



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
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**Testimony of Jonathan Wayne, Executive Director of the
Commission on Governmental Ethics and Election Practices
before the Joint Standing Committee on Veterans and Legal Affairs
February 3, 2025**

Senator Hickman, Representative Supica, and distinguished members of the committee: my name is Jonathan Wayne, and I am the Executive Director of the Maine Ethics Commission. Thank you for the opportunity to testify in support of **L.D. 9**, which is an Ethics Commission bill to address some issues that have arisen in recent years. A summary of the bill is attached. In this testimony, I highlight three parts of the bill for your consideration.

Text messages in ballot question campaigns. The Commission proposes that the transmission of text messages at a cost of more than \$500 to expressly advocate for or against a ballot question would need to state who paid for the communication. Section 22 of the bill.

Straw donor contributions. The Commission proposes higher penalties for straw donor contributions. Those are situations in which a funding source gives money to an intermediary to be donated to a political group or candidate with the intention that the original source is not disclosed publicly. Straw donor contributions are currently illegal in Maine, as in other jurisdictions, but they remain a continuing problem for campaign finance disclosure nationwide because the intermediary is listed as the contributor in campaign finance reports and the actual source of money remains hidden from policymakers and the public.

In the past year, there have been numerous enforcement cases covered in the national press involving donations made through intermediaries that obscure the actual source of the funds. In November 2023, the Commission completed an enforcement proceeding concerning a 2018 incident in which consultants in Maine arranged for a \$150,000 contribution to the Maine Democratic Party through an intermediary and the actual source of funds was not disclosed. The Commission staff can provide news

coverage of these types of straw donor contributions if any committee members are interested

The current maximum civil penalty for this violation under 21-A M.R.S. § 1004-A(3) is \$5,000. We propose increasing the maximum penalty to five times the amount of the illegal contribution. Section 3 of the bill.

Definition of public communication. The Commission proposes a definition of the term “public communication” to bring greater clarity to the types of election advocacy communications that require an independent expenditure report and greater consistency to disclaimer provisions in Maine campaign finance law. Sections 1, 7, 20-23, and 29 of the bill.

Thank you for your consideration of this testimony.

Ethics Commission Explanation of each Section of LD 9
(all references are to Title 21-A except for section 30 of the bill)

	<i>Proposed Change in Law</i>	<i>Rationale/Comment by Commission</i>
1	<i>Definition of “public communication.” § 1001(4).</i> The Commission proposes a definition for the term “public communication” for purposes of independent expenditure reporting and three different “paid for by” disclaimer requirements for communications received by the public. The types of media listed in the definition largely track the types of media in current §§ 1014 and 1055-A, except that it also includes prerecorded telephone calls and communications made through satellite technology.	The proposed definition is made in connection with proposals to: (1) simplify the language in §§ 1014 & 1055-A, (2) avoid potential vagueness in § 1019-B as to which media are covered by independent expenditure reporting, and (3) promote consistency among media covered by §§ 1014, 1019-B, 1055-A and 1064(6). These proposals are in sections 7, 20-23, and 29 of the bill. Please note that one phrase in the proposed definition, “placed or promoted for a fee,” is defined in section 5 of the bill.
2	<i>Outdated cross-reference. § 1004(4).</i> This change eliminates a reference to § 1056-B.	Section 1056-B has been deleted from the Election Law.
3	<i>Straw donor contributions. § 1004-A(3).</i> The Commission proposes to increase the penalty for “straw donor” contributions, <i>i.e.</i> , a funding source gives money to an intermediary to be donated to a political action committee, party committee, or candidate with the intention that the original source will remain hidden. The proposal also authorizes a penalty against an intermediary who knowingly permits their name to be used to effectuate a straw donor contribution, and is based on 52 U.S.C. § 30122	Straw donor contributions undermine transparency because the actual source of money is concealed from policymakers and the public. The maximum penalty in current law, \$5,000, is insufficient. The Commission proposes a maximum penalty of five times the amount of the contribution.
4	<i>Outdated cross-reference. § 1005.</i> This change eliminates a reference to § 1056-B.	Section 1056-B has been deleted from the Election Law.
5	<i>“Placed or promoted for a fee” – definition. § 1007.</i> This section defines what it means for an internet communication to be “placed or promoted for a fee.” The language was moved to a separate section of statute by the Revisor of Statutes.	An internet or digital communication is considered placed or promoted for a fee when a payment is made in order to increase the circulation, prominence, or availability of the communication.

6	<p>Promises to make a contribution. § 1012(2)(A). The Commission proposes that when a potential donor promises or agrees to contribute to a candidate or party committee, the promise or agreement would not need to be reported as a contribution. The Commission believes that the common practice of reporting contributions when they are received is sufficient to inform the public about who is influencing politics and government. A scan of NCSL-compiled contribution definitions indicates that very few state definitions include a promised donation.</p>	<p>The Commission wishes to avoid potential vagueness in reporting responsibilities. It may be unclear whether a prospective donor has made a promise or agreement to provide funds. Also, the Commission would prefer not to incur a cost to redesign its eFiling website to reflect contributions that have been promised but not given.</p>
7	<p>“Paid for by” disclaimers – incorporating the public communication definition. § 1014. To simplify the language of § 1014(1), the Commission proposes incorporating the defined term “public communication.” The Commission suggests deleting § 1014(5) (covering telephone calls) because the term public communication would include telephone calls made to influence elections.</p>	<p>Subsection 1014(5-B) is proposed to confirm that a website advocating for or against candidates that is organized by a candidate, PAC, or party committee must state who paid for it, even if no fee is paid to increase the website’s circulation, prominence or availability. Two exceptions are moved from § 1014(5) (proposed to be deleted) to § 1014(6).</p>
8	<p>Reporting exemption for candidates with no financial activity – county and municipal. § 1017(7-A)(A). Candidates may apply to be exempt from campaign finance reporting if they affirm in writing they will not receive or spend any money to promote their election. The Commission would like to receive these affirmations through an online form, rather than a sworn statement.</p>	<p>The Commission believes an online form made available to county and municipal candidates when they register is more efficient than a sworn statement on paper.</p>
9	<p>Reporting exemption for candidates with no financial activity – legislative. § 1017(7-A)(A-1). Under current law, the reporting exemption discussed in section 8 is also available to legislative candidates for the primary election reports only.</p>	<p>The exemption is helpful for “paper” candidates who do not intend to run in the general election. The Commission proposes allowing an online form for the affirmation.</p>

10	<p><i>Disposing of surplus funds after an election – clarification on paying debts. § 1017(8)(F).</i> If a candidate has surplus funds after an election, the Commission believes candidates should be able to use those funds to retire any debt incurred in the course of campaign activity.</p>	<p>We find the phrase “debts incurred to defray campaign expenses” confusing and suggest replacing it with “debts incurred in the course of the candidate’s campaign activity.” This change is intended as a clarification only.</p>
11-12	<p><i>Independent expenditure reporting – incorporating “public communication.” § 1019-B(1).</i> This statute requires independent expenditure reporting for communications costing more than \$250 that advocate for or against a candidate.</p>	<p>Because this statute does not define “communication,” the Commission wishes to incorporate a defined term public communication in § 1001(4) to avoid potential vagueness as to which types of communications are covered.</p>
13	<p><i>Letter from Commission three days after campaign finance reporting deadline. § 1020-A(6).</i> If a candidate or party committee has not filed a campaign finance report within three business days after a scheduled deadline, the Commission is currently required by this subsection to mail a letter stating that the report has not been received.</p>	<p>The Commission proposes moving this letter requirement to the first sentence of § 1020-A(8) (see section 14 of the bill) as part of a revision of the procedures used by the Commission when a candidate or party committee does not file a required campaign finance report in spite of multiple communications from the Commission.</p>
14-15	<p><i>Correspondence if no report is received. § 1020-A(8) & (8-A).</i> Although some campaign finance reports are filed late, it is very rare that a candidate or party committee altogether fails to file a required campaign finance report. When this happens, the Commission proposes that it send two letters by regular and electronic mail stating that the report is overdue, rather than the current requirement to send one letter under § 1020-A(6) and three more letters under § 1020-A(8). The Commission proposes that if the report is not filed, the Commission staff may bring the matter to the attention of the Commission for a potential finding of violation and penalty, which would require one more letter.</p>	<p>Under our current practice, if a report is not received on time, the Commission staff is usually very effective in getting the report filed late through emails and phone calls. The letters required by this subsection are rarely necessary. In those situations, the Commission believes the procedures currently required by statute are excessive. We propose two letters by regular mail and email, to be followed by one more notice if the Commission staff wants to pursue a penalty. The Commission proposes to keep the provision allowing for criminal referral to the Office of the Attorney General but does not anticipate making any referrals.</p>

16	<p>List of late-filers. § 1020-A(9). When a candidate files a campaign finance report late, it is often due to a good-faith reason such as a misunderstanding, miscommunication, or technological problem. The Commission proposes eliminating the requirement to post a list of candidates who have filed reports late.</p>	<p>The Commission’s procedures for reminding candidates of upcoming deadlines and assessing penalties have been effective in curbing lateness without the need to embarrass late filers. The Commission can always generate and provide a list of late filers upon request.</p>
17	<p>Promises to make a contribution. § 1052(3)(B). This section is analogous to section 6 (eliminating from the definition of contribution a promise or agreement to make a donation), except that this definition applies to contributions to PACs and ballot question committees.</p>	
18	<p>Definition of “initiate” – clarification. § 1052(4-B). This change in the definition of “initiate” is intended to clarify that initiating a ballot question refers to the collection of signatures on petitions and related activities.</p>	
19	<p>Municipal elections – changes for consistency and clarity. § 1053-A. In the second sentence relating to municipal referenda, the Commission proposes inserting “receives contributions or” to be consistent with the definition of ballot question committee in 21-A M.R.S. § 1052(2-A). Organizations qualify as ballot question committees by <u>receiving or</u> spending more than \$5,000 to influence a ballot question election.</p>	<p>For greater clarity, the Commission recommends the phrases “municipal election” and “municipal referendum,” rather than “municipal campaign” and “municipal referendum campaign.” “Campaign” is defined in § 1052(1) to mean “any course of activities to influence [a candidate or ballot question election.]”</p>
20	<p>PAC communications – incorporating “public communication.” § 1055. The Commission proposes changing the phrase “communications” to “public communications.”</p>	

21-23	<p>Communications to influence a ballot question – text messages, BQC websites. § 1055-A. The Commission proposes that the transmission of text messages costing more than \$500 that expressly advocate for or against a ballot question should identify the person that funded the communications. Current law only covers text messages containing a hyperlink to an express advocacy website.</p>	<p>The section also confirms that a website established by a registered ballot question committee that expressly advocates for or against a ballot question must state the name and address of the person who financed the website, even if no fee was paid to increase the website’s circulation, prominence, or availability. These sections also amend “communication” to “public communication.”</p>
24	<p>Record-keeping by PACs and ballot question committees. § 1057(4). The proposed amendment confirms that bank account statements maintained by a political action committee or ballot question committee should generally reflect all financial activity in the committee’s campaign account, not just deposits to the account.</p>	
25	<p>Letter from Commission three days after campaign finance reporting deadline. § 1062-A(5). If a PAC or ballot question committee has not filed a campaign finance report within three business days after a scheduled deadline, the Commission is currently required by this subsection to mail a letter stating that the report has not been received.</p>	<p>The Commission proposes moving this letter requirement to the first sentence of § 1062-A(8) (see section 27 of the bill) as part of a revision of the procedures used by the Commission when a PAC or ballot question committee does not file a required campaign finance report in spite of multiple communications from the Commission.</p>
26	<p>List of late-filers. § 1062-A(7). When a PAC or ballot question committee files a campaign finance report late, it is often due to a good-faith reason such as a misunderstanding, miscommunication, or technological problem. The Commission proposes eliminating the requirement for the Commission to post a list of committees who have filed reports late.</p>	<p>The Commission’s procedures for reminding committees of upcoming deadlines and assessing penalties have been effective in curbing lateness without the need to embarrass late filers. The Commission will always provide a list of late filers upon request.</p>

27-28	<p>Correspondence if no report is received. § 1062-A(8) & (8-A). Although some campaign finance reports are filed late, it is very rare that a PAC or ballot question committee altogether fails to file a required campaign finance report. Similar to procedures set out in section 14 of the bill, the Commission proposes a requirement to send two letters by regular and electronic mail notifying the committee that the report is overdue. If the committee still does not file the report, the Commission staff may bring the matter to the attention of the Commission for a potential finding of violation and penalty, which would require one more notice.</p>	<p>When a PAC or ballot question doesn't file a campaign finance report, the Commission's current practice is to email and call the committee principal officer or treasurer, which is almost always effective in getting the report filed late. In rare circumstances that the Commission needs to send letters by U.S. mail, current § 1062-A(8) & (8-A) are silent as to what notices the Commission must send.</p>
29	<p>Disclaimer in communications by foreign governments – "public communication." § 1064(1)(H). The Commission proposes deleting a definition of "public communication" that applies to § 1064 only.</p>	<p>The reference to "public communication" in § 1064(6) would instead rely on the definition in section 1 of the bill.</p>
30	<p>Coverage of campaign finance law in municipal elections. 30-A M.R.S. § 2502. The proposal in § 2502(1) of the Municipalities and Counties Law is intended to clarify that state campaign finance law applies not just to municipal candidates but also to others influencing municipal candidate elections such as PACs and party committees.</p>	<p>The proposal in § 2502(2) is intended to clarify that ballot question committees formed to influence municipal referenda need to comply with the full range of requirements in Title 21-A, chapter 13, subchapter 4, and not just campaign finance reporting.</p>