



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

To: Commission
From: Jonathan Wayne, Executive Director
Date: May 5, 2025
Re: Agenda Item #6 – Response from Nirav Shah

Mr. James Kilbeth, who filed the request to investigate red boxing by the Nirav Shah campaign, is unable to participate in tomorrow's meeting due to a conflict in the second half of the morning. He asked me to reinforce that he is requesting the Commission to draw a red line stating that redboxing amounts to a suggestion for spending by others.

Attorney Newell Augur submitted the attached response on behalf of the Shah campaign. Mr. Augur states that the 2022 re-election campaign of Governor Janet Mills engaged in red boxing. He also cites to page 17 in a PAC guidebook on the Commission's website that quotes Chapter 1, section 6(9) of the Commission's rules. The Commission staff respond briefly in this cover memo because we believe Mr. Augur is reading too much into these rules.

Mr. Augur relies on this provision in the Commission's rules:

B. An expenditure is presumed to be made in cooperation, consultation or concert with, or at the request or suggestion of a candidate ...

(2) when the candidate has directly shared the candidate's campaign plans, activities, or needs with the spender for the purpose of facilitating a payment by the spender on a public communication to voters to promote or support the candidate.

The candidate or spender may rebut the presumption by submitting sufficient contrary evidence.

94-270 C.M.R. ch. 1, § 6(9)(B)(2). Mr. Augur argues that because of the adverb "directly," a candidate has suggested spending only if there has been direct "verbal or electronic correspondence" between the candidate's campaign and the person making the expenditure. The Commission staff responds that this provision merely describes one

hypothetical scenario that results in a presumption of suggested spending. This is not an exhaustive list of all the methods by which a candidate's campaign could suggest spending by others. Candidates and their campaigns could suggest spending through all sorts of channels: a direct face-to-face conversation with the spender; communicating through an intermediary such as a family member or consultant of the candidate; a single email or text; or an extended back and forth discussion.

Mr. Augur also relies on this provision in the rules:

D. An expenditure will not be presumed to have been made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, solely because: ...

(3) the person makes an expenditure in response to a general, non-specific request for support by a candidate, provided that there is no discussion, cooperation or consultation with the candidate prior to the expenditure relating to the details of the expenditure;

94-270 C.M.R. ch. 1, § 6(9)(D)(3). Commission staff responds that the red box messages of the Shah, Pingree, and Jackson campaigns are not "general, non-specific request[s] for support." Rather they are requests to communicate specific paid messages to specific audiences through specific types of advertising media.

In summary, Commission staff believes that current 94-270 C.M.R. ch. 1, § 6(9) does not clear the way for candidates to post red box messages on their campaign websites.

NEWELL AUGUR

Merrill's Wharf
254 Commercial Street
Portland, ME 04101

157 Capitol Street
Suite 3
Augusta, ME 04330

PH 207.791.1281
FX 207.791.1350
naugur@pierceatwood.com

pierceatwood.com

Admitted in: ME

May 4, 2026

Jonathan Wayne, Executive Director
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

RE: Shah Campaign Response to Kilbreth Complaint

Dear Jonathan,

On behalf of the Shah for Maine Campaign, thank you for the opportunity to respond to Attorney Kilbreth's 4/27/26 complaint.

The practice of "red boxing" identified in the complaint has been part of Maine state elections for at least the past four years. The history of this practice stands in contrast to the complaint's suggestion that this is a recent development, and that the Commission should take steps to prevent the practice from "sprouting up" in Maine.

Included with this letter are two examples of red boxing from the Mills for Maine Campaign in 2022. Both general directives were posted on the Mills for Maine campaign website; the first in August 2022 and a second in October 2022. Both postings from that campaign identify a specific constituency (arguably in a more granular way than the example cited in the complaint), a method by which that constituency might be contacted, and a series of messages that could be delivered to that constituency. Additionally, two other current Democratic gubernatorial campaigns are engaged in the identical practice, although neither of those campaigns is mentioned in the complaint.

The complaint argues that MRSA 21-A §1015 (5) renders any independent expenditure made as a result of these postings or statements as a contribution to the campaign. An expenditure made "at the request or suggestion of" of a

candidate includes these types of general statements of support on a campaign website because the law “does not require a private channel or a specific recipient.” Kilbreth Complaint p. 2.

The Commission has provided prior guidance refuting this argument. In order for an independent expenditure to be presumed a request or suggestion by a candidate, the request must be made “directly” to an entity paying for an independent expenditure. Political Action Committee Campaign Finance Guidebook, Commission on Governmental Ethics & Election Practices (2026) p. 17.¹ At a minimum, this would appear to require verbal or electronic correspondence between a candidate’s campaign and the entity funding an independent expenditure.

This practice of red boxing – as demonstrated by the examples of the Mills Campaign, the two other Democratic campaigns and our own – is well within Maine election law. See MRSA 21-A §1019-B (defining an “independent expenditure” as “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 . . .”). A decision to the contrary puts the Ethics Commission in the near impossible and undoubtedly dangerous position of regulating not only the political content of campaign websites but the individual speech of candidates.²

Perhaps anticipating a complaint like the one filed by Attorney Kilbreth, the Ethics Commission has provided clear and specific guidance on the issue of a candidate’s general statements that otherwise might be viewed as coordination in support of that candidate. Notably, a general statement – whether delivered in a political speech, printed on a campaign flyer, or posted on the campaign website – does not vitiate the status of an independent expenditure absent evidence that the campaign is in contact with the entity making the expenditure and having conversations with that entity about the expenditure:

An expenditure will *not* be presumed to have been made in cooperation, consultation or concert with or request or suggestion of a candidate, solely because the person making the expenditure does so in response to a general, unspecific request for support by a candidate, provided there is

¹ “An expenditure is presumed to be made in cooperation or consultation with a candidate when . . . [t]he candidate has *directly* shared their campaign plans, activities, or needs with the spender for the purpose of facilitating a payment on a communication to voters to promote or support them . . .” (emphasis added).

² Such a decision would present significant First Amendment challenges. See *Buckley v. Valeo*, 424 U.S. 1, 19 (1976).

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no discussion, cooperation, or consultation with the candidate about the expenditure prior to dissemination (emphasis supplied). Political Action Committee Campaign Finance Guidebook at 17.

We are unaware at the moment of any independent expenditures made in support of Dr. Shah, so the complaint also is facially deficient on those grounds. (There are two other campaigns engaged in red boxing and independent expenditures have already been made in support of both of those candidates.) Yet, even if independent expenditures subsequently were made in support of Dr. Shah, the information currently posted on the campaign website would not make that expenditure a contribution to the campaign. See Political Action Committee Campaign Finance Guidebook at 17.

Consistent with state law, our campaign has not directly shared plans, activities or needs with any potential spender, whether an individual, independent political action committee or other organization, for the purpose of facilitating a communication to voters to promote or support our candidate, other than communications that are paid for and authorized by the campaign. We will adhere to that law throughout this campaign, irrespective of what other campaigns may do.

If the Commission concludes that the language currently posted on our campaign website is inconsistent with state law, we will take it down. We would ask that if any order or guidance is issued, the Commission take similar action with respect to the other candidates who have posted similar content on their websites, and who already are the beneficiaries of independent expenditures.

Sincerely,

A handwritten signature in black ink, appearing to read "Newell A. Augur". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Newell A. Augur
Enclosures

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Important Election Updates

As Paul LePage attempts to turn the page on his past, voters throughout Maine, statewide, including independents, non-college-educated women, and college-educated men, need to see on TV that Paul LePage's outrageous comments, threats, inability to work together, and unwillingness to listen to voices other than his own threatens vulnerable Mainers like children and seniors.

Voters throughout Maine, statewide, need to see on TV that Paul LePage is out of step with Mainers on abortion. He opposes a woman's right to choose, has spoken at anti-choice rallies, and has refused to rule out signing restrictions on abortion access into law. If Paul LePage is elected Governor, Maine women could lose control of their reproductive **health**.

Keep Moving Maine Forward.

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AUTHORIZED AND PAID FOR BY MILLS FOR MAINE
PO BOX 94 AUGUSTA, ME 04332 | BARBARA TRAFTON, TREASURER

PO Box 94 Augusta, ME 04332
info@janetmills.com



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Important Election Updates

As Paul LePage attempts to turn the page on his past, voters across southern Maine — including independents and non-college-educated men and women — need to see on TV and social media that Paul LePage opposed bipartisan \$850 inflation relief and tried to cut funding for child care. They need to know that his latest fights, conspiracy theories, and lies about Governor Mills all just reinforce that he is unable to tell the truth, to work together with people, and to solve problems. Maine will not go back to the days of chaos, fighting, and divisive governing that hurt Maine people, including his anti-choice positions that could take away women’s reproductive freedoms.

Voters throughout Maine, statewide, need to see on TV that Paul LePage is out of step with Mainers on abortion. He opposes a woman’s right to choose, has spoken at anti-choice rallies, and has refused to rule out signing restrictions on

abortion access into law. If Paul LePage is elected Governor, Maine women could lose control of their reproductive **health**.

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info@janetmills.com



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