

BANGOR DAILY NEWS

Lawsuit seeks to halt Maine's matching campaign funds law

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AUGUSTA, Maine — Critics of Maine's public campaign financing program are asking the courts to suspend part of the law in a move that, if successful, could have significant impacts on this November's races for governor and the State House.

Bolstered by recent court victories against other states with similar laws, two individuals and two conservative groups filed a lawsuit in U.S. District Court on Thursday challenging the constitutionality of a key portion of the Maine Clean Election Act.

In particular, the plaintiffs are seeking to suspend the part of Maine's law that allows publicly financed candidates to receive additional taxpayer money — on top of what they already received — when they are outspent by their opponents.

“It has a chilling effect on a candidate's free speech when he knows that every time he spends money he is putting more money in the campaign chest of his opponent,” said Josiah Neeley, an attorney with the James Madison Center for Free Speech in Indiana.

The lawsuit makes Maine the latest front in a national legal battle widely expected to end up in front of the U.S. Supreme Court. But the timing of the filing could have major implications on the 2010 governor's race in Maine.

If approved by a judge, the request would severely limit the amount of campaign money available to Democratic gubernatorial candidate Libby Mitchell and potentially hundreds of publicly financed candidates for the Legislature.

“This lawsuit is going to cause a lot of concern and disruption for candidates,” said Jonathan Wayne, executive director of the Maine Ethics Commission, which administers the public campaign financing system. “The plaintiffs are trying to change the rules of the game with just three months to go before the general election.”

The lawsuit also challenges the contribution limit of \$750 per donor for privately funded candidates running for governor. The limit likewise infringes on free speech rights, Neeley said.

Approved by voters in a 1996 statewide referendum, the Maine Clean Election Act is intended to reduce the influence of special interest groups and individual contributors in political campaigns.

Publicly financed candidates agree to spending limits and to not accept private contributions. In return, the candidates receive an initial allotment of money and the promise of additional funds, up to a point, to match the spending of their privately financed opponent.

In Mitchell's case, she is eligible for up to \$1.2 million, which includes \$600,000 in matching funds, for the general election.

Supporters claim the additional subsidies ensure a level playing field for publicly financed candidates. But Rep. Andre Cushing, a Hampden Republican who is a plaintiff in the suit, and other opponents contend the program has the opposite effect.

Privately financed candidates or outside groups may actually curtail their spending to avoid triggering more matching funds to their opponent — which Cushing and the other plaintiffs argue is an infringement of their First Amendment rights.

Cushing gave the hypothetical example of a “clean elections” candidate or an outside group running an attack ad against a privately financed candidate. But by purchasing an ad to respond to the attack, the privately funded candidate could end up giving his or her opponent more money with which to purchase additional ads, Cushing said.

“I just feel like the system, and particularly the matching funds program, tends to favor the publicly financed candidates,” said Cushing, who privately financed his campaign in 2008 and this year.

Defenders of the Maine Clean Election Act counter that the plaintiffs have no evidence matching funds have had a chilling effect on free speech in Maine.

In fact, Alison Smith with Maine Citizens for Clean Elections pointed out that there is plenty of money flowing in this year's gubernatorial race, which was already the most expensive in state history as of the June 8 primary.

“We have had 10 years of clean elections in this state that completely belie the allegations,” Smith said. “We have a very successful, popular system.”

Instead, Smith said she believes the Maine lawsuit is part of a “coordinated national strategy to undermine campaign finance laws all across the country.”

Smith and Maine Ethics Commission officials have been on high alert for months as they watched states with similar programs face legal challenges.

In June, the U.S. Supreme Court halted — at least temporarily — Arizona's matching funds program for publicly financed candidates, likely signaling that the high court plans to take a closer look at the Arizona law.

Federal courts have since struck down matching funds programs in Connecticut and Florida. The appellate court's decision in the latter case effectively turned off the spigot of taxpayer dollars for one of Florida's major Republican gubernatorial candidates, who is facing a wealthy, self-financed opponent.

Now, the same thing could happen in Maine to Mitchell, who is the only publicly financed candidate left among the five remaining gubernatorial hopefuls.

Mitchell spokesman David Loughran declined to speculate on what would happen if the judge suspended Maine's matching funds program.

"Libby chose to run as a clean elections candidate based on a set of laws that are still in place today and have been found to be constitutional," Loughran said. "We would hope that the court allows us to continue to operate in that way."

The lawsuit has been assigned to the same judge — D. Brock Hornby — who upheld Maine's Clean Election Act during the last challenge in 2000.

But David Crocker, director of the Center for Constitutional Government at the Maine Heritage Policy Center, said much has changed in election law since 2000.

"Really, it's time for a reassessment of that case in light of recent developments," Crocker said.