



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

To: Commission
From: Jonathan Wayne, Executive Director
Date: May 18, 2025
Re: Agenda Item #2 – Red Boxing by Gubernatorial Candidates

At the Commission's May 6, 2026 meeting, the Commission considered complaints concerning red boxing on the campaign websites of three Democratic candidates for Governor. The Commission requested a legal opinion from its counsel, Assistant Attorney General Jonathan R. Bolton. Mr. Bolton provided the attached memo today, which includes suggested advice to campaigns and PACs concerning red boxing.

Commission staff would like to offer two additional quick comments. Although the complaints were filed with respect to the primary election, guidance from the Commission would also help gubernatorial candidates in the general election with predictability and risk assessment.

Commission staff favor guidance over enforcement in these cases. Regarding enforcement challenges generally, it is a fact of life that enforcing contribution limits sometimes requires a campaign finance authority to investigate whether third-party spending was coordinated with a candidate's campaign. Investigations may require interviewing witnesses and requesting written communications. Investigating third-party spending after candidate red-boxing would not be radically different. The burden of proof would be on the Commission, not the respondent. All procedural safeguards in the Commission's statutes and rules would apply. Sometimes it's necessary to investigate a new or emerging area of regulated activity to promote the Legislature's intent behind a statute.



M E M O R A N D U M

TO: COMMISSIONERS, COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES (“COMMISSION”)

FROM: JONATHAN BOLTON, AAG

SUBJECT: SUGGESTED GUIDANCE TO CAMPAIGNS AND POLITICAL
ACTION COMMITTEES CONCERNING REDBOXING

DATE: MAY 18, 2026

CC: JONATHAN WAYNE, EXECUTIVE DIRECTOR

At the May 6, 2026 meeting, the Commission voted to request a legal opinion on “redboxing”—the practice of placing on a candidate’s public website specific instructions concerning the advertising that a campaign believes would be beneficial, often inside a distinctive red box. The Commission directed that the memo include suggested guidance to campaigns about the practice.

After reviewing the relevant legal authorities and the parties’ submissions, I offer my thoughts and analysis below. This memo reflects my own legal analysis as counsel to the Commission. It is not an opinion of the Attorney General under 5 M.R.S.A. § 195.

I conclude that redboxing, while not inherently illegal, poses substantial risks that any purportedly independent spending undertaken based on the redboxed instructions would be, in fact, a coordinated expenditure that must be treated as campaign contribution under Maine law. I conclude that this interpretation of Maine law, despite departing from the Federal Election Commission’s (FEC’s) interpretation of a similar federal law, is the best reading of the relevant statute and rules. I further conclude that the Commission need not avoid this interpretation based on First Amendment concerns, since spenders relying on redboxes are providing a service that the redbox itself confirms is valuable to the campaign, thereby creating risks of quid pro quo corruption and its appearance that campaign finance law may properly regulate.

BACKGROUND

Factual Background

The complaint raises a concern about the practice that has come to be known as “redboxing.” The practice involves candidates placing information on their public campaign websites, often inside a red box, that provides detailed specifications about advertisements that they wish to have disseminated to voters. The example provided in the complaint is typical:

Beginning the week of April 27, a broad group of likely Democratic primary voters (including newly registered voters, unenrolled voters who this cycle in particular may take a Democratic ballot, and Democrats who vote in general elections that might be inclined to vote in this year’s primary), should watch while on the go and read, that Dr. Nirav Shah is the leader our state needs to stand up to Donald Trump and deliver real results on affordability - especially likely voters in the Portland media market. These voters should also watch these messages on connected TV at the same time. Eventually, they should see them on traditional television if possible.

Dr. Nirav Shah stood up to Trump’s lies during COVID with clear communication and compassionate decision-making and delivered real results. As Governor, Shah will fight for Mainers; protecting democracy, defending healthcare and standing up to Trump. Shah will also tackle the affordability crisis: capping out of control insurance costs and prescription drug prices. And build more affordable housing and make it easier to buy a home.

As can be seen in the example, the redbox operates as a set of detailed instructions that explain precisely what sort of advertising the campaign believes would be beneficial to it. Its elements include (1) a timeframe for the advertising (“the week of April 27”), (2) the voters whom the advertising should target (“a broad group of likely Democratic primary voters...”), (3) the advertising medium (“read,” “watch while on the go,” “watch...on connected TV,” “see . . . on traditional television”); (4) the requested message (that the candidate “is the leader our state needs to stand up to Donald Trump,” etc.), (5) the particular media market in which the ads would be most effective (“the Portland media market”), and (6) the priority that should be given to different mediums (“Eventually” voters should see the ads on “traditional television if possible”).

In short, the typical redbox is a jargon-laden set of instructions written for an audience of political professionals and containing detailed specifications for advertisements that the campaign wishes to see run. Campaigns presumably enclose these instructions within a red box to make clear beyond any doubt that these are messages to aligned political professionals and not the more traditional candidate-website messages aimed at voters, pundits, or media.¹

The practice of redboxing has been linked to changes in the financing of campaigns for federal office brought about by a pair of court decisions, *Citizens*

¹ For additional background on redboxing, see Kaveri Sharma, “Voters Need to Know: Assessing the Legality of Redboxing in Federal Elections,” *Yale L.J.* 130, 1900 (2021), available at https://yalelawjournal.org/pdf/130.Sharma_9bups9gc.pdf.

United v. FEC, 558 U.S. 310 (2010), and *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc).² By striking down federal limits on independent expenditures and contributions to entities that make independent expenditures, these decisions together paved the way for the rise of a type of political action committee known as the independent expenditure–only committee or, more commonly, the “super PAC.” Under this pair of decisions, federal³ super PACs can raise and spend unlimited sums in support of candidates as long as they do not coordinate their spending with those candidates. Super PACs can run the gamut from supporting a large number of candidates based on party or ideology to supporting only a single candidate.

Since 2010, spending by super PACs in federal elections has grown enormously, to the point where outside spending now eclipses candidate spending in some races.⁴ It is in the midst of these trends of increasing independent spending in races that redboxing emerged as a widespread practice.

While Maine’s campaign finance laws have a somewhat different history than the federal laws described above, Maine has seen a concurrent rise in independent expenditures. In the 2022 gubernatorial race, for example, PACs made \$13.7 million in independent expenditures to support or oppose candidates while the candidates themselves spent only \$8.5 million. Compare that to the 2010 gubernatorial race, in which candidates spent \$15.5 million and PACs made only \$3.6 million in independent expenditures. A review of 2026 campaign filings shows that there are already at least four PACs that have been making independent expenditures in support of single candidates. These trends suggest that redboxing may have increasing utility to candidates in state races, which may explain its emergence as an issue before the Commission.

Legal Background

Like federal law, Maine campaign finance law places limits on how much money an individual or corporation may contribute to a candidate. *See* 21-A M.R.S.A.

² *See id.* at 1905–06.

³ The *SpeechNow.org* decision applies only to federal campaign finance laws. Neither the U.S. Supreme Court nor the Court of Appeals for the First Circuit (covering Maine) have ever opined on the question of whether the government may limit contributions to PACs that make independent expenditures. Maine enacted such contribution limits by referendum in 2024, but those limits have been enjoined, subject to the Commission’s and the Attorney General’s pending appeal to the First Circuit. *See Dinner Table Action v. Schneider*, No. 1:24-CV-00430-KFW, 2025 WL 1939946 (D. Me. July 15, 2025).

⁴ *See* “Races in Which Outside Spending Exceeds Candidate 2024 Election Cycle,” *OpenSecrets* (last visited May 15, 2026), at <https://www.opensecrets.org/outside-spending/outvscand>.

§ 1015. In the case of gubernatorial candidates, those limits are \$2,075 for the primary election and \$2,075 for the general election. *Id.*

Maine law properly recognizes that contributions can encompass more than direct payments of money to a candidate. Subject to certain exceptions, providing “anything of value” to a candidate to support their campaign is a contribution under Maine law. 21-A M.R.S.A. § 1012(2). Maine law further recognizes that expenditures by individuals or groups unaffiliated with the candidate are properly understood as contributions if they are made “in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s political committee or their agents.” 21-A M.R.S.A. § 1015(5) (emphasis added). Federal law contains a nearly identical provision. *See* 52 U.S.C.A. § 30116(a)(7)(B)(i).

The Commission’s rules provide non-exhaustive guidance on when expenditures may be considered to be “made in cooperation, consultation or concert with, or at the request or suggestion of a candidate.” 21-A M.R.S.A. § 1015(5). Although none of this guidance addresses redboxing specifically, several provisions are relevant to the legal analysis below. First, the rules create a rebuttable “presumption” of coordination in two circumstances, one of which is relevant here:

(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 public communication to voters to promote or support the candidate. The candidate or spender may rebut the presumption by submitting sufficient contrary evidence.

94-270 C.M.R. ch. 1, § 6(9)(B). The rule also provides a list of six circumstances in which coordination “will not be presumed.” *Id.* § 6(9)(D). Of these, two are relevant here:

(1) the spender has obtained a photograph, biography, position paper, press release, logo, or similar material about the candidate from a publicly available source;

and

(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;

Id. § 6(9)(D)(1) & (3). Finally, the rule describes one circumstance that must be deemed *per se* coordination:

E. A paid public communication that disseminates, distributes, or republishes, in whole or in substantial part,

a public communication designed, produced, paid for or distributed by the candidate is a contribution to the candidate regardless whether the candidate suggested or requested the expenditure for the public communication, or cooperated with or consulted on the expenditure.

Id. § 6(9)(E).

The Commissioners should also be aware that the Federal Election Commission has, since at least 2003, interpreted the identically worded “request or suggestion” standard in federal law as requiring that request or suggestion be made to a “selected audience” in order to trigger coordination rules. *See* Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 431–32 (Jan. 3, 2003), available at <https://www.federalregister.gov/documents/2003/01/03/03-90/coordinated-and-independent-expenditures>. The FEC has distinguished, for example, between a “request that is posted on a web page that is available to the general public” versus a “request posted through an intranet service or sent via electronic mail directly to a discrete group of recipients.” *Id.* Thus, complaints to the FEC about candidates’ use of the Internet to request or suggest advertising have been unsuccessful. *See, e.g.* Statement of Reasons, *In re VoteVets et al.*, MUR 7700 (FEC Apr. 29, 2022), available at https://www.fec.gov/files/legal/murs/7700/7700_14.pdf (rejecting complaint against the Buttigieg presidential campaign based on a twitter post suggesting specific advertising in Nevada).

ANALYSIS

REDBOXES SHOULD GENERALLY BE UNDERSTOOD AS “REQUESTS” OR “SUGGESTIONS” WITHIN THE MEANING OF MAINE LAW.

THE PLAIN LANGUAGE OF THE STATUTE SUPPORTS GENERALLY TREATING REDBOXES AS “REQUESTS” OR “SUGGESTIONS.”

The goal of statutory interpretation is to give effect to the Legislature’s intent. *See State v. Santerre*, 2023 ME 63, ¶ 8, 301 A.3d 1244. That analysis requires considering the “plain meaning” of the statutory language “in the context of the whole statutory scheme.” *Id.*; *see also Mallinckrodt US LLC v. Dep’t of Env’t Prot.*, 2014 ME 52, ¶ 21, 90 A.3d 428 (court must construe the “whole statutory scheme of which the section at issue forms a part so that a harmonious result, presumably the intent of the Legislature, may be achieved”). “[A]bsurd, illogical, or inconsistent results” should be avoided. *Santerre*, 2023 ME 63, ¶ 9, 301 A.3d 1244. It is also appropriate to consider the “subject matter, design, and structure of the statute, as well as the consequences of specific interpretations.” *Id.*

As the staff memo correctly acknowledges, Maine law does not forbid redboxing per se. Rather, the legal question raised by redboxing is whether, if an individual or a PAC decides to make an expenditure to carry out the instructions contained in the redbox, that individual or PAC has made an expenditure “in cooperation, consultation or concert with, or at the request or suggestion of” the candidate’s

campaign. 21-A M.R.S.A. § 1015(5). If so, the resulting expenditure cannot be considered independent and must be treated as a contribution to the candidate.

Because redboxes are posted to public websites and on their face do not involve two-way communication between candidate and spender, any resulting spending would not seem to involve “cooperation” or “consultation” with the campaign or be made “in concert with” the campaign. The legal issue thus appears to be limited to whether spending done in response to a redbox could be considered spending “at the request or suggestion of” the candidate’s campaign. 21-A M.R.S.A. § 1015(5).

The text of the statute alone suggests that the answer is “yes.” The terms *request* and *suggestion* do not require communications to a definite recipient. The relevant definition of *request* is “the act or an instance of asking for something.” “Request,” Merriam-Webster, <https://www.merriam-webster.com/dictionary/request>. The relevant definition of *suggest* is “to propose as desirable or fitting.” “Suggest,” Merriam-Webster, <https://www.merriam-webster.com/dictionary/suggest>; see also “Suggestion,” *Black’s Law Dictionary* (12th ed. 2024) (“An indirect presentation of an idea”). Thus, in ordinary English, a request or suggestion can be made to a specific person, to a group of people, or to the public at large, with no specific recipient in mind.

A broad understanding of *request* and *suggestion* is also dictated by the surrounding statutory terms. In construing statutes, “[a]ll words in a statute are to be given meaning, and no words are to be treated as surplusage if they can be reasonably construed.” *Howard v. White*, 2024 ME 9, ¶ 11, 308 A.3d 213 (quoting *Cent. Me. Power Co. v. Devereux Marine, Inc.*, 2013 ME 37, ¶ 8, 68 A.3d 1262). Section 1015(5) refers to five separate modes of coordination: “cooperation,” “consultation,” “in concert with,” “request,” and “suggestion.” The first three of these concepts would seem to require various types of interpersonal communication between the candidate and a specific spender. Two parties cannot “consult” or “cooperate” without communicating with each other. If *request* and *suggestion* are treated as independent and non-duplicative, they must be understood as referring to more attenuated forms of communication between spender and candidate that do not involve two-way interaction.

In applying these statutory terms to redboxing, it should also be recognized that even though redboxes appear on public websites, they are not messages intended for the public at large. Rather, as evidenced by the coded language and (in many cases) conspicuous red boxes, they are messages aimed at a narrow audience: political professionals operating PACs that might have the financial means to and interest in organizing an advertising campaign tailored to the candidate’s wishes. In some cases, the target audience might be only a handful of people or even a single person. Thus, the Commission need not adopt the most expansive possible reading of “request or suggestion” to find redboxing problematic. Requesting expenditures to mount a carefully specified advertising campaign is fundamentally different than requesting, say, that people encourage their neighbors to vote for the candidate.

The Commission should also consider that there may be circumstances in which the redbox is indistinguishable from a private message to a particular person.

Redboxes, which already use coded language, could easily incorporate language making clear to a particular spender (but not the general public) that the message is intended for them. Consider also a situation in which all outside spending in support of a candidate is coming from a single aligned PAC. In such a scenario it would seem likely that both the candidate and the PAC would understand the redboxes as requests or suggestions from the campaign to the PAC to engage in the requested spending. It is difficult to see how such a redbox would not be a “suggestion” or “request” under any reasonable reading of those terms.

These considerations call into doubt the viability of the FEC’s interpretation of “request or suggestion” in federal law as applying to communications to a “selected audience,” but not “the public generally.” 68 Fed. Reg. 421, 431–32. While this distinction may have seemed sensible in 2003 when the FEC’s rules were promulgated, the rise of super PACs, including single-candidate super PACs, together with the development of the coded language and formatting of the redbox, renders it less tenable. If a candidate’s redbox is meant to convey instructions to particular aligned super PACs that the candidate knows to be monitoring the candidate’s website, it is hard to see any meaningful difference between publishing the redbox and sending a private email. And even if some redboxing is not as focused on a specific target, redboxing is still an effort to send a message to a narrow audience of political professionals operating PACs with the means to purchase advertising. Redboxing would thus still appear to be more like an attempt to reach a “selected audience,” than a bona fide message to the public at large.

THE COMMISSION’S RULES SUPPORT TREATING REDBOXES AS “REQUESTS” OR SUGGESTIONS

Proponents of redboxing have argued that the Commission’s rules suggest that redboxing does not count as a “suggestion” or “request” within the meaning of the statute. If anything, the rules suggest the opposite.

Proponents point to the language creating a rebuttable presumption of coordination where the “candidate has *directly* shared the candidate’s campaign plans, activities, or needs with the spender for the purpose of facilitating [advertising spending].” 94-270 C.M.R. ch. 1, § 6(9)(B)(2) (emphasis added). There are two problems with reliance on this provision. First, the argument is premised on the notion that redboxing is a method of “[in]directly” sharing the candidate’s “needs.” But this assumption seems wrong. While a campaign explaining its needs to a third party who then shares them with a super PAC, unbeknownst to the candidate, may amount to “indirectly” sharing the campaign’s needs in an uncoordinated manner, the candidate’s intentional placement of detailed advertising instructions on the campaign’s public website in a distinctive format meant to signal to aligned spenders that the instructions are intended for them seems at least arguably to be a “direct” sharing of needs with super PACs for the purpose of facilitating advertising spending, not an indirect one.

Second, this provision of the Commission’s rules only determines whether or not a rebuttable presumption of coordination exists, shifting the burden of proof to the spender to disprove coordination. *Id.* Thus, even if the use of redboxing is only an

indirect means of sharing the campaign's needs, a PAC's decision to fulfill those needs could still amount to coordination if staff could prove that the PAC acted at the suggestion of the candidate.

Redboxing also does not fit within either of the relevant circumstances specified in the rules where coordination may not be presumed. The first of these exceptions is where "the spender has obtained a photograph, biography, position paper, press release, logo, or similar material about the candidate from a publicly available source." 94-270 C.M.R. ch. 1, § 6(9)(D)(1). Under the interpretative principle known as *ejusdem generis*, "[w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." *New Orleans Tanker Corp. v. Dep't of Transp.*, 1999 ME 67, ¶ 7, 728 A.2d 673 (quoting 2A Norman J. Singer, Sutherland Statutes and Statutory Construction § 47.17 (5th ed.1992)). Moreover, here, the catch-all provision itself requires that the materials be "similar" to the ones already listed. Thus, for redboxing to be covered by the catch-all "similar material about the candidate," redboxes would have to be "similar" to photographs, a biography, a position paper, etc. But redboxes are categorically different from these subjects, in that they are instructions to political professionals about how to advertise. They contain descriptions of the candidate only to the extent necessary to describe the requested content of those advertisements. Typical redbox content therefore cannot be considered "similar" to a candidate's photograph, biography, position papers, or similar items.

The other relevant circumstance in which coordination may not be presumed also cuts against redboxing. It exempts expenditures made in response to a "general, non-specific request for support by a candidate" provided there is no coordination with the campaign in advance. 94-270 C.M.R. ch. 1, § 6(9)(D)(3). But redboxes are the opposite of a "general, non-specific request for support." As the example above shows, they are often highly specific, designing preferred media markets, timing, content, and medium. Indeed, the typical redbox is so obviously different from a "general, non-specific request" that the exception's wording actually cuts affirmatively against the position of redbox proponents that it is not a "request" or "suggestion."

Finally, the rule's description of a circumstance that constitutes *per se* coordination further suggests redboxing is problematic. Under that provision, it is *per se* coordination to disseminate "a public communication designed . . . by the candidate" *even if* the candidate did not suggest or request the expenditure. 94-270 C.M.R. ch. 1, § 6(9)(E). While redboxes do not seem to be sufficiently detailed to permit the argument that advertisements made according to their instructions are literally "designed" by the candidate, this *per se* exception establishes that coordination may occur without any personalized contact between the campaign and the spender. Indeed, the rule is premised on the notion that dissemination of a candidate-designed advertisement will *necessarily* have subjective value to the candidate, therefore making dissemination of the ad indistinguishable from a monetary contribution to the candidate. In the case of advertisements based on redboxes, the redboxed instructions likewise establish that the advertising described in the redbox would have subjective value to the candidate.

In short, the various relevant examples and clarifications in the Commission’s rules suggest that redboxing may be considered coordination at least in some circumstances.

THE FIRST AMENDMENT DOES NOT REQUIRE THE COMMISSION TO INTERPRET MAINE LAW TO ALLOW UNLIMITED REDBOX-CAUSED SPENDING

Finally, in considering the appropriate interpretation of “suggestion” and “request,” the Commission should consider the canon of constitutional avoidance. Under this canon, “when there is a reasonable interpretation of a statute that will satisfy constitutional requirements, [courts] will adopt that interpretation notwithstanding other possible interpretations of the statute that could violate the Constitution.” *Martin v. MacMahan*, 2021 ME 62, ¶ 24, 264 A.3d 1224, *as revised* (Jan. 4, 2022). As evidenced by the FEC’s differing interpretation of the identical “request or suggestion” language, there are in fact multiple possible interpretations of § 1015(5). However, I do not believe that the FEC’s more lenient interpretation of that language is necessary to avoid constitutional problems.

Limits on expenditures and contributions, by their nature, implicate the First Amendment. With certain exceptions not relevant here,⁵ the Supreme Court has recognized only one governmental interest that can justify such limits: preventing quid pro quo corruption and its appearance. *See FEC v. Cruz*, 596 U.S. 289, 305 (2022). The Court has long recognized that reasonable limits on contributions to candidates directly further this anti-corruption interest and are therefore constitutional. *See, e.g., FEC v. Beaumont*, 539 U.S. 146 (2003). In contrast, and as noted above, the Court has held that limits on independent expenditures do not adequately further the government’s interest in combatting quid pro quo corruption and are therefore impermissible under the First Amendment. *Buckley v. Valeo*, 424 U.S. 1, 45 (1976); *Citizens United*, 558 U.S. at 357.

Given this framework, the relevant constitutional question is whether interpreting *suggestion* and *request* to cover redboxes, such that expenditures made in response to them may be deemed contributions rather than independent expenditures, furthers the state’s interest in combating quid pro quo corruption or its appearance.

While adopting a stricter interpretation of campaign finance laws always carries some litigation risk, my conclusion is that redboxing has a sufficient nexus to quid pro quo corruption to permit treating any resulting expenditures as contributions, without running afoul of the First Amendment. As noted above, federal campaign finance law contains the same prohibition on coordination that is in § 1015(5). The Supreme Court’s landmark *Buckley* decision recognized the importance of these provisions, distinguishing between expenditures made “totally independent of the

⁵ *See, e.g., Bluman v. FEC*, 800 F. Supp. 2d 281 (D.D.C. 2011), *aff’d*, 565 U.S. 1104 (2012) (recognizing governmental interest in curbing foreign influence in U.S. elections).

candidate and his campaign,” which generally may not be limited, and “prearranged or coordinated expenditures amounting to disguised contributions.” 424 U.S. at 47.

In its 2003 *McConnell* decision, the Supreme Court considered whether federal regulations defining coordination to include circumstances in which there was no agreement between the candidate and spender violated the First Amendment. The Court reasoned that the regulation furthered the government’s anti-corruption interest even in absence of an agreement:

[T]he rationale for affording special protection to wholly independent expenditures has nothing to do with the absence of an agreement and everything to do with the functional consequences of different types of expenditures. Independent expenditures are poor sources of leverage for a spender because they might be duplicative or counterproductive from a candidate’s point of view. **By contrast, expenditures made after a wink or nod often will be as useful to the candidate as cash.** For that reason, Congress has always treated expenditures made at the request or suggestion of a candidate as coordinated. **A supporter easily could comply with a candidate’s request or suggestion without first agreeing to do so, and the resulting expenditure would be virtually indistinguishable from a simple contribution.**

McConnell v. FEC, 540 U.S. 93, 221–22 (2003) (cleaned up and emphasis added), *overruled on other grounds Citizens United*, 558 U.S. 310; *accord Campaign Legal Ctr. v. Fed. Election Comm’n*, 106 F.4th 1175, 1180 (D.C. Cir. 2024) (quoting *McConnell*’s “wink or nod” reasoning). And as a lower federal court reasoned in assessing the constitutionality of coordination rules: “The fact that the candidate has requested or suggested that a spender engage in certain speech indicates that the speech is valuable to the candidate, giving such expenditures sufficient contribution-like qualities to fall within [FECA’s] prohibition on contributions.” *Fed. Election Comm’n v. Christian Coal.*, 52 F. Supp. 2d 45, 92 (D.D.C. 1999).

Under the reasoning of these decisions, an interpretation of *request* and *suggestion* to cover typical forms of redboxing should pass constitutional muster. Here the “wink or nod” is the redbox—the signal that will be understood by the spender as a request or suggestion to engage in spending. Moreover, the spender who follows the instructions in a redbox will be assured that they are creating advertising that “will be as useful to the candidate as cash.” *McConnell*, 540 U.S. at 221. Thus, they will have generated the “quid” that might be traded for a “quo”—an official act—by the candidate.

Redboxing also creates an appearance of quid pro quo corruption. The state’s interest in combating such an appearance is just as strong as the interest in combating actual corruption. As the Supreme Court has observed, “[l]eave the perception of impropriety unanswered, and the cynical assumption that large donors

call the tune could jeopardize the willingness of voters to take part in democratic governance.” *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 390 (2000). Many voters who stumble across redboxes on campaign websites will likely recognize them as coded messages to aligned spenders seeking spending on significant advertising campaigns that would almost certainly exceed contribution limits. Their reaction may be similar to that of the headline of the *New York Times*’s 2022 expose on the practice: “The Little Red Boxes Making a Mockery of Campaign Finance Laws.”⁶ Regardless of whether candidates understand their redboxes the same way, voters will likely assume that any spending resulting from these redboxes is being done in coordination with the campaigns and thus in disregard of contribution limits. Voters could be forgiven for worrying that spenders who mount the expensive advertising campaigns specified by the redbox have been promised official acts by the candidate in exchange for carrying out redboxed requests.

In short, while there is not yet caselaw assessing the constitutionality of limits on redboxing, existing precedent indicates that the government may, consistent with the First Amendment, regulate spending made at the request or suggestion of a candidate as contributions, even if that spending was not pursuant to an agreement between the candidate and spender. This caselaw suggests that treating spending resulting from redboxes as contributions to the candidate would be consistent with the First Amendment.

PROPOSED ADVICE TO CAMPAIGNS

If the Commission agrees with the interpretation I recommend above, candidates and PACs should be advised that the practice of redboxing, while not itself illegal, creates a substantial risk that spenders who follow the instructions in the redbox will be determined to have made a contribution to the campaign by spending at the “request” or “suggestion” of the candidate. Such a determination will necessarily be fact-dependent and require investigation of the extent to which the spending was caused by the redbox, the extent to which the spending followed the instructions in the redbox, and the precise message in the redbox, among other things. Candidates and PACs should also be warned that the absence of a pre-existing agreement or private communications between the candidate and PAC will not by itself immunize the spending from being considered a contribution.

With that said, campaigns should also be given assurance that they remain free to publish photos, position papers, press releases and other materials concerning the candidate’s positions and qualifications on their websites, even if they expect that such materials may be accessed and used by independent spenders to devise their own independent advertisements to support the candidate. Campaigns should also be assured that general non-specific requests for support will not be considered a basis for a finding of coordination. To avoid the risk that outside spending will be determined to be coordinated, campaigns need only refrain from publishing specific

⁶ Available at <https://www.nytimes.com/2022/05/16/us/politics/red-boxes-campaign-finance-democrats.html>.

instructions, coded or otherwise, describing advertising or other expenditures by independent spenders that the campaign would find valuable.

I look forward to answering any questions you may have at our next meeting.

J.R.B.



To: Commission
From: Jonathan Wayne, Executive Director
Date: April 30, 2026
Re: Complaints against Democratic Gubernatorial Candidates on Redboxing

The Ethics Commission received complaints against three Democratic gubernatorial candidates regarding a campaign tactic known as red boxing. As background, in most cases, it is illegal for a candidate to suggest that a supportive group advertise to promote the candidate, because the group's spending would amount to a contribution that exceeds the applicable limit. Some candidates for U.S. Congress have responded to this prohibition against directly suggesting third-party spending by posting information in a red box on their campaign website that includes proposed campaign themes, target audiences, and specific types of media (TV, digital, *etc.*). This web content goes beyond merely listing the candidate's accomplishments and policy views. It often includes language that could have the effect of encouraging advertising to specific parts of the electorate, for example, "women without a college degree should hear that ...," "voters over 65 should see ...," "people who voted in the Democratic primary in '22 or '24 should know that"

Because the Federal Election Commission (FEC) has signaled that it will not initiate enforcement matters against red boxing, a perception has grown among some campaign consultants that red boxing is generally legal. Depending on how the Commission views red boxing as a matter of policy, the Commission staff suggests clarifying that red boxing is not necessarily safe in Maine state elections. The FEC's rule on coordinated spending is substantially different from Maine law. People in Maine expect a high degree of compliance from their candidates and a high level of responsiveness from their regulators. The Commission staff is concerned that the practice of red boxing can undermine public trust in campaign finance law because red boxing is contrary in spirit to the well-known principle that candidates can't suggest spending by others.

The Commission staff suggests responding to the complaints by taking an educational approach, rather than enforcement action. We have prepared a draft advisory statement for your consideration that reflects the Commission staff's view that red boxing entails some risk under current law. Alternatively, if a majority of the Commission believes as a matter of policy that red boxing is candidate speech that should receive a very high degree of First Amendment protection such that red boxing should not be viewed as part of a contribution limit violation, the Commission staff could draft other written guidance.

RELEVANT LAW

Limits on giving directly to a candidate. The typical way a candidate receives a contribution is for a source to donate money or goods/services that the candidate may make use to promote their election. 21-A M.R.S. § 1012(2)(A). Maine places limits on the amounts that can be given directly to a candidate. 21-A M.R.S. § 1015(1)&(2-B). For example, the limit on contributing to a candidate for Governor is now \$2,075 per election.

Spending that is suggested by a candidate. Maine Election Law recognizes another way a candidate may receive a contribution. If an outside group spends money to promote a candidate because the candidate suggested the spending, the group has made a contribution to the candidate:

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.

21-A M.R.S. § 1015(5) (underlining added for emphasis). If § 1015(5) is read literally, a contribution does not necessarily require any ongoing coordination or mutual awareness of activities between the spender and the candidate. All that is required is:

- (1) a suggestion by the candidate, and
- (2) an expenditure by someone else that results from the suggestion.

Lack of limits on contributions to super-PACs. So-called “super-PACs” are political groups that promote candidates by paying for advertising or other communications directed at voters, such as mailers or automated phone calls. There are no limits on the amount that a source may give to a super-PAC. Candidates, on the other hand, are sharply limited in what they can

accept from contributors. Because of this contrast (limited contributions to candidates vs. unlimited contributions to PACs), it can be tempting for a candidate to invite advertising by PACs they know are supportive.

Commission rule. The Commission has adopted a rule that provides examples of a few activities which create an evidentiary presumption that a candidate has coordinated with someone else on their spending. 94-279 C.M.R. ch. 1, 6(9). Subsection (6)(9)(D)(1) of the rule states that a presumption of coordination is not created if a spender has obtained a photograph, logo, or biography of the candidate, “or similar material” from a publicly available source. This rule reflects that political candidates and other individuals seeking publicity put photos or other shareable content in a “gallery” or “media” section of their website in the hope that fans, bloggers, and others will share this content for free on social media. Commission staff suggest that posting a candidate’s photo on a campaign website that may be freely shared through social media is quite different from posting language that could function as instructions for a sophisticated paid advertising campaign.

COMPLAINTS RECEIVED

On April 24, 2026, Mr. James Kilbreth asked the Commission to investigate whether the red box message on the campaign website of gubernatorial candidate Nirav Shah resulted in any illegal contributions to Dr. Shah that exceeded the \$2,075 contribution limit. On April 28, Newell Augur, counsel for the Shah campaign, requested that any investigation include the red box messages on Troy Jackson’s campaign website and formerly on Hannah Pingree’s website.

The red box messages in the complaints are shown directly below, with yellow highlighting added by Commission staff for easier reference. We’ve provided links to the campaign websites in red text below each red box message in case the Commission wants to view the red box messages live on the internet.

Beginning the week of April 27, a broad group of likely Democratic primary voters (including newly registered voters, unenrolled voters who this cycle in particular may take a Democratic ballot, and Democrats who vote in general elections that might be inclined to vote in this year's primary), should watch while on the go and read, that Dr. Nirav Shah is the leader our state needs to stand up to Donald Trump and deliver real results on affordability - especially likely voters in the Portland media market. These voters should also watch these messages on connected TV at the same time. Eventually, they should see them on traditional television if possible.

Dr. Nirav Shah stood up to Trump's lies during COVID with clear communication and compassionate decision-making and delivered real results. As Governor, Shah will fight for Mainers; protecting democracy, defending healthcare and standing up to Trump. Shah will also tackle the affordability crisis: capping out of control insurance costs and prescription drug prices. And build more affordable housing and make it easier to buy a home.

(currently available at shahformaine.com by clicking on the link for Media Kit at the bottom of the page)

Media Kit

▶ DOWNLOADABLE VIDEO

📷 DOWNLOADABLE PHOTOS

Women who are consistent primary voters need to see and read that Hannah Pingree is a lifelong progressive leader, and the only candidate with the experience and backbone to stand up to Donald Trump, greedy corporations or anyone who wants to hurt Mainers.

Hannah faced down opposition even in her own party to pass one of the nation's first marriage-equality laws, and she stopped right-wing Republicans from taking away women's reproductive rights. Hannah fought large healthcare corporations and big pharma to force insurance companies to cover cancer screenings, dental, and women's health and to allow Mainers to buy lower-cost prescription drugs from Canada.

Hannah took on chemical corporations who were poisoning kids — and passed landmark legislation protecting families from toxic chemicals in toys and household products.

Communication should start as soon as possible with a digital and mail plan that can be sustained through the June 9 primary. Please check this page for updates.

** Consistent primary voters have voted in (1) at least three of the last four non-presidential primaries or (2) registered after the 2020 primary but voted in the '22 and/or '24 primary and (3) voted by mail in either the '22 or '24 primaries.*

(according to Newell Augur, formerly available at hannahforgovernor.com by clicking on "Media Kit" at the bottom of the page; screenshot reportedly captured on 2/8/2026)

TROY JACKSON FOR MAINE

Maine Democratic Primary voters need to know that Troy Jackson is the only candidate who is a progressive fighter that has been standing up for working Mainers his whole life:

- Troy doesn't come from a political dynasty — he's a fifth-generation logger from Allagash who has been endorsed by Bernie Sanders.
- Troy put his life and livelihood on the line to blockade the border and stop greedy corporations from replacing Maine loggers to boost their profits. Now he's the only candidate rejecting corporate PAC money.
- As Governor, Troy will stand up to them and Trump to lower costs and make sure working families and seniors, not the wealthy, get a tax break.

Voters should see a robust and holistic, multi-platform paid communications campaign for Troy's message as soon as possible, especially on broadcast in the Portland Market and in more targeted mediums to, in particular, voters over 65 and all women of all ages, especially without a college degree. It is critical that voters see Troy and Bernie Sanders together.

(www.jacksonformaine.com, click on link for “Media” at bottom of webpage)

STAFF DISCUSSION

On April 29, 2026, the Commission staff sent correspondence to the three campaigns inviting them to submit any brief written comments they would like, for example, explaining a purpose for the red box messages other than suggesting spending by others. It is possible that the campaigns will provide a plausible alternative explanation, but Commission staff are having a hard time thinking of one. Please note that the Troy Jackson red box contains this text:

- “Voters should see a robust ... paid communications campaign”

The red box formerly on the Hannah Pingree website stated:

- “Communications should start as soon as possible with a digital and mail plan.”

Although Mr. Kilbreth’s complaint was about a different candidate, he asks a reasonable question: *isn't this language a suggestion for others to engage in paid advertising?*

In the opinion of the Commission staff, posting a red box message to a candidate website does not, in itself, violate any provision in Maine campaign finance law. It becomes a legal violation only if another party makes an expenditure at the suggestion of the candidate that exceeds the contribution limit.

Depending on how the Commission views red boxing as a matter of policy, it may want to respond to Mr. Kilbreth's complaint with education, rather than enforcement. The Commission is authorized to start an investigation in response to an outside request "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). The Commission staff recommends no investigation of the Shah campaign because Mr. Kilbreth's complaint does not point out any third-party spending in support of Nirav Shah. Mr. Augur's complaint does not sufficiently draw a connection between the red box message on Troy Jackson's website and recent spending by the Working Mainers First PAC. Hannah Pingree's campaign apparently removed its red box message some time ago.

The Commission staff believe there is already sufficient reason for Maine state candidates to understand that red boxing carries some risk. The staff of the gubernatorial campaigns know very well they cannot suggest that others spend money to promote their candidates. If the Commission investigated and received sufficient evidence that a PAC ran ads due to suggestions in a candidate's red box message, that could support a conclusion that the candidate received an over-the-limit contribution under current law.

Nevertheless, it is possible that campaign consultants working for the gubernatorial candidates do not appreciate any risk because red boxing is a growing tactic on the campaign websites of congressional candidates. Most candidates for Governor are risk averse. An advisory statement addressed to candidates generally could be an effective way to convey to candidates that continued red boxing may lead to an investigation by the Ethics Commission, if sufficient evidence is presented to the Commission of a legal violation.

Alternatively, if a majority of the Commission views redboxing as candidate speech that needs to be strongly protected by the First Amendment such that redboxing should not be considered as part of a contribution limit violation in the future, the Commission staff can prepare other written advice for consideration at a future meeting.



To: Kate Knox, Counsel for Hannah Pingree
Newell Augur, Counsel for Nirav Shah
Christine Kirby, Troy Jackson Campaign
Cc: James Kilbreth
From: Jonathan Wayne, Executive Director
Date: April 29, 2026
Re: Requests to Investigate Campaigns of Nirav Shaw, Hannah Pingree, and Troy Jackson

The Ethics Commission received two requests to investigate whether red box messages on the campaign websites of Nirav Shah, Hannah Pingree, and Troy Jackson have resulted in any illegal contributions that exceeded the \$2,075 contribution limit. On April 24, 2026, James Kilbreth asked the Commission to investigate whether the red box message on the Shah campaign website is a suggestion to advertise on Dr. Shah's behalf. Yesterday, Newell Augur, counsel for the Shah campaign, requested that any investigation include the red box messages on the Pingree and Jackson campaign websites.

Mr. Kilbreth raises a reasonable question. Under Maine Election Law, "[a]ny expenditure made ... at the request or suggestion of [] a candidate ... is considered to be a contribution to that candidate." 21-A M.R.S. § 1015(5). Many people could interpret the campaign themes, target audiences, and advertising media in the red box messages as suggestions to spend money to promote the candidates.

The requests for investigations will be added to the agenda for the Ethics Commission's meeting on May 6, 2026 (agenda attached). Please take these requests seriously because they could result in investigations of your clients' campaigns or spending by your allies.

Alternatively, the Commission could view this as an occasion for education, not enforcement.

The Commission requests that a representative from each campaign participate in the meeting in person or by zoom. Each campaign is also encouraged to provide any brief written comments you would like on this matter. For example, you could identify what purpose the red box messages serve other than suggesting spending by others, or provide reasons to conclude that any spending made in response to these messages is not a contribution under 21-A M.R.S. § 1015(5). Please email me or call me at 287-4179 if you have any questions. Thank you.

Friday, April 24, 2026
Maine Commission on Governmental Ethics and Election Practices
45 Memorial Circle
Augusta, ME 04333

Re: Complaint to the Maine Commission on Governmental Ethics and Election Practices

Dear Director Wayne and Assistant Director Currier,

I was recently made aware of a practice that has apparently become common in federal campaigns called "redboxing" — a candidate publishing detailed instructions on their website directing outside groups to run ads on their behalf, written to look like ordinary content but using the language of campaign media buying.

Use of "red boxing" in Maine campaigns would seem to be a blatant violation of the prohibition against candidate coordination with dark money "independent expenditure" PACS. That's why a recent post on the Nirav Shah for Governor campaign website raises numerous red flags. It can be found at <https://shahformaine.com/media-kit/> and I have included a screenshot below. It was accessed today, April 24, 2026.

Beginning the week of April 27, a broad group of likely Democratic primary voters (including newly registered voters, unenrolled voters who this cycle in particular may take a Democratic ballot, and Democrats who vote in general elections that might be inclined to vote in this year's primary), should watch while on the go and read, that Dr. Nirav Shah is the leader our state needs to stand up to Donald Trump and deliver real results on affordability - especially likely voters in the Portland media market. These voters should also watch these messages on connected TV at the same time. Eventually, they should see them on traditional television if possible.

Dr. Nirav Shah stood up to Trump's lies during COVID with clear communication and compassionate decision-making and delivered real results. As Governor, Shah will fight for Mainers; protecting democracy, defending healthcare and standing up to Trump. Shah will also tackle the affordability crisis: capping out of control insurance costs and prescription drug prices. And build more affordable housing and make it easier to buy a home.

The first oddity about this post is that it's found in the "media kit" section of the website. The post initially appears to be a strange, barely grammatical block of text. But I'm told by people familiar with campaign advertising that to anyone in that world it reads as a complete set of instructions for running an ad campaign on Shah's behalf, specifying when to start, which voters to target, which media market to buy, which platforms to use and in what order, and what message to run.

The legal issue

Two provisions of Maine law are directly implicated. Section 1015(5) provides that any expenditure made "at the request or suggestion of" a candidate is treated as a direct contribution, not an independent expenditure. Section 1019-B(1) defines an independent expenditure as one made *without* that kind of candidate direction. Together, these mean that if a

candidate suggests what an outside group should spend money on, that spending loses its protected status and counts against the contribution limit, which is \$2,075 per election for a gubernatorial candidate. A single television ad buy would exceed that by orders of magnitude.

What the post means

The message reads, in relevant part: *"Beginning the week of April 27, a broad group of likely Democratic primary voters (including newly registered voters, unenrolled voters who this cycle in particular may take a Democratic ballot, and Democrats who vote in general elections that might be inclined to vote in this year's primary) should watch while on the go and read, that Dr. Nirav Shah is the leader our state needs to stand up to Donald Trump and deliver real results on affordability, especially likely voters in the Portland media market. These voters should also watch these messages on connected TV at the same time. Eventually, they should see them on traditional television if possible."*

To a media buyer, this is a complete brief. "Beginning the week of April 27" is a start date. The voter description is a targeting universe. "Especially likely voters in the Portland media market" is a geographic instruction. "Watch while on the go" means digital and mobile advertising; "connected TV" means streaming; "traditional television" means broadcast. That is three platforms sequenced in order of rollout. The second paragraph supplies the ad content itself. Section 1015(5) contains a separate clause worth noting: it also treats as a contribution the financing of "the dissemination, distribution or republication, in whole or in part, of any campaign materials prepared by the candidate." If that paragraph is functioning as a script, groups that run it face liability under that clause independently of the suggestion theory.

Why posting it publicly doesn't cure the problem

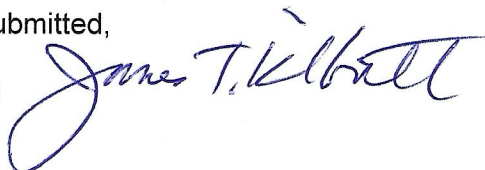
The campaign may argue that a public post cannot constitute coordination. But Sections 1015(5) and 1019-B(1) prohibit expenditures made at the "suggestion" of a candidate, a word that does not require a private channel or a specific recipient. More fundamentally, accepting this argument would render Maine's coordination rules meaningless. Any candidate could post their media strategy online and claim that whatever followed was independent spending. That cannot be and is not what the legislature intended.

Request

I ask the Commission to open an investigation into whether this post constitutes a "suggestion" under Sections 1015(5) and 1019-B(1) and to determine whether any outside spending that followed must be reclassified as a contribution to the Shah campaign. If the Commission finds that in fact the post is a "suggestion," given the importance of preventing "redbox" circumvention of the campaign finance laws from sprouting up in Maine, a strong sanction including appropriate penalties should be imposed. Given that the post references activity beginning the week of April 27, 2026, I ask that this be treated with urgency.

Respectfully submitted,

James Kilbreth



NEWELL AUGUR

Merrill's Wharf
254 Commercial Street
Portland, ME 04101

157 Capitol Street
Suite 3
Augusta, ME 04330

PH 207.791.1281
FX 207.791.1350
naugur@pierceatwood.com

pierceatwood.com

Admitted in: ME

April 28, 2026

Jonathan Wayne, Executive Director
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

Dear Jonathan,

With respect to Attorney Kilbreth's complaint against the Shah campaign, as I referenced in an earlier email, there are other Democratic gubernatorial campaigns currently engaged in this common practice.

Accordingly, pursuant to MRSA 21-A Section 1003 Subsection 2, I would formally request an investigation be conducted of the Jackson and Pingree campaigns on the same grounds set forth by Attorney Kilbreth in his letter of 4/27/26. I have embedded below relevant information for both of those campaigns.

We also request that any discussion of this issue and the activities of the three campaigns be considered in the aggregate. Please do not hesitate to contact me if you need additional information.

Sincerely,



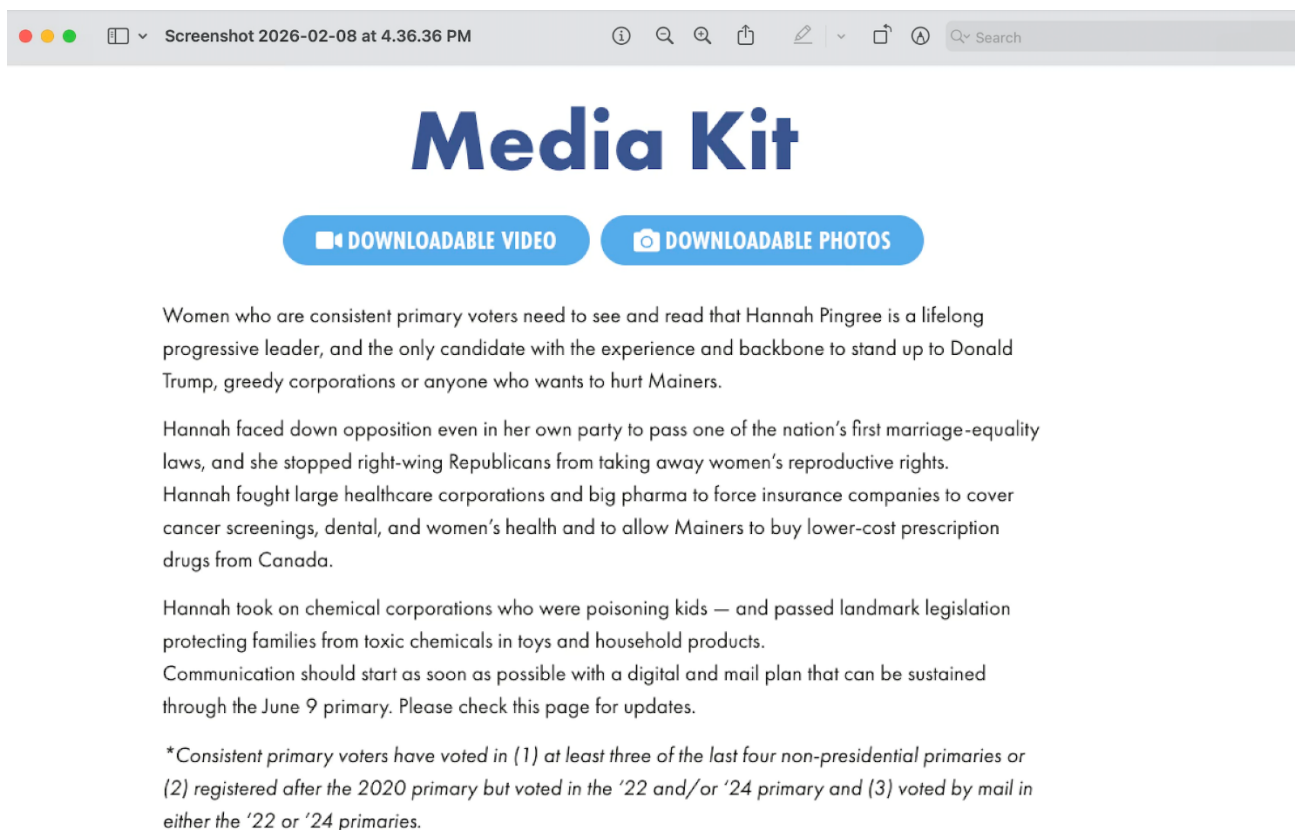
Newell A. Augur

NAA:vc
Enclosure

Pingree for Governor

The directive below was posted on the campaign's website on the Media Kit page on February 8, 2026 as referenced by screenshot meta data. On the same day, this press release was sent out: <https://hannahforgovernor.com/hannah-pingree-reserves-400000-in-tv-advertising-for-democratic-gubernatorial-primary/>

This language has now been removed from the page - but it directs the viewer to "check back for updates".



Women who are consistent primary voters need to see and read that Hannah Pingree is a lifelong progressive leader, and the only candidate with the experience and backbone to stand up to Donald Trump, greedy corporations or anyone who wants to hurt Mainers.

Hannah faced down opposition even in her own party to pass one of the nation's first marriage-equality laws, and she stopped right-wing Republicans from taking away women's reproductive rights. Hannah fought large healthcare corporations and big pharma to force insurance companies to cover cancer screenings, dental, and women's health and to allow Mainers to buy lower-cost prescription drugs from Canada.

Hannah took on chemical corporations who were poisoning kids — and passed landmark legislation protecting families from toxic chemicals in toys and household products.

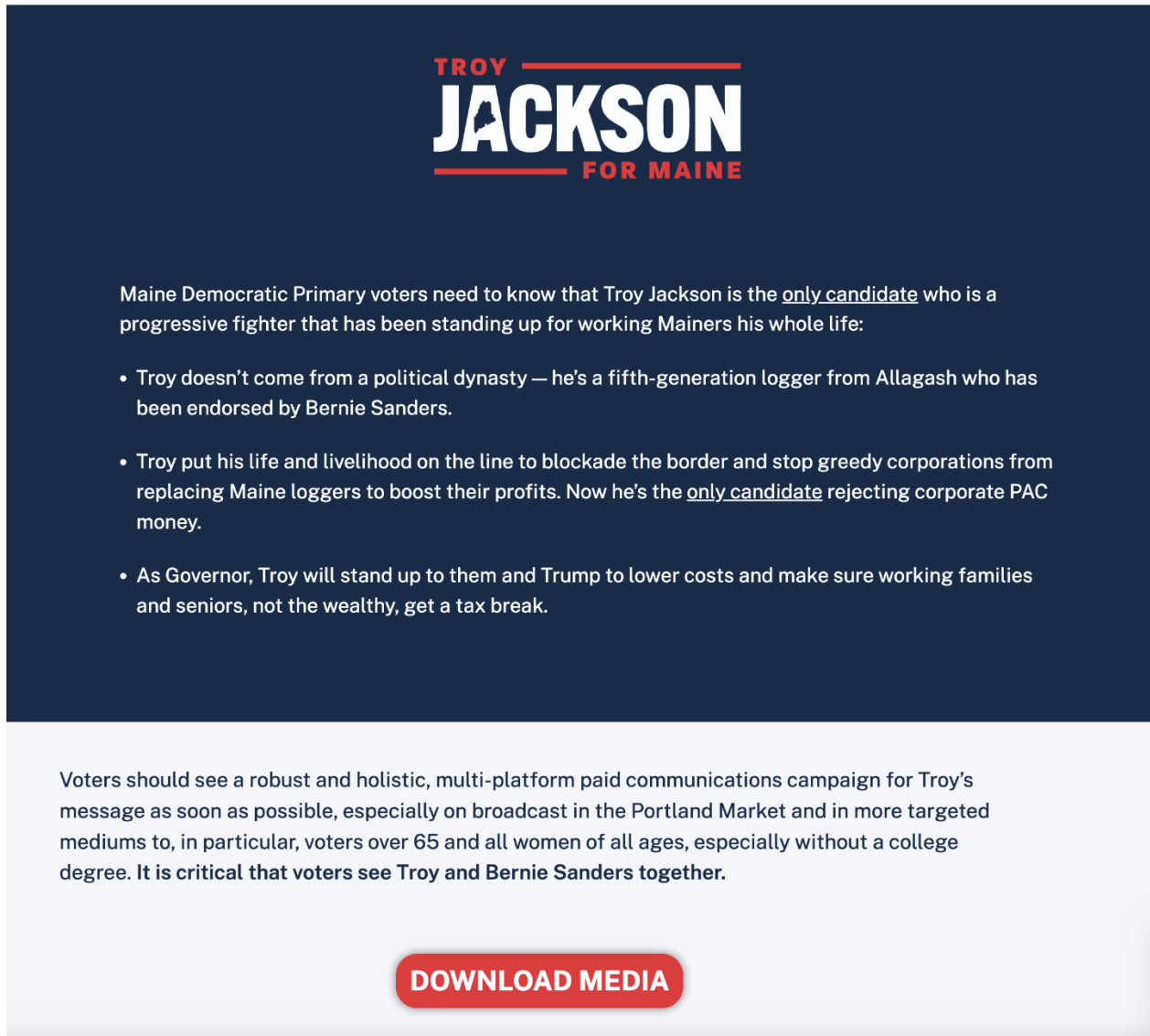
Communication should start as soon as possible with a digital and mail plan that can be sustained through the June 9 primary. Please check this page for updates.

**Consistent primary voters have voted in (1) at least three of the last four non-presidential primaries or (2) registered after the 2020 primary but voted in the '22 and/or '24 primary and (3) voted by mail in either the '22 or '24 primaries.*

Maine Conservation Voters is currently running ads on Pingree's behalf. Press release on the ad campaign here: <https://www.maineconservation.org/2026/04/07/mcvaf-launches-ad-campaign-for-hannah-pingree-for-governor/>

Jackson for Governor

Website: <https://troyjackson.org/>. This website is directly linked on the official campaign website. Go to: <https://jacksonformaine.com/>, scroll to the bottom, and click on "MEDIA" it takes you to this page:



TROY JACKSON FOR MAINE

Maine Democratic Primary voters need to know that Troy Jackson is the only candidate who is a progressive fighter that has been standing up for working Mainers his whole life:

- Troy doesn't come from a political dynasty — he's a fifth-generation logger from Allagash who has been endorsed by Bernie Sanders.
- Troy put his life and livelihood on the line to blockade the border and stop greedy corporations from replacing Maine loggers to boost their profits. Now he's the only candidate rejecting corporate PAC money.
- As Governor, Troy will stand up to them and Trump to lower costs and make sure working families and seniors, not the wealthy, get a tax break.

Voters should see a robust and holistic, multi-platform paid communications campaign for Troy's message as soon as possible, especially on broadcast in the Portland Market and in more targeted mediums to, in particular, voters over 65 and all women of all ages, especially without a college degree. It is critical that voters see Troy and Bernie Sanders together.

DOWNLOAD MEDIA

Here is a link to a recently released independent expenditure on Jackson's behalf:

https://www.maine campaign financedisclosure.com/public/filers/f_01kk7pe34pf8x9esghc60jvts6



Advisory Statement on Red boxing

The Maine Ethics Commission issues this statement for purposes of the 2026 election cycle to confirm how it intends to apply Maine Election Law and a provision in the Commission's rules with respect to red boxed messages placed on a candidate's campaign website.

Expenditures suggested by a candidate. If an outside group spends money to promote a candidate because the candidate suggested the spending, the group has made a contribution to the candidate. 21-A M.R.S. § 1015(5). Such spending can easily exceed the contribution limit for the office the candidate is seeking. For example, if the campaign manager of a 2026 gubernatorial candidate asked a supportive group to purchase \$20,000 in advertising to promote the candidate, the group's expenditure of \$20,000 would amount to an illegal over-the-limit contribution to the candidate because it exceeds the \$2,075 per-election limit. The Commission has adopted a rule specifying certain activities that result in a presumption that spending was made in coordination with a candidate. 94-270 C.M.R. ch. 1, § 6(9).

Red boxing. Red boxing refers to a campaign tactic in which a candidate's website uses signals and phrases that may invite outside groups to engage in advertising desired by the candidate. In some cases, the invitational language appears in a red box and may include:

- suggestions that information needs to be communicated to voters, such as "voters should know that ..." or "voters in Southern Maine need to hear ...,"
- highlighting certain messages or themes for inclusion in communications to voters,
- hints to target certain audiences by location or demographics, such as "independent voters in Northern Maine," or "Democrats under 50," or
- code words that campaign and advertising professionals understand refer to specific media such as television or digital, *e.g.*, "voters need to see," "read," "hear," or "see on the go."

Combining this content in a red boxed message can communicate the candidate's suggested messaging and strategy to outside spenders.

Advisory statement. If an outside spender uses a photograph or logo from a candidate's website as an element in a paid communication to voters, the Commission's rule states that the use of that photo or logo does not, in itself, create a presumption that the outside spender coordinated with the candidate. 94-270 C.M.R. ch. 1, § 6(9)(D)(1). That provision, however, does not condone red boxing.

The Commission advises that, for the remaining part of the 2026 election cycle, red box messages as described above may be interpreted as suggestions to outside groups to spend money, depending on the totality of the circumstances. If sufficient evidence is provided to the Commission, this could result in an investigation to determine whether a candidate received an over-the-limit contribution by suggesting spending from outside groups.

Because the Commission has not provided guidance on this campaign tactic previously, the Commission does not intend to investigate past examples of red boxing by a 2026 candidate, provided the red box messages are no longer on the candidate's website. Any complaints about past redboxing will result in an investigation only if a complainant provides a high degree of proof that red boxing directly resulted in outside spending specifically in the categories that were suggested by the candidate's website.

May 6, 2026



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

To: Commission
From: Jonathan Wayne, Executive Director
Date: May 5, 2025
Re: Agenda Item #6 – Response from Nirav Shah

Mr. James Kilbeth, who filed the request to investigate red boxing by the Nirav Shah campaign, is unable to participate in tomorrow's meeting due to a conflict in the second half of the morning. He asked me to reinforce that he is requesting the Commission to draw a red line stating that redboxing amounts to a suggestion for spending by others.

Attorney Newell Augur submitted the attached response on behalf of the Shah campaign. Mr. Augur states that the 2022 re-election campaign of Governor Janet Mills engaged in red boxing. He also cites to page 17 in a PAC guidebook on the Commission's website that quotes Chapter 1, section 6(9) of the Commission's rules. The Commission staff respond briefly in this cover memo because we believe Mr. Augur is reading too much into these rules.

Mr. Augur relies on this provision in the Commission's rules:

B. An expenditure is presumed to be made in cooperation, consultation or concert with, or at the request or suggestion of a 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 public communication to voters to promote or support the candidate.

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

94-270 C.M.R. ch. 1, § 6(9)(B)(2). Mr. Augur argues that because of the adverb "directly," a candidate has suggested spending only if there has been direct "verbal or electronic correspondence" between the candidate's campaign and the person making the expenditure. The Commission staff responds that this provision merely describes one

hypothetical scenario that results in a presumption of suggested spending. This is not an exhaustive list of all the methods by which a candidate's campaign could suggest spending by others. Candidates and their campaigns could suggest spending through all sorts of channels: a direct face-to-face conversation with the spender; communicating through an intermediary such as a family member or consultant of the candidate; a single email or text; or an extended back and forth discussion.

Mr. Augur also relies on this provision in the rules:

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: ...

(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;

94-270 C.M.R. ch. 1, § 6(9)(D)(3). Commission staff responds that the red box messages of the Shah, Pingree, and Jackson campaigns are not "general, non-specific request[s] for support." Rather they are requests to communicate specific paid messages to specific audiences through specific types of advertising media.

In summary, Commission staff believes that current 94-270 C.M.R. ch. 1, § 6(9) does not clear the way for candidates to post red box messages on their campaign websites.

NEWELL AUGUR

Merrill's Wharf
254 Commercial Street
Portland, ME 04101

157 Capitol Street
Suite 3
Augusta, ME 04330

PH 207.791.1281
FX 207.791.1350
naugur@pierceatwood.com

pierceatwood.com

Admitted in: ME

May 4, 2026

Jonathan Wayne, Executive Director
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

RE: Shah Campaign Response to Kilbreth Complaint

Dear Jonathan,

On behalf of the Shah for Maine Campaign, thank you for the opportunity to respond to Attorney Kilbreth's 4/27/26 complaint.

The practice of "red boxing" identified in the complaint has been part of Maine state elections for at least the past four years. The history of this practice stands in contrast to the complaint's suggestion that this is a recent development, and that the Commission should take steps to prevent the practice from "sprouting up" in Maine.

Included with this letter are two examples of red boxing from the Mills for Maine Campaign in 2022. Both general directives were posted on the Mills for Maine campaign website; the first in August 2022 and a second in October 2022. Both postings from that campaign identify a specific constituency (arguably in a more granular way than the example cited in the complaint), a method by which that constituency might be contacted, and a series of messages that could be delivered to that constituency. Additionally, two other current Democratic gubernatorial campaigns are engaged in the identical practice, although neither of those campaigns is mentioned in the complaint.

The complaint argues that MRSA 21-A §1015 (5) renders any independent expenditure made as a result of these postings or statements as a contribution to the campaign. An expenditure made "at the request or suggestion of" of a

candidate includes these types of general statements of support on a campaign website because the law “does not require a private channel or a specific recipient.” Kilbreth Complaint p. 2.

The Commission has provided prior guidance refuting this argument. In order for an independent expenditure to be presumed a request or suggestion by a candidate, the request must be made “directly” to an entity paying for an independent expenditure. Political Action Committee Campaign Finance Guidebook, Commission on Governmental Ethics & Election Practices (2026) p. 17.¹ At a minimum, this would appear to require verbal or electronic correspondence between a candidate’s campaign and the entity funding an independent expenditure.

This practice of red boxing – as demonstrated by the examples of the Mills Campaign, the two other Democratic campaigns and our own – is well within Maine election law. See MRSA 21-A §1019-B (defining an “independent expenditure” as “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 . . .”). A decision to the contrary puts the Ethics Commission in the near impossible and undoubtedly dangerous position of regulating not only the political content of campaign websites but the individual speech of candidates.²

Perhaps anticipating a complaint like the one filed by Attorney Kilbreth, the Ethics Commission has provided clear and specific guidance on the issue of a candidate’s general statements that otherwise might be viewed as coordination in support of that candidate. Notably, a general statement – whether delivered in a political speech, printed on a campaign flyer, or posted on the campaign website – does not vitiate the status of an independent expenditure absent evidence that the campaign is in contact with the entity making the expenditure and having conversations with that entity about the expenditure:

An expenditure will *not* be presumed to have been made in cooperation, consultation or concert with or request or suggestion of a candidate, solely because the person making the expenditure does so in response to a general, unspecific request for support by a candidate, provided there is

¹ “An expenditure is presumed to be made in cooperation or consultation with a candidate when . . . [t]he candidate has *directly* shared their campaign plans, activities, or needs with the spender for the purpose of facilitating a payment on a communication to voters to promote or support them . . .” (emphasis added).

² Such a decision would present significant First Amendment challenges. See *Buckley v. Valeo*, 424 U.S. 1, 19 (1976).

Jonathan Wayne
Page 3
May 5, 2026

no discussion, cooperation, or consultation with the candidate about the expenditure prior to dissemination (emphasis supplied). Political Action Committee Campaign Finance Guidebook at 17.

We are unaware at the moment of any independent expenditures made in support of Dr. Shah, so the complaint also is facially deficient on those grounds. (There are two other campaigns engaged in red boxing and independent expenditures have already been made in support of both of those candidates.) Yet, even if independent expenditures subsequently were made in support of Dr. Shah, the information currently posted on the campaign website would not make that expenditure a contribution to the campaign. See Political Action Committee Campaign Finance Guidebook at 17.

Consistent with state law, our campaign has not directly shared plans, activities or needs with any potential spender, whether an individual, independent political action committee or other organization, for the purpose of facilitating a communication to voters to promote or support our candidate, other than communications that are paid for and authorized by the campaign. We will adhere to that law throughout this campaign, irrespective of what other campaigns may do.

If the Commission concludes that the language currently posted on our campaign website is inconsistent with state law, we will take it down. We would ask that if any order or guidance is issued, the Commission take similar action with respect to the other candidates who have posted similar content on their websites, and who already are the beneficiaries of independent expenditures.

Sincerely,

A handwritten signature in black ink, appearing to read 'Newell A. Augur', written in a cursive style.

Newell A. Augur
Enclosures

[DONATE](#)

Important Election Updates

As Paul LePage attempts to turn the page on his past, voters throughout Maine, statewide, including independents, non-college-educated women, and college-educated men, need to see on TV that Paul LePage's outrageous comments, threats, inability to work together, and unwillingness to listen to voices other than his own threatens vulnerable Mainers like children and seniors.

Voters throughout Maine, statewide, need to see on TV that Paul LePage is out of step with Mainers on abortion. He opposes a woman's right to choose, has spoken at anti-choice rallies, and has refused to rule out signing restrictions on abortion access into law. If Paul LePage is elected Governor, Maine women could lose control of their reproductive **health**.

Keep Moving Maine Forward.

Email address

Zip Code

JOIN THE TEAM



ABOUT CONTACT PRIVACY POLICY VOTE VOLUNTEER DONATE

AUTHORIZED AND PAID FOR BY MILLS FOR MAINE
PO BOX 94 AUGUSTA, ME 04332 | BARBARA TRAFTON, TREASURER

PO Box 94 Augusta, ME 04332
info@janetmills.com



POWERED BY APOLLO



[DONATE](#)

Important Election Updates

As Paul LePage attempts to turn the page on his past, voters across southern Maine — including independents and non-college-educated men and women — need to see on TV and social media that Paul LePage opposed bipartisan \$850 inflation relief and tried to cut funding for child care. They need to know that his latest fights, conspiracy theories, and lies about Governor Mills all just reinforce that he is unable to tell the truth, to work together with people, and to solve problems. Maine will not go back to the days of chaos, fighting, and divisive governing that hurt Maine people, including his anti-choice positions that could take away women’s reproductive freedoms.

Voters throughout Maine, statewide, need to see on TV that Paul LePage is out of step with Mainers on abortion. He opposes a woman’s right to choose, has spoken at anti-choice rallies, and has refused to rule out signing restrictions on

abortion access into law. If Paul LePage is elected Governor, Maine women could lose control of their reproductive **health**.

Keep Moving Maine Forward.

Email address

Zip Code

JOIN THE TEAM



[ABOUT](#) [CONTACT](#) [PRIVACY POLICY](#) [VOTE](#) [VOLUNTEER](#) [DONATE](#)

AUTHORIZED AND PAID FOR BY MILLS FOR MAINE
 PO BOX 94 AUGUSTA, ME 04332 | BARBARA TRAFTON, TREASURER

PO Box 94 Augusta, ME 04332
info@janetmills.com



POWERED BY APOLLO





MEMORANDUM

To: Maine Commission on Governmental Ethics and Election Practices

From: Maine Citizens for Clean Elections

Date: May 4, 2026

Re: Red Boxing Advisory Statement and Pending Complaints

Maine Citizens for Clean Elections (MCCE) respectfully submits this memorandum regarding the Commission's consideration of red boxing in Maine elections.

MCCE agrees with Commission staff that red boxing is materially different from ordinary candidate speech. Red boxing can undermine public trust in campaign finance law because it is contrary to the basic rule that candidates may not suggest or direct independent spending on their behalf. When so directed, such spending is no longer independent, but is then coordinated, in subversion of contribution limits. Maine law is different from the federal regulatory framework under which this practice has developed in federal campaigns.

MCCE does not request a retroactive finding of violation or the assessment of any penalty against the campaigns identified in the staff materials, provided that those campaigns remove any remaining red boxing materials and refrain from using this practice in the future. Our recommendation is prospective: the Commission should make clear that red boxing is inconsistent with Maine's campaign finance laws and may not be used going forward.

I. Red boxing should be treated as a candidate request or suggestion for outside spending.

Maine law provides that any expenditure made "in cooperation, consultation or concert with, or at the request or suggestion of," a candidate, candidate committee, or their agents is considered a contribution to that candidate. 21-A M.R.S. § 1015(5). That language is broad. It is not limited to private meetings, direct emails, telephone calls, or express agreements.

A candidate who publicly posts targeted instructions telling outside spenders what voters should "see," "read," or "hear," what messages should be used, which audiences should be targeted, and what media should be deployed, and when, is making a request or suggestion within the ordinary meaning of those words. Red boxing is not simply public information. It is campaign strategy made public for the apparent purpose of directing outside spending while preserving formal deniability.

Re: Red Boxing Advisory Statement and Pending Complaints
May 4, 2026

A suggestion does not stop being a suggestion because it is posted on a website rather than spoken in a private meeting. If the same words appearing in a red box were spoken by a candidate or campaign consultant in a one-on-one meeting with an outside spender, it would strain credulity to deny that the candidate had made a suggestion within the meaning of section 1015(5). The legal conclusion should not change merely because the campaign has adopted the unusual convention of placing the same instructions in a so-called “media kit.”

Under current law, a completed expenditure may be necessary before the Commission can calculate and penalize an over-the-limit contribution. But the Commission need not ignore the candidate-side conduct that makes such an expenditure non-independent. It can and should issue prospective guidance warning candidates that red boxing may convert later outside spending into an illegal contribution.

II. The First Amendment does not require Maine to treat red boxing as ordinary public campaign speech.

Candidates have broad constitutional protection to speak to voters, publish campaign materials, state policy positions, criticize opponents, urge public support, and communicate with the press and the general public. The Commission’s guidance should not restrict that activity.

Red boxing is different. Its structure, vocabulary, and placement show that it is designed for political professionals, outside spenders, consultants, media buyers, and allied political actors. References to what voters should “see,” “read,” or “hear,” combined with target audiences, timing, media channels, and preferred claims, are not conventional public persuasion. They are operational guidance.

The Commission would not be regulating red boxing because it disagrees with a candidate’s message. It would be recognizing that a communication providing suggested messages, target audiences, timing, and media channels can function as a request or suggestion for outside spending. Maine law does not prohibit candidates from saying what they believe. It does, however, treat spending made at a candidate’s “request or suggestion” as a contribution.

The constitutional protection for independent expenditures rests on their independence. *Buckley*, *Citizens United*, and *McConnell* all reflect the same basic distinction: independent spending receives special constitutional protection because it is independent of the candidate. Red boxing exploits that distinction by using public webpages to convey the very information that would plainly raise coordination concerns if conveyed privately.

III. Prospective guidance is the fairest and most effective response.

The Commission has not previously issued clear guidance on red boxing in Maine elections. Federal practice has created confusion, and campaign consultants may have assumed, wrongly in

Re: Red Boxing Advisory Statement and Pending Complaints
May 4, 2026

our view, that the FEC's permissive posture in federal elections applies equally in Maine. For that reason, MCCE supports an educational and prospective approach.

The Commission should not make findings of violation or impose penalties against the campaigns identified in the staff materials, so long as they remove any remaining red boxing content and desist from the practice. At the same time, the Commission's guidance should be clear enough to prevent repetition.

MCCE recommends that the Commission state that, going forward, candidates, candidate committees, and their agents may not post public communications that, viewed in context, provide outside spenders with strategic instructions regarding paid communications. Prohibited red boxing content should include, at minimum, combinations of the following: suggested messages, preferred claims or themes, target audiences, geographic or demographic targeting, timing, media channels, coded media references, or other signals designed to guide outside spending.

Ordinary public campaign materials should remain permissible. The problem is not publicity. The problem is using public-facing material as a deliberate channel for campaign-to-outside-spender instruction.

Conclusion

MCCE asks the Commission to issue clear prospective guidance prohibiting red boxing while declining to impose penalties or make findings of violation against campaigns that remove any remaining red boxing content and agree to desist. That approach is fair, gives regulated parties clear notice, and protects the principle that independent expenditures must be genuinely independent, not candidate-directed spending with a public website standing in for the phone call.

If it looks like a duck, quacks like a duck, and comes with a media-buy schedule, the Commission does not have to call it a swan.

21-A M.R.S. § 1012. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. ...

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;

21-A M.R.S. § 1015. Limitations on contributions and expenditures

1. Contributions by individuals. An individual may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$1,950 in any election for a gubernatorial candidate, more than \$475 for a legislative candidate, more than \$575 for a candidate for municipal office and more than \$975 in any election for any other candidate. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate’s spouse or domestic partner. Beginning December 1, 2024, contribution limits in accordance with this subsection are adjusted every 2 years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by \$25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

2. Contributions by party committees, ballot question committees and political action committees. [2023, ch. 244, § 5 (RP).]

2-A. Contributions by business entities. [2023, ch. 244, § 6 (RP).]

2-B. Committees; corporations; associations. A political committee, political action committee, ballot question committee or other committee, firm, partnership, corporation, association or organization may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$1,950 in any election for a gubernatorial candidate, more than \$475 for a legislative candidate, more than \$575 for a candidate for municipal office and more than \$975 in any election for any other candidate. Beginning December 1, 2024, contribution limits in accordance with this subsection are adjusted every 2 years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by \$25. The commission shall post the current contribution limit and the amount of the next adjustment and

the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

2-C. Contributions by individuals to political action committees making independent expenditures. An individual may not make contributions aggregating more than \$5,000 in any calendar year to a political action committee for the purpose of making independent expenditures under section 1019-B, subsection 1. Beginning December 1, 2024, contribution limits in accordance with this subsection are adjusted every 2 years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by \$25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates

2-D. Contributions by political action committees and business entities to political action committees making independent expenditures. A leadership political action committee, a separate segregated fund committee, a caucus political action committee, any other political action committee or any business entity may not make contributions aggregating more than \$5,000 in any calendar year to a political action committee for the purpose of making independent expenditures under section 1019-B, subsection 1. Beginning December 1, 2024, contribution limits in accordance with this subsection are adjusted every 2 years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by \$25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates. For purposes of this subsection, “business entity” includes a firm, partnership, corporation, incorporated association, labor organization or other organization, whether organized as a for-profit or a nonprofit entity.

3. Aggregate contributions. [2023, ch. 324, § 9 (RP).]

3-A. Contributions to candidate seeking nomination by petition; primary election period. For the purposes of contribution limits under subsections 1 and 2-B applicable to a candidate seeking nomination by petition, “any election,” when referring to a primary election, includes the period beginning on the day after the most recent general election for the office that candidate is seeking and ending on the day of the primary election for that office.

4. Political committees; intermediaries. For the purpose of the limitations imposed by this section, contributions made to any political committee authorized by a candidate to accept contributions on the candidate’s behalf are considered to be contributions made to that candidate. If the campaign activities of a political action committee within a calendar year primarily promote or support the nomination or election of a single candidate, contributions to the committee that were solicited by the candidate are considered to be contributions made to the candidate for purposes of the limitations in this section. For purposes of this subsection, solicitation of contributions includes but is not limited to the candidate’s appearing at a fundraising event organized by or on behalf of the political action committee or suggesting that a donor make a contribution to that committee.

For the purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, that are in any way earmarked or

otherwise directed through an intermediary or conduit to the candidate are considered to be contributions from that person to the candidate. The intermediary or conduit shall report the original source and the intended recipient of the contribution to the commission and to the intended recipient.

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.

6. Prohibited expenditures. A candidate, a treasurer, a political committee, a party or party committee, a person required to file a report under this subchapter or their authorized agents may not make any expenditures for liquor to be distributed to or consumed by voters while the polls are open on election day.

7. Voluntary limitations on political expenditures. A candidate may voluntarily agree to limit the total expenditures made on behalf of that candidate's campaign as specified in section 1013-A, subsection 1, paragraph C and subsections 8 and 9.

8. Political expenditure limitation amounts. Total expenditures in any election for legislative office by a candidate who voluntarily agrees to limit campaign expenditures as provided in subsection 7 are as follows:

- A. For State Senator, \$25,000; and
- B. For State Representative, \$5,000.
- C. [2007, ch. 443, § A-14 (RP).]

Expenditure limits are per election and may not be carried forward from one election to another. For calculation and reporting purposes, the reporting periods established in section 1017 apply.

9. Publication of list. The commission shall publish a list of the candidates for State Representative and State Senator who have agreed to voluntarily limit total expenditures for their campaigns as provided in section 1013-A, subsection 1, paragraph C.

For the purposes of subsections 7 and 8 and this subsection, "total expenditures" means the sum of all expenditures made to influence a single election that are made by a candidate or made on the candidate's behalf by the candidate's political committee or committees, the candidate's party or the candidate's immediate family.

10. Business entity defined. [2023, ch. 244, § 8 (RP).]

94-270 CHAPTER 001. PROCEDURES

SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS

. . .

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 public communication, or the person paying for that public communication, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that public 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 public 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; or

(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 public communication to voters to promote or support 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.

E. A paid public communication that disseminates, distributes, or republishes, in whole or in substantial part, a public communication designed, produced, paid for or distributed by the candidate is a contribution to the candidate regardless whether the candidate suggested or requested the expenditure for the public communication, or cooperated with or consulted on the expenditure.

...