



## MEMORANDUM

**To:** Maine Commission on Governmental Ethics and Election Practices

**From:** Maine Citizens for Clean Elections

**Date:** May 4, 2026

**Re:** Red Boxing Advisory Statement and Pending Complaints

---

Maine Citizens for Clean Elections (MCCE) respectfully submits this memorandum regarding the Commission's consideration of red boxing in Maine elections.

MCCE agrees with Commission staff that red boxing is materially different from ordinary candidate speech. Red boxing can undermine public trust in campaign finance law because it is contrary to the basic rule that candidates may not suggest or direct independent spending on their behalf. When so directed, such spending is no longer independent, but is then coordinated, in subversion of contribution limits. Maine law is different from the federal regulatory framework under which this practice has developed in federal campaigns.

MCCE does not request a retroactive finding of violation or the assessment of any penalty against the campaigns identified in the staff materials, provided that those campaigns remove any remaining red boxing materials and refrain from using this practice in the future. Our recommendation is prospective: the Commission should make clear that red boxing is inconsistent with Maine's campaign finance laws and may not be used going forward.

### **I. Red boxing should be treated as a candidate request or suggestion for outside spending.**

Maine law provides that any expenditure made "in cooperation, consultation or concert with, or at the request or suggestion of," a candidate, candidate committee, or their agents is considered a contribution to that candidate. 21-A M.R.S. § 1015(5). That language is broad. It is not limited to private meetings, direct emails, telephone calls, or express agreements.

A candidate who publicly posts targeted instructions telling outside spenders what voters should "see," "read," or "hear," what messages should be used, which audiences should be targeted, and what media should be deployed, and when, is making a request or suggestion within the ordinary meaning of those words. Red boxing is not simply public information. It is campaign strategy made public for the apparent purpose of directing outside spending while preserving formal deniability.

Re: Red Boxing Advisory Statement and Pending Complaints  
May 4, 2026

A suggestion does not stop being a suggestion because it is posted on a website rather than spoken in a private meeting. If the same words appearing in a red box were spoken by a candidate or campaign consultant in a one-on-one meeting with an outside spender, it would strain credulity to deny that the candidate had made a suggestion within the meaning of section 1015(5). The legal conclusion should not change merely because the campaign has adopted the unusual convention of placing the same instructions in a so-called “media kit.”

Under current law, a completed expenditure may be necessary before the Commission can calculate and penalize an over-the-limit contribution. But the Commission need not ignore the candidate-side conduct that makes such an expenditure non-independent. It can and should issue prospective guidance warning candidates that red boxing may convert later outside spending into an illegal contribution.

**II. The First Amendment does not require Maine to treat red boxing as ordinary public campaign speech.**

Candidates have broad constitutional protection to speak to voters, publish campaign materials, state policy positions, criticize opponents, urge public support, and communicate with the press and the general public. The Commission’s guidance should not restrict that activity.

Red boxing is different. Its structure, vocabulary, and placement show that it is designed for political professionals, outside spenders, consultants, media buyers, and allied political actors. References to what voters should “see,” “read,” or “hear,” combined with target audiences, timing, media channels, and preferred claims, are not conventional public persuasion. They are operational guidance.

The Commission would not be regulating red boxing because it disagrees with a candidate’s message. It would be recognizing that a communication providing suggested messages, target audiences, timing, and media channels can function as a request or suggestion for outside spending. Maine law does not prohibit candidates from saying what they believe. It does, however, treat spending made at a candidate’s “request or suggestion” as a contribution.

The constitutional protection for independent expenditures rests on their independence. *Buckley*, *Citizens United*, and *McConnell* all reflect the same basic distinction: independent spending receives special constitutional protection because it is independent of the candidate. Red boxing exploits that distinction by using public webpages to convey the very information that would plainly raise coordination concerns if conveyed privately.

**III. Prospective guidance is the fairest and most effective response.**

The Commission has not previously issued clear guidance on red boxing in Maine elections. Federal practice has created confusion, and campaign consultants may have assumed, wrongly in

Re: Red Boxing Advisory Statement and Pending Complaints  
May 4, 2026

our view, that the FEC's permissive posture in federal elections applies equally in Maine. For that reason, MCCE supports an educational and prospective approach.

The Commission should not make findings of violation or impose penalties against the campaigns identified in the staff materials, so long as they remove any remaining red boxing content and desist from the practice. At the same time, the Commission's guidance should be clear enough to prevent repetition.

MCCE recommends that the Commission state that, going forward, candidates, candidate committees, and their agents may not post public communications that, viewed in context, provide outside spenders with strategic instructions regarding paid communications. Prohibited red boxing content should include, at minimum, combinations of the following: suggested messages, preferred claims or themes, target audiences, geographic or demographic targeting, timing, media channels, coded media references, or other signals designed to guide outside spending.

Ordinary public campaign materials should remain permissible. The problem is not publicity. The problem is using public-facing material as a deliberate channel for campaign-to-outside-spender instruction.

## **Conclusion**

MCCE asks the Commission to issue clear prospective guidance prohibiting red boxing while declining to impose penalties or make findings of violation against campaigns that remove any remaining red boxing content and agree to desist. That approach is fair, gives regulated parties clear notice, and protects the principle that independent expenditures must be genuinely independent, not candidate-directed spending with a public website standing in for the phone call.

If it looks like a duck, quacks like a duck, and comes with a media-buy schedule, the Commission does not have to call it a swan.