To: Commissioners

From: Jonathan Wayne, Executive Director
       Benjamin Dyer, Political Committee and Lobbyist Registrar

Date: November 31, 2016

Re: Request for Opportunity to Rebut Presumption of an Independent Expenditure or
    Request for Waiver of Late-Filing Penalty – New England Opportunity Project

INTRODUCTION

Independent expenditures (IEs) are payments by party committees, political action
committees (PACs) and others, including persons not registered with the Commission,
for communications to voters advocating for or against candidates. After Labor Day, any
expenditure for a communication which depicts a clearly identified candidate is presumed
to be an IE. Persons or organizations making or anticipating making expenditures which
are presumed to be IE may attempt to rebut that presumption by filing a request with the
Commission within 48 hours of making the expenditure.

On October 11, 2016, the New England Opportunity Project (NEOP), a registered
non-profit corporation created by State Representative Lawrence Lockman, made an
expenditure of $4,205.06 for a mailing which referred to State Representative Jeffrey
McCabe, who was running for Maine Senate District 3. Because the expenditure was
made after Labor Day and the communication clearly identified a candidate, NEOP
should have either filed an IE report within two days of making the expenditure or filed
within 48 hours a request with the Commission to rebut the presumption that the expenditure was for an IE.

After receiving a telephone call from the Commission staff, on October 21, 2016, NEOP filed a request to rebut the presumption and an IE report to suspend the accumulation of any penalty for a late IE report. If the IE report is viewed as late (as recommended by Commission staff), the preliminary penalty for the late report is $672.80.

**LEGAL REQUIREMENTS**

*Definition of an Independent Expenditure.* An IE is defined as an expenditure for any communication that expressly advocates the election or defeat of a clearly identified candidate, or, during the time period from Labor Day through the general election day, an independent expenditure is presumed when any communication names or depicts a clearly identified candidate. (21-A M.R.S.A. § 1019-B(1))

*Opportunity to Rebut Presumption.* A person presumed to have made an IE costing over $250 may rebut that presumption by filing a signed written statement with the Commission within 48 hours of making the expenditure. The statement must state that the cost was not incurred to influence the election of a candidate and may be supported by any additional evidence the person may submit. The Commission may gather any additional evidence to assist it in determining, by a preponderance of the evidence, whether the expenditure was incurred with the intent to influence a candidate election. (21-A M.R.S.A. § 1019-B(2), Comm. Rules Ch. 1, § 10(5))
Duty to File IE Report. Any person making an IE in excess of $250 per candidate between September 9 and October 25, 2016 is required to file an IE report within two calendar days. (21-A M.R.S.A. § 1019-B(4), Comm. Rules Ch. 1, § 10(3))

Late-filing procedures. If a person is late in filing the IE report, the amount of the penalty is set by a formula which takes into consideration the amount of the transaction, the number of prior violations within a two-year period, and the number of days the report is late. (21-A M.R.S.A. § 1020-A(4-A))

PRELIMINARY PENALTY

On October 11, 2016, NEOP made an expenditure of $4,205.06 to the Bangor Letter Shop for a mailing. NEOP describes the communication as a fund-raising letter. The mailing, included with your materials, identified Rep. Jeffrey McCabe and included a picture of him. Commission staff became aware of the mailings from newspaper reports. The Commission’s Assistant Director, Paul Lavin, contacted Rep. Lockman regarding the expenditure. NEOP filed an IE report for the expenditure on October 21, 2016, in order to suspend the increase of any late-filing penalty.

Based on the statutory formula for calculating late-filed report penalties, the Commission staff has calculated the preliminary penalty as follows:

<table>
<thead>
<tr>
<th>Report Name</th>
<th>Activity Amount</th>
<th>Due Date</th>
<th>Days Late</th>
<th>Penalty Prescribed</th>
<th>Preliminary Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>IE Report</td>
<td>$4,205.06</td>
<td>10/13/2015</td>
<td>8</td>
<td>2%</td>
<td>$672.80</td>
</tr>
</tbody>
</table>
REQUEST BY NEOP FOR OPPORTUNITY TO REBUT IE PRESUMPTION OR WAIVER OF IE LATE-FILING PENALTY

In a cover letter dated October 21, 2016, NEOP asked for an opportunity, pursuant to 21-A M.R.S.A. § 1019-B(2), to rebut the presumption that the expenditure at issue was an IE. In support of its request for an opportunity to rebut the IE presumption, NEOP offers a statement that the communication was not meant to influence Rep. McCabe’s election, but to encourage citizen’s to contact him and to raise awareness of the issues addressed in the mailer. Rep. Lockman provided further argument in support of his rebuttal request in email communications dated November 22 and 29 (attached), including some answers to factual questions posed by Commission staff.

As a fallback position (in case the Commission determines that NEOP was required to file an IE report), NEOP argues that any late-filing penalty should be waived. NEOP first requested a waiver of the late-filing penalty in a short email from Rep. Lockman dated November 8 (attached) and elaborated on the waiver request in his November 22 email. NEOP argues that the preliminary penalty of $672.80 is disproportionate to the level of experience of the person filing the report and to the harm suffered by the public. Regarding the experience of the person filing the reports, NEOP writes that Rep. Lockman “has no experience filing non-profit reports, and NEOP has no history of late filings.”^1 As for the lack of harm to the public caused by the late filing, NEOP argues that the mailer caused a “robust public discussion of campaign finance rules, as well as the legislative issue raised in the mailer.” NEOP also argues there was a lack of harm to the public because Rep. McCabe was given several opportunities to criticize NEOP for the mailing in several media outlets.

^1 NEOP is not registered as a PAC with the Commission.
STAFF RECOMMENDATION

*Intention to influence an election.* Commission staff recommends finding that NEOP is precluded from rebutting the presumption that the expenditure was an IE, because NEOP did not submit the rebuttal request within 48 hours of making the expenditure.

21-A M.R.S.A. § 1019-B(2) is clear about the deadline: “A person presumed . . . to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission *within 48 hours of making the expenditure.*” (emphasis added) NEOP paid for the mailing on October 11 but did not submit a request to rebut the presumption until it sent a letter on October 21, 2016 – after being contacted by Commission staff about the IE reporting requirement.

IE reports are perhaps the most critical reports filed with the Commission, as they provide members of the public with timely and detailed information about “who” and “how” outside groups are attempting to influence their vote. Consistent with canons of statutory interpretation, exceptions to general rules should be narrowly construed. Given the critical importance of IE reports, a person seeking the benefit of the rebuttal of a presumption that an expenditure is an IE must strictly comply with the statutory procedures to rebut the presumption.

Should the Commission allow NEOP an after-deadline opportunity to rebut the presumption, we recommend the view that NEOP has failed to meet its burden of demonstrating - by a preponderance of the evidence - that the expenditure was not
intended to influence Rep. McCabe’s election. Three circumstances suggest at least a partial intention by NEOP to influence the general election in Senate District 3:

- NEOP paid for the mailing on October 18, 2016 – three weeks before voters in Senate District 3 would vote.
- Rep. Lockman acknowledges that the letter was received by voters in Senate District 3, at least those who are not enrolled in a political party.

The Commission staff is concerned about the long-term precedent of accepting that “the purpose” of a negative political communication about a candidate is to raise funds or to initiate citizen-to-Legislator communications merely because the communication includes a few sentences soliciting a contribution or contact with a legislative office. Since the 1980s or 1990s, voters nationwide have received communication after communication portraying an official in a positive or negative light and urging the public to contact the official to speak out on a policy issue. Common sense tells us that these messages were crafted to influence us as voters, which is why the State of Maine and other states have moved their political reporting requirements from a narrow express advocacy standard to a broader standard such as the rebuttable presumption.

The Commission staff acknowledges that NEOP might have hoped that the mailing would generate some cash receipts, but the letter does not contain the hallmarks of many fundraising letters such as specific payment instructions, a return envelope, or discussion

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2 Although the statute does not explicitly use the term burden, the customary operation of a rebuttable presumption is that the presumption applies unless the party opposing the presumption has produced sufficient evidence to nullify or reverse the presumption.
of deductibility for tax purposes. These factors weaken the contention that the mailing’s purpose was to raise funds. Rep. Lockman concedes that the mailing was a net loss (the proceeds of the mailing were less than the costs).

For your information, the Commission has considered arguments on two occasions that no IE report should be required because the spender did not intend to influence an election:

- In October of 2004, the Commission considered the purpose of a proposed mailing comparing the legislative voting records of two candidates who were running against each other in the general election for the Maine House of Representatives. The Commission decided that given the timing, source, and content of the mailing, it was presumably an IE.

- In May of 2010, a leadership PAC of a State Senator commissioned a poll that mentioned candidates during the 21-day presumption period before the 2010 primary elections. The PAC successfully argued to the Commission that the poll was not intended to influence the primary election.

*Request for waiver of late-filing penalty.* Regarding the waiver request, made in the alternative by NEOP, Commission staff disagrees that the harm to the public was minimal. Commission staff cannot see how denying the public the information contained in an IE report for an IE which causes “a robust public discussion of campaign finance rules, as well as the legislative issue raised in the mailer” and generates newspaper and radio coverage does not harm the public. Regarding the experience of Rep. Lockman in filing reports, Rep. Lockman is a three-term legislator who has filed candidate reports
since 2012. Rep. Lockman also indicated to Commission staff that he received legal advice before making the expenditure at issue, which suggests he was aware of the potential legal issues surrounding NEOP’s expenditure. Commission staff views the preliminary penalty of $672.80 as appropriate given the harm suffered by the public from the late filing of the IE report in this matter and recommends the Commission grant no waiver.

Thank you for your consideration of this memo.
October 28, 2016

Hon. Lawrence Lockman, President
New England Opportunity Project
60 Western Ave, Suite 3
Augusta, ME 04330

Dear Rep. Lockman,

Thank you for your letter dated October 21, 2016 concerning the mailing by the New England Opportunity Project (NEOP) referring to Rep. Jeffrey McCabe. The Commission understands that NEOP wishes to rebut the presumption of an independent expenditure, but acknowledges that the letter was not filed within 48 hours of making the expenditure. (NEOP reported an 10/11/2016 payment $4,205.06 for the mailing.) Under our office’s procedures, this request must be considered by the members of the Commission at a regularly scheduled meeting, rather than by the Commission staff.

Request to rebut the presumption. The Commission staff has scheduled your request for the December 8, 2016 meeting of the Commission. The meeting will be held at 9:00 a.m. at the Commission Office, 45 Memorial Circle, in Augusta. You are welcome to attend the meeting to speak in support of your request to rebut the presumption. At the meeting, the Commission staff expects the Commissioners to consider two questions:

- First, does the Commission have the discretion to consider the rebuttal request, even though NEOP submitted it more than 48 hours after expenditure?
- If so, did NEOP incur the cost of the mailing with the intent to influence Rep. McCabe’s election to the Senate in District 3?

In case the Commissioners reach the second question, the Commission staff recommends providing the following additional information in writing that we believe would be relevant to the intent of the communication:

- How many pieces were mailed?
- Did residents of Senate District 3 receive the mailing?
- If NEOP did not intend to influence the general election in Senate District 6, what circumstances led NEOP to send the mailing a few weeks before the election?
- What factors determined the recipients of the mailing?
- Did the funds raised by NEOP exceed the $4,205 cost of the mailing?

Also, if you could please provide a copy of the mailing, that would be helpful.
**Possible late-filing penalty.** If the presumption is not rebutted, the independent expenditure report filed on October 21, 2016 would be viewed as eight days late and a preliminary penalty of $672.80 would be owed. (Please see attached penalty matrix for the calculation, which is based on the amount of financial activity in the report, the number of calendar days the report was late, and NEOP’s history of no late-filing violations this year.)

If NEOP wishes to request that the Commission waive or reduce the penalty, please submit an additional letter within 14 days of your receipt of this notice. The Commission would schedule the waiver request for the December 8, 2016 meeting. If you request a waiver, you are strongly encouraged to attend the meeting to speak in support of the waiver. 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 Organization 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 ethics@maine.gov if you have questions.

Sincerely,

Benjamin P. Dyer  
Political Committee and Lobbyist Registrar

Enclosure: payment receipt & penalty matrix
Payment Receipt

Mail payment to:

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

Make checks payable to: “Treasurer, State of Maine.”

Representative Lawrence Lockman, President
New England Opportunity Project
60 Western Ave, Ste 3
Augusta, ME 04330

Violation: Late Independent Expenditure Report
Amount Due: $672.80
Party Name: New England Opportunity Project  
Prior Violations: N/A

<table>
<thead>
<tr>
<th>Report Name</th>
<th>Activity Amount</th>
<th>Due Date</th>
<th>Days Late</th>
<th>Penalty Prescribed</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Independent Expenditure Report</td>
<td>$4,205.06</td>
<td>10/13/2016</td>
<td>8</td>
<td>2%</td>
<td>$672.80</td>
</tr>
</tbody>
</table>

Total: $672.80

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

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

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

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

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

MAXIMUM PENALTIES
21-A M.R.S.A. Section 1020-A(5-A)(A-1)
Five thousand dollars for reports required under section 1019(B), subsection 4, except that if the financial activity reported late exceeds $10,000, the maximum penalty is 100% of the amount reported late.
October 21, 2016

Paul Lavin
Assistant Director
Maine Ethics Commission
45 Memorial Circle
135 State House Station
Augusta, Maine 04333-0135

RE: New England Opportunity Project

Mr. Lavin:
As you know, the New England Opportunity Project, a non-profit based in Maine, recently sent out a fundraising mailer that contained issue information consistent with the mission of the organization.

While the mail piece did reference Representative Jeff McCabe and encourage people to phone his office, the cost for the mail piece was not incurred with the intent to influence the election or defeat of Representative McCabe, only to encourage citizens to contact his office about the issue in question.

There was no attempt to hide which organization was responsible for the mail piece, or the purpose of the mail piece, as there were several solicitations for funds and phone calls in the mail piece. At no time did the mail piece ask the recipient to vote for or against any candidate.

That being said, it has been brought to our attention that since the mail piece was mailed after Labor Day, it is presumed to be an independent expenditure, 21-A MRSA §1019B(1)(B). To rebut the presumption this letter stating that the mail piece was not intended to influence an election needed to be submitted within 48 hours of the distribution of the mailer, 21-A MRSA §1019B(2).

Since a letter was not filed prior to the 48-hour deadline, we have enclosed an independent expenditure report, but contend that this mailer was not intended to influence the election or defeat of a candidate, only to raise funds and bring awareness to the issue. Therefore, it should not be considered an independent expenditure on its face.

Thank you.

Lawrence Lockman
President
New England Opportunity Project
Representative Lockman,

Thank you. That information is very helpful and will be presented to the Commission. If there is any other information you think may be helpful, please send it to me. For now, I think we have what we need for the Commission meeting on December 8.

Paul

Paul Lavin
Assistant Director
Maine Ethics Commission
Office: 45 Memorial Circle
Mailing address: 135 State House Station
Augusta, Maine 04333-0135
207-287-3024
Paul.Lavin@maine.gov

Hi Paul,

Here’s a response to your request for more information. Let me know if you need anything else prior to the Dec. 8th meeting.

How many pieces were mailed? 7,066
Did residents of Senate District 3 receive the mailing? Unenrolled voters in SD 3 received the mailer, as well as NEOP donors and prospective donors across the state.

If NEOP did not intend to influence the general election in Senate District 3, what circumstances led NEOP to send the mailing a few weeks before the election?
We had originally planned to do the mailing in July, while the issue was still somewhat fresh in people’s minds, then decided that since so many Maine people are on vacation or otherwise “tuned out” during the summer months, it would be better to send the mailer later in the season. We wanted to raise awareness of the illegal immigration issue, and solicit contributions to the organization. We concluded that people are most likely to be receptive to a discussion of legislative issues, and a solicitation for contributions, after the school year begins. And obviously, in an election year, people tend to be paying closer attention to legislative voting records.

What factors were used to select the recipients of the mailing? As stated before, we wanted to highlight the majority leader's vote in order to increase awareness on the issue, and to prospect
for NEOP donors, so Somerset County, where Rep. McCabe lives and is the most well known, was included in the mailing. Our objective was to raise money and public awareness, and to demonstrate to donors and prospective donors the type of policy discussion NEOP will initiate.

Did the funds raised by NEOP exceed the $4,205 cost of the mailing? No
INDEPENDENT EXPENDITURE REPORT – 2016 GENERAL ELECTION

Name of Person/Committee Making Expenditure(s): NEW ENGLAND OPPORTUNITY PROJECT

Mailing Address: 60 WESTERN AVE., STE 3

City, State, Zip Code: AUGUSTA, ME 04330 Telephone: 207-460-6578

Please check the appropriate box for the report you are filing and complete the notarized affidavit and attached schedules. Reports must be filed on Saturday or Sunday if that is when they are due by faxing the report to the Commission (207-6775). The Commission must receive the signed original report within 5 days after the fax was received.

☐ Check here if this report is an amendment to a previously filed report. Date of original report: ________________

Independent Expenditures of more than $250 per candidate must reported according to the schedule below.

<table>
<thead>
<tr>
<th>Report</th>
<th>Expenditure Made</th>
<th>Report Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ 60-Day Pre-Election Report</td>
<td>On or before September 8, 2016</td>
<td>September 9, 2016</td>
</tr>
<tr>
<td>☐ 2-Day Report</td>
<td>Between September 9 - October 25, 2016</td>
<td>Within 2 calendar days of making the expenditure</td>
</tr>
<tr>
<td>☐ 1-Day Report</td>
<td>Between October 26 - November 8, 2016</td>
<td>Within 1 calendar day of making the expenditure</td>
</tr>
</tbody>
</table>

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

[Signature]
Signature of PAC or Party Treasurer, or Other Authorized Person Making Expenditure(s)

Date: 10/20/16

Received Time Oct. 21, 2016 9:27AM No. 0576
INDEPENDENT EXPENDITURE REPORT – GENERAL ELECTION

AFFIDAVIT

STATE OF  Maine

COUNTY OF  Penobscot

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

[Signature]

Sworn to before me, this 20th day of October 2016

[Notary Public/Attorney at Law]

My commission expires:

[Notary Seal]

Received Time Oct. 21, 2016 9:27AM No. 0576
Schedule B-IE-1
CANDIDATE(S) SUPPORTED/OPPOSED

- Please list all candidates that were the subjects of independent expenditures.
- If more than one candidate was the subject of the expenditure, allocate the expenditure among the candidates.

<table>
<thead>
<tr>
<th>Office sought by candidate (including district # or county)</th>
<th>Candidate's Name</th>
<th>Indicate whether expenditure was made in support of or in opposition to the candidate</th>
<th>Amount expended this reporting period for each candidate</th>
</tr>
</thead>
<tbody>
<tr>
<td>SD 3</td>
<td>JEFF MCCABE</td>
<td>OPPOSE</td>
<td>4205.06</td>
</tr>
</tbody>
</table>

Total expenditures for all candidates this reporting period:
This amount should equal the total independent expenditures listed on Schedule B-IE-2, Line C.  4205.06
Schedule B-IE-2
PAYMENTS AND OBLIGATIONS

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

<table>
<thead>
<tr>
<th>Date of Expenditure</th>
<th>Payee; Address, Zip Code</th>
<th>Expenditure Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>10/11/16</td>
<td>BANGOR LETTER SHOP</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>99 Washington St.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>BANGOR 04401</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

A. Expenditures for this page ⇒ 4205.06

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

C. Total independent expenditures for this reporting period (A+B). This amount should equal the total amount for all candidates listed on Schedule B-IE-1. ⇒ 4205.06

Received Time Oct. 21, 2016 9:27AM No. 0576
ASK Jeff McCabe!

Terorists Living in Maine?
Should Maine taxpayers continue to give welfare benefits to Islamic State?

Augusta, ME 04330
60 Western Ave. Ste. 3
New England Opportunity Project

Authorized and paid by

Bangor ME
Permit No.
US Postage Paid
 Permit ST

925 Maine Mills Road
Or Current Resident

Skoowhegan, ME 04976-4120
October 2016

Dear Friend:

Maine is under an invasion!

And now, not even the Boston Herald can ignore it!

What's even more disturbing, the invasion is not only encouraged, but funded by liberal legislators -- and led by House Majority Leader Jeff McCabe.

The Boston Herald is reporting now a second ISIS terrorist was cultivated in Maine. And to make matters even worse, Maine workers were on the hook, paying for the terrorist to enjoy food stamps and other welfare benefits.

That's two ISIS terrorists now that have been harbored in Maine at the expense of Mainers.

As you may have heard, this past legislative session, I sponsored a bill that would have ended Portland's reign as a Harboring Haven for illegal immigrants. The bill had the support of Gov. Paul LePage and my fellow committed conservatives in the legislature.

However, Rep. McCabe is more interested in turning our beautiful state into the second-coming of San Francisco, than he is in preserving Maine values. On a straight party-line vote, Rep. McCabe and his caucus voted to kill legislation -- without debate and without public hearings -- that would have cut off state aid to Portland and any other municipality harboring illegal immigrants.

Remember, the entire state of Maine was a Harboring Haven for illegals until Gov. Paul LePage issued an executive order on his first day in office. Prior to the Governor's decisive action, state employees were not allowed to ask people applying for welfare if they were in the country legally.

If Rep. McCabe has his way, Portland's Harboring Haven would once again extend throughout the entire state.

Rep. McCabe and his supporters would have you believe the only reason to oppose Harboring Havens is bigotry, calling proponents of my bill racists. I find that disgusting and offensive and I'm sure you do too!
And let us not forget, by protecting Portland’s status as a Harboring Haven for illegals, Rep. McCabe is telling working men and women in Somerset County that while they have to obey the law, liberal politicians in Portland and Augusta are free to thumb their noses at federal immigration law.

The New England Opportunity Project believes Harboring Havens are bad for Maine and bad for you and your family. We support legislation requiring Portland and all other Maine cities to report illegals living in their communities.

But Rep. McCabe can’t just hear this message from the New England Opportunity Project and Larry Lockman. The message needs to come from his constituents. And as Majority Leader, every Mainer is his constituent.

Please do me a personal favor, pick up your phone and politely tell Rep. McCabe you will no longer tolerate Rep. McCabe pandering to his favorite voting block at the expense of your safety, security and tax dollars. You can reach him at 207-287-1430. Or, if it’s more convenient for you, e-mail Rep. McCabe at jeff.mccabe@legislature.maine.gov.

And if you can afford it, please contribute $500, $250, $100, $25 or whatever you can afford to the New England Opportunity Project so we can spread this message to Mainers in other districts with legislators enabling Harboring Havens.

The Boston Herald can see there is a problem with Mainers paying for welfare benefits to ISIS, but apparently, Rep. McCabe and his followers are turning a blind eye to your family’s safety.

I thank you in advance for your action and your commitment to freedom and free markets for every Mainer.

Sincerely,

Larry Lockman
President
New England Opportunity Project

P.S. House Majority Leader Jeff McCabe is leading efforts to protect criminals illegally living in Maine.

* These efforts are leading to Mainers being forced to fund welfare for ISIS terrorists being harbored in the Pine Tree State!

* The Harboring Havens Rep. McCabe supports put your tax dollars, your children’s schools and most importantly, your family’s safety all at risk.

* Contact Rep. McCabe and let him know, as one of his constituents, you insist he put an end to Harboring Havens in Maine.
Representative Lockman,

Thank you for your email regarding the rebuttal of the presumption that the mailer by the New England Opportunity Project was an independent expenditure. In his letter of October 28th, Benjamin Dyer requested some additional information in order to assist the Commission in considering whether the purpose of the mailer was to influence the election in Senate District 3. The information requested was:

- How many pieces were mailed?
- Did residents of Senate District 3 receive the mailing?
- If NEOP did not intend to influence the general election in Senate District 3, what circumstances led NEOP to send the mailing a few weeks before the election?
  - If you feel you have answered this question in your email, you do not have to repeat the answer. If you believe there are other factors the Commission should consider, please include them in your response.
- What factors were used to select the recipients of the mailing?
- Did the funds raised by NEOP exceed the $4,205 cost of the mailing?

These are questions for which the Commission will likely want answers in order to assess whether there is sufficient evidence to rebut the presumption. If there is any other factual information that you believe will support your rebuttal of the presumption, please include that in your response. And if you have any questions, please do not hesitate to contact me by phone or email.

Paul Lavin
Assistant Director
Maine Ethics Commission
Office: 45 Memorial Circle
Mailing address: 135 State House Station
Augusta, Maine 04333-0135
207-287-3024
Paul.Lavin@maine.gov

Mr. Lavin,

With regard to your recent correspondence regarding the Commission’s December
8th meeting, please be advised that New England Opportunity Project wishes to rebut the presumption that our mailer was an “independent expenditure” subject to a 48-hour deadline for filing a spending report. We did file an IE report late, after my phone conversation with you, in order to “stop the clock” on the daily accrual of penalties in the event that the Commission ultimately rules that the mailer was an electioneering piece.

While the mail piece did reference Representative Jeff McCabe and encourage people to phone his office, the cost for the mail piece was not incurred with the intent to influence the election or defeat of Representative McCabe, only to encourage citizens to contact his office about the issue in question.

There was no attempt to hide which organization was responsible for the mail piece, or the purpose of the mail piece, as there were several solicitations for funds and phone calls in the mail piece. At no time did the mail piece ask the recipient to vote for or against any candidate.

That being said, it has been brought to our attention that since the mail piece was mailed after Labor Day, it is presumed to be an independent expenditure. As stated above, we filed a late report to stop the clock, but contend that this mailer was not intended to influence the election or defeat of a candidate, only to raise funds and bring awareness to the issue. Therefore, it should not be considered an independent expenditure on its face.

We request that the late-filing penalty be waived, for all the reasons cited above, and further note that the Commission may waive or reduce 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.

As you know, I have no previous experience filing non-profit reports, and NEOP has no history of late filing. I would note further that there was no harm suffered by the public by the late disclosure. Quite the contrary. There was a robust public discussion of campaign finance rules, as well as the legislative issue raised in the mailer. Rep. McCabe was given a public forum well in advance of the election to criticize New England Opportunity Project for the mailing, both on talk radio and in a guest column in the Morning Sentinel. In addition, two news reports on the
mailer appeared in the same newspaper, casting NEOP in a very negative light. Again, there was no subterfuge on our part. We wanted recipients of the mailer to know who New England Opportunity Project is, and what we stand for.

Please let me know if you need any further information before the December 8th meeting.

Larry Lockman

From: Lavin, Paul
Sent: Tuesday, November 15, 2016 11:25 AM
To: Lawrence Lockman
Subject: RE: Independent Expenditure Report Information

Representative Lockman,

It occurred to me that in our conversation and my email, I wasn’t clear about the timeline for getting your request for a penalty waiver heard by the Commission at the December 8th meeting. We would need your request by November 27th (Sunday) in order for the staff to prepare a cover memo and include it in the packet of meeting materials sent to the Commissioners on November 29th.

Please let me know if you have any questions.

Paul

Paul Lavin
Assistant Director
Maine Ethics Commission
Office: 45 Memorial Circle
Mailing address: 135 State House Station
Augusta, Maine 04333-0135
207-287-3024
Paul.Lavin@maine.gov

From: Lavin, Paul
Sent: Wednesday, November 09, 2016 11:23 AM
To: ‘Lawrence Lockman’
Cc: Dyer, Benjamin P; Wayne, Jonathan
Subject: RE: Independent Expenditure Report Information

Representative Lockman,

Thank you for responding with your request for a waiver of the late-filing penalty. In order for the Commission to fully consider your request, please provide an explanation of the reasons for the late-filing in writing. An email is fine; you do not need to send a letter. Your waiver request will be considered at the Commission’s meeting on December 8, 2016. You are strongly encouraged to
attend the meeting to support your waiver request and answer any questions the Commissioners may have.

As mentioned in the penalty letter, the Commission may consider 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 or reduce 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. (21-A M.R.S.A. § 1020-A(2))

Since you are requesting a penalty waiver, I assume that you will not be attempting to rebut the presumption that the communication was an independent expenditure.

Please let me know if you have any questions or need further assistance. I will be out of office on Thursday and Friday. If you need assistance while I am out, please contact Benjamin Dyer at Benjamin.P.Dyer@Maine.gov or 287-4179.

Paul

Paul Lavin
Assistant Director
Maine Ethics Commission
Office: 45 Memorial Circle
Mailing address: 135 State House Station
Augusta, Maine 04333-0135
207-287-3024
Paul.Lavin@maine.gov
Subject: RE: Independent Expenditure Report Information

Rep. Lockman,

The letter went out in today’s mail and it was addressed to the Augusta address. I’ve attached a scanned copy of the letter to this email. Please let us know if you have any questions.

Paul

Paul Lavin  
Assistant Director  
Maine Ethics Commission  
Office: 45 Memorial Circle  
Mailing address: 135 State House Station  
Augusta, Maine 04333-0135  
207-287-3024  
Paul.Lavin@maine.gov

From: Larry Lockman [mailto:larrylockman@rivah.net]  
Sent: Friday, October 28, 2016 1:08 PM  
To: Lavin, Paul  
Cc: Dyer, Benjamin P  
Subject: Re: Independent Expenditure Report Information

Mr. Lavin,

To date, I have not received any communication from the Ethics Commission regarding the New England Opportunity Project mailer.

I have read in the news media that the Commission has proposed fines.

You can mail any correspondence for NEOP in care of me at 10 Perry Lane, Amherst, ME 04605-8302, as I don’t pick up mail at the Augusta address more than once or twice a week.

Lawrence Lockman  
207-460-6518  
larrylockman@rivah.net

From: Lavin, Paul  
Sent: Wednesday, October 19, 2016 3:02 PM  
To: larrylockman@rivah.net  
Cc: Dyer, Benjamin P  
Subject: Independent Expenditure Report Information

Rep. Lockman,

I’ve attached the Independent Expenditure Report form. The first two pages have information about when a report is required to be filed. Below are some links to the relevant statutes and the Commission’s rule on independent expenditures.
I didn’t think to bring this up when we spoke, but if the communication is an independent expenditure, the communication should have listed the names of the top three funders of the organization that paid for the communication.

21-A MRSA § 1019-B – Reports of Independent Expenditures

21-A MRSA § 1020-A – Failure to File on Time

Commission Rule on Independent Expenditures – See Section 10, starting on page 10

21-A MRSA § 1014 – Publication or distributions of political statements (the disclaimer statement on political communications) – See subsection 2-B

To review Independent Expenditure Reports filed by other organizations, click here.

Either Ben Dyer, the Commission’s Political Committee and Lobbyist Registrar, or I would be glad to talk with you or your counsel regarding any questions regarding this matter or to provide you with any additional information.

Paul

Paul Lavin
Assistant Director
Maine Ethics Commission
Office: 45 Memorial Circle
Mailing address: 135 State House Station
Augusta, Maine 04333-0135
207-287-3024
Paul.Lavin@maine.gov
Information Summary

This record contains information from the CEC database and is accurate as of: Tue Nov 29 2016 13:02:30. Please print or save for your records.

<table>
<thead>
<tr>
<th>Legal Name</th>
<th>Charter Number</th>
<th>Filing Type</th>
<th>Status</th>
</tr>
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<tbody>
<tr>
<td>NEW ENGLAND OPPORTUNITY PROJECT</td>
<td>20150417ND</td>
<td>NONPROFIT CORPORATION (T13-B)</td>
<td>GOOD STANDING</td>
</tr>
</tbody>
</table>

Filing Date: 04/13/2015
Expiration Date: N/A
Jurisdiction: MAINE

Other Names: NONE

Clerk/Registered Agent:

LAWRENCE E. LOCKMAN
10 PERRY LANE
AMHERST, ME 04605 8302

Click on a link to obtain additional information.

List of Filings: View list of filings
Obtain additional information:
Certificate of Existence: Short Form without amendments ($10.00)
Certificate of Existence: Long Form with amendments ($10.00)

You will need Adobe Acrobat version 3.0 or higher in order to view PDF files. If you encounter problems, visit the troubleshooting page.

If you encounter technical difficulties while using these services, please contact the Webmaster. If you are unable to find the information you need through the resources provided on this web site, please contact the Bureau's Reporting and Information Section at 207-624-7752 or e-mail or visit
21-A § 1019-A. Reports of membership communications

Any membership organization or corporation that makes a communication to its members or stockholders expressly advocating the election or defeat of a clearly identified candidate shall report any expenses related to such communications aggregating in excess of $50 in any one candidate's election race, notwithstanding the fact that such communications are not expenditures under section 1012, subsection 3, paragraph A. Reports required by this section must be filed with the commission on forms prescribed and prepared by the commission and according to a reporting schedule that the commission shall establish by rule.

21-A §1019-B. Reports of independent expenditures

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

   A. Is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and
   
   B. Is presumed to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 28 days, including election day, before a primary election; during the 35 days, including election day, before a special election; or from Labor Day to a general election day.

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

3. Report required; content; rules. (REPEALED)

4. Report required; content; rules. A person, party committee, political committee or political action committee that makes any independent expenditure in excess of $250 during any one candidate's election shall file a report with the commission. In the case of a municipal election, the report must be filed with the municipal clerk.

   A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2 A.
   
   B. A report required by this subsection must contain an itemized account of each expenditure in excess of $250 in any one candidate's election, the date and purpose of each expenditure and the name of each payee or creditor. The report must state whether the expenditure is in support of or in opposition to the candidate and must include, under penalty
of perjury, as provided in Title 17 A, section 451, a statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. The commission may adopt procedures requiring the electronic filing of an independent expenditure report, as long as the commission receives the statement made under oath or affirmation set out in paragraph B by the filing deadline and the commission adopts an exception for persons who lack access to the required technology or the technological ability to file reports electronically. The commission may adopt procedures allowing for the signed statement to be provisionally filed by facsimile or electronic mail, as long as the report is not considered complete without the filing of the original signed statement.

5. Exclusions. An independent expenditure does not include:

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

B. A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting;

C. A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and

D. A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate.

21-A § 1020. Failure to file on time (REPEALED)

21-A § 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;
B. An error by the commission staff;

C. Failure to receive notice of the filing deadline; or

D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service.

3. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

4. Basis for penalties. (REPEALED)

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

A. For the first violation, 2%;

B. For the 2nd violation, 4%; and

C. For the 3rd and subsequent violations, 6%.

Any penalty of less than $10 is waived.

Violations accumulate on reports with filing deadlines in a two-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. (REPEALED)

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, except that if the financial activity reported late exceeds $50,000, the maximum penalty is 100% of the amount reported late;

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 100% of the amount reported late;
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 100% of the amount reported late;

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

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B.

E. (REPEALED)

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.

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.

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.

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.

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.

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.
For any other political action committee that does not fall within the parameters of paragraphs C or D, the top three funders are the contributors who have given the top three aggregate contributions, as defined in Title 21-A, section 1052(3), during the time period specified in Title 21-A, section 1014, subsection 2-B, paragraph A.

Communications for which including the statement required by Title 21-A, section 1014, subsection 2-B would be impossible or impose an unusual hardship due to their format or medium are exempt from the requirements of that section.

SECTION 8. PROHIBITED COMMUNICATIONS

Commission members shall not discuss any specific case under investigation, or any case which may reasonably be expected to be the subject of investigation, as long as the matter is pending before the Commission. Members of the Commission may discuss its final determination regarding the matter with members of the press or other interested persons only after the appeal period has expired and no appeal is filed, or if an appeal is filed, only after the appellant has exhausted all administrative or judicial remedies.

SECTION 9. ACCELERATED REPORTING SCHEDULE [Repealed]

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. General. Any person, party committee, political committee or political action committee that makes any independent expenditure in excess of $250 per candidate in an election must file a report with the Commission according to this section.

2. Definitions. For purposes of this section, the following phrases are defined as follows:

A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.

B. "Expressly advocate" means any communication that

(1) uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"; or
(2) is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.

C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.

3. **Reporting Schedules.** Independent expenditures in excess of $250 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following schedule:

   A. [Repealed]

   B. [Repealed]

   1. **60-Day Pre-Election Report.** A report must be filed by 11:59 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.

   2. **Two-Day Report.** From the 60th day through the 14th day before an election, a report must be filed within two calendar days of the expenditure.

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

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

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

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

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

4. **Multi-Candidate Expenditures.** When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.
A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

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

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

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR’S RACE.]

5. **Rebuttable Presumption.** Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and that is disseminated during the 28 days before a primary election, the 35 days before a special election or from Labor Day to the general election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

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

1. Printed advertisements in newspapers and other media;
2. Television and radio advertisements;
3. Printed literature;
4. Recorded telephone messages;
5. Scripted telephone messages by live callers; and
This list is not exhaustive, and other types of communications may be covered by the presumption.

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

(1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate, the candidate’s immediate family, or a political committee;

(2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;

(3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;

(4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and

(5) other communications and activities that are excluded from the legal definition of “expenditure” in the Election Law.

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

D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the applicable presumption period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.

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

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