



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

Commission Meeting 4/29/2015
Agenda Item #3

To: Commissioners

From: Benjamin Dyer, Political Committee and Lobbyist Registrar

Date: April 8, 2015

Re: Request for Waiver of Late-Filing Penalties by EqualityMaine PAC

Organizations that made independent expenditures (IE) costing in the aggregate more than \$100 per candidate between October 22, 2014 and November 4, 2014 were required to report those expenditures as independent expenditures within one calendar day of making them. An independent expenditure is a paid communication to voters advocating the election or defeat of a candidate. On October 27, 2014, the EqualityMaine PAC (the PAC) made two IEs related to phone banks in support of the Michaud gubernatorial campaign totaling \$24,657. It was required to report these expenditures on an Independent Expenditure form by October 28, 2014, but did not do so until March 12, 2015. Instead, the PAC reported these expenditures on a 24-Hour Report filed on October 27, 2014. Commission staff discovered the transaction was incorrectly-filed during a routine review of the PAC's 2015 January Quarterly Report.

LEGAL REQUIREMENTS

IE reports for expenditures made after October 22, 2014 for amounts over \$100 per candidate are due within one calendar day of the expenditure. (Commission Rules, Chapter 1, Section 10(3)) If a PAC 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,

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

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the number of prior violations within a two-year period, and the number of days the report is late. (21-A M.R.S.A. § 1020-A(4-A))

DISCUSSION

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty amount totals \$5000¹, calculated as follows:

Transactions	Date Due	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
IE Report	10/28/2014	\$24,657	5%	135	\$5,000

The PAC asks that the Commission waive the penalty in its entirety because the preliminary penalty is vastly disproportionate to the experience of the PAC's treasurer and the actual harm to the public. Regarding the treasurer's inexperience, the PAC notes that he was new to filing campaign finance reports at that time, having taken over from the PAC's previous long-serving treasurer. It further argues that, during the applicable time-frame, IE and 24-Hour reports have extremely similar filing-threshold and information requirements, and are thus easily confused.² The PAC also argues that there was little harm to the public as a result of the PAC's disclosure because the PAC merely filed the wrong form, noting that the PAC timely-disclosed all the same information required by an IE report, only it placed that information on a 24-hour report.

¹ The Preliminary Penalty Notice sent by Commission staff incorrectly cited 21-A M.R.S.A. §1062-A(3) & (4) as the basis for the maximum penalty. The PAC's counsel brought this to the attention of the Commission Staff, and both agree that 21-A M.R.S.A. §1020-A(4-A) & (5-A) is the correct governing statute, setting the maximum penalty at \$5,000.

² The PAC highlights in its waiver request an email from Commission staff that it says led the treasurer to believe that entering information about the transactions online would ensure the correct report would be filed. The Commission staff would note, like it did in the email in question, for the system to create the correct report, the user must input correct information.

STAFF RECOMMENDATION

Violations of the IE reporting requirements can be serious matters. IE reports, especially during the last days of the general election, play an important role in informing the electorate about how money is being spent to influence their votes. In this situation, over \$24,000 was spent on an IE without that information being disclosed in the manner the public rightfully expects. However, the whole situation is truly a matter of wanting for a single nail; had the treasurer, when entering the information about these transactions into the system, checked the “This is an Independent Expenditure” box, the system would have created an independent expenditure report for filing rather than a 24-hour report. There was no attempt to conceal the information, as a 24-hour report containing the same information was timely filed, simply a mistake. The preliminary penalty, the only tool available to Commission staff for addressing these matters, takes none of this into account and thus a single missed box balloons into a statutory-maximum penalty. Certainly, an organization as large and politically active as the PAC should put in place staff trainings and procedures to ensure it complies with Maine campaign finance disclosure laws. The Commission staff recommend a finding that the violation occurred and the imposition of a \$250 penalty. Where there was little public harm from the violation because the information was timely-disclosed in a 24-Hour report and no malice behind the erroneous filing, we believe this penalty is sufficient to encourage the organization to focus additional attention and resources on its future campaign finance reports.

Thank you for your consideration of this memo.



STATE OF MAINE
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AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

March 16, 2015

John McKenna, Treasurer
EqualityMaine PAC
PO Box 1951
Portland, ME 04104

Re: Late Filing of Independent Expenditure Report

Dear Mr. McKenna:

The Commission staff has made a preliminary determination that the EqualityMaine PAC (the PAC) was late in filing an Independent Expenditure report for telephone calls in support of the Michaud for Governor campaign. The report was due by 11:59 p.m. on October 28, 2014 but was not filed until March 12, 2015. Under the Commission's statutes, the late filing of a report triggers an enforcement process. (21-A M.R.S.A. § 1062-A(3)). 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 the statutory maximum penalty of \$10,000.00 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 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) 287-4179 or send me an email at benjamin.p.dyer@maine.gov if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Benjamin P. Dyer".

Benjamin P. Dyer
Political Committee and Lobbyist Registrar

Payment Receipt

Mail payment to:

The Maine Ethics Commission
135 State House Station
Augusta, ME 04333

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

John McKenna, Treasurer
EqualityMaine PAC
PO Box 1951
Portland, ME 04104

Violation: Late IE Report
Amount Due: \$10,000.00

Committee Name: EqualityMaine PAC
Previous Violation(s): 10/24/2014, 10/25/2014

Report Title: IE Report
Due Date: October 28, 2014
Filed Date: March 12, 2015

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, 1%
 For the second violation, 3%
 For the third and each subsequent violation, 5%

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

Penalty Example:		Your Penalty is calculated as follows:	
The treasurer files the PAC's report two (2) days late. The PAC has not had any previous late violations this biennium. The PAC reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is			
\$2,500	Greater amount of the total contributions received or expenditures made during the filing period	Contributions / Expenditures:	<u>\$24,657.00</u>
X .01	Percent prescribed for first violation	Percent Prescribed:	<u>5%</u>
\$25.00	One percent of total contributions	Number of days late:	<u>135</u>
X 2	Number of calendar days late	Statutory maximum penalty:	<u>\$10,000.00</u>
\$50.00	Total Penalty		

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 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.

MAXIMUM PENALTIES
 21-A M.R.S.A. Section 1062-A(3)
 \$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 one-fifth of the amount reported late.

BERNSTEIN SHUR

C O U N S E L O R S A T L A W

207 623-1596 main
207 626-0200 facsimile
bernsteinshur.com

146 Capitol Street
PO Box 5057
Augusta, ME 04332-5057

Katherine R. Knox
207 228-7229 direct
kknox@bernsteinshur.com

April 2, 2015

Ben Dyer
Political Committee and Lobbyist Registrar
Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333-0135

RE: EqualityMaine PAC Waiver Request for the Late Filing of an Independent Expenditure Report

Dear Mr. Dyer:

On behalf of my client, EqualityMaine PAC (EQME PAC or PAC), and pursuant to 21-A M.R.S.A. § 1020-A(2), I write to request a waiver of the preliminary penalties issued by the Commission staff for late filing of an Independent Expenditure Report (“IE Report”). EQME PAC did timely file a 24-Hour Report of Expenditures on October 27, 2014 to report and disclose the expenditure to the public – which it believes constituted compliance with the reporting requirements under the accelerated reporting schedule. While EQME PAC takes its reporting responsibilities seriously, the mistake above of filing a 24-Hour Report instead of an IE Report was inadvertent and due to the confusing and duplicative nature of the requirements. Ultimately, the PAC believes that a fine should be waived in whole as there was no harm to the public – who had access to all the relevant expenditure information in the time frame outlined by the Commission.

FACTUAL SUMMARY

On October 27, 2014, EQME PAC conducted phone banking in support of gubernatorial candidate Mike Michaud. Understanding that the calls were taking place in the accelerated time period before the election, EQME PAC promptly and timely filed a 24-Hour Report disclosing the phone calls. The 24-Hour Report clearly indicates that the phone calls were made “in support of Michaud for Maine” and outlines the phone vendor and the amount spent (attached as Exhibit A). Prior to the filing of the report, the Treasurer reviewed email correspondence from Commission staff alerting PACs about the need to file the 24-Hour Reports (attached as Exhibit B). On October 29,

2014, the Treasurer also called and spoke with PAC Registrar Ben Dyer to confirm the report was filed properly and was told that everything looked good.

The PAC continued to file reports and never received notification, electronic or otherwise that the wrong reporting form had been used for disclosure of the October 27th expenditure.¹

Five months later, on March 12, 2015, Mr. Dyer sent an email to Mr. McKenna marked "URGENT" indicating that upon review of EQME PAC's January Quarterly Report the PAC should have filed an IE Report instead of a 24-Hour report on October 27, 2014 notifying the Commission of the phone bank expenditures. That same day, EQME PAC refiled the expenditures as an IE Report and deleted the previous 24-Hour Report as requested.

On March 19, 2015, EQME PAC received a letter from the Ethics Commission stating that the IE report was 135 days late and subject to the maximum \$10,000 fine pursuant to 21-A M.R.S. § 1062-A(4). We now understand that the maximum fine indicated in the letter was in error and should have read \$5,000 pursuant to 21-A M.R.A. § 1020-A(5-A) .

Unfortunately, the length of time it took to catch that the report was filed on the wrong form has led to a proposed maximum fine of \$5,000 which EQME PAC contends is vastly disproportionate to the severity of the error. Additionally, EQME PAC contends that the error was simply one of using the wrong form – all proper disclosure occurred in a timely manner. As such, the PAC now requests a full waiver of the penalty.

Applicable Law

There are two separate reporting requirements that are triggered for certain expenditures made with 14 days of a general election:

- a) an IE Report for independent expenditures aggregating in excess of \$100 per candidate must be reported within one calendar day of those expenditures, see Ethics Rule Ch. 1 Section 10(3)B) and 21-A MRS 1019-B; and
- b) a 24-Hour Expenditure Report for any single expenditure of \$1000 or more within 24 hours of making the expenditure. 21-A MRS 1059.

These two requirements, while not identical, are substantially similar and in some cases – require duplicative filings. That similarity is acknowledged in the Commission's rules which state that if an IE report is filed, a separate 24-Hour Report is not required. Rule Ch. 1 (Section 10(3)(D)). The rule makes inherent sense since both reports require

¹ In fact, the email sent by Mr. Dyer on October 22, 2014 seems to indicate that the electronic system will immediately alert if the wrong report is filed. In his email, he states "All organizations registered with the Ethics Commission should file their 24-Hour and preliminary IE reports online. This will prevent duplication of reports, and, if the transactions are correctly entered on daily basis, *alert you to the need to file a report.*" (See Exhibit B, emphasis added)

similar information and timely disclosure to the public and it doesn't provide additional disclosure to the public to require the same information to be provided on two different forms.

The Proposed Fine is Vastly Disproportionate to the Level of Harm to the Public as There Was No "Late Disclosure" of the Expenditures.

The proposed fine of \$5,000 is unfairly high given the lack harm to the public. While the expenditures were reported on the wrong form – they were fully reported in a timely manner. In this case, the 24-Hour Report contained *all* the information requested in the IE Report. The 24- Hour Report listed the date, payee, type of expenditure, amount of expenditure and specifically stated:

- PHONE BANK CALLS IN SUPPORT OF MICHAUD FOR MAINE 2014
- PAYMENT OF (*EXPENDITURE AMOUNT*) TO SUPPORT: MICHAEL H MICHAUD
- JURISDICTION: STATEWIDE
- PARTY: DEMOCRATIC
- OFFICE: GOVERNOR
- ELECTION YEAR: 2014

Because the information contained on the 24-Hour Report filed by the PAC is exactly the same as the information requested on the IE Report – there was no harm to the public. Both the IE Report and the 24-Hour Report are posted online and the 24-Hour Report is available to the public immediately upon filing. There was no delay in the public disclosure and as such, no resulting injury to the public.

Maine's disclosure laws are designed to give the public maximum information about who is raising and spending money to influence the opinions of voters. We respectfully argue that the filing of the required information on the incorrect form did not deprive the public of its ability to understand who spent money in the gubernatorial election. As a result, that lack of public harm supports a full waiver of the fine.

The Proposed Fine is Vastly Disproportionate to the Level of Experience of the Treasurer

The Treasurer of EQME PAC, John McKenna, is the long time office manager for EqualityMaine. In addition to his office management duties, Mr. McKenna personally prepares and files the PAC reports. Despite its generally active status in electoral campaigns, Mr. McKenna is not experienced when it comes to filing IE and 24-Hour Reports. That is because EqualityMaine normally does not conduct electoral activity out of its own PAC – but starts specialized PACs with professional accounting software and PAC filing assistance. Mr. McKenna has not been involved in those larger efforts – which are where most past IE's have originated. He is not experienced dealing with IE or 24-Hour Reports and despite his best efforts, was understandably confused at which

April 2, 2015

Page 4 of 4

form to use. Finally, Mr. McKenna showed a great deal of due diligence in saving Mr. Dyer's October email and reaching out to him after the filing to ensure it had been done properly. He did everything he could, given his inexperience with these reports, to make sure everything was properly disclosed. The proposed fine of \$5,000 is vastly disproportionate not only to the harm done to the public but to the level of experience of Mr. McKenna. Combined, these factors justify a full waiver of the fine.

Accelerated reporting prior to an election is designed to allow the public to know who is spending money on which candidates in the days leading up to an election. That prompt public disclosure is critical to our system and we fine entities who withhold that information either by providing incomplete detail or not timely providing disclosure. None of those two circumstances occurred here – it was simply a matter of disclosure being made on an incorrect form. The 24-Hour Report was filed online with the maximum amount of information about the expenditures listed on the form. The harm to the public didn't occur in this case – and the form confusion is easy to understand given the Treasurer's level of experience.

We respectfully request that this Commission consider the similarity of the forms and the lack of public harm when reviewing the proposed fine and ultimately decide that this case merits a full waiver of the penalty.

Sincerely,

A handwritten signature in black ink, appearing to read 'Katherine R. Knox', with a stylized, cursive flourish at the end.

Katherine R. Knox

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

2014 CAMPAIGN YEAR

COMMITTEE		TREASURER	
EQUALITYMAINE PAC P.O. BOX 1951 PORTLAND, ME 04104 PHONE: (207) 761-3732 EMAIL: EJOHANSEN@EQUALITYMAINE.ORG		JOHN MCKENNA PO BOX 1951 PORTLAND, ME 04104 PHONE: (207) 761-3732 EMAIL: JMCKENNA@EQUALITYMAINE.ORG	
REPORT	DUE DATE	REPORTING PERIOD	
24 Hour Report of Major Contributions and Expenditures	10/28/2014	10/27/2014 - 10/27/2014	

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$0.00
2. TOTAL EXPENDITURES	\$24,657.00
3. TOTAL DEBTS	\$0.00

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

REPORT FILED BY: JOHN MCKENNA
 REPORT FILED ON: 10/27/2014
 LAST MODIFIED: 10/27/2014
 PRINTED: 03/12/2015
 COMMITTEE ID: 668

24-HOUR EXPENDITURE AND PAYEE INFORMATION

EXPENDITURE TYPES				
CNS	Campaign consultants	POL	Polling and survey research	
CON	Contribution to other candidate, party, committee	POS	Postage for U.S. Mail and mail box fees	
EQP	Equipment (office machines, furniture, cell phones, etc.)	PRO	Other professional services	
FND	Fundraising events	PRT	Print media ads only (newspapers, magazines, etc.)	
FOD	Food for campaign events, volunteers	RAD	Radio ads, production costs	
LIT	Print and graphics (flyers, signs, palmcards, t-shirts, etc.)	SAL	Campaign workers' salaries and personnel costs	
MHS	Mail house (all services purchased)	TRV	Travel (fuel, mileage, lodging, etc.)	
OFF	Office rent, utilities, phone and internet services, supplies	TVN	TV or cable ads, production costs	
OTH	Other	WEB	Website design, registration, hosting, maintenance, etc.	
PHO	Phone banks, automated telephone calls			

DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
10/27/2014	STARTING POINT OPS PO BOX 717 LEWISTON, ME 04243	PHONE BANK CALLS IN SUPPORT OF MICHAUD FOR MAINE 2014 PAYMENT OF \$17,650.00 TO SUPPORT: MICHAEL H MICHAUD. JURISDICTION: STATEWIDE. PARTY: DEMOCRATIC. OFFICE: GOVERNOR. ELECTION YEAR: 2014	PHO	\$17,650.00
10/27/2014	STONES' PHONES 1309 F ST NW #200 WASHINGTON, DC 20004	PHONE BANK CALLS IN SUPPORT OF MICHAUD FOR MAINE 2014 PAYMENT OF \$7,007.00 TO SUPPORT: MICHAEL H MICHAUD. JURISDICTION: STATEWIDE. PARTY: DEMOCRATIC. OFFICE: GOVERNOR. ELECTION YEAR: 2014	PHO	\$7,007.00
TOTAL EXPENDITURES FOR CANDIDATE:				\$24,657.00

Kate Knox

From: John McKenna <jmckenna@equalitymaine.org>
Sent: Friday, March 20, 2015 1:31 PM
To: Kate Knox; Elise Johansen
Subject: Fwd: 24 Hour Reporting Period Begins Tomorrow, October 22, 2014

----- Forwarded message -----

From: **Dyer, Benjamin P** <Benjamin.P.Dyer@maine.gov>
Date: Wed, Oct 29, 2014 at 10:31 AM
Subject: RE: 24 Hour Reporting Period Begins Tomorrow, October 22, 2014
To: "Dyer, Benjamin P" <Benjamin.P.Dyer@maine.gov>
Cc: "Wayne, Jonathan" <Jonathan.Wayne@maine.gov>, "Lavin, Paul" <Paul.Lavin@maine.gov>

I made a mistake in the first paragraph of the email below sent on Tuesday, October 21st. Regarding 24-Hour report only, reports are required for single contributions of **\$5,000 or more** or single expenditures of **\$1,000 or more**. This is more inclusive than what I wrote in the email below.

I apologize for the confusion. Please contact me if you have any questions or concerns.

Sincerely,

Benjamin P. Dyer

Political Committee and Lobbyist Registrar

Maine Ethics Commission

Mailing: 135 State House Station

Augusta, Maine 04333

T: [\(207\) 287-6221](tel:(207)287-6221)

benjamin.p.dyer@maine.gov

From: Dyer, Benjamin P
Sent: Tuesday, October 21, 2014 4:08 PM
To: Dyer, Benjamin P
Cc: Wayne, Jonathan; Lavin, Paul
Subject: 24 Hour Reporting Period Begins Tomorrow, October 22, 2014
Importance: High

Please be aware that October 22, 2014 begins the 24-hour reporting period for all committees for Independent Expenditures (IEs) and large contributions and expenditures. IEs aggregating over \$100 per candidate and single contributions of over \$5,000 and single expenditures (including obligations and debts) of over \$1,000 must be reported within 24 hours of the transaction.

Please review the [2014 Filing Schedule](#) and the [IE Report form](#) for more information about 24 hour reporting requirements for large contributions, expenditures, and IEs.

All organizations registered with the Ethics Commission should file their 24-Hour and preliminary IE reports online. This will prevent duplication of reports and, if the transactions are correctly entered on a daily basis, alert you to the need to file a report. If a report deadline falls on a weekend, the report must be filed on that day.

As always, please contact the Commission staff at [\(207\) 287-4179](tel:(207)287-4179) if you have questions.

Regards,

Benjamin P. Dyer

Political Committee and Lobbyist Registrar

Maine Ethics Commission

Mailing: 135 State House Station

Augusta, Maine 04333

T: [\(207\) 287-6221](tel:(207)287-6221)

benjamin.p.dyer@maine.gov

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John McKenna
Office Manager
EqualityMaine
PO Box 1951
Portland, ME 04104
jmckenna@equalitymaine.org
207-761-3732 office
207-761-3752 fax

Proud Member of MaineShare

21-A MRS § 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 \$10. 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; [1999, c. 729, §5 (AMD).]
- B. An error by the commission staff; [1999, c. 729, §5 (AMD).]
- C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (AMD).]
- 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. [2009, c. 190, Pt. A, §13 (AMD).]

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. Basis for penalties.

[2001, c. 470, §7 (AMD); T. 21-A, §1020-A, sub-§4 (RP) .]

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, 1%; [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]
- B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]
- C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]

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.

5. Maximum penalties.

[2001, c. 470, §8 (AMD); T. 21-A, §1020-A, sub-§5 (RP) .]

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed:

- A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; and section 1017, subsection 4; [2011, c. 389, §23 (AMD).]
- A-1. Five thousand dollars for reports required under section 1019-B, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late; [2011, c. 389, §24 (NEW).]
- B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late; [2011, c. 389, §25 (AMD).]
- C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; or [2011, c. 558, §4 (AMD).]
- D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B. [2011, c. 558, §4 (AMD).]
- E. [2011, c. 558, §5 (RP).]

[2011, c. 558, §§4, 5 (AMD) .]

6. Request for a commission determination. If the commission staff finds that a candidate or political committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the candidate or political committee within 3 business days following the filing deadline informing the candidate or political committee that a report was not received. If a candidate or a political committee files a report required under this subchapter late, a notice of preliminary penalty must be sent to the candidate or political committee whose registration or campaign finance report was not received by 11:59 p.m. on the deadline date, informing the candidate or political committee of the staff finding of violation and preliminary penalty calculated under subsection 4-A and providing the candidate or political committee with an opportunity to request a determination by the commission. Any request for a determination must be made within 14 calendar days of receipt of the commission's notice. A candidate or political committee requesting a determination may either appear in person or designate a representative to appear on the candidate's or political committee's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

[2013, c. 334, §17 (AMD) .]

7. Final notice of penalty. If a determination has been requested by the candidate or political committee and made by the commission, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the political committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

[2009, c. 302, §6 (AMD) .]

8. Failure to file report. The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. The notice must be sent by certified mail. If a candidate fails to file a report after 2 notices have been sent by the commission, the commission shall send a final notice by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the notices required by this subsection is guilty of a Class E crime.

[2007, c. 443, Pt. A, §25 (AMD) .]

8-A. Penalties for failure to file report. The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

[2003, c. 628, Pt. A, §6 (NEW) .]

9. List of late-filing candidates. The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

[1995, c. 483, §15 (NEW) .]

10. Enforcement. A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

[2009, c. 302, §7 (RPR) .]

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General.** Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 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 must be reported to the Commission in accordance with the following provisions:
 - A. Independent expenditures aggregating in excess of \$100 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 reporting schedule, unless required to be reported according to the schedule in paragraph B.
 - (1) **Quarterly Reports.** *[Repealed]*
 - (1-A) **60-Day Pre-Election Report.** A report must be filed by 5:00 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.

- (1-B) **11-Day Pre-Election Report.** A report must be filed by 5:00 p.m. on the 11th day before the election is held and be complete as of the 14th day before the election.

If the total of independent expenditures made to support or oppose a candidate exceeds \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure according to the schedule in this paragraph or paragraph B.



- B. Independent expenditures aggregating in excess of \$250 per candidate made during the sixty days before an election must be reported within two calendar days of those expenditures.

[NOTE: WHEN THE CUMULATIVE AMOUNT OF EXPENDITURES TO SUPPORT OR OPPOSE A CANDIDATE EXCEEDS \$250, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED WITH THE COMMISSION WITHIN TWO DAYS OF GOING OVER THE \$250 THRESHOLD.

FOR EXAMPLE, IF AN INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES THREE EXPENDITURES OF \$100 IN SUPPORT OF A CANDIDATE ON SEPTEMBER 8TH, SEPTEMBER 13TH, AND SEPTEMBER 29TH, FOR AN ELECTION ON NOVEMBER 6, 2012, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 1ST. THE THIRD EXPENDITURE OF \$100 MADE THE CUMULATIVE TOTAL OF EXPENDITURES EXCEED \$250 AND THE TWO-DAY REPORTING REQUIREMENT WAS TRIGGERED ON SEPTEMBER 29TH. THE REPORT MUST INCLUDE ALL THREE EXPENDITURES.

AFTER SEPTEMBER 29TH, IF THAT INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES ADDITIONAL EXPENDITURES TO SUPPORT THAT CANDIDATE, THE REQUIREMENT TO FILE AN INDEPENDENT EXPENDITURE REPORT WITHIN TWO DAYS WILL APPLY ONLY IF THE CUMULATIVE TOTAL SPENT AFTER SEPTEMBER 29TH EXCEEDS \$250. FOR EXAMPLE, IF THE INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES TWO PAYMENTS OF \$200 TO PROMOTE THE CANDIDATE ON OCTOBER 8TH AND OCTOBER 13TH, ANOTHER INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 15TH DISCLOSING THOSE TWO EXPENDITURES.]

Independent expenditures aggregating in excess of \$100 per candidate made after the 14th day before an election must be reported within one calendar day of those expenditures.

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 in a race involving a Maine Clean Election Act candidate and that is disseminated during the 21 days before a primary election and 35 days before a 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, in the aggregate, than \$100 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. Independent expenditures aggregating \$100 or less per candidate per election do 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 21-day or 35-day 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.

SECTION 11. REPORTS OF BALLOT QUESTION CAMPAIGN ACTIVITY BY PERSONS AND ORGANIZATIONS OTHER THAN POLITICAL ACTION COMMITTEES

[Repealed]

SECTION 12. CAMPAIGN CONTRIBUTIONS DURING LEGISLATIVE SESSION

1. **Seed Money Contributions.** Legislators and other individuals covered by Title 1 M.R.S.A. §1015(3)(B) may not intentionally solicit or accept a seed money contribution from a lobbyist or lobbyist associate during any period of time in which the Legislature is convened until final adjournment.
2. **Acceptance of Contributions through Political Committees.** During a legislative session, lobbyists, lobbyist associates, and their employers may not give, offer or promise a contribution to a political action committee, ballot question committee, or party committee of which the Governor, a member of the Legislature, a constitutional officer, or staff or agent of these officials is a treasurer, officer, or primary fund-raiser or decision maker. During the session, these political committees may not solicit or accept a contribution from lobbyists, lobbyist associates, or their employers, but they may accept contributions from other individuals and organizations.