

- To: Commissioners
- From: Emma Burke, Political Committee & Lobbyist Registrar
- Date: August 14, 2023
- Re: Request by Josh McClenney for Waiver of Late-Filing Penalty Due to Late June Lobbying Report

Josh McClenney, the lobbyist for American Council for an Energy Efficient Economy, was required to file his June Lobbying Report no later than Thursday, June 15, 2023, but it was not until June 22<sup>nd</sup>, 7 days late. The preliminary penalty for the late report is \$100. Mr. McClenney requests a waiver of the penalty.

## LEGAL REQUIREMENTS

When the Legislature is in session, registered lobbyists shall file with the commission, no later than 11:59 p.m. on the 15<sup>th</sup> calendar day of each month, a report concerning the lobbyist's activities for the previous month regarding each client. 3 M.R.S. § 317(1). If a lobbyist is late in filing a monthly report, the amount of the penalty is determined by how late the report was filed. If the report is filed within 24 hours of the deadline, the penalty is \$50, otherwise the penalty is \$100. The penalty will then increase another \$100 for every additional month the report is late. 3 M.R.S. § 319(1).

## DISCUSSION

Mr. McClenney registered as a lobbyist with the Commission on May 3, 2023. The first report due for his lobbying activity was the June Lobbying Report, to disclose May lobbying activity. The report was due June 15<sup>th</sup>. On June 14<sup>th</sup>, Mr. McClenney called and left Political Committee & Lobbyist Registrar Emma Burke a voicemail stating he had attempted to file his first report, but had accidentally filed the short form version instead, which states the lobbyist had no activity in the reporting month. On the morning of June 14<sup>th</sup>, Ms. Burke unfiled the short form version of the June Lobbying Report, and emailed Mr. McClenney stating she had done so, and he would be able

to file the long form version of his report. Mr. McClenney responded thanking Ms. Burke about an hour later.

On June 15<sup>th</sup>, Ms. Burke sent two emails to Mr. McClenney, whose June Lobbying Report had not yet been filed correctly, reminding him of the filing deadline. The second email notified him she would be on vacation from June 18<sup>th</sup> through June 20<sup>th</sup> and would not be able to provide notice to lobbyists with unfiled reports during that time. When Ms. Burke returned to work on June 21<sup>st</sup>, she sent another email to Mr. McClenney notifying him he had not filed his June Lobbying Report yet. Mr. McClenney, who had also been on vacation, responded to Ms. Burke's email on June 22<sup>nd</sup>, stating his apologies. Mr. McClenney's June Lobbying Report for American Council for an Energy Efficient Economy was filed on June 22, 2023, 7 days late.

Based on the statute for calculating late-filing penalties for monthly lobbying reports, the preliminary penalty amount is \$100.

In his waiver request, Mr. McClenney states he attempted to file the report on time on June 14<sup>th</sup>, made the mistake with the short form, and then attempted to file again on the same day. He believed he had filed, but realized he may have simply saved the report instead of filing it.

#### **STAFF RECOMMENDATION**

Lobbyists are a unique filer with the Commission, as they are compensated employees or independent contractors of their client, and their monthly reports are part of their paid work. Reports are always due at least two weeks after the end of the reporting month, creating a large window of time for reports to be timely filed in. In the case of Mr. McClenney, there are multiple factors to consider. He is a new lobbyist in Maine, and this report was his first using Maine's eFiling system. However, he did not log into the system or attempt to file a report until June 13<sup>th</sup>, 40 days after he was allowed access to eFiling. For lobbyist penalties, "The commission may waive the fine or penalty in whole or in part if [it] determines the failure to…report was due to mitigating circumstances or the fine or penalty is disproportionate to the level experience of the lobbyist or the harm suffered by the public from the late…report. [...] 'mitigating circumstances' means:

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

B. An error by the commission; or

C. Circumstances determined by the commission to warrant the waiver of the fine or penalty in whole or in part, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with this chapter, including, but not limited to, unexplained delays in Internet service." 3 M.R.S. § 319(1)

Since 2018, the Commission has heard seven waiver requests for lobbyists requesting a waiver of penalties for a late-filed monthly report. Four of the penalties, three for \$50 and one for \$100, were not waived. Three of the penalties, all of \$100, were reduced by half to \$50. The reasons for these waiver requests were illness, issues with a merged username, and confusion regarding the filing of a non-session waiver.

The Commission staff does not recommend a reduction in the preliminary penalty of \$100 because it is proportionate to the violation of filing a lobbyist report seven days late by someone who is required to make the disclosure as part of their paid occupation. There was an attempt to file the report, but the failure of the filing was due to Mr. McClenney, and not internet or website service issues. He was not ill, had no issues logging in, and was aware he was required to file a report. Nevertheless, if the Commission is persuaded to provide some relief after hearing from Mr. McClenney at the August 23<sup>rd</sup> meeting, the Commission has the discretion to grant a partial waiver which has sometimes been the outcome when candidates have entered data into the Commission's eFiling system but made an error in clicking on the "File" button.

From:
Sent:
To:
Subject:

Joshua McClenney <jmcclenney@standardsasap.org> Wednesday, July 12, 2023 11:17 AM Burke, Emma Re: Penalty Appeal

# EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thanks, Emma.

I would like to formally appeal the penalty. I attempted to file my report on Wednesday, June 14th, and even called to have my report sent back when I accidentally submitted the short report by mistake. I believe when I went back to resubmit the report, I must have clicked on "Save and preview" or "Save and View" rather than "Submit". This is simply due to this being the first report I've filed in the state of Maine and not being entirely familiar with the system. Additionally, I apologise for not seeing emails after the 15th that notified me my report was late. I would have been able to respond to them sooner but was on vacation at that time. I am happy to answer any questions that I can.

best,

Josh

On Wed, Jul 12, 2023 at 11:06 AM Burke, Emma <<u>Emma.Burke@maine.gov</u>> wrote:

You can send it to me.

Emma J. Burke (she/her)

Political Committee & Lobbyist Registrar

Maine Ethics Commission

(207) 287-4709 | Agency Site | eFiling Site

From: Joshua McClenney <<u>imcclenney@standardsasap.org</u>> Sent: Wednesday, July 12, 2023 10:53 AM To: Burke, Emma <<u>Emma.Burke@maine.gov</u>> Subject: Penalty Appeal

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Emma,

I'd like to formally submit an appeal for the \$100 penalty for my late filing. Who do I need to email to formally submit this?

Thanks for your help!

best,

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Josh McClenney

State Policy Associate

Appliance Standards Awareness Project (ASAP)

(919)454-1560 (Cell)

www.appliance-standards.org

Sign up for the ASAP <u>newsletter</u>

Josh McClenney State Policy Associate Appliance Standards Awareness Project (ASAP) (919)454-1560 (Cell) <u>www.appliance-standards.org</u> Sign up for the ASAP newsletter



June 28, 2023

Josh McClenney American Council for an Energy Efficient Economy 529 14<sup>th</sup> Street NW, Suite 600 Washington, DC 20045

Re: Late Filing – 2023 June Lobbying Report

Dear Josh:

The Commission staff has made a preliminary determination a penalty of **\$100** applies for the late filing of the 2023 June Lobbying Report for your client American Council for an Energy Efficient Economy. 3 MRS § 319. The report was due on June 15, 2023, but was not filed until June 22, 2023.

If you disagree with the preliminary penalty, you may request a waiver by submitting a statement, in writing, to the Commission stating the reason the report was filed late and requesting that the preliminary penalty be waived. All requests for waiver will be included on the agenda for the next Commission meeting.

If you do not intend to seek a waiver of the preliminary penalty, please mail a check, payable to "Treasurer, State of Maine," for the above amount to the Ethics Commission at 135 S.H.S., Augusta, Maine 04333. You may also pay online at www.maine.gov/ethics by selecting the "penalty payment" option.

Please either pay the preliminary penalty or submit a request for waiver within 14 days of the date of this letter. Please call (207) 287-4709 or send an email to emma.burke@maine.gov with questions.

Sincerely,

Emma Burke Political Committee & Lobbyist Registrar

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If paying by check, please return this portion with your payment. Thank you.

From: Josh McClenney for American Council for an Energy Efficient Economy Re: Penalty for late filing of 2023 June Lobbying Report (\$100).

Enclosed: \$\_\_\_\_\_ Check/M.O. No.#\_\_\_\_

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE WEBSITE: WWW.MAINE.GOV/ETHICS Ŵ

Commission on Governmental Ethics and Election Practices Mail: 135 State House Station, Augusta, Maine 04333 Office: 45 Memorial Circle, Augusta, Maine Website: www.maine.gov/ethics Phone: 207-287-4179 Fax: 207-287-6775

## LOBBYIST DISCLOSURE REPORT FOR MAY 2023

LOBBYIST INFORMATION				
Josh McClenney	Telephone: (202) 79	6-2476		
529 14th Street NW, Ste. 600	imcclenney@standa	jmcclenney@standardsasap.org		
Washington, DC 20045	,	ID: 13328		
		15.10020		
American Council for an Energy Efficient Econor	ny Telephone: (202) 79	6-2476		
Principal Contact: Joshua McClenney				
529 14th Street NW, Ste. 600	jmcclenney@standa	jmcclenney@standardsasap.org		
Washington, DC 20045	https://www.aceee.c	org/		
LOBBYIST ASSOCIATES				
TOTAL COMPENSATION FOR LOBE	BYING			
\$91.20	\$0.00	\$0.00		
Legislative Branch Officials	Executive Branch Officials	Constitutional Officials		
TOTAL EXPENDITURES MADE FOR LOBBYING ACTIVITIES				
\$0.00	\$0.00	\$0.00		
Legislative Branch Officials	Executive Branch Officials	Constitutional Officials		
TOTAL EXPENDITURES MADE TO C	OR ON BEHALF OF OFFICIALS	AND FAMILY MEMBERS		
\$0.00	\$0.00	\$0.00		
Legislative Branch Officials	Executive Branch Officials	Constitutional Officials		
EXPENDITURES OF \$25 OR MORE I	FOR OFFICIALS AND FAMILY N	<b>MEMBERS</b>		
LIST OF EVENTS AND ATTENDEES	IF \$250 OR MORE WAS SPEN	T ON OFFICIALS		
LEGISLATIVE ACTIONS THAT WER	E THE SUBJECT OF LOBBYING	G		
Bills LD 1814				
Issues				
LEGISLATIVE ACTIONS FOR WHICH	H COMPENSATION/EXPENDITU	JRES EXCEEDED \$1,000		
Bills				
Issues				
ORIGINAL SOURCES OF CONTRIBU	JTIONS/PAYMENTS OF \$1,000	OR MORE TO CLIENT		
LEGISLATIVE ACTIONS THAT WER \$2,000)	E THE SUBJECT OF GRASSRO	OOTS LOBBYING (OVER		
CERTIFICATION				

I, Josh McClenney, affirm that the information contained in this report is true and complete and that no information is knowingly withheld to the best of my knowledge.

Report Filed by: Josh McClenney Report Filed on: July 07, 2023

If this report is filed by an authorized agent of the Principal Lobbyist, the Principal Lobbyist and the agent are liable for any violations of the Lobbyist Disclosure Law (3 M.R.S.A Chapter 15) that may result from the filing of a false or inaccurate report

Unsworn falsification is a Class D crime (17-A M.R.S.A. § 453).

From:	Joshua McClenney <jmcclenney@standardsasap.org></jmcclenney@standardsasap.org>
Sent:	Thursday, June 22, 2023 10:33 AM
То:	Burke, Emma
Subject:	Re: June Lobbying Report

# EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Emma,

My sincere apologies. I had filled this out completely before vacation and it looks like there was one more button I needed to hit on the last screen to fully submit. That is completely my fault as I thought I had completed it before leaving. Please let me know if there's anything else I need to do.

best,

On Wed, Jun 21, 2023 at 10:19 AM Burke, Emma < <u>Emma.Burke@maine.gov</u>> wrote:

Hi Josh

Just sending you a quick reminder your June lobbying report for American Council for an Energy Efficient Economy hasn't been filed yet and is 5 days late. Please file as soon as you can.

Emma J. Burke (she/her)

Political Committee & Lobbyist Registrar

Maine Ethics Commission

(207) 287-4709 | Agency Site | eFiling Site

Josh McClenney State Policy Associate Appliance Standards Awareness Project (ASAP) (919)454-1560 (Cell) <u>www.appliance-standards.org</u> Sign up for the ASAP <u>newsletter</u>

From: Sent: To: Subject: Burke, Emma Wednesday, June 21, 2023 10:20 AM jmcclenney@standardsasap.org June Lobbying Report

Hi Josh

Just sending you a quick reminder your June lobbying report for American Council for an Energy Efficient Economy hasn't been filed yet and is 5 days late. Please file as soon as you can.

**Emma J. Burke** (she/her) Political Committee & Lobbyist Registrar Maine Ethics Commission (207) 287-4709 | <u>Agency Site</u> | <u>eFiling Site</u>

From:	Burke, Emma
Sent:	Thursday, June 15, 2023 4:36 PM
То:	'jmcclenney@standardsasap.org'
Subject:	FINAL REMINDER June Lobbying Report TONIGHT

Hi Josh! It's me again. Emailing about the same thing as I did this morning. This is your final reminder your June Lobbying Report for American Council for an Energy Efficient Economy is due before midnight tonight.

FYI, in half an hour (though I am not counting) I will be on vacation until next Wednesday. This means I won't be able to help you or nag you until then if you don't file tonight. I am available by phone until 5pm. I will check my emails a few times throughout the evening in case anyone has any lobbying reporting emergencies. I don't think that's truly a thing, but it makes me feel more important when I put it like that.

Anyhoo, please, please file on time. Thanks!

**Emma J. Burke** (she/her) Political Committee & Lobbyist Registrar Maine Ethics Commission (207) 287-4709 | <u>Agency Site</u> | <u>eFiling Site</u>

From:	Burke, Emma	
Sent:	Thursday, June 15, 2023 10:38 AM	
То:	'jmcclenney@standardsasap.org'	
Subject:	June Lobbying Report due TODAY	

Hear ye, hear ye, please remember that YOU, Josh, have the June Lobbying Report for May hours for your client, American Council for an Energy Efficient Economy, due TODAY, before midnight.

If you need assistance, please let me know. Just remember, Cuddles is counting on you.



**Emma J. Burke** (she/her) Political Committee & Lobbyist Registrar Maine Ethics Commission (207) 287-4709 | <u>Agency Site</u> | <u>eFiling Site</u>

From:	Jo
Sent:	V
То:	В
Subject:	R

oshua McClenney <jmcclenney@standardsasap.org> Nednesday, June 14, 2023 9:46 AM Burke, Emma Re: June and July Reports

# EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thanks, Emma!

On Wed, Jun 14, 2023 at 8:41 AM Burke, Emma <<u>Emma.Burke@maine.gov</u>> wrote:

Hi Josh,

I have unfiled the July report so you can file it next month, and I have unfiled the short form of the June report so you can file your long form instead. Let me know if you need anything else!

## Emma J. Burke (she/her)

Political Committee & Lobbyist Registrar

Maine Ethics Commission

(207) 287-4709 | Agency Site | eFiling Site

Josh McClenney State Policy Associate Appliance Standards Awareness Project (ASAP) (919)454-1560 (Cell) www.appliance-standards.org Sign up for the ASAP <u>newsletter</u>

#### §317. Reports

A registered lobbyist shall file a report for each month that the Legislature is in session on forms prescribed or approved by the commission, even if no lobbying has been performed or compensation or reimbursement for expenses received for the month. [PL 2019, c. 587, §12 (RPR); PL 2019, c. 587, §18 (AFF).]

**1. Monthly session reports.** During the period in which the Legislature is in session, a registered lobbyist shall file with the commission, no later than 11:59 p.m. on the 15th calendar day of each month, a report concerning the lobbyist's activities for the previous month regarding each employer.

The monthly report must contain the following information:

A. The month to which the report pertains; [PL 1979, c. 632, §2 (RPR).]

- B. The name and address of the lobbyist and employer; [PL 1979, c. 632, §2 (RPR).]
- C. The names of the individuals who lobbied during the month; [PL 1979, c. 632, §2 (RPR).]

D. The total amount of compensation the lobbyist and lobbyist associates received or expect to receive for lobbying during the month. The amount of compensation for lobbying officials in the legislative branch, officials in the executive branch and constitutional officers must be reported separately.

In the case of a lobbyist or lobbyist associate who is a regular employee of the employer, the amount of compensation must be computed by multiplying the number of hours devoted to the preparation of documents and research for the primary purpose of influencing legislative action and to lobbying by the employee's regular rate of pay based on a 40-hour week; [PL 2019, c. 587, §13 (AMD); PL 2019, c. 587, §18 (AFF).]

E. The total amount of expenditures made or incurred by the lobbyist and lobbyist associates during the month for purposes of lobbying for which they have been or expect to be reimbursed. The amount of expenditures for lobbying officials in the legislative branch, officials in the executive branch and constitutional officers must be reported separately; [PL 2019, c. 587, §13 (AMD); PL 2019, c. 587, §18 (AFF).]

E-1. When expenditures made or incurred for the purposes of grassroots lobbying exceed \$2,000 during the month that is the subject of the report, the specific dollar amount of expenditures for grassroots lobbying made or incurred during the month by a lobbyist, lobbyist associate or employer, with separate totals for expenditure categories as determined by the commission, and the legislative actions that are the subject of the grassroots lobbying. Salaries paid to the employer's regular employees are not expenditures for the purposes of this paragraph and are exempt from disclosure under this paragraph; [PL 2019, c. 599, §3 (AMD); PL 2019, c. 599, §5 (AFF).]

F. The total amount of expenditures by the lobbyist and lobbyist associates on behalf of the employer for which they have been or expect to be reimbursed and by the employer directly to or on behalf of one or more covered officials, including members of the official's immediate family; [PL 2019, c. 587, §13 (AMD); PL 2019, c. 587, §18 (AFF).]

G. For each expenditure of \$25 or more reported under paragraph F, the person making the expenditure and the date, amount and purpose of the expenditure and the name of the covered official or official's immediate family member on whose behalf the expenditure was made; [PL 2019, c. 587, §13 (AMD); PL 2019, c. 587, §18 (AFF).]

G-1. If the total cost for covered officials and the officials' immediate family members to attend an event paid for by the employer or by the lobbyist, lobbyist associate or lobbying firm on the employer's behalf is \$250 or more, the date and a description of the event, a list of the names of covered officials and the officials' immediate family members in attendance and the total cost for the covered officials and the officials' immediate family members to attend the event; [PL 2019, c. 587, §13 (AMD); PL 2019, c. 587, §18 (AFF).]

H. A list of each legislative action by Legislative Document number, specific issue, nomination or other matter in connection with which the lobbyist is engaged in lobbying; [PL 2007, c. 630, §14 (AMD).]

I. A list specifically identifying each legislative action for which the lobbyist and lobbyist associates were compensated or expect to be compensated, or expended in excess of \$1,000 for lobbying related to those actions and a statement of the amounts compensated or expended for each; and [PL 2019, c. 587, §13 (AMD); PL 2019, c. 587, §18 (AFF).]

J. A list of all of the employer's original sources and a statement of the dollar amounts contributed or paid by the original sources to the employer. If the original source is a corporation formed under Title 13 or 13-C or former Title 13-A, nonprofit corporation formed under Title 13-B or limited partnership under Title 31, the corporation, nonprofit organization or limited partnership, not the individual members or contributors, must be listed as the original source. [PL 2009, c. 282, §5 (AMD).]

[PL 2019, c. 587, §13 (AMD); PL 2019, c. 587, §18 (AFF); PL 2019, c. 599, §3 (AMD); PL 2019, c. 599, §5 (AFF).]

**1-A. Lobbyist expenditure reports.** A lobbyist or lobbyist associate who makes an expenditure directly to or on behalf of a covered official or a member of the covered official's immediate family that is not reportable under subsection 1, paragraphs F, G or G-1 shall file a report pursuant to this subsection. If such an expenditure is made by a lobbying firm, a lobbyist or lobbyist associate from that lobbying firm shall report the expenditure.

A. A report under this subsection is required if:

(1) The total amount of expenditures directly to or on behalf of covered officials and their immediate family members is more than \$300 in a calendar month; and

(2) The lobbyist or lobbyist associate has not been and does not expect to be reimbursed by any employer. [PL 2019, c. 587, §14 (NEW); PL 2019, c. 587, §18 (AFF).]

B. The report must include:

(1) The date of the expenditure;

(2) The name and address of the lobbyist, lobbyist associate or lobbying firm;

(3) The amount of the expenditure made or incurred by the lobbyist, lobbyist associate or lobbying firm either directly to or on behalf of a covered official or a covered official's immediate family member;

(4) A description of the goods or services purchased by the lobbyist, lobbyist associate or lobbying firm;

(5) The date and a description and location of an event paid for by the lobbyist, lobbyist associate or lobbying firm at which covered officials and the covered officials' immediate family members were in attendance; and

(6) The names of all covered officials and their immediate family members to whom the expenditures were directly made or on whose behalf the expenditures were made or who attended an event paid for by the lobbyist, lobbyist associate or lobbying firm. [PL 2019, c. 587, §14 (NEW); PL 2019, c. 587, §18 (AFF).]

C. A report under this subsection is due no later than 11:59 p.m. on the 15th calendar day of the month following the month in which the expenditure was made or incurred. [PL 2019, c. 587, §14 (NEW); PL 2019, c. 587, §18 (AFF).]

#### §319. Penalty

**1. Failure to file registration or report.** Any person who fails to file a registration or report as required by this chapter may be assessed a fine of \$100 for every month the person fails to register or is delinquent in filing a report pursuant to section 317. If a registration or report is filed late, the commission shall send a notice of the finding of violation and preliminary penalty. The notice must provide the lobbyist with an opportunity to request a waiver of the preliminary penalty. If a lobbyist files a report required pursuant to section 317 within 24 hours after the deadline, the amount of the preliminary penalty is \$50. The commission may waive the fine or penalty in whole or in part if the commission determines the failure to register or report was due to mitigating circumstances or the fine or penalty is disproportionate to the level of experience of the lobbyist or the harm suffered by the public from the late registration or report. For purposes of this subsection, "mitigating circumstances" means:

A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the fine or penalty in whole or in part; [PL 2011, c. 179, §7 (NEW).]

B. An error by the commission; or [PL 2011, c. 179, §7 (NEW).]

C. Circumstances determined by the commission to warrant the waiver of the fine or penalty in whole or in part, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with this chapter, including, but not limited to, unexplained delays in Internet service. [PL 2011, c. 179, §7 (NEW).]

[PL 2011, c. 179, §7 (RPR).]

**1-A.** Notice of suspension. Any person who fails to file a report or pay a fee as required by this chapter may be suspended from further lobbying by written notice of the commission until such failure is corrected.

[PL 1993, c. 446, Pt. B, §12 (AMD).]

2. Class E crime.

[PL 1979, c. 632, §3 (RP).]

**3. Exemption.** Notwithstanding section 317, subsection 1, a registered lobbyist is exempt from the penalty imposed under this section if, while the Legislature is convened in special session, the lobbyist failed to file a report with the commission pursuant to section 317 if no lobbying has been performed during that special session.

[PL 1993, c. 446, Pt. B, §13 (AMD).]

SECTION HISTORY

PL 1975, c. 576 (NEW). PL 1975, c. 621, §2 (RP). PL 1975, c. 724 (REEN). PL 1977, c. 696, §17 (AMD). PL 1979, c. 632, §3 (RPR). PL 1989, c. 114 (AMD). PL 1991, c. 465, §2 (AMD). PL 1993, c. 446, §§A15,B11-13 (AMD). PL 1993, c. 691, §22 (AMD). PL 2011, c. 179, §7 (AMD).

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