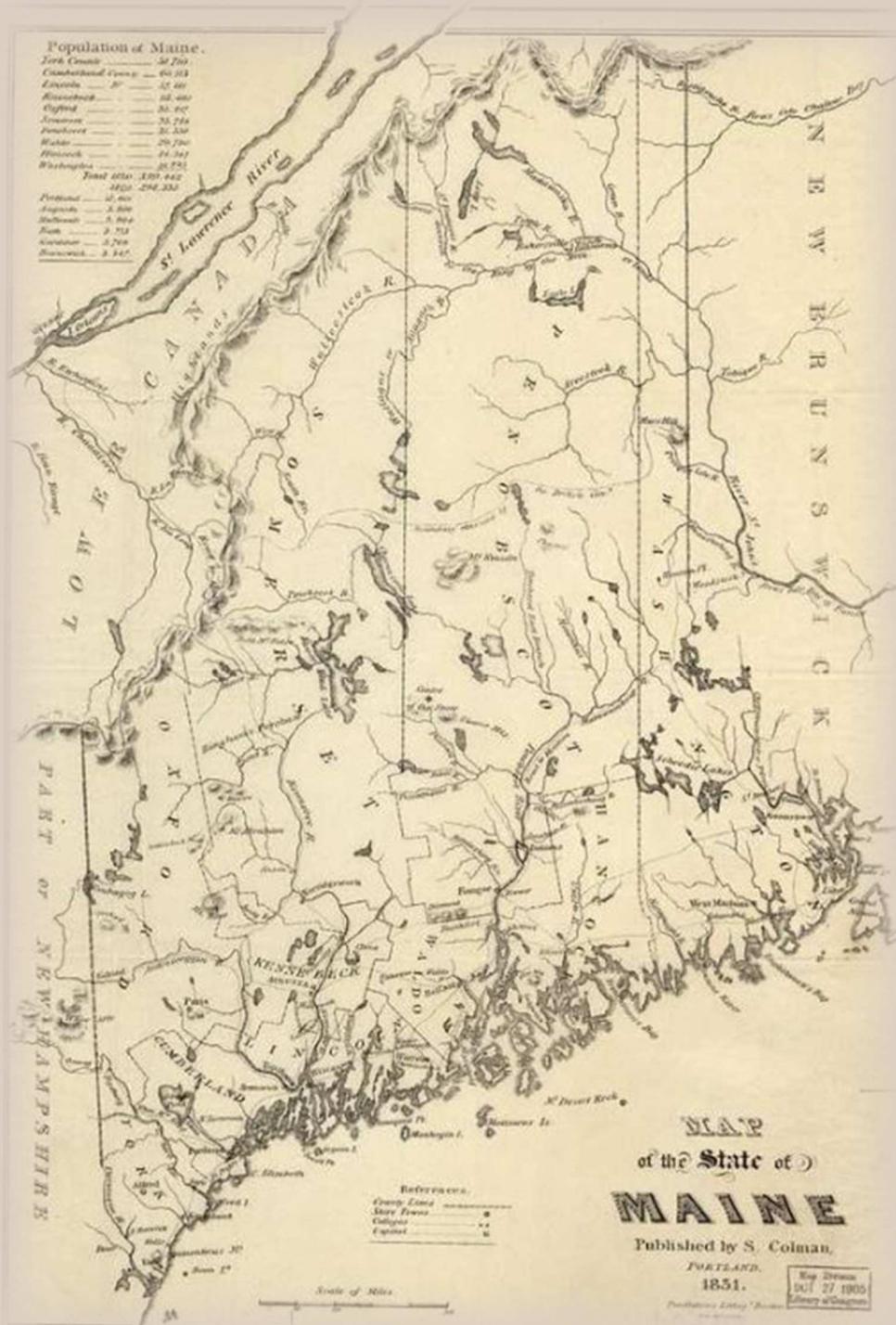


Municipal Ballot Question Committee Guidebook





PURPOSE OF THIS GUIDE

Information about getting a municipal referendum onto the ballot is available from the appropriate municipal clerk. This guide is to help people and organizations who wish to spend money on supporting or defeating a municipal ballot question know what to do, and when.

The Commission has taken care to make this guide concise and accurate; however, do not substitute the information presented here for the applicable provisions of Maine law, municipal ordinances, and the Commission's rules. The statutory and regulatory requirements are controlling in the event of any omission or error in this publication.

NOTE FROM THE COMMISSION STAFF

The Ethics Commission advises all campaigns that our main priority is helping you. Maine's campaign finance laws are complicated and they cannot all be summarized in a guidebook. We have a dedicated employee for BQCs, who will work with you throughout the entirety of your campaign. Please contact us with your questions so we can help you get compliance right the first time and you can focus on spreading your campaign's message your municipality's voters!



Municipal Ballot Question Committee Guidebook

This guide is meant to help anyone who wants to raise and spend money to either support or defeat a referendum in their municipality. Regardless of the size of a town, if any person or organized group raises or spends more than \$5,000 to affect a referendum election in their town, they will have to register as ballot question committee (BQC) and file reports on their financial activity.

In this guide, statutory language is only in the appendix, and the content is a more informally written interpretation of statute written by the Commission staff (“we”) to make this guide as reader-friendly as possible. This is important because the statutes and rules of the Commission are ultimately the controlling language should any issues arise.

Where, When, and How to Register

Once your BQC raises or spends \$5,000, you are required to register within 7 days. Your BQC can also register before hitting the \$5,000 threshold if you prefer.

For a BQC in a town of 15,000 or more people you must register and file campaign finance reports with the municipal clerk, not the Ethics Commission. This registration will be a paper form you receive from, and then submit back to, the clerk. As of the 2020 Census, there are 15 municipalities in Maine of this size: Auburn,

Augusta, Bangor, Biddeford, Brunswick, Gorham, Lewiston, Portland, Saco, Sanford, Scarborough, South Portland, Waterville, Westbrook, and Windham.

For any other Maine town, you must register and file reports with the Ethics Commission. These include BQCs formed to support or defeat a question being put to voters in multiple towns, like a school budget. Registrations that must be filed with the Ethics Commission are done online at mainecampaignfinance.com.

No matter if your BQC is registering with a municipality or the Ethics Commission, the following information and details are required to file a complete registration:

- Name of your BQC
- Name, mailing address, phone number, and email address of the principal officer and the treasurer (who must be two different people)
- Name, mailing address, phone number, and email of your BQC’s headquarters (typically either the principal officer’s or treasurer’s information)
- The form of the organization and its date of origination (for most of you, this is a Voluntary Association)



- Which ballot question your BQC is supporting or opposing, and its position (whether it is supporting or opposing)

Raising and Spending Funds

Campaign Bank Account. Your BQC must have a campaign bank account used exclusively for BQC purposes and it must be completely separate from any other bank account. Only BQC funds can go in and out of it. It is a violation for any other money to go in or out of the account, like personal or business funds. We recommend opening a personal checking account at a local credit union, as there is no need to open a business-type account, which tend to charge higher fees. An individual associated with your BQC can open a new checking account under an existing umbrella of accounts.

Contributions. Contributions are essentially any money your BQC gets for its campaign, and all of them have to be kept track of and reported. BQCs can establish fundraising websites to receive online contributions, though we discourage the use of apps like Venmo and Cash App due to the minimal information they require from donors.

BQCs can accept funds from any individual, organization or business; there are no limits on how much a BQC can accept from any donor, and every cent donated to your BQC must be reported.

How much a donor gives a BQC determines what information your BQC must get about that donor,

and how your BQC reports the contribution from that donor.

- If a contributor donates more than \$50 in total during the campaign, your BQC must get and report the contributor's name, full address, occupation, and employer information. These contributions must be reported as "itemized," meaning the contribution date and amount, and all of the donor's information, are included in the reports.
- If a single contributor does not give more than \$50 in total, your BQC must get the donor's name and address, but can report the contribution as "unitemized." Unitemized contributions are reported in one lump sum.

There are two main kinds of contributions - cash and in-kind - and all contributions must be reported and kept track of.

- Cash contributions are donations of actual funds to your BQC, and are deposited in your BQC's bank account.
- In-kind contributions are donations of things or services that have a monetary value.

The following lists examples of in-kind contributions - however, this not a be-all, end-all list. If you have questions about whether something is an in-kind contribution, you should reach out for assistance.



- If someone buys sign materials and donates them to your BQC, the amount of the purchase is an in-kind contribution.
- If a business offers a discount to your BQC because the owner knows the purchaser or supports your BQC, the amount of the discount is an in-kind contribution.
- If a business allows an employee to do work for your BQC while being paid by the business for their time, the amount the employee is paid is an in-kind contribution.
- If someone donates stamps to your BQC, the face value of the stamps is an in-kind contribution.

The rules and information required for reporting in-kind contributions are the same as reporting cash contributions.

Expenditures. The term ‘expenditure’ covers every time your BQC spends money on the campaign. Anytime your BQC makes or plans a purchase, it becomes a reportable expenditure. Reporting details include the date, amount, payee (the store or vendor where the purchase was made), category of the purchase (what was bought), and a brief explanation of what was purchased.

We strongly suggest BQCs use debit cards from their campaign bank accounts when making purchases. Checks are good as well. Spending cash should be avoided because it can cause

issues with record keeping and is easy to lose track of.

Debts and Unpaid Obligations. When you place larger orders for materials like lawn signs or mailers, it is common for the vendor to send an invoice to be paid later date. If a purchase has been ordered but not paid for at the end of any reporting period, your BQC must report the purchase as a debt, even if you have not received the purchased items yet.

Reporting

Throughout the campaign, your BQC will have to file a number of reports. When the reports are due is decided by your BQC’s activity and whether it is an even- or odd-numbered year. BQCs registered with the municipal clerk file their reports on paper, which are received from and submitted back to the clerk. BQCs registered with the Ethics Commission file their reports online via the eFiling system.

Reports must include all of your BQC’s financial activity during the reporting period, including contributions, expenditures, and any unpaid debts.

Reporting Schedule. This guidebook does not give specific due dates for reports, as those can be found on the forms given out by the municipal clerk, or on your BQC’s eFiling account. The general scheduling of reports is as follows:



- Within 7 days after registration, your BQC must file an Initial Campaign Finance Report, covering all activity up through the day your BQC registered.
- No matter the year, your BQC must file quarterly reports in January, April, July, and October, which cover the previous three months of activity.
- In an even-numbered year - the years primary and general elections are held - your BQC must also file reports 11 days before and 42 days after both the primary and general elections.
- In an odd-numbered year in which your BQC's supported or opposed question is on the ballot, you must file reports 11 days before and 42 days after the referendum's election day.
- In the two weeks prior to an election, if your BQC receives a single contribution of \$5,000 or more, or makes a single expenditure of \$1,000 or more, it is required to file a special report within 24 hours of the activity occurring.
- If a single contributor gives a BQC more than \$100,000, your BQC must file a special Major Contributor Report. If you think your BQC needs to file one of these reports, contact the municipal clerk or the Ethics Commission, whichever is appropriate.

Remember, either the forms you receive from the clerk or the schedule available on your eFiling account will inform you what reports you have due, and when. The forms will also provide what information you must include; reports that are incomplete may be considered late, so be sure to take your time filling them out.

If at any time you recognize an error or omission in a file report, you must amend it. Contact the municipal clerk or Ethics Commission for help to amend a previously filed report. Amending reports is common and most of the time does not cause any problems!

Advertisements and Disclosures

When your BQC purchases an advertisement or communication that costs more than \$500 and is for or against a ballot question, it must have an obvious statement with the name and address of who purchased it. The statement should read "Paid for by [Name of BQC], [Address of BQC]." Telephone calls only require the name of who financed the communication be stated.

If a statement would be so small as to be illegible or infeasible then it is not required. This includes small promotional items such as pens, lapel stickers, buttons, and the like.

Violations and Penalties

If your BQC files a registration or report late, you may be assessed a penalty. Penalty amounts are determined using a formula that multiplies the



number of days the report was filed late by a small percentage of the financial activity in the report. The amount of the percentage increases each time a report is filed late.

The maximum penalty is \$10,000, unless the amount of the financial activity reported late exceeds \$50,000, in which case the maximum penalty is the dollar amount of that financial activity. If your BQC fails to file a report within 30 days you may also be charged with Class E crime.

If your BQC is assessed a penalty you may either pay it or seek a waiver of it. A waiver can only be requested in the two weeks after the penalty is assessed.

Requests for waivers are considered by members of the Commission at a public meeting - not by the Commission staff. The Commission may waive or reduce a penalty if there are mitigating circumstances such as a valid emergency, an error by Commission or municipal staff, or other circumstances such as the level or experience of the committee, or the harm suffered by the public

from the late disclosure. A penalty of less than \$25 is automatically waived.

Terminating a BQC

Your BQC can be terminated once it has a \$0 cash balance. Once terminated, a BQC is no longer required to file reports, and cannot be reactivated. This is typically done after the ballot question your BQC formed to support or oppose has been voted on. A BQC must file reports after its referendum's election if it still has a positive cash balance. To dispose of leftover funds you can return donations to contributors, donate to non-profits, party committees, or other organizations. All of your BQCs records must be retained for 4 years after the referendum's election.



APPENDIX

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DIRECTORY

Commission on Governmental Ethics and Election Practices

Office: 45 Memorial Circle, Augusta Mail: 135 State House Station
Augusta, Maine 04333

Phone: (207) 287-4179 Email: ethics@maine.gov

Website: www.maine.gov/ethics eFiling: www.mainelection.com

Department of the Secretary of State, Division of Elections

Office: 111 Sewall Street, Augusta Mail: 101 State House Station
Cross Office Building 4th Floor Augusta, Maine 04333

Phone: (207) 624-7650 Email: cec.elections@maine.gov

Website: www.maine.gov/sos/cec/

Department of Transportation, Right of Way Control Section

Mail: 16 State House Station Phone: (207) 624-3611
Augusta, Maine 04333

Maine Association of Broadcasters

Mail: 69 Sewall Street Phone: (207) 623-3870
Augusta, Maine 04330

Website: www.mab.org Email: info@mab.org



APPENDIX

Definitions & Legal References

Important Definitions

Ballot Question Committee. A person or entity that receives contributions or makes expenditures aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign that is not a campaign for the nomination or election of a candidate.

Campaign. Any course of activities to initiative or influence:

- 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.

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;

- B. Any funds deposited or transferred into the campaign account described in section 1054;
- C. A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make a contribution to a committee;
- D. 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
- E. 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.

"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.

Expenditure. Includes:

- A. 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;

- B. Any purchase, payment, distribution, loan, advance, deposit or gift of money made from the campaign account described in section 1054;
- C. 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
- D. The transfer of funds by a political action committee to another candidate or committee.

Influence. To promote, support, oppose or defeat.

Initiate. Includes the collection of signatures and related activities to qualify a state or local initiative or referendum for the ballot.

Exempt Donor. 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, PACs or BQCs 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, PACs or BQCs registered with the commission or a municipality.



Legal References

| | |
|---|---------------------------------|
| Investigations & Audits | 21-A M.R.S. § 1003 |
| Important Definitions | 21-A M.R.S. § 1052 |
| Donor Exception | 21-A M.R.S. § 1052(3-A) |
| Loans | 21-A M.R.S. §§ 1052(3)(A), 1060 |
| Initiation of a Campaign | 21-A M.R.S. § 1052(4-B) |
| Registering with the Ethics Commission | 21-A M.R.S. § 1052-A(1) |
| Amendments | 21-A M.R.S. § 1052-A(1)(B) |
| Registration Requirements | 21-A M.R.S. §§ 1052-A(2) & (3) |
| Campaign Bank Account | 21-A M.R.S. § 1054 |
| Responsibilities of Officers | 21-A M.R.S. § 1054-A |
| Compensation & Reimbursement | 21-A M.R.S. § 1054-B |
| Disclaimers on Political Communications | 21-A M.R.S. § 1055-A |
| Expenditure Limitations | 21-A M.R.S. § 1056(1) |
| Record Retention | 21-A M.R.S. § 1057 |
| Initial Campaign Finance Report | 21-A M.R.S. § 1059 |
| Regular Campaign Finance Reports | 21-A M.R.S. § 1059(2) |
| 24-Hour Reports | 21-A M.R.S. § 1059(2)(E) |
| Content of Reports | 21-A M.R.S. § 1060 |
| Major Contributors | 21-A M.R.S. § 1060-A |
| Terminating a BQC | 21-A M.R.S. § 1061 |
| Penalties for Late Registration | 21-A M.R.S. § 1062-A(1) |
| Amendments | 21-A M.R.S. § 1062-A(2) |
| Penalties for Late Reports | 21-A M.R.S. § 1062-A(2) |
| Requesting a Waiver of a Penalty | 21-A M.R.S. § 1062-A(5) |
| Appealing a Penalty Determination | 21-A M.R.S. § 1062-A(5) |
| Commission's Review of Reports | 94-270 C.M.R. Ch. 1 § 5(1) |
| Expenditures Made by a Consultant | 94-270 C.M.R. Ch. 1 § 7(1) |
| Debts | 94-270 C.M.R. Ch. 1 § 7(3) |



Janet T. Mills
GOVERNOR

STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

Bruce A. Van Noto
COMMISSIONER

To Whom it May Concern:

As we approach another campaign season the Maine Department of Transportation would like to take this opportunity to offer some information regarding the placement of temporary signs in the right-of-way on state and state aid highways.

Changes were made to the temporary sign laws during the 129th Legislature. The law allows temporary signs, which include campaign signs, to be placed in the right-of-way for up to 6 weeks from January 1st to June 30th and another 6 weeks between July 1st and December 31st. The law further states that individual signs bearing substantially the same message must be placed at least 30 feet from one another and requires that each sign be labeled with the owner's name, address and the date on which the sign was erected. This will help MaineDOT discern whether a sign is in compliance and also allows the Department to contact an entity if a sign needs to be removed for any reason.

There are areas within the state's roadway system that are off limits to temporary signs. These areas include the Maine Interstate System, the Maine Turnpike Authority system, Route 1 between Bath and Brunswick and all connecting interchanges and ramps. Along with the interstate system, some sections of state highways have been designated as "control of access" (C.O.A) roadways where ingress and egress to and from the highway is prohibited/limited. **No temporary signs of any kind can be placed along these control of access areas.** These areas have been officially designated with signage indicating the beginning and ending of a C.O.A. A sample of these signs has been provided below for your reference:



Note: The interstate, including the Maine Turnpike and all their ramps and the portion of Route 1 between Bath and Brunswick do not have C.O.A. signage. The signage denoted to the right has been erected on those other roadways that have C.O.A.

Temporary signs are also prohibited on traffic control devices (stop signs, yield signs, warning signs, guide signs, regulatory signs, etc.), all utility poles and trees, on islands within a rotary/roundabout, and in medians/islands in the center of the road that are less than 6 feet wide.

Here are some questions that campaign personnel may ask regarding the placement of political signs:

How do I recognize a "control of access" area?

- *Aside from the Interstate System, MaineDOT officials have marked C.O.A areas across the state. These areas will have signs indicating the beginning and ending of a C.O.A.*



THE MAINE DEPARTMENT OF TRANSPORTATION IS AN AFFIRMATIVE ACTION - EQUAL OPPORTUNITY EMPLOYER
PHONE: (207) 624-3000 TTY USERS CALL MAINE RELAY 711 FAX: (207) 624-3001

What will happen to my sign if it has been placed within a C.O.A. section?

- *MaineDOT personnel have been advised to remove temporary signs from within the C.O.A. areas. Maintenance crews have also been instructed to safely store the signs until the owner of the sign can be contacted or 60 days, whichever comes first.*

Does MaineDOT enforce these sign placement restrictions statewide?

- *MaineDOT is committed to providing the equitable enforcement of these sign restrictions upon notification of a violation.*
- *Per a recent statute change, Temporary Signs within Urban compact areas may be enforced by the municipality they are within.*

What do I need to know about placing my sign along the roadway?

- *The first thing to consider in placement is the safety of the traveling public. Please do not install your signs where they will limit the sight line of anyone trying to pull out of a side road or driveway. Signs that block a driver's sight line will be removed and held at the closest MaineDOT maintenance lot to be picked up by the owner.*

In summary, when placing political signs, the important areas to avoid are the interstate system with the connecting interchanges, including the MTA system, and control of access areas across the state. Also, individual signs bearing the same message can be no closer than 30 feet from one another and must contain appropriate contact information and the date in which the sign was placed in the ROW. Candidates/referendums/special interest signage may want to work with sign making companies to have the contact information printed on their signs. MaineDOT will continue to provide the necessary information to help Maine's candidates.

For more information regarding the appropriate placement of political signs, please contact the Department's Legislative Liaison, Meghan Russo at Meghan.russo@maine.gov.

MaineDOT appreciates your cooperation in this effort.

Sincerely,

Stephen Landry, P.E.
State Traffic Engineer
MaineDOT

THE MAINE DEPARTMENT OF TRANSPORTATION IS AN AFFIRMATIVE ACTION - EQUAL OPPORTUNITY EMPLOYER
PHONE: (207) 624-3000 TTY USERS CALL MAINE RELAY 711 FAX: (207) 624-3001



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 16-264
March 14, 2016
Enforcement Advisory No. 2016-03

FCC ENFORCEMENT ADVISORY

TELEPHONE CONSUMER PROTECTION ACT ROBOCALL AND TEXT RULES

BIENNIAL REMINDER FOR POLITICAL CAMPAIGNS ABOUT ROBOCALL AND TEXT ABUSE

With the 2016 campaign season underway, the FCC's Enforcement Bureau reminds political campaigns and calling services that there are clear limits on the use of autodialed calls or texts (known as "robocalls") and prerecorded voice calls. The FCC is committed to protecting consumers from harassing, intrusive, and unwanted robocalls and texts, including to cell phones and other mobile devices.

Since its adoption in 1991, the Telephone Consumer Protection Act ("TCPA") has placed limits on unsolicited prerecorded telemarketing calls to landline home telephones, and all autodialed calls or prerecorded voice calls to wireless numbers, emergency numbers, and patient rooms at health care facilities. The FCC's corresponding rules¹ governing automated telephone calls set forth restrictions that govern the use of prerecorded voice messages and automatic telephone dialing systems including those that deliver text messages. These provisions apply to all such prerecorded voice calls and autodialed calls or texts, including those made by political campaigns or other organizations involved in the 2016 election. The restrictions vary according to whether a call is delivered to a business or residential landline telephone, a cell phone, or some other category of protected telephone lines such as toll-free lines, emergency lines, or those lines servicing hospitals, nursing homes, or paging systems.²

We expect this Advisory will facilitate compliance with the law and rules by senders of campaign related voice messages and autodialed calls and texts and again remind all those using these tool to carefully observe the legal limits. The FCC's Enforcement Bureau will rigorously enforce the important consumer protections in the TCPA and our corresponding rules.

¹ See 47 CFR § 64.1200.

² By this Enforcement Advisory, the FCC's Enforcement Bureau highlights certain obligations under the TCPA and corresponding Commission rules. Failure to receive this notice does not absolve an entity of the obligation to meet the requirements of the Communications Act of 1934, as amended, or the Commission's rules and orders. Companies, individuals, and other entities should read the full text of the relevant portions of the TCPA and corresponding Commission rules, respectively, at 47 U.S.C. § 227 and 47 CFR § 64.1200.



Prohibition Against Prerecorded Voice Messages and Autodialed Calls to Cell Phones and Other Mobile Services.

Prerecorded voice messages and autodialed calls (including autodialed live calls, prerecorded or artificial voice messages, and text messages) to cell phones and other mobile services such as paging systems are prohibited, subject to only three exceptions: (1) calls made for emergency purposes, (2) calls made with the prior express consent of the called party, (3) and calls made to collect debts “owed to or guaranteed by the United States.”³ This broad prohibition covers prerecorded voice and autodialed calls, including those sent by nonprofit or political campaign-related organizations. Callers contending that they have the prior express consent to make prerecorded voice or autodialed calls to cell phones or other mobile service numbers have the burden of proof to show that they obtained such consent.⁴ Further, call recipients may revoke their consent to be called using any reasonable method including verbally or in writing.⁵

Prerecorded Voice Messages and Autodialed Calls to Landline Telephones. Political campaign-related prerecorded voice messages or autodialed calls—whether live or prerecorded—to most landline telephones are not prohibited, so long as they adhere to the identification requirements set forth immediately below. However, prerecorded campaign-related voice messages or autodialed calls to emergency telephone lines; lines in guest or patient rooms at a hospital, nursing home, or similar establishment; or toll-free lines are prohibited unless the called party has agreed to receive such calls.⁶

Identification Requirements for Prerecorded Voice Messages. All prerecorded voice messages, campaign-related and otherwise, that are permissible under Section 227 of the Communications Act of 1934, as amended, and the Commission’s rules must include certain information to identify the party responsible for the message. In particular:

- All artificial and prerecorded voice messages must state clearly, at the beginning of the message, the identity of the business, individual, or other entity that is responsible for initiating the call.⁷
- If a business or other corporate entity is responsible for the call, the prerecorded voice message must contain that entity’s official business name (the name registered with a state corporation commission or other regulatory authority).⁸
- In addition, the telephone number of such business, individual, or other entity must be provided either during or after the prerecorded voice message.⁹

³ See 47 U.S.C. § 227(b)(1)(A)(iii); see also 47 CFR § 64.1200(a)(1)(iii) (prohibiting such calls to “any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service which the called party is charged for the call”). Congress has amended the TCPA to exempt federal debt collection calls and the Commission is in the process of implementing rules related to that exemption.

⁴ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7990, para. 47 (2015) (*TCPA Omnibus Declaratory Ruling and Order*); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 23 FCC Rcd 559, 565, para. 10 (2008) (concluding that creditors and debt collectors claiming prior express consent to deliver prerecorded voice or autodialed calls to cell phones are responsible for demonstrating such consent was granted).

⁵ *TCPA Omnibus Declaratory Ruling and Order*, 30 FCC Rcd at 7996, para. 64.

⁶ Non-emergency prerecorded voice or autodialed calls to such destinations are permissible only with the prior express consent of the called party. 47 U.S.C. § 227(b)(1)(A); 47 CFR § 64.1200(a)(1).

⁷ 47 U.S.C. § 227(d)(3)(A)(i); 47 CFR § 64.1200(b)(1).

⁸ 47 CFR § 64.1200(b)(1).

⁹ 47 U.S.C. § 227(d)(3)(A)(ii); 47 CFR § 64.1200(b)(2). Any telephone number so provided may not be for (1) the



Line Seizure by Prerecorded Voice Messages and Autodialed Calls. Automatic telephone dialing systems that deliver prerecorded voice messages must release the called party's telephone line within five seconds of the time that notification is transmitted to the system that the called party has hung up.¹⁰ In addition, an automatic telephone dialing system may not be used in a way that simultaneously engages two or more telephone lines of a multi-line business.¹¹

As we have done in previous election cycles, we remind senders of campaign-related prerecorded voice messages and autodialed calls or texts that failure to comply with the relevant sections of the TCPA and corresponding rules may subject them to enforcement action, including monetary forfeitures as high as \$16,000 per violation for any person who does not hold a license or other authorization issued by the Commission.¹²

autodialer or prerecorded message player that placed the call, (2) a 900 number, or (3) any other number for which charges exceed local or long distance transmission charges. 47 CFR § 64.1200(b)(2).

¹⁰ 47 U.S.C. § 227(d)(3)(B); 47 CFR § 68.318(c).

¹¹ 47 U.S.C. § 227(b)(1)(D); 47 CFR § 64.1200(a)(5).

¹² This amount reflects inflation adjustments to the forfeitures specified in Section 503(b)(2)(D) of the Communications Act. Section 503(b)(2)(D) provides for forfeitures of up to \$10,000 for each violation by a person who is not a broadcast station licensee, cable operator, common carrier, or applicant for any broadcast station, cable operator, or common carrier license issued by the Commission. See 47 U.S.C. § 503(b)(2)(D). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. See 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, 28 FCC Rcd 10785, 10786-790, paras. 3-5 (EB 2013); see also *Inflation Adjustment of Maximum Forfeiture Penalties*, 78 Fed. Reg. 49370-01, 49370 (2013) (setting September 13, 2013, as the effective date for the increases). The Commission has made such inflation adjustments and the current maximum forfeiture is \$16,000 for each violation under Section 503(b)(2)(D). See *Inflation Adjustment of Maximum Forfeiture Penalties*, 78 Fed. Reg. at 49371. The penalties for broadcast station licensees, cable operators, common carriers, and applicants for broadcast station, cable operator, and common carrier licenses are higher.

Need more information? For further information regarding requirements for prerecorded voice and autodialed calls, contact Kristi Thompson at (202) 418-1318 or kristi.thompson@fcc.gov or Mary Romano at (202) 418-0975 or mary.romano@fcc.gov in the Telecommunications Consumers Division, Enforcement Bureau. More information can also be found at www.fcc.gov/guides/robocalls. To file a complaint, visit www.consumercomplaints.fcc.gov or call 1-888-CALL-FCC.

Media inquiries should be directed to Will Wiquist at (202) 418-0509 or will.wiquist@fcc.gov.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). You may also contact the Enforcement Bureau on its TTY line at (202) 418-1148 for further information about this Enforcement Advisory, or the FCC on its TTY line at 1-888-TELL-FCC (1-888-835-5322) for further information about the Telephone Consumer Protection Act.

Attachments: (1) "At a Glance," Political Calls; (2) Frequently Asked Questions.

Issued by: Chief, Enforcement Bureau



"AT A GLANCE"

POLITICAL CALLS

- Political campaign-related calls are subject to restrictions governing prerecorded voice and autodialed calls.
- There are no restrictions on live manually-dialed political calls, which may be delivered to any landline telephone or cell phone.
- Prerecorded voice and autodialed calls may NOT be delivered to the following types of landline phones without the prior express consent of the called party:
 - ✓ any emergency line (including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency);
 - ✓ the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or
 - ✓ any service for which the called party is charged for the call such as toll-free lines.
- Prerecorded voice and autodialed calls (including live calls, prerecorded voice messages, and text messages) may NOT be delivered to cell phones, pagers, or other mobile devices without the prior express consent of the called party. This restriction governs all prerecorded voice and autodialed calls.
- All prerecorded voice messages must contain the following information:
 - ✓ the name of the person or entity responsible for the call, which must be provided at the beginning of the message;
 - ✓ the telephone number of the person or entity responsible for the call, which must be provided during or after the message.
- The National Do-Not-Call Registry and company-specific do-not-call lists do not apply to political calls.
- Individuals or entities who do not hold (and are not required to hold) FCC licenses responsible for unlawful political prerecorded voice messages or autodialed calls may face forfeiture penalties of up to \$16,000 per violation. The penalties are higher for FCC licensees, such as broadcasters, cable operators, and common carriers.



FREQUENTLY ASKED QUESTIONS

The following Frequently Asked Questions are addressed in this Advisory:

- What are the rules covering prerecorded voice messages and autodialed calls, and where can I find them?
- What is an autodialed call?
- Are nonprofit organizations exempt from the prohibition against making prerecorded voice calls or autodialed calls or texts to cell phones and other mobile service numbers?
- What does it mean to make a prerecorded voice or autodialed call for “emergency purposes”?
- Does the same prohibition against making autodialed calls to cell phones apply to sending autodialed text messages to cell phones?
- Do the rules allow me to send campaign-related prerecorded voice messages to a landline telephone number that is registered on the National Do Not Call Registry?
- Before making a prerecorded voice or autodialed call, how can I determine whether the target telephone number is associated with a landline phone or a wireless phone?
- What if I have questions?

What are the rules covering prerecorded voice messages and autodialed calls, and where can I find them?

These calls are subject to the general restrictions on prerecorded voice messages and autodialed calls, found at 47 U.S.C. § 227 and 47 CFR § 64.1200.

What is an autodialed call?

An autodialed call is any type of call or message, including a text message, that is made by an “autodialer” or “automatic telephone dialing system,” which is “equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.”¹ The Commission has emphasized that this definition covers any equipment—including predictive dialers—that has the specified *capacity* to dial numbers without human intervention whether or not the numbers called actually are randomly or sequentially generated or come from calling lists.² The Commission has further emphasized that the capacity of a dialing system is not limited to any current configuration or present ability but also includes

¹ 47 CFR § 64.1200(f)(2).

² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14092-93, para. 133 (2003) (*2003 TCPA Order*). Predictive dialers use automated equipment to dial numbers (either from lists or randomly or sequentially) and then connect the called party to a live person. The distinctive element of a predictive dialer is software that predicts calling patterns to minimize the time live agents spend between calls while also minimizing the incidence of individuals answering a call when no agent is available.



potential functionalities that are more than mere theoretical possibilities.³ Finally, the Commission has made clear that Internet-to-phone text messaging technology and text messaging apps that send to all or virtually all text-capable U.S. phone numbers constitute autodialers.⁴

Are nonprofit organizations exempt from the prohibition against making prerecorded voice calls or autodialed calls or texts to cell phones and other mobile service numbers?

No. Although nonprofit organizations enjoy certain exemptions under the TCPA, there is NO blanket exemption that allows nonprofit organizations to make either prerecorded voice calls or autodialed calls or texts to cell phones or other mobile service numbers without prior express consent.

What does it mean to make a prerecorded voice or autodialed call for "emergency purposes"?

Under Commission rules, "emergency purposes means calls made necessary in any situation affecting the health and safety of consumers." 47 CFR § 64.1200(f)(4). Political campaign-related prerecorded voice messages and autodialed calls are NOT included in this definition.

Does the same prohibition against making autodialed calls to cell phones apply to sending autodialed text messages to cell phones?

Yes. The Commission has determined that the prohibition against placing autodialed calls to cell phones without prior express consent "encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls, provided the call is made to a telephone number assigned to [a wireless] service."⁵ Accordingly, only manually placed text messages are permissible without prior express consent.

Do the rules allow me to send political campaign-related prerecorded voice messages to a landline telephone number that is registered on the National Do-Not-Call Registry?

Yes. Political campaign-related prerecorded voice messages (as well as live political calls) are not subject to the National Do-Not-Call Registry because such messages (or live calls) do not include telephone solicitations.⁶

Before making a prerecorded voice or autodialed call, how can I determine whether the target telephone number is associated with a landline phone or a wireless phone?

There are a variety of commercial services that callers may use to identify wireless telephone numbers.

What if I have questions?

For further information regarding requirements for prerecorded voice and autodialed calls, contact one of the following individuals in the Telecommunications Consumers Division, Enforcement Bureau: Kristi Thompson at (202) 418-1318 or kristi.thompson@fcc.gov or Mary Romano at (202) 418-0975 or mary.romano@fcc.gov. To file a complaint, visit www.consumercomplaints.fcc.gov or call 1-888-CALLFCC.

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³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7974-77, paras. 15-21 (2015).

⁴ *Id.* at 8017-22, paras. 108-22.

⁵ 2003 TCPA Order, 18 FCC Rcd at 14115, para. 165.

⁶ In order to constitute a "telephone solicitation," a call or message must be "for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services." 47 CFR § 64.1200(f)(14); see also 47 U.S.C. § 227(a)(4).

2023 Municipal BQC Guidebook

Commission on Governmental Ethics & Election Practices
Mailing: 135 State House Station, Augusta, Maine 04333
Location: 45 Memorial Circle, Augusta, Maine

Phone: 207-287-4179

Email: ethics@maine.gov

Fax: 207-287-6775

Website: www.maine.gov/ethics

eFiling: www.mainecampaignfinance.com