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Clean Elections can surive, but leadership PACS shouldn't

By Doug Rooks
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Can the Clean Election Act be saved? The answer is yes, but not without a lot of pulling and tugging, and not without some significant changes that shape the law closer to what voters actually want.

The Clean Election Act, a public-financing law that was then unique in the nation, was enacted by a solid majority in a 1996 referendum. The reason a referendum was necessary was that neither major party instinctively favors public funding of elections. By their competitive nature, politicians seek an advantage over opponents, and public financing, by definition, aims to blunt the often huge advantages offered by money.

Things proceeded well. Legislative races began offering a public financing option in 2000 – the U.S. Supreme Court forbids making public financing mandatory – and candidates for governor could "run clean" starting in 2002. To date, no Maine governor has been elected with public financing – Arizona has that distinction – but most House and Senate candidates choose it.

Some 75 percent of all legislative candidates use public financing, and about 80 percent of winners do – powerful numbers. And there are just as many Republicans as Democrats, and in that sense the system is truly bipartisan. In polls, the public registers support by at least a 2-1 margin.

But that happy consensus was rudely overturned by the U.S. Supreme Court, which decided, 5 to 4, that Arizona's matching fund provisions were unconstitutional, and hence Maine's were too. The court majority, using truly preposterous reasoning, decided that matching funds for publicly-funded candidates who face high-spending privately funded opponents "discourages" the latter from raising more money. No campaign works this way – more spending by one side almost always triggers more spending by the other, but the court's agenda was obvious: public financing must go.

In that respect, the ruling was clever. Outlawing matching funds seems to leave Clean Elections intact, but instead hollows it out. Most candidates using public financing do so because they know they won't be dramatically outspent. Remove that protection and we will see far, far fewer candidates choosing public financing in any even potentially competitive race.

The staff of the Maine Governmental Ethics and Elections Commission came up with a possible solution that meets the court's ruling while allowing public candidates to remain competitive. It would enable candidates to seek more qualifying contributions – the $5-per-voter donations each public candidate must collect – to receive an additional allotment.

Democrats have taken to this plan, but Republicans haven't. As a 7-5 committee vote this week suggested, the GOP has decided the matching provisions may be gone but they have no plan to replace them. Unless the Legislature acts, candidates will receive only the standard allotment – sufficient when two "clean" candidates face each other, but not when someone aims for a fundraising advantage.

One Republican on the Veterans and Legal Affairs Committee, Rep. Jarrod Crockett, R-Bethel, said that by eliminating matching funds "you're looking at saving over a million dollars this year." That's rather like claims that eliminating gasoline tax indexing is "saving" motorists money, when it fact it just accelerates deterioration of Maine's already substandard road system.

Dan Billings, Gov. LePage's legal counsel, had a more cogent objection to replacing matching funds, saying that the continued legality of "leadership PACs," the political action committees used by virtually all ambitious legislators, simply absorbs special interest contributions that once went directly to candidates.

Billings is correct. If Democrats (and Republicans, not all of whom agree with the committee vote) are truly serious about restoring the law's effectiveness, they will abolish leadership PACs and require candidates for House and Senate posts to persuade their colleagues with words, not dollars.

True, outside PACs can still spend money to influence races, as – most notoriously – a national Republican outfit did in 2010, dropping a $400,000 bomb on five Senate races – but, most of the time, it's Mainers who donate to PACs.

The Legislature should also toughen disclosure and reporting requirements, and sharply increase fines for violators, who too often feel free to defy the law. It's dismaying, for instance, that two years after the referendum that rejected Maine's same-sex marriage law, we still don't know who was financing that campaign.

Curbing the influence of leadership PACs on legislative decision-making would complete the promise to the voters that the Clean Election Act represents. And, by calling Billings' bluff, it could again reaffirm the bipartisan consensus that, in the long run, is the best guarantee public campaign financing will survive in Maine, no matter what the U.S. Supreme Court opines.