



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

To: Commission
From: Emma Burke, Political Committee & Lobbyist Registrar
Date: November 14, 2022
Re: Closing Television Advertisement – Independent Expenditure Determination

The Bruce Poliquin for Congress committee (“the Poliquin Committee”) has requested a determination by the Commission the cost of a final television advertisement is not an independent expenditure (IE) for Paul LePage. The 30-second ad contains multiple pieces of video footage, including roughly two seconds of Bruce Poliquin and Paul LePage walking side by side. In the rebuttal request form and statement from the Poliquin campaign manager, Benjamin Trundy provides the script:

I am so fearful this winter for oil prices. We can't go on like this. Jared Golden's votes are definitely making inflation worse. Jared Golden is not independent. Golden and Biden are lockstep. I'm a marine corps veteran and I cannot support Jared Golden. We need to make a change. Maine needs Bruce Poliquin. Bruce Poliquin is concerned with Maine people of all walks of life. I know Bruce Poliquin cares for Maine and I know he'll fight for us. I'm Bruce Poliquin and I approve this message.

The content of the television advertisement is overwhelmingly about Bruce Poliquin. His voice and viewpoints are heard throughout the ad. He is shown on-screen through the entire ad, except for some testimonials given by three other individuals. Paul LePage is not mentioned by name. There is no indication he is a candidate and no encouragement to vote for him. The office of Governor is not mentioned.

The Commission staff acknowledges some people viewing the ad may feel it contains at least a little promotion of Paul LePage’s candidacy. However, if there is any benefit at all to Mr. LePage,

it is very slim and collateral to the ad's purpose which is to promote Bruce Poliquin. Even though 21-A M.R.S. § 1019-B was amended in 2003 to extend IE reporting beyond express advocacy, the Commission staff recommend a pragmatic approach that in order to require IE reporting (and potentially PAC registration) one would need more substantial evidence of an intent to influence than a two-second image of a person whose name is not mentioned nor the office they are seeking election to.

Thank you for your consideration of this memo.



Statement to Rebut Presumption of Independent Expenditure

Instructions: Under 21-A M.R.S.A. §1019-B, an expenditure to design, produce, or disseminate a communication that names or depicts a clearly identified candidate and that 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 is presumed to be an independent expenditure. The individual or organization making the expenditure may attempt to rebut the presumption by filing this form with the Ethics Commission. Any documents, statements, or other evidence (e.g., a copy of a printed communication or a script of a recorded communication) supporting the rebuttal may be attached to this form. The form is required to be filed with the Ethics Commission within 48 hours of disseminating the communication, including weekends and holidays. The form may be filed by faxing it to (207) 287-6775 or by sending a scanned copy to ethics@maine.gov, provided that the Commission receives the original within 5 days.

Individual/Organization making the expenditure:

Poliquin For Congress

Contact person:

Ben Trundy

Contact's mailing address:

P.O. Box 524

Bangor, ME 04402

Contact's telephone number(s):

207-607-9981

Candidate(s) named or depicted:
(use additional pages if necessary)

Paul LePage

Type of communication:
(e.g., mailer, television or radio ad, online ad)

Television

Date(s) of dissemination:

11/2/22 - 11/8/22

Payee or creditor (including address):

Poliquin For Congress

P.O. Box 524 Bangor, ME 04402

The costs for the communication referred to above were not incurred with the intent to influence the nomination, election, or defeat of a candidate.

Signature of authorized individual

Benjamin Trundy

Date

11/4/22

Printed name of authorized individual

Benjamin Trundy

§1019-B. Reports of independent expenditures

1. Independent expenditures; definition. For the purposes of this section, an "independent expenditure" means 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 and that:

A. Is made to design, produce or disseminate any communication that expressly advocates the election or defeat of a clearly identified candidate; or [PL 2021, c. 132, §7 (AMD).]

B. Unless the person, party committee or political action committee making the expenditure demonstrates under subsection 2 that the expenditure was not intended to influence the nomination, election or defeat of the candidate, is 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. [PL 2021, c. 132, §7 (AMD).]

[PL 2021, c. 132, §7 (AMD).]

2. Commission determination. A person, party committee or political action committee may request a determination that an expenditure that otherwise meets the definition of an independent expenditure under subsection 1, paragraph B is not an independent expenditure by filing a signed written statement with the commission within 7 days 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, party committee or political action committee chooses to submit. The commission may gather any additional evidence it determines 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.

[PL 2021, c. 132, §8 (AMD).]

3. Report required; content; rules.

[PL 2009, c. 524, §6 (RPR); MRSA T. 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. [PL 2011, c. 558, §2 (AMD).]

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. [PL 2015, c. 350, §6 (AMD).]

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. [PL 2013, c. 334, §16 (AMD).]

[PL 2019, c. 323, §17 (AMD).]

5. Exclusions. An independent expenditure does not include:

A. [PL 2021, c. 132, §9 (RP).]

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; [PL 2011, c. 389, §21 (NEW).]

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 [PL 2011, c. 389, §21 (NEW).]

D. A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate. [PL 2011, c. 389, §21 (NEW).]

[PL 2021, c. 132, §9 (AMD).]

SECTION HISTORY

PL 2003, c. 448, §3 (NEW). PL 2007, c. 443, Pt. A, §20 (AMD). PL 2009, c. 366, §5 (AMD). PL 2009, c. 366, §12 (AFF). PL 2009, c. 524, §§6, 7 (AMD). PL 2011, c. 389, §§20, 21 (AMD). PL 2011, c. 389, §62 (AFF). PL 2011, c. 558, §2 (AMD). PL 2013, c. 334, §§15, 16 (AMD). IB 2015, c. 1, §§5, 6 (AMD). PL 2015, c. 350, §6 (AMD). PL 2019, c. 323, §§15-17 (AMD). PL 2021, c. 132, §§7-9 (AMD).