

Part 6200.10 of Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended to read as follows:

§6200.10 Disclosure of Independent Expenditures

**(a) Purpose and Overview**

The purpose of this Regulation is to set forth the requirements under the New York State Election Law regarding compliance with the Independent Expenditure disclosure. The New York State Election Law mandates how financial activity, including independent expenditures, is to be disclosed. Article 14 of the Election Law ("EL") sets forth the requirement that independent expenditures be disclosed through the filing of campaign financial disclosure reports.

**(b) Definitions**

(1) **"Independent Expenditure"** means:

(i) an expenditure made by an an [Person] independent expenditure committee [and] conveyed to five hundred (500) or more members of a General Public Audience in the form of

(a) an audio or video communication via broadcast, cable or satellite;

(b) a written communication via advertisements, pamphlets, circulars, flyers, brochures, letterheads; or

(c) other published statements which:

(1) irrespective of when such communication is made, contains words such as "vote," "oppose," "support," "elect," "defeat," or "reject," which call for the election or defeat of the Clearly Identified Candidate;

(2) refers to and Advocates For or Against a Clearly Identified Candidate or ballot proposal on or after January first of the year of the election in which such candidate is seeking office or such proposal shall appear on the ballot, or

(3) within sixty days before a general or special election for the office sought by the candidate or thirty days before a primary election, includes or references a clearly identified candidate.

(i) For purposes of this regulation "Advocates for or Against" means – in the absence of explicit words of advocacy for or against a candidate or ballot proposal – that the

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expenditure, through the use of images, photos, or language, promotes, supports, attacks, or opposes the Clearly Identified Candidate or ballot proposal.

(ii) For purposes of determining that a communication is advocating for or against a candidate or ballot proposal, the following factors shall be considered, but shall not be limited to:

(A) Whether it identifies a particular candidate by name or other means such as party affiliation or distinctive features of a candidate's platform or biography or identifies a ballot proposal;

(B) Whether it expresses approval or disapproval for said candidate's positions or actions or for a ballot proposal;

(C) Whether it refers to a candidate or ballot proposal and is part of an ongoing series by the group on the same issue and the expenditure is made on or after January first of the year of the election in which such candidate is seeking office or such proposal shall appear on the ballot;

(D) Whether the issue raised in the communication has been raised as a distinguishing characteristic amongst the referenced candidates; and

(E) Whether its timing and the identification of the candidate are related to a vote on legislation or a position on legislation by an officeholder who is also a candidate and is made on or after January first of the year of the election in which such candidate is seeking office.

(iii) For purposes of determining that a communication is not advocating for or against a candidate or ballot proposal, the following factors shall be considered, but shall not be limited to:

(A) Whether it is part of an ongoing series by the group on the same issue and does not refer to a candidate or ballot proposal; and

(B) Whether its timing and the identification of the candidate or ballot proposal are related to a non-electoral event (e.g. a vote on legislation or a position on legislation by an officeholder who is also a candidate) and is not made on or after January first of the year of the election in which such candidate is seeking office or such proposal shall appear on the ballot.

(iv) However, even if some of the above factors in (ii) or (iii) are found, the communication must still be considered in its context before arriving at any conclusion.

(2) **“Independent Expenditure”** shall not include:

(i) payments or expenditures made by a party or constituted committee that is required to file disclosure reports under the Election Law;

(ii) payments or expenditures where Coordination occurs in the creation, formation, or operation of the independent expenditure committee making the payment or expenditure.

(a) Coordination shall include:

**(1) Candidate Participated in Creation/Formation of IE Committee within 2 years of Election:** The candidate or the candidate's authorized committee, or an agent of the candidate or candidate's authorized committee, participated in the creation or formation of the independent expenditure committee within two years of the general election, primary or special election in which the candidate is a candidate for nomination or election and the payment or expenditure made is for the benefit of that candidate.

**(2) Candidate Appears at Fundraiser Hosted by IE Committee within 2 years of Election:** The candidate or an agent of the candidate appears at any fundraising event hosted by an independent expenditure committee, or its agent, making a payment or expenditure that benefits that candidate within two years of the general election, primary or special election in which the candidate is a candidate for nomination or election.

**(3) IE Committee Employed or Retained Former Employee of Candidate or Policymaker in Candidate office holder’s office within 2 years of Election:** The independent expenditure committee making the payment or expenditure, or its agent, employed or retained an individual, other than an individual described in subparagraph (viii) of this paragraph, who was employed by the candidate, the candidate's authorized committee or an agent of the candidate or has held a policymaking, non-administrative position in the office of the candidate's elected office within two years of the general election, primary or special election in which the candidate is a candidate for nomination or election, and the payment or expenditure is made for the benefit of that candidate.

**(4) IE Committee is a Member of, or is Established, Directed or Managed by Candidate’s Immediate Family Member:** The independent expenditure committee making the payment

or expenditure, or its agent, is a member of the candidate's immediate family or is established, directed, or managed by a member of the immediate family of the candidate, and the payment or expenditure is made for the benefit of that candidate.

**(5) IE Committee Uses Campaign Material from Candidate:** The independent expenditure committee making the payment or expenditure benefiting the candidate, republishes, disseminates, or distributes, in whole or in part, any video, audio, written, or other campaign- related material prepared by the candidate or the candidate's authorized committee or by an agent of the candidate or the candidate's authorized committee. This paragraph shall not apply if the independent expenditure committee making the payment or expenditure obtains the communication or materials from a publicly available source.

**(6) Candidate Shares or Rents Campaign Space With or From the IE Committee:** The candidate or the candidate's authorized committee, or an agent of the candidate or the candidate's authorized committee, shares or rents space for a campaign-related purpose with or from the independent expenditure committee, or its agent, making the payment or expenditure benefitting the candidate.

**(7) IE Committee has Participated in Strategic Discussions with the Candidate within 2 years of the Election:** The independent expenditure committee, or its agent, making the payment or expenditure benefitting the candidate has participated in strategic discussions with the candidate, the candidate's authorized committee, or an agent of the candidate or the candidate's authorized committee within two years of the general election, primary or special election in which the candidate is a candidate for nomination or election. Discussions shall be deemed strategic if information about the candidate's or opponent's electoral campaign plans, projects, or activities that is not obtained from a publicly available source is conveyed to the independent expenditure committee, or its agent, making the payment or expenditure. This paragraph shall only apply to discussions occurring after the independent expenditure committee is formed or, one week after the candidate has been certified for that election, whichever occurs first.

**(8) IE Committee and Candidate Retain Same Professional Campaign Service Provider within 2 years of the Election:** The independent expenditure committee, or its agent, making the payment or expenditure benefitting the candidate, and the candidate or the candidate's authorized committee knowingly retain the same individual or entity to provide professional campaign services

within two years of the general election, primary or special election in which the candidate is a candidate for nomination or election, and the professional campaign services provider discloses strategic information regarding one party with the other party. Information shall be deemed strategic if it relates to either party's respective campaign or independent expenditure plans, projects, or activities that are not obtained from a publicly available source. This subparagraph shall not prohibit a candidate, a candidate's authorized committee, or an agent of the candidate or the candidate's authorized committee from retaining the same professional campaign services provider as the independent expenditure committee, or its agent, making the payment or expenditure benefitting the candidate upon the professional campaign services provider entering into a confidentiality agreement with both parties expressly stating that it will not disclose strategic information regarding each party with the other party.

**(9) IE Committee utilizes Strategic Information or Data from Common**

**Vendor/Campaign Professional of Candidate within 2 years of the Election:** The independent expenditure committee, or its agent, making the payment or expenditure benefitting the candidate, utilizes strategic information or data related to the candidate, that is not from a publicly available source and is not otherwise available by subscription, from an individual who has been previously compensated, reimbursed or retained by the candidate as a consultant, political, media or fundraising advisor, vendor or contractor within two years of the general election, primary or special election in which the candidate is a candidate for nomination or election.

(b) Coordination shall not include:

(1) Responses to Inquiries re Legislative or Policy Issues: a response by a candidate or a party or constituted committee to an inquiry about that candidate's or party or constituted committee's position on legislative or policy issues;

(2) Public Communications by Candidate Owner/Operator of Business: a public communication in which a candidate is clearly identified only in his/her capacity as the owner/operator of a business that existed prior to the candidacy, if (i) the medium, timing, content, and geographic distribution of the public communication are consistent with the public communications made by such business prior to the candidacy, and (ii) the public communication does not promote, support, attack, or oppose that candidate or another candidate in their capacity as candidates who seek the same office as that candidate.

[communications where there is Coordination (e.g. it is authorized, requested, suggested, fostered or there is cooperation in such communication) between the person making the expenditure and a candidate, the candidate's political committee or its agents, a party committee or its agents, or a constituted committee or its agents or a political committee formed to promote the success or defeat of a ballot proposal or its agents. (EL 14-107(1) (A)).

(ii) (iii) expenditures in connection with:

(a) a written news story, commentary, or editorial or a news story, commentary, or editorial distributed through the facilities of any broadcasting station, cable or satellite unless such publication or facilities are owned or controlled by any political party, political committee or candidate; or

(b) a communication that constitutes a candidate debate or forum; or

(c) internal communication by members to other members of a Membership Organization of not more than five hundred (500) members, for the purpose of supporting or opposing a candidate or candidates for elective office, provided such expenditures are not used for the costs of campaign material or communications used in connection with broadcasting, telecasting, newspapers, magazines, or other periodical publication, billboards, or similar types of general public communications;

(d) internal communications by members to other members of a membership organization of not more than five hundred members or communications by a corporation organized for charitable purposes pursuant to §501(c)(3) of the internal revenue code, within sixty days before a general or special election for the office sought by the candidate or thirty days before a primary election, that includes or references a clearly identified candidate but does not otherwise qualify as an independent expenditure under this section; or

(e) a communication published on the internet, unless the communication is a paid advertisement. (EL 14-107(1)(B))

(3) "**Clearly Identified Candidate**" means that:

(i) the name of the candidate involved appears;

(ii) a photograph or drawing of the candidate appears; or

(iii) the identity of the candidate is apparent by unambiguous reference. (EL 14-100(12)).

Material in brackets [ ] is to be deleted. Material underlined is to be added.

(4) "**General Public Audience**" means an audience composed of members of the public, including a targeted subgroup of members of the public; provided, however, it does not mean an audience solely comprised of members, retirees and staff of a labor organization or members of their households or an audience solely comprised of employees of a corporation, unincorporated business entity or members of a business, trade or professional association or organization. (EL 14-100(13)).

(5) "**Labor Organization**" means any organization of any kind which exists for the purpose, in whole or in part, of representing employees employed within the State of New York in dealing with employers or employer organizations or with a state government, or any political or civil subdivision or other agency thereof, concerning terms and conditions of employment, grievances, labor disputes, or other matters incidental to the employment relationship. For the purposes of this regulation, each local, parent national or parent international organization of A statewide labor organization, and each statewide federation receiving dues from subsidiary labor organizations, shall be considered a separate labor organization. (EL 14-100(14)).

(6) "**Membership Organization**" means a group that has a recognized organizational structure and maintains a list of its members, such as a professional, fraternal, patriotic, or social association or organization, a cooperative or a corporation without capital stock, and is not organized primarily for the purpose of influencing the nomination for election, or election, of any candidate for office covered by Article 14 of the Election Law of the State of New York, or any ballot proposal covered therein.

(a) Factors that support a conclusion that a group is a "Membership Organization" for this purpose shall include, but not be limited to the following:

(i) The group is composed of members, some or all of whom are vested with the power or authority to administer the organization pursuant to membership by-laws, constitution or other formal organizational documents;

(ii) There are expressly stated qualifications for membership, including special membership status such as "retired" or "lifetime" member;

(iii) The group expressly solicits persons to become members;

(iv) Individuals pay dues to be members of the group;

(v) The group acknowledges the acceptance of membership, such as by issuing a membership card or sending confirming correspondence;

(vi) The group distributes newsletters or other informational messages to its members;

(vii) The group has a mission statement that is available for the members and the public to see; and

(viii) The group is not organized primarily for the purpose of influencing the nomination for election, or election, of any candidate for office or for the success or defeat of any ballot proposal covered by Article 14 of the Election Law.

(7) [“Person” means for purposes of this section, a person, group of persons, corporation, unincorporated business entity, labor organization or business, trade or professional association or organization, or political committee. It does not include any party or constituted committee, that is required to file campaign finance disclosure reports pursuant to the Election Law. (EL 14- 107(1)(c)).]

“Immediate Family” means for the purposes of this section, the spouse, child, parent, grandparent, brother, half-brother, sister, half-sister of the candidate, and the spouses of such persons.(EL 14-107(1)(f).

(8) “Agent” means for the purposes of this section, a person authorized by the candidate or the candidate's authorized committee, who acts on behalf of or at the direction of a candidate or the candidate's authorized committee; or a party committee or constituted committee acting on behalf of a candidate; or a person authorized by an independent expenditure committee who acts on behalf of or at the direction of such committee.(EL 14-107(1)(g).

(9) “Independent Expenditure Committee” means a political committee, that makes only independent expenditures as defined in Article 14 of the EL, and does not coordinate with a candidate, candidate's authorized committees or an agent of the candidate as defined in paragraph (g) of subdivision one of section 14-107 of the EL. For purposes of this section, an independent expenditure committee may be created by a person, group of persons, corporation, unincorporated business entity, labor organization or business, trade or professional association, or organization, or political committee. (EL 14-100(15).

(10) "Political Action Committee" means a political committee which makes no expenditures to aid or take part in the election or defeat of a candidate, or to promote the success or defeat of a ballot proposal, other than in the form of contributions, including in-kind contributions, to candidates, candidate's authorized committees, party committees, constituted committees, or independent expenditure committees provided there is no common operational control between the political action committee and the independent expenditure committee; or in the form of communications that are not distributed to a general public audience as described in subdivision thirteen of this section." (EL 14-100(16). For purposes of this paragraph, "common operational control" means that (i) the same individual or individuals exercise actual and strategic control over the day-to-day affairs of both the political action committee and the independent expenditure committee, or (ii) employees of the political action committee and the independent expenditure committee engage in communications related to the strategic operations of either committee."

**(c) Registration**

~~[Before a]~~Any person prior to making any ~~[receives any receipt or contribution for]~~ independent expenditure~~[s incurs any liability for independent expenditures or makes an independent expenditure, they]~~ shall:

- (1) first register with the New York State Board of Elections ("the Board") as a political committee and as an independent expenditure committee in conformance with Article 14 of the Election Law~~;~~, and
- (2) comply with all disclosure obligations required for political committees by law and regulation~~;~~, and ~~[ (EL14-107(3)(A); Part 6200)]~~
- (3) shall provide the following additional information upon registration:
  - (i) An Individual registering to make their own independent expenditures must provide their name, address, occupation and employer.
  - (ii) An Entity registering to make independent expenditures must provide the name and employer of any individual who exerts operational or managerial influence or control over the entity, as well as the name of any salaried employee of the entity. The disclosure requires the name of at least one natural person.

(a) Additional Information for Certain Individuals named in (i) and (ii): Any individuals identified in (i) or (ii) who have, during the two-year period before registration, been employed or retained as a political, media, or fundraising adviser or consultant for a candidate, any entity directly controlled by a candidate, or any party committee or constituted committee, or have held a formal position in the office of a candidate's elected office, or any party committee or constituted committee, and the name of the relevant employer, must be so reflected on the registration.

(b) Identification of immediate family members among the individuals named in (i), (ii) and (ii)(a): members of a candidate's immediate family who are listed in (i), (ii), and (ii)(a), must be identified as such on the registration.

(c) Mandatory Update of Info with 24 Hours: Any change in any of the information provided for pursuant to EL 14-107(3) must be updated within twenty-four hours of any change in ownership or control of any registered entity.

[complete, sign and submit an applicable form to indicate an intent to make Independent Expenditures to the Board.]

**(d) Filing Financial Disclosure Statements**

(1) Committees making independent expenditures are obligated, as are all political committees, to file campaign financial disclosure statements pursuant to and in the manner set forth in EL 14-102. For each election in which they support or oppose candidates or ballot proposals, the committee must submit election reports (3 primary, and 3 general and/or special, as applicable), as well as campaign financial disclosure periodic reports, due on January 15 and July 15 of each year in accordance with EL 14-108, NYCRR 6200.2. (EL 14-107(3))[(A)].

(2) All independent expenditure committees are required to file applicable election reports for each election unless the independent expenditure committee submits a fully completed Notice of Non-Participation in Election(s) (CF-20), electronically or by mail, as prescribed by the Board.

(3) Weekly Disclosure regarding Independent Expenditures: any independent expenditure committee [person] who has registered with the State Board pursuant to [paragraph (A) of] EL 14- 107(3) [as a political committee for the purposes of disclosing Independent Expenditures], shall disclose to the State Board electronically, once a week on Monday [the Friday following the receipt of] any contribution to such committee [person over] of one thousand dollars (\$1,000) or more or expenditures made by such

person over five thousand dollars (\$5,000) made [at any time] during the reporting period. [year except during the 24-hour notice disclosure period before an election (EL 14-107(3)(B)).] All contributions[, loans] or expenditures that are required to be disclosed via a weekly disclosure must also be disclosed on the next applicable financial disclosure statement.

(4) Independent Expenditures Committee 24 Hour Disclosure: any independent expenditure committee [person] who has registered with the State Board pursuant to [paragraph (A) of] EL 14- 107(3) [as a political committee for the purposes of disclosing Independent Expenditures,] shall disclose to the State Board electronically, within twenty-four (24) hours of receipt, any contribution [or loan] to such independent expenditure committee [person over] of one thousand dollars (\$1,000) or more [expenditure by such person over five thousand dollars (\$5,000)] made within thirty (30) days before any primary, general, or special election. (EL14-107(4)(3)(C)). All contributions, [loans or expenditures] that are required to be disclosed via the Independent Expenditure 24-hour notice must also be disclosed on the 11 day pre-election financial disclosure statement or on the post-election financial disclosure statement, as applicable.

(5) Every statement shall be filed electronically with the State Board. (EL 14-107(6)).

**(e) Additional Information Required Regarding Independent Expenditures**

(1) The Weekly and 24 Hour Disclosures required by [subdivision (3)(B) and (C) of] EL 14-107, [as set out in (d)(3) and (4) above], shall include, in addition to any other information required by law:

(i) the name, address, occupation and employer of the person making the statement;

(ii) [the name, address, occupation and employer of the person making the Independent Expenditure;

(iii) For Each Contribution Received: the name, address, occupation and employer of any person providing a contribution, gift, loan, advance or deposit of one thousand dollars (\$1,000) or more for the Independent Expenditure, or the provision of services for the same, and the date it was given;

[(iv)] iii For Each Expenditure or Payment Made: (1) the dollar amount paid for each independent expenditure, the name and address of the person or entity receiving the payment, the date the payment was made and a description of the Independent Expenditure; and

([v]2) the election to which the Independent Expenditure pertains and the name of the clearly identified candidate or the ballot proposal referenced and whether the candidate or ballot proposal is supported or opposed, and (3) a list of all expenditures made by and liabilities incurred for services rendered during the relevant reporting period.. (EL 14-107(4)).

(2) The provisions of this regulation do not effect the application or validity of Election Law 14-120.

**(f) Disclosure of Political Communications / “Campaign Materials”**

(1) All political committees whose activity requires the filing of primary, general and/or special election reports, must at the same time the applicable post-election campaign financial disclosure report is due and made, submit copies of all the filer’s political communications, also known as campaign materials, associated with that election. Copies shall include a copy of all broadcast, cable or satellite schedules and scripts, internet, print and other types of advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter purchased or produced, and reproductions of statements or information published to five hundred or more members of a general public audience by computer or other electronic device including but not limited to electronic mail or text message, purchased in connection with such election by or under the authority of the person filing the statement or the committee or the person on whose behalf it is filed, as the case may be. Such copies, schedules and scripts shall be preserved by the officer with whom or the board with which it is required to be filed for a period of one year from the date of filing thereof. (EL14-106)

(2) In addition to the requirements of subparagraph 1 herein, for any required weekly disclosures [statements] filed by an independent expenditure committee [in conjunction with (d) (3) and (4) above], a copy of all political communications paid for by the independent expenditure, including but not limited to broadcast, cable or satellite schedules and scripts, advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter and statements or information conveyed to one thousand or more members of a general public audience by computer or other electronic devices shall be filed with the State Board in conjunction with such weekly disclosures [with the statements required by (d) (3) and (4) EL 14-107(5)].

**(g) Attributions and Identification of Independent Expenditures**

Whenever any person makes an Independent Expenditure that costs [more than] one thousand dollars (\$1,000) or more in the aggregate, such communication shall clearly state the name of the person who paid for or otherwise published or distributed the communication and state, with respect to communications regarding candidates, that the communication was not expressly authorized or requested by any candidate, or by any candidate's political committee or any of its agents. (EL 14-107(2)).

**(h) Prohibited Spending by Independent Expenditure Committees and Political Action Committees**

(1) IE Committees prohibited from making contributions: An independent expenditure committee shall not contribute to any candidate, constituted committee, political committee, or party committee.

(2) (a) PACS prohibited from making IE's , or contributions to IE committees with "common operational control" as the PAC: A political action committee shall not make any independent expenditures and may only make contributions to any independent expenditure committee if such committee does not have common operational control. For purposes of this paragraph, "common operational control" means that (i) the same individual or individuals exercise actual and strategic control over the day-to-day affairs of both the political action committee and the independent expenditure committee, or (ii) employees of the political action committee and the independent expenditure committee engage in communications related to the strategic operations of either committee.

(b) Candidates/their authorized committees, party/constituted committees prohibited from contributing to IE committees that make beneficial expenditures regarding the candidate or the candidate supported by the party/constituted committee: No candidate, candidate's authorized committee, party committee, or constituted committee shall contribute to an independent expenditure committee that is making expenditures benefitting the candidate or the candidate supported by such party or constituted committee.

**(i) Non-compliance**

(1) Any person who falsely identifies or knowingly fails to identify any Independent Expenditure as required by subdivision 2 of section 14-107, as outlined in (g)[(1)], "Attributions and Identification of Independent Expenditures" above, shall be subject to a civil penalty up to one thousand dollars (\$1,000) or up to the cost of the communication, whichever is greater, in a special proceeding or civil action brought by the State Board Chief Enforcement Counsel or imposed directly by the State Board. For

purposes of this subdivision, the term "person" shall mean a person, group of persons, corporation, unincorporated business entity, labor organization or business, trade or professional association or organization or political committee. Such term does not include any party or constituted committee that is required to file campaign finance disclosure reports pursuant to the Election Law. (EL 14-126(3)).

(2) [In addition to any other penalty that may otherwise pertain, a] A knowing and willful violation of the provisions of subdivisions (3) and (4) of EL 14-107 shall subject the person to a civil penalty equal to five thousand dollars (\$5,000) or the cost of the communication, whichever is greater, in a special proceeding or civil action brought by the Board [or imposed directly by the Board.] (EL 14-107(8)(b)(3)(D)).

(3) Any person who, acting as or on behalf of an independent expenditure committee or a political action committee, knowingly and willfully violates the provisions of EL 14-107-a (Prohibited Spending by IE Committees and PACS) of this article shall be subject to a civil penalty, up to one thousand dollars (\$1,000) or up to the cost of the communication, whichever is greater, to be recoverable in a special proceeding or civil action to be brought by the State Board of Elections.

(4) All criminal liability related to EL 14-107 shall require knowing and willful violations in accordance with EL 14-126. (EL 14-107(8)(a)).