

STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES

In re: New England Citizens for Right to  
Work

**INDEPENDENT EXPENDITURE  
DETERMINATION BY  
EXECUTIVE DIRECTOR**

New England Citizens for Right to Work (“NECRW”) describes itself as a nonpartisan organization that promotes right to work laws. It explains that during 2024, NECRW will send three surveys to legislative candidates in Maine asking them to pledge support for a right to work law and related policy positions. As part of this “candidate survey program,” NECRW also intends to mail letters to right to work supporters in Maine (referred to below as the “recipients”) asking them to contact their local legislative candidates to urge them to respond positively to the survey.

Because the letters will refer to specific legislative candidates and will be sent to recipients in the last 28 days before the election, NECRW submitted an April 11, 2024 request that the Commission determine that no independent expenditure (IE) reporting is required.

**Procedural History**

On April 18, 2024, the Commission received NECRW’s request by U.S. Mail. The request consisted of:

- a cover sheet dated April 11, 2024 (a form designed by the Commission),
- an April 11, 2024 letter of support by NECRW’s executive director, McKayne Boedeker,

- an example of a 2024 Maine Candidate Survey addressed to three primary election candidates using placeholder names X, Y, and Z (X is a Democrat, Y and Z are Republicans),
- an example of a series of four letters to recipients asking them to send letters or postcards to House candidates X, Y, and Z urging the candidates to respond positively to the survey,
- four pre-printed postcards that would be enclosed with the letters to recipients, and
- a reply memo that a recipient would send back to NECRW confirming the recipient contacted their local candidates.

On Tuesday, April 23, 2024, NECRW’s executive director submitted the cover sheet in an updated format at the request of the Commission’s executive director that reflected Commission rule changes that took effect in March 2024. The Commission has received no other information relative to this request.

### **Legal Requirements**

Section 1019-B(1) of the Maine Election Law defines “independent expenditure” as an expenditure to design, produce, or disseminate a communication to voters that expressly advocates for the election or defeat of a clearly identified candidate or that, within certain time periods close to an election, names or depicts a clearly identified candidate. 21-A M.R.S. § 1019-B(1). If the expenditure is more than \$250 during any one candidate’s election, the spender must file an IE report in which they itemize how much was spent and state whether the expenditure was made in support of or in opposition to the candidate. 21-A M.R.S. § 1019-B(4)(B). During the last 60 days before an election, the report must be filed within one or two days of the expenditure in accordance with a schedule in the Commission’s rules. 94-270 C.M.R. Ch. 1, § 10(3)(B).

*Non-express advocacy communications.* If a communication naming or depicting a clearly identified candidate is disseminated to voters during the 28 days before a primary

election, the communication is an IE unless the person making the expenditure demonstrates to the Commission “that the expenditure did not have a purpose or effect of influencing the nomination, election or defeat of the candidate.” 21-A M.R.S. § 1019-B(1)(B). A person making an expenditure greater than \$250 for a communication covered by § 1019-B(1)(B) must file an IE report or request a determination by the Commission.

The request is made “by submitting a signed written statement that the expenditure did not have a purpose of, and will not have an effect of, influencing the nomination, election or defeat of a candidate.” Commission rules, 94-270 C.M.R. Ch. 1, § 10(5)(C). Once a request is received, the Commission is directed to:

determine by a preponderance of the evidence whether the cost was incurred with a purpose of, or had the effect of, influencing the nomination, election or defeat of a candidate. In order to make this determination, the commission shall consider whether the language and other elements of the communication would lead a reasonable person to conclude that the communication had a purpose of, or had the effect of, influencing an election. The commission may consider other factors, including, but not limited to, the timing of the communication, the recipients of the communication or, if the communication is a digital communication, any links to publicly accessible websites related to the nomination, election or defeat of a candidate.

21-A M.R.S. § 1019-B(2). The Commission’s executive director makes an initial determination on the request, which may be appealed to the Commission. *Id.*

*Exception for voter guides.* The independent expenditure reporting statute contains exceptions for three types of communications, including “[a] voter guide that consists primarily

of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate." § 1019-B(5)(D).

### **Findings of Fact**

In his April 11, 2024 letter, NECRW's executive director, McKayne Boedeker, explains "the sole purpose of our program is to inform and educate Right to Work supporters about their candidates' positions on the forced-unionism issue and encourage them to lobby all of their candidates in support of Right to Work." Boedeker letter, at 1. He states the organization will send three candidate surveys to legislative candidates: two before the primary election and one before the general election. The first survey for the primary is "scheduled to go out in several days." *Id.*

In his letter, Mr. Boedeker states that NECRW contemplates mailing letters to the recipients prior to the June 11, 2024 primary election and the general election. *Id.* The letters will ask the recipients to contact their legislative candidates by personalized letter or postcard to encourage them to respond to NECRW's survey with a pledge to support right to work legislation. If a candidate has already pledged their support, the recipients are encouraged to contact the candidate to thank them. Because NECRW has not received any surveys back, it has not selected the districts to which it will send letters in May and June.

As part of its request, NECRW has submitted four sample letters addressed to recipients in a single House district. The letters appear to be written in a progression that updates the recipients on whether or not their local legislative candidates have pledged to support a right to work law in Maine:

- The first letter, dated May 15, 2024, asks the recipients to send personalized letters or postcards to three candidates in the June 11 primary elections (Democratic candidate X and Republican candidates Y and Z) urging them to pledge support for a right to work law in Maine.

- The first letter is accompanied by four pre-printed postcards for the recipients to mail to the candidates asking them to support a right to work law. After sending the postcards, the recipients are encouraged to return a “reply memo” to NECRW confirming that the recipients contacted the candidates.
- The second letter, dated May 28, 2024, follows up on the first letter. The letter states that Republican candidate Z has responded to the survey by pledging support for a right to work law, but Republican candidate Y and Democratic candidate X have not responded to the survey. NECRW encourages the recipients to contact candidates Y and X to ask them to pledge their support and to contact candidate Z to thank him for his support for a right to work law in Maine
- The third letter, dated June 4, 2024, refers to previous letters and essentially makes the same request as the second letter.
- In the fourth letter, dated June 7, 2024, NECRW tells the recipients that both Republican candidates Y and Z have responded to the surveys and pledged their support for a right to work law, but Democratic candidate X has not responded to the survey. The recipients are encouraged to ask X to support a right to work law and to thank candidates Y and Z.

### **Analysis**

In this decision, I am required to “consider whether the language and other elements of the communication would lead a reasonable person to conclude that the communication had a purpose of, or had the effect of, influencing an election” and to reach a determination by a preponderance of the evidence. § 1019-B(2).

*Effect of NECRW’s letters on candidate nominations.* The language of NECRW’s letters is consistent with its assertion that the letters are designed to encourage citizen lobbying of candidates in support of right to work legislation. Nevertheless, four features of the letters suggest they will have an effect of influencing candidate nominations in the June 11, 2024 primary elections. The first relevant feature is the timing of the letters. They will be sent during the last four weeks before the June 11, 2024 primary election. This is a time period in which Maine voters are making decisions concerning whether to support any candidate’s nomination and whom to support. Some Mainers will be voting early on candidate nominations through absentee ballots.

The second feature is that the letters are being sent to “identified Right to Work supporters as well as business owners.” Boedeker letter, at 1. These are the Maine residents who are more likely to prioritize the right to work issue when deciding which candidates to nominate for the general election.

The third feature of the letters is the positive or negative descriptions of a candidate’s support – or lack of support – for a right to work law. If a candidate has pledged support for a right to work law, the candidate is described as having taken positive action:

- By pledging to support a right to work law, the candidate is favoring “more freedom, jobs and economic prosperity.”
- The candidate’s response to the survey is described as “good news.”
- Recipients are called upon to “thank” the candidate, implying the candidate has done something good.

The letters contain subtle but noticeable negative connotations for candidates who have not pledged their support for a right to work law. It is “bad news” that the candidates have “failed to return” NECRW’s survey. The candidates are supposed to “come clean” by completing NECRW’s survey, which implies the candidates are hiding something.

The fourth relevant feature of the letter campaign is that recipients may receive as many as four letters discussing the candidates. This predictably will reinforce the positive or negative associations with specific candidates.

These four elements of NECRW’s letters would lead a reasonable person to conclude that the letter campaign will have an effect in influencing whether Mainers support or oppose candidate nominations. § 1019-B(2). The extent of the effect is difficult to predict based on the information currently available, but a preponderance of evidence suggests that there will be some effect on candidate nominations.

*Evidence of “a purpose” to influence candidate nominations.* Several features of the letters suggest their purpose is citizen lobbying, such as the rhetoric and call to action in the letters. Additionally, the inclusion of the postcards and reply memo’s in NECRW’s mailings underscores that encouraging citizen contact with candidates is a genuine motivation for the letter campaign.

Political communications can have more than one objective, however. The four elements of the letters cited above are consistent with a purpose of influencing the nomination of candidates in the June 11, 2024 primary election: (1) the timing of the letters close to the election, (2) the distribution to identified right to work supporters who are most likely to prioritize the right to work issue when voting, (3) the positive and negative characterizations of candidates, and (4) the iterative quality of the mail campaign. These elements “would lead a reasonable person to conclude that the communication[s] ha[ve] a purpose of ... influencing an election.” § 1019-B(2).


*Letters are not voter guides.* NECRW is correct that the letters refer to candidates’ responses to surveys and do not contain any explicit advocacy for or against any candidate. Nevertheless, they do not fit into the exempt category of a voter guide, as suggested by Mr. Boedeker. Boedeker letter, at 1. The letters are an invitation to engage in citizen lobbying. The recipients are addressed not as voters but as citizens who can influence public policy. Indeed, the letters make no reference to voting whatsoever. I conclude that the letters do not qualify for the voter guide exclusion in § 1019-B(5)(D).

### **Conclusion**

I appreciate NECRW’s willingness to seek a Commission determination before sending the planned letters. The letters appear to be part of a genuine effort to generate support for right

to work legislation among officials who will serve in the next Legislature and to influence public policy. Nevertheless, I determine that a preponderance of the evidence indicates the costs of this mail program are being incurred with a purpose of, and will have the effect of, influencing the nomination of candidates in the primary election. Therefore, the costs are IEs as defined in 21-A M.R.S. § 1019-B(1)(B). If more than \$250 is spent in any one candidate's election, NECRW would be required to file an IE report stating the amount spent in support or opposition to specific candidates. § 1019-B(4)(B). The Commission staff is available to advise NECRW on when and how to file an IE report, if necessary. NECRW may appeal this determination to the Commission in accordance with the notice below.

Dated, April 29, 2024

A handwritten signature in black ink that reads "Jonathan Wayne". The signature is written in a cursive style with a large initial "J" and "W".

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Jonathan Wayne  
Executive Director

**NOTICE OF APPEAL RIGHTS:** Any person may appeal this determination to the Commission within two days of their receipt of the determination or the posting of this determination to the Commission's website, whichever is earlier. The suggested format is a letter addressed to William Schneider, Chair, Maine Ethics Commission, 135 State House Station, Augusta, ME 04333, which may be submitted by email or other means.