



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 23, 2024

Re: Statutory Proposals by Commission Staff – Campaign Finance

Each election year, the Ethics Commission submits legislation to be considered in the First Regular Session of the next Legislature. I have attached some statutory changes to Maine's campaign finance laws that are proposed by the Commission staff based on our recent experience. We hope you will have time to review them before the October 30 meeting and let us know if you are comfortable with submitting them to the Legislature. Some selected issues are discussed in this memo.

Definition of public communication. The Commission staff proposes a definition of public communication to bring greater clarity to the types of election advocacy communications that must identify the sponsor in the communication and that require an independent expenditure report. 21-A M.R.S. § 1001(4).

Straw donor contributions. The Commission staff proposes higher penalties for straw donor contributions, *i.e.* situations in which a funding source gives money to an intermediary to be donated to a political group or candidate with the intention that the original source is not disclosed publicly. Straw donor contributions are illegal in Maine, as in other jurisdictions, but they remain a continuing problem for campaign finance disclosure because the intermediary is listed as the contributor in campaign finance reports and the actual source of money remains hidden from policymakers and the public.

In the past year, there have been numerous enforcement cases covered in the national press involving donations made through intermediaries that obscure the actual source of the funds. I have attached the Commission's November 2023 consent agreement with Alpine Initiatives, which describes how consultants in Maine arranged for a \$150,000 contribution to the Maine Democratic Party through an intermediary and the actual source of funds was not disclosed (at the end of these materials). Below are some links to news coverage of recent cases nationally and two from Maine.

Straw donor contributions are difficult to detect by campaign finance agencies because the reported donation by the intermediary appears compliant on its face. The intermediary may be a business entity, nonprofit, employee or relative that is affiliated with the actual donor. Even if a campaign finance agency or outside party believes a particular donation appears suspicious as reported, an investigation typically would require a factual predicate that can be hard to establish.

The current maximum civil penalty in Maine campaign finance law for this violation under 21-A M.R.S. § 1004-A(3) is \$5,000. We propose increasing the Commission's penalty authority to up to five times the amount of the illegal contribution.

Text messages in ballot question campaigns. Staff proposes that a mass distribution of text messages at a cost of more than \$500 to expressly advocate for or against a ballot question would need to include the funder of the communication. 21-A M.R.S. § 1055-A(1).

Straw Donor Contribution Enforcement Cases

Recent Examples Nationally

Keri Blakinger, Burger chain manager fined for using 'straw donors' to back ex-Sheriff Alex Villanueva's 2018 campaign, Los Angeles Times (Jan. 10, 2024), <https://www.latimes.com/california/story/2024-01-10/burger-chain-manager-fined-straw-donors-ex-sheriff-alex-villanueva-2018-campaign>

Jake Offenhartz, Chinese billionaire pleads guilty to straw donor scheme that funneled donations to RI pol, The Providence Journal (March 19, 2024), <https://www.providencejournal.com/story/news/politics/2024/03/19/chinese-billionaire-pleads-guilty-to-ri-ny-straw-donor-scheme/73027173007/>

David Yaffe-Bellany and Theodore Schleifer, Crypto Lobbyist Charged With Breaking Campaign Finance Rules, New York Times (Aug. 22, 2024) (pending criminal prosecution; no conviction), <https://www.nytimes.com/2024/08/22/technology/ftx-crypto-campaign-finance.html>

John Marzulli, Campaign Treasurer for Candidate for Brooklyn Borough President Charged with Scheme to Defraud New York City's Campaign Finance Board, U.S. Department of Justice Press Release (Oct. 2, 2024) (pending criminal prosecution; no conviction), <https://www.justice.gov/usao-edny/pr/campaign-treasurer-candidate-brooklyn-borough-president-charged-scheme-defraud-new>

Examples from Maine

Leela Stockley, Hawaii man pleads guilty in scheme that funneled contributions to Susan Collins' 2020 campaign, Bangor Daily News (Sept. 29, 2022),

<https://www.bangordailynews.com/2022/09/29/politics/martin-kao-susan-collins-illegal-contributions-plea/>

Edward D. Murphy, Ex-Portland developer gets 4 months in prison, \$100,000 fine for illegal campaign donations, Portland Press Herald (Aug. 9, 2017),

<https://www.pressherald.com/2017/08/09/former-portland-developer-gets-four-months-100000-fine-for-campaign-finance-violations/>

Subchapter I General Provisions

§ 1001. Definitions

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, internet or digital methods, newspaper 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 calls.

Maine campaign finance law requires that certain political communications to the public include information about the communication’s funder, sometimes referred to as a disclaimer. 21-A M.R.S. §§ 1014, 1055-A, and 1064(6). Also, communications to the public advocating for or against candidates may require the filing of an independent expenditure report. § 1019-B. The Commission staff proposes a definition for the term “public communication” for the purposes of: (1) simplifying the language of §§ 1014 & 1055-A, (2) avoiding potential vagueness in § 1019-B as to which media are covered by the independent expenditure reporting requirement, and (3) promoting consistency. The media listed in this proposed definition largely track the coverage of current §§ 1014 and 1055-A, except that it also includes communications made through satellite technology and refers to “internet or digital methods” rather than “publicly accessible sites on the Internet.”

§ 1004. Violations

The violation of any of the following subsections is a Class E crime.

- 1. Contributions and expenditures.** A person, candidate, treasurer, political committee or political action committee may not knowingly make or accept any contribution or make any expenditure in violation of this chapter.
- 2. False statements.** A person, candidate, treasurer or political action committee may not make a false statement in a report required by this chapter.
- 3. Contributions in another's name.** A person may not knowingly:
 - A. Make a contribution in the name of another person;
 - B. Permit the person's name to be used to accomplish a contribution in violation of paragraph A; or
 - C. Accept a contribution made by one person in the name of another person.
- 4. Registration; political action committees.** A political action committee or ballot question committee required to be registered under section 1052-A ~~or 1056-B~~ may not operate in this State unless it is so registered.

This change eliminates a reference to section 1056-B, which has been deleted from the Election Law.

§ 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-B 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, knowingly permits their name to be used to effect such a contribution, or that knowingly accepts a contribution made by one person in the name

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances



of another person, may be assessed a penalty not to exceed ~~\$5,000~~ 500 percent of the amount of contribution.

Among other things, this statute covers “straw donor” situations in which a funding source gives money to an intermediary to be donated to a political action committee, party committee, etc. with the intention that the original source will remain hidden. This undermines transparency because the actual source of money is concealed from policymakers and the public. Including in a recent enforcement action before the Commission, there are numerous examples nationally of contributors of six-figure donations being hidden because the money is contributed through an intermediary. In these contexts, a maximum penalty of \$5,000 is insufficient. The other proposed insertion authorizes the Commission to assess a penalty against an intermediary who knowingly permits their name to be used to effectuate a contribution in the name of another and is based on the federal analogue to this statute, 52 U.S.C. § 30122, which is relied upon by the U.S. Department of Justice in criminal prosecutions. More information about the challenges of detecting and deterring straw donor donations is included in the cover memo to these statute changes.

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.

Subchapter II

Reports on Campaigns for Office

§ 1012. Definitions

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

1. Clearly identified. “Clearly identified,” with respect to a candidate, means that:

- A. The name of the candidate appears;
- B. A photograph or drawing of the candidate appears; or
- C. The identity of the candidate is apparent by unambiguous reference.

2. Contribution. The term “contribution:”

A. Includes:

(1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office or for the purpose of liquidating any campaign deficit of a candidate, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;

~~(2) A contract, promise or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;~~

...

Commission staff proposes deleting from the definition of “contribution” the concept of a promise or agreement to give a donation, for a few reasons. One rationale is to avoid potential vagueness in reporting responsibilities. Various conversations about a potential donation may occur between a prospective donor and a candidate or party committee, and it may be unclear whether the prospective donor has made a promise or agreement to provide funds. We believe the current practice of reporting contributions when they are received is sufficient to inform the public about who is influencing elections and government. The Commission’s current presentation of financial information to the public through its eFiling system presumes that a reported contribution has been received, not just promised. Amending our eFiling system to reflect contributions that have been promised but not realized would entail some redesign and cost. Other jurisdictions, including the federal government, do not include a promised donation in the definition of contribution. 52 U.S.C. § 30101(8).



§ 1014. Publication or distribution of political communications



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 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 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.

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 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

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances



if the 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 communication that contains a visual aspect must include the statement in written text. A 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

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

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 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 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 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




Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances


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 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.~~

<i>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.</i>

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

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.

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

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

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.

1. Single entities. Two or more entities are treated as a single entity if the entities:

A. Share the majority of members of their boards of directors;

B. Share 2 or more officers;

C. Are owned or controlled by the same majority shareholder or shareholders;

C-1. Are limited liability companies that are owned or controlled by the same majority member or members; or

D. Are in a parent-subsiidiary relationship.

2. Sole proprietorships. A sole proprietorship and its owner are treated as a single entity.

§ 1017. Reports by candidates

...

3-A. Other candidates. A treasurer of a candidate for state or county office other than the office of Governor shall file reports with the commission and municipal candidates shall file reports with the municipal clerk as follows. Once the first required report has been filed, each subsequent report must cover the period from the end date of the prior report filed.

A. In any calendar year in which an election for the candidate's particular office is not scheduled, when any candidate or candidate's political committee has received contributions in excess of \$500 or made or authorized expenditures in excess of \$500, reports must be filed no later than 11:59 p.m. on July 15th of that year and January 15th of the following calendar year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report.

B. Reports must be filed no later than 11:59 p.m. on the 11th day before the date on which an election is held and must be complete as of the 14th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the 14th day before the election.

C. If the candidate has an opponent who is on the ballot or who is a declared write-in candidate, any single contribution of \$1,000 or more received or any single expenditure of \$1,000 or more made after the 14th day before any election and more than 24 hours before 11:59 p.m. on the day of any election must be reported within 24 hours of that contribution or expenditure. The candidate or 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.

D. Reports must be filed no later than 11:59 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date.

D-1. Reports must be filed no later than 11:59 p.m. on the 42nd day before the date on which an election is held and must be complete as of the 49th day before that

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

date, except that this report is not required for candidates for municipal office, unless required by the municipality. Certified candidates and participating candidates, as defined under section 1122, subsections 1 and 6, respectively, are not required to file a report on the 42nd day before a primary election pursuant to this section.

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$100 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of \$100 shall file reports semiannually with the commission within 15 days following the end of the 2nd and 4th quarters of the State's fiscal year, complete as of the last day of the quarter, until the surplus is disposed of or the deficit is liquidated. The first report under this paragraph is not required until the 15th day of the period beginning at least 90 days from the date of the election. The reports will be considered timely if filed electronically or in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section.

F. Reports with respect to a candidate who seeks nomination by petition must be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election.

...

7-A. Reporting exemption. A candidate seeking election to a county or municipal office or a legislative candidate seeking the nomination of a party in an uncontested primary election is exempt from reporting as provided by this subsection.

A. A candidate seeking election to a county or municipal office may, at the time the candidate registers under section 1013-A, notify the commission that the candidate and the candidate's agents, if any, will not personally accept contributions, make expenditures or incur obligations associated with that candidate's candidacy. The notification must be ~~sworn and notarized~~ made through an online or written form prescribed by the commission. A candidate who provides this notice to the commission is not required to appoint a treasurer and is not subject to the filing requirements of this subchapter if the statement is true.



County and municipal candidates, and legislative candidates in a primary election, are exempt from filing campaign finance reports if they complete a form affirming they will not receive or spend any money to promote their election. Commission staff seeks the ability to receive these affirmations through an online form, rather than a sworn statement.

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances



A-1. A legislative candidate seeking the nomination of a party in an uncontested primary election may, at the time the candidate registers under section 1013-A, notify the commission that the candidate and the candidate's agents, if any, will not personally accept contributions, make expenditures or incur obligations associated with that candidate's candidacy through the 35th day after the primary election. The notification must be ~~sworn and notarized~~ made through an online or written form prescribed by the commission. A candidate who provides this notice to the commission is not required to appoint a treasurer or to file the campaign finance reports under subsection 3-A, paragraphs B and D with respect to the primary election.

B. The notice provided to the commission under paragraph A or A-1 may be revoked. Prior to revocation, the candidate must appoint a treasurer. The candidate may not accept contributions, make expenditures or incur obligations before the appointment of a treasurer and the filing of a revocation notice are accomplished. A revocation notice must be in the form of an amended registration, which must be filed with the commission no later than 10 days after the appointment of a treasurer. The candidate and the candidate's treasurer, as of the date the revocation notice is filed with the commission, may accept contributions, make expenditures and incur obligations associated with the candidate's candidacy. Any candidate who fails to file a timely revocation notice is subject to the penalties prescribed in section 1020-A, subsection 4-A, up to a maximum of \$5,000. Lateness is calculated from the day a contribution is received, an expenditure is made or an obligation is incurred, whichever is earliest.

8. Disposition of surplus. A candidate or treasurer of a candidate registered under section 1013-A or qualified under sections 335 and 336 or sections 354 and 355 shall dispose of a surplus exceeding \$100 within 4 years of the election for which the contributions were received by:

- A.** Returning contributions to the candidate's or candidate's authorized political committee's contributors, as long as no contributor receives more than the amount contributed;
- B.** A gift to a qualified political party within the State, including any county or municipal subdivision of such a party;
- C.** An unrestricted gift to the State. A candidate for municipal office may dispose of a surplus by making a restricted or unrestricted gift to the municipality;
- D.** Carrying forward the surplus balance to a political committee established to promote the same candidate for a subsequent election;

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

D-1. Carrying forward the surplus balance for use by the candidate for a subsequent election;

E. Transferring the surplus balance to one or more other candidates registered under section 1013-A or qualified under sections 335 and 336 or sections 354 and 355, or to political committees established to promote the election of those candidates, provided that the amount transferred does not exceed the contribution limits established by section 1015;

F. Repaying any loans or retiring any other debts incurred ~~to defray campaign expenses of the candidate~~ in the course of campaign activity;

This change is intended as a clarification. Commission staff believes candidates should be authorized to use their post-election surplus to retire any debt incurred in the course of campaign activity. We find the phrase “to defray campaign expenses” confusing in the context of the sentence and suggest replacing it.

G. Paying for any expense incurred in the proper performance of the office to which the candidate is elected, as long as each expenditure is itemized on expenditure reports; and

H. A gift to a charitable or educational organization that is not prohibited, for tax reasons, from receiving such a gift.

The choice must be made by the candidate for whose benefit the contributions were made.

...

§ 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 public communication that expressly advocates the election or defeat of a clearly identified candidate; or

B. Unless the person, party committee or political action committee making the expenditure demonstrates under subsection 2 that the expenditure did not have a purpose or effect of influencing the nomination, election or defeat of the candidate, is made to design, produce or disseminate a public communication that names or depicts a clearly identified candidate and is disseminated during the 28 days,

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

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.

This statute requires the filing of an independent expenditure report with the Commission for a communication costing more than \$250 that advocates for the election or defeat of a candidate. Because this statute does not define “communication” the Commission staff proposes relying on a definition of public communication in § 1001(4) to avoid potential vagueness as to which media are covered by the reporting requirement.

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 a purpose of influencing 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. The commission shall determine by a preponderance of the evidence whether the cost was incurred with a purpose of, or had the effect of, influencing the nomination, election or defeat of a candidate. In order to make this determination, the commission shall consider whether the language and other elements of the communication would lead a reasonable person to conclude that the communication had a purpose of, or had the effect of, influencing an election. The commission may consider other factors, including, but not limited to, the timing of the communication, the recipients of the communication or, if the communication is a digital communication, any links to publicly accessible websites related to the nomination, election or defeat of a candidate. The commission's executive director shall make an initial determination on the request, which must be posted on the commission's publicly accessible website. Any person may appeal the initial determination, which must be considered by the commission at the next public meeting that is feasible.

3. Report required; content; rules. [Repealed]

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

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

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 unsworn falsification, as provided in Title 17-A, section 453, a statement 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 adopts an exception for persons who lack access to the required technology or the technological ability to file reports electronically.

5. Exclusions. An independent expenditure does not include:

A. [Repealed]

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.

§ 1020. Failure to file on time (Repealed)

§ 1020-A. Failure to file on time

1. Registration. A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$100. The commission shall determine

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

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 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or 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 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;

C. Failure to receive notice of the filing deadline; or

D. 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. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

4. [Repealed]

4-A. 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%.

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

Any penalty of less than \$25 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered 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.

5. [Repealed]

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed:

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; and section 1017, subsection 4, 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;

A-1. Five thousand dollars for reports required under section 1019-B, subsection 4, 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;

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E, 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;

C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; or

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B.

E. [Repealed]

6. Request for a commission determination. ~~If the commission staff finds that a candidate or political committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the candidate or political committee within 3 business days following the filing deadline informing the candidate or political committee that a report was not received.~~ If a candidate or a political



Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

committee files a report required under this subchapter late, a notice of preliminary penalty must be sent to the candidate or political committee whose registration or campaign finance report was not received by 11:59 p.m. on the deadline date, informing the candidate or political committee of the staff finding of violation and preliminary penalty calculated under subsection 4-A and providing the candidate or political committee with an opportunity to request a determination by the commission. Any request for a determination must be made within 14 calendar days of receipt of the commission's notice. A candidate or political committee requesting a determination may either appear in person or designate a representative to appear on the candidate's or political committee'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.

Although it is rare, if a report remains unfiled three business days after a scheduled deadline, the Commission is required by this subsection to notify the candidate/committee by mail that the report has not been received. Commission staff proposes moving this 3-day notice to subsection 8 as part of a revision of the procedures used by the Commission when someone remains unresponsive to Commission's pre- and post-deadline notifications that a report is due.


7. Final notice of penalty. If a determination has been requested by the candidate or political committee and made by the commission, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the political 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 candidate and treasurer. A detailed summary of all notices must be provided to the commission.

8. Penalties for failure to file report. If the commission staff finds that a candidate, party committee, or other person has failed to file a report required under this subchapter, the commission staff shall send by regular and electronic mail a notice to the person within 3 business days following the filing deadline informing them that the report has not been received. If the report remains unfiled after ten days, the commission shall send another notice by regular and electronic mail. If the filer has not filed the report after these two notices, commission staff may refer the violation to the commission, which may, after notice and an opportunity to be heard, determine whether a violation has occurred and, if so, the amount of any penalty. The penalty may not exceed the maximum penalties as provided in subsection 5-A. The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. The notice must be sent by certified mail. If a candidate fails to file a report after 2 notices have been sent by the




Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances



~~commission, the commission shall send a final notice by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the first two notices required by this subsection is guilty of a Class E crime. As an alternative to assessing a civil penalty, the commission may refer the violation to the Office of the Attorney General for potential criminal prosecution.~~

~~8-A. Penalties for failure to file report.~~ ~~The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.~~

Current subsection 8 declares that a candidate's failure to file a campaign finance report after the Commission has mailed three notices is a Class E crime. Subsection 8-A authorizes the Commission to assess a penalty when a candidate, party committee, or other person fails to file a report required under subchapter 1. In practice, the Commission receives some campaign finance reports late, but it is rare that a candidate, party committee, etc. altogether fails to file a required campaign finance report. The Commission staff wishes to clarify this penalty authority, including what notifications must be sent to a candidate or party committee when a regularly scheduled report has not been filed. We believe sending the notice required by subsection 6 and the three notices as required by subsection 8 (which applies only to candidates) is excessive. We suggest two notices by regular and electronic mail. If the report is not filed, the Commission staff may bring the matter to the attention of the Commission for a potential finding of violation and penalty, which would require one more notice. Alternatively, the Commission could refer the matter for potential criminal prosecution, but we expect that would be rare.



~~9. List of late filing candidates.~~ ~~The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.~~

When a candidate files a campaign finance report late, the Commission engages in an automatic penalty process under § 1020(2)&(6). In addition, this provision directs the Commission to prepare and make available for public inspection a list of candidates who filed reports late. The Commission staff has not implemented this because the Commission's procedures for reminding candidates and assessing penalties have been effective in curbing lateness and we have not wanted to shame candidates who filed a report late due to a misunderstanding, miscommunication, or technological problem. We propose eliminating the duty to post a public list of late-filing candidates. If someone wants a list, the Commission staff can run a report in our eFiling system and produce the list upon request.

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

10. 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.

Subchapter IV

Reports by Political Action Committees and Ballot Question Committees

§ 1051. Application

This subchapter applies to the activities of political action committees and ballot question committees organized in and outside this State that accept contributions, incur obligations or make expenditures to influence the nomination or election of a candidate to state, county or municipal office or to initiate or influence a campaign, as defined in this subchapter.

§ 1052. Definitions

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

1. Campaign. “Campaign” means any course of activities to influence the nomination or election of a candidate or to initiate or influence any of the following ballot measures:

- A.** A people’s veto referendum under the Constitution of Maine, Article IV, Part Third, Section 17;
- B.** A direct initiative of legislation under the Constitution of Maine, Article IV, Part Third, Section 18;
- C.** An amendment to the Constitution of Maine under Article X, Section 4;
- D.** A referendum vote on a measure enacted by the Legislature and expressly conditioned upon ratification by a referendum vote under the Constitution of Maine, Article IV, Part Third, Section 19;
- E.** The ratification of the issue of bonds by the State or any agency thereof; and
- F.** Any county or municipal referendum.

2. Committee. “Committee” means any political action committee or ballot question committee and includes any agent of a political action committee or ballot question committee.

2-A. Ballot question committee. “Ballot question committee” means a person that receives contributions or makes expenditures aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign, other than a campaign for the nomination or election of a candidate. The term “ballot question committee” does not include a political action committee or an exempt donor.

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

3. Contribution. “Contribution” includes:

A. A gift, subscription, loan, advance or deposit of money or anything of value made to or received by a committee for the purpose of initiating or influencing a campaign, including but not limited to:


(1) Funds that the contributor specified were given, in whole or in part, in connection with a campaign;

(2) Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically, in whole or in part, for the purpose of initiating or influencing a campaign; and

(3) Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a campaign when viewed in the context of the contribution and the recipient committee’s activities regarding a campaign;

A-1. Any funds deposited or transferred into the campaign account described in section 1054;

B. ~~A contract, promise or agreement, expressed or implied whether or not legally enforceable, to make a contribution to a committee;~~



Commission staff proposes deleting from the definition of “contribution” the concept of a promise or agreement to give a donation, for a few reasons. One rationale is to avoid potential vagueness in reporting responsibilities. Various conversations about potential donation may occur between a prospective donor and a candidate or party committee, and it may be unclear whether the prospective donor has made a promise or agreement to provide funds. We believe the current practice of reporting contributions when they are received is sufficient to inform the public about who is influencing elections and government. The Commission’s current presentation of financial information to the public through its eFiling system presumes that a reported contribution has been received, not just promised. Amending our eFiling system to reflect contributions that have been promised but not realized would entail some redesign and cost. Other jurisdictions, including the federal government, do not include a promised donation in the definition of contribution. 52 U.S.C. § 30101(8).

C. Any funds received by a 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 committee that is used by the committee to initiate or influence a campaign.

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

“Contribution” does not include a loan of money by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business.

3-A. Exempt donor. “Exempt donor” means a person that has not received contributions for the purpose of influencing a campaign in the prior 2 years and whose only payments of money to influence a campaign in the prior 2 years are:

A. Contributions of money to candidates, party committees, political action committees or ballot question committees registered with the commission or a municipality; or

B. Payments for goods or services with an aggregate value of no more than \$100,000 contributed to candidates, party committees, political action committees or ballot question committees registered with the commission or a municipality.

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;

(1-A) Any purchase, payment, distribution, loan, advance, deposit or gift of money made from the campaign account described in section 1054;

(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

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

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;

(6) Any communication by a committee that is not made for the purpose of influencing the nomination or election of any person to state or county office; and

(7) Any payments to initiate a people's veto referendum or the direct initiative of legislation made prior to the submission of an application to the Department of the Secretary of State as provided in section 901.

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

4-B. Initiate. "Initiate" includes the collection of signatures on petitions and related activities to qualify a state or local initiative or referendum for the ballot.

<i>This change is intended to clarify that the collection of signatures refers to the petition process.</i>

4-C. [Repealed]

5. Political action committee. The term "political action committee":

A. Includes:

(1) Any separate or segregated fund established by any corporation, membership organization, cooperative or labor or other organization that receives contributions or makes expenditures aggregating more than \$2,500 in a calendar year for the purpose of influencing the nomination or election of a candidate to political office; and

(4) [Repealed]

(5) Any person, including any corporation or association, other than an individual, that receives contributions or makes expenditures aggregating more than \$2,500 in a calendar year for the purpose of influencing the nomination or election of any candidate to political office; and

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

B. Does not include:

- (1) A candidate or a candidate's treasurer under section 1013-A, subsection 1;
- (2) A candidate's authorized political committee under section 1013-A, subsection 1, paragraph B;
- (3) A party committee under section 1013-A, subsection 3; or
- (4) An exempt donor.

6. [Repealed]

§ 1053-A. Municipal elections



If an organization qualifies as a committee under section 1052, subsection 2 and that organization receives contributions or makes expenditures to influence a municipal ~~campaign~~ election in towns or cities with a population of 15,000 or more, that organization must register and file reports with the municipal clerk as required by Title 30-A, section 2502. If an organization qualifies as a ballot question committee under section 1052, subsection 2-A and that organization receives contributions or makes expenditures exceeding \$5,000 to influence a municipal referendum ~~campaign~~ in a town or city with a population of less than 15,000, that organization must register and file reports with the commission using the electronic filing system pursuant to section 1059, subsection 5. The reports must be filed in accordance with the reporting schedule in section 1059 and must contain the information listed in section 1060. A committee registered with the commission and that receives contributions or makes expenditures relating to a municipal election shall file a copy of the report containing such contributions or expenditures with the clerk in the subject municipality. The commission retains the sole authority to prescribe the content of all reporting forms. The commission does not have responsibility to oversee the filing of registrations or campaign finance reports relating to municipal campaigns in towns or cities with a population of 15,000 or more. If a municipal clerk becomes aware of a potential violation of this subchapter that the clerk considers to be substantial, the clerk may refer the matter to the commission for enforcement. The commission may conduct an investigation if the information referred by the municipal clerk shows sufficient grounds for believing that a violation may have occurred. After conducting the investigation, if the commission determines that a violation of this subchapter has occurred, the commission may assess penalties provided in this subchapter.

For greater clarity, Commission staff recommends the phrases “municipal election” and “municipal referendum,” rather than “municipal campaign” and “municipal referendum campaign.” “Campaign” is defined in § 1052(1) to mean “any course of activities to influence [a candidate or ballot question election.]”

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

Commission staff proposes inserting “receives contributions” because organizations may qualify as a ballot question committee under § 1052(2-A) by receiving or spending more than \$5,000 to influence a ballot question election.

§ 1055. Publication or distribution of political communications



A political action committee that makes an expenditure to finance a public communication expressly advocating the election or defeat of a candidate or that names or depicts a clearly identified candidate is subject to the requirements of section 1014.

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



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 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. 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

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

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.

§ 1057. Required records for committees

Any 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 committee shall record a detailed account of:
 - A.** All expenditures made to or in behalf of a candidate, campaign or committee;
 - B.** The identity of each candidate, campaign or committee;
 - C.** The office sought by a candidate and the district the candidate seeks to represent, for candidates that a committee has made an expenditure to or in behalf of; and
 - D.** The date of each expenditure.
- 2. Receipts.** The treasurer of a 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 committee shall keep a record of all contributions to the 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. When any donor’s contributions to a

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

committee exceed \$50, the record must include the aggregate amount of all contributions from that donor.



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

This change is intended to confirm that account statements maintained by a political action committee or ballot question committee should generally reflect all financial activity in the committee's campaign account, not just deposits to the account.

5. Simplified record-keeping requirements. The commission may adopt by rule simplified record-keeping requirements for an individual registering as a ballot question committee to initiate or influence a ballot question. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

§ 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:

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

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 \$25 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.

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



Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

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.

Although it is rare, if a report remains unfiled three business days after a scheduled deadline, the Commission is required by this subsection to notify the candidate/committee by mail that the report has not been received. Commission staff proposes moving this 3-day notice to subsection 8 as part of a revision of the procedures used by the Commission when a committee remains unresponsive to Commission's pre- and post-deadline notifications that a report is due.

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.~~

When a political action committee or ballot question committee files a campaign finance report late, the Commission engages in an automatic penalty process under § 1062-A(2)&(5). In addition, this provision directs the Commission to prepare and make available for public inspection a list of committees that have filed reports late. The Commission staff has not implemented this, because the Commission's procedures for reminding committees and assessing penalties have been effective in curbing lateness and we have not wanted to shame committees that have filed a report late due to a misunderstanding, miscommunication, or technological problem. We propose eliminating the duty to post a public list of late-filing committees. If someone wants a list, the Commission staff can run a report in our eFiling system and produce the list upon request.



Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

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. Penalties for failure to file report. If the commission staff finds that a committee or other person has failed to file a report required under this subchapter, the commission staff shall send by regular and electronic mail a notice to the committee treasurer or other responsible officer within 3 business days following the filing deadline informing them that the report has not been received. If the report remains unfiled after ten days, the commission shall send another notice by regular and electronic mail. If the filer has not filed the report after these two notices, commission staff may refer the violation to the commission, which may, after notice and an opportunity to be heard, determine whether a violation has occurred and, if so, the amount of any penalty. The maximum penalty for failure to file a report required under section 1059 is \$10,000 or the amount of financial activity not reported, whichever is greater. A person who fails to file a report as required by this subchapter within 30 days of the filing deadline after the Commission has sent the first two notices required in this subsection is guilty of a Class E crime, except that, if a penalty is assessed pursuant to this 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.~~

If a political action committee or ballot question committee fails to file a campaign finance report, current subsection 8-A authorizes the Commission to assess a civil penalty up to \$10,000 or the amount of the financial activity not reported, whichever is greater. Subsection 8 provides that a committee's failure to file a report within 30 days of the filing deadline is a Class E crime. In practice, the Commission receives some campaign finance reports late, but it is rare that a PAC or ballot question committee altogether fails to file a required campaign finance report. Consistent with procedures proposed above in § 1020-A(8) for candidates and party committees, Commission staff proposes two notices would be sent to the late filer by regular and electronic mail. If the report is not filed, the Commission staff may bring the matter to the attention of the Commission for a potential finding of violation and penalty, which would require one more notice. Alternatively, the Commission could refer the matter for potential criminal prosecution, but we expect that would be rare.

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.

§ 1064. Foreign government campaign spending prohibited

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

A. "Contribution" has the meanings given in section 1012, subsection 2 and section 1052, subsection 3.

B. "Electioneering communication" means a communication described in section 1014, subsection 1, 2 or 2-A.

C. "Expenditure" has the meanings given in section 1012, subsection 3 and section 1052, subsection 4.

D. "Foreign government" includes any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country other than the United States or over any part of such country and includes any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. "Foreign government" includes any faction or body of insurgents within a country assuming to exercise governmental authority, whether or not such faction or body of insurgents has been recognized by the United States.

E. "Foreign government-influenced entity" means:

(1) A foreign government; or

(2) A firm, partnership, corporation, association, organization or other entity with respect to which a foreign government or foreign government-owned entity:

(a) Holds, owns, controls or otherwise has direct or indirect beneficial ownership of 5% or more of the total equity, outstanding voting shares, membership units or other applicable ownership interests; or


(b) Directs, dictates, controls or directly or indirectly participates in the decision-making process with regard to the activities of the firm, partnership, corporation, association, organization or other entity to influence the nomination or election of a candidate or the initiation or approval of a referendum, such as decisions concerning the making of

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

contributions, expenditures, independent expenditures, electioneering communications or disbursements.

F. "Foreign government-owned entity" means any entity in which a foreign government owns or controls more than 50% of its equity or voting shares.

G. "Independent expenditure" has the meaning given in section 1019-B, subsection 1.

 ~~H. "Public communication" means a communication to the public through broadcasting stations, cable television systems, satellite, newspapers, magazines, campaign signs or other outdoor advertising facilities, Internet or digital methods, direct mail or other types of general public political advertising, regardless of medium.~~

This section of statute, enacted by Maine voters in a 2023 citizen initiative, is currently the subject of a constitutional challenge. The definition of public communication in § 1064(1)(H) is used in subsection 6 below to require a sponsorship message for certain policy-related messages funded by foreign government-influenced entities. To promote uniformity, the Commission staff proposes deleting § 1064(1)(H) and instead relying on the definition of "public communication in § 1001(4). This change would add automated telephone calls to the coverage of subsection 6.

I. "Referendum" means any of the following:

(1) A people's veto referendum under the Constitution of Maine, Article IV, Part Third, Section 17;

(2) A direct initiative of legislation under the Constitution of Maine, Article IV, Part Third, Section 18;

(3) A popular vote on an amendment to the Constitution of Maine under the Constitution of Maine, Article X, Section 4;

(4) A referendum vote on a measure enacted by the Legislature and expressly conditioned upon ratification by a referendum vote under the Constitution of Maine, Article IV, Part Third, Section 19;

(5) The ratification of the issue of bonds by the State or any state agency; and

(6) Any county or municipal referendum.

2. Campaign spending by foreign governments prohibited. A foreign government-influenced entity may not make, directly or indirectly, a contribution, expenditure, independent expenditure, electioneering communication or any other donation or disbursement of funds to influence the nomination or election of a candidate or the initiation or approval of a referendum.

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

3. Solicitation or acceptance of contributions from foreign governments prohibited. A person may not knowingly solicit, accept or receive a contribution or donation prohibited by subsection 2.

4. Substantial assistance prohibited. A person may not knowingly or recklessly provide substantial assistance, with or without compensation:

A. In the making, solicitation, acceptance or receipt of a contribution or donation prohibited by subsection 2; or

B. In the making of an expenditure, independent expenditure, electioneering communication or disbursement prohibited by subsection 2.

5. Structuring prohibited. A person may not structure or attempt to structure a solicitation, contribution, expenditure, independent expenditure, electioneering communication, donation, disbursement or other transaction to evade the prohibitions and requirements in this section.

6. Communications by foreign governments to influence policy; required disclosure. Whenever a foreign government-influenced entity disburses funds to finance a public communication not otherwise prohibited by this section to influence the public or any state, county or local official or agency regarding the formulation, adoption or amendment of any state or local government policy or regarding the political or public interest of or government relations with a foreign country or a foreign political party, the public communication must clearly and conspicuously contain the words "Sponsored by" immediately followed by the name of the foreign government-influenced entity that made the disbursement and a statement identifying that foreign government-influenced entity as a "foreign government" or a "foreign government-influenced entity."

7. Due diligence required. Each television or radio broadcasting station, provider of cable or satellite television, print news outlet and Internet platform shall establish due diligence policies, procedures and controls that are reasonably designed to ensure that it does not broadcast, distribute or otherwise make available to the public a public communication for which a foreign government-influenced entity has made an expenditure, independent expenditure, electioneering communication or disbursement in violation of this section. If an Internet platform discovers that it has distributed a public communication for which a foreign government-influenced entity has made an expenditure, independent expenditure, electioneering communication or disbursement in violation of this section, the Internet platform shall immediately remove the communication and notify the commission.

8. Penalties. The commission may assess a penalty of not more than \$5,000 or double the amount of the contribution, expenditure, independent expenditure, electioneering

Changes Proposed by Commission Staff to Title 21-A, Chapter 13: Campaign Finance Reports and Finances

communication, donation or disbursement involved in the violation, whichever is greater, for a violation of this section. In assessing a penalty under this section, the commission shall consider, among other things, whether the violation was intentional and whether the person that committed the violation attempted to conceal or misrepresent the identity of the relevant foreign government-influenced entity.

9. Violations. Notwithstanding section 1004, a person that knowingly violates subsections 2 through 5 commits a Class C crime.

10. Rules. The commission shall adopt rules to administer the provisions of this section. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

11. Applicability. Notwithstanding section 1051, this section applies to all persons, including candidates, their treasurers and authorized committees under section 1013-A, subsection 1; party committees under section 1013-A, subsection 3; and committees under section 1052, subsection 2.

§ 2502. Campaign reports in municipal elections

1. Reports by candidates. ~~A candidate for municipal office~~ Financial activities by candidates and others to influence elections for municipal office in a town or city with a population of 15,000 or more is ~~are~~ governed by Title 21-A, sections 1001 to 1020-A, except that registrations and campaign finance reports must be filed with the municipal clerk instead of the Commission on Governmental Ethics and Election Practices. A town or city with a population of less than 15,000 may choose to be governed by Title 21-A, sections 1001 to 1020-A by vote of its legislative body at least 90 days before an election for office. A town or city that votes to adopt those provisions may revoke that decision, but it must do so at least 90 days before an election subject to those sections.

A. [Repealed]

2. Municipal referenda campaigns. Municipal referenda campaigns ~~finance reporting is~~ are governed by Title 21-A, chapter 13, subchapter 4.

3. Public access to records. A town or city that receives registrations or reports pursuant to this section must keep them for 8 years.

Commission staff proposes changes to section 1 of this statute to clarify that state campaign finance requirements apply to party committees and political action committees in municipal candidate elections, and not just to candidates.

The changes in section 2 are intended to clarify that the full range of legal requirements for ballot question committees in state campaign finance law (registration, financial reporting, disclaimers in advertisements, etc.) are all required for municipal referenda campaigns, not just financial reporting.

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

IN THE MATTER OF:

ALPINE INITIATIVES LLC

Respondent.

CONSENT AGREEMENT

The Maine Commission on Governmental Ethics and Election Practices (the “Commission”) and Alpine Initiatives LLC (“Alpine Initiatives”) enter into the following consent agreement (the “Agreement”) to resolve alleged violations of campaign finance laws without further administrative proceedings. The alleged violations arise out of activities to oppose the New England Clean Energy Connect transmission project (“NECEC”). Without admitting any liability or wrongdoing, Alpine Initiatives wishes to resolve this matter with the Commission by entering into this Agreement pursuant to which Alpine Initiatives agrees that it should have registered as a Political Action Committee (“PAC”) and, as a result, filed a Maine campaign finance report.

PROCEDURAL BACKGROUND

1. During 2021, the Commission staff investigated the activities of Clean Energy for ME, LLC, which conducted activities to oppose NECEC in the name of Stop the Corridor. The Commission staff discovered Stop the Corridor had made payments to Alpine Initiatives, a Maine limited liability company formed in October 2018 that did not have any commercial presence on the internet. In July 2021, the Commission authorized its staff to investigate whether Alpine Initiatives had been used as a pass-through for a \$150,000 contribution to the Maine Democratic Party.

2. Beginning in July 2021, the Commission staff conducted investigations of Alpine Initiatives and Stop the Corridor concurrently. For purposes of this investigation, the Commission staff received large productions of documents from Bernstein, Shur, Sawyer & Nelson (“Bernstein Shur”) and Alpine Initiatives and conducted recorded interviews of the

consultants referenced in this Agreement and the former Deputy Director of the Maine Democratic Party.

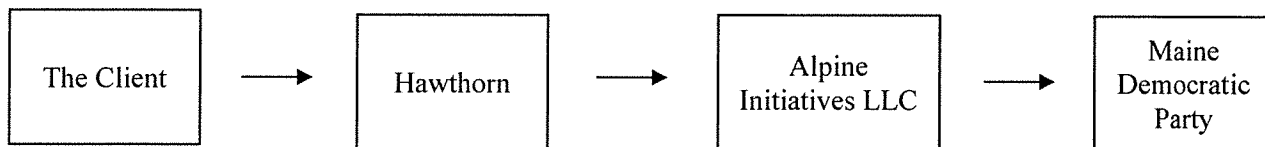
FINDINGS OF FACT

3. Alpine Initiatives was a Maine limited liability company formed in October 2018.
4. Bernstein Shur is a Maine law firm that employs political consultants.
5. The Hawthorn Group, L.C. (“Hawthorn”) is a public affairs and communications consulting firm based in Alexandria, Virginia.
6. In late 2017 or early 2018, Hawthorn, acting on behalf of a client (“the Client”), approached Bernstein Shur about doing work against NECEC.
7. Bernstein Shur employees provided a mix of legal and consulting services for this purpose during 2018-2020. (The Bernstein Shur employees that provided consulting services are referenced collectively as the “Maine consultants”.)
8. In early meetings with the Maine consultants in late 2017 or 2018 Hawthorn told the Maine consultants they should not disclose Hawthorn or the Client and that all activities should be conducted in accordance with Maine law. These directives never changed during the relevant period covered by this Agreement and covered the full range of activities that would be conducted by the Maine consultants. The Maine consultants understood this to mean that, if Maine law required an activity to result in the disclosure of the name of Hawthorn or the Client, the Maine consultants should not engage in such activity. Hawthorn retained the Maine consultants based on their expertise in Maine elections and election law and were relying on the Maine consultants to act within these parameters.
9. In October 2018, the Maine consultants viewed Democratic officials as generally more likely to oppose the NECEC project. In anticipation of future lobbying activities with Democratic officials regarding potential legislation, the Maine consultants explored the feasibility of making a substantial contribution to the Maine Democratic Party in connection with get out the vote activities related to the upcoming general election. The Maine consultants believed the contribution would help their relationships with Democratic officials.
10. The Maine consultants assert that they believed that providing funding for get out the vote activities was not reportable and that, therefore, none of their activities required Alpine

Initiatives to register as a PAC or to identify its source of funding under Maine law. The Commission staff's investigation did not find evidence contradicting this assertion.

11. Around two weeks before the November 6, 2018, general election, one of the Maine consultants called the former Deputy Director of the Maine Democratic Party to discuss a potential donation toward the party's get out the vote activities. That consultant asked: if the consultant had a donor that could contribute \$100,000 or \$150,000, would the party be able to use the contribution before Election Day? The former Deputy Director confirmed the party could use that money to expand the party's activities to contact voters to encourage them to return absentee ballots. The Maine consultant did not identify the donor. No policy agenda was attached to the contribution. The contribution was intended to support the Democratic Party's get out the vote activities. In a second conversation, the Maine consultant confirmed that the amount would be \$150,000 and the donor would be a new entity named Alpine Initiatives. Commission staff's investigation did not find evidence that the Client knew the purpose of the funds or to whom they would be paid.

12. On October 23-24, 2018, the Maine consultants and Hawthorn agreed to form a new limited liability company to make a donation to the Maine Democratic Party. It was determined that the funds would flow as follows:



13. Within a three-day period of October 24-26, 2018, the Maine consultants caused Alpine Initiatives, a Maine limited liability company, to be formed, opened its bank account, and made other necessary arrangements.

14. On Monday, October 29, 2018, Hawthorn made a wire transfer of \$160,000 to Alpine Initiatives' bank account. The next day, October 30, 2018, Alpine Initiatives wired \$150,000 to the Maine Democratic Party.

15. In a 24-Hour Report filed with the Commission on October 29, 2018 (eight days before the general election), the Maine Democratic Party reported receiving \$150,000 from Alpine Initiatives. The party also reported the contribution in its 42-Day Post-General Election Report filed on December 18, 2018.

16. Alpine Initiatives was the only source reported to the public of the \$150,000 contribution identified in the Maine Democratic Party campaign finance reports filed with the Commission. The public did not learn of the ultimate source of the contribution because it was reported in the name of Alpine Initiatives.

17. Alpine Initiatives did not register and file campaign finance reports with the Commission as a PAC.

18. Alpine Initiatives did not participate in any commerce within its 14-month existence. Making the \$150,000 contribution was Alpine Initiatives' only activity, other than administrative tasks to maintain the LLC (*e.g.*, making corporate filings and paying routine fees). Alpine Initiatives did not lobby or participate in any other political activities. It dissolved on December 31, 2019.

APPLICABLE LAW

19. Under campaign finance law in effect during October 2018, an organization qualified as a PAC if it received contributions or made expenditures over a monetary threshold for purposes of initiating or influencing an election campaign in Maine. 21-A M.R.S. § 1052(5)(A). The threshold was \$1,500 for organizations with a "major purpose" of initiating or influencing a campaign. § 1052(5)(A)(4) (repealed under a 2021 consolidation of the PAC definition, P.L. 2021, Ch. 217).

20. Maine campaign finance laws governing PACs separately define *expenditure* and *contribution*. The definition of *expenditure* includes "[t]he transfer of funds by a political action committee to another candidate or political committee." § 1052(4)(A). The definition of *contribution* includes "[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." § 1052(3)(A). The definition of *expenditure*, but not the definition of *contribution*, excludes "[a]ctivity designed to encourage individuals ... to vote, if that activity or communication does not mention a clearly identified candidate." § 1052(4)(B)(2) (hereinafter, "get out the vote activities").

21. Political action committees are required to register with the Commission under

§ 1052-A(1)(A). The Commission is authorized to assess a penalty of up to \$2,500 against a PAC that fails to register, pursuant to § 1062-A(1).

22. PACs are required to file campaign finance reports with the Commission disclosing contributions they have received and expenditures they have made. §§ 1059 & 1060. Section 1062-A(8-A) authorizes the Commission to assess a civil penalty when a PAC fails to file a campaign finance report. The maximum penalty is \$10,000 or the amount of financial campaign activity not reported, whichever is greater.

23. The Commission may triple a penalty authorized under Chapter 13 of Maine Election Law for a violation occurring less than 14 days prior to an election day. § 1004-C.

CONCLUSIONS OF LAW

24. Alpine Initiatives received a contribution of \$160,000 as defined by 21-A M.R.S. § 1052(3)(A)&(C).

25. The Commission concludes that only the entity directly making the expenditure for get out the vote activities is exempt from reporting the expenditure. Accordingly, the Commission concludes that Alpine Initiatives made an expenditure of \$150,000 as defined by 21-A M.R.S. § 1052(4)(A)(1)&(3) in the form of a transfer of funds to the Maine Democratic Party for the purpose of influencing a campaign.

26. The Commission concludes that the exception to the definition of *expenditure* in § 1052(4)(B)(2) for get out the vote activities is inapplicable to the facts found above because Alpine Initiatives transferred funds to another political committee to use for get out the vote activities rather than engaging in get out the vote activities itself.

27. Based on this construction of applicable campaign finance laws, the Commission concludes that Alpine Initiatives qualified as a PAC under former 21-A M.R.S. § 1052(5)(A)(4) because its major purpose was influencing a campaign and it received contributions and made expenditures exceeding \$1,500 in 2018 for that purpose, despite the Maine consultants' view that such activities constituted get out the vote activities.

28. Therefore, the Commission concludes that Alpine Initiatives violated 21-A M.R.S. § 1052-A(1)(A) by failing to register as a PAC.

29. Alpine Initiatives violated 21-A M.R.S. § 1059 by not filing a campaign finance report at the time of registration.

COVENANTS

30. To resolve this matter without further administrative hearings or litigation, Alpine Initiatives agrees to pay or cause to be paid, and the Commission agrees to accept, civil penalties totaling \$160,000 for not registering as a PAC and filing a campaign finance report at the time of registration.

31. The payments must be in the form of a check or money order payable to “Treasurer, State of Maine” and delivered to the Commission. Alpine Initiatives, or others on its behalf, will make the payment within 30 days of the full execution of this Agreement.

32. No later than simultaneously with the execution of this Agreement, Alpine Initiatives agrees to file the following documents with the Commission: (a) the PAC registration attached as Exhibit A and incorporated into this Agreement; and (b) the campaign finance report disclosing the October 29, 2018, contribution of \$160,000 it received from Hawthorn and its October 30, 2018, expenditure of \$150,000 to the Maine Democratic Party, attached as Exhibit B and incorporated into this Agreement. In consideration of these disclosures, the execution of this Agreement and payment of the penalties described above, the Commission will not seek any other civil or administrative sanctions or make any criminal referral(s) available under or pursuant to Maine campaign finance law against Alpine Initiatives, or any other individual or entity relating to the October 30, 2018, contribution to the Maine Democratic Party, the funding for the contribution, or the failure of Alpine Initiatives to register and file campaign finance reports as a PAC.

33. The Commission has determined that the investigative report by the Commission staff and the accompanying appendices (collectively the “IR”) constitute an investigative working paper pursuant to 21-A M.R.S. § 1003(3-A) and shall request that the Attorney General defend that designation in response to any lawsuit seeking disclosure of the IR. The Commission further agrees to keep confidential all other materials produced to or generated by Commission staff during the investigation that meet the definition of investigative working papers under 21-A M.R.S. § 1003(3-A). If the Commission believes that materials other than the IR produced to or

generated by Commission staff during the investigation do not meet the definition of investigative working papers, prior to disclosing any such material the Commission will provide Stop the Corridor and any person who initially disclosed the material in question to the Commission with an opportunity prior to any disclosure to be heard on the Commission's intended response to any request for disclosure of such document(s), and, as appropriate, to obtain a judicial determination whether the materials in question are subject to public disclosure under the Maine Freedom of Access Act, 1 M.R.S. § 400 et seq. The parties acknowledge and agree that the Commission's disclosure of records pursuant to court order shall not be a breach of the Consent Agreement.

34. This Agreement becomes effective upon approval of the Commission by majority vote and the date of the last necessary signature below.

35. This Agreement contains the entire agreement among the parties. It may be modified only by a written agreement executed by the parties.

36. This Agreement is not subject to appeal. By entering into the Agreement, the Commission, Alpine Initiatives and its officers, and the other individuals and entities referred to herein waive any further administrative hearings or appeals regarding the October 30, 2018, contribution to the Maine Democratic Party, the funding for the contribution, and the failure of Alpine Initiatives to register and file campaign finance reports as a PAC.

37. The individual who is signing this Agreement for Alpine Initiatives acknowledges by his signature hereto that he has read this Agreement and has had the opportunity to consult with legal counsel before executing it, that he has authority to sign the Agreement on behalf of Alpine Initiatives and its officers, that he has executed the Agreement voluntarily, and that he agrees to abide by all terms and conditions set forth herein.

In Witness Whereof, the parties have executed this Agreement consisting of eight (8) pages.

Dated: November 29, 2023

ALPINE INITIATIVES:

By: 

Its: Principal

MAINE COMMISSION ON
GOVERNMENTAL ETHICS
AND ELECTION PRACTICES:

Dated: 19 NOV 23

By: 

Its: CHAIRMAN

Exhibit A

Retroactive Political Action Committee Registration

Name of Committee: Alpine Initiatives

Street: 53 Exchange St

City and Zip: Portland, 04101

Name of Principal Officer: David Farmer

Mailing Address Street: 100 Middle Street

City and Zip: Portland 04103

Telephone 207-228-7275

Email: dfarmer@bernsteinshur.com

Type of Report: Retroactive Political Action Committee Registration

Exhibit B

Consolidated Campaign Finance Report

Name of Committee: Alpine Initiatives

Street 53 Exchange St

City and Zip Portland 04101

Name of Principal Officer David Farmer

Mailing Address Street 100 Middle Street

City and Zip Portland 04103 **Telephone** 207-228-7275

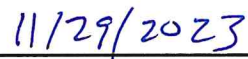
Email dfarmer@bernsteinshur.com

Type of Report Consolidated Initial PAC Report, and Termination Report

Dates of Report Period October 29, 2018-November 6, 2018



Principal Officer's Signature



Date

SCHEDULE A
CASH CONTRIBUTIONS

- For contributors who gave more than \$50, the committee must report the contributor's name, address, occupation, and employer.
- If employment information has been requested from the contributor and the contributor has not provided it, indicate "information requested" for the occupation and employer.
- For cash contributions totaling \$50 or less, please enter "unitemized contributions" as the contributor and the total amount and the appropriate key code on a line on this page. Once a contributor has given the committee more than \$50 in a report period, you must list that contributor separately.
- Duplicate as needed.

DATE RECEIVED	CONTRIBUTOR'S NAME, ADDRESS, ZIP	OCCUPATION AND EMPLOYER	TYPE (use key code)	AMOUNT
Oct. 29, 2018	The Hawthorn Group 2111 Eisenhower Ave Ste 200 Alexandria, VA 22314		3	\$160,000
Total cash contributions (this page only) ⇒ (combined totals from all Schedule A pages must be listed on Schedule F)				\$160,000

Key Codes:

1 = Individuals

3 = Commercial Source

4 = Non Profit Organization

5 = Political Action Committee

6 = Political Party Committee

7 = Ballot Question Committee

9 = Candidate/Candidate Committees

10 = General Treasury Transfer

12 = Contributors giving \$50 or Less

16 = Financial Institution

SCHEDULE B

EXPENDITURES TO SUPPORT OR OPPOSE

- Enter all expenditures, including cash contributions from this committee, made to support or oppose a candidate, political action committee, ballot question committee, or party committee.
- Enter all expenditures made to support or oppose a ballot question, referendum, or citizen initiative, including expenditures made in the signature-gathering phase.
- Enter the name of the candidate, ballot question, or committee supported or opposed by the expenditure and indicate whether the expenditure was made in support or opposition.
- Duplicate as needed.

If a single expenditure is made to support or oppose multiple candidates, committees, or ballot questions, the expenditure must be itemized by the amount spent per candidate, committee, or ballot question, not as a single expenditure, and each candidate, committee, or ballot question must be identified.

EXPENDITURE TYPES			
APP	Apparel (t-shirts, hats, embroidery, etc.)	PER	Personnel and campaign staff, consulting, and independent contractors
CON	Contribution to party committee, non-profit, other	PHO	Phones (phone banking, robocalls, and texts)
EQP	Equipment of \$50 or more (computer, tablet, phone, furniture, etc.)	POL	Polling and survey research
EVT	Campaign and fundraising events (venue/booth rental, entertainment, supplies, etc.)	POS	Postage for US Mail and mailbox fees
FOD	Food for campaign events or volunteers, catering	PRO	Professional services (graphic design, legal services, web design)
HRD	Hardware and small tools (hammer, nails, lumber, paint, etc.)	RAD	Radio ads and production costs only
LIT	Printed campaign materials (palmcards, signs, stickers, flyers etc.)	TKT	Entrance cost to event (bean suppers, fairs, party events, etc.)
MHS	Mail house and direct mail (design, printing, mailing, and postage)	TRV	Travel (mileage and lodging, etc.)
OFF	Office supplies, rent, utilities, internet service, phone minutes/data	TVN	TV/Cable ads, production, and media buyer costs only
ONL	Social medial and online advertising only	WEB	Website and internet costs (website domain and registration, etc.)
OTH	Other and fees (bank, contribution, and money order fees, etc.)		
! REMARKS REQUIRED ON ALL EXPENDITURE TYPES!			
Date:	Payee Name and Address:	Amount	
Oct. 30, 2018	Maine Democratic Party 320 Water St., 3rd Floor Augusta, ME 04330	\$150,000	
Type:	Remarks (Required): CON: To support the Maine Democratic Party's Get Out the Vote efforts		
<input type="checkbox"/> Support <input type="checkbox"/> Oppose	Candidate Name/Ballot Question:		
Date:	Payee Name and Address:	Amount	
Type:	Remarks (Required):		
<input type="checkbox"/> Support <input type="checkbox"/> Oppose	Candidate Name/Ballot Question:		
Total expenditures this page only ⇒		\$150,000	
(combined totals from all Schedule B pages must be listed on Schedule F)			

PAC/BQC Name: Alpine Initiatives

SCHEDULE F
SUMMARY SCHEDULE
CASH ACTIVITY

Receipts		Total for this Period
1. Cash Contributions (Schedule A)		\$160,000
2. Other Cash Receipts (interest, etc.)		0
3. Loans (Schedule C)		0
4. Total Receipts (lines 1 + 2 + 3)		\$160,000
Expenditures		Total for this Period
5. Expenditures to Support or Oppose (Schedule B)		\$150,000
6. Operating Expenditures (Schedule B-1)		
7. Loan Repayment (Schedule C)		
8. Total Payments (lines 5 + 6 + 7)		\$150,000

CASH SUMMARY

		Total for This Period
9. Cash Balance at Beginning of Period		0
10. Plus Total Receipts This Period (line 4 above)		\$160,000
11. Minus Total Payments This Period (line 8 above)		\$150,000
12. Cash Balance at End of Period		\$10,000

OTHER ACTIVITY

		Total for This Period
13. In-Kind Contributions (Schedule A-1)		0
14. Total Loan Balance at End of Period (Schedule C)		0
15. Total Unpaid Debts at End of Period (Schedule D)		0