Primary Report	06/03/2016	\$375.00	2%	53	\$397.50

Through a letter dated August 8, 2016 (attached), Mr. McDonald asks that the Commission waive the preliminary penalty and finding of violation. (In addition to the letter, Candidate Registrar Emma Burke and Executive Director Jonathan Wayne separately discussed the reasons for the filing of the incomplete report with the candidate, and some of those reasons are included in this memo.)

Mr. Ryan received a check from Charting Maine’s Future PAC and deposited it prior to the June 3 filing deadline. Mr. McDonald filed his 11-Day Pre-Primary Report on time as a no-activity report. At the time of the filing, Mr. McDonald was aware of the contribution from Charting Maine’s Future but thought he needed the PAC’s address before he could input the contribution. (The check had been deposited, and Mr. McDonald apparently did not yet have access to an image of the contribution from his online banking.) Accordingly, on June 3, 2016, he chose to file the report without the

contribution. On June 6, 2016 (three days later), Mr. McDonald logged back into the e-filing system and entered the contribution, but did not file an amended report. Mr. McDonald filed the amended report on July 26, 2016 when he was filing his 42-Day Post-Primary Report and the e-filing system notified him he had unfiled transactions from a previous reporting period.

In fact, because the contribution was from a PAC (which has registered and is on file with the Commission), Mr. McDonald *could* have filed a complete campaign finance report on June 3 – even though did not have his own record of the PAC’s address. To reduce time spent on data entry, the e-filing system is designed so that when a filer chooses a PAC or party committee as a type of contributor, the filer is then given the opportunity to do a simple search for the appropriate committee and select it from a drop-down list. The filer does not have to type the committee’s name and contact information. Therefore, Mr. McDonald was able to enter the contribution from Charting Maine’s Future PAC on June 3, 2016, even though he had already deposited the check. Mr. McDonald also knew how to file reports when he logged in on June 6, 2016, as he had just filed a report three days earlier, but failed to file an amended version of the report, or call Commission staff to receive assistance.

#### **STAFF RECOMMENDATION**

Accurate and complete campaign finance reports are an integral part of Maine Campaign Finance Law. Candidates, party activists, news reporters and others visit the Commission’s public access website after a filing deadline in order to find out how candidates and committees have raised and spent their campaign funds. They should have access to the candidate’s or committee’s *complete* financial activity as soon as the filing deadline has passed. It is not practical for concerned members of the public to keep checking the Commission’s website to verify whether a report has been amended. Significantly incomplete or nonconforming reports can have the result of denying meaningful information to the public and to the opposing candidate and political committees.

Mr. McDonald has provided a plausible explanation as to why he omitted the \$375 contribution from his pre-primary report, but he should not have filed a report that was incomplete. The Commission staff is preliminarily viewing the report to have been late, because it was required to include only one transaction which Mr. McDonald chose to omit.<sup>1</sup>

The Commission staff views the preliminary penalty of \$397.50 as disproportionate to the harm to the public from the late disclosure. We recommend reducing the penalty to \$50.

Thank you for your consideration of this memo.

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<sup>1</sup> To clarify: the staff is not suggesting that every case of an omitted transaction should result in a campaign finance report being considered late. If – due to a bookkeeping error – a filer omits one transaction from a report containing multiple transactions, we do not necessarily intend to regard the report as substantially non-conforming.

August 8<sup>th</sup> 2016

State of Maine Commission on  
Governmental Ethics & Election Practices  
Emma Burke, Candidate Registrar  
135 State House Station  
Augusta, Maine 04333-0135

Dear Ms. Burke:

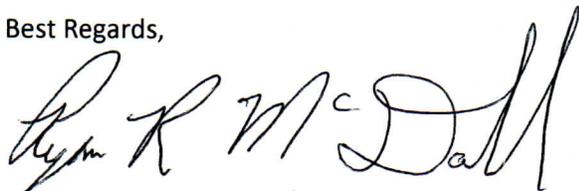
Please consider this letter my formal request for the commission to waive the penalty for the alleged violation of late filing of the 11 day Pre-Primary Report. There are 2 major issues which should be considered.

First and foremost is the fact that a penalty of \$397.50 is disproportionate to the harm caused to the public of the alleged late reporting of a single \$350 contribution, which I might add was a contribution from a PAC registered with the State of Maine, whom I must assume disclosed the donation in their filing. It is outlandish to say that the contribution significantly increased the amount of contributions originally reported; this is the problem with not applying the spirit of the statute. Given that \$350 is significantly larger than \$0, that assertion could technically be considered accurate, but that logic can be just as reasonably applied if the contribution in question was in the amount of \$25 as that too is significantly higher than \$0. The point is that this was a single donation, there is no evidence that there was any attempt to conceal this contribution in anyway as it was entered on to the filing website on the 6<sup>th</sup> of June 2016.

Second, according to the language in the Notice of Violation letter I received apparently we must have a low level of experience in the use of computers and in the electronic filing of forms. The contribution information was entered and because one final button was not selected, the information, while entered and saved, was not reflected in the report. It is not likely that the commission has no way of verifying this claim.

Thank you for your time.

Best Regards,

A handwritten signature in black ink, appearing to read "Ryan R. McDonald". The signature is written in a cursive, flowing style with some loops and flourishes.

Ryan R. McDonald

July 28, 2016

Ryan McDonald  
10 Studio Drive  
Windham, Maine 04062

**Re: Notice of Violation and Penalty for Late-Filed 11-Day Pre-Primary Report**

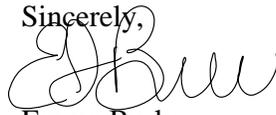
Dear Mr. McDonald:

You filed your 11-Day Pre-Primary Report on June 3, 2016, and subsequently filed an amended version of the report on July 26, 2016. The amended version of the report significantly increased the amount of contributions than originally reported. Therefore, the Commission staff considers the report late as a result of substantial non-conformity with disclosure requirements (21-A M.R.S.A. § 1020-A(2)). Under the Commission's statutes the late filing of a report triggers an enforcement process. The Commission staff has made a preliminary finding of violation and determined that the preliminary penalty for filing the report late is \$397.50. (21-A M.R.S.A. § 1020-A(4-A)). Please see the next page for the penalty calculation.

You may request that the Commission waive the penalty in whole or in part or find that there was no violation. The request must be made within 14 calendar days of your receipt of this notice. The request must be in writing and contain a full explanation of the reasons the report was filed late. Upon receiving your request, the Commission staff will schedule your request to be heard at an upcoming Commission meeting. You or your designee will have an opportunity to be heard at the meeting or you may submit a sworn statement to the Commission explaining the mitigating circumstances for its consideration.

The Commission may waive or reduce the penalty or find that there was no violation if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; or (3) relevant evidence that a bona fide effort was made to file the report on time. The Commission may also consider whether the penalty is disproportionate to the level of experience of the person filing the report or the harm to the public caused by the late disclosure.

The staff requests that you pay the preliminary penalty within 14 days of the date of your receipt of this notice if you do not intend to request a waiver. Please use the payment statement on the next page when paying by mail. You may also make a payment online at [www.maine.gov/ethics](http://www.maine.gov/ethics) by clicking the "Penalty Payment" link. Please contact me at (207) 287-4727 or [emma.burke@maine.gov](mailto:emma.burke@maine.gov) if you have any questions.

Sincerely,  
  
Emma Burke  
Candidate Registrar

cc: William McDonald

## PENALTY CALCULATION

The penalty for filing a campaign finance report late is based on a percentage of the total contributions or expenditures for the reporting period, whichever is greater, multiplied by the number of days late. The percentage is based on your history of past violations: 2% for the first violation, 4% for the second violation, and 6% for the third and each subsequent violation. Violations for late-filed reports accumulate in the two-year period beginning on January 1<sup>st</sup> of each even-numbered year. A penalty accrues daily beginning on the day following the filing due date. Any penalty of less than \$10 is automatically waived.

### HOW YOUR PENALTY WAS CALCULATED

Filer: Ryan McDonald			
Late-Filed Report: 11-Day Pre-Primary			
Contributions	\$375.00	Penalty Base Amount	\$375.00
Expenditures	\$0.00	Percentage	2%
Due Date	06/03/2016	Daily Accrual Rate	\$7.50
Date Filed	07/26/2016	Days Late	53
Previous Violations	0	Your Total Penalty	\$397.50

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### PAYMENT STATEMENT AND PAYMENT OPTIONS

**From:** Ryan McDonald

**Penalty Amount:** \$ 397.50

**Penalty ID:** N/A

**Amount Enclosed:** \_\_\_\_\_

**Check/M.O. #:** \_\_\_\_\_

**BY MAIL:** Enclose this payment statement with your payment so that it will be properly accounted for.

**Please make check or money order payable to:** Treasurer, State of Maine

**Mail to:** Maine Ethics Commission  
135 State House Station  
Augusta, Maine 04333-0135

**ONLINE:** Go to [www.maine.gov/online/ethics/penalties](http://www.maine.gov/online/ethics/penalties). Please include the penalty ID so that your payment will be properly accounted for.



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](http://www.maine.gov/ethics)  
 Phone: 207-287-4179  
 Fax: 207-287-6775

## 2016 CAMPAIGN FINANCE REPORT

### FOR PRIVATELY FINANCED CANDIDATES

COMMITTEE	TREASURER	
Mr. Ryan R McDonald 10 Studio Dr Windham, ME 04062 PHONE: (207) 518-1492 EMAIL: r.r.mcdonald@roadrunner.com	Mr. William Corey McDonald 41 Inland Farm Dr Windham, ME 04062 PHONE: (207) 838-6005 EMAIL: r.r.mcdonald@roadrunner.com	
REPORT	DUE DATE	REPORTING PERIOD
11-DAY PRE-PRIMARY REPORT	06/03/2016	01/01/2016 - 05/31/2016

#### FINANCIAL ACTIVITY SUMMARY

RECEIPTS	TOTAL FOR THIS PERIOD	TOTAL FOR CAMPAIGN
1. CASH CONTRIBUTIONS FOR THE PRIMARY ELECTION (SCHEDULE A)	\$375.00	\$375.00
1A. CASH CONTRIBUTIONS FOR THE GENERAL ELECTION(SCHEDULE A) <i>For party candidates, general election contributions will only appear on this line after the primary.</i>		
1B. CASH CONTRIBUTIONS FOR THE GENERAL ELECTION RAISED PRIOR TO PRIMARY (Not shown on Schedule A of this report)		
2. OTHER CASH RECEIPTS (INTEREST, ETC)	\$0.00	\$0.00
3. LOANS (SCHEDULE C)	\$0.00	\$0.00
4. TOTAL RECEIPTS	\$375.00	\$375.00
EXPENDITURES		
5. EXPENDITURES (SCHEDULE B)	\$0.00	\$0.00
6. LOAN REPAYMENTS (SCHEDULE C)	\$0.00	\$0.00
7. TOTAL PAYMENTS	\$0.00	\$0.00
CASH SUMMARY		
8. CASH BALANCE AT BEGINNING OF PERIOD	\$0.00	
9. PLUS TOTAL RECEIPTS THIS PERIOD (LINE 4)	\$375.00	
10. MINUS TOTAL PAYMENTS THIS PERIOD (LINE 8)	\$0.00	
11. CASH BALANCE AT END OF PERIOD	\$375.00	
OTHER ACTIVITY		
12. IN-KIND CONTRIBUTIONS (SCHEDULE A-1)	\$0.00	\$0.00
13. TOTAL LOAN BALANCE AT END OF PERIOD (SCHEDULE C)	\$0.00	
14. TOTAL UNPAID DEBTS AT END OF PERIOD (SCHEDULE D)	\$0.00	
FOR PARTY CANDIDATES ONLY: CASH CONTRIBUTIONS FOR THE GENERAL ELECTION RAISED PRIOR TO PRIMARY ELECTION (INCLUDED IN LINE 1A AFTER PRIMARY ELECTION)	\$0.00	\$0.00

I, Mr. Ryan R McDonald, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: Mr. Ryan R McDonald  
 REPORT FILED ON: 06/03/2016  
 LAST MODIFIED: 07/26/2016  
 PRINTED: 08/15/2016  
 COMMITTEE ID: 9444

**SCHEDULE A  
CASH CONTRIBUTIONS**

- For contributors who gave more than \$50, the names, address, occupation, and employer must be reported. If "information requested" is listed instead of occupation and employer, the candidate is waiting to receive that information.
- Cash contributions of \$50 or less can be added together and reported as a lump sum.
- Contributor Types

1 = Individual

2 = Candidate/ Spouse/ Domestic Partner

3 = Commercial Source

4 = Nonprofit Organization

5 = Political Action Committee

6 = Political Party Committee

7 = Ballot Question Committee

8 = Other Candidate/ Candidate Committee

9 = Candidate / Candidate Committee

10 = General Treasury Transfer

11 = Transfer from Previous Campaign

12 = Contributors giving \$50 or less

13 = Contributors giving \$100 or less

14 = Contributors giving \$200 or less

15 = MCEA Payment

16 = Financial Institution

DATE RECEIVED	CONTRIBUTOR	OCCUPATION AND EMPLOYER	TYPE	ELECTION	AMOUNT
5/31/2016	CHARTING MAINE'S FUTURE 71 SETH'S WAY WEST GARDINER, ME 04345		5	Primary	\$375.00
<b>TOTAL CASH CONTRIBUTIONS FOR PRIMARY</b>					\$375.00
<b>TOTAL CASH CONTRIBUTIONS FOR GENERAL</b>					\$0.00

**11-Day Pre-Primary Report filed: 06/03/2016**



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](http://www.maine.gov/ethics)  
 Phone: 207-287-4179  
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Mr. Ryan R McDonald 10 Studio Dr Windham, ME 04062 PHONE: (207) 518-1492 EMAIL: r.r.mcdonald@roadrunner.com		Mr. William Corey McDonald 41 Inland Farm Dr Windham, ME 04062 PHONE: (207) 838-6005 EMAIL: r.r.mcdonald@roadrunner.com
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EXPENDITURES		
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6. LOAN REPAYMENTS (SCHEDULE C)	\$0.00	\$0.00
7. TOTAL PAYMENTS	\$0.00	\$0.00
CASH SUMMARY		
8. CASH BALANCE AT BEGINNING OF PERIOD	\$0.00	
9. PLUS TOTAL RECEIPTS THIS PERIOD (LINE 4)	\$0.00	
10. MINUS TOTAL PAYMENTS THIS PERIOD (LINE 8)	\$0.00	
11. CASH BALANCE AT END OF PERIOD	\$0.00	
OTHER ACTIVITY		
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13. TOTAL LOAN BALANCE AT END OF PERIOD (SCHEDULE C)	\$0.00	
14. TOTAL UNPAID DEBTS AT END OF PERIOD (SCHEDULE D)	\$0.00	
FOR PARTY CANDIDATES ONLY: CASH CONTRIBUTIONS FOR THE GENERAL ELECTION RAISED PRIOR TO PRIMARY ELECTION (INCLUDED IN LINE 1A AFTER PRIMARY ELECTION)	\$0.00	\$0.00

I, Mr. Ryan R McDonald, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: Mr. Ryan R McDonald  
 REPORT FILED ON: 06/03/2016  
 LAST MODIFIED: 06/03/2016  
 PRINTED: 08/15/2016  
 COMMITTEE ID: 9444

immediate family, the account must also state the relationship. For purposes of this paragraph, "filing period" is as provided in section 1017, subsections 2 and 3-A;

C. All expenditures made by or on behalf of the committee or candidate; and

D. The name and address of every person to whom any expenditure is made and the date and amount of the expenditure.

**4. Receipts preservation.** The candidate or treasurer shall obtain and keep a receipted bill, stating the particulars, for every expenditure in excess of \$50 made by or on behalf of a political committee or a candidate and for any such expenditure in a lesser amount if the aggregate amount of those expenditures to the same person in any election exceeds \$50. The candidate or treasurer shall preserve all receipted bills and accounts required to be kept by this section for 2 years following the final report required to be filed for the election to which they pertain, unless otherwise ordered by the commission or a court.

#### **21-A § 1016-A. Duties and liability of the candidate and treasurer**

**1. Keeping required records.** The candidate or treasurer shall keep records of contributions and expenditures as required by section 1016, chapter 14 and the commission's rules. If the candidate keeps the records, the candidate shall provide the treasurer or deputy treasurer with access to the records for the purpose of filing complete and accurate campaign finance reports. The candidate and treasurer are jointly responsible for ensuring that the campaign keeps all records required by law.

 **2. Filing campaign finance reports.** The treasurer shall file complete and accurate campaign finance reports as required by section 1017. The treasurer may delegate the filing of the reports to the deputy treasurer.

**3. Liability for violations.** The commission may hold the candidate and treasurer jointly and severally liable for any penalties assessed for violations of the financial reporting or record-keeping requirements of this chapter, chapter 14 and the commission's rules. If the deputy treasurer files reports for the campaign, the commission may hold the deputy treasurer jointly and severally liable for any penalties related to reports filed by the deputy treasurer.

#### **21-A § 1017. Reports by candidates**

**1. Federal candidates. (REPEALED)**

**2. Gubernatorial candidates.** A treasurer of a candidate for the office of Governor shall file reports with the commission as follows. Once the first required report has been filed, each subsequent report must cover the period from the end date of the prior report filed.

A. In any calendar year, other than a gubernatorial election year, in which the candidate or the candidate's political committee has received contributions in excess of \$1,000 or made or authorized expenditures in excess of \$1,000, reports must be filed no later than 11:59 p.m. on July 15th of that year and January 15th of the following calendar year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the candidate's treasurer as of the end of the preceding month, except those covered by a previous report.

B. Reports must be filed no later than 11:59 p.m. on the 42nd day before the date on which an election is held and must be complete as of the 49th day before that date. If a report was

year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report.

➔ B. Reports must be filed no later than 11:59 p.m. on the 11th day before the date on which an election is held and must be complete as of the 14th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the 14th day before the election.

C. Any single contribution of \$1,000 or more received or any single expenditure of \$1,000 or more made after the 14th day before any election and more than 24 hours before 11:59 p.m. on the day of any election must be reported within 24 hours of that contribution or expenditure. The candidate or treasurer is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses.

D. Reports must be filed no later than 11:59 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date.

D-1. Reports must be filed no later than 11:59 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date, except that this report is not required for candidates for municipal office.

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$100 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of \$100 shall file reports semiannually with the commission within 15 days following the end of the 2nd and 4th quarters of the State's fiscal year, complete as of the last day of the quarter, until the surplus is disposed of or the deficit is liquidated. The first report under this paragraph is not required until the 15th day of the period beginning at least 90 days from the date of the election. The reports will be considered timely if filed electronically or in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section.

F. Reports with respect to a candidate who seeks nomination by petition must be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election.

### **3-B. Accelerated reporting schedule. (REPEALED)**

**4. New candidate or nominee.** A candidate for nomination or a nominee chosen to fill a vacancy under Chapter 5, subchapter 3 is subject to section 1013-A, subsection 1, except that the candidate shall register the name of a treasurer or political committee and all other information required in section 1013-A, subsection 1, paragraphs A and B within 7 days after the candidate's appointment or at least 6 days before the election, whichever is earlier. The commission shall send notification of this registration requirement and report forms and schedules to the candidate

and the candidate's treasurer immediately upon notice of the candidate's and treasurer's appointments.



**5. Content.** A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name of each payee and creditor and any refund that a payee has made to the candidate or an agent of the candidate. If the payee is a member of the candidate's household or immediate family, the candidate must disclose the candidate's relationship to the payee in a manner prescribed by the commission. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A. The candidate and the treasurer are jointly and severally responsible for the timely and accurate filing of each required report.

**5-A. Valuation of contributions sold at auction.** Any contribution received by a candidate that is later sold at auction must be reported in the following manner.

A. If the contribution is sold at auction before the commencement of the appropriate reporting period specified in subsections 2 to 4, or during that period, the value of the contribution is deemed to be the amount of the purchase price paid at auction.

B. If the contribution is sold after the termination of the appropriate reporting period specified in subsections 2 to 4, the value of the contribution is the difference between the value of the contribution as originally reported by the treasurer and the amount of the purchase price paid at auction. Unless further reports are filed in relation to a later election in the same calendar year, the disposition of any net surplus or deficit in excess of \$100 resulting from the difference between the auction price and the original contribution value must be reported in the same manner as provided in subsection 2, paragraph F or subsection 3-A, paragraph E, as appropriate.

**6. Forms.** Reports required by this section not filed electronically must be on forms prescribed, prepared and sent by the commission to the treasurer of each registered candidate at least 7 days before the filing date for the report. Establishment of or amendments to the campaign report filing forms required by this section must be by rule. Persons filing reports may use additional pages if necessary, but the pages must be the same size as the pages of the form. Although the commission mails the forms for required reports to candidates who are exempt from filing electronically, failure to receive forms by mail does not excuse treasurers, committees and other persons who must file reports from otherwise obtaining the forms or from late filing penalties.

Rules of the commission establishing campaign report filing forms for candidates are routine technical rules as defined in Title 5, Chapter 375, subchapter 2-A.

**7. Reporting exemption. (REPEALED)**

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.

**21-A § 1020. Failure to file on time (REPEALED)**

**21-A § 1020-A. Failure to file on time**

**1. Registration.** A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.



**2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;

- B. An error by the commission staff;
- C. Failure to receive notice of the filing deadline; or
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service.

**3. Municipal campaign finance reports.** Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

**4. Basis for penalties. (REPEALED)**

**4-A. Basis for penalties.** The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

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- A. For the first violation, 2%;
  - B. For the 2nd violation, 4%; and
  - C. For the 3rd and subsequent violations, 6%.

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a two-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as the facsimile copy is filed by the applicable deadline and an original of the same report is received by the commission within 5 calendar days thereafter.

**5. Maximum penalties. (REPEALED)**

**5-A. Maximum penalties.** Penalties assessed under this subchapter may not exceed:

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; and section 1017, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late;

A-1. Five thousand dollars for reports required under section 1019 B, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late;