



## **Guidance on Reporting as a Ballot Question Committee (effective June 30, 2008)**

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### **What is a ballot question committee?**

Most organizations that raise or spend money to influence a ballot question in Maine form a political action committee (PAC) for that purpose, and file regular PAC reports with the Commission. Some advocacy, charitable, or other organizations do not qualify as PACs under the Election Law, but they are interested in raising and spending money to influence a ballot question. In 2000, the Maine Legislature enacted 21-A M.R.S.A. § 1056-B to create a reporting requirement for these non-PAC organizations. The Election Law designates these organizations as “ballot question committees” (BQCs) and they are required to register with the Commission. Under these requirements,

[a]ny person not defined as a political action committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee or ballot question committee, aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign ... shall register as a ballot question committee and file reports with the commission in accordance with this section.

The complete language of 21-A M.R.S.A. § 1056-B and the definition of “campaign” attached to this memo.

### **Does the requirement apply only to individuals?**

No. Under Maine Election law, the term “person” includes individuals, committees, firms, partnerships, corporations, associations, or organizations.

### **When does a ballot question committee have to register with the Commission?**

Within seven days of receiving contributions or making expenditures to initiate or influence a campaign that exceed \$5,000, a ballot question committee must register with the Commission.

## **How does a ballot question committee register with the Commission and file financial reports?**

The committee must register and file the initial campaign finance report using the Commission's e-filing website. The committee may also use the Commission's paper forms available for download on the Commission's website. After registering, the committee must file all other campaign finance reports electronically.

## **What contributions must be reported by a ballot question committee?**

Section 1056-B covers "contributions [received] for the purpose of initiating or influencing a [ballot question] ...." This includes:

- funds that the contributor specified were given in connection with a ballot question;
- funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a ballot question;
- funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a ballot question when viewed in the context of the contribution and the recipient's activities regarding a ballot question; and
- funds or transfers from the general treasury of an organization filing a ballot question report.

Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used to support an organization's general activities, rather than activities relating to a ballot question, do not need to be reported.

A ballot question committee must report but is not required to itemize contributions from a single source that aggregate \$50 or less.

## **What expenditures must be reported by a ballot question committee?**

Section 1056-B covers expenditures for communications and activities made "for the purpose of initiating or influencing a [ballot question]." The Commission interprets this to include communications and activities which expressly advocate for or against a ballot question or which clearly identify a ballot question by apparent and unambiguous reference and are susceptible of no reasonable interpretation other than to promote or oppose the ballot question. Expenditures to be reported include:

- expenditures for communications to voters for the purpose of promoting or opposing a ballot question, including advertising on television, radio, and print media; literature that is mailed or distributed by hand to voters; automated

telephone calls and scripted calls from live callers; signs, bumper stickers, and other forms of outdoor advertising;

- staff time promoting or opposing the ballot question at public or press events;
- staff time canvassing (conducting door-to-door visits to) voters;
- travel expenses paid to employees or volunteers who are conducting activities to promote or oppose a ballot question;
- staff time preparing presentations, testimony, letters to the editor, opinion pieces, articles for publication, or press releases to promote or oppose a ballot question;
- research or analysis, including written reports and legal opinions, where the organization knows or reasonably should know that the results will be used to promote or oppose a ballot question and where the results are used for that purpose; and
- expenditures to distribute research or technical analysis regarding a ballot question for the purpose of encouraging voters to vote yes, or no, on the question.

This list is not intended to be exhaustive and is similar to the types of expenditures reported by political action committees to promote or defeat a ballot question.

### **What expenditures are not covered by § 1056-B?**

The Commission interprets § 1056-B as excluding expenditures for communications or activities that do not clearly identify a ballot question by apparent and unambiguous reference. In addition, expenditures made merely to educate voters or others about a ballot question in a neutral way are not covered by § 1056-B, even if a ballot question is clearly identified. These would include expenditures for:

- hosting a meeting at which advocates or members of the public are invited to present their views on the ballot question, provided that the sponsors of the event make reasonable efforts to ensure that the forum is balanced;
- distributing news stories, commentary, or editorials concerning a ballot question through the facilities of a broadcasting station, newspaper, magazine, or other periodical publication, unless the facilities are owned or controlled by persons otherwise engaged in other advocacy activities to promote or oppose the ballot question; and
- research or analysis concerning a ballot question paid by an entity which is not otherwise participating in the ballot question campaign, provided that the

research or analysis does not clearly express support for or opposition to the ballot question or urge others to vote for or against the ballot question.

**Do “expenditures [made] ... for the purpose of initiating ... a [ballot question]” include payments to staff or other expenses incurred in drafting legislation intended as a direct initiative?**

Yes. If an organization pays its employees (or incurs other expenses) to draft legislation that the organization intends will be submitted to the Secretary of State as a direct initiative (even if submitted by a different organization or individuals), those expenses should be counted as expenditures made to initiate a ballot question.

**What about expenditures to circulate ballot question petitions to collect signatures, and other expenses of advocates for and against a ballot question during the signature-gathering phase?**

In 2006, the Legislature amended the term “expenditure” to clarify that payments of money to collect signatures for a ballot question must be reported. The Commission interprets the “expenditures [made] ... for the purpose of ... influencing” includes payments made by opponents of the ballot question during the time period in which proponents may gather petition signatures.

**Are donors required to register and file reports as a BQC?**

If an individual or organization makes contributions to a PAC or BQC, those contributions do not count toward the threshold of making expenditures that total more than \$5,000 to initiate or influence a campaign. Consequently, if an individual’s or organization’s only financial activity to initiate or influence a ballot question is to make a contribution to a PAC or BQC, that individual or organization would not need to register and file campaign finance reports as a BQC. That is to say, if an individual or organization uses their own funds to make the contribution, the contribution is not counted towards the \$5,000 threshold.

**What if an individual or organization raises money to give to a PAC or BQC?**

If an individual or organization receives funds for the purpose of influencing a ballot question, and gives those funds to a PAC or BQC, the funds received by the individual or organization count towards the \$5,000 threshold. For example, if a trade association solicits funds from its members in order to make a contribution to a PAC or BQC involved in a ballot question, the trade association may have to register as a ballot question committee if it raised more than \$5,000. It is not the contribution to the PAC or BQC that triggers the registration requirement; it is the fund-raising activity by the trade association that triggers it.

### **What if an organization contributes or transfers funds to another organization which is not a PAC or BQC?**

A contribution or transfer of funds from one organization to another organization for the purpose of influencing a ballot question counts towards the \$5,000 threshold as an expenditure made by the first organization. The other organization may also have to register as a BQC.

### **What if an organization donates the time of its paid employees to a PAC or BQC to influence a ballot question or makes payments to vendors for goods or services to influence a ballot question in coordination with a PAC or BQC?**

Donating paid staff to a PAC or BQC, and coordinating expenditures with a PAC or BQC are in-kind contributions to the PAC or BQC. They do not count toward the \$5,000 expenditure threshold that would trigger filing of a § 1056-B report by the donor; however, the PAC or BQC must report them as in-kind contributions.

An organization's expenditures to influence a ballot question may be considered an in-kind contribution to a PAC or BQC only if they are coordinated with the PAC or BQC or are accepted by a PAC or BQC. Expenditures to influence a ballot question made independently of the PAC or BQC should not be considered contributions to the PAC or BQC and would count toward the \$5,000 threshold.

### **Guidance to PACs and Contributors on the Reporting of In-Kind Contributions**

Some PACs and BQCs involved in ballot question campaigns have reported receiving significant in-kind contributions from other organizations, but provided little detail regarding the goods and services they received. PACs or BQCs must provide more detail about large in-kind contributions they have received. For example, if a PAC or BQC reports that it received significant paid staff time from another organization, it should include a description of those staff activities and the number of hours of staff time that were contributed. A PAC's or BQC's reporting of coordinated spending made by a contributor should include a brief description of the goods and services that were purchased and their value. Contributed staff and coordinated expenditures should not be lumped together as a single contribution for the reporting period, but should be itemized as separate contributions.

### **Other Guidance**

If you have any questions, please contact the Commission's Political Committee and Lobbyist Registrar at 287-4179 or [ethics@maine.gov](mailto:ethics@maine.gov).

Adopted by the Commission on July 27, 2008; updated the Commission staff on May 22, 2017 to reflect statutory changes in 2011 and 2016.

## 21A § 1056-B. Ballot Question Committees

### 21-A § 1056-B. Ballot question committees

A person not defined as a political action committee that receives contributions or makes expenditures, other than by contribution to a political action committee or a ballot question committee, aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign as defined by section 1052, subsection 1 shall register as a ballot question committee and file reports with the commission in accordance with this section. For the purposes of this section, "campaign" does not include activities to influence the nomination or election of a candidate. For the purposes of this section, expenditures include paid staff time spent for the purpose of initiating or influencing a campaign.

**1. Filing requirements.** A report required by this section must be filed with the commission according to the reporting schedule in section 1059. After completing all financial activity, the committee shall terminate its campaign finance reporting in the same manner provided in section 1061. The committee shall file each report required by this section through an electronic filing system developed by the commission unless granted a waiver under section 1059, subsection 5.

**1-A. Ballot question committee registration.** A person subject to this section who receives contributions or makes expenditures that exceed \$5,000 shall register with the commission as a ballot question committee within 7 days of receiving those contributions or making those expenditures. A ballot question committee shall have a treasurer and a principal officer. The same individual may not serve in both positions unless the person establishing the ballot question committee is an individual. The ballot question committee when registering shall identify all other individuals who are the primary decision makers and fund-raisers, the person establishing the ballot question committee and the campaign the ballot question committee intends to initiate or influence. The ballot question committee shall amend the registration within 10 days of a change in the information required in this subsection. The commission shall prescribe forms for the registration, which must include the information required by this subsection and any additional information reasonably required for the commission to monitor the activities of the ballot question committee.

**2. Content.** A report required by this section must contain an itemized account with the date, amount and purpose of each expenditure made for the purpose of initiating or influencing a campaign; an itemized account of contributions received from a single source aggregating in excess of \$50 in any election; the date of each contribution; the date and purpose of each expenditure; the name and address of each contributor, payee or creditor; and the occupation and principal place of business, if any, for any person who has made contributions exceeding \$50 in the aggregate. The filer is required to report only those contributions made to the filer for the purpose of initiating or influencing a campaign and only those expenditures made for those purposes. The definitions of "contribution" and "expenditure" in section 1052, subsections 3 and 4, respectively, apply to persons required to file ballot question reports.

**2.A. Contributions.** For the purposes of this section, “contribution” includes, but is not limited to:

- A. Funds that the contributor specified were given in connection with a campaign;
- B. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a campaign;
- C. 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’s activities regarding a campaign; and
- D. Funds or transfers from the general treasury of an organization filing a ballot question report.

**3. Forms.** A report required by this section 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.

**4. Records.** A person filing a report required by this section shall keep records as required by this subsection for 4 years following the election to which the records pertain.

- A. The filer shall keep a detailed account of all contributions made to the filer for the purpose of initiating or influencing a campaign and all expenditures made for those purposes.
- B. The filer shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50.

**5. Liability for penalties.** The commission may hold the treasurer and principal officer of a ballot question committee and any for-profit, nonprofit or other organization that established the ballot question committee jointly and severally liable with the ballot question committee for any fines assessed against the ballot question committee for a violation of this chapter.

## **Definition of Campaign**

### **21-A § 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.

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