

MASSACHUSETTS

CAMPAIGN FINANCE AND BALLOT MEASURE GUIDE

These resources are current as of 9/20/16. We do our best to periodically update these resources and welcome any comments or questions regarding new developments in the law. Please email us at advocacy@afj.org.

This guide summarizes key aspects of laws and regulations governing campaign finance on the state level. The laws discussed in this publication apply to election activities surround candidates for statewide office. It is not intended to provide legal advice or to serve as a substitute for legal advice.

In some jurisdictions, city and/or county regulations may also apply to certain political activities. Check with the appropriate local jurisdiction before undertaking any activity.

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CONTRIBUTION LIMITS AND SOURCE RESTRICTIONS

Contribution limits are all per calendar year. Limits are set forth at M.G.L. ch. 55, §§ 6, 6A, 6B, 7, 7A, 8.

From (Left) To (Top)	Candidate Committee (All)	Traditional PAC	People's Committee ¹	Independent Expenditure PAC	Party Committee ²	Ballot Question Committee
Individuals³	\$1,000	\$500	\$165	No Limit	\$5,000	No Limit
Non-Profit Organization⁴	\$500	\$500	Prohibited	No Limit	\$5,000	No Limit
Corporations	Prohibited	Prohibited	Prohibited	No Limit	Prohibited	No Limit
Labor Organization	\$500	\$500	Prohibited	No Limit	\$5,000	No Limit
Lobbyist	\$200	\$200	\$165	No Limit	\$200	No Limit
PAC	\$500 ⁵	\$500	Prohibited	No Limit	\$5,000	No Limit
People's Committee	\$500	\$500	Prohibited	No Limit	\$5,000	No Limit
Independent Expenditure PAC	Prohibited	Prohibited	Prohibited	No Limit	Prohibited	No Limit
Ballot Question Committee	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	No Limit

¹ The contribution limits for People's Committees are adjusted biennially - \$165 is in effect for 2016 and 2017. Aggregate limits on amounts candidates may receive from PACs (described below) *do not* apply to contributions received from People's Committees.

² Aggregate limit is to particular party's state *and* local committees *combined*, e.g., \$5,000 to *all* of a party's nonfederal committees at whatever level.

³ Individuals under 18 have an aggregate contribution limit of \$25 per year.

⁴ A non-profit organization, including if incorporated, may contribute subject to the usual limits *only* if it does not receive *any* funds from businesses or professional corporations, *and* does not solicit or receive funds for any political purposes.

⁵ The amount of aggregate contributions a candidate for the following offices may lawfully accept from PACs per election are subject to the following limits:

- Governor, including contributions jointly with a candidate for Lt. Governor - \$150,000;
- Lt. Governor - \$31,250;
- Attorney General - \$62,500;
- State Secretary, State Treasurer and State Auditor - \$37,500;
- State Senator, County Commissioner, Governor's Councillor, District Attorney, Clerk of Courts, Register of Probate, Registrar of Deeds or any other county officer - \$18,750;
- State Representative - \$7,500.

Incidental Threshold: A non-profit organization, including if incorporated, that (1) does not receive *any* funds from businesses or professional corporations, *and* (2)

does not solicit or receive funds for any political purpose, may make “incidental” political contributions and expenditures that do not exceed *the lesser* of \$15,000 or 10% of the organization’s gross revenues for the previous calendar year that are not subject to the usual contribution limits apply. After that threshold is spent, the usual limits begin to apply as if the organization had not yet contributed that year. If an organization exceeds its incidental threshold, it must also file Form CPF-111 to report its incidental threshold year and its spending. See [OCPE Interpretive Bulletin 88-01](#).

In the year *after* a qualifying organization exceeds the “incidental” threshold, *all* of the organization’s contributions remain subject to the usual per-recipient limits. Those limits continue to apply to all contributions in each subsequent year until the first year *after* a year when the organization’s political expenditures (contributions and independent expenditures combined) do not exceed the \$15,000/10% incidental threshold.

For example, consider Organization X, with an annual budget normally over \$150,000. In 2015, Org. X made no political contributions or independent expenditures. In 2016, Org. X’s first political spending consisted of a \$12,000 contribution to candidate Y, followed by an independent expenditure of \$3,001, for a total of \$15,001, exceeding the incidental threshold. After that, *all* of its other 2016 contributions must adhere to the usual contribution limits. During 2017, *all* Org. X contributions must continue to comply with the usual contribution limits. If its *total* contributions *and* independent expenditures combined in 2017 do not exceed \$15,000, then in 2018 it may again make contributions not subject to the usual limits until it exceeds the \$15,000 incidental threshold. But if its total contributions and independent expenditure in 2017 *do* exceed \$15,000, then in 2018 all of its contributions will remain subject to the usual limits.

Although a non-profit organization that has accepted *any* business entity corporate contributions are excluded from this exception, it may again qualify for the exception if it spends *all* the funds in the account that accepted such corporate contributions and opens a new account that has *never* received such corporate contributions.

COMMUNICATIONS

Independent Expenditures: An “independent expenditure” is an expenditure expressly advocating the election or defeat of a clearly identified candidate that is made without the cooperation, consultation, request or suggestion of any candidate, a PAC created on behalf of the candidate, or an agent of the candidate. M.G.L. ch. 55 § 1.

Electioneering Communications: An “electioneering communications” is any *non-express-advocacy* broadcast, mail, print, paid internet advertising or billboard communication (*not* phone, unpaid-Internet or email) that (1) refers to a clearly

identified candidate, and (2) is publicly distributed to at least 100 recipients *within 90 days* of an election. M.G.L. ch. 55 § 1.

Member Communications Exception: “Communications from a membership organization ... to its members and their families on any subject shall not be deemed to be a contribution or expenditure.” M.G.L. c. 55, s. 1. The touchstone for determining membership is that “[a] person may be considered a ‘member’ if the organization requires *some affirmative action* by the person ... in order to become a member.” 970 CMR 2.02. See also [AO-02-23](#), [AO-97-09](#).

Disclaimers: Disclaimers for independent expenditures and electioneering communications are required for “paid radio, television, and internet advertising,” as well as print advertisements in a newspaper, magazine, or other publication larger than 15 square inches. M.G.L. ch. 55 § 18G; 970 CMR 2.20(3). There is *no* disclaimer requirement for telephone calls, mailings, emails, unpaid internet, billboards, texts, yard signs, canvassing material, and member communications. 970 CMR 2.20(4).

In a radio or television ad paid for by a nonprofit organization, union, or corporation, the following statement must be spoken *by the organization’s chief executive*: M.G.L. ch. 55 § 18G.

“I am [name], the [office held] of [name of organization], and [name of organization] approves and paid for this message.”

During the spoken disclaimer, the television ad must either show a full-screen video of the officer making the statement, or a full-screen photograph of the officer. See [OCPF Interpretive Bulletin 10-01](#) at p. 2. Radio ad disclaimers must be spoken at the same audio level as the rest of the ad. *Id.*

For Internet ads and printed advertisements, “Paid for by [name of organization]” must be printed, either in a box, in a separate section, or in another manner that makes the disclaimer conspicuous. It must have at least the same degree of color contrast as the contrast between the background color and the color of the largest text in the communication. *Id.* Internet ads, including videos that are smaller than 15% of a standard screen (1366x768), are exempt from disclaimer requirements. *Id.* at 3.

Paid television, internet advertising, and newspaper and magazine advertisements larger than 15 square inches are also subject to two additional requirements:

1. They must include the following written statement at the bottom: “For more information, go to www.ocpf.us.”; and
2. They must list the five “Top Contributors” (if there are that many) who contributed more than \$5,000 during the preceding 12-month period. If

more one donor is tied for fifth, they must list only the most recent tied contributor. Contributors may be listed in any order.

M.G.L. ch. 55, § 18G; 970 CMR 2.20. These two requirements *do not apply* to radio, mailings, yard signs, billboard, door hangers, SMS texts, emails, or live or recorded telephone messages.

So, in summary, disclaimers are required as follows:

	Electioneering Communication	Independent Expenditure
Telephones	No	No
Internet	No, unless paid ads	No, unless paid ads
Email	No	No
Television	Yes	Yes
Radio	Yes, to a limited extent.	Yes, to a limited extent.
Print	No, unless a print ad larger than 15 sq. in.	No, unless a print ad larger than 15 sq. in.
Billboards	No	No
Handbills	No	No
Mail	No	No

COORDINATION

In 2016, Massachusetts introduced new coordination rules.

A communication is coordinated if made under any of the following circumstances (970 CMR 2.21):

- **General Coordination Prior to Communication.** The expenditure is made at the request, suggestion, or direction of, or in cooperation, arrangement, consultation, concert or coordination with, the candidate or committee on whose behalf, or for whose benefit, the expenditure is made.

- Involvement in the Specifics of the Communication. The communication is created, produced, or disseminated after discussion or consultation between the creator, producer, or distributor of the communication, or the person or entity paying for that communication, and the candidate or committee benefited by the communication, regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of the communication.

Presumption of Coordination. There is also a *presumption* that an expenditure funding a communication would be a coordinated communication under any of the following circumstances. This means the organization bears the burden to *disprove* coordination in these circumstances, contrary to the normal situation where the state has the burden to *prove* it:

- Expenditures made through an agent. The expenditure is made by or through an agent of the candidate or committee in the course of the agent's involvement in the current campaign.
- Common consultants. The person or entity making the expenditure retains the services of a person or entity such as a political, media or legal consultant, or polling firm, that *concurrently* provides either the candidate or the committee with professional services related to strategy for the current campaign. The presumption may be rebutted by evidence demonstrating that the services were provided consistent with a previously established *written firewall policy* that prohibits the flow of strategic non-public information to the person or entity making the expenditure.
- Former staff. The person or entity making the expenditure employs a staff member who previously worked in a senior position or advisory capacity on the candidate's or officeholder's staff *within ninety days* prior to the date of the election in which the expenditure is made. The presumption may be rebutted by evidence demonstrating that the services were provided consistent with a written firewall policy that prohibits the flow of strategic non-public information to the person or entity making the expenditure.
- Campaign information. The expenditure is based on information about the candidate's or committee's campaign needs or plans that the candidate or committee provided to the person or entity making the expenditure, such as information concerning campaign messaging, planned expenditures or polling data during the current campaign.
- Fundraising. In the course of the current campaign, the candidate who benefits from the expenditure solicits funds for or appears as a speaker or draw at a fundraiser held by the person or entity making the expenditure.
- Candidate's family. The person making the expenditure is a member of the candidate's immediate family, or if the expenditure is made by an entity, the entity making the expenditure is established, run, staffed in a leadership role, or principally funded by an individual who is the candidate's immediate family member.

- Republication. A communication relating to a candidate republishes, in whole or in part, a communication that is posted on the candidate's Internet or social media site. This presumption does not apply, however, to the use of photographs taken from the candidate's Internet or social media site, provided there is no discussion with the candidate or committee prior to the expenditure relating to the details of the expenditure.
- Advance notification. The person or entity making a communication provides advance notification to the candidate or committee of the planned expenditure.

Firewall Requirements. An expenditure is *not* considered to be coordinated if made consistent with a written firewall policy that prohibits the flow of strategic non-public information between the individual or entity and the campaign:

- The firewall policy must designate specific staff who will solely service the candidate, and specific staff who will solely service persons making independent expenditures or electioneering communications;
- The firewall policy must provide for physical and technological separations to ensure that strategic non-public information does not flow between the person or entity and the candidate or committee; and
- The firewall policy must be *written* and distributed to all relevant employees, consultants, and clients affected by the policy.

Other Exceptions to Presumption of Coordination. The following are also not, , presumed to be coordinated, absent other factors indicating coordination:

- Photographs. The person or entity making the expenditure uses a photograph of the candidate, provided there is no discussion with the candidate or committee prior to the expenditure relating to the details of the expenditure.
- Prior contribution. The person or entity making the expenditure has previously made a contribution to the candidate or committee.
- Informed after the fact. A person or entity informs a candidate or committee after the publication or airing of a communication that the person or entity has paid for the communication, if there is no other exchange of information, not otherwise available to the public, relating to the details of the expenditure, and no discussion or exchange of information relating to any future expenditure that may be made by the person or entity.
- Candidate or committee forwards the communication after the fact. The candidate or committee learns of the communication after the fact and then forwards the communication to potential supporters.
- Hyperlink. The communication includes a hyperlink to the Internet website or a social media page of a candidate or committee, provided there is no discussion with the candidate or committee regarding the planned use of the hyperlink.

Ballot Question-Related Coordinated Expenditures. A communication made to support a ballot question must be disclosed as an in-kind contribution to the ballot question committee supporting the question by the individual or entity paying for the communication if the individual or entity coordinated the communication with the ballot question committee.

Rebutting the Presumption. A person or entity that has made an expenditure that is presumptively coordinated may seek to rebut the presumption by submitting evidence to OCPF demonstrating that the expenditure was independent. Relevant facts that may be submitted include the expenditure maker's history of making independent expenditures or electioneering communications, as well as facts relating to the timing, content and geographic distribution of a communication.

REGISTRATION AND REPORTING REQUIREMENTS

Types of Political Committees. Massachusetts defines a political committee as “any committee, association, organization or other group . . . which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates.” M.G.L. ch. 55, § 1.

- PAC: A political committee focused on candidate contributions is considered a “political action committee” or PAC. There is no minimum threshold of spending that triggers PAC status. A PAC must file a Statement of Organization ([CPF 101 PC](#)) with the Office of Campaign and Political Finance (“OCPF”) *prior* to accepting contributions and making expenditures.
- People’s Committee: A special category of PAC exists for entities funded solely by small contributions. The advantage of a People’s Committee is that it may contribute to candidates who have reached their aggregate limits on contributions from PACs. A “people’s committee” is a PAC that:
 - Receives contributions only from individuals;
 - Accepts no more than \$165 per year from any donor;
 - Contributes to five or more candidates (ever); *and*
 - Has been in existence for at least six months.

Once the above conditions are met, a PAC can change its registration to become a People’s Committee by filing a Declaration of Status ([CPF 101 DS-1](#)).

Note: An organization may create and control both a regular PAC and a People’s Committee. However, the two committees will be treated as “affiliated” and subject to a single outgoing contribution limit. For example, if in a given year the PAC contributes \$300 to a candidate, the People’s Committee may only contribute \$200 to that candidate during that year.

- Independent Expenditure PAC: A political committee or other entity that *receives* contributions to make independent expenditures is considered an Independent Expenditure PAC (“IE PAC”). M.G.L. ch. 55, § 18A(d). An organization that does not *receive* money specifically for independent expenditures is not an IE PAC, although it will still be subject to rules regarding disclosure of its spending for independent expenditures and regarding disclaimers.

An IE PAC must register by filing a Statement of Organization for IE PACs using Form [CPF 101 IE PAC](#). The name of an IE PAC must include the words “independent expenditure political action committee” and use a name which clearly identifies “the economic or other special interest . . . of a majority of its contributors.” M.G.L. ch. 55, § 5B; 970 CMR 2.17(4)(c).

- Ballot Question Committee: See description in ballot measure section below.

Federal and Out-of-State PACs: Federal or out-of-state PACs that wish to support or oppose Massachusetts candidates must organize a separate Massachusetts PAC with OCPF. Once organized, the Massachusetts PAC must ensure that all of its fundraising activities comply with the Massachusetts campaign finance law. Funds raised must be kept in a separate bank account established for the Massachusetts PAC. No transfers may be made from the federal PAC or out-of-state PAC to the Massachusetts PAC.

Reporting:

- PAC Reporting:
 - Initial Report: An initial campaign finance report (Form [CPF D102](#)) must be filed by PACs with OCPF within three days of a committee organizing. Any receipts or expenditures that occurred in the PAC’s first three days must be disclosed. The report must be [e-filed](#) using the committee identification number and password provided by OCPF after initial registration.
 - Semi-Monthly Reports: A PAC must report *receipts* by e-filing directly with OCPF twice each month. (*PAC expenditures* are disclosed on depository reports filed twice monthly by the PAC’s bank; see below.) The PAC must disclose names and residential addresses of everyone who has contributed more than \$50 in a calendar year; aggregate contributions of \$50 or less may be included in one lump-sum total. Occupation and employer names are required for contributors who contribute at least \$200 in one calendar year. Deposit reports must be submitted by the 5th day of the month (covering the 16th through end of prior month) and the 20th day of the month (covering the 1st through 15th).

- Monthly Subvendor Reports: If a committee makes payments to a vendor that aggregate \$5,000 or more in a calendar year, the PAC must disclose not only the vendor, but also the full name and address of each subvendor receiving payments aggregating more than \$500 during a calendar year from the vendor. Vendors are responsible for reporting this information to the PAC, and the PAC is required to e-file the expenditure information to OCPF by the 5th of each month covering the prior month. See *id.* at § 18D.
- Year-End Reports: A year-end report must be filed on Form [CPF D102](#) by January 20th each year, providing receipt and expenditure information from the day following the ending date of the last-filed Form CPF D102 through December 31st of the previous year. Most of this information will be duplicative of information filed on the semi-monthly reports.
- Independent Expenditure Reporting: Massachusetts requires two kinds of reporting for independent expenditures: 1) event-based reports that are triggered each time aggregate independent expenditures exceed \$250; and 2) year-end reports covering all activity conducted by an IE PAC during a calendar year.
 - Event-based IE Reports: Massachusetts requires that all individuals, entities, PACs, and IE PACs making independent expenditures file a report when their independent expenditures exceed \$250 in the aggregate during any calendar year. M.G.L. ch. 55, § 18A(a); (b). IE Reports and IE PAC Reports must be filed electronically [here](#).
 - IE and IE PAC reports must be filed within 7 days when an independent expenditure is distributed before the 10th day preceding any election;
 - Between the 10th day before an election and 24 hours before the election, IE and IE PAC reports must be filed within 24 hours.
 - A new report is required each time the \$250 threshold is met.
 - If a communication supports or opposes more than one candidate, the cost must be apportioned based on the respective benefit to each candidate.

Note: For IE PACs, all contributors of \$50 or more to the IE PAC during the current calendar year must be identified by name and address; contributors of \$200 or more in the aggregate must include occupation and employer.

- Year-End Reports for IE PACs: IE PACs must file year-end reports using Form [CPF D102](#) on or before January 20th of each year, covering the entire prior calendar year. The year-end report largely

duplicates the information disclosed on the event-based independent expenditure reports, and includes activity that occurred after an election and fundraising conducted in preparation of the upcoming year's election.

- Subvendor Reports: IE PACs are also required to file subvendor reports, described earlier.
- Electioneering Communications: All individuals and entities not registered as political committees that make electioneering communications must file an Electioneering Communications Report (known as an "18F report"), when electioneering communications exceed \$250 in the aggregate during any calendar year. M.G.L. ch. 55, § 18F.
 - Electioneering reports must be filed within seven days after an electioneering communication is made before the seventh day preceding any election.
 - During the final seven days before an election, such reports must be filed within 48 hours for electioneering communications that exceed \$1,000. *Id.*
 - A new report is required each time the relevant threshold is met. Reports must be filed electronically [here](#). Reports must disclose the name and address of any contributor who provides \$250 or more to make electioneering communications.
- Bank Depositories of PACs: Massachusetts has strict (and unique) requirements for the depositories (banks) used by political committees that make contributions to candidates PACs and people's committees. M.G.L. ch. 55, § 19. PACs and People's Committees – *but not IE PACs or Ballot Question Committees* – must submit an Appointment of Depository Bank ([CPF D103](#)) *before* the committee raises or spends any money, and not later than the third business day after creating an account. Both the committee and an authorized employee from the financial institution are required to sign the Appointment form. This may be filed at the same time as the Statement of Organization.

The PAC's bank must have a branch office in the state. All financial activity for the committee must go through the designated account, and that account must be used exclusively for PAC transactions. Contributions must be deposited within seven days of receipt by the PAC. Expenditures over \$100 must be made by check or debit card from the depository account, with a check including the committee's name and state identification number, and the "memo" line indicating the specific purpose of the expenditure. For debit transactions, a committee must append its bank report to add the purpose information *within seven days* of the depository's deadline.

The depository must itself file aggregate contribution and expenditure information directly with OCPF twice a month, on the 20th (covering the 1st

through 15th of that month) and the 5th of the following month (covering the 16th through end of month). The bank's report must include: (1) a statement of the balance as of the preceding first day or fifteenth day of the month; (2) a summary of all credits to the account since the last statement; and (3) a list of all the debits to the account since the last statement. The bank must also report, to the extent such information is available, the names and addresses of the payees, the amount of each check, and the purposes for which the money was paid as indicated on the check. *Id.* at § 19(d). It is useful to determine a bank's familiarity with this process before selecting the institution where the PAC will maintain its account. OCPF's instructions for banks are available at <http://files.ocpf.us/pdf/legaldocs/M-90-04-2011.pdf>.

A PAC or People's Committee must each have its own separate account and file a separate Appointment form.

ENFORCEMENT AND PENALTIES

- A committee Treasurer is *personally* liable for a \$25 per day fine for any statement or report filed late, with a maximum penalty of \$5,000 for any one report, statement or affidavit. M.G.L. ch. 55, § 3.
 - The director of OCPF may waive all or part of any civil penalty for good cause.
- Transfer of funds from a federal PAC to a Massachusetts PAC, or failure to designate a depository, may be punished by a fine up to \$500, and imprisonment up to six months. § 7; § 19.
- Unlawful business corporation contributions may be punished by a fine up to \$50,000. Any officer, director or agent of the corporation who violates or authorizes a violation, and any person who violates or in any way knowingly aids or abets a violation, is subject to a fine up to \$10,000 and imprisonment up to one year. § 8.
- Failure to provide the true name and address of a donor, or failure of a committee's agent to report financial activity to the committee's treasurer, may be punished by a fine up to \$1,000, and imprisonment up to one year. § 10, § 23.
- Failure to file independent expenditure reports or electioneering communications reports may be punished by a fine up to \$5,000 and imprisonment in a house of correction for up to one year. § 18A; 18F.
- Any person or corporation, association, organization or other group of persons that fails to report expenditures in support or against a ballot question may be punished by a fine up to \$50,000 and any of its officers, directors or agents who violates or authorizes any such violation, and any person who violates or knowingly aids or abets a violation of any provision, is subject to a fine up to \$10,000 and imprisonment up to one year. § 22.

BALLOT MEASURES

State Ballot Measure Committee: A ballot measure committee (BQC) is a type of political committee that receives or expends money or other things of value for the purpose of supporting or opposing a charter change, initiative, referendum question, constitutional amendment or other ballot question. M.G.L. ch. 55, § 1.

Registration: A BQC must file a Statement of Organization ([CPF 101 BQ](#)) with OCPF *prior* to accepting contributions and making expenditures. M.G.L. ch. 55, § 5.

The name of a BQC must clearly identify the economic or other special interest of a majority of its contributors, and, if a majority of its contributors share a common employer, must clearly identify that employer. If neither is identifiable, then the committee must use a name that clearly identifies the economic or other special interest of a majority of its organizers, and, if a majority of its organizers share a common employer, identifies that employer.

Reporting: BQCs report using [Form CPF 102 BQ](#).

- Initial Reports: Filed along with the BQC's Statement of Organization to disclose any activity since the last state election.
- 60th Day Prior to the Election Report: Filed by the 60th day prior to the election.
- 5th and 20th Day of the Month Reports: Filed by the 5th and 20th day of each month, *including November 20*. A committee may dissolve as of the Nov. 20 report if it has no remaining assets or liabilities.
- Year End: Due January 20, regardless of whether the respective questions were on the ballot in the most recent election.
- Late Contributions (72-Hour Reports): Statewide ballot question committees that receive and deposit contributions of \$500 or more *within 18 days* of an election must file electronic disclosure reports with OCPF within 72 hours. For more information on late contribution reports, see [OCPF Interpretive Bulletin IB-10-02](#).

Ballot Question-Related Coordinated Expenditures. A person that makes a communication to support a ballot question by an individual or entity coordinating the communication with the ballot question committee must disclose it as an in-kind contribution.

Disclaimers. Massachusetts "paid for by" and "top contributor" disclaimer requirements, described earlier, apply to ballot question advertisements transmitted through paid television, internet advertising, and print advertising appearing larger than 15 square inches. M.G.L. ch. 55, § 18G; 970 CMR 2.20.

CONTACT INFORMATION FOR STATE AND LOCAL AGENCIES

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FOR FURTHER ASSISTANCE

For assistance regarding these resources or for more information about federal law, please contact our attorney one-on-one counseling service:

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