



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

Commission Meeting 07/30/2021
Agenda Items 2-6

To: Commissioners
From: Michael Dunn, Esq., Committee Registrar
Date: May 18, 2021 / AMENDED July 19, 2021
Re: Enhanced Compliance Review of Leadership PACs' 2020 Filings (Report 2 of 2)

This memo describes the procedures used in the post-election review of 2020 leadership PACs. The idea for the project originated in 2017 after the Commission completed the investigation of the Respect Maine PAC and considered news coverage of other leadership PACs. The Commission staff did not review leadership PACs in 2018 due to an extended budget crisis (resulting in litigation) and the introduction of a new electronic filing system that occupied far more staff time than was anticipated.

Genesis of Project

On August 30, 2017, the Commission staff reported back to the Commission concerning an investigation of Respect Maine PAC. The Commission determined that a State Senator had made unreported payments from his leadership PAC as loans to a family business, and assessed penalties totaling \$7,500 for the reporting violations. In 2019, the Commission staff presented an outline for a potential one-time review of leadership PACs to be conducted after the November 3, 2020 general election. The Commission directed staff to distribute a letter notifying leadership PACs of a more thorough review of their financial activities in 2020. We sent the mailing on October 9, 2019. At a meeting on November 18, 2020, the Commission authorized the staff to conduct an enhanced compliance review of the finances of leadership PACs with the understanding that the project was not intended to suggest any impropriety by the legislators that established the PACs.

Statutory Authority to Conduct Audits

The enhanced compliance reviews of 2020 leadership PACs were conducted pursuant to two provisions:

- Title 21-A, § 1003(1): “The commission may undertake audits and investigations to determine whether a person has violated this chapter [*i.e.*, the campaign finance reporting laws], chapter 14 [the Maine Clean Election Act], and the rules of the commission.”
- Title 1, § 1008(2): “The general duties of the commission shall be: ... [t]o administer and investigate any violations of those requirements of campaign reports and campaign financing, including the provisions of the Maine Clean Election Act and the Maine Clean Election Fund”

Currently, the Commission staff conducts compliance reviews of all campaign finance reports filed by PACs and ballot question committees. This review is administered by Michael Dunn, Esq. and Lorrie Brann. The Commission staff reviews the reports to make sure that each report appears complete and accurate on its face, all required details appear in the report, and no deficiencies or violations are apparent. The Commission staff follows up when documentation or additional information is needed.

Selection of PACs to be Reviewed

The term, leadership PAC, is not defined in Maine Election Law.¹ For purposes of this review, the Commission has defined leadership PAC to mean:

- A PAC registered in 2020;
- The Legislator is a principal officer or treasurer of the PAC, or one of the people primarily responsible for making decisions for the PAC; and
- The PAC reported raising or spending over \$5,000 in 2020.

Based on these criteria, fifteen (15) PACs were selected for review:

¹ The term “leadership PAC” is now defined by P.L. 2021 Ch. 217 § 3.

| Committees (and Associated Legislators) | 2020 Contributions | 2020 Expenditures |
|---------------------------------------------------|---------------------------|--------------------------|
| Aroostook PAC (John Martin) | \$6,400.00 | \$2,686.00 |
| Charlotte PAC (Charlotte Warren) | \$4,745.00 | \$10,733.23 |
| Committee for Peace and Justice (Michael Brennan) | \$8,755.00 | \$4,755.19 |
| Fecteau for Leadership (Ryan Fecteau) | \$31,876.00 | \$46,557.56 |
| Libby Leadership PAC (Nathan Libby) | \$23,750.00 | \$15,283.90 |
| Maine First PAC (Lawrence Lockman) | \$3,600.00 | \$7,757.01 |
| Maine Opportunity PAC (Andrew Gattine) | \$500.00 | \$18,152.59 |
| One Maine (Kathleen Dillingham) | \$55,428.00 | \$30,468.71 |
| PAC to the Future (Matt Moonen) | \$12,505.00 | \$23,643.13 |
| Prosperity for Maine's Future (Matthew Pouliot) | \$58,515.00 | \$138,182.45 |
| Revive Home Town Maine PAC (Joel Stetkis) | \$25,050.00 | \$22,275.76 |
| Shiretown PAC (Gregg Swallow) | \$5,789.00 | \$4,932.67 |
| Star City PAC (Trey Stewart) | \$10,450.00 | \$28,589.66 |
| Still Fed Up with Taxes (Jeffrey Timberlake) | \$92,063.20 | \$136,585.77 |
| Sunshine Hill (Stacey Guerin) | \$24,000.00 | \$27,720.99 |

Review Procedures

On December 8, 2020, the Commission staff mailed each PAC a letter requesting the following documents:

- All 2020 bank statements for the PAC;
- Receipts/invoices for all expenditures over \$50 incurred during 2020;
- Documentation of any new loans or debts, or any payments thereof in 2020; and
- Records from ActBlue, Anedot, or similar fundraising service of contributions received in 2020.

All PACs were given a deadline of January 31, 2021.

Once these documents were received, the Commission staff began reviewing the documents and then comparing them to the PAC's campaign finance reports. The Commission staff would flag issues² found in the records for appropriate follow-up. On March 9, 2020¹, the Commission staff had completed its initial review and mailed

² The term "issue" here means that information provided raised questions for Commission staff. It does not mean that it was a violation, only that it warranted gathering further information.

specific follow-up questions to each PAC based on the issues that were flagged by the Commission staff. The PACs were to provide the additional information by March 23, 2021.

After reviewing the additional information, the Commission staff would mark each issue as either: (1) Resolved; (2) Exception; or (3) Potential Violation. A Resolved issue means the PAC provided sufficient information to show that the issue was reported appropriately. An Exception means the PAC has slightly deviated from the statutory requirements and no further action is warranted. A Potential Violation means the PAC has significantly deviated from the statutory requirements and the Commission staff may recommend a finding of violation and potentially a civil penalty, if warranted.

On June 7, 2021, the Commission staff mailed the PACs (that were participating in the July 30th meeting) individual reports for its Exceptions and Potential Violations. The Commission staff invited the PACs to submit any replies by June 28, 2021. Lastly, the Commission staff prepared a cover memo and materials for each PAC that documents the issues and any needed follow-ups.

The Commission staff focused on the following issues as part of their review:

- The transactions on the campaign finance reports were reported accurately and completely.
- No transactions have been omitted or duplicated.
- The PAC's actual bank balance can be reconciled with the PAC's reported balance.³
- All required records (receipts, invoices, bank statements, *etc.*) were maintained.
- There were no prohibited transactions (lobbyist contributions, self-enrichment).
- Any other issues that were apparent.

³ For each campaign finance report filed by a candidate or committee, the Commission's efilings system calculates a "cash balance at end of period" based on the transactions reported by the filer, and displays that balance in the financial activity summary on the cover page of the report.

Presented Committees

The Commission staff has concluded its review of the fifteen PACs selected for review. The Commission staff previously reported on the first ten PAC on May 30, 2021. After this presentation of the remaining five PACs, the review will be completed, unless the Commission orders otherwise.

Conclusions

Attached to this memorandum is a chart that breaks down the issues for each PAC. Also attached to this memorandum are the relevant laws that impact the analysis for the issues found in these five committees.

The Commission staff is happy to answer questions that the Commission may have. Thank you for your attention in this matter.

Title 1 Maine Revised Statutes

§ 1015-A. Campaign contributions and solicitations prohibited

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A.** “Contribution” has the same meaning as in Title 21-A, section 1012, subsection 2 and includes seed money contributions as defined in Title 21-A, section 1122, subsection 9, and, with respect to political action committees and ballot question committees, includes contributions as defined in Title 21-A, section 1052, subsection 3. “Contribution” does not include qualifying contributions as defined in Title 21-A, section 1122, subsection 7.
- B.** “Employer” has the same meaning as in Title 3, section 312-A, subsection 5. “Employer” does not include a lobbying firm.
- C.** “Legislative session” means the period of time after the convening of the Legislature and before final adjournment.
- D.** “Lobbying firm” has the same meaning as in Title 3, section 312-A, subsection 9-A.
- E.** “Lobbyist” has the same meaning as in Title 3, section 312-A, subsection 10.
- F.** “Lobbyist associate” has the same meaning as in Title 3, section 312-A, subsection 10-A.

2. Campaign contributions and solicitations prohibited during legislative session.

The following provisions prohibit certain contributions and solicitations and offers of contributions during a legislative session.

- A.** The Governor, a member of the Legislature, a constitutional officer or the staff or agent of these officials may not intentionally solicit or accept a contribution from a lobbyist, lobbyist associate, employer of a lobbyist or lobbying firm during a legislative session.
- B.** A lobbyist, lobbyist associate, employer of a lobbyist or lobbying firm may not intentionally give, offer or promise a contribution to the Governor, a member of the Legislature, a constitutional officer or the staff or agent of these officials during a legislative session.
- C.** The prohibitions in paragraphs A and B apply to contributions directly and indirectly solicited or accepted by or given, offered and promised to a political action committee, ballot question committee or party committee of which the Governor, a member of the Legislature, a constitutional officer or the staff or agent of these officials is a treasurer, officer or primary fund-raiser or decision maker.
- D.** The prohibitions in paragraphs A and B do not apply to the following:
 - (1)** The solicitation or acceptance of a contribution from or the offer or promise of a contribution by a lobbyist, lobbyist associate, employer of a lobbyist or lobbying

firm that is not the property of that lobbyist, lobbyist associate, employer of a lobbyist or lobbying firm;

(2) The solicitation or acceptance of a contribution from or the offer or promise of a contribution by an employer of a lobbyist or lobbying firm related to a special election to fill a vacancy from the time of announcement of the election until the election; or

(3) The solicitation or acceptance of a contribution from or the offer or promise of a contribution by a lobbyist or lobbyist associate related to a special election to fill a vacancy from the time of announcement of the election until the election if the lobbyist or lobbyist associate is eligible to vote or will be eligible to vote on the day of the election in the district where the special election will appear on the ballot.

3. Campaign contributions and solicitations prohibited when Legislature not in legislative session. The following provisions prohibit certain contributions and solicitations and offers of contributions when the Legislature is not in legislative session.

A. When the Legislature is not in legislative session, the Governor, a member of the Legislature or the staff or agent of these officials may not intentionally solicit or accept a contribution from a lobbyist or lobbyist associate unless the lobbyist or lobbyist associate is eligible to vote or will be eligible to vote on the day of the election in a district where the Governor or member of the Legislature will appear on the ballot.

B. When the Legislature is not in legislative session, a lobbyist or lobbyist associate may not intentionally give, offer or promise a contribution to the Governor, a member of the Legislature or the staff or agent of these officials unless the lobbyist or lobbyist associate is eligible to vote or will be eligible to vote on the day of the election in a district where the Governor or member of the Legislature will appear on the ballot.

C. The prohibitions in paragraphs A and B do not apply to the solicitation or acceptance of a contribution from or the offer or promise of a contribution by a lobbyist or lobbyist associate that is not the property of that lobbyist or lobbyist associate.

D. The prohibitions in paragraphs A and B do not apply to the solicitation or acceptance of a contribution from or the offer or promise of a contribution by an employer of a lobbyist or a lobbying firm.

4. Campaign contributions and solicitations prohibited at all times. The following provisions prohibit certain contributions and solicitations and offers of contributions at all times, regardless of whether the Legislature is in legislative session.

A. A gubernatorial or legislative candidate who is not the Governor or a member of the Legislature, or the staff or agent of a gubernatorial or legislative candidate, may not intentionally solicit or accept a contribution from a lobbyist or lobbyist associate unless the lobbyist or lobbyist associate is eligible to vote or will be eligible to vote on the day of the election in a district where the gubernatorial or legislative candidate will appear on the ballot.

B. A lobbyist or lobbyist associate may not intentionally give, offer or promise a contribution to a gubernatorial or legislative candidate who is not the Governor or a member of the Legislature, or the staff or agent of a gubernatorial or legislative candidate, unless the lobbyist or lobbyist associate is eligible to vote or will be eligible

to vote on the day of the election in a district where the gubernatorial or legislative candidate will appear on the ballot.

C. The prohibitions in paragraphs A and B do not apply to the solicitation or acceptance of a contribution from or the offer or promise of a contribution by a lobbyist or lobbyist associate that is not the property of that lobbyist or lobbyist associate.

D. The prohibitions in paragraphs A and B do not apply to the solicitation or acceptance of a contribution from or the offer or promise of a contribution by an employer of a lobbyist or lobbying firm.

5. Exceptions. This section does not prohibit any of the following.

A. The solicitation, acceptance, offer or gift of money or anything of value for bona fide social events hosted for nonpartisan, charitable purposes.

B. The solicitation, acceptance, offer or promise of contributions to a member of the Legislature supporting that member's campaign for federal office.

C. The attendance of the Governor, a member of the Legislature, a constitutional officer, a gubernatorial or legislative candidate or the staff or agent of these persons at fund-raising events held by a municipal, county, state or national political party organized pursuant to Title 21-A, chapter 5, nor the advertisement of the expected presence of any such person at any such event, as long as any such person has no involvement in soliciting attendance at the event and all proceeds are paid directly to the political party organization hosting the event or a nonprofit charitable organization.

6. Violations. The commission may undertake investigations to determine whether any person has violated this section. A person who violates this section is subject to a civil penalty not to exceed \$1,000 for each violation, payable to the State and recoverable in a civil action. A contribution accepted in violation of this section must be returned to the contributor.

Title 21-A Maine Revised Statutes

§ 1004-A. Penalties

The commission may assess the following penalties in addition to the other monetary sanctions authorized in this chapter.

1. Late campaign finance report. A person that files a late campaign finance report containing no contributions or expenditures may be assessed a penalty of no more than \$100.

2. Contribution in excess of limitations. A person that accepts or makes a contribution that exceeds the limitations set out in section 1015, subsections 1 and 2 may be assessed a penalty of no more than the amount by which the contribution exceeded the limitation.

3. Contribution in name of another person. A person that makes a contribution in the name of another person, or that knowingly accepts a contribution made by one person in the name of another person, may be assessed a penalty not to exceed \$5,000.

4. Substantial misreporting. A person that files a campaign finance report that substantially misreports contributions, expenditures or other campaign activity may be assessed a penalty not to exceed \$5,000.

5. Material false statements. A person that makes a material false statement or that makes a statement that includes a material misrepresentation in a document that is required to be submitted to the commission, or that is submitted in response to a request by the commission, may be assessed a penalty not to exceed \$5,000.

When the commission has reason to believe that a violation has occurred, the commission shall provide written notice to the candidate, party committee, political action committee, committee treasurer or other respondent and shall afford them an opportunity to appear before the commission before assessing any penalty. In determining any penalty under subsections 3, 4 and 5, the commission shall consider, among other things, the level of intent to mislead, the penalty necessary to deter similar misconduct in the future and the harm suffered by the public from the incorrect disclosure. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure Rule 80C.

Penalties assessed pursuant to this section that have not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

§ 1019-B. Reports of independent expenditures

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

A. Is any expenditure made by a person, party committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and

B. Is presumed to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 28 days, including election day, before a primary election; during the 35 days, including election day, before a special election; or from Labor Day to a general election day.

2. Rebutting presumption. A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of disseminating the communication stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and shall determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

3. Report required; content; rules. [2009, c. 524, § 6 (RPR); MRSAT. 21-A, § 1019-B, sub—§ 3 (RP).]

4. Report required; content; rules. A person, party committee or political action committee that makes any independent expenditure in excess of \$250 during any one candidate's election shall file a report with the commission. In the case of a municipal election, the report must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

B. A report required by this subsection must contain an itemized account of each expenditure in excess of \$250 in any one candidate's election, the date and purpose of each expenditure and the name of each payee or creditor. The report must state whether the expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. The commission may adopt procedures requiring the electronic filing of an independent expenditure report, as long as the commission receives the statement made under oath or affirmation set out in paragraph B by the filing deadline and the commission adopts an exception for persons who lack access to the required technology or the technological ability to file reports electronically. The commission may adopt procedures allowing for the signed

statement to be provisionally filed by facsimile or electronic mail, as long as the report is not considered complete without the filing of the original signed statement.

5. Exclusions. An independent expenditure does not include:

- A.** An expenditure made by a person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents;
- B.** A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting;
- C.** A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and
- D.** A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate.

§ 1052. Definitions

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

3. Contribution. "Contribution" includes:

- A.** A gift, subscription, loan, advance or deposit of money or anything of value made to a political action committee, except that a loan of money by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- B.** A contract, promise or agreement, expressed or implied whether or not legally enforceable, to make a contribution to a political action committee;
- C.** Any funds received by a political action committee that are to be transferred to any candidate, committee, campaign or organization for the purpose of initiating or influencing a campaign; or
- D.** The payment, by any person or organization, of compensation for the personal services of other persons provided to a political action committee that is used by the political action committee to initiate or influence a campaign.

4. Expenditure. The term "expenditure:"

A. Includes:

- (1)** A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of initiating or influencing a campaign;

(2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in this paragraph; and

(3) The transfer of funds by a political action committee to another candidate or political committee; and

B. Does not include:

(1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, cable television system, newspaper, magazine or other periodical publication, unless these facilities are owned or controlled by any political party, political committee, candidate or the spouse or domestic partner of a candidate;

(2) Activity designed to encourage individuals to register to vote or to vote, if that activity or communication does not mention a clearly identified candidate;

(3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;

(4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by a political action committee in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the political action committee on behalf of any candidate does not exceed \$250 with respect to any election;

(5) Any unreimbursed travel expenses incurred and paid for by a political action committee that volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election; and

(6) Any communication by any political action committee member that is not made for the purpose of influencing the nomination or election of any person to state or county office.

4-A. Influence. "Influence" means to promote, support, oppose or defeat.

§ 1052-A. Registration

A political action committee shall register with the commission and amend its registration as required by this section. A registration is not timely filed unless it contains all the information required in this section.

1. Deadlines to file and amend registrations. A political action committee shall register and file amendments with the commission according to the following schedule.

A. A political action committee as defined under section 1052, subsection 5, paragraph A, subparagraph (1) or (4) that receives contributions or makes expenditures in the aggregate in excess of \$1,500 and a political action committee

as defined under section 1052, subsection 5, paragraph A, subparagraph (5) that receives contributions or makes expenditures in the aggregate in excess of \$5,000 for the purpose of influencing the nomination or election of any candidate to political office shall register with the commission within 7 days of exceeding the applicable amount.

B. A political action committee shall amend the registration within 10 days of a change in the information that political action committees are required to disclose under this section.

C. A political action committee shall file an updated registration form between January 1st and March 1st of each year in which a general election is held. The commission may waive the updated registration requirement for a newly registered political action committee or other registered political action committee if the commission determines that the requirement would cause an administrative burden disproportionate to the public benefit of the updated information.

2. Disclosure of treasurer and officers. A political action committee must have a treasurer and a principal officer. The same individual may not serve in both positions. The political action committee's registration must contain the names and addresses of the following individuals:

A. The treasurer of the political action committee;

B. A principal officer of the political action committee;

C. Any other individuals who are primarily responsible for making decisions for the political action committee;

D. The individuals who are primarily responsible for raising contributions for the political action committee; and

E. The names of any other candidates or Legislators who have a significant role in fund-raising or decision-making for the political action committee.

3. Other disclosure requirements. A political action committee's registration must also include the following information:

A. A statement indicating the specific candidates, categories of candidates or campaigns that the political action committee expects to support or oppose;

B. If the political action committee is formed to influence the election of a single candidate, the name of that candidate;

C. The form or structure of the organization, such as a voluntary association, membership organization, corporation or any other structure by which the political action committee functions, and the date of origin or incorporation of the organization;

D. If the political action committee has been formed by one or more for-profit or nonprofit corporations or other organizations for the purpose of initiating or influencing a campaign, the names and addresses of the corporations or organizations;

- E. The name of the account that the political action committee will use to deposit contributions and make expenditures pursuant to section 1054, and the name and address of the financial institution at which the account is established; and
- F. Any additional information reasonably required by the commission to monitor the activities of political action committees in this State under this subchapter.

§ 1054-A. Duties and liabilities of the treasurer, principal officer and primary decision maker of political action committees

- 1. Duties of the treasurer.** The treasurer of the political action committee shall ensure that the political action committee files and amends the political action committee's registration, files complete and accurate financial reports with the commission and maintains the political action committee's records as required by this chapter and the commission's rules. The treasurer is responsible for the political action committee's performance of these duties regardless of whether the treasurer has delegated administrative tasks related to these duties to another individual.
- 2. Joint responsibilities of the treasurer and principal officer.** The treasurer and the principal officer are jointly responsible for the political action committee's compliance with the requirements of this chapter and the commission's rules. The treasurer and principal officer are responsible for accepting and responding to notices and correspondence from the commission on behalf of the political action committee.
- 3. Participation in spending decisions.** An individual who is the treasurer, principal officer or primary decision maker of the political action committee and who has signed the acknowledgment statement required by section 1052-A, subsection 4 is deemed to have participated in the spending decisions of the political action committee until the commission receives the individual's resignation statement or a notice of the individual's involuntary removal from the political action committee.
- 4. Financial liability.** The commission may hold the treasurer and principal officer jointly and severally liable with the political action committee for any fines assessed against the political action committee for violations of this chapter and chapter 14. In addition, the commission may assess all or part of a fine against any other agent of the political action committee who is directly responsible for a violation, including individuals who have resigned or have been removed involuntarily from the political action committee. In deciding whether to assess a penalty against a treasurer, principal officer or any other individual, the commission may consider, among other things, whether the individual had actual knowledge of the action that constituted the violation or had authorized that action and whether the violation was intentional or caused by an error by a vendor or someone outside the control of the political action committee.

§ 1054-B. Payments to Legislators by political action committees

If a Legislator is a principal officer or treasurer of a political action committee or is one of the individuals primarily responsible for raising contributions or making decisions for the political action committee, the political action committee may not compensate the

Legislator for services provided to the political action committee. The political action committee may not make payments or distribute, loan, advance, deposit or gift money or anything of value to or compensate a business owned or operated by the Legislator. The political action committee may reimburse the Legislator for expenses incurred in the proper performance of the duties of the Legislator, for purchases made on behalf of the political action committee and for travel expenses associated with volunteering for the political action committee. Allowable reimbursement for expenses does not include payments from the political action committee that are determined by the commission to be for the purpose of personal financial enrichment of the Legislator. The funds of the political action committee may not be commingled with the personal funds of the Legislator or the funds of a business owned or operated by the Legislator.

§ 1057. Required records for political action committees

Any political action committee that is required to register under section 1052-A or 1053-B shall keep records as provided in this section for 4 years following the election to which the records pertain.

1. Details of records. The treasurer of a political action committee shall record a detailed account of:

- A.** All expenditures made to or in behalf of a candidate, campaign or political action committee;
- B.** The identity of each candidate, campaign or political action committee;
- C.** The office sought by a candidate and the district the candidate seeks to represent, for candidates that a political action committee has made an expenditure to or in behalf of; and
- D.** The date of each expenditure.

2. Receipts. The treasurer of a political action committee shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50 to initiate or influence a campaign.

3. Record of contributions. The treasurer of a political action committee shall keep a record of all contributions to the political action committee, by name and mailing address, of each donor and the amount and date of the contribution. This provision does not apply to aggregate contributions from a single donor of \$50 or less for an election or referendum campaign. When any donor's contributions to a political action committee exceed \$50, the record must include the aggregate amount of all contributions from that donor.

4. Account statements. The treasurer of a political action committee shall keep account statements relating to the deposit of funds of the political action committee required by section 1054.

§ 1059. Report; filing requirements

A committee required to register under section 1052-A, 1053-B or 1056-B shall file an initial campaign finance report within 7 days of registration and thereafter shall file reports in compliance with this section. All reports must be filed by 11:59 p.m. on the day of the filing deadline, except that reports submitted to a municipal clerk must be filed by the close of business on the day of the filing deadline.

1. Deleted. Laws 2007, c. 443, § A-35.

2. Reporting schedule. A committee shall file reports according to the following schedule.

A. A committee shall file quarterly reports:

- (1)** On January 15th, and the report must be complete as of December 31st;
- (2)** On April 10th, and the report must be complete as of March 31st;
- (3)** On July 15th, and the report must be complete as of June 30th; and
- (4)** On October 5th, and the report must be complete as of September 30th.

B. During any year in which primary and general elections are held, a committee shall file primary and general election reports in addition to the reports required under paragraph A:

- (1)** On the 11th day before the date on which the election is held, which must be complete as of the 14th day before that date; and
- (2)** On the 42nd day after the date on which the election is held, which must be complete as of the 35th day after that date.

A committee shall file primary and general election reports even if the committee did not engage in financial activity to influence the primary or general election.

C. In any election year other than a year described in paragraph B, if a committee has received contributions or made expenditures for the purpose of influencing a ballot question election, a special election or a municipal candidate or referendum election subject to Title 30-A, section 2502, the committee shall file preelection and post-election reports:

- (1)** On the 11th day before the date on which the election is held, which must be complete as of the 14th day before that date; and
- (2)** On the 42nd day after the date on which the election is held, which must be complete as of the 35th day after that date.

D. A committee that files an election report under paragraph B or C is not required to file a quarterly report when the deadline for that quarterly report falls within 10 days of the filing deadline established in paragraph B or C.

E. If a committee is required to file a report 11 days before an election pursuant to paragraph B or C, the committee shall report any single contribution of \$5,000 or

more received or single expenditure of \$1,000 or more made after the 14th day before the election and more than 24 hours before 5:00 p.m. on the day of the election within 24 hours of that contribution or expenditure. The treasurer is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses.

3. Repealed. Laws 1989, c. 504, § 28

4. Repealed. Laws 1989, c. 504, § 28

5. Electronic filing. A committee shall file each report required by this section through an electronic filing system developed by the commission. The commission may make an exception to this electronic filing requirement if a committee submits a written request that states that the committee lacks access to the technology or the technological ability to file reports electronically. The request for an exception must be submitted within 30 days of the registration of the committee. The commission shall grant all reasonable requests for exceptions.

§ 1060. Content of reports

The reports must contain the following information and any additional information required by the commission to monitor the activities of political action committees:

1. Identification of candidates. The names of and offices sought by all candidates whom the political action committee supports, intends to support or seeks to defeat;

2. Identification of committees; parties. The names of all political committees or party committees supported in any way by the political action committee;

3. Identification of referendum or initiated petition. The referenda or initiated petitions that the political action committee supports or opposes;

4. Itemized expenditures. An itemization of each expenditure made to initiate or influence any campaign, including the date, payee and purpose of the expenditure; the name of each candidate, campaign, political committee, political action committee or party committee supported or opposed; and each referendum or initiated petition supported or opposed by the expenditure. If expenditures were made to a person described in section 1012, subsection 3, paragraph A, subparagraph (4), the report must contain the name of the person; the amount spent by that person on behalf of the candidate, campaign, political committee, political action committee, party committee, referendum or initiated petition, including, but not limited to, expenditures made during the signature gathering phase; the reason for the expenditure; and the date of the expenditure. The commission may specify the categories of expenditures that are to be reported to enable the commission to closely monitor the activities of political action committees;

5. Aggregate expenditures. An aggregation of expenditures and cumulative aggregation of expenditures to a candidate, campaign, political committee, political action committee, party committee, referendum or initiated petition;

6. Identification of contributions. Names, occupations, places of business and mailing addresses of contributors who have given more than \$50 to the political action committee in the reporting period and the amount and date of each contribution, except that an organization qualifying as a political action committee under section 1052, subsection 5, paragraph A, subparagraph (5) is required to report only those contributions made to the organization for the purpose of influencing a ballot question or the nomination or election of a candidate to political office and all transfers to or funds used to support the political action committee from the general treasury of the organization; and

7. Other expenditures. Operational expenses and other expenditures that are not made on behalf of a candidate, committee or campaign, except that an organization qualifying as a political action committee under section 1052, subsection 5, paragraph A, subparagraph (5) is required to report only those expenditures made for the purpose of influencing a campaign.

§ 1062-A. Failure to file on time

1. Registration. A political action committee required to register under section 1052-A, 1053-A or 1053-B or a ballot question committee required to register under section 1053-A or 1056-B that fails to do so or that fails to provide the information required by the commission for registration may be assessed a fine of no more than \$2,500. In assessing a fine, the commission shall consider, among other things, whether the violation was intentional, the amount of campaign and financial activity that occurred before the committee registered, whether the committee intended to conceal its campaign or financial activity and the level of experience of the committee's volunteers and staff.

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if it is disproportionate to the level of experience of the person filing the report or to the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A.** A valid emergency of the committee treasurer determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;
- B.** An error by the commission staff; or
- C.** Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to

file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service.

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

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

Any penalty of less than \$ 10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered calendar year. Waiver of a penalty does not nullify the finding of a violation.

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

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

4. Maximum penalties. The maximum penalty under this subchapter is \$10,000 for reports required under section 1053-A, 1056-B or 1059, except that if the dollar amount of the financial activity that was not timely filed or did not substantially conform to the reporting requirements of this subchapter exceeds \$50,000, the maximum penalty is 100% of the dollar amount of that financial activity.

5. Request for a commission determination. If the commission staff finds that a committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the treasurer of the committee within 3 business days following the filing deadline informing the treasurer that a report was not received. If a committee files a report required under this subchapter late, a notice of preliminary penalty must be forwarded to the treasurer of the committee whose report is not received by 11:59 p.m. on the deadline date, informing the treasurer of the commission staff finding of violation and preliminary penalty calculated under subsection 3 and providing the treasurer with an opportunity to request a determination by the commission. A request for determination must be made within 14 calendar days of receipt of the commission's notice. A principal officer or treasurer requesting a determination may either appear in person or designate a representative to appear on the principal officer's or treasurer's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

6. Final notice of penalty. After a commission meeting, notice of the final determination of the commission and the penalty, if any, imposed pursuant to this subchapter must be sent to the principal officer and the treasurer of the committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the principal officer and to the treasurer of the committee. A detailed summary of all notices must be provided to the commission.

7. List of late-filing committees. The commission shall prepare a list of the names of committees that are late in filing a report required under section 1059, subsection 2, paragraph B, subparagraph (1) or section 1059, subsection 2, paragraph C or D within 30 days of the date of the election and shall make that list available for public inspection.

8. Failure to file. A person who fails to file a report as required by this subchapter within 30 days of the filing deadline is guilty of a Class E crime, except that, if a penalty pursuant to subsection 8-A is assessed and collected by the commission, the State may not prosecute a violation under this subsection.

8-A. Penalties for failure to file report. The commission may assess a civil penalty for failure to file a report required by this subchapter. The maximum penalty for failure to file a report required under section 1056-B or section 1059 is \$ 10,000 or the amount of financial activity not reported, whichever is greater.

9. Enforcement. A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

§ 1062-B. Failure to keep records

A committee that fails to keep records required by this chapter may be assessed a fine of up to \$10,000 or the amount of financial activity for which no records were kept, whichever is greater. In assessing a fine, the commission shall consider, among other things, whether the violation was intentional, whether the violation occurred as the result of an error by someone outside the control of the committee, whether the committee intended to conceal its financial activity, the amount of financial activity that was not documented and the level of experience of the committee's volunteers and staff.

CMR 94-270-001

94 270 001. PROCEDURES

SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS

- 1.** The date of a contribution is the date it is received by a candidate, an agent of the candidate, a candidate's committee, a party committee and its agents, or a political action committee and its agents.
- 2.** A loan is a contribution at the time it is made unless the loan was made by a financial institution in the State of Maine in the ordinary course of business. Loans continue to be contributions until they are repaid. Loans are subject to the candidate contribution limitations, except for loans made by the candidate, the candidate's spouse, or a financial institution in the State of Maine in the ordinary course of business. The Commission may consider any reported loan to be a cash contribution if it remains unpaid four years after the election in which it was incurred.
- 3.** Candidates and political action committees must report the name, address, occupation and employer of each individual contributor who gives, in the aggregate, more than \$ 50 for the reporting period. The reporting is required for private contributions raised by privately financed candidates and for seed money contributions to candidates participating in the Maine Clean Election Act. Candidates, political action committees, ballot question committees, and party committees must make a reasonable effort to obtain the employment information of the contributor when required by statute. The reasonable effort must include requesting the employment information and providing a convenient means for the donor to provide the information, such as a paper form to be submitted with a contribution or text fields to enter the information on an online fundraising screen. If a candidate or committee is unable to obtain the information from the contributor in response to a candidate's or committee's request, the candidate or committee shall indicate "information requested" in the occupation and employer sections of the campaign finance report. If the Commission staff believes that due to the amount of missing information further inquiry is warranted, the Commission staff shall verify whether the candidate or committee has made a reasonable effort to obtain the information.
- 4.** Unless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee.
 - A.** A commercial vendor that has provided a discount to a candidate or political committee because of a defect in performance or other business reason has not

made a contribution if the vendor grants substantially similar discounts to other customers in the ordinary course of the vendor's business.

B. If a candidate is a public official who is provided a vehicle for transportation by a public entity for the purpose of conducting official duties, the use of such vehicle for campaign purposes is considered to be an in-kind contribution to the candidate from the public entity unless the candidate reimburses the public entity for the use of the vehicle.

5. An employer that has authorized an employee to provide services without charge to a candidate or political committee during the employee's paid work-time has made an in-kind contribution to the candidate or political committee. No contribution has been made if the employee is providing services as a volunteer outside of the employee's paid work-time.

6. A commercial vendor that has extended credit to a candidate or political committee has not made a contribution if the credit is extended in the ordinary course of the vendor's business and the terms are substantially similar to extensions of credit made to nonpolitical customers that are of similar risk and size of obligation. The Commission shall presume any debt that remains unpaid more than six months after the election in which the debt was incurred to be a contribution to the candidate or political committee unless the candidate or committee provides clear and convincing evidence to the Commission that they intend to raise funds or take other measures to satisfy the debt. The Commission shall determine whether any debt that remains unpaid for more than four years after the election should be deemed a contribution to the candidate or committee. The Commission may take into consideration any evidence it believes is relevant, including evidence that the creditor did not intend to make a contribution to the candidate or committee or that the candidate or committee is unable to pay the debt.

7. For the purposes of the limitations imposed by 21-A M.R.S.A. §1015(1), 21-A M.R.S.A. §1015(2), 21-A M.R.S.A. §1015(3), 21-A M.R.S.A. §1018-B and 21-A M.R.S.A. §1056, the following guidelines shall apply:

A. All contributions received through the day of the primary election by candidates enrolled in a political party are deemed to be received for the primary election, unless the candidate designates the contribution for the general election on the applicable campaign finance report. If a candidate receives a contribution before the primary election and designates it for the general election, the candidate must deposit the contribution in an account that is separate from all funds received for the primary election and may not use the contribution in any way to promote the candidate's nomination in the primary election.

A-1. For an election determined by ranked-choice voting, the day of the primary election is deemed to be the date on which the Secretary of State submits the tabulation of election results to the Governor, pursuant to Title 21-A, section 722.

B. If a candidate loses in the primary, all contributions made to that candidate for the purpose of liquidating debts and liabilities associated with the candidate's candidacy are deemed to be made in the primary election.

C. All contributions made to a general election candidate from the day after the primary election through the date of the general election are deemed to be made for the general election.

D. All contributions made after the general election to a general election candidate for the purpose of reducing debts and liabilities associated with the candidate's candidacy are deemed to be made in the general election.

E. After the day of a candidate's last election, all contributions made to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election.

F. Subparagraphs A through E above shall apply to any write-in candidate who has qualified under 21-A M.R.S.A. §723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.

8. If a political committee that is required to file reports with the Commission sells an item to raise funds, the entire amount received is a contribution to the committee. If the political committee provides meals or entertainment at a fundraising event, the entire amount paid by the donor is a contribution to the committee. [FOR EXAMPLE: IF A SUPPORTER PAYS A CANDIDATE COMMITTEE \$ 20 FOR A T-SHIRT THAT COST THE CAMPAIGN \$ 5, THE SUPPORTER HAS MADE A \$ 20 CONTRIBUTION. IF A SUPPORTER PAYS \$ 100 FOR A TICKET TO A FUNDRAISING DINNER, THE SUPPORTER HAS MADE A \$ 100 CONTRIBUTION EVEN IF THE COMMITTEE PROVIDES A MEAL WORTH \$ 30.]

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

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

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

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

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

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

received any campaign-related compensation or reimbursement from the candidate;

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

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

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

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

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

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

(2) the person making the expenditure has previously provided advice to the candidate on suggested communication strategies, budgets, issues of public policy, or other campaign plans or activities;

(3) the person makes an expenditure in response to a general, non-specific request for support by a candidate, provided that there is no discussion, cooperation or consultation with the candidate prior to the expenditure relating to the details of the expenditure;

(4) the spender has also made a contribution to the candidate, or has discussed with the candidate his or her campaign plans or activities as part of the candidate's solicitation for a donation;

(5) the expenditure is made by a for-profit or non-profit organization for invitations, announcements, food and beverages and similar costs associated with an event to which the candidate has been invited by the organization to make an appearance before the organization's members, employees, shareholders and the families thereof; or

(6) the expenditure is made by an individual who spends \$ 100 or less for costs associated with a sign that is lettered or printed individually by hand and that reproduces or replicates a candidate's campaign-related design or graphic.

10. Funds or services received solely for the purpose of conducting activities to determine whether an individual should become a candidate are not contributions if the individual does not become a candidate. Examples of such activities include, but

are not limited to, conducting a poll, telephone calls, and travel. The individual shall keep records of all such funds or services received. If the individual becomes a candidate, the funds or services received are contributions and are subject to the reporting requirements of 21-A M.R.S.A. §1017. The amount and source of such funds or the value of services received must be disclosed in the first report filed by the candidate or the candidate's authorized campaign committee, regardless of the date when the funds or services were received, in accordance with the Commission's procedures for reporting contributions.

Funds or services used by an individual for activities indicating that he or she has decided to become a candidate for a particular office are contributions. Examples of such activities include, but are not limited to: using general public political advertising to publicize his or her intention to campaign for office; hiring staff or consultants for campaign activities; raising funds in excess of what could reasonably be expected to be used for exploratory activities; making or authorizing statements that refer to him or her as a candidate; or taking action to qualify for the ballot.

11. The statutory exception to the definition of "contribution" in 21-A M.R.S.A. §1012 (2)(B)(2) applies when an individual provides real or personal property or pays for invitations, food or beverages as an incidental cost of providing voluntary personal services for a candidate-related activity. The costs of food and beverages are exempt only if they relate to the personal services provided by the volunteer (for example, assisting at a house party, or hosting an evening of envelope-stuffing by volunteers). The costs of invitations for a campaign event may not be shared and are exempt only if paid by a single volunteer providing the real property for the event.

SECTION 7. EXPENDITURES

1. Expenditures by Consultants, Employees, and Other Agents of a Political Campaign

A. Each expenditure made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc., employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee must be reported separately by the candidate or committee as if made or incurred by the candidate or committee directly. The report must include the name of the third party vendor or payee to whom the expenditure was made, the date of the expenditure, and the purpose and amount of the expenditure. It is not sufficient to report only the total retainer or fee paid to the person, agency, firm, organization, etc., if that retainer or fee was used to pay third party vendors or payees for campaign-related goods and services.

B. If a candidate or committee has paid a media buyer, advertising consultant or similar contractor to purchase advertising time or for the production of television or radio advertising, the candidate or committee may disclose the advertising time and production costs in the aggregate, rather than itemizing each payment made by the contractor to a third party vendor or payee. Maine Clean Election Act candidates must obtain from their contractor(s) documentation of every payment of \$ 50 or more made on their behalf by a contractor or subcontractor related to television or radio advertising.

2. Expenditures by Political Action Committees. In addition to the requirements set forth in 21-A M.R.S.A. §1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.

3. Reporting Debts and Unpaid Obligations

A. The following events constitute expenditures, even if the payment for a good or service has not been made at the time of the event:

(1) The placement of an order for a good or service;

(2) The signing of a contract for a good or service;

(3) The acceptance of the delivery of a good or the performance of a service by a vendor; or

(4) A promise or an agreement (including an implied one) that a payment will be made in exchange for a good or service.

B. For reporting purposes, the expenditures listed in paragraph A are designated as debts or obligations prior to payment for the goods or services being made.

C. If a person required to file a campaign finance report has a debt or obligation which remains unpaid at the end of the report period, the person shall report the date, amount, vendor, and purpose of the debt or obligation. If the exact amount is not known, the person filing the report shall report an estimate of the amount (preferably obtained in a written statement from the vendor).

D. If a debt or obligation occurs in the same report period as a payment for that debt or obligation, the person filing the report will report only the payment, not the debt or obligation.

E. A candidate or committee is not required to report a payment for a good or service in a 24-Hour Report, if the candidate or committee reported a debt for that good or service in the last regularly scheduled campaign finance report.

4. Advance Purchases of Goods and Services for the General Election [Repealed]

5. All campaign-related payments made with the personal funds or credit card of the candidate or an individual authorized by the candidate must be reported as expenditures in the reporting period during which the payment to the vendor or payee is made. The candidate must report the name of the vendor or payee to whom the payment was made, the date of the expenditure, and the purpose and amount of the expenditure. When the expenditure is reported, the candidate should indicate the person who made the payment by entering "Paid by [name of candidate or supporter]" in the remarks section of the expenditure schedule. It is not sufficient to report only the name of the candidate or authorized individual to whom reimbursement was made and the total amount of the reimbursement.

6. Multiple expenditures for bank fees and for vehicle travel may be reported in an aggregate amount, provided that the candidate or committee identifies the time period of the expenditures in the remarks section of the report.

7. When a political action committee or party committee makes an expenditure for a communication to voters for the purpose of influencing the election of a clearly

identified candidate, the amount spent to influence that candidate's election must be specified on the regularly filed campaign finance report of the committee, regardless whether the communication expressly advocates for the election or defeat of the candidate. If a single expenditure influences the election of more than one candidate, the political action committee or party committee shall itemize the amount spent per candidate.

8. Payments made or obligations incurred solely for the purpose of conducting activities to determine whether an individual should become a candidate are not expenditures if the individual does not become a candidate. Examples of such activities include, but are not limited to, conducting a poll, telephone calls, and travel. The individual shall keep records of all such payments and obligations. If the individual becomes a candidate, the payments made or obligations incurred are expenditures and are subject to the reporting requirements of 21-A M.R.S.A. §1017. Such expenditures must be disclosed in the first report filed by the candidate or the candidate's authorized campaign committee, regardless of the date when the funds were expended, in accordance with the Commission's procedures for reporting expenditures.

Payments made for activities indicating that an individual has decided to become a candidate for a particular office are expenditures. Examples of such activities include, but are not limited to: using general public political advertising to publicize his or her intention to campaign for office; hiring staff or consultants for campaign activities; raising funds in excess of what could reasonably be expected to be used for exploratory activities; making or authorizing statements that refer to him or her as a candidate; or taking action to qualify for the ballot.

9. Exception to Disclaimer Requirements for Certain Handbills, Campaign Signs, and Internet or E-Mail Communications

For purposes of applying the exclusions listed in Title 21-A, section 1014, subsection 6, paragraphs A through C, the following terms have the following meanings:

A. "Cost" includes all payments or obligations incurred, and the value of all goods and services received, for the purpose of creating, designing, preparing or distributing the communications. **B.** "Internet or e-mail communication" means any communication transmitted over the Internet, including but not limited to: sending or forwarding electronic messages; social networking; providing a hyperlink or other direct access to another person's website; creating, maintaining or hosting a website or blog; placing material on another person's website; and any other form of communication distributed over the Internet. **C.** "Acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent [thereof]" means acting without any suggestion, request, direct or indirect authorization or compensation or reimbursement from any such candidate, committee or agent.

10. Press Exemption. In order for the costs of preparing and disseminating a news story, commentary, or editorial to be exempt from the definitions of expenditure under the press exemption [§§ 1012(3)(B)(1) & 1052(4)(B)(1)], the following criteria must be met:

A. the names of the persons or entities who own, control and operate the broadcasting station or publication are identified within the publication or otherwise made known to the public; and

B. the broadcasting station or publication is not owned or controlled by any political party, political action committee or ballot question committee and is not owned or controlled by any candidate for state, county or municipal office whose candidacy, election campaign, or opponent is a subject of the news story, commentary or editorial, or by the authorized campaign committee of such a candidate, or by a member of such a candidate's immediate family.

In addition to the above criteria, to qualify as a periodical publication, including one in electronic form on the Internet, or a newspaper or magazine, a publication (i) must have been disseminating news stories, commentaries or editorials on a variety of topics to the general public on a periodic basis for at least the previous twelve months, or (ii) must have a record of disseminating news stories, commentaries or editorials on a variety of topics to the general public or other objective indicators that the publication will continue to be published on a periodic basis beyond the election cycle during which the press exemption is claimed.

For purposes of this section, broadcasting station includes a cable television system.

11. Shared Expenditures by Candidates. When two or more candidates have jointly purchased a communication to voters or another good or service, a candidate will not be considered to have received an in-kind contribution if the cost is allocated among the candidates in proportion to the benefit received by each candidate.

12. Disclosure of top funders in paid communications. If an entity makes an independent expenditure in excess of \$ 250 to influence a candidate's election, the communication is required to contain the entity's top three funders under Title 21-A, section 1014, subsection 2-B.

A. The disclosure included in a cable television or broadcast television communication must conform with those portions of federal regulations 47 CFR §73.1212(a)(2)(ii) and 47 CFR §76.1615(a) which regulate text size and duration of sponsorship information. Specifically

(1) the font size must be equal to or greater than four percent of the vertical picture height, and **(2)** the text must appear for not less than four seconds.

B. For communications listed in Title 21-A, section 1014, subsection 2-B with a visual aspect other than television or video communications, the statement of funders must appear in a font size that is 12-point or larger.

C. If the communication is funded by a political action committee that is a separate or segregated fund as defined in Title 21-A, section 1052, subsection (5)(A)(1), but not a separate legal entity, the top three funders to be listed are the top three funders of the legal entity (corporation, membership organization, cooperative or labor or other organization) that established the fund.

D. If the communication is funded by a political action committee that is fully funded or controlled by another political action committee or legal entity, the top

three funders to be listed are the top three funders of that entity that fully funds or controls the political action committee.

E. For any other political action committee that does not fall within the parameters of paragraphs C or D, the top three funders are the contributors who have given the top three aggregate contributions, as defined in Title 21-A, section 1052(3), during the time period specified in Title 21-A, section 1014, subsection 2-B, paragraph A.

Communications for which including the statement required by Title 21-A, section 1014, subsection 2-B would be impossible or impose an unusual hardship due to their format or medium are exempt from the requirements of that section.

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. General. Any person, party committee, political committee or political action committee that makes any independent expenditure in excess of \$ 250 per candidate in an election must file a report with the Commission according to this section.

2. Definitions. For purposes of this section, the following phrases are defined as follows:

A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.

B. "Expressly advocate" means any communication that

(1) uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"; or

(2) is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.

C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.

3. Reporting Schedules. Independent expenditures in excess of \$ 250 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following schedule:

A. [Repealed]

B. [Repealed]

(1) 60-Day Pre-Election Report. A report must be filed by 11:59 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.

(2) Two-Day Report. From the 60 [th] day through the 14 [th] day before an election, a report must be filed within two calendar days of the expenditure.

(3) One-Day Report. After the 14 [th] day before an election, a report must be filed within one calendar day of the expenditure.

For purposes of the filing deadlines in this paragraph, if the expenditure relates to a legislative or gubernatorial election and the filing deadline occurs on a weekend, holiday, or state government shutdown day, the report must be filed on the deadline. If the expenditure relates to a county or municipal election, the report may be filed on the next regular business day.

C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate.

D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.

E. An independent expenditure report may be provisionally filed by facsimile or by electronic mail to an address designated by the Commission, as long as the facsimile or electronic copy is filed by the applicable deadline and an original of the same report is received by the Commission within five calendar days thereafter.

4. Multi-Candidate Expenditures. When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.

A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

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

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

[Note: For example, if an expenditure on a legislative scorecard that names 150 Legislators is distributed to voters within a town in which only one Legislator is seeking re-election, 100% of the cost should be allocated to that Legislator's race.]

5. Rebuttable Presumption. Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and that is disseminated during the 28 days before a primary election, the 35 days before a special election or from Labor Day to the general election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) Printed advertisements in newspapers and other media;
- (2) Television and radio advertisements;
- (3) Printed literature;
- (4) Recorded telephone messages;
- (5) Scripted telephone messages by live callers; and
- (6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.

B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate, the candidate's immediate family, or a political committee;
- (2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;
- (3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
- (4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
- (5) other communications and activities that are excluded from the legal definition of "expenditure" in the Election Law.

C. If an expenditure is covered by the presumption and is greater than \$ 250 per candidate per election, the person making the expenditure must file an

independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. Any independent expenditure of \$ 250 or less per candidate per election does not require the filing of an independent expenditure report or a rebuttal statement.

D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the applicable presumption period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.

E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.

F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.

G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.