



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

To: Commission
From: Jonathan Wayne, Executive Director
Date: January 22, 2024
Re: Proposed Rulemaking on Foreign Government-Influenced Entities

Background

In the November 7, 2023 election, Maine voters approved “An Act to Prohibit Campaign Spending by Foreign Governments and Promote an Anticorruption Amendment to the United States Constitution” (attached). The law is intended to prevent foreign governments from influencing candidate and ballot question elections in Maine. The Commission is required to adopt rules to administer the new law. 21-A M.R.S. § 1064(10).

The law prohibits any “foreign government-influenced entity” (referenced below in this memo as a FGIE) from making, directly or indirectly, “a contribution, expenditure, independent expenditure, electioneering communication or any other donation or disbursement of funds to influence the nomination or election of a candidate or the initiation or approval of a referendum.” 21-A M.R.S. § 1064(2). An entity qualifies as a FGIE if:

- 1) the entity is a foreign government or a subdivision of a foreign government,
- 2) a foreign government directly or indirectly owns 5% or more of the entity, or
- 3) a foreign government participates in the decision-making process of the entity regarding activities “to influence the nomination or election of a candidate or the initiation or approval of a referendum.”

21-A M.R.S. § 1064(1)(E). An entity also qualifies as a FGIE if it is owned or controlled as described in (2) or (3) by an intermediate entity that is majority-owned by a foreign government. *Id.*

The law contains several secondary provisions designed to increase the effectiveness of the prohibitions on FGIEs. The law prohibits soliciting or accepting contributions from a FGIE. 21-A M.R.S.A. § 1064(3). It also prohibits knowingly or recklessly assisting with a prohibited expenditure by a FGIE or structuring a transaction to evade the law’s prohibitions. *Id.* § 1064(4)&(5).

The law includes requirements for certain media entities. A “television or radio broadcasting station, provider of cable or satellite television, print news outlet and Internet platform” must establish “due diligence policies, procedures and controls that are reasonably designed to ensure that it does not broadcast, distribute or otherwise make available to the public a public communication for which a foreign government-influenced entity has made a [prohibited] expenditure, independent expenditure, electioneering communication or disbursement.” *Id.* § 1064(7). If an Internet platform discovers it has published a communication that violates the law, it must remove the communication and notify the Commission. *Id.*

As noted above, the law prohibits FGIEs from paying for an advertisement to influence a candidate or ballot question election. The law requires a disclaimer for other “public communications” to influence the public or a government agency regarding “the formulation, adoption or amendment of any state or local government policy or regarding the political or public interest of or government relations with a foreign country or a foreign political party.” *Id.* § 1064(6). The advertisement must state that it is “sponsored by” the entity and that the entity is either a foreign government or a foreign government-influenced entity. *Id.*

Proposed Amendment

After consulting with counsel, the Commission staff recommends amending our department’s rules to provide guidance on the new law, as summarized below.

Definitions. The proposed amendment defines different types of media providers that are required to establish due diligence policies, procedures and controls. The amendment also defines other terms, such as what does it mean to participate in an election-related decision of a FGIE or to structure financial activity to evade the prohibitions and requirements of the law. The amendment defines “campaign

advertisement” to better describe what paid political communications are covered by the law.

Policies, procedures and controls for media providers. As noted above, the new law requires certain media providers to establish policies, procedures and controls reasonably designed to avoid distributing campaign advertisements by FGIEs. Under the proposed amendment, the Commission would deem a policy to be compliant if it includes four features:

- a person purchasing a campaign advertisement must certify in writing that it is not a FGIE and not acting on behalf of a FGIE,
- the media provider must keep the written certifications for two years,
- a media provider must decline to publish a campaign advertisement if: the purchaser failed to make the certification; the Commission has listed the purchaser as a FGIE on its website based on an enforcement proceeding; or the media provider has actual knowledge of facts indicating the purchaser is a FGIE, notwithstanding any written certification to the contrary made by the purchaser, and
- if the media provider is an Internet platform, the policy would require the platform to remove all communications that the platform discovers were purchased by or on behalf of a FGIE.

Media providers could adopt other policies, provided they were reasonably designed to avoid distributing campaign advertisements by FGIEs. The amendment states that a media provider is not required to investigate its advertisers or monitor comments made on its platforms.

Enforcement. The amendment contains two provisions intended to promote proportional enforcement outcomes when unintentional violations occur. If a media provider violates the provisions of the law, any penalty by the Commission would not exceed \$100 unless there was a finding that the media provider knowingly violated the requirement. The Commission would assess a penalty for illegally structuring a transaction only upon a finding that the person intended to evade the prohibitions or requirements of the law.

Thank you for your consideration of the amendment.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 21-A MRSA §1064 is enacted to read:

§1064. Foreign government campaign spending prohibited

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Contribution" has the meanings given in section 1012, subsection 2 and section 1052, subsection 3.

B. "Electioneering communication" means a communication described in section 1014, subsection 1, 2 or 2-A.

C. "Expenditure" has the meanings given in section 1012, subsection 3 and section 1052, subsection 4.

D. "Foreign government" includes any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country other than the United States or over any part of such country and includes any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. "Foreign government" includes any faction or body of insurgents within a country assuming to exercise governmental authority, whether or not such faction or body of insurgents has been recognized by the United States.

E. "Foreign government-influenced entity" means:

(1) A foreign government; or

(2) A firm, partnership, corporation, association, organization or other entity with respect to which a foreign government or foreign government-owned entity:

(a) Holds, owns, controls or otherwise has direct or indirect beneficial ownership of 5% or more of the total equity, outstanding voting shares, membership units or other applicable ownership interests; or

(b) Directs, dictates, controls or directly or indirectly participates in the decision-making process with regard to the activities of the firm, partnership, corporation, association, organization or other entity to influence the nomination or election of a candidate or the initiation or approval of a referendum, such as decisions concerning the making of contributions, expenditures, independent expenditures, electioneering communications or disbursements.

F. "Foreign government-owned entity" means any entity in which a foreign government owns or controls more than 50% of its equity or voting shares.

G. "Independent expenditure" has the meaning given in section 1019-B, subsection 1.

H. "Public communication" means a communication to the public through broadcasting stations, cable television systems, satellite, newspapers, magazines, campaign signs or other outdoor advertising facilities, Internet or digital methods, direct mail or other types of general public political advertising, regardless of medium.

I. "Referendum" means any of the following:

(1) A people's veto referendum under the Constitution of Maine, Article IV, Part Third, Section 17;

(2) A direct initiative of legislation under the Constitution of Maine, Article IV, Part Third, Section 18;

(3) A popular vote on an amendment to the Constitution of Maine under the Constitution of Maine, Article X, Section 4;

(4) 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;

(5) The ratification of the issue of bonds by the State or any state agency; and

(6) Any county or municipal referendum.

2. Campaign spending by foreign governments prohibited. A foreign government-influenced entity may not make, directly or indirectly, a contribution, expenditure, independent expenditure, electioneering communication or any other donation or disbursement of funds to influence the nomination or election of a candidate or the initiation or approval of a referendum.

3. Solicitation or acceptance of contributions from foreign governments prohibited. A person may not knowingly solicit, accept or receive a contribution or donation prohibited by subsection 2.

4. Substantial assistance prohibited. A person may not knowingly or recklessly provide substantial assistance, with or without compensation:

A. In the making, solicitation, acceptance or receipt of a contribution or donation prohibited by subsection 2; or

B. In the making of an expenditure, independent expenditure, electioneering communication or disbursement prohibited by subsection 2.

5. Structuring prohibited. A person may not structure or attempt to structure a solicitation, contribution, expenditure, independent expenditure, electioneering communication, donation, disbursement or other transaction to evade the prohibitions and requirements in this section.

6. Communications by foreign governments to influence policy; required disclosure. Whenever a foreign government-influenced entity disburses funds to finance a public communication not otherwise prohibited by this section to influence the public or any state, county or local official or agency regarding the formulation, adoption or amendment of any state or local government policy or regarding the political or public interest of or government relations with a foreign country or a foreign political party, the public communication must clearly and conspicuously contain the words "Sponsored by" immediately followed by the name of the foreign government-influenced entity that made the disbursement and a statement identifying that foreign government-influenced entity as a "foreign government" or a "foreign government-influenced entity."

7. Due diligence required. Each television or radio broadcasting station, provider of cable or satellite television, print news outlet and Internet platform shall establish due diligence policies, procedures and controls that are reasonably designed to ensure that it

does not broadcast, distribute or otherwise make available to the public a public communication for which a foreign government-influenced entity has made an expenditure, independent expenditure, electioneering communication or disbursement in violation of this section. If an Internet platform discovers that it has distributed a public communication for which a foreign government-influenced entity has made an expenditure, independent expenditure, electioneering communication or disbursement in violation of this section, the Internet platform shall immediately remove the communication and notify the commission.

8. Penalties. The commission may assess a penalty of not more than \$5,000 or double the amount of the contribution, expenditure, independent expenditure, electioneering communication, donation or disbursement involved in the violation, whichever is greater, for a violation of this section. In assessing a penalty under this section, the commission shall consider, among other things, whether the violation was intentional and whether the person that committed the violation attempted to conceal or misrepresent the identity of the relevant foreign government-influenced entity.

9. Violations. Notwithstanding section 1004, a person that knowingly violates subsections 2 through 5 commits a Class C crime.

10. Rules. The commission shall adopt rules to administer the provisions of this section. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

11. Applicability. Notwithstanding section 1051, this section applies to all persons, including candidates, their treasurers and authorized committees under section 1013-A, subsection 1; party committees under section 1013-A, subsection 3; and committees under section 1052, subsection 2.

Sec. 2. Accountability of Maine's Congressional Delegation to the people of Maine with respect to federal anticorruption constitutional amendment.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Actively support and promote" means to sponsor or cosponsor in Congress a joint resolution proposing pursuant to the United States Constitution, Article V an anticorruption constitutional amendment, and to advance such constitutional amendment by engaging, working and negotiating with others in Congress, the State of Maine and the United States in good faith and without respect to party partisanship to secure passage of such constitutional amendment in Congress so that Maine and the several states may consider ratification of such constitutional amendment.

B. "Anticorruption constitutional amendment" means a proposed amendment to the United States Constitution that is consistent with the principles of the Maine Resolution and the reaffirmation of the Maine Resolution.

C. "The Maine Resolution" means the joint resolution, Senate Paper 548, adopted by the 126th Legislature of the State of Maine on April 30, 2013 calling for an amendment to the United States Constitution to "reaffirm the power of citizens through their government to regulate the raising and spending of money in elections."

2. Reaffirmation of the Maine Resolution. The Maine Resolution is hereby reaffirmed and clarified to call on each member of Maine's Congressional Delegation to

actively support and promote an effective anticorruption amendment to the United States Constitution to secure the following principles and rights:

A. That governmental power derives from the people, and influence and participation in government is a right of all the people and under the Constitution of Maine and the United States Constitution, should not be allocated or constrained based on the use of wealth to influence the outcome of elections and referenda; and

B. That Maine and the several states, and Congress with respect to federal elections, must have the authority to enact reasonable limits on the role of money in elections and referenda to secure the rights of the people of Maine to free speech, representation and participation in self-government; the principles of federalism and the sovereignty of the State of Maine and the several states; and the integrity of Maine elections and referenda against corruption and foreign influence.

3. Accountability. For 7 consecutive years beginning on July 31, 2023, the Commission on Governmental Ethics and Election Practices shall issue a report, following public comment, identifying anticorruption amendment proposals introduced in Congress, and the members of Maine's Congressional Delegation sponsoring such proposals.

SUMMARY

This initiated bill makes the following changes to the election laws.

1. It prohibits a foreign government-influenced entity from making, directly or indirectly, a contribution, expenditure, independent expenditure, electioneering communication or any other donation or disbursement of funds to influence the nomination or election of a candidate or the initiation or approval of a referendum. It prohibits a person from knowingly or recklessly providing substantial assistance, with or without compensation, in the making of an expenditure, independent expenditure, electioneering communication or disbursement in violation of this prohibition. It prohibits a person from knowingly soliciting, accepting or receiving a contribution or donation in violation of this prohibition and prohibits a person from knowingly or recklessly providing substantial assistance, with or without compensation, in the making, solicitation, acceptance or receipt of a contribution or donation in violation of this prohibition.

2. It prohibits a person from structuring or attempting to structure a solicitation, contribution, expenditure, independent expenditure, electioneering communication, donation, disbursement or other transaction to evade the prohibitions and requirements in the initiated bill.

3. It requires, whenever a foreign government-influenced entity disburses funds to finance a public communication to influence the public or government officials on issues of state or local policy or foreign relations, that the communication include a clear and conspicuous statement naming the foreign government-influenced entity as a sponsor of the communication.

4. It directs each television or radio broadcasting station, provider of cable or satellite television, print news outlet and Internet platform to establish due diligence policies to prevent the distribution of communications for which foreign government-influenced entities have made prohibited expenditures, independent expenditures, electioneering

communications or disbursements and further directs an Internet platform to, upon discovery, immediately remove any such communications from its platform.

5. It provides that the Commission on Governmental Ethics and Election Practices may assess a penalty of not more than \$5,000 or double the amount of the contribution, expenditure, independent expenditure, electioneering communication, donation or disbursement involved in the violation, whichever is greater, for a violation of the initiated bill.

6. The initiated bill also calls on each member of Maine's Congressional Delegation to actively support and promote an effective anticorruption amendment to the United States Constitution to reaffirm the power of citizens through their government to regulate the raising and spending of money in elections.

7. For 7 consecutive years beginning July 31, 2023, the initiated bill requires the Commission on Governmental Ethics and Election Practices to issue a report, following public comment, identifying anticorruption amendment proposals introduced in Congress and the members of Maine's Congressional Delegation sponsoring such proposals.

Chapter 1: PROCEDURES

SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

SECTION 15. FOREIGN GOVERNMENT-INFLUENCED ENTITIES

1. **Definitions.** For purposes of this section, the Commission incorporates the definitions in 21-A M.R.S. § 1064(1). In addition, the following terms have the following meanings when used in § 1064 or in this section:
 - A. **Campaign Advertisement.** “Campaign advertisement” means a paid public communication to influence the nomination or election of a candidate or to influence the initiation or approval of a referendum.
 - B. **Contribution.** “Contribution” has the meaning set forth in 21-A M.R.S. § 1012(2) if the contribution is directed to a candidate or a candidate’s political committee. “Contribution” has the meaning set forth in 21-A M.R.S. § 1052(3) if the contribution is directed to any other person or entity.
 - C. **Direct participation in a decision-making process.** To “directly participate in the decision-making process” means to communicate a direction or preference concerning the outcome of the decision-making process through a person who is an employee or official of a foreign government or an employee, director, or member of a foreign government-owned entity.
 - D. **Donation.** “Donation” means any gift, subscription, loan, advance or deposit of money or anything of value, regardless of whether it satisfies the definition of a contribution.
 - E. **Disbursement of funds.** “Disbursement of funds” means any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, regardless of whether it satisfies the definition of an expenditure.
 - F. **Expenditure.** “Expenditure” has the meaning set forth in 21-A M.R.S. § 1012(3) if made by a candidate for office or the candidate’s political committee. “Expenditure” has the meaning set forth in 21-A M.R.S. § 1052(4) if made by any other person or entity.
 - G. **Indirect beneficial ownership.** “Indirect beneficial ownership” means having an ownership interest in an entity as a result of owning an interest in an intermediate entity that either directly owns part or all of the entity or indirectly owns part or all of the entity through other intermediate entities. For example, if a foreign government wholly owns a firm that has a 10% interest in a Maine corporation, the foreign government indirectly owns 10% of that corporation.

- H. **Indirect participation in a decision-making process.** To “indirectly participate in the decision-making process” means to knowingly communicate a direction or preference concerning the outcome of the decision-making process using an intermediary, whether or not the intermediary has any formal affiliation with the foreign government or foreign government-owned entity.
- I. **Internet platform.** “Internet platform” means an entity that controls any public-facing website, internet application, or mobile application that sells advertising space and:
- (1) is also a print news outlet, television or radio broadcasting station, or provider of cable or satellite television; or
 - (2) publishes content primarily intended for audiences within Maine.
- J. **Media provider.** “Media provider” means a television or radio broadcasting station, provider of cable or satellite television, print news outlet or Internet platform, as defined in this section.
- K. **Print news outlet.** “Print news outlet” means an entity that publishes physically printed news or news commentary on a periodical basis in which advertisers may purchase advertising space and which distributes at least 25 percent of its copy for one or more publications within the State of Maine.
- L. **Provider of cable or satellite television.** “Provider of cable or satellite television” means an entity that is engaged in the provision of cable or satellite television service in Maine to a public audience and sells advertising space for transmission through its service.
- M. **Structure.** “Structure” means to arrange for financial activity to be made by or through a person for the purpose of evading the prohibitions and requirements of 21-A M.R.S. § 1064. Structuring includes, but is not limited to, creating a business entity whose ownership is difficult to ascertain for the purpose of concealing ownership or control by a foreign government.
- N. **Television or radio broadcasting station.** “Television or radio broadcasting station” means an entity that broadcasts television or radio signals from within the state of Maine to a public audience and sells advertising space for broadcast through those signals.
2. **Ownership or control by a foreign government.** An entity does not qualify as a foreign government-influenced entity pursuant to 21-A M.R.S. § 1064(1)(E)(2)(a) solely because multiple foreign governments or foreign government-owned entities have ownership interests in the entity that, if combined, would exceed 5% of the entity’s total equity or other ownership interests.
3. **Campaign spending by foreign governments prohibited.** A foreign government-influenced entity may not make, directly or indirectly, a contribution, expenditure, independent expenditure, electioneering communication or any other donation or

disbursement of funds to influence the nomination or election of a candidate or the initiation or approval of a referendum.

4. **Solicitation or acceptance of contributions from foreign governments prohibited.** A person may not knowingly solicit, accept or receive a contribution or donation prohibited by subsection 3.
5. **Substantial assistance prohibited.** A person may not knowingly or recklessly provide substantial assistance, with or without compensation:
 - A. In the making, solicitation, acceptance or receipt of a contribution or donation prohibited by subsection 3; or
 - B. In the making of an expenditure, independent expenditure, electioneering communication or disbursement prohibited by subsection 3.
6. **Circumvention through structuring financial activity**
 - A. **Prohibition.** A person may not structure or attempt to structure a solicitation, contribution, expenditure, independent expenditure, electioneering communication, donation, disbursement or other transaction to evade the prohibitions and requirements in 21-A M.R.S. § 1064.
 - B. **Enforcement.** The Commission shall assess a penalty against a person for illegally structuring a transaction only upon finding that the person intended to evade the prohibitions and requirements in 21-A M.R.S. § 1064.
7. **Disclaimer in paid communications**
 - A. **Disclaimer required.** A disclaimer is required whenever a foreign government-influenced entity makes a disbursement of funds to finance a public communication not otherwise prohibited by 21-A M.R.S. § 1064 or this section if it meets either of the following criteria:
 - (1) A reasonable observer would understand the content of the public communication to be seeking to influence the public or any state, county or local official or agency regarding the formulation, adoption or amendment of any state or local government policy; or,
 - (2) The public communication promotes the political or public interest of or government relations with a foreign country or a foreign political party.
 - B. **Disclaimer content.** A public communication subject to the disclaimer requirement of this subsection must clearly and conspicuously contain the words “Sponsored by” immediately followed by the name of the foreign government-influenced entity that made the disbursement and a statement identifying that foreign government-influenced entity as a “foreign government” or a “foreign government-influenced entity.” The disclaimer may include additional truthful and accurate language describing the entity, including language to indicate that “foreign government” and “foreign government-influenced entity” are defined

terms under state law, for example, “sponsored by [entity], a foreign government-influenced entity as defined in Maine law.”

- B. **Applicability.** This subsection applies only to public communications purchased from media providers or otherwise intended to be viewed primarily by Maine residents.

8. Requirements for media providers

- A. **Policies, procedures and controls.** Each media provider must establish due diligence policies, procedures and controls that are reasonably designed to ensure that it does not broadcast, distribute or otherwise make available to the public a campaign advertisement purchased by a foreign government-influenced entity.
- B. **Safe harbor.** A media provider will be deemed to satisfy the requirements of subsection 8(A) if it adopts a policy containing the following features:
- (1) The policy prohibits publication of any campaign advertisement that the media provider knows to originate from a foreign government-influenced entity, except that the policy may allow reproduction of a campaign advertisement in a news story to which the campaign advertisement is relevant.
 - (2) The policy requires a purchaser of a campaign advertisement to certify in writing that it is not a foreign government-influenced entity or acting on behalf of a foreign government-influenced entity. The policy may allow certification via electronic means and may allow the advertiser to certify by checking a box or other similar mechanism, as long as the box or other mechanism is clearly labeled as a certification that the advertiser is not a foreign government-influenced entity or acting on behalf of a foreign government-influenced entity.
 - (3) The policy requires that such certifications be preserved by the media provider for a period of not less than 2 years.
 - (4) The policy requires the media provider to decline to publish a campaign advertisement if:
 - a. the purchaser fails to provide the certification required by subsection (8)(B)(2);
 - b. the purchaser is listed by the Commission on its website as a foreign government-influenced entity in accordance with subsection (8)(E) below; or,
 - c. the media provider has actual knowledge of facts indicating that, notwithstanding the purchaser’s written confirmation to the contrary, the purchaser is a foreign government-influenced entity or is acting on behalf of a foreign government-influenced entity.

- (5) If the media provider is an Internet platform, its policy provides that, upon discovery that the Internet platform has distributed a campaign advertisement purchased by or on behalf of a foreign government-influenced entity, the Internet platform shall immediately remove the communication and notify the Commission.
- C. **Other policies permitted.** Nothing in this section prevents a media provider from adopting a due diligence policy containing provisions other than those described in subsection (8)(B) above, so long as the policy is reasonably designed to ensure that it does not broadcast, distribute or otherwise make available to the public a campaign advertisement purchased by or on behalf of a foreign government-influenced entity.
- D. **Investigations not required.** A due diligence policy need not require the media provider to investigate their advertisers or to monitor comment sections or other similar fora that the media provider makes available to subscribers, users, or the general public to post commentary.
- E. **Public list.** The Commission will maintain a list on its website of all entities that it has determined in enforcement proceedings to meet the definition of a foreign government-influenced entity. An entity may request to be removed from the list by presenting satisfactory evidence to Commission staff that it no longer meets the definition of a foreign government-influenced entity. If Commission staff reject the request, the entity may request a determination by the Commission.
- F. **Takedown requirement.** If an Internet platform discovers that it has distributed a campaign advertisement purchased by a foreign government-influenced entity, the Internet platform shall immediately remove the communication and notify the Commission.
- G. **Enforcement.** A penalty assessed against a media provider for a violation of 21-A M.R.S. § 1064(7) shall not exceed \$100 unless the Commission determines that the media provider knowingly violated the requirements of that subsection. A prior determination by the Commission that a media provider violated that subsection creates a rebuttable presumption that a violation was knowing.