Agenda Item #5

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

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: February 12, 2010

Re: For Your Consideration – DRAFT Advice Memo Regarding Independent Expenditures in the 2010 Elections

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In recent election years, organizations such as political parties and political action committees (PACs) have sent communications to voters that include positive or negative messages about candidates in Maine state elections. In legislative races, the communications have most often been made through direct mail literature. In gubernatorial elections, the communications are most often made through broadcast media.

Under some circumstances, the organizations making these expenditures are required to file "independent expenditure reports" with the Commission. Special rules apply in the final weeks before an election, but at all times independent expenditure reports are required if the communication expressly advocates for the election or defeat of the candidates mentioned in the communication. In 1998 the Commission adopted a definition of "expressly advocate" in Chapter 1, Section 10(2)(B) of its Rules. The rule sets forth certain phrases that qualify as express advocacy (*e.g.*, "Jones for House of Representatives") and a catch-all category 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) ...." In 2000, 2006, and 2008, candidates asked the Commission to consider whether certain communications in their races qualified as express advocacy.

In recent election years, the Commission has posted Advice Regarding Independent Expenditures on its website to provide guidance to PACs, party committees, and others concerning whether they are required to file an independent expenditure reports. For your consideration, I have attached updated advice for the 2010 elections (referred to below as the "Advice Memo"). In particular, the staff is interested in whether you approve of the discussion of express advocacy on pages 1-2 of the decision, and the proposed guidance concerning the three examples of direct mail literature attached to the Advice Memo concerning House candidates Peter Kent, Anne Rand, and Jane Knapp.

If you approve of the guidance in the draft Advice Memo, you could adopt it at the February 25, 2010 meeting. Otherwise, the staff would be happy to make any improvements to the Advice Memo you suggest and bring it back to you at your March 25, 2010 meeting.

Role of Independent Expenditure Reports in the Maine Clean Election Act Program

Many states have adopted some form of independent expenditure reporting to assist the public in understanding what groups are attempting to influence candidate elections. In Maine, the reporting of independent expenditures also plays an important role in the administration of the Maine Clean Election Act (MCEA) program.

The MCEA program was designed to keep participating candidates on an even playing field with their opponents. The designers of the program recognized that it might be unsuccessful if participating candidates could be outspent by independent expenditures by PACs and party committees seeking to elect the candidates' opponents.

So, the MCEA contains a "matching funds" provision that attempts to keep participating candidates competitive financially. If an MCEA candidate's campaign funding is less than their opponent's, the candidate may receive matching funds (up to certain maximum amounts) to keep them on an even playing field. The calculation takes into consideration the independent expenditures made by PACs, parties, and other groups in the race. For example, if a PAC spends $1,000 on direct mail in support of candidate X, then the opponents of candidate X who are in the MCEA program would be eligible to receive $1,000 in matching funds (depending on other factors).

Because of this design of the program, PACs, parties, and others are interested in clear guidance in understanding how the Commission will apply the express advocacy rule. They would like to send communications to voters to promote the candidates that they support. Sometimes, however, they will try to avoid expressly advocating for "their" candidate's election, because that would trigger the payment of matching funds to that candidate's opponents.

Commission's Express Advocacy Determinations in the 2006 Elections

In September 2006, the Commission considered some television advertisements paid for by the Maine Democratic Party and the national Republican Governors Association in support of gubernatorial candidates John Baldacci and Chandler Woodcock, respectively. The Commission determined that the television advertisements were not express advocacy.

Following that decision, on October 20, 2006 the Commission considered literature that the Maine Democratic and Republican Parties mailed in support of three House candidates, including Anne Rand. The Democratic Party mailers in support of Anne Rand contained the phrase "Anne Rand/State Representative" even though Ms. Rand was not an incumbent State Representative. The Commission determined by a vote of 2-1 that the Anne Rand literature was not express advocacy, even though it mentioned the office she was seeking.

Commission's Express Advocacy Determinations in 2008

In the 2008 elections, the political parties relied on the Commission's October 20, 2006 decisions in formulating language for direct mail. In early October 2008, several candidates came forward regarding campaign literature sent by the Democratic and Republican state parties with positive messages about their opponents. They inquired whether this literature entitled them to receive matching funds.

At a meeting on October 17, 2008, you considered three examples of literature sent in support of House candidates Peter Kent, Jane Knapp, and Kerri Prescott. Commissioner Youngblood commented that he believed that the mailers expressly endorsed the candidates, but that under the Commission's decision in October 2006, the mailers would not be express advocacy. He recommended that the Commission revisit the issue of express advocacy. Commissioner McKee agreed. Michael Friedman expressed that he believed the examples were express advocacy, but that it would not be appropriate to change the rules in the middle of election period. Commissioner Marsano moved to find that the Jane Knapp mailer did not contain express advocacy, and to pay no matching funds to her opponent. The motion passed 4-1, with Commissioner Friedman in the minority.

January 2009 Working Group

In response to direction that you provided at your November 24, 2008 meeting, the Commission staff gathered a working group to consider whether the Commission's October 20, 2006 decision applying the Commission's express advocacy rule "moved the line" for express advocacy and thereby influenced campaign mailings sent in the 2008 elections. The working group held one meeting on January 13, 2009. The participants included

State Senator Debra Plowman
Alex Pringle, Senate President's Office
Arden Manning, Chair, Maine Democratic Party
Daniel W. Walker, counsel for Maine Democratic Party
Daniel I. Billings, counsel for 2008 Maine Senate Republican candidates
Ann Luther, Maine Citizens for Clean Elections
Alison Smith, Maine Citizens for Clean Elections

Jill Ward, Maine Citizens for Clean Elections
Pam Cahill, lobbyist for Maine Citizens for Clean Elections
Assistant Attorney General Phyllis Gardiner
Assistant Director Paul Lavin
Executive Director Jonathan Wayne

The working group decided that the Commission narrowly applied its express advocacy rule at its October 20, 2006 meeting. The working group recommended to the Commission that it apply a slightly broader interpretation of express advocacy in future elections. It suggested that the Commission amend its existing advice on independent expenditures to clarify that, in future elections, literature similar to the Anne Rand mailers considered on October 20, 2006 *could* be considered express advocacy.

Proposed Advice Memo for Your Consideration

In light of the suggestions of the working group, for your consideration the Commission staff proposes the following language on page 2 of the Advice Memo:

> In February 2010, the Commission gave further consideration to some of its prior determinations applying the express advocacy rule. As a result of this review, the Commission decided to clarify that, in a communication to voters, the identification of the office sought by a candidate named in the communication is a factor that the Commission generally will consider in favor of a determination that the meaning of the communication is to urge the election or defeat of a candidate. The determination of whether the communication constitutes express advocacy will be based on the entire content of the communication, and whether the communication has any other reasonable meaning than to urge the election or defeat of a candidate.

Specific Policy Questions You May Wish to Consider

Please be aware that PACs and parties in Maine will be looking to whatever guidance you give on express advocacy in the Advice Memo for purposes of planning their

communications in the 2010 elections. It is likely that some national groups spending money in the governor's race will likely consider your advice as well. You may wish to consider the following two issues.

Incumbents. The draft advice memo does not distinguish between incumbents who are running for re-election and non-incumbents.

Commenting on Other 2006 and 2008 Mailers. You may wish to go farther in commenting on the actual mailers which the Commission considered in 2006 and 2008, and whether you believe those mailers would constitute express advocacy in the future. For example:

- If you believe that in the future you will view literature that is substantially similar to the Anne Rand or Jane Knapp examples to constitute express advocacy, you could provide that specific guidance in the Advice Memo.
- I have attached a couple of other examples of literature that you could use as examples to provide guidance (2006 literature concerning Walter Ash, who was an incumbent in that election year, and 2008 literature concerning Kerri Prescott, who was an incumbent in that election year.)

Thank you for your consideration of the draft Advice Memo.

DRAFT

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Advice Regarding Independent Expenditures for the 2010 Elections

This memo answers some frequently asked questions about whether independent expenditure reporting is required. A copy of the relevant law (21-A M.R.S.A. § 1019-B) is attached with the corresponding Commission rule regarding independent expenditures. For advice about how to file an independent expenditure report, please see the instructions on the reporting form.

What is an "independent expenditure?"

Independent expenditures are payments or obligations made by individuals and organizations, acting independently of candidate campaigns, for certain communications referring to clearly identified candidates.

More specifically, payments or obligations made for communications (for example, advertisements and literature) that expressly advocate the election or defeat of a candidate are always considered independent expenditures.

In addition, payments or obligations made for communications are presumed to be independent expenditures if the communication 1) is disseminated within 21 days before a primary election or within 35 days before the general election, 2) names or depicts a clearly identified candidate, and 3) involves a race in which a Maine Clean Election Act certified candidate is running.

These two periods before an election are referred to below as the "presumption periods."

Presumption Periods for the 2010 Elections

Election	Length (includes election day)	Dates
Primary	21 days	May 19 – June 8
General	35 days	September 29 – November 2

Some communications are exempt from the presumption, such as slate cards sent by political party committees (please see exceptions below).

How do I know if my advertisement or literature "expressly advocates" the election or defeat of a candidate?

The term "expressly advocate" is defined in Chapter 1, Section 10(2)(B) of the Commission Rules, which is attached to this memo. The definition includes phrases such as "Jones for House of Representatives" or "Vote for the Governor," and other words which in context can have no reasonable meaning other than to urge the election or defeat of one or more clearly identified candidates.

Since the Commission adopted the rule, the Commission has been asked whether certain communications constitute express advocacy. In order to provide better guidance to organizations making campaign-related expenditures, the Commission has attached to this memo three examples of campaign literature, which are discussed below.

In February 2010, the Commission gave further consideration to some of its prior determinations applying the express advocacy rule. As a result of this review, the Commission decided to clarify that, in a communication to voters, the identification of the office sought by a candidate named in the communication is a factor that the Commission generally will consider in favor of a determination that the meaning of the communication is to urge the election or defeat of a candidate. The determination of whether the communication constitutes express advocacy will be based on the entire content of the communication, and whether the communication has any reasonable meaning other than to urge the election or defeat of a candidate.

The Commission offers the following guidance on the attached three examples of campaign literature

- In the 2008 general election, the Maine Democratic Party mailed the attached literature concerning Peter Kent. Mr. Kent was a candidate for the Maine House of Representatives, but the literature did not mention his candidacy or the election.

  This communication was determined not to contain express advocacy.

- In the 2006 general election, the Maine Democratic Party sent the attached literature in support of Anne Rand. In that election, Ms. Rand was a candidate for the Maine House of Representatives, but she was not an incumbent. Nevertheless, the front of the card included the phrase "Anne Rand/State Representative."

- In the 2008 general election, the Maine Republican Party mailed literature concerning Jane Knapp. Ms. Knapp was a candidate for the House of Representatives, and was not an incumbent. The literature did not mention her candidacy explicitly, but it contained the phrase "Maine Families Deserve a Representative Who Will Fight for Them."

  With respect to the Anne Rand and Jane Knapp literature, the Commission advises that the identification of the office sought by a candidate named in a communication will favor a determination that the only reasonable meaning of the communication was to urge the election or defeat of a candidate.

If I make an independent expenditure, how does that affect a Maine Clean Election Act candidate?

Independent expenditures are included in the Commission's determination of whether a Maine Clean Election Act candidate is entitled to receive matching funds. For example, if Candidate A and Candidate B (a Maine Clean Election Act candidate) are opponents in the general election, and a political action committee (PAC) makes an independent expenditure in support of Candidate A, Candidate B may be entitled to receive matching funds. The independent expenditure has the same effect regardless how Candidate A is financing his campaign.

How do I report independent expenditures?

Please see the independent expenditure reporting form for instructions on how to file the report. Under the Commission's rules, entering into an obligation to make an independent expenditure may require the filing of a report regardless when the payment for the communication is made.

Does making an independent expenditure turn me or my organization into a political action committee?

The definition of "political action committee" was changed in 2008. If an organization spends more than $5,000 in a calendar year to influence candidate elections, it must register with the Commission as a political action committee, even if its major purpose is something other than the influencing of candidate elections. (21-A M.R.S.A. § 1052(5)(A)(5)) This new requirement does not apply to individuals.

If your organization's major purpose is to influence candidate or ballot question elections, please contact the Commission to find out what your registration and reporting requirements are.

I have heard that I should not coordinate my spending with the candidate I want to support. Why?

Independent expenditures must be independent of the candidate. Any expenditure made by a third-party in consultation or cooperation with a candidate is considered to be a contribution to the candidate and is not an independent expenditure. For example, if a supporter wants to place an ad supporting a candidate in the local newspaper and asks the candidate to supply him with a campaign photograph, that is enough to make the entire cost of the ad a contribution to the candidate. The cost would have to be reported by the candidate, and the supporter would not be required to file an independent expenditure report. Since MCEA candidates cannot accept contributions, this is not permitted for them. It would be permissible for privately financed candidates to accept the payment for an ad as an in-kind contribution, but the cost of the ad must be $350 or less because that is the contribution limit for legislative, county candidates and some municipal candidates. Gubernatorial candidates can accept contributions of $750 or less.

What paid communications are covered by the rebuttable presumption?

The law was designed to apply to written and oral communications intended to influence the nomination, election, or defeat of a candidate. Under the Commission's rules, the following types of communications are covered under the rebuttable presumption:

- Printed advertisements in newspapers and other media
- Television and radio advertisements
- Printed literature
- Recorded telephone messages
- Live scripted telephone calls or messages
- Electronic communications.

This list is not exhaustive and other types of communication may also be covered. In general, any expenditure that has all of the following four elements is covered by the rebuttable presumption:

- an expenditure made to design, produce, or disseminate a communication
- that is disseminated in the last 21 days before a primary election or in the last 35 days before a general election, and
- that names or depicts a clearly identified candidate
- who is in a race involving a Maine Clean Election Act candidate.

If the expenditure is covered by the presumption and is greater than $100 per candidate, the person making the expenditure must either file an independent expenditure report or a signed statement that the expenditure was not made with the intent to influence the election (see below).

What determines if a communication is made within the presumption periods that begin on May 19 and September 29?

The presumption period applies to when the communication is disseminated to voters. The date of the dissemination is the date of the postmark, broadcast, or hand-delivery of the communication.

If expenditures are made before the presumption period to design or produce a communication that is then disseminated during the presumption period, the expenditure may nevertheless be covered by the presumption, and the costs of designing, producing, and disseminating the communication must be reported in an independent expenditure report.

How do I rebut the presumption that the communication is a campaign-related independent expenditure?

To rebut the presumption, the person making the expenditure must file a signed written statement that the expenditure was not made in order to influence the election. As a convenience, the Ethics Commission has developed a form that may be used for this purpose but using the form is not mandatory. The person filing a rebuttal statement is welcome to include any relevant evidence. It is acceptable to file the rebuttal statement by faxing it to (207) 287-6775. Please note that if the 48-hour deadline falls on a weekend, the report must be filed on a Saturday or a Sunday.

If a person has a specific communication that appears to be covered by the presumption, but 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.

While there is no penalty for failing to file a statement rebutting the presumption within 48 hours, if the Commission determines that the communication was covered by the presumption and an independent expenditure report was not filed on time, the person making the expenditure could be assessed a penalty for late filing.

The Commission will take into consideration any evidence relevant under the statute, including the following:

- Does the language of the communication appear designed to influence the nomination, election, or defeat of a candidate?

- Was the communication disseminated to voters in the district of the candidate(s) mentioned in the communication?
- Was the communication disseminated to voters in other districts?
- How many voters received the communication?
- Is the communication directed to voters at all?
- Does the communication seem primarily designed for some identifiable purpose other than influencing the nomination, election, or defeat of a candidate?
- Does the communication mention all candidates running in the district?
- When was the communication produced, and when was it distributed?

What if the cost of a communication is less than $100 per candidate?

The definition of independent expenditure applies only to expenditures for communications. If the person making the communication did not spend or obligate more than $100 per candidate to design, produce, or disseminate the communication, no independent expenditure report or rebuttal statement is necessary. However, once the aggregated costs for any candidate exceed $100, a report must be filed for communications regarding that candidate.

Example: a community organization maintains a list of e-mail addresses of individuals who are concerned about local economic development issues. At no cost, it sends an e-mail to the concerned citizens endorsing a legislative candidate. The organization would not be required to file an independent expenditure report or submit a rebuttal statement because the communication involved no expense.

Please note that if an organization uses materials produced by another entity (*e.g.*, a legislative scorecard), the cost of producing that material must be included in the total amount for that communication (see below).

Are there any expenditures that are exempt from the reporting requirement and the rebuttable presumption?

Certain election-related activities are excluded from the legal definition of "expenditure" in the Election Law. Because these activities are not considered expenditures, they do not need to be reported as independent expenditures and the rebuttable presumption does not apply to them. These excluded costs include:

- News stories and editorials distributed through a broadcasting station, newspaper, or other periodical;
- Any communication from a membership organization (*e.g.*, a union or trade association) or corporation to its members or stockholders if that organization is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
- Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate;
- The use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
- The payment by a party committee for a slate card or party candidate listing (see definition below).

For a full list of exceptions to the legal definition of "expenditure," *see* 21-A M.R.S.A. § 1012(3)(B).

Isn't there an exception for communications naming three or more candidates?

There is an exception for communications involving three or more candidates, but it applies only to state and local party committees and only to communications that meet the following requirements:

- The communication lists the names of at least 3 candidates for election to public office (this can be a combination of federal, state, and local candidates).
- The communication is distributed through public advertising such as broadcast stations, cable television, newspapers and similar media, and through direct mail, telephone, electronic mail, publicly accessible sites on the Internet or personal delivery.
- The treatment of all candidates in the communication is substantially similar (although if required by federal law, a federal candidate may be treated differently).
- The content of the communication is limited to:

  (1) The identification of each candidate, with which pictures may be used;

  (2) The offices sought;

  (3) The offices currently held by the candidates;

  (4) The party affiliation of the candidates and a brief statement, including campaign slogans, about the party's or the candidates' positions, philosophy, goals, accomplishments, or biographies;

  (5) Encouragement to vote for the candidates identified;

  (6) Information about voting, such as voting hours and locations; and

  (7) Campaign or party logos.

If the communication contains language outside the categories of this paragraph, it does not qualify as a slate card.

Are telephone communications covered by the rebuttable presumption?

In the view of the Commission, the rebuttable presumption in Section 1019-B would cover automated telephone messages and live calls from individuals that are scripted, if the communications have the four elements described above on page 4.

Are there any individuals or organizations that are exempt from the presumption?

Section 1019-B does not exempt any category of individuals or organizations from the rebuttable presumption. Nevertheless, as noted above, some expenditures by membership, news organizations and party committees are excluded from the legal definition of expenditure, and therefore are not covered by the independent expenditure law.

Does my membership organization have to report its communications to its members?

The Election Law contains an exemption for membership organizations that are not organized primarily for the purpose of influencing an election. Communications from those organizations to their members are not considered expenditures, and therefore are not considered independent expenditures. However, if the communication expressly advocates for the election or defeat of a candidate and the cost of the communication is more than $50 in any one candidate's election, the expenditures must be disclosed in a special report required by 21-A M.R.S.A. § 1019-A. Those expenditures, however, will not trigger matching funds under the Maine Clean Election Act.

What if the costs of producing the communication are paid for by an organization that is different than the organization that disseminates the communication? Which organization must file an independent expenditure report or a rebuttal statement?

Some of the questions posed to the Commission suggest that organizations may purchase or produce copies of a written communication (such as a legislative scorecard or voting record) and provide them to another organization that will distribute them. Persons paying for *or* disseminating communications covered by the presumption will be expected to demonstrate a high degree of good faith to ensure that all design, production, and distribution costs are reported to the Commission so that the correct amount of matching funds will be received by MCEA candidates.

When calculating whether it has spent more than $100 per candidate, an organization that has been supplied printed communications covered by the presumption and that distributes them must report *both* its own distribution costs *and* the value of the materials it has distributed. The Commission requests that the organization make a good faith effort to determine the value of the materials by ascertaining the *actual* design and production costs of the materials distributed. If the actual costs cannot be determined with a reasonable effort, the organization should estimate the fair market value of the materials it has distributed. Both the distributions costs and the value of the materials must be included in the independent expenditure report, unless the organization has filed a rebuttal statement.

Example: A PAC receives 500 copies of literature referring to a candidate that it distributes one week before the general election in order to influence the outcome of the election. By checking with the person or organization that supplied the literature, the PAC determines that the actual cost of the literature was $400. The PAC spends $200 distributing the literature. The PAC should file an independent expenditure report with a total expenditure of $600.

What about legislative scorecards or voting records of legislators?

Some organizations produce literature that summarizes legislators' voting records on particular issues and rates the legislators on their voting records. If these communications have the four elements of the rebuttable presumption described above on page 4, the person paying for or disseminating the literature will be required to file either an independent expenditure report or a written statement rebutting the presumption if more than $100 is spent in any candidate's race. For communications that refer to multiple candidates, the Commission's rule (attached) explains how to allocate the cost among the candidates.

The Commission will consider each rebuttal statement on a case-by-case basis. The determination will depend on the factors listed above, and any other evidence deemed relevant

by the Commission. As noted above, many communications sent by a membership organization to its members are not covered by the rebuttable presumption.

Are communications designed to encourage individuals to register to vote or to vote covered by the presumption?

The Election Law excludes from the legal definition of expenditure "activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate." (21-A M.R.S.A. § 1012(2)(B)(10)) Those communications are not covered by the rebuttable presumption. If communications designed to encourage individuals to register to vote or to vote name or depict a clearly identified candidate and meet the other requirements of the presumption (including the $100 per candidate threshold), the person making the expenditure may rebut the presumption by filing a written statement explaining that the materials were distributed for the purpose of encouraging voting or registration and were not intended to influence the election.

Are polling, voter surveys, and public opinion research covered by the presumption?

Some live scripted conversations made by telephone callers within the presumption periods could be covered by the rebuttable presumption. If a public opinion survey within the presumption periods contains references to a candidate, and the person funding the survey believes that the references were not made with the intent to influence the election, the person should file a rebuttal statement. If a survey relates to a public issue and does not mention a candidate's name, it is not subject to the presumption and no report or rebuttal statement must be filed. If public opinion research (*e.g.*, voter identification information) is contributed to a PAC to influence an election, the PAC must report the research as an in-kind contribution including the fair market value of the research.

Are Section 527 organizations covered by the law?

National organizations are subject to the Maine Election Law if they raise or spend money regarding state candidates in Maine. This includes so-called Section 527 organizations that are organized outside the State of Maine. If a Section 527 organization makes an expenditure that is covered by the rebuttable presumption, it is required to file an independent expenditure report or a rebuttal statement.

What is the consequence of filing an independent expenditure report late?

The late filing of an independent expenditure report can result in the assessment of a civil penalty up to $5,000 under 21-A M.R.S.A. § 1020-A(4).

21-A M.R.S.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 in races involving a candidate who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5 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 21 days, including election day, before a primary election; the 35 days, including election day, before a general election; or during a special election until and on 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. A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of $100 during any one candidate's election shall file a report with the Commission. In the case of a municipal election, a copy of the same information 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 and matching fund provisions under Chapter 14. 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 contribution or expenditure aggregating in excess of $100 in any one candidate's election, the date and purpose of each contribution or expenditure and the name of each payee or creditor. The report must state whether the contribution or 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 contribution or 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.

COMMISSION RULES, CHAPTER 1, 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 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!".

   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 but not in excess of $250 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, except that expenditures made after the 14th day before an election must be reported within 24 hours of the expenditure.

(1) **Quarterly Reports.** Quarterly reports must be filed by 5:00 p.m. on:

(a) January 15th and be complete as of January 5th;

(b) April 10th and be complete as of March 31st;

(c) July 15th and be complete as of July 5th; and

(d) October 10th and be complete as of September 30th.

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

If the total of independent expenditures made to support or oppose a candidate exceed $100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure. As long as the total amount spent with respect to the candidate does not exceed $250, all reports must be filed according to the deadlines in this paragraph. If the total amount spent per candidate exceeds $250, the reports must be filed in accordance with paragraph B.

[NOTE: FOR EXAMPLE, IF A COMMITTEE MAKES THREE $80 EXPENDITURES IN SUPPORT OF A CANDIDATE ON SEPTEMBER 20, THE 15TH DAY BEFORE THE ELECTION AND THE 8TH DAY BEFORE THE ELECTION, THOSE THREE EXPENDITURES MUST BE REPORTED ON OCTOBER 10th, AND THE 14TH AND 7TH DAYS BEFORE THE ELECTION, RESPECTIVELY.]

B. Independent expenditures aggregating 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 within 24 hours of those expenditures. If any additional expenditures, regardless of amount, increase the total spent per candidate above the threshold of $250, each additional expenditure must be reported within 24 hours.

[NOTE: FOR EXAMPLE, IF A COMMITTEE HAS REPORTED INDEPENDENT EXPENDITURES TOTALING $300 IN SUPPORT OF A CANDIDATE, AND THE COMMITTEE MAKES AN ADDITIONAL $50 INDEPENDENT EXPENDITURE IN SUPPORT OF THE CANDIDATE, THE ADDITIONAL $50 EXPENDITURE MUST BE REPORTED WITHIN 24 HOURS.]

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. Reports filed after the eighth day before an election must include the following information:

1. the date on which the person making the expenditure placed the order with the vendor for the goods or services;

2. the approximate date when the vendor began providing design or any other services in connection with the expenditure;

3. the date on which the person making the expenditure first learned of the total amount of the expenditure; and

4. a statement why the expenditure could not be reported by the eighth day before the election.

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

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.]

C. If a candidate who has received matching funds because of a multi-candidate communication believes that he or she deserves additional matching funds because the communication disproportionately concerns his or her race, the Commission may grant additional matching funds in proportion to the relative treatment of the candidates in the communication.

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.

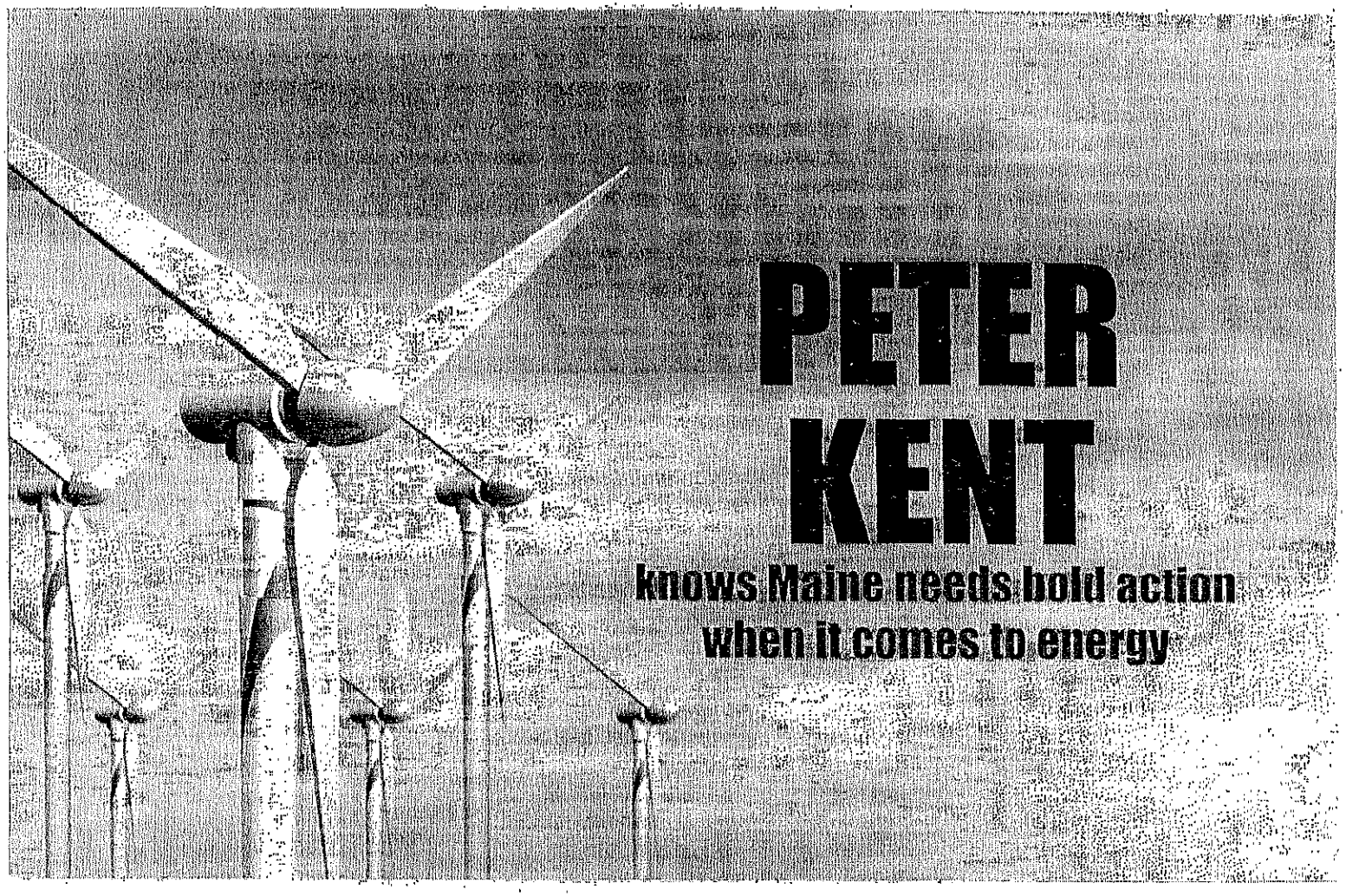
C. If an expenditure is covered by the presumption and is greater, in the aggregate, than $100 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, 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.


PETER
KENT
knows Maine needs bold action
when it comes to energy

PETER KENT

knows Maine needs bold action when it comes to energy

Maine has tremendous assets, from wind to wood to tides, that can help us create a **better energy future** for our state.

Maine can create thousands of **good paying jobs, lower energy costs** for businesses and consumers, and protect our environment with the right plan of action. However, we need real leaders who are willing to stand up and make it happen.

Peter Kent is committed to ensuring that all Mainers, especially our seniors, **stay safe in their homes** during the difficult winter we face. He knows we must take action to create a more sustainable energy future. Peter supports significant weatherization efforts for middle and low-income Mainers and businesses, **tax credits** for alternative and new energy sources, and investment in research and development to **bring new power and new jobs** to Maine.

Contact Peter Kent with your energy ideas and concerns.

(207) 442-9255 or pskentz5@hotmail.com

16 Winthrop Street
Augusta, ME 04332

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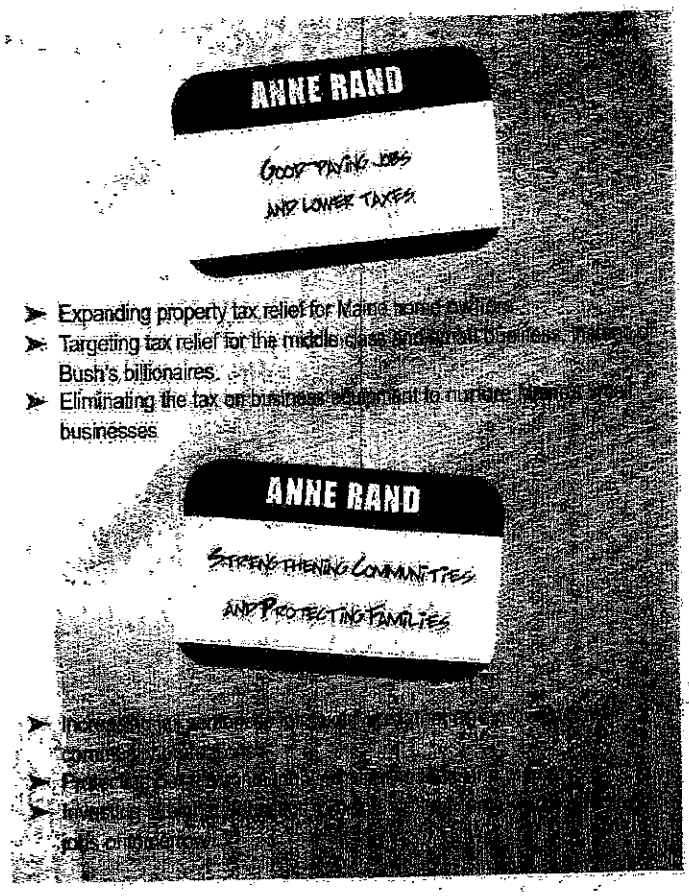
Augusta, ME

Tray 4**********AUTO**5-DIGIT 04579
Paul and Susan Wasserott
OR CURRENT RESIDENTS
7 Ledge Wood Dr
Woolwich ME 04579-4145

Paid for by the Maine Democratic Party, 16 Winthrop Street, Augusta, ME 04332.
This communication is not authorized by any candidate or candidate's committee.

RECEIVED
OCT 16 2006
COMMISSION ON GOVERNMENTAL ETHICS
& ELECTION PRACTICES MODESTA, ME

HELLO
my name is
ANNE RAND
Anne Rand
Anne Rand
State Representative



ANNE RAND

State Representative

MAINE VALUES, AN INDEPENDENT VOICE

Paid for by the Maine Democratic Party, 16 Winthrop Street, Augusta, ME 04332
This Communication is not authorized by any candidate or candidate's committee.
DESIGNED, PRINTED & MAILED IN MAINE PRINTED ON RECYCLED PAPER

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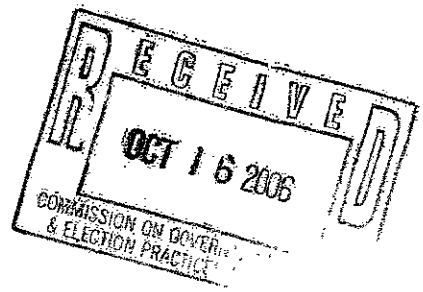
Tray 3 **********AUTO**SCH 5-DIGIT 04101
DOUGLAS EMERY
or CURRENT RESIDENT
11 EXCHANGE ST APT 3G
PORTLAND ME 04101-5086



JANE KNAPP

FIGHTING FOR YOUR FAMILY

Growing Our Economy.

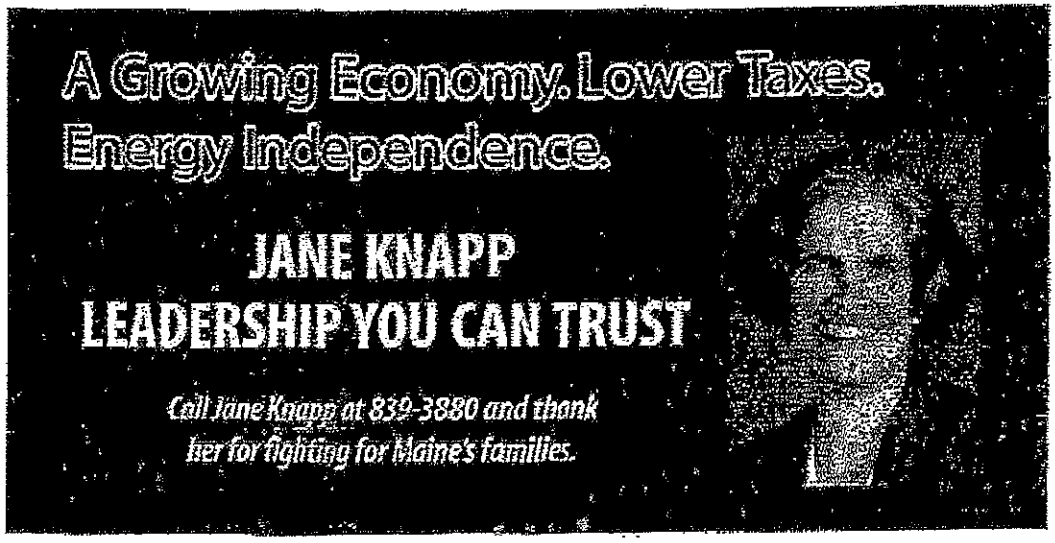
Maine families are worried about the state of our economy. Jane Knapp understands the economic anxiety, and will work to stimulate the economy, create jobs, and expand opportunity.

Keeping Taxes Low.

Maine families already pay too much in taxes. Jane Knapp will fight to lower taxes for working families so they can keep more of what they make. Maine families can make better decisions about how to spend their money than government bureaucrats.

Lowering Energy Costs.

Jane Knapp knows Maine families are struggling to pay for the high cost of gas and heating oil. That is why she will fight for an energy plan that will lower costs and allow our natural resources to power Maine's future.



FROM :21st Century Motors FAX NO. :2078390493 Oct. 06 2008 09:41AM P 1

Maine Families Deserve a Representative Who Will Fight for Them

Growing Our Economy. Keeping Taxes Low. Lowering Energy Costs.

Call Jane Knapp at 839-3880 and thank her for fighting for Maine families!

Maine Republican Party
9 Higgins Street
Augusta, ME 04330

Paid for and authorized by the Maine Republican Party, Phil Roy, Treasurer.

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Wilkes Barre, PA

38524
Daniel J Levasseur
117 McLellan Rd
Gorham ME 04038-1849

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

INDEPENDENT EXPENDITURE REPORT – 2010 ELECTIONS

Name of Person/Committee Making Expenditure(s) _____

Mailing Address _____

City, Zip Code _____ Telephone _____

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 (287-6775). The Commission must receive the signed original report within 5 days after the fax was received.

INDEPENDENT EXPENDITURES OF MORE THAN $250 PER CANDIDATE

- Independent expenditures of more than $250 per candidate per election must be reported to the Commission within 24 hours of making the expenditure.
- Once the aggregate amount per candidate exceeds $250, any additional expenditures, regardless of amount, must be reported within 24 hours.

☐ **Report of Independent Expenditure over $250 per Candidate**

INDEPENDENT EXPENDITURES OF MORE THAN $100 AND UP TO $250 PER CANDIDATE (SELECT ONE REPORT)

- If the total of expenditures per candidate exceeds $100 but is not more than $250, the expenditures must be reported according to the schedule below.
- Once the amount per candidate exceeds $100, all subsequent expenditures must be reported, regardless of amount, up to $250 per candidate. Once the amount spent per candidate exceeds $250 in the aggregate, independent expenditures must be reported within 24 hours.
- Do not include expenditures that you listed in previously filed reports.
- During the 13-day period before an election, all independent expenditures must be reported within 24 hours.

GENERAL ELECTION REPORTS

	Reporting Period	Filing Deadline
☐	**Through March 31**	**April 12**
☐	**Through May 26 – June 7**	**Within 24 Hours**
☐	**Through July 5**	**July 15**
☐	**October 20 - November 1**	**Within 24 Hours**
☐	**Through January 5**	**January 18, 2011**

OTHER

☐ **Amendment to report dated:** _____

☐ **Other (specify):** _____

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

_____ _____

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

Date

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

INDEPENDENT EXPENDITURE REPORT – 2010 ELECTIONS

AFFIDAVIT

STATE OF _____

COUNTY OF _____

_____, being duly sworn, attests that he/she 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, the candidates named in the report or the authorized committees or agents of the candidates.

_____

(Signature of Affiant)

Sworn to before me, this _____ day of _____ 2010

_____

(Notary Public/Attorney at Law)

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.

Office sought by candidate (including district # or county)	Candidate's name	Indicate whether expenditure was made in support of or in opposition to the candidate	Amount expended this reporting period for each candidate
Total expenditures for all candidates this reporting period. *This amount should equal the total independent expenditures listed on Schedule B-IE-2, Line C.* ⇒			

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.**

Expenditure Types			
LIT	Printing and graphics (flyers, signs, palmcards, etc.)	PRT	Print media ads only (newspapers, magazines)
MHS	Mail house (all services purchased)	RAD	Radio ads, production costs
PHO	Phone banks, automated telephone calls	TVN	TV or cable ads, production costs
POL	Polling and research survey	WEB	Website design, registration, hosting, maintenance, etc.
POS	Postage for U.S. Mail and mail box fees	OTH	Other (include description)

Date of expenditure	Payee, address, zip code	Expenditure type	√	Amount
	A. Expenditures for this page ⇒			
	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.*			

Schedule B-IE-3

EXPENDITURE DETAILS

- **If you file an independent expenditure report after May 31, 2010 for the primary election OR October 25, 2010 for the general election, you must provide the following information.**

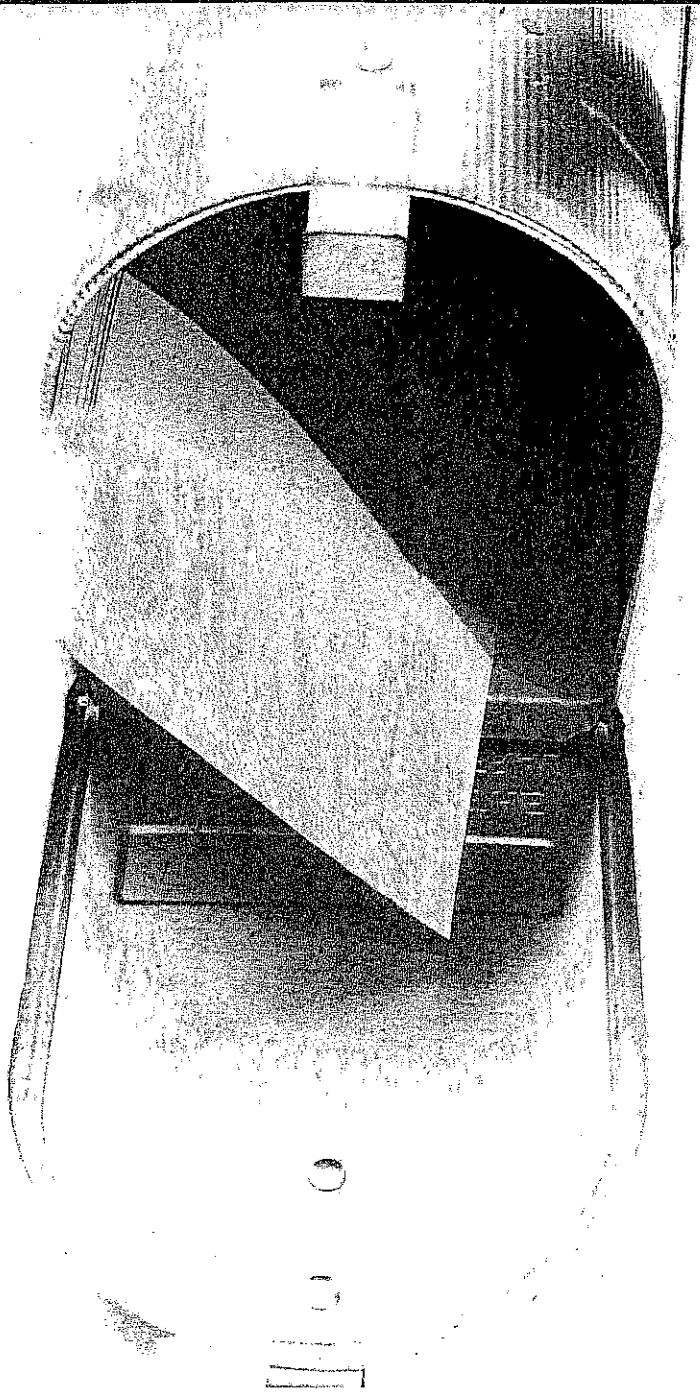
1. The date on which the person making the expenditure placed the order with the vendor for the goods or services	
2. The approximate date when the vendor began providing design or any other services in connection with the expenditure	
3. The date on which the person making the expenditure first learned of the total amount of the expenditure	
4. A statement why the expenditure could not be reported by the eighth day before the election	

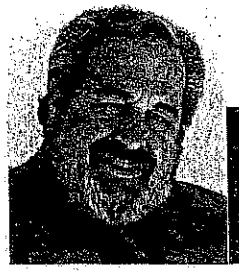
Additional Examples of Campaign Literature for Your Consideration

Found not to be express advocacy

10/20/06

Q: What do your mailman & Rep. Walter Ash both have in common?





A: They deliver.

Rep. Walter Ash

is working to build a stronger future for Maine and is standing up for hard-working Mainers.

rec'd 10/4/06

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Permit #304
Augusta, ME

While in Augusta **Walter Ash** delivered:

- ☑ Voted to double tax refunds for Mainers hit hard by local property taxes. (Roll call #18)
- ☑ Voted to protect Maine children and communities from sex offenders by creating stricter sentences. (Roll call #530)
- ☑ Voted to increase the minimum wage for Maine workers. (Roll call #484)
- ☑ Voted to create more protections for women who have been the victim of domestic violence, and to keep guns out of their abuser's hands. (Roll call #537)

Tray 2 **********AUTO**5-DIGIT 04915
LORING GILES
15 TOZIER ST
BELFAST ME 04915-6037

DESIGNED, PRINTED & MAILED IN MAINE PRINTED ON RECYCLED PAPER

Paid for by the Maine Democratic Party, 16 Winthrop Street, Augusta, ME 04332
This Communication is not authorized by any candidate or candidate's committee.

"MY HEALTH & MY FAMILY'S HEALTH ARE EVERYTHING"

That's the sentiment of mothers and fathers across Maine.

Sadly, today's economy is sapping precious health care dollars from Topsham family budgets.

Fortunately, State Representative Kerri Prescott understands how precious affordable health care is to Maine families.

KERRI PRESCOTT

She's demonstrated her leadership by supporting such legislation as LD 1047, An Act To Lower The Cost of Health Insurance. She also worked to allow Maine families to purchase cheaper insurance coverage from out-of-state companies and to make all health care costs deductible from Maine income taxes.

Kerri Prescott knows every little bit helps in making affordable health insurance a reality for all.

Call State Representative

Kerri Prescott today at 319-7589

and encourage her to keep fighting for affordable health care

Found not to be express advocacy
10/17/08

OUR KIDS NEED MORE THAN JUST ONE A DAY

That's why Kerri Prescott is taking the lead in increasing access to affordable health care.

She *Understands.*

Paid for and authorized by the Maine Republican Party, Phil Roy, Treasurer.
9 Higgins Street, Augusta, ME 04330.
Not authorized by any candidate or candidate committee.

Maine Republican Party
9 Higgins Street
Augusta, ME 04330.

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TOPSHAM, ME 04086-5146