



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

To: Commission  
From: Commission Staff  
Date: October 28, 2024  
Re: Agenda Item #6 - Revisions to Statutory Proposals by Commission Staff

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After sending the meeting packet, the Commission received a suggestion that the part of the definition of public communication relating to internet or digital communications should focus on advertising or other content that is placed or promoted for a fee on another person's website, digital device, application, or advertising platform, similar to the federal definition of public communication in 110 C.F.R. § 100.26 (attached). The Commission staff and counsel agree with this, as shown in the revised definition below.

In addition, we suggest that if a candidate, party committee, political action committee, or ballot question committee has *their own website* that advocates for or against a candidate or ballot question, the website should be required to state the name and address of the person who made or financed the expenditure for the website and a statement that the website was or was not authorized by any candidate.

We propose the revisions that are highlighted in yellow below.

## **§ 1001. Definitions**

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

**1. Commission.** "Commission" means the Commission on Governmental Ethics and Election Practices established under Title 1, section 1002.

**1-A. Caucus political action committee.** "Caucus political action committee" means a political action committee designated under section 1053-C to promote the election of nominees of a political party to the Senate or the House of Representatives.

**2. Election.** "Election" means any primary, general or special election for state or county office or municipal office in a municipality subject to Title 30-A,

section 2502, subsection 1 and any referendum, including a municipal referendum in a municipality subject to Title 30-A, section 2502, subsection 2.

**3. Person.** “Person” means an individual, committee, firm, partnership, corporation, association or organization.

**4. Public communication.** “Public communication” means any communication to the public by means of broadcast, cable, or satellite technology communication, internet or digital methods, newspapers, or other types of general public political advertising, direct mail, handbills or other printed literature, campaign signs or other outdoor advertising facilities, and prerecorded automated telephone call, or other types of general public political advertising. The term general public political advertising shall not include communications over the internet, except for communications placed or promoted for a fee on another person's website, digital device, application, or advertising platform. A public communication is promoted for a fee where a payment is made to a website, digital device, application, or advertising platform in order to increase the circulation, prominence, or availability of the communication on that website, digital device, application, or advertising platform.



*This would replace the definition on page 1 of the Chapter 13 changes in the packet.*

## **§ 1014. Publication or distribution of political communications**

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**1. Authorized by candidate.** Whenever a person makes an expenditure to finance a public communication expressly advocating the election or defeat of a clearly identified candidate ~~through broadcasting stations, cable television systems, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications,~~ the communication, if authorized by a candidate, a candidate’s authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. A public communication financed by a candidate or the candidate’s committee is not required to state the address of the candidate or committee that financed the communication. If a public communication that is financed by someone other than the candidate or the candidate’s authorized committee is broadcast by radio, only the city and state of the address of the person who financed the communication must be stated.



*This would replace the changes on pages 5-10 of the Chapter 13 changes in the packet.*

*To simplify this subsection, the Commission proposes relying on a new definition of public communication in § 1001(4).*



**2. Not authorized by candidate.** If ~~the~~ a public communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. If the public communication is in written form, the communication must contain at the bottom of the communication in print that is no smaller in size than 12-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."



**2-A. Other communications.** Whenever a person makes an expenditure to finance a public 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 during the period of time from Labor Day to the election day for a general election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. The disclosure is not required if the public communication was not made for the purpose of influencing the candidate's nomination for election or election.



**2-B. Top 3 funders; independent expenditures.** A public communication that is funded by an entity making an independent expenditure as defined in section 1019-B, subsection 1 must conspicuously include the following statement:

"The top 3 funders of (name of entity that made the independent expenditure) are (names of top 3 funders)."

The information required by this subsection may appear simultaneously with any statement required by subsection 2 or 2-A. A public communication that contains a visual aspect must include the statement in written text. A public communication that does not contain a visual aspect must include an audible statement. This statement is required only for communications made through broadcast or cable television, broadcast radio, Internet audio and video programming, direct mail or newspaper or other periodical publications.

A cable television, broadcast television or Internet video communication must include both an audible and a written statement. For a cable television, broadcast television or Internet video communication 30 seconds or less in duration, the audible statement may be modified to include only the single top funder.

The top funders named in the required statement consist of the funders providing the highest dollar amount of funding to the entity making the independent expenditure since the day following the most recent general election day.

**A.** For purposes of this subsection, “funder” includes:

**(1).** Any entity that has made a contribution as defined in section 1052, subsection 3 to the entity making the independent expenditure since the day following the most recent general election day; and

**(2)** Any entity that has given a gift, subscription, loan, advance or deposit of money or anything of value, including a promise or agreement to provide money or anything of value whether or not legally enforceable, except for transactions in which a fair value is given in return, since the day following the most recent general election day.

**B.** If funders have given equal amounts, creating a tie in the ranking of the top 3 funders, the tie must be broken by naming the tying funders in chronological order of the receipt of funding until 3 funders are included in the statement. If the chronological order cannot be discerned, the entity making the independent expenditure may choose which of the tying funders to include in the statement. In no case may a communication be required to include the names of more than 3 funders.

**C.** The statement required under this subsection is not required to include the name of any funder who has provided less than \$1,000 to the entity making the independent expenditure since the day following the most recent general election day.

**D.** If only one or 2 funders must be included pursuant to this subsection, the **public** communication must identify the number of funders as “top funder” or “top 2 funders” as appropriate. If there are no funders required to be included under this subsection, no statement is required.

**E.** When compiling the list of top funders, an entity making an independent expenditure may disregard any funds that the entity can show were used for purposes unrelated to the candidate mentioned in the communication on the basis that funds were either spent in the order received or were strictly segregated in other accounts.

**F.** In any **public** communication consisting of an audio broadcast of 30 seconds or less or a print communication of 20 square inches or less, the requirements of this subsection are satisfied by including the name of the single highest funder only.

**G.** If the list of funders changes during the period in which a recurring communication is aired or published, the statement appearing in the **public** communication must be updated at the time that any additional payments are made for that communication.

H. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, forms and procedures for ensuring compliance with this subsection. Rules adopted pursuant to this paragraph must ensure that the information required by this subsection is effectively conveyed for a sufficient duration and in a sufficient font size or screen size where applicable without undue burden on the ability of the entity to make the communication. The rules must also provide an exemption for types of communications for which the required statement would be impossible or impose an unusual hardship due to the unique format or medium of the communication.



**3. Broadcasting prohibited without disclosure.** No person operating a broadcasting station or cable television system within this State may broadcast any public communication, as described in subsections 1 to 2-A, without an oral or written visual announcement of the disclosure required by this section.

**3-A. In-kind contributions of printed materials.** A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a ballot question. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include the name or title of that candidate, political committee or political action committee as the authorizing agent for the printing and distribution of the in-kind contribution.



**3-B. Newspapers.** A newspaper may not publish a public communication described in subsections 1 to 2-A without including the disclosure required by this section. For purposes of this subsection, “newspaper” includes any printed material intended for general circulation or to be read by the general public, including a version of the newspaper displayed on a website owned or operated by the newspaper. When necessary, a newspaper may seek the advice of the commission regarding whether or not the communication requires the disclosure.



**4. Enforcement.** A violation of this section may result in a civil penalty of no more than 100% of the amount of the expenditure in violation, except that an expenditure for yard signs lacking the required information may result in a maximum civil penalty of \$200. In assessing a civil penalty, the commission shall consider, among other things, how widely the public communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the public communication conceals or misrepresents the identity of the person who financed it. If the person who financed the communication or who committed the violation corrects the violation within 10 days after receiving notification of the violation from the commission by adding the missing

information to the communication, the commission may decide to assess no civil penalty.



~~**5. Telephone calls.** Prerecorded automated telephone calls and scripted live telephone communications that name a clearly identified candidate during the 28 days, including election day, before a primary election, during the 35 days, including election day, before a special election or during the period of time from Labor Day to the general election day for a general election must clearly state the name of the person who made or financed the expenditure for the communication and whether the communication was authorized by a candidate, except for prerecorded automated telephone calls paid for by the candidate that use the candidate's voice in the telephone call and that are made in support of that candidate. Telephone surveys that meet generally accepted standards for polling research and that are not conducted for the purpose of influencing the voting position of call recipients are not required to include the disclosure.~~

*Telephone calls would be covered by the definition of "public communication" in proposed § 1001(4). The exceptions in this subsection are moved to subsection 6 below.*

**5-A. Text messages.** Text messages sent with the assistance of mass distribution technology that is paid for by a person must clearly and conspicuously state the name of the person who made or financed the expenditure if:

**A.** The text message expressly advocates the election or defeat of a candidate; or

**B.** The text message contains a link to a website that expressly advocates the election or defeat of a candidate.

*Because we propose revising the definition of public communication to mean paying a fee to place or promote a communication on another person's website, Commission staff proposes this provision.*

**5-B. Websites of a candidate or political committee.** All websites and other internet applications available to the general public that are established by a party committee or a person that is required to register with the commission as a candidate or political action committee and that expressly advocate for the election or defeat of a candidate or that name a clearly identified candidate during the 28 days, including election day, before a primary election, during the 35 days, including election day, before a special election or during the period of time from Labor Day to the general election day for a general election must state the name and address of the person who made or financed the expenditure for the website and state that the website was or was not authorized by any candidate.

**6. Exclusions.** The requirements of this section do not apply to:

**A.** Handbills or other literature produced and distributed at a cost not exceeding \$100 and prepared by one or more individuals who are not required to register or file campaign finance reports with the commission and who are 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 of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;

**B.** Campaign signs produced and distributed at a cost not exceeding \$100, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are 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 of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;

**C.** Internet and e-mail activities costing less than \$100, as excluded by rule of the commission, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are 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 of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;

**D.** Communications in which the name or address of the person who made or authorized the expenditure for the communication would be so small as to be illegible or infeasible, including communications on items such as ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section and in electronic media advertisements where compliance with this section would be impractical due to size or character limitations; and

**E.** Campaign signs that are financed by the candidate or candidate's authorized committee and that clearly identify the name of the candidate and are lettered or printed individually by hand.

**F.** Prerecorded automated telephone calls paid for by the candidate that use the candidate's voice in the telephone call and that are made in support of that candidate.

**G.** Telephone surveys that meet generally accepted standards for polling research and that are not conducted for the purpose of influencing the voting position of call recipients are not required to include the disclosure.



*These exceptions for telephone calls are moved from subsection 5, which the Commission staff proposes deleting.*

## § 1055-A. Political communications to influence a ballot question

*This would replace the changes on page 27 of the Chapter 13 changes in the packet.*

*Because we propose revising the definition of public communication to mean paying a fee to place a communication on another person's website, Commission staff proposes this provision.*

**1. Communications to influence ballot question elections.** Whenever a person makes an expenditure exceeding \$500 for a public communication expressly advocating through broadcasting stations, cable television systems, prerecorded automated telephone calls or scripted live telephone calls, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, for or against an initiative or referendum that is on the ballot, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, except that telephone calls must clearly state only the name of the person who made or financed the expenditure for the communication. A digital **public** communication, including the transmission of text messages, costing more than \$500 that expressly advocates for or against an initiative or referendum or that includes a link to a publicly accessible website expressly advocating for or against an initiative or referendum that is on the ballot containing express advocacy must clearly and conspicuously state the name of the person who made or financed the expenditure, unless the digital communication is excluded under subsection 2. A website established by a person required to register as a ballot question committee expressly advocating for or against an initiative or referendum must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the website. Telephone surveys that meet generally accepted standards for polling research and that are not conducted for the purpose of influencing the voting position of call recipients are not required to include the disclosure.



*To simplify this subsection, the Commission staff proposes relying on the definition of "public communication in § 1001(4).*

*The Commission staff proposes that the expenditure of more than \$500 to transmit text messages expressly advocating for or against a ballot question should identify the person that funded the communications.*

**2. Exceptions.** The following forms of political communication do not require the name and address of the person who made or financed the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: clothing, envelopes and stationery, small promotional items, tickets to fundraisers and electronic media advertisements where compliance with this section would be impracticable due to size or character

limitations and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section. “Small promotional items” includes but is not limited to ashtrays, badges and badge holders, balloons, campaign buttons, coasters, combs, emery boards, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers and swizzle sticks.

**3. Enforcement.** A violation of this section may result in a penalty of no more than \$5,000. In assessing a penalty, the commission shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it.

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## **11 C.F.R. § 100.26 Public communication**

Public communication means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. The term general public political advertising shall not include communications over the internet, except for communications placed or promoted for a fee on another person's website, digital device, application, or advertising platform. A public communication is promoted for a fee where a payment is made to a website, digital device, application, or advertising platform in order to increase the circulation, prominence, or availability of the communication on that website, digital device, application, or advertising platform.