



Testimony before the Joint Standing Committee on Veterans and Legal Affairs

LD 1509

An Act to Simplify the Filing of Campaign  
Independent Expenditure and 24-hour Reports

and

LD 1510

An Act to Improve the Disclosure of Financial Activities by  
Political Action Committees and Ballot Question Committees

January 6, 2016

Senator Cyrway, Representative Luchini and members of the Joint Standing Committee on Veterans and Legal Affairs:

Thank you for the opportunity to comment on LD 1509, An Act to Simplify the Filing of Campaign Independent Expenditure and 24-hour Reports, and on LD 1510, An Act to Improve the Disclosure of Financial Activities by Political Action Committees and Ballot Question Committees.

My name is Bob Howe, and I am testifying on behalf of Maine Citizens for Clean Elections.

Maine Citizens for Clean Elections is a 501(c)3 nonprofit organization dedicated to educating and engaging the public on matters of money in politics and campaign finance law, and to encouraging citizens to participate in our electoral system and in government to make ours a more politically responsive democracy.

MCCE wrote and sponsored the legislation enacted by voter initiative in November, known as Question 1 or the Clean Elections Initiative. With the enactment of this second citizen initiative, a new chapter in the history of the Maine Clean Election Act is now beginning.

We were gratified that voters adopted the measure by a double-digit margin – approximately the same approval level achieved in 1996 when the original bill was passed by the voters. There is now a strong public mandate for a robust but accountable public funding system for Maine legislative and gubernatorial candidates.

The new law also strengthens disclosure, gives the Commission greater latitude in imposing fines and penalties, and brings transparency to the fundraising activities conducted by newly elected gubernatorial administrations.

The provisions of the citizen initiative took effect on December 23, 2015. The new law will add to the legacy of Maine as a laboratory of democracy, and give continued hope to those who want to ensure that government of, by and for the people is still possible.

The guiding principle behind the Clean Election program is to ensure a government that is accountable to the people. We believe that all legislation in this area, including LD 1509 and LD 1510, should be evaluated on that principle. Any legislation should ensure that the process Maine people use to govern ourselves is democratic (with a small “d”), fair and transparent. Legal requirements should be adequate to address the public’s interest, but should not create an undue burden on legitimate political speech and activity.

Both of the Agency bills before you today meet those tests.

#### LD 1509, An Act to Simplify the Filing of Campaign Independent Expenditure and 24-hour Reports

LD 1509 relates to reporting requirements for last-minute political expenditures. Information in 24-hour reports is vitally important to the public because large transactions in the final days of a campaign can have a significant impact on the outcome. The public needs to understand who is behind those transactions in order to evaluate the credibility of the messages they communicate. This is in current law.

Over time, the Commission has determined that the existing 24-hour reporting law may sweep in too many transactions that are not related to the pending election. There is no compelling public need for a committee to immediately report expenditures that do not relate to candidate or citizen initiative elections on the upcoming ballot. LD 1509 will address this issue.

Also, under LD 1509 any entity making an independent expenditure must abide by legal requirements relating to unsworn statements. This replaces the legal “oath” requirement, which for technical reasons was difficult to administer. MCCE believes that it is important that people or organizations making independent expenditures should state that they are truly independent of the candidate that the expenditure refers to. We support this change as a more user-friendly way to accomplish that goal.

#### LD 1510, An Act to Improve the Disclosure of Financial Activities by Political Action Committees and Ballot Question Committees.

MCCE also supports LD 1510. Many of the provisions of LD 1510 are housekeeping changes which are not controversial or difficult to understand. There are provisions to clarify who needs to file as a political action committee (Sections 1 and 2); clarify and re-organize the law covering reports by ballot question committees (Section 3); allow the Ethics Commission to hold BQC officers responsible for any fines that are imposed under their management (Section 3); give

political action committees flexibility in managing their records (Section 5); and clarify how multipurpose organizations that spend money on Maine campaigns report the funds that they raise for that purpose (Sections 6 and 8).

I'll limit my specific comments to two of the provisions in LD 1510.

First, Section 2 of the bill clarifies when a political action committee must register. Current law ties registration to making expenditures of a certain amount, but not to the receipt of contributions. An entity could receive substantial contributions to influence Maine elections but still not register and report its activity. Under LD 1510, an entity that receives contributions has the obligation to register. Adding the receipt of substantial contributions as a trigger for the registration requirement makes sense and is an improvement in current law.

Second, Section 8 establishes a single definition of "contribution" that applies to both ballot question committees and certain types of political action committees referred to as "non-major-purpose PACs." A non-major-purpose PAC is an entity that is not established for the primary purpose of engaging in political activity, but does have some degree of involvement in campaigns. Many corporations, unions, non-profits, and similar entities fall into this category. This type of organization has special reporting rules due to its unique nature as partially political and partially non-political.<sup>1</sup> The courts have ruled that these entities have the legal right to communicate with the public about candidates and issues on the ballot, but that the state can require them to report the funding raised and spent for that purpose. This basic concept is nothing new in Maine law, but in LD 1510 the requirement is being reorganized and clarified, and the new language ensures that the types of contributions they must report are exactly the same as the types of contributions a ballot question committee must report..

The reporting requirement for a non-major-purpose PAC or BQC is somewhat less rigorous than for other types of PACs. They do not have to report the receipt of funds from contributors who do not have a specific interest in an election issue, even if the non-major-purpose PAC or BQC uses those funds to pay for election expenditures. The non-major-purpose PAC or BQC , however, must report every dollar of political expenditures. Therefore the dollar amount of expenditures it must report can exceed the dollar amount of the contributions it must report. In order to ensure that contributions and expenditures balance out for reporting purposes, Section 8 of the bill directs the organization to report itself as the source of enough funding so that total contributions equal expenditures.

While we understand the rationale for considering the organization itself as the source of the funds, we think it is worth considering an approach that could provide more transparency to the public without violating any legal decisions that might apply. We would like to see the statute differentiate between funds that the organization raised from third party contributors, and funds that the organization raised through a profit-making enterprise, its general treasury, or some other means. Where the courts have said that the state cannot require the organization to name a specific contributor, we believe that the state could still ask the

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<sup>1</sup> Under Maine law, if its "major purpose" does not relate to elections, it has fewer reporting requirements. For this reason, these are sometimes referred to as "non-major-purpose" PACs.

organization to report whether or not the funds were derived from a third party as opposed to the organization's own operations or internal general treasury funds. We'd be happy to work with the Committee and the Ethics Commission on specific language if there is support for this approach.

Thank you for the opportunity to testify, and I am happy to take questions.