

## **Title 410 – RI BOARD OF ELECTIONS**

### **Chapter 10 – CAMPAIGN FINANCE**

#### **Subchapter 00 – N/A**

#### **Part 8 – Disclosure of Independent Expenditures, Electioneering Communications and Covered Transfers**

### **8.1 Purpose**

The Board of Elections adopts the following rules for the purpose of clarifying the disclosure requirements for independent expenditures, electioneering communications, and covered transfers in R.I. Gen. Laws § 17-25.3-1 *et seq.*

### **8.2 Authority**

These rules are adopted by the Board of Elections pursuant to R.I. Gen. Laws §§ 17-7-5(c) and 17-25.3-1 *et seq.*, and in accordance with the Administrative Procedures Act (R.I. Gen. Laws § 42-35-1 *et seq.*). These rules are available for public inspection at the offices of the Rhode Island Board of Elections, 50 Branch Avenue, Providence, Rhode Island, and are also available electronically on the website of the Secretary of State in the Rhode Island Code of Regulations.

### **8.3 Definitions**

A. Wherever used in this Part, the following terms have the meanings set forth herein:

1. “Agent” means any person with actual authority, either express or implied, to engage in activities on behalf of another person. For purposes of this Part, an agent of a candidate or political committee includes any person who has served as a paid or unpaid employee of, or consultant to, the candidate or political committee at any time during the preceding two (2) years.
2. “Authorized candidate committee” means any committee organized by or on behalf of a candidate to aid or support his or her nomination or election to any public office, regardless of whether or not the specific public office for which the candidate will seek nomination or election is known at the time the committee is organized and whether or not the candidate has

announced his or her candidacy or filed a declaration of candidacy at that time.

3. “Candidate” means any individual who undertakes any action, whether preliminary or final, which is necessary under the law to qualify for nomination for election or election to public office, and/or any individual who receives a contribution or makes an expenditure, or gives his or her consent for any other person to receive a contribution or make an expenditure, with a view to bringing about his or her nomination or election to any public office, whether or not the specific public office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at that time. For purposes of this Part, the term “candidate” includes an agent of the candidate.

4. “Clearly identified candidate” means:

- a. The candidate's name or nickname is used;
- b. A photograph, drawing, or likeness of the candidate appears; or
- c. The identity of the candidate is otherwise apparent through any reference or link to the candidate's website, or through an unambiguous reference such as “the Governor,” “Your state representative,” or “the incumbent,” or through an unambiguous reference to his or her status as a candidate such as “the Democratic gubernatorial nominee” or the “Republican candidate for District 500 in the State of Rhode Island.”

5 “Clearly identified referendum” means:

- a. The number, official title, or popular name of the referendum is used; or
- b. There is reference to the subject matter of the referendum and the communication either states the referendum is before the people for a vote or, when taken as a whole and in context, makes an unambiguous reference to the referendum.

6. “Covered disbursement” means:

- a. Any purchase, payment, distribution, loan, advance, deposit, paid personal services, or other thing of value made by a person for an independent expenditure or electioneering communication; and

b. Any covered transfer.

7. "Covered transfer" means:

a. Any transfer or payment of funds by a person to another person, if the person making the transfer:

(1) Designates, requests, or suggests that the amounts be used for independent expenditures or electioneering communications or making a transfer to another person for the purpose of making or paying for such independent expenditures or electioneering communications. A person "designates, requests, or suggests" that amounts be used for independent expenditures or electioneering communications if, at any time, there is an agreement, suggestion, designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, that all or any part of the transfer or payment of funds be used for independent expenditures or electioneering communications;

(2) Made such transfer or payment in response to a solicitation or other request for a transfer or payment for the making of or paying for independent expenditures or electioneering communications or making a transfer to another person for the purpose of making or paying for such independent expenditures or electioneering communications;

(3) Engaged in discussions with the recipient of the transfer or payment regarding independent expenditures or electioneering communications or making a transfer to another person for the purpose of making or paying for such independent expenditures or electioneering communications;  
or

(4) Made independent expenditures or electioneering communications in an aggregate amount of five thousand dollars (\$5,000) or more during the two-year (2) period ending on the date of the transfer or payment, or knew or had reason to know that the person receiving the transfer or payment made such independent expenditures or electioneering communications in such an aggregate amount during that two-year (2) period.

b. The term "covered transfer" does not include:

- (1) A transfer or payment made in the ordinary course of any trade or business conducted by a person or in the form of investments made by the person; or
  - (2) A transfer or payment made by a person if the person making the transfer prohibited, in writing, the use of such transfer or payment for covered disbursements and the recipient of the transfer or payment agreed to follow the prohibition and deposited the transfer or payment in an account that is segregated from any account used to make covered disbursements.
- 8. “Election cycle” means the twenty-four (24) month period commencing on January 1 of an odd-numbered year and ending on December 31 of the next even-numbered year.
- 9. “Electioneering communication” means:
  - a. Any public communication not coordinated with any candidate, authorized candidate committee, or political party committee that:
    - (1) Refers to a clearly identified candidate or referendum;
    - (2) Is made either within sixty (60) days before a general or special election or town meeting for the office sought by the candidate or referendum, or thirty (30) days before a primary election for the office sought by the candidate; and
    - (3) Is targeted to the relevant electorate. A communication that refers to a clearly identified candidate or referendum is “targeted to the relevant electorate” if the communication can be received by two thousand (2,000) or more persons in the district the candidate seeks to represent or the constituency voting on the referendum.
  - b. The term “electioneering communication” does not include:
    - (1) A communication appearing in a news story, commentary, or editorial as part of a general pattern of election-related news accounts or commentary distributed by any broadcast station (including a cable television operator, programmer, or producer), radio station, internet platform, or any regularly published newspaper, magazine, or other periodical of general circulation, unless the facility is owned or controlled by any candidate, political party, or political committee;

(2) A communication that constitutes or solely promotes a debate or similar forum made by or on behalf of the person sponsoring the debate or forum, if:

(AA) At least two (2) candidates seeking nomination or election to the same public office were invited to participate in the debate or forum and the structure of the debate or forum does not favor or advance one candidate over another; or

(BB) A ballot question advocate and at least one opponent, or their respective representatives, were invited to participate in the debate or forum in equal numbers and the structure of the debate or forum does not favor or advance one position over another;

(3) A membership communication; or

(4) A communication over the internet, except for

(AA) qualified internet or digital communications; and

(BB) any communication placed on an internet platform formed primarily to expressly advocate the election or defeat of one or more candidates or the passage or defeat of one or more referendums.

10. "Electronic media communication" means any writing, image, recording, or other data transmitted, disseminated, posted, broadcast, or displayed electronically. "Electronic media communication" includes, but is not limited to, any electronic message, electronic message attachment, text message, or other electronic communication system.

11. "Expenditure" means:

a. Any purchase, payment, distribution, loan, advance, deposit, gift, or other thing of value made by a person for the purpose of promoting or supporting or attacking or opposing the nomination or election of any clearly identified candidate or the passage or defeat of any clearly identified referendum.

b. The term "expenditure" includes, but is not limited to:

(1) All transfers of money, credit or debit card transactions, on line or electronic payment systems, paid personal services,

or other thing of value made by any candidate or political committee;

(2) A purchase, payment, or other thing of value made for any media advertising services or products for public communications; and

(3) A purchase, payment, or other thing of value made for paid personal services.

12. "Expressly advocates" means any communication that:

a. Uses phrases such as "Vote for the Governor," "Re-elect your State Senator," "Yes to Question 1," "Support the Gubernatorial Nominee," "Cast Your Ballot for the Democratic Challenger for the State Senate Seat 500," "Smith for Lt. Governor," "John Doe in 2010," "Vote for a Balanced Budget" accompanied by a listing of clearly identified candidates described as being in favor of a balanced budget, "Vote Against John Doe," "Defeat Question 2," "Reject the Incumbent," "Defeat" accompanied by a picture of one or more candidates, or repeats or adopts slogans or words associated with a clearly identified candidate or referendum within the communication; or

b. When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as advocating the election or defeat of one or more clearly identified candidates or the passage or defeat of one or more clearly identified referendums because:

(1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

(2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates or to pass or defeat one or more clearly identified referendums or encourages some other kind of action.

13. "General treasury" means a collective designation of all of the assets of a person which furnish the means for defraying the necessary, usual, ordinary running and incidental expenses of the person. General treasury funds are typically not derived from a special solicitation, effort, or receipt, but derive from regular, planned for, and ongoing revenue streams or sources.

14. “Independent expenditure” means:

- a. An expenditure that, when taken as a whole, expressly advocates the election or defeat of a clearly identified candidate, or the passage or defeat of a clearly identified referendum, and is not coordinated with any candidate, authorized candidate committee, or political party committee.
- b. The term “independent expenditure” does not include costs incurred for:
  - (1) A communication appearing in a news story, commentary, or editorial as part of a general pattern of election-related news accounts or commentary distributed by any broadcast station (including a cable television operator, programmer, or producer), radio station, internet platform, or any regularly published newspaper, magazine, or other periodical of general circulation, unless the facility is owned or controlled by a candidate, political party, or political committee;
  - (2) A communication that constitutes or solely promotes a debate or similar forum made by or on behalf of the person sponsoring the debate or forum, if:
    - (AA) At least two (2) candidates seeking nomination or election to the same public office were invited to participate in the debate or forum and the structure of the debate or forum does not favor or advance one candidate over another; or
    - (BB) A ballot question advocate and at least one opponent, or their respective representatives, were invited to participate in the debate or forum in equal numbers and the structure of the debate or forum does not favor or advance one position over another;
  - (3) A membership communication; or
  - (4) A communication over the internet, except for
    - (AA) qualified internet or digital communications; and
    - (BB) any communication placed on an internet platform formed primarily to expressly advocate the election or

defeat of one or more candidates or the passage or defeat of one or more referendums.

15. “Independent spender” means any person who makes a covered disbursement. For purposes of § 8.7 (“Disclaimers”) of this Part, the term “independent spender” includes an exempt nonprofit as defined in R.I. Gen. Laws § 17-25-3.

16. “Internet platform” means any public-facing website, internet-enabled application, or other digital application.

17. “Membership communication” means:

a. Any communication made by a business entity or union that is limited in circulation to members, owners, stockholders, or executive or administrative employees of the business entity or union, unless such business entity or union is organized primarily to support or oppose the nomination or election of one or more candidates or the passage or defeat of one or more referendums. A “membership communication” does not include any payments made by a business entity or union for public communications or for communications to persons who are not members, owners, stockholders, or executive or administrative employees of the business entity or union.

b. For purposes of this Part,

(1) “Member” means:

(AA) Any person who, pursuant to a specific provision of an organization’s articles or bylaws, has the right to vote directly or indirectly for the election of a director or directors or an officer or officers or on a disposition of all or substantially all of the assets of the organization or on a merger or on a dissolution; or any person who is designated in the articles or bylaws as a member and, pursuant to a specific provision of an organization’s articles or bylaws, has the right to vote on changes to the articles or bylaws, or pays or has paid membership dues in an amount predetermined by the organization so long as the organization is tax exempt under § 501(c) of the Internal Revenue Code of 1986. A member of a local union is considered to be a member of any national or international union of



which the local union is a part and of any federation with which the local, national, or international union is affiliated.

(BB) A person is not a “member” of an organization if the person is only on a mailing or contact list of an organization without meeting the definition provided in § 8.3(A)(17)(b)(1)(AA) of this Part.

(2) “Owner” means any person who directly or indirectly holds, owns, or controls equity in an amount equal to at least ten percent (10%) of the total equity of a business entity.

(3) “Stockholder” means any person who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted if it is voting stock, and has the right to receive dividends.

(4) “Executive or administrative employee” means any individual employed by a business entity or union who is paid on a salary rather than hourly basis and who has policymaking, managerial, professional, or supervisory responsibilities. “Executive or administrative employee” includes any individual who runs a corporation’s business, such as officers, other executives, and plant, division, and section managers, and individuals following the recognized professions, such as lawyers and engineers.

18. “Paid personal services” means personal services of every kind and nature, the cost or consideration for which is paid or provided by someone other than the person for whom the services are rendered, but shall not include personal services provided without compensation by individuals volunteering their time.

19. “Person” means an individual, business entity, political committee, ballot question advocate, union, association, or any other organization. Except as provided in this Part, the term “person” shall not include an exempt nonprofit as defined in R.I. Gen. Laws § 17-25-3 or any organization described in § 501(c)(3) of the Internal Revenue Code of 1986.

20. “Personal funds” means:

a. Any asset of an individual that the individual had legal control over and rightful title to at the time the individual made a covered transfer;

b. Income received by an individual, including:

- (1) Salary, wages, and other earned income from bona fide employment;
- (2) Investment income, including capital gains, dividends, and other proceeds from personal investments; and
- (3) Bequests to the individual, including income from trusts established by bequests; and

c. A portion of assets that are jointly owned by the individual and the individual's spouse equal to the individual's share of the asset under the instrument of conveyance or ownership or, if no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of such assets.

d. The term "personal funds" does not include any asset or income received from any person for the purpose of influencing an election.

21. "Political committee" means any authorized candidate committee, political action committee, or political party committee. For purposes of this Part, the term "political committee" includes an agent of the political committee.

22. "Principal officer" means the individual who is primarily responsible for authorizing the political activities of an organization or business entity, including, but not limited to, authorizing the content of communications or authorizing the making of independent expenditures, electioneering communications, or covered transfers.

23. "Public communication" means any communication to the general public by means of print, broadcast, cable, satellite, electronic media communication, qualified internet or digital communication, newspaper, magazine, outdoor advertising facility, mass mailing, telephone call, or any other form of general public advertising or marketing regardless of medium.

24. "Qualified internet or digital communication" means any communication placed or promoted for a fee on the internet platform of another person or any communication posted on an internet platform without charge which is linked to by any paid advertising or promoted content. "Qualified internet or digital communication" includes, but is not limited to, paid internet video advertising, paid internet audio advertising, display advertising, native advertising, search engine marketing, and sponsorships.

25. “Referendum” means any proposition of amendment of the Constitution of this State or any public question of statewide impact submitted to the electors of this State at a general election.
26. “Street address” means the street name or post-office box, building number (if applicable), city, state, and zip code. For a person other than an individual, “street address” means the street name or post-office box, building number (if applicable), city, state, and zip code of the person’s principal place of business.
27. “Supervisory Staff” means the Board of Elections’ Executive Director, Director of Campaign Finance, or their designees.

## **8.4 Coordinated Expenditures**

- A. An expenditure or electioneering communication that disseminates, distributes, or republishes, in whole or in part, any public communication or other form of campaign materials prepared by a candidate, authorized candidate committee, or political party committee is a contribution to the candidate or committee, unless:
1. The campaign material is disseminated, distributed, or republished by the candidate or committee that prepared the material;
  2. The campaign material is incorporated into a communication that advocates the defeat of the candidate or committee that prepared the material; or
  3. The campaign material consists of a brief quote of materials that demonstrates a candidate’s or committee’s position as part of a person’s expression of its own views.
- B. An expenditure or electioneering communication that is coordinated with a candidate, authorized candidate committee, or political party committee is a contribution to the candidate or committee.
- C. An expenditure or electioneering communication is coordinated with a candidate, authorized candidate committee, or political party committee if one or more of the following conditions is met:
1. The expenditure or electioneering communication is made by a person in cooperation, consultation or in concert with, or at the request, suggestion or direction of, or pursuant to an express or implied agreement, arrangement or understanding with, or with the advance knowledge of, the candidate or committee;

2. The candidate or committee played any role in establishing, financing, fundraising for, or controlling the person making the expenditure or electioneering communication within the previous two (2) years, or in preparing, creating, designing, planning, authorizing, implementing, or agreeing to the expenditure or electioneering communication;
3. In the same election cycle, the person making the expenditure or electioneering communication, including any officer, director, employee, or agent of the person, is or has been authorized to raise or expend funds on behalf of the candidate or committee, or is or has been an officer of the committee, or is or has been receiving any form of compensation or reimbursement from the candidate or committee;
4. The person making the expenditure or electioneering communication, including any officer, director, employee, or agent of the person, has communicated with, advised, or counseled the candidate or authorized candidate committee on the candidate's plans, projects, or needs relating to the candidate's pursuit of election to public office at any time in the same election cycle, including any advice relating to the candidate's decision to seek election to public office;
5. The person making the expenditure or electioneering communication retains the professional services of any individual or other person also providing those services to the candidate or authorized candidate committee in connection with the candidate's pursuit of election to office in the same election cycle, including any services relating to the candidate's decision to seek election to office;
6. The person making the expenditure or electioneering communication, including any officer, director, employee, or agent of the person, has communicated or consulted at any time during the same election cycle about the candidate's plans, projects, or needs relating to the candidate's pursuit of election to public office, with:
  - a. Any officer, director, employee, or agent of a political party committee that has made or intends to make expenditures or contributions in connection with the candidate's campaign; or
  - b. Any person whose professional services have been retained by a political party committee that has made or intends to make expenditures or contributions in connection with the candidate's campaign;

7. The expenditure or electioneering communication is made by a person on the basis of information provided directly or indirectly to the person by the candidate or authorized candidate committee about the candidate's plans, projects, or needs; or
  8. The expenditure or electioneering communication is made by a person with the intention of seeking or obtaining any governmental benefit or consideration from the candidate or committee by reason of the expenditure or electioneering communication.
- D. Any person found in violation of this section may be fined in accordance with R.I. Gen. Laws Chapter 17- 25.

## **8.5 Reporting of Covered Disbursements**

- A. It is lawful for any person, not otherwise prohibited by law and not acting in coordination with any candidate, authorized candidate committee, or political party committee, to expend personally from that person's own funds a sum which is not to be repaid to him or her for any purpose not prohibited by law to support or defeat a candidate or referendum.
- B. Reports. Any independent spender that makes covered disbursements exceeding one thousand dollars (\$1,000) in the aggregate during a calendar year shall file a report with the Board of Elections. The report shall include the following information:
1. The full name, street address, telephone number, and email address of the independent spender.
    - a. An independent spender who is an individual shall also include their occupation and employer (if self-employed, the name and place of business).
    - b. An independent spender, other than an individual, shall also include:
      - (1) The full name, street address, telephone number, and email address of the treasurer or individual filing the report on behalf the independent spender;
      - (2) The full name and street address of the chief executive officer or principal officer of the independent spender;
      - (3) The type of entity. A tax-exempt organization under § 501(c) of the Internal Revenue Code of 1986 shall specify which

type of exempt organization under Internal Revenue Code § 501(c). A political committee shall include the Key Number assigned to the committee by the Board of Elections; and

(4) The URL for the independent spender's official website, if any.

2. For each covered disbursement made during the period covered by the report, the report shall provide:

a. The full name and street address of every person to whom a covered disbursement was made;

b. The total amount and date of each covered disbursement. The total amount of an independent expenditure or electioneering communication includes all design, production, and distribution costs;

c. A description of each covered disbursement made, including the type of disbursement and its purpose;

d. In the case of an independent expenditure or electioneering communication, the full name of each candidate or referendum referenced by the independent expenditure or electioneering communication and, in the case of an independent expenditure, whether such expenditure supports or opposes that candidate or referendum. An independent expenditure or electioneering communications that refers to more than one clearly identified candidate or referendum shall be apportioned among the candidates or referendums based on the proportionate value of the independent expenditure or electioneering communication to each candidate or referendum referenced; and

e. The year-to-date total of all covered disbursements made by the independent spender.

3. Affirmance. The report shall include a statement signed by the chief executive officer or principal officer of the independent spender affirming, under penalty of false statement, that the covered disbursement is not coordinated with any candidate, authorized candidate committee, or political party committee.

4. Donor disclosure. The report shall include identification of every donor of one thousand dollars (\$1,000) or more in the aggregate to the independent spender in the current election cycle. If an independent

spender has established a separate campaign-related account in accordance with § 8.6 of this Part, the report shall only identify donors of one thousand dollars (\$1,000) or more in the aggregate to the separate campaign-related account in the current election cycle.

a. For any donor who is an individual, the report shall include the individual's full name, street address, occupation and employer, the date and amount of the individual's donation(s) during the period covered by the report, and the aggregate amount of all donations received from the individual in the current election cycle.

b. For any donor other than an individual, the report shall include the person's full name, street address, the date and amount of the person's donation(s) during the period covered by the report, the aggregate amount of all donations received from the person in the current election cycle, and the type of entity.

c. A donor who is identified on a report pursuant to §§ 8.5(B)(4)(a) - (b) of this Part need not be identified on any subsequent report filed under this Part unless the donor makes additional donations to the independent spender in the current election cycle.

5. An independent spender is not required to include on the report identification of any donor for whom the following conditions are satisfied:

a. At the time the donation was made, the independent spender and the donor mutually agreed, in writing, not to use the donation for covered disbursements;

b. The independent spender deposited the donation in an account that is segregated from any account used to make covered disbursements; and

c. Within thirty (30) days after receiving the donation, the independent spender transmits to the donor a written certification from its chief financial officer or highest-ranking financial officer affirming that:

(1) The independent spender will not use the donation for covered disbursements; and

(2) The independent spender will not include information about the donor on any report filed under this section.

C. Timing of reports; period covered. An independent spender shall file an initial report under this section within seven (7) days of making covered disbursements

that exceed one thousand dollars (\$1,000) in the aggregate during a calendar year; except that, if an independent spender is required to file an initial report within thirty (30) days of an election, the report shall be filed within twenty-four (24) hours of making such covered disbursements. The initial report shall cover the period beginning on the first day of the calendar year and be complete through the date that covered disbursements exceeding one thousand dollars (\$1,000) in the aggregate are made. After an independent spender files an initial report, subsequent reports shall be filed within seven (7) days each time the independent spender makes further covered disbursements aggregating an additional one thousand dollars (\$1,000) or more with respect to the same election; except that, if an independent spender is required to file a subsequent report within thirty (30) days of an election, the report shall be filed within twenty-four (24) hours of making such covered disbursements. Each subsequent report shall cover the period beginning on the date following the last date included in the previous report filed under this section and be complete through the date that covered disbursements aggregating an additional one thousand dollars (\$1,000) or more are made.

- D. For purposes of this Part, an independent expenditure or electioneering communication is "made" on the date when the independent expenditure or electioneering communication is first publicly disseminated. A covered transfer is "made" on the date that funds are transferred or paid to the recipient.
- E. Electronic filing. All reports required under this section shall be filed electronically with the Board of Elections. All information entered on such reports shall be typewritten; except that, the affirmation required pursuant to § 8.5(B)(3) of this Part shall bear an original signature subscribed in ink.
- F. An individual who makes a covered transfer exclusively consisting of that individual's personal funds to a political committee is not required to file a report under this section.
- G. A political committee that makes both covered disbursements and contributions to or coordinated expenditures with any candidate or another political committee remains subject to limits on the amount of contributions the committee may make or receive pursuant to R.I. Gen. Laws § 17-25-10.1.
- H. A political committee that makes covered disbursements exceeding one thousand dollars (\$1,000) in the aggregate during a calendar year shall, in addition to filing reports under this section, disclose the covered disbursements in accordance with the reporting requirements of R.I. Gen. Laws § 17-25-1 *et seq.*
- I. A ballot question advocate that makes covered disbursements exceeding one thousand dollars (\$1,000) in the aggregate during a calendar year shall, in



addition to filing reports under this section, disclose the covered disbursements in accordance with the reporting requirements of R.I. Gen. Laws § 17-25.2-1 et seq.

J. Affiliated entities. For purposes of this section, two (2) or more entities, other than an exempt nonprofit as defined in R.I. Gen. Laws § 17-25-3 or an organization described in § 501(c)(3) of the Internal Revenue Code of 1986, are treated as a single entity if the entities:

1. Share the majority of members on their boards of directors;
2. Share two (2) or more officers;
3. Are owned or controlled by the same majority shareholder, shareholders, or persons;
4. Are in a parent-subsidary relationship;
5. Have bylaws so stating; or
6. In the case of two or more entities which are political committees, have the candidate or a member of the candidate's immediate family as an officer.

K. Any independent spender required to file a report under this section shall maintain and preserve all records and supporting documentation for a period of at least four (4) years from the filing date of the report.

## **8.6 Separate Campaign Related Accounts**

A. In accordance with R.I. Gen. Laws § 17-25.3-2, an independent spender may establish a separate campaign-related account to make covered disbursements. The separate campaign-related account shall be maintained separately from all other accounts controlled by the independent spender and shall consist exclusively of amounts paid directly to the account by persons other than the independent spender.

B. An independent spender that establishes a separate campaign-related account shall not make any transfer or payments from its general treasury into the separate campaign-related account.

C. An independent spender that establishes a separate campaign-related account shall not make a covered disbursement from any source other than the separate campaign-related account.

D. An independent spender that establishes a separate campaign-related account shall exclusively use amounts in the account to make covered disbursements.

Upon dissolution of a separate campaign-related account, any surplus funds in the account shall be returned to donors on a prorated basis, distributed to state or municipal governments or agencies, or donated to any organization which is a tax-exempt organization under § 501(c)(3) of the Internal Revenue Code of 1986.

- E. An independent spender that establishes a separate campaign-related account shall file reports of covered disbursements made from the account in accordance with § 8.5 of this Part.

## **8.7 Disclaimers**

- A. Video advertising. Any independent spender that makes a covered disbursement for video advertising shall include at the end of such advertising:

1. A clearly identifiable video, photographic, or similar image of the independent spender's chief executive officer or principal officer; and
2. An audio statement recorded by the independent spender's chief executive officer or principal officer in the following form: "I am (full name of CEO or principal officer), (title), of (full name of independent spender), and I approved its content."
3. If the independent spender is a tax-exempt organization under § 501(c) of the Internal Revenue Code of 1986 (other than an organization described in § 501(c)(3) of such Code), an exempt nonprofit as defined in R.I. Gen. Laws § 17-25-3, or an organization organized under § 527 of the Internal Revenue Code of 1986, the advertising shall also include a written statement in the following form: "The top five donors to the organization responsible for this advertisement are" followed by a list of the five (5) persons making the largest aggregate donations to the independent spender during the twelve (12) month period before the date of the advertising.

- B. Audio advertising. Any independent spender that makes a covered disbursement for audio advertising shall include at the end of such advertising:

1. An audio statement recorded by the independent spender's chief executive officer or principal officer in the following form: "I am (full name of CEO or principal officer), (title), of (full name of independent spender), and I approved its content."
2. If the independent spender is a tax-exempt organization under § 501(c) of the Internal Revenue Code of 1986 (other than an organization described in § 501(c)(3) of such Code), an exempt nonprofit as defined in R.I. Gen. Laws § 17-25-3, or an organization organized under § 527 of the Internal

Revenue Code of 1986, the advertising shall also include at the end of such advertising:

- a. An audio statement in the following form: "The top five donors to the organization responsible for this advertisement are" followed by a list of the five (5) persons making the largest aggregate donations to the independent spender during the twelve (12) month period before the date of the advertising; or
- b. In the case of audio advertising that is thirty (30) seconds in duration or shorter, an audio statement providing a website address that enables the recipient of the communication to view, with minimal effort and without receiving or viewing any additional material, a statement listing the names of the five (5) persons making the largest aggregate donations to the independent spender during the twelve (12) month period before the date of the advertising. In such case, the independent spender shall establish and maintain a website with such statement for the entire period during which the audio advertising continues to be publicly disseminated.

C. Written, printed, or typed communication. Any independent spender that makes a covered disbursement for a written, printed, or typed communication, including a qualified internet or digital communication which is not video advertising or audio advertising, shall include on the face of the communication:

1. The words "Paid for by" followed by the full name of the independent spender, the full name of the chief executive officer or principal officer of the independent spender, and either the independent spender's street address or the URL for the independent spender's official website.
2. If the independent spender is a tax-exempt organization under § 501(c) of the Internal Revenue Code of 1986 (other than an organization described in § 501(c)(3) of such Code), an exempt nonprofit as defined in R.I. Gen. Laws § 17-25-3, or an organization organized under § 527 of the Internal Revenue Code of 1986, the communication shall also bear on its face a statement in the following form: "The top five donors to the organization responsible for this advertisement are" followed by a list of the five (5) persons making the largest aggregate donations to the independent spender during the twelve (12) month period before the date of the communication.

D. Automated telephone calls. Any independent spender that makes a covered disbursement for automated telephone calls shall include, as part of the narrative of the telephone calls, an audio statement providing:

1. The full name of the independent spender; and
2. The full name of the chief executive officer or principal officer of the independent spender.
3. If the independent spender is a tax-exempt organization under § 501(c) of the Internal Revenue Code of 1986 (other than an organization described in § 501(c)(3) of such Code), an exempt nonprofit as defined in R.I. Gen. Laws § 17-25-3, or an organization organized under § 527 of the Internal Revenue Code of 1986, the narrative of the telephone call shall also include a statement in the following form: "The top five (5) donors to the organization responsible for this telephone call are" followed by a list of the five (5) persons making the largest aggregate donations to the independent spender during the twelve (12) month period before the date of the telephone call.

E. Determination of top five donors. The top five (5) donors to be listed in a communication or advertising pursuant to this section shall include the following persons:

1. If fewer than five (5) persons made donations to the independent spender during the twelve (12) month period before the date of the communication, only those persons making the largest aggregate donations during that twelve (12) month period shall be listed on the communication.
2. If more than five (5) persons made aggregate donations in equal amounts to the independent spender during the twelve (12) month period before the date of the communication, only the last five (5) persons to donate that amount shall be listed on the communication.
3. The top five (5) donors may be listed on the communication in any order and do not have to be listed in ascending or descending order based upon the amount of the person's donation.

F. No person shall be listed as a top donor on any statement required by this section who is not required to be identified on a covered disbursement report pursuant to § 8.5(B)(4) of this Part.

G. For purposes of this Section, the "date" of a communication or advertising is the date that the communication or advertising is first publicly disseminated.

H. Clear and conspicuous manner requirement. All disclaimers required by this section shall be presented in a clear and conspicuous manner in order to give the recipient of the communication adequate notice of the identity of the person that paid for, and where required, authorized the communication. For purposes of this subsection, a disclaimer is not presented in a clear and conspicuous manner if it is difficult to read or hear, or if the placement is easily overlooked.

1. Accommodation for technological impossibility. In the case of any qualified internet or digital communication which is disseminated through a medium in which the provision of all of the information specified in this section is not technologically possible, the communication shall, in a clear and conspicuous manner:

a. State the full name of the independent spender who paid for the communication; and

b. Provide a means for the recipient of the communication to immediately obtain the remainder of the information required under this section with minimal effort and without receiving or viewing any additional material other than such required information.

2. Safe harbor for determining clear and conspicuous manner. A disclaimer required by this section shall be considered to be made in a clear and conspicuous manner, as required by this Section, if the communication meets the following requirements:

a. In the case of the statement required by §8.7(A)(3) of this Part for video advertising, the statement:

(1) Appears in letters at least as large as the majority of the text in the communication, for a period of at least four (4) seconds;

(2) Is contained in a printed box set apart from the other contents of the communication; and

(3) Is presented with a reasonable degree of color contrast between the background and message text.

b. In the case of an audio statement required for video advertising under § 8.7(A)(2) of this Part, audio advertising under § 8.7(B) of this Part, or automated telephone calls under § 8.7(D) of this Part, the statement:

(1) Is spoken in a clearly audible and intelligible manner at the end of the communication; and

(2) Lasts for at least four (4) seconds.

c. In the case of the statements required by § 8.7(C) of this Part for a written, printed, or typed communication, the statements:

(1) Appear in letters at least as large as the majority of the text in the communication;

(2) Are contained in a printed box set apart from the other contents of the communication; and

(3) Are presented with a reasonable degree of color contrast between the background and text of the statements.

I. Communications not covered. The following communications are not subject to the requirements of this section:

1. Any editorial, news story, or commentary published in a newspaper, magazine, or journal on its own behalf and upon its own responsibility and for which it does not charge or receive any compensation;

2. Small-item campaign paraphernalia such as pins, buttons, badges, emblems, hats, bumper stickers, and other similar items;

3. Signs and banners with a surface area of not more than thirty-two (32) square feet;

4. A communication that constitutes or solely promotes a debate or similar forum made by or on behalf of the person sponsoring the debate or forum, if:

a. At least two (2) candidates seeking nomination or election to the same public office were invited to participate in the debate or forum and the structure of the debate or forum does not favor or advance one candidate over another; or

b. A ballot question advocate and at least one opponent, or their respective representatives, were invited to participate in the debate or forum in equal numbers and the structure of the debate or forum does not favor or advance one position over another; or

5. A membership communication.

## **8.8 Fines; Contesting Fines; Waivers**

- A. The Board of Elections shall send a notice of noncompliance, by certified mail, to any person who fails to comply with the provisions of R.I. Gen. Laws § 17-25.3-1 et seq. A person who has been sent a notice of noncompliance and fails to correct the violation within seven (7) days of receipt of the notice may be assessed a fine by the Board of Elections pursuant to R.I. Gen. Laws § 17-25.3-4.
- B. When the Board of Elections assesses a person with a fine for failure to comply with the provisions of R.I. Gen. Laws § 17-25.3-1 et seq., and the person is subsequently notified by certified mail of the imposition of the fine, the person may appeal the fine on grounds that the fine was incorrectly imposed within thirty (30) days of receipt of the notice of non-compliance or, in the event that the notice is not claimed, within forty-five (45) days of the date on which the notice was sent. A failure to file a timely appeal shall be deemed an admission. Requests for appeals shall be in accordance with the Rules of Practice and Procedure in Adjudicatory Hearings before the Board of Elections.
- C. A person seeking a waiver of fines imposed under R.I. Gen. Laws § 17-25.3-4 may request a waiver by the Board of Elections for good cause shown within sixty (60) days of receipt of the notice of non-compliance or, if the notice is not claimed, within seventy-five (75) days of the date on which the notice was sent. All waiver requests shall be submitted to the Board of Elections either in writing or electronically and contain the person's name, street address, a statement specifying the fines to be waived, and cause for the noncompliance.
- D. The Board of Elections authorizes its Supervisory Staff to administratively review and act upon all waiver requests, including setting conditions for any full or partial waivers, where the amount of fines does not exceed five thousand dollars (\$5,000). Waiver requests where the amount of fines exceeds five thousand dollars (\$5,000) will be submitted to the Board of Elections for public hearing, provided that the Board of Elections hereby authorizes its legal counsel to take whatever action is available under the law to collect any outstanding penalties and, with the consent of the Supervisory Staff, to set conditions for any full or partial waivers.
- E. A person may appeal a decision by the Supervisory Staff on any waiver request for a de novo public hearing to the Board of Elections within forty-five (45) days of the date of notice of the decision, which shall contain a statement of the person's right of appeal. All requests for a hearing shall be in writing and in compliance with the Rules of Practice and Procedure in Adjudicatory Hearings before the Rhode Island Board of Elections.

F. Nothing in this section shall prohibit the Board of Elections from acting on its own motion to waive any fines imposed.

## **8.9 Implementation**

The Board of Elections may promulgate procedures and forms necessary to implement the requirements of this Part.