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Burden returns to people to guarantee clean elections

By David Farmer

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The U.S. Supreme Court may have delivered the death blow, but Maine's clean election system was already reeling from abuse and legislative tinkering.

In Arizona Free Enterprise Club's Freedom Club PAC v. Bennett, the court said that Maine's clean election law could not provide matching dollars to publicly funded candidates.

Under Maine's law, candidates for the Legislature and governor could agree to abide by spending limits. If they are able to attract enough qualifying $5 contributions, then they are entitled to receive public financing for their campaigns and matching dollars if their opponents or outside groups spend beyond the spending cap.

The U.S. Supreme Court found that the matching money acts as an unconstitutional restriction on free speech. A case specific to Maine was similarly decided last week.

It's contorted logic, which makes little sense to me. But Maine's law must change.

The Maine Clean Election Act was already under a near constant assault that had left it weakened and called into question its effectiveness.

Last October, the Republican State Leadership Committee, a Virginia-based political action committee, spent nearly $400,000 on attack ads targeting five Democratic state senators. The PAC failed to report its spending quickly enough as required by law, slowing the distribution of matching funds.

The illegal activity earned the PAC the largest fine in the history of the Maine Ethics Commission — $26,000.

For an organization willing to spend $400,000, another $26,000 could be considered just the cost of doing business. Or the price to pay for spending big money on what are generally local elections.

The illegal activity certainly had an effect on the campaigns in question, and brought a new level of both outside spending and nastiness to Maine elections.

Given the threat of not having the money to respond — and the seeming wiliness of well-funded groups to simply pay fines after an election has been settled — participating in public financing becomes a big risk for candidates.

Then, this spring, Gov. Paul LePage led the successful effort to double the contribution limit for gubernatorial candidates to $1,500, making it easier for traditionally financed candidates to raise money and further putting clean election candidates at a disadvantage.

Finally, there is the simple fact that during its existence, no publicly financed candidate for governor has won the Blaine House.

Despite all the silly rhetoric about public financing being "welfare for politicians," Maine's system has opened the door to candidates who might have been reluctant to become involved in politics by removing the burden of raising money.

And since it was passed as a citizen's initiative in 1996, it has remained popular with voters and grown overwhelmingly popular with candidates for the Legislature, regardless of their political affiliation.

Public financing is about leveling the playing field and trying to take money out of politics and government. That's a worthwhile investment, if it could only work. As it's been said before, money is like water, it always finds a way in.

But I believe it might have also had the unintended effect of changing who candidates speak to and how they run their campaign.

Thursday, the Maine Commission on Governmental Ethics and Election Practices will hold a public hearing on how the system could be changed to meet the standard imposed by the courts.

The ideas so far range from a hybrid system that allows a combination of public financing and private fundraising, a new matching-fund system that would match small contributions instead of spending by opponents or a system with only an initial payment and no opportunity to spend more.

All three, which are used only as examples, have flaws and would likely make public financing less attractive.

While there are a number of committed activists willing to work out the details of a new clean election law that will pass through the needle's eye created by the Supreme Court, perhaps the best path forward would require instant disclosure of all political spending and fundraising, including the source of funding, and substantial fines for any material violations.

At its beginning, it was Maine voters who took the initiative to limit the power of money in politics. Now there is renewed onus upon them — and the media — to pay attention to who's spending money and what they're buying.

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