



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

To: Commission
From: Michael J. Dunn, Esq., Political Committee Registrar
Jonathan Wayne, Executive Director
Date: August 5, 2020
Re: Women's Leadership Fund – Late Independent Expenditure Report

Independent expenditures (IEs) are payments by party committees, political action committees (PACs) and others for communications to voters advocating for or against candidates. The IE reporting requirement covers paid communications that expressly advocate for the election or defeat of a clearly identified candidate. In addition, a communication is presumed to be an IE if it names or depicts a “clearly identified” candidate and is disseminated in the 28 days before a primary election or after Labor Day for a general election. ETH-16.

On Friday, July 3, 2020, the Women's Leadership Fund (the “PAC”), a registered political action committee, paid a professional TV production company \$2,500 for the production of a video to be disseminated by social media prior to the July 14, 2020 primary election. Two of the video's central themes are the importance of voting to change political leadership in Maine and the need for elected officials to listen to the people. The video was filmed at a rally on Capitol Street in Augusta to open up Maine's economy. As part of the rally, a “people's scroll” was delivered to the Governor's office within the State House. None of the speakers is designated as a candidate in the video, and their names are not identified.

To report the \$2,500 expenditure, the PAC's treasurer, Bob Carter, filed a 24-Hour Report on July 4, 2020. ETH 7-8. Because of the holiday weekend, Mr. Carter could not contact Commission staff to verify that the PAC had reported the expenditure correctly. On Monday, July 6, 2020, he called Political Committee Registrar Michael Dunn

regarding the expenditure.¹ In the conversation, Mr. Carter said he was not aware that any candidates were speaking in the video. He later checked with the PAC's principal officer, Paula Sutton, who clarified that one of the speakers at the rally, State Rep. John DeVeau (District #149), was a candidate for re-election this year. (In the July 14, 2020 primary election, Mr. DeVeau lost the Republican nomination to another candidate.)

Mr. Dunn advised Bob Carter that because the video depicted a "clearly identified" candidate (as that term is defined), the video would be presumed to be an IE, which required the filing of an IE report. Mr. Dunn also advised Mr. Carter (including by email) that if the PAC did not want to file an IE report the PAC had the option of trying to rebut the presumption by filing a signed written statement that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

Mr. Dunn also emailed Mr. Carter the IE reporting form, which Mr. Carter promptly completed by hand and emailed back to Mr. Dunn as a PDF attachment. ETH 9-11. To assist the PAC, Michael Dunn entered the information as an IE report in the Commission's e-filing system and filed the electronic version of the report on behalf of the PAC.

LEGAL REQUIREMENTS

Any person making an IE in excess of \$250 per candidate between July 1, 2020 and July 14, 2020 was required to file an IE Report within one calendar day. 21-A M.R.S.A. § 1019-B(4), 94 CMR 270-001 § 10(3). ETH 12-13, 16-19. An advertisement that depicts a clearly identified candidate within twenty-eight (28) days before the primary election is presumed to be an IE. ETH-12. The committee may file a written statement rebutting this presumption within 48-hours of disseminating the communication. Id.

If a committee is late in filing the IE Report, the amount of the penalty is set by a formula which takes into consideration the amount of the transaction, the number of prior violations within a two-year period, and the number of days the report is late. 21-A

¹ In his July 15, 2020 letter requesting a penalty waiver, Mr. Carter provided an accurate description of his July 6, 2020 conversation with Michael Dunn. ETH 1-3.

M.R.S.A. § 1020-A(4-A). ETH 14-15. If an expenditures triggers both the 24-Hour reporting requirement and the IE reporting requirement, then the committee only needs to file the IE report. 94 CMR 270-001 § 10(3). ETH-17.

DISCUSSION AND STAFF RECOMMENDATION

The presumption of IE applies to the Women’s Leadership Fund video because the PAC made an expenditure of \$2,500 to produce a communication that depicted a clearly identified candidate that was disseminated during the 28 days before a primary election. In the Election Law, the term “clearly identified” is defined to mean:

1. The name of the candidate appears;
2. A photograph or drawing of the candidate appears; or
3. The identity of the candidate is apparent by unambiguous reference.

21-A M.R.S. § 1012(1). Mr. DeVeau is photographed in the video and is on screen for about 17 seconds, which comprises about one-tenth of the running time of the two-minute, 40-second video.² Mr. Carter confirmed by email that the video started being circulated person to person via Facebook on July 6, 2020. The video was produced by Trade-mark R Productions, based in Gardiner, which also makes highly professional marketing communications for some large companies and public-sector entities in Maine.

Because the PAC did not opt to rebut the presumption, it was required to file an IE report on Saturday, July 4, 2020 (one calendar day after the \$2,500 expenditure), but the report was filed two days late on July 6. The Commission staff sent a notice that the preliminary penalty was \$100, calculated as follows:

Report Name	Activity Amount	Due Date	Days Late	Rate	Penalty
Late IE Report	\$2,500	07/04/2020	2	2%	\$100

² Rep. DeVeau’s first appearance is at roughly 1 minute, 18 seconds into the video, and he is later shown carrying the scroll into the State House. In the course of writing this memo, the Commission staff identified a second legislative candidate in the video, John Linnehan, who lost his Republican primary election for State Senate, District #7. He is shown for about 3 seconds addressing the rally.

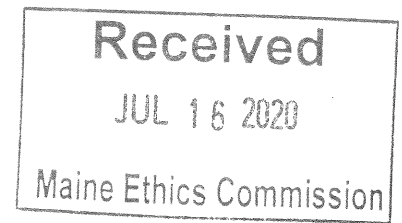
On behalf of the PAC, Mr. Carter requests a waiver of the \$100 preliminary penalty in a letter dated July 15, 2020. ETH 1-3. He provides a credible explanation for why he was unaware that Maine Election Law might treat the video as an IE.

The Commission staff credits the PAC treasurer with handling his duties responsibly. He was aware of the 24-hour reporting requirement during the last 13 days before the primary and filed a 24-Hour Report on July 4. He was told that the video would be used, via social media, to “promote voting in general.” Prior to filing the 24-Hour Report he asked the PAC’s principal officer, former State Rep. Paula Sutton, whether the video supported or opposed any candidate, and she assured him that it did not. On Monday, July 6, he initiated the call to Michael Dunn. Upon being informed of the IE presumption, he filed an IE report that morning. Because of his attention to compliance, the preliminary penalty is only \$100.

The Commission has considered similar cases before. The Progressive Kick Maine PAC spent \$8,000 on advertisements during the presumption period before the 2014 general election and filed a 24-Hour report but did not file an IE Report. On Sept. 21, 2015, the Commission reduced the penalty to \$250. In 2014, the Equality Maine PAC spent \$24,657, and filed a 24-Hour report but did not file an IE Report. On April 29, 2015, the Commission reduced that penalty to \$250. In those cases, the committees were unaware of the need to file an IE report because the online system prompted them to file a 24-Hour Report, and they failed to recognize the check-box to file an IE. Both of these cases were before your decision in 2018 to assess higher penalties for routine late-filing violations.

Accordingly, the Commission staff believes the \$100 preliminary penalty is reasonable and appropriate in order to underscore that PACs, party committees, and others need to attend to the IE presumption when a candidate is named or depicted in a paid communication. In some cases, that will include contacting the Commission or an attorney or political consultant that has a technical understanding of the IE reporting requirements. Thank you for your consideration of this item.

July 15, 2020



State of Maine

Commission on Governmental Ethics

And Election Practices

135 State House Station

Augusta, Maine 04333-0135

Re: Late Independent Expenditure Report- Women's Leadership Fund

Dear Commissioners;

I am writing you regarding a recent fine assessed to the Women's Leadership PAC. My name is Bob Carter and I serve as treasurer for the PAC.

The transaction, creating the fine, involved the late filing of an Independent Expenditure. In order to provide more detail, I want to explain the issue's and decision-making related to the transaction.

On Friday evening July 3rd, I received an email from PAC Chairperson Paula Sutton stating that \$2,500 was being spent to produce a video. This video would be used, via social media, to "promote voting in general". I realized that it would require a filing within 24 hours, so I called Paula to insure that the video was not supporting/opposing any candidate currently running for office. She assured me that no candidate was being promoted or opposed.

Additionally we discussed the necessary disclosures for the video. I was also emailed a copy of the video.

Because the information came to me on a Friday evening, it was obvious that I would not be able to discuss any questions with Michael Dunn at the Ethics Commission. Therefore, based on my review of the regulations and viewing the draft video, I filed a 24 hour report for the \$2,500 expenditure.

On Monday morning July 6th, I contact Michael Dunn at the Ethics Commission office to review my action and decision. One of the questions he asked me related to individuals speaking in the video. He asked, if any one speaking was running for office? I indicated that I wasn't aware of anyone. I did recognize some of the speakers but not all. We also discussed the disclosures necessary and we came to an agreement that I had followed the regulations as they current exist. Michael also asked that I forward a copy of the video to him for review, which I did.

Following that discussion I placed a follow-up call to Paula Sutton. It was at this point, that she informed me that, in fact, a current candidate did speak on the video.

The candidate was John Deveau running in District 149.

I then recalled Michael and asked his thoughts. He subsequently emailed me that it was going to be a violation and that I should file the Independent Expenditure ASAP. He explained that although his comments were not related to him directly, an assumption of support could be made.

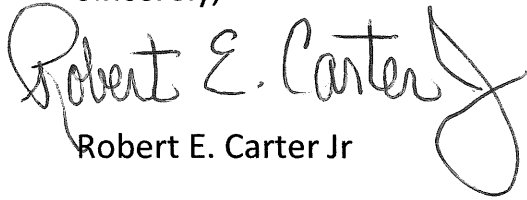
Given all this information I immediately filed (Monday July 6th) the Independent Expenditure Report. Michael assisted and corrected a date error that I had entered.

Michael also informed me, of the PAC's options relating to the penalty. Based on the information he provided, I decided to present our case for your consideration.

I was not trying to ignore or avoid the proper timing of filing, since I did make a filing within the timeframe, I simply did not recognize the issue relating to assumptions.

I take my responsibility as treasurer very seriously and regret the error. I simply wanted an opportunity to explain the events surrounding what happened.

Sincerely,

A handwritten signature in cursive script that reads "Robert E. Carter Jr". The signature is written in black ink and is positioned to the left of the typed name.

Robert E. Carter Jr

Women's Leadership PAC treasurer



July 7, 2020

Robert Carter Jr., Treasurer
Women's Leadership Fund
3 Busque Blvd
Standish, ME 04084

Re: Late Independent Expenditure Report – Women's Leadership Fund

Dear Mr. Carter:

The Commission staff has made a finding that the Women's Leadership Fund (the PAC) was late in filing an Independent Expenditure report. The report was due by 11:59 p.m. on July 4, 2020 but was not filed until July 6, 2020. Under the Commission's statutes, the late filing of a report triggers an enforcement process. (21-A M.R.S.A. § 1062-A). Based on the amount of financial activity in the report, the number of calendar days the report was late, and the PAC's history of violations, the Commission staff has determined that a penalty of **\$100** is owed. (Please see attached penalty matrix for the calculation.)

The PAC may make a written request that the Commission waive the violation or penalty in whole or in part. Any request for a waiver must be made within 14 calendar days of your receipt of this notice. The request must be in writing and contain a full explanation of the reasons the PAC filed late. Upon receiving your request, the Commission staff will schedule your appeal for an upcoming Commission meeting.

The Commission may waive the penalty if you request that the expenditure not be treated as an Independent Expenditure. The Commission may also waive the penalty if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; or (3) relevant evidence that the PAC made a bona fide effort to file the report on time. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure.

Please call me at (207) 287-4709 or send me an email at michael.dunn@maine.gov if you have questions.

Sincerely,

Michael J. Dunn

Michael J. Dunn, Esq.
Political Committee and Lobbyist Registrar

Enclosures

PAYMENT RECEIPT
(Please enclose with payment.)

Mail payment to:

Maine Ethics Commission
135 State House Station
Augusta, ME 04333

Make checks payable to: "Treasurer, State of Maine."

Robert Carter Jr., Treasurer
Women's Leadership Fund
3 Busque Blvd
Standish, ME 04084

Violation: Late Independent Expenditure Report
Amount Due: \$100

Committee Name: Error! Reference source not found.
Prior Violations:

Report Name	Activity Amount	Due Date	Days Late	Penalty Rate	Penalty
Independent Expenditure Report	\$2500	07/06/2020	2	2%	\$100

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

- For the first violation, 2%
- For the second violation, 4%
- For the third and each subsequent violation, 6%

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

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.

MAXIMUM PENALTIES

21-A M.R.S.A. Section 1062-A(4)
\$10,000 for Pre- and Post-Election Reports, Quarterly Reports and 24-Hour Reports, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late.



Commission on Governmental Ethics and Election Practices
Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine
Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES

2020 CAMPAIGN YEAR

COMMITTEE		TREASURER
WOMEN'S LEADERSHIP FUND PO Box 166 Warren, ME 04864 PHONE:(207) 380-6406 EMAIL: pgsutton@hotmail.com		Robert Carter, Jr. 3 Busque Blvd Standish, ME 04084 PHONE:(207) 648-4111 EMAIL: rcjcsccc@gmail.com
REPORT	DUE DATE	REPORTING PERIOD
24 Hour Report for Expenditures	07/04/2020	07/03/2020-07/03/2020

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$0.00
2. TOTAL EXPENDITURES	\$2,500.00
3. TOTAL DEBTS	\$0.00

I, Robert Carter, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: Robert Carter
REPORT FILED ON: 7/4/2020 4:25:24 PM
LAST MODIFIED:
COMMITTEE ID: 4919

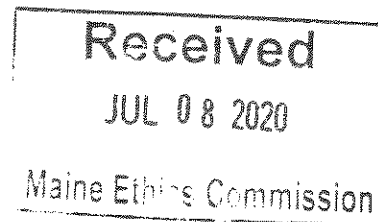
24-HOUR EXPENDITURE AND PAYEE INFORMATION

EXPENDITURE TYPES				
<p>CNS Campaign consultants</p> <p>CON Contribution to other candidate, party, committee</p> <p>EQP Equipment (office machines, furniture, cell phones, etc.)</p> <p>FND Fundraising events</p> <p>FOD Food for campaign events, volunteers</p> <p>LIT Print and graphics (flyers, signs, palmcards, t-shirts, etc.)</p> <p>MHS Mail house (all services purchased)</p> <p>OFF Office rent, utilities, phone and internet services, supplies</p> <p>OTH Other</p> <p>PHO Phone banks, automated telephone calls</p>	<p>POL Polling and survey research</p> <p>POS Postage for U.S. Mail and mail box fees</p> <p>PRO Other professional services</p> <p>PRT Print media ads only (newspapers, magazines, etc.)</p> <p>RAD Radio ads, production costs</p> <p>SAL Campaign workers' salaries and personnel costs</p> <p>TRV Travel (fuel, mileage, lodging, etc.)</p> <p>TVN TV or cable ads, production costs</p> <p>WEB Website design, registration, hosting, maintenance, etc.</p>			
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
7/3/2020	Trade-mark R Productions 259 Brunswick Ave Gardiner, ME, 64345	creation of social media video used to "get people to vote". No specific candidate supported or opposed.	ONL	\$2,500.00
TOTAL EXPENDITURES TO SUPPORT OR OPPOSE:				\$2,500.00



INDEPENDENT EXPENDITURES AFFIDAVIT

AFFIDAVIT



STATE OF Maine

COUNTY OF Cumberland

I, ROBERT E. CARTER JR., being duly sworn, attest that I, or the organization that I am affiliated with, made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate, authorized committee or agent of a candidate in a race affected by any expenditure listed in this report.

Robert E. Carter Jr.
Signature of Affiant

7/6/2020
Date

I certify that on the date set forth below, the individual named above did appear personally before me and that did identify this applicant by: (a) comparing his/her physical appearance with the photograph on the identifying document presented by the applicant and with the photograph affixed thereto, and (b) comparing the applicant's signature made in my presence on this form with the signature on his/her identifying document.

The statements on this document are subscribed and sworn to before me by the applicant on this 6th day of July, 2020.

Notary Public Signature: Mary Martell

My Notary Commission Expires: _____

MARY MARTELL
NOTARY PUBLIC
State of Maine
My Commission Expires
November 16, 2023

Schedule B-IE-2
PAYMENTS AND OBLIGATIONS

- Please indicate the date, payee, expenditure type, and amount of each expenditure.
- If you are reporting an agreement or obligation to make a future payment, please check (☐) the box next to the expenditure type.
- Duplicate as needed.

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 media 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.)		

Date of Expenditure	Payee, Address, Zip Code	Expenditure Type	✓	Amount
7/3/2020	TRADE-MARK R Productions 259 Brunswick Ave Gardiner, ME 04345	ONL	✓	2,500 ⁰⁰

Received
JUL 08 2020
Maine Ethics Commission

A. Expenditures for this page ⇒ 2500⁰⁰

B. Total for all other Schedule B-IE-2 pages (if any) ⇒

C. Total independent expenditures for this reporting period (A+B).
This amount should equal the total amount for all candidates listed on Schedule B-IE-1. ⇒ 2,500⁰⁰

21-A M.R.S. § 1019-B

Current with the Second Regular Session of the 129th Maine Legislature.

§ 1019-B. Reports of independent expenditures

1. Independent expenditures; definition. For the purposes of this section, an “independent expenditure”:

A. Is any expenditure made by a person, party committee or political action committee, other than by contribution to a candidate or a candidate’s authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and

B. Is presumed to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and 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 from Labor Day to a general election day.

2. Rebutting presumption. A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of disseminating the communication stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and shall determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

3. Report required; content; rules. [2009, c. 524, § 6 (RPR); MRSAT. 21-A, § 1019-B, sub—§ 3 (RP).]

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 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 perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation 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 receives the statement made under oath or affirmation set out in paragraph B by the filing deadline and the commission adopts an exception for persons who lack access to the required technology or the technological ability to file reports electronically. The commission may adopt procedures allowing for the signed statement to be provisionally filed by facsimile or electronic mail, as long as the report is not considered complete without the filing of the original signed statement.

5. Exclusions. An independent expenditure does not include:

- A. An expenditure made by a person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents;
- 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.

21-A M.R.S. § 1020-A

Current with the Second Regular Session of the 129th Maine Legislature.

§ 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 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. Pursuant to its terms, eff. Aug. 1, 2002.

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%.

Any penalty of less than \$ 10 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.

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as the facsimile copy is filed by the applicable deadline and an original of the same report is received by the commission within 5 calendar days thereafter.

...

CMR 94-270-001

This document reflects changes current through June 30, 2020

94 270 001. PROCEDURES

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. General. Any person, party committee, political committee or political action committee that makes any independent expenditure in excess of \$ 250 per candidate in an election must file a report with the Commission according to this section.
2. Definitions. For purposes of this section, the following phrases are defined as follows:
 - A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
 - B. "Expressly advocate" means any communication that
 - (1) uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"; or
 - (2) is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.
 - C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
3. Reporting Schedules. Independent expenditures in excess of \$ 250 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following schedule:
 - A. [Repealed]
 - B. [Repealed]
 - (1) 60-Day Pre-Election Report. A report must be filed by 11:59 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.
 - (2) Two-Day Report. From the 60 [th] day through the 14 [th] day before an election, a report must be filed within two calendar days of the expenditure.

(3) One-Day Report. After the 14 [th] day before an election, a report must be filed within one calendar day of the expenditure.

For purposes of the filing deadlines in this paragraph, if the expenditure relates to a legislative or gubernatorial election and the filing deadline occurs on a weekend, holiday, or state government shutdown day, the report must be filed on the deadline. If the expenditure relates to a county or municipal election, the report may be filed on the next regular business day.

C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate.

D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.

E. An independent expenditure report may be provisionally filed by facsimile or by electronic mail to an address designated by the Commission, as long as the facsimile or electronic copy is filed by the applicable deadline and an original of the same report is received by the Commission within five calendar days thereafter.

4. Multi-Candidate Expenditures. When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.

A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

[NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]

B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.

[Note: For example, if an expenditure on a legislative scorecard that names 150 Legislators is distributed to voters within a town in which only one Legislator is seeking re-election, 100% of the cost should be allocated to that Legislator's race.]

5. Rebuttable Presumption. Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and that is disseminated during the 28 days before a primary election, the 35 days before a special election or from Labor Day to the general election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement

to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) Printed advertisements in newspapers and other media;
- (2) Television and radio advertisements;
- (3) Printed literature;
- (4) Recorded telephone messages;
- (5) Scripted telephone messages by live callers; and
- (6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.

B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate, the candidate's immediate family, or a political committee;
- (2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;
- (3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
- (4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
- (5) other communications and activities that are excluded from the legal definition of "expenditure" in the Election Law.

C. If an expenditure is covered by the presumption and is greater than \$ 250 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. Any independent expenditure of \$ 250 or less per candidate per election does not require the filing of an independent expenditure report or a rebuttal statement.

D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the

applicable presumption period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.

E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.

F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.

G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.