



Powerful Ideas, Practical Actions

Keeping It Clean: Maine's Fight for Fair Elections

For more than a decade, a groundbreaking Clean Elections law has helped protect Maine politics from the influence of big money. But what's happening now that big spenders have free rein to influence elections—and what does it mean for the rest of the country?

Eleven years ago, a waitress named Deb Simpson was elected to Maine's state legislature—one of 116 candidates to run that year under the state's newly implemented Clean Elections Act, a first-in-the-nation attempt to replace private campaign contributions with public funding in order to keep rich, out-of-state special interests from determining who gets elected to public office or how they vote once they get there.

Simpson—who, at the time, was earning \$3.18 an hour plus tips—became something of a poster child for what the law was meant to accomplish: allowing political outsiders without ties to lobbyists or wealthy patrons to gain office through the support of their constituents.

“Gradually, we’re pushing the money further away from the act of governing—but it’s always trying to find its way back in.” —Alison Smith, Maine Citizens for Clean Elections

“We all have had equal access to get our message out,” Simpson told Public Campaign, a pro-Clean Elections group that profiled her in 2006 as an example of what the system makes possible. “We get to have a dialogue with the voters, to get out there and try to convince them to vote for us, hopefully based on the ideals and values that we have, that we share.”

Last year, though, Simpson lost her seat after a campaign that was far from equal. She and four of her Democratic colleagues in the Senate were swept out of office on a tide of out-of-state money that swamped what Clean Elections offered; Simpson herself faced nearly \$100,000 in opposition from a single group.

“There just isn’t any way it’s fair when you have this money coming in,” says Patsy Crockett, another of the targeted former senators. Local candidates who usually campaign through lawn signs, mailers, and lots of door-knocking found themselves facing vilification in statewide TV and radio ads.

The same thing, of course, was happening in races nationwide. The 2010 elections were the first since the Supreme Court’s [controversial decision](#), in *Citizens United v. the Federal Election Commission*, that corporations and wealthy individuals have a First Amendment right to spend unlimited (and largely anonymous) amounts of money to influence elections. Major funders were

quick to put the decision to use: Political spending by groups other than candidates and political parties (“independent expenditures”), already on the rise, jumped by 427 percent from the 2006 midterms. Many analysts predict that 2012 will make the 2010 cycle look tame.

This new political landscape raises questions about the future of publicly financed elections (also known as “fair elections” and “voter-owned elections” in addition to “clean elections”), long considered one of the most promising ideas for keeping big money out of politics in Maine and beyond. The Clean Elections system is about breaking the direct connection between funders and legislators; it’s designed to deal with *some* outside spending, but not at the scale that *Citizens United* has unleashed. Some think Clean Elections can adapt; others believe the system’s new vulnerability is proof that deeper changes are needed in order to protect it.

Simpson, in other words, had become a poster child not only for the benefits of Clean Elections, but also for the threats they now face following the unfettering of outside spending. If big money is beginning to overwhelm even this system so carefully designed to keep it out, what does that mean for the nation as a whole—and what can be done about it?

How Clean Elections Keep Big Money Out

Between 2004 and 2010, in 92.5 percent of U.S. House races and 82.5 percent of U.S. Senate races, the candidate who won was the one who spent the most money—end of story. During that same period in Maine, most races were between Clean Elections candidates, each of whom had access to the same amount of money. In the races where publicly funded candidates faced opponents receiving private donations, Clean Elections candidates actually won a slight majority of the time—perhaps due, in part, to the stigma of running a “dirty” campaign.

Clean Elections candidates in Maine have to gather a certain number (it depends on the race) of \$5 “qualifying contributions” from voters; they then receive a sum of money from Maine’s treasury to run their campaign. Everybody in the same race gets the same amount, and no one can accept other donations. If a candidate is outspent by an outside group or a privately funded opponent (participation in Clean Elections is voluntary), matching funds are automatically triggered up to a pre-set limit so that candidates can respond.

The system has proved exceptionally popular, with 80 percent of candidates now using the Clean Elections system. Similar systems are in use in Arizona, Connecticut, and a number of other states; a federal system has been repeatedly introduced in Congress, including a bill co-sponsored by then-Senator Barack Obama.

Maine passed its Clean Elections law in 1996, after more than a thousand volunteers gathered signatures to put it on the ballot. Alison Smith, now president of the grassroots group Maine Citizens for Clean Elections, was one of those volunteers. “Some of the people I worked with told me what things were like in Augusta when they got involved in campaign finance, thirty years ago,” she said. “Lobbyists would be right on the floor of the House—right there in the chamber—handing out checks before a vote. Eventually they passed a law that said lobbyists can’t be on the floor. Gradually, we’re pushing the money further away from the act of governing—but it’s always trying to find its way back in.”

“I don’t owe anything to anybody at this point, except my constituents, and that’s really what politics should be about.”

-Representative Andy O'Brien

From the beginning, the Clean Elections law has allowed political action committees (PACs) and other groups to independently back their preferred candidates. In the Maine Policy Review, Richard J. Powell writes that the presence of PAC spending has undermined some of the goals of Clean Elections, including reducing the total amount of money in campaigns and increasing the competitiveness of challengers taking on incumbents. Legislators have attempted PAC reform many times, but without success.

Still, the Clean Elections Act was a milestone in the effort to create space between big money and the people who make the state’s decisions. Rob Hunt, a schoolteacher now in his second term as a state representative, used public funding in both his campaigns. “I don’t owe anything to anybody at this point, except my constituents, and that’s really what politics should be about,” he says. “Clean Elections really took the money equation out of running for political office.”

The most fundamental goal of Clean Elections, says Smith, is to “keep candidates close to voters, not funders.” And the law has had that effect, literally. A University of Illinois political science professor surveyed state house candidates from 18 states about how they spent their time during their 2008 campaigns. Maine candidates reported spending less time with donors and more time in the field (going door-to-door, attending community events, and talking with voters) than candidates from any other state. And even then, they’re not fundraising, but discussing issues. “It would feel almost like a violation of my constituents’ trust to ask them for money,” says Hunt. “You want to be able to say, ‘the only reason I’m here today is to find out what’s important to you.’ If you had to say, ‘the only reason I’m here today is to find out what’s important to you and ask for \$25,’ it just seems different.”

The candidates I spoke to all described “knocking on doors”—often thousands of doors—as a key part of their campaign strategy. Even in small races, that’s not often the case in other states. “I talked to a campaign organizer from Florida who couldn’t believe I actually knocked on doors,” says Andy O’Brien, a state representative who ran under Clean Elections.

O’Brien, like Simpson, exemplifies another success of the Maine system: allowing people who ordinarily wouldn’t try—or who wouldn’t have a chance—to run for office. During his first campaign, he was working as a housepainter and caretaker. “I didn’t exactly have much in the way of financial means,” he explains. “The public fund meant money for little things: yard signs and gas and flyers.” In a 2008 survey by the Maine Ethics Commission, 74 percent of first-time candidates said that the availability of public funds was “very important” to their decision to run for public office; women have been particularly keen to take advantage of the program.

“I also think that Clean Elections made running for office in the state legislature accessible to a lot more young people,” says Hannah Pingree, who was 25 when she was first elected to office and 32 when she became the youngest female Speaker of the House in Maine’s history.

Anne Perry is a nurse practitioner and former legislator from Maine’s poorest county. I asked her who she thought would run if Clean Elections funds weren’t available. “It would be hard to raise money because of the poverty in the area,” she says. “So it would probably be somebody who had the money, or who had connections elsewhere.”

Because Maine legislators work part time, Perry was still seeing patients while working on the Health and Human Services committee—a collision of lawmaking and practical expertise common in what some refer to as a “citizens’ legislature.” “We have doctors, we have lawyers, we have teachers, farmers, lobstermen, cops, firefighters,” says Andrew Bossie, director of Maine Citizens for Clean Elections. “What we don’t have, really, are professional politicians.”

So what impact does a system that’s focused on the campaign process have on what actually gets passed in the legislature? It’s hard to isolate the effects, but many legislators feel sure that the Clean Elections process has made the difference in passing legislation that moneyed interests opposed—things like prescription drug pricing reform, mandatory pesticide disclosure, and laws banning BPA, certain flame retardants, and other toxic chemicals in consumer products, all of which passed over the strong objections of industry.

In polls taken last spring, more than 80 percent of active voters thought it was important that Maine continue to have Clean Elections.

“It’s not that you don’t still get lobbied or that businesses don’t still have significant impact over how legislators vote,” explains Pingree. “But it’s more about what’s going on in your own district. It’s not about the interests or needs of a major corporation from out of state.”

Nick Nyhart, the president of Public Campaign, tells of a Republican lawmaker who had served under both the private and public systems. “‘In the old days,’ he said, ‘before I voted I would have to consider where my conscience was on an issue, where the people in my issue were, and where my campaign donors were. But now I only have to think about the first two.’”

Voters, too, are happy with the system, which only costs about \$2 per year per taxpayer, according to Maine Citizens for Clean Elections. In 2010, they made 40,000 \$5 contributions to candidates; in polls taken last spring, more than 80 percent of active voters thought it was important that Maine continue to have Clean Elections. Support was strongest among Democrats (at 91 percent) but still high among Republicans (76 percent) and Independents (79 percent).

How Money Gets In

Still, when I called Hannah Pingree to talk about her opinion of the system, her first response was, “Clean Elections? Well, good but depressing.” The system was designed to create, in a phrase I heard over and over again, “an even playing field.” But evenness is not likely to be a feature of the emerging political landscape.

The 2010 election—the one in which Simpson and her colleagues were unseated—was a reminder that, as Bossie put it, Maine’s “Clean Elections system doesn’t operate in the vacuum; there’s a world of other campaign finance that exists around us.”

After securing 175 \$5 contributions, Clean Elections candidates running for Maine’s state Senate each received \$19,078 to start their 2010 campaigns. When more money was spent against them by an outside group or a privately funded opponent, it automatically triggered matching funds to be paid into their accounts—up to a maximum of an additional \$38,156—so that they could respond. (Amounts are far smaller in House races). The system was designed to limit spending while still allowing candidates to react flexibly to sudden influxes of big money. But in 2010, “big money” meant something new.

In one example, the Republican State Leadership Committee (RSLC), a Virginia-based group that targets state races around the country, spent a total of \$400,000 against the five Democratic Senators, most of it funneled through Crossroads Media, a national Republican media firm. "It was more money than we had ever seen in the state of Maine," says Crockett, one of the targets.

"To be targeted at the end of a campaign by so much money was beyond disheartening," says Simpson.



A mailer targeting state senate candidate Jim Schatz that the Republican State Leadership Committee sent to Maine voters. It reads "Baseball, apple pie, 4th of July and FIREWORKS? Not this 4th of July. Jim Schatz had other priorities. Schatz and the Blue Hill Selectmen paid \$10,000 taxpayer dollars to a political organization. Schatz then voted to cancel the \$10,000 fireworks campaign for the Fourth of July—blaming it on a bad economy. THAT'S WRONG."

In fact, Schatz voted for the fireworks display, in 2009; the \$10,000 contribution (to oppose mandatory school consolidation) was made on behalf of the town of Blue Hill in 2008 and was approved by voters at a town hall meeting.

Much of the money was spent on attack ads, many of them deeply negative and some simply untrue. Jim Schatz, a 71-year-old innkeeper and one of the targeted Senators, ended up suing the RSLC for libel after it ran TV and print ads making false accusations about his voting record. A federal judge dismissed the lawsuit, calling the ads "the price that we pay for unfettered debate on public issues as protected by the First Amendment." Schatz appealed the ruling. "I think because [independent expenditures] allow people to be anonymous, it unleashes a lot of venom," he says. "People behave in ways they wouldn't if they were being held accountable."

"[The RSLC's ads] were just really big and loud; they dominated the last weeks of the election with controversial attacks," says Smith. "In many of those races both candidates—including the person who wasn't being attacked—were equally appalled by the tenor of those ads." Schatz's opponent was publicly disgusted with the ads, going so far as to ask TV stations to pull them.

The RSLC also failed to report some of its expenditures on time, violating the Clean Elections Act and delaying the payment of matching funds to all five targeted candidates. The Maine Ethics Commission (which oversees Clean Elections) levied the largest fine in its history against the RSLC—but all five races were lost. Republicans gained control of the Maine Senate for only the second two-year term since 1982.

On its website, the RSLC touts its 100,000 contributors, but large amounts of its funding come from large corporations and corporate-funded front groups, including such familiar names as the U.S. Chamber of Commerce, American Crossroads, and Koch Industries. Its Maine money was part of a much larger national effort that had little to do with Maine politics or the issues the winning candidates would address when in office. As the group explains on its website, "Shortly after the 2008 elections, the RSLC began planning for the 2010 election cycle, formulating a strategy to keep or win Republican control of state legislatures with the largest impact on

Congressional redistricting.” In other words, Jane Mayer explains in the *New Yorker*, Republican strategists were “leveraging victories in cheap local races into a means of shifting the balance of power in Washington.”

“Cheap,” of course, means different things in different contexts. The \$400,000 the RSLC spent on five Senate races in Maine represented a phenomenal increase over what candidates were used to facing, but small potatoes compared to what the Committee was spending elsewhere: \$1.4 million against four state Senators in New York; \$500,000 to target a single Wisconsin state Senator. In total, the RSLC spent \$30 million against state-level candidates during the 2009-2010 election cycle—and helped Republicans gain majorities in 10 of the 15 states where local legislators will play a role in redrawing the districts that determine U.S. House seats.

The Maine Ethics Commission levied the largest fine in its history against the RSLC—but all five races were lost.

And, for all its influence, the RSLC was just one small funnel of “independent expenditures” during the 2010 elections. Other political action committees were helping major donors use often untraceable money to sway elections large and small; the group Public Citizen found that, of 75 U.S. Congressional races where “partisan power changed hands, spending by outside groups favored the winning candidate in 60.” And that spending is only expected to increase.

Maine’s level playing field, in other words, is getting increasingly tilted.

Clean Elections still have a valuable role to play. The system can break the direct connection between candidates and funders; it can keep candidate spending on an even footing; it can help political outsiders enter the race. It can even, through matching funds, allow candidates to respond to a moderate amount of outside spending. But, at least currently, it can’t keep up if they’re unlucky enough to obstruct the agendas of groups with very, very deep pockets. When that happens, says Schatz, the real issues can be drowned out, and “money becomes what influences and creates the outcome of the election, more than the character and skills and ability of the candidates”—the opposite of Maine’s goal with Clean Elections.

Patsy Crockett, having lost her seat, says she has no plans to run again—but if she did, she doubts she would use Clean Elections: “It isn’t viable the way it is right now, with so much money coming in. But I hope that they can come up with some way to fix it.”

Growing amounts of outside money aren’t the only reason the law needs a fix. The Supreme Court ruled last summer that, for Arizona’s very similar public elections law, the matching funds provision is unconstitutional. (The 5-4 majority argued that a privately funded candidate’s free speech is “chilled” if, by spending money, the candidate produces money for his or her opponent. A lower court, making the opposite ruling, had held that a right to free speech doesn’t imply a right to unanswered speech.) Maine Citizens for Clean Elections has proposed a replacement system under which candidates facing major oppositional spending can “requalify” for more public funds by getting more \$5 donations.

Supporters say the new option, if approved, will be as effective as the old system—that it will be somewhat slower to react, particularly to last-minute spending, but that it will encourage candidates to plan their campaigns more effectively and to make even more connections with voters. Nyhart also believes it’s even a potential way to help candidates keep pace with independent expenditures: “Maybe you have to raise twice as much money as you would

ordinarily, or maybe three times as much, but you can create a system that allows that to happen,” he says. “Then you also have to have the political will, every several years, to say ‘Do we have enough money in the system to be able to take on whatever the next level of independent expenditures is?’ and raise the amount if you don’t.”

Some are hopeful that, especially in Maine’s small house districts, the power of connecting with voters will trump attack ads: people will respond more favorably to face-to-face conversations than glossy ads, and will know candidates well enough to tell fact from fiction. “There are some studies that show that you don’t have to have *as much* money as is being spent against you; you just need to have *enough* money,” says Nyhart.

But others worry that the reforms offered by Clean Elections aren’t sufficient for the new realities of campaign spending. “In some ways I think that matching funds are kind of like the boy with his finger in the dike,” O’Brien says. If the tide of outside spending grows as expected, few would want publicly financed campaigns to enter into a funding arms race with corporate-backed groups like the RSLC.

A Larger Fix

The obvious solution, if public funds can’t keep pace with private wealth, is to try to put limits on what outside interests can spend to influence elections. Thanks to the Supreme Court, though, many such limits are now considered unconstitutional. “So you need to change how the Court interprets the Constitution,” says Nyhart. “You either do that by changing the Court or [changing the Constitution](#).”

Only 19 percent of Americans agree with the Court’s argument that election spending is a form of free speech; 77 percent call it, more simply, bribery.

With the *Citizens United* decision just the latest in decades of decisions expanding the rights and powers of corporations, frequently at the expense of citizens, many reformers say the time has come to change the Constitution. Though there are many reform options being worked on—and a number of them, such as regulations to increase funder transparency or to require shareholder approval for corporate expenditures on politics, have become state law—many consider a change in Constitutional law the best way to strike at the root of the problem. After all, they point out, it took Constitutional amendments to outlaw slavery, to allow for the popular election of U.S. senators, and to expand voting rights to blacks, women, and Americans younger than 21. And a Constitutional change—particularly one that rejects the idea that corporations have the same rights, including free speech, that people do—would combat not only *Citizens United*, but the many expansions of corporate power that preceded it.

Ever since *Citizens United* was decided in early 2010, Americans have opposed it by about 4 to 1 in polls; large majorities have consistently expressed support for a Constitutional amendment to overturn it. One poll sponsored by MoveOn.org found that only 19 percent of Americans agree with the Court’s argument that election spending is a form of free speech; 77 percent call it, more simply, bribery.

Still, amending the Constitution is a major undertaking, requiring major political will, and awareness of the issue has been low (in a poll taken nearly a year after the decision, most respondents hadn’t heard of it; they based their opinions on brief descriptions of the ruling and a proposed amendment).

But that could be changing. Taking on corporate power has been a rallying cry for [the Occupy movement](#) now energizing tens of thousands in New York and beyond, with slogans related to *Citizens United* and corporate personhood appearing on many protest signs and some protesters calling for an effort to “occupy the Constitution” with a new amendment targeting corporate influence on politics. During an Occupy D.C. demonstration, 19 people were arrested on the steps of the Supreme Court in protest of its role in expanding corporate power.

“I think that if there's one concrete thing that we can get out of what's happening right now it's a Constitutional amendment saying that corporations are not people—get it right there in black and white,” says O'Brien.

Maine's story is a case study in the potential impact of unleashed outside money—even on reforms already made. Clean Elections may have made the state a leader in campaign finance reform, says Smith, “but just like the rest of the country, we live with the reality that there is no way to shut off the spigot of money that goes to independent expenditures”—at least under current law.

A few days after the *Citizens United* ruling was announced, Public Citizen's Craig Holman gave a briefing on its potential effects to congressional staffers. One of them summed up the dilemma that unlimited spending creates: “How do I say ‘no’ to a deep-pocketed corporate lobbyist who now has all the resources necessary to defeat my boss in the next election?” That's exactly the problem that Maine's Clean Elections law was meant to address—and that still needs to be answered, in Maine as in other parts of the country.



Brooke Jarvis wrote this article for [YES! Magazine](#), a national, nonprofit media organization that fuses powerful ideas with practical actions, as part of [Campaign Cash](#), a collaborative effort by independent media to expose the influence of corporate money on the political process. Brooke is YES! Magazine's web editor.