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William M. Gardner
Secretary of State
107 North Main Street
Concord, NH 03301

Re: Campaign Finance Guidance

Dear Secretary Gardner:

The purpose of this letter is to provide current guidance on our interpretation and enforcement of our State's campaign laws.[1] In 2018, this Office published similar guidance, focusing on political committees and their registration and reporting requirements. That guidance can be found here: https://www.doj.nh.gov/election-law/documents/20180524-campaign-finance-law.pdf.

While much of this guidance remains valid, House Bill 263 (Laws of 2021, Chapter 168) has made changes to two sections of this guidance. Specifically, Section II – Reporting Requirements, and Section III – Contribution Limits & Expenditure Cap. Most importantly, the tables on pages seven and eight of this guidance, which summarize contribution limits, have been updated to reflect the changes instituted by House Bill 263.

House Bill 263 went into effect on September 28, 2021. All individuals and entities subject to campaign finance obligations are responsible for reviewing House Bill 263 in its entirety, as this letter will only summarize its effect on contribution limits and reporting requirements.

In this iteration of this Office's campaign finance guidance, we will also be addressing some questions that have been presented to both this Office and the Secretary of State's office. The chairs of the major political parties are copied on this letter. In addition, it will be posted to the Attorney General's Office website. Should you receive any inquiries about the guidance provided in this letter, you may direct the inquiries to the Attorney General's Office Election Hotline at 1-866-868-3703.

[1] The guidance in this memorandum reflects the laws as currently enacted as of the date of this memorandum. Each candidate and political committee is responsible for compliance with the law.

1. **How do New Hampshire's campaign finance laws regarding registration and reporting impact federal political action committees?**

Answer:

A federal nonconnected[2] Political Action Committee ("PAC") is required to register as a New Hampshire political committee if it meets at least one of the criteria set forth in RSA 664:2, III, and report receipts and expenditures if that state committee's receipts or expenditure exceed the thresholds for filing statements of receipts and expenditures as set forth in RSA 664:6.

The FEC explicitly directs that such contributions are "subject to state law."

> A nonconnected committee may use money raised for federal elections to make contributions to nonfederal candidates. **Donations to nonfederal candidates are subject to state and local laws**, however, not the Federal Election Campaign Act. The committee must still disclose such contributions (as "Other Disbursements") in its FEC reports.

Supporting Nonfederal Candidates, available at: https://www.fec.gov/help-candidates-and-committees/making-disbursements-pac/supporting-nonfederal-candidates-nonconnected-pac/, last visited 9/29/2021 (emphasis added). See 52 U.S.C. 30125(e)1(B).

State regulation of candidates for federal office and connected committees is generally preempted by the Federal Election Campaign Act ("FECA"). FECA imposes limitations on the amount that certain federal committees may contribute. Consult the FECA and FEC guidance, available at: https://www.fec.gov/. Federal candidates/candidate committees may voluntarily register a New Hampshire political committee to promote the success or defeat of a state candidate or state measure. Such a committee must comply with the receipts and expenditures reporting required by RSA 664:6.

As a preliminary matter, the State takes no position on the federal accounting and reporting obligations of a federal PAC that registers a New Hampshire political committee. New Hampshire state law does not impose a specific accounting process for a federal nonconnected PAC that also exists as a New Hampshire political committee. While other accounting may comply with state law, to the extent permitted by federal law, it is permissible to maintain a separate accounting of the receipts and expenditures of the state political committee associated with the federal PAC that allows the state committee to fulfill its New Hampshire reporting obligations without reporting to New Hampshire all of the non-New Hampshire-related receipts and expenditures of the federal PAC.

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[2] "Nonconnected" is a federal term used by the FEC. Consult the FECA and FEC for guidance.

For example, if a federal nonconnected PAC makes a contribution to a New Hampshire candidate or political committee it would be obligated to report all federal PAC donor and contribution information required under New Hampshire law. On the other hand, a federal nonconnected PAC that registers a state committee would only have to report contributions directly to the state committee, whether that is a transfer from the federal nonconnected PAC or other contributors. The state committee would not have to report contributions made to the federal nonconnected PAC.

2. How much can a political committee contribute?

Answer: There is no contribution limit.

RSA 664:4 was recently amended by House Bill 263 (Laws of 2021, Chapter 168), which went into effect on September 28, 2021. The Bill removed any reference to "political committee" under RSA 664:4, V. Just as the law has not limited contributions by "political advocacy organizations" under RSA 664:4, V, with the removal of a reference to "political committees," this paragraph no longer limits political committee contributions.

RSA 664:4 states in relevant part –

> No contribution, whether tangible or intangible, shall be made to a candidate, a political committee, or political party, or in behalf of a candidate or political committee or political party, directly or indirectly, for the purpose of promoting the success or defeat of any candidate or political party at any state primary or general election:
>
> I. [Repealed.]
> II. By any partnership as such or by any partner acting in behalf of such partnership.
> III. By any labor union or group of labor unions, or by any officer, director, executive, agent or employee acting in behalf of such union or group of unions; or by any organization representing or affiliated with any such union or group of unions, or by any officer, director, executive, agent or employee acting in behalf of such organization.
> IV. [Repealed.]
> V. By any person (1) if in excess of $5,000 in value to a candidate or candidate committee, except for contributions made by a candidate in behalf of his own candidacy, or in excess of $10,000 in value to a political committee other than a political committee of a candidate, (2) if made anonymously or under a

> name not that of the donor, (3) if made in the guise of a loan, (4) if any other manner concealed, (5) if made without the knowledge and written consent of the candidate or his fiscal agent, a political committee or its treasurer, or not to any one of the same.

In the prior version of this statute, the law identified specific contributors under Paragraph V(1) (*i.e.* "any person" in the first clause versus "any person or any political committee" in the second clause).

By contrast, House Bill 263 has amended the two clauses of RSA 664:4, V(1) as follows:

RSA 664:4, V(1) – First Clause	
Before	After
"[A]ny person (1) if in excess of $5,000 in value, except for contributions made by a candidate in behalf of his own candidacy…"	"[A]ny person (1) if in excess of $5,000 in value to a candidate or a candidate committee, except for contributions made by a candidate in behalf of his own candidacy…"

RSA 664:4, V(1) – Second Clause	
Before	After
"…or if in excess of *$1,000* in value by any person or by any political committee **to a candidate or a political committee working on behalf of a candidate** who does not voluntarily agree to limit his campaign expenditures and those expenditures made on his behalf…"	"…or in excess of *$10,000* in value **to a political committee other than a political committee of a candidate**…"

We interpret these amendments to have the following effects, with the largest change appearing in RSA 664:4, V(1)'s second clause:

1. While the preamble of RSA 664:4 prohibits contributions to "a candidate, a political committee, or political party, or in behalf of a candidate or political committee or political party" according to the remaining provisions of this statute, the amendment to the first clause of Paragraph V(1) appears to narrow the scope of the $5,000 contribution limit by a person to apply only to a candidate or a candidate committee.

2. The second clause raises the contribution limit by a person to a non-candidate political committee to $10,000 per each phase of the election cycle (exploratory, primary, general). In addition, House Bill 263 also omits the distinguishing

language from the first clause of the contributor being "any person" or "any political committee." Finally, House Bill 263 also changes the identified recipient(s) of the limited contribution from both a candidate and a political committee working on behalf of a candidate, to any political committee except the political committee of a candidate.

Based on the forgoing, we have amended the summarizing tables that appeared in this Office's 2018 guidance. For the purposes of crafting the tables below, the analysis in this Office's 2018 guidance[3] regarding the contribution limits as they apply to the different phases of the election[4], continues to apply and remains valid:

Limits on Contributions made by a Person, Corporation, Partnership, or Union				
	Maximum amount that can be contributed during the exploratory phase	**Additional maximum that may be contributed for the Primary Election**	**Additional maximum amount that may be contributed for the General Election**	**Total Maximum amount of contributions over all three phases**
Contributed to:				
Candidate or Candidate Committee	$5,000	$5,000	$5,000	$15,000
Non-Candidate Political Committee or Political Party	$10,000	$10,000	$10,000	$30,000
Political Advocacy Organization	Unlimited	Unlimited	Unlimited	Unlimited

Additionally, if candidates decide not to create and register any type of committee, but then make contributions, then those contributions are made as a "person" and are bound by the limits as described above. RSA 664:4, V, references a candidate as a subcategory of "person:" "By any person (1) if in excess of $5,000 in value, except for contributions made by a candidate in behalf of his own candidacy." RSA 664:4, V, emphasis added. That means that a candidate contributing without a committee would be subject to contribution limitations, but a candidate that contributed through a candidate or

[3] Letter to Secretary of State William M. Gardner, May 24, 2018, Pgs. 6-7.
[4] The Attorney General has historically recognized there to be an exploratory phase as well as primary and general election phases in each election cycle. As we have previously stated, if the Legislature disagrees with this determination, it must adopt amendments to law to explicitly address the existence of the exploratory phase. Letter to Secretary of State William M. Gardner, January 18, 2000. The written testimony of House Bill 263's primary sponsor expresses an intent to eliminate the exploratory phase, but the Bill lacks any language to effectuate this intent.

non-candidate political committee would be able to make unlimited contributions, as discussed in the next section.

Limits on Contributions made by Candidate and Non-Candidate Political Committees

Due to the amendment's removal of "any person" or "any political committee as the identified contributors from the second clause, it now reads as follows: (Prohibiting contributions) "[b]y any person in excess of $10,000 in value to a political committee other than a political committee of a candidate..."[5] Thus, the below table illustrates the law, following House Bill 263's, amendment with both a candidate committee and non-candidate political committee as the contributor.

Limits on Contributions made by Candidate and Non-Candidate Political Committees				
	Maximum amount that can be contributed during the exploratory phase	**Additional maximum that may be contributed for the Primary Election**	**Additional maximum amount that may be contributed for the General Election**	**Total Maximum amount of contributions over all three phases**
Contributed to:				
Candidate or Candidate Committee	Unlimited	Unlimited	Unlimited	Unlimited
Non-Candidate Political Committee or Political Party	Unlimited	Unlimited	Unlimited	Unlimited
Political Advocacy Organization	Unlimited	Unlimited	Unlimited	Unlimited

3. What are the campaign finance obligations of contribution aggregation services?

Answer: It depends on the nature of the service provided.

RSA 664:2, III defines what constitutes a "political committee." It states in relevant part, that a political committee is:

(a) Any organization of 2 or more persons that promotes the success or defeat of a candidate or candidates or measure or measures, including the political committee of a political party;

[5] The law as understood by this Office, has historically distinguished between a "person" and a "political committee" for the purposes of campaign finance. See Letter to Secretary of State William M. Gardner, May 24, 2018, Fn. 2. See also RSA 664:4, eff. Aug. 7, 2011.

(b) Any segregated fund established by any organization the purpose of which is to promote the success or defeat of a candidate or candidates or measure or measures;
(c) Any organization that has as its major purpose to promote the success or defeat of a candidate or candidates or measure or measures and whose receipts or expenditures total $2,500 or more in a calendar year for that purpose;
(d) Any organization that does not have as its major purpose to promote the success or defeat of a candidate or candidates or measure or measures but that makes expenditures that total $5,000 or more in a calendar year[6]; or
(e) Any segregated fund that is voluntarily registered with the secretary of state for the purpose of reporting its receipts and expenditures under this chapter or any organization that voluntarily registers with the secretary of state, without regard to whether such segregated fund or organization meets the receipt or expenditure thresholds described in this paragraph.

This Office is aware that there are online services that provide a platform for candidates to fundraise. Contributors can go to the website and view candidates who have signed up for the service. From there, a contributor can choose which candidate (or candidates) to make a contribution to.

It is worth noting here that federal law and case law have ruled on other forms of contributions made by an individual, through a third-party, to a candidate. So-called "pass-through contributions," meaning soliciting individuals to contribute to a particular candidate with the promise to reimburse the contributor, are prohibited. U.S. v. Danielczyk, 788 F. Supp. 2d 472, 485 (E.D. Va.). Federal law also prohibits contributions in the name of another. 52 U.S.C.A. § 30122 ("No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.") See U.S. v. Kanchanaklak, 192 F.3d 1037, 1042-43 (D.C. Cir., 1999) (Discussing the reporting requirements for the true sources of "soft money donations.") See also U.S. v. Boender, 691 F. Supp. 2d 833, 838 (N.D. Ill. 2010) (Holding that federal law prohibits "conduit contributions," where an individual gives money to nominal donors, who in turn actually contribute the money to a candidate.)

For the purpose of our analysis, the critical factor is determining who has *control* over the contribution after it is made by the contributor. Specifically, the question is who actually decides how the contribution is used. The answer to this question will establish whether the aggregating third-party is a "political committee" within the meaning of RSA 664:2, III, and thus, whether it is subject to registration and reporting requirements under Chapter 664.

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[6] In a letter to Senator Donna Soucy dated February 14, 2019, this Office determined that RSA 664:2, III(d) raised significant constitutional issues that would hinder its enforcement as it pertains to political committee registration requirements. It was determined that unless those issues were resolved, RSA 664:2, III(d) was unenforceable. Attachment A.

If the contributor decides to make a contribution using the aggregating third-party's service, and the third-party does not have any autonomy to choose how that contribution is spent, then the third-party merely constitutes a processing entity in much the same way as a payment processor would facilitate transactions between a consumer and retailer. The payment processor is not a "buyer" or "seller" in the transaction, in much the same way as the aggregating third-party is not a "contributor" or "recipient/candidate" in political advocacy. By relaying the contributor's contribution to the contributor's chosen candidate, the third-party is not promoting the success or defeat of said candidate. Therefore, in this situation, the third-party would not constitute a "political committee" and would not be subject to the registration and reporting requirements.

By contrast, if an aggregating third-party solicits contributions, but decides how the money is spent, it is likely the entity would trigger one of the definitions of "political committee" under RSA 664:2, III.

For example, consider the case of a contributor who makes a contribution to a third-party with no mechanism, document, or direction to the third-party on which candidate (or candidates) the money should be contributed to. In such a case, if the entity in turn, uses the contribution to donate to a particular candidate, or help fund a group supporting/opposing a measure, the entity would qualify as a "political committee" and must comply with the registration and reporting requirements under Chapter 664.

The determination of whether an aggregating third-party constitutes a political committee within the statutory definition is a fact-based analysis, which must be evaluated on a case-by-case basis.

It is important to note that even where an aggregating third-party does not constitute a political committee, the recipient of the contribution must report the full amount contributed and report any processing fee as an expenditure. For example:

- Donor contributes $100 to Candidate A through an aggregating third-party;
- The aggregating third-party charges 10% as a processing fee;
- Candidate A must report:
  - Receipt: $100; and
  - Expenditure: $10.

4. What are the registration and reporting requirements for those candidates who use "slate pages?"

Answer: This question is related to Question #3 and its analysis, and shall be answered accordingly.

First, we understand that a "slate page" is a service offered by some contribution aggregation websites described in Question #3. A "slate page" would feature multiple candidates that would divide any contribution made through the slate page among the listed candidates. (*i.e.* A $10 contribution to a slate page of five candidates would result in $2 being received by each of the listed candidates).

New Hampshire's laws do not make explicit reference to slate pages or joint fundraising. Joint fundraising activities may constitute "in kind" contributions under our current campaign finance law if there is disproportionate distribution of contributions and expenditures related to the joint fundraising.

Black's Law Dictionary defines "in kind" as "[i]n goods or services rather than money <payment in cash or in kind>."

RSA 664:2, VIII defines "contribution" as "a payment, gift, subscription, assessment, contract, payment for services, dues advance, forbearance or loan to a candidate or political committee made for the purpose of influencing the nomination or election of any candidate." (Emphasis added.) "'Contributions' shall include the use of any thing of value." RSA 664:2, VIII.

RSA 664:2, IX defines "expenditure" as "the disbursement of money or thing of value or the making of a legally binding commitment to make such a disbursement in the future or the transfer of funds by a political committee to another political committee or to a candidate for the purpose of promoting the success or defeat of a candidate or candidates or measure or measures." (Emphasis added.)

Any payment by candidates who work together (hereafter referred to as the "participants") to a service provider to purchase a slate page would constitute an expenditure. As such, each participant would have to report their share of the payment to purchase said slate page as an expenditure provided it qualifies as a reportable expenditure under RSA 664:6.[7] (Refer to Question #8 below for further discussion.)

However, a more comprehensive analysis must be conducted to determine whether the creation or promotion of a slate page constitutes a contribution and/or an expenditure between each of the participants. This analysis is largely based on the participants' share of receipts of contributions from the slate page.

If participants are basing their share of receipts of contributions solicited by the slate page based on the proportion they have spent on the service's cost, we believe that no benefit has been exchanged among the participants. Therefore, the participants would not be required to report anything except:

[7] Similarly, if a political committee or political advocacy organization created a slate page in support of particular candidates, these entities would be required to report their payment to the service provider as an expenditure.

1. Their direct expenditure (or payment) to the service provider for the cost of the slate page; and
2. Their receipts from contributors who use the slate page itself.

If the contributions (or the benefit of the service) is not the same percentage distribution as the cost of the service per participant, then it would constitute an in kind contribution, and trigger reporting of receipts and expenditures between the participants.

The ultimate objective of the statements of receipts and expenditures is to ensure transparency, and to allow the public to identify who is receiving campaign funds, where those receipts come from, and how said campaign funds are ultimately spent.

In that spirit, this Office suggests as a best practice relative to slate pages, that the participants utilize an addendum or some form of log submitted alongside the traditional statement of receipts and expenditures. This addendum or log could be used to, in greater detail, explain who the reporting candidate has participated with in creating and promoting a slate page, the cost of the slate page, how that cost was allocated among the participants, and the benefit ultimately conveyed to each participant.

It is important to note that the slate page service provider must gather sufficient information from each donor to properly provide each candidate recipient with the information required by RSA 664:6, 664:6-a, and RSA 664:7. This is critical to ensure that contribution limits are not circumvented by a donor who attempts to make both a direct contribution to a candidate as well as a contribution to a slate page the donor's chosen candidate is listed on.

To illustrate this we offer the below example.

Note: This example utilizes smaller numbers to more easily convey the intended best practice, and does not reflect the actual threshold values for reporting of receipts and expenditures. This is discussed in greater detail under Question #8 below.

- Four participants agree to purchase a slate page from a service provider: Participant A; Participant B; Participant C; and Participant D.
- The four participants will divide the slate page proceeds evenly.
- The cost of the slate page is $100.
- As a result, were costs shared equally, each participant's share of the service cost is $25.
- However, the participants agree to divide the cost based on the offices each participant is running for:
    - Participant A (Candidate for Senate): $40

- Participant B (Candidate for House): $40
- Participant C (Candidate for Register Deeds): $10
- Participant D (Candidate for Register Probate): $10

Total: $100

- As a result, the following equation could be used by participants when calculating their contributions between and receipts from one another:

[Share of Service Cost] – [Participants' Actual Expenditure for Service] = Benefit provided to or received from other participants.

- Using this equation in the context of this example, would result in the following:
  - Participant A
    - $25 - $40 = -$15
  - In this equation $25 represents the potential equal cost distribution across four candidates. In other words, a quarter or 25% of the total cost of the service.
- This means that Participant A has provided a benefit of $15 to other participants who have paid less of the service cost. In other words, Participant A has provided a benefit of $7.50 each to Participants C and D.
- Participant A should record an expenditure to Participant C of $7.50 and an expenditure to Participant D of $7.50.
- Participant A would not record an expenditure to Participant B because no benefit has been conveyed on account of Participant B paying the same amount of the cost.
- Both Participants C and D would report a receipt from Participant A of $7.50.
- Similarly, both Participants C and D would report a receipt from Participant B of $7.50. This is reflected in the equation below.
    - $25 - $10 = $15
- This means Participant C has received a benefit of $15 from the other participants who have paid more of the service cost. In other words, Participant C has received a benefit of $7.50 each from Participants A and B.
- Participant C would not record a receipt from Participant D because they have paid the same amount of the cost for the slate page.

- The following would be the values reported by all participants on their respective Statements of Receipts and Expenditures:

    - Participant A

        - *Expenditures*
            - $40 to service provider;
            - $7.50 in-kind to Participant C;
            - $7.50 in-kind to Participant D.

    - Participant B

        - *Expenditures*
            - $40 to service provider;
            - $7.50 in-kind to Participant C;
            - $7.50 in-kind to Participant D.

    - Participant C

        - *Expenditure*
            - $10 to service provider.
        - *Receipts*
            - $7.50 in-kind from Participant A;
            - $7.50 in-kind from Participant B.

    - Participant D

        - *Expenditure*
            - $10 to service provider.
        - *Receipts*
            - $7.50 in-kind from Participant A;
            - $7.50 in-kind from Participant B.

Participants A, B, C, and D are responsible for reporting each donor and the proportion of each contribution the reporting participant received through the slate page.

Although there may be reporting obligations related to the participants who utilize slate pages, our analysis for whether the service provider is subject to registration and reporting requirements in this context, follows the analysis under Question #3 above.

5. Are political advocacy organizations subject to the contribution limits imposed by RSA 664:4?

Answer: No. Throughout Chapter 664, the law uses specific language to identify those entities that may be engaged in campaign finance and political advocacy. This is evident under RSA 664:2, III and XXII, where the law establishes separate provisions for what constitutes a "political committee" and what constitutes a "political advocacy organization."

RSA 664:2 was amended in 2014 through Senate Bill 120, and introduced the term "political advocacy organization." The Law specifically imposes registration and reporting requirements upon this new entity. It did not however, enact any amendments to RSA 664:4 to impose contribution limits on political advocacy organizations.

However under RSA 664:4, V – which outlines contribution limits – most recently amended in 2021, the law now only makes reference to "any person" and "political committee[s]."

Senate Bill 120 created a new entity and imposed registration and reporting requirements upon political advocacy organizations, but did not impose contribution limits on them.[8]

In the absence of explicit, contrary statutory language, the Attorney General's interpretation protects the constitutional, First Amendment right to political communication. See Citizens United v. Federal Election Com'n, 558 U.S. 310, 327 (U.S. 2010) ("First Amendment standards, however, must give the benefit of any doubt to protecting rather than stifling speech.") (Internal quotations omitted.)

It is because of this rationale that this Office declines to engage in an analysis of whether to extend the term "any person" to encompass a political advocacy organization. Doing so would likely invite constitutional challenges under Buckley and its progeny. See Citizens United 558 U.S. at 365 ("No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations.")

This Office also recognizes that given the current construction of the terms "political committee" and "political advocacy organization," there is significant, and often confusing, overlap between the two entities, which may lead some to conclude that they are functionally equivalent to one another.

For example, an organization that pays for a communication that is functionally equivalent to express advocacy (or "political advocacy organization") may also constitute an entity that "has as its major purpose to promote the successor defeat of a candidate or candidates or measure or measures" (or "political committee"). See RSA 664:2, III(c).

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[8] In the House Calendar dated May 9, 2014, the following comment on Senate Bill 120 is provided by Rep. Gary Richardson regarding the purpose of the bill: "The committee amendment creates a new category of "political advocacy organization"..." See Attachment B.

6. When do campaign materials (*i.e.* lawn signs, mailers, etc.) need to contain the identification information required by RSA 664:14?

Answer: RSA 664:2, VI defines political advertising as any communication, including buttons or printed material attached to motor vehicles, which expressly ~~or implicitly~~ advocates the success or defeat of any party, measure or person at any election.

With respect to implicit advocacy, as referenced in RSA 664:2 and implemented through RSA 664:14, the United States District Court for New Hampshire held that the term "implicitly" was unconstitutional. Stenson v. McLaughlin, No. CIV. 00-514-JD, 2001 WL 1033614, at *7 (D.N.H. Aug. 24, 2001). As a result, the Court struck the term "implicitly" from RSA 664:2, VI and prohibited its use when enforcing RSA 664:14. Therefore, the requirement only applies if the political advertising explicitly advocates the success or defeat of any party, measure, or person at any election.

The language that constitutes "express advocacy" has been shaped by many courts. In the case of Buckley v. Valeo, the United States Supreme Court recognized certain "magic words" that are helpful in understanding what is encompassed by "express advocacy." The Court held that express advocacy communications are those that contain "express words of advocacy of election or defeat, such as:

- "Vote for;"
- "Elect;"
- "Support;"
- "Cast your ballot for;"
- "Smith for Congress;"
- "Vote against;"
- "Defeat;"
- "Reject."

See Buckley v. Valeo, 424 U.S. 1 at 44 n. 52, 80, n. 108.

While the Court in Buckley used "magic words" of express advocacy, its use of the phrase "such as" before those words, and its subsequent decision in Federal Election Commission v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (U.S 1986) indicate that express advocacy advertisements are not limited to communications that contain the Buckley "magic words." In Massachusetts Citizens for Life, Inc., the Court held that a print communication that directed readers to vote for pro-life candidates and identified and depicted specific pro-life candidates constitutes express advocacy, because although it failed to directly tell the readers to vote for a specific candidate, "it provide[d] in effect an explicit directive: vote for those (named) candidates." Massachusetts Citizens for Life, Inc., 479 U.S. at 249 (emphasis added); See also League of Women Voters v. Davidson, 23 P.3d 1266, 1277 (Colo.App. 2001) (Holding that express advocacy as defined in

Colorado statute required the use of the "magic words" from Buckley or other substantially similar and synonymous words).

In FEC v. Wisconsin Right to Life, the Supreme Court ruled that a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible to no reasonable interpretation other than as an appeal to vote for or against a specific candidate. FEC v. Wisconsin Right to Life, 551 U.S. 449, 470 (2007).

RSA 664:14 requires all political advertising to be signed at the beginning or end with the names and addresses of the candidates, persons, or entity responsible for it.

If a document, mailer, or other form of communication meets the criteria of RSA 664:2, VI (as narrowed by Stenson), meaning that is expressly advocates for a candidate or measure, then the identification requirements of RSA 664:17 apply. In the event a candidate or group fails to comply with this requirement, this Office has historically identified and contacted the entity responsible for the political advertisement, and provided them an opportunity to cure. For example, the entity responsible for the sign may write the required information on the sign, or apply a sticker with the same.

However, in 1995, the United States Supreme Court found that a "written election-related document…is often a personally crafted statement of a political viewpoint" and as such, "identification of the author against her will is particularly intrusive." McIntyre v. Ohio, 514 U.S. 334, 355, 357 (U.S. 1995). The Court held that the First Amendment protects the anonymity of political speech when conducted by an individual. *Id.* at 357. Consistent with McIntyre, this Office has reached determinations in some cases where a single individual is responsible for a political advertisement, and thus the constitutional protections of anonymity outlined in McIntyre have been applied.[9]

This protection of anonymity would not apply where one person in a group agrees to be the "responsible" person for a political advertisement.

7. Does the deadline to remove political advertising following an election, as imposed by RSA 664:17, apply to private property?

Answer: No.

RSA 664:17 states in relevant part that "[a]ll political advertising shall be removed by the candidate no later than the second Friday following the election unless the election is a primary and the advertising concerns a candidate who is a winner in the primary."

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[9] This Office notes that in the twenty-six years since McIntyre, many courts (including one within our federal circuit) have narrowed its application and upheld advertising disclosure requirements, even against individuals. See Bailey v. State, 900 F. Supp. 2d 75, 85-87 (D. Me 2011); Citizens United v. FEC, 558 U.S. 310, 366-71 (2009).

However, under this statute, advertising placed on private property is not subject to any removal deadline. This Office has historically notified complainants that if they dislike political advertising remaining on private property, they would need to contact their town officials to determine if a local ordinance would be applicable. Otherwise, the law does not regulate what a private property owner can and cannot post on his/her own property.

It is also important to note, as this Office had previously addressed in its Letter to Senator David Pierce (January 29, 2014), that that the United States Supreme Court has held that a person may not be prohibited from maintaining a sign on his or her own private property that otherwise complies with law. "Special respect for individual liberty in home has long been part of our culture and our law [...] that principle has special resonance when government seeks to constrain person's ability to speak there." City of Ladue v. Gilleo, 512 U.S. 43, 58 (U.S. 1994).[10]

Furthermore, in the case of City of Painesville Bldg. Dep't v. Dworken & Bernstein Co., L.P.A, the court struck down durational limits on the posting of political signs on private property. 733 N.E.2d 1152, 1154 (Ohio 2000). The City of Painesville decision also cited numerous other courts that similarly struck down durational limits imposed upon political signs on private property.

8. What changes has House Bill 263 made to campaign finance reporting requirements?

Answer: Simply put, House Bill 263 increases the expenditure threshold by which candidates and political committees are required to report pursuant to RSA 664:6.

It should be noted that the Bill listed amendments to RSA 664:6 in two different sections of House Bill 263. Under Section 168:4, it changes the threshold that would trigger reporting requirements, but did not amend the specific thresholds for the content of a statement of receipts and expenditures. However, under Section 168:10, the Bill wrote RSA 664:6 in its entirety, omitting its amendment to the reporting threshold, but outlining its amendments to the specific thresholds for the content of a statement of receipts and expenditures. This Office interprets these two sections in harmony with one another, to apply amendments to both the reporting threshold and the specific thresholds for the content of a statement of receipts and expenditures.

House Bill 263 has made the following changes to the above, as summarized in the tables below:

[10] The Court in Gilleo also recognized its decision "by no means leaves the City powerless to address the ills that may be associated with residential signs. It bears mentioning that individual residents themselves have strong incentives to keep their own property values up and to prevent "visual clutter" in their own yards and neighborhoods—incentives markedly different from those of persons who erect signs on others' land, in others' neighborhoods, or on public property." Gilleo, 512 U.S. 58 (U.S. 1994).

Reporting Threshold Trigger – Receipts or Expenditures Exceed	
Before	After
$500	$1000

This means that a political committee whose receipts or expenditures do not exceed $1000 for a reporting period is not required to file a statement, *subject to an important caveat*: A duty arises to report after the election, at least once every 6 months, if the political committee has any debt, obligation, or surplus.

This requirement has no dollar value limitation. As a result – and for example – a political committee of a political party that had $450 in receipts and $350 in expenditures in the course of an election cycle for a primary election would have to report all receipts and expenditures for the first time within 6 months of the election. The committee would have to continue making 6 month reports until the balance for that election cycle reaches $0.

However, it is expected that a political committee of a political party with surplus after the primary election would contribute that surplus to the committee's next election cycle account. In the above example, the $100 surplus from the primary cycle would be contributed to that committee's account for the general election. This would allow the one report filed after the election to show an ending $0 balance after all expenditures and the committee would have no further reporting obligation for receipts or expenditures for that primary election cycle. Alternatively, the committee can use those surplus funds for any purpose allowed by law.

If a political committee's accumulated receipts or accumulated expenditures for an election exceed $1000, "the committee shall file a statement at the next reporting deadline, and shall continue to file at each reporting deadline." RSA 664:6, IV.

After the election for which a political committee was formed has ended, the committee ceases to exist once it has filed a report showing a zero balance. The zero balance could be achieved by spending a surplus, paying a deficit, or moving a surplus to a new political committee.

Statement of Receipts and Expenditures Content Thresholds									
List receipts Exceeding		Aggregate total for each election for each contributor over		All receipts of [x] value shall appear as unitemized receipts		Any listing that exceeds and individual's aggregate value of [x] to be accompanied by information		List expenditures exceeding	
Before	After	Before	After	Before	After	Before	After	Before	After
$25	$50	$100	$200	$25	$50	$100	$200	$25	$50

Reporting Threshold Trigger – Independent Expenditures	
Before	After
$500	$1000

9. What options are available to a candidate to file receipts and expenditures?

House Bill 263 also clarified that a candidate for office may only file his/her statements of receipts and expenditures either as: (1) a candidate; or (2) a candidate committee.

Consequently, we understand this law to prohibit a candidate from registering as a political advocacy organization. This is consistent with our analysis under Question #5 above, which recognizes the law distinguishing a political advocacy organization from any other entity listed under Chapter 664. This distinction is important, particularly in light of the changes implemented by House Bill 263, and candidates cannot use a political advocacy organization to circumvent contribution limits under RSA 664:4.

Any candidate who has formed a political advocacy organization is grandfathered in under House Bill 263, and may continue to use the receipts obtained by it. As of September 28, 2021, the effective date of House Bill 263, such a candidate needs to establish a candidate or candidate committee account for all future receipts.

We trust that this guidance will assist candidates and political committees throughout the coming election cycle.

Sincerely,

Myles B. Matteson
Deputy General Counsel

Nicholas A. Chong Yen
Assistant Attorney General

Enclosure

cc: Raymond Buckley – Chairman, New Hampshire Democratic Party
Stephen Stepanek – Chairman, New Hampshire Republican State Committee