



Testimony before the Joint Standing Committee on Veterans and Legal Affairs

LD 619, An Act To Limit the Participation of Candidates and Legislators in Political Action Committees and Nonprofit Entities Conducting Political Activities

Monday, March 30, 2015

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 619, An Act To Limit the Participation of Candidates and Legislators in Political Action Committees and Nonprofit Entities Conducting Political Activities. My name is John Brautigam, and I am testifying on behalf of Maine Citizens for Clean Elections.

Maine Citizens for Clean Elections (MCCE) is a nonpartisan organization that works in the public interest to advocate for, defend and improve the Maine Clean Election Act and related campaign finance law. We have been at this work since the 1990's. Whenever there is legislation relating to our campaign finance and reporting system, MCCE works to bring the point of view of Maine citizens to the decision-making table.

This is our third time testifying on leadership PACs, addressing five separate bills. We are very pleased to see this issue receive so much attention. Now is the time to act.

And we are especially pleased to see a bill that really, truly addresses the fundamental problem with leadership PACs. Rep. Chenette's bill LD 619 would put an end to the practice of all legislators and all legislative candidates having their own personal PAC. This is the solution the people have been looking for, and we strongly support it.

I won't repeat our past testimony, but I will add a few new comments.

Under longstanding state law, Maine's Secretary of State, Attorney General, State Treasurer and State Auditor are not allowed to be involved in a PAC. Even candidates for those positions are not allowed to be involved in a PAC. We are unaware of any complaints or problems with this system. We are only asking to apply this same rule to legislators.

Other states are also looking into this issue. South Carolina legislators recently voted almost unanimously to ban leadership PACs in their legislature. The rule in South Carolina states: "A member of the House shall not, directly or indirectly, establish, finance, maintain, or control any entity including, but not limited to, a non-candidate committee that receives or makes contributions." I have attached more information on the South Carolina ban.

Let me say a few words to those who think this will have dire consequences for legislators interested in leadership. There are still plenty of avenues for those legislators to help other candidates and otherwise advocate for the things they believe in: They can still raise money for the political parties and be involved in party spending decisions. They can still raise money for their own campaigns and use that money to help other candidates and pay for their own travel expenses as they campaign for a leadership position in the House or Senate. They can still raise money for issue campaigns and any political organization so long as that organization is not involved in Maine candidate campaigns. There is a lot they can do.

If that is not enough, we would not oppose an amendment that allows candidates and legislators to be involved in a single caucus PAC. We think the public does not want them to run their own personal PAC to get contributions that would be illegal for their own campaign, but a caucus PAC could be transparent and democratic. A caucus PAC approach might address just about all the concerns from all the different perspectives from which you have been hearing.

Let me speak to the constitutionality of LD 619. The Supreme Court has clearly stated that legislation combatting corruption or the appearance of corruption is permissible under the First Amendment. Maine's candidate contribution limits have been upheld in court, as have the limits in other states and the federal system. There is no serious question whether the legislature may limit the size of contributions received. The Supreme Court has also stated that it is permissible to enact other restrictions if needed to ensure that no one circumvents the contribution limits. That is exactly what that this bill would do. The leadership PAC ban is necessary in order to prevent candidates and legislators from accepting contributions that are already banned by the contributions limits. It closes a loophole that has allowed corruption or the appearance of corruption to creep back into the campaign system. Therefore, if it is challenged in the courts it will be upheld. I would point out that there has never been a court decision striking down a ban on leadership PACs.

And once again, Maine already has a PAC ban for constitutional officers. And South Carolina has a PAC ban for legislators. There are a lot of precedents for this legislation.

During the last election cycle leadership PACs raised over a million dollars. They received tens of thousands of dollars from cigarette makers, big drug companies, the chemical industry, tobacco interests, big insurance companies, lobbyists, and law firms. The list goes on and on. Very little of that money was from Maine families or small, individual contributors.

The public wants a bill that will close all the loopholes. LD 619 is the right solution to the problem of leadership PACs.

Thank you again for the opportunity to testify.

John Brautigam: Legislators can abolish leadership PACs

Sunday, March 8, 2015

The proliferation of leadership PACs in Maine is detrimental to public confidence in the democratic process. Legislation now pending would ban such PACs. The Legislature should seize the opportunity.

Maine voters have long demanded a campaign funding system that ensures accountability and honors democratic ideals. Through the years, many steps have been taken to reduce the influence of special interest money. Banning lobbyists from making campaign contributions during the legislative session, reducing contribution limits, and creating the Maine Clean Election system all served that goal.

Despite these improvements, it is still possible for lawmakers and candidates to create their own political action committees without violating the letter of the law. Those candidates operate two committees — one for their own campaign, plus a political action committee to raise money for other purposes.

Leadership PACs are a growing part of the campaign funding system in Maine. In the 2014 election cycle, legislative candidates operated more than 30 leadership PACs that together raised more than a million dollars.

Ethics Commission records show that all 10 current members of legislative leadership operated PACs in addition to their own campaign re-election committees. The top Democratic and Republican leadership PACs each took in more than \$100,000.

Although a majority of state legislators fund their own election campaigns with the Clean Election public funding system, most of those who rise to official leadership positions within the Legislature use private funding for their re-election campaigns. Seven current legislative leaders used the private funding option and also operated PACs, raising more than \$400,000 in the 2014 cycle. The three legislative leaders who used Clean Elections operated PACs that raised about \$300,000.

These totals do not include thousands of dollars raised by other PACs controlled by the legislative caucuses, the political parties, national PACs, super-PACs, and “social welfare” organizations.

In 2014, much of the money raised by leadership PACs was eventually spent on independent expenditures, filling mailboxes and the airwaves with campaign messages that many voters found negative and destructive.

While all legislative candidates, both privately and publicly funded, are limited in what they may raise from individual contributors, there are no contribution limits on the money raised by these same candidates for their leadership PACs. In contrast, candidates for secretary of state, attorney general, state treasurer and state auditor are banned from having a PAC or even soliciting contributions for another person’s PAC.

Legislators ought to be subject to the same ban, and now is the time to close that troubling loophole. Legislators have an opportunity to solve the problem, with several PAC reform bills under consideration.

Maine Citizens for Clean Elections strongly supports a comprehensive bill to ban leadership PACs for all candidates. Whether a candidate is privately funded or publicly funded, operating a leadership PAC to receive unlimited contributions violates the spirit of the law — and the public trust.

Our policymakers should be accountable to the voters, and not to contributors from across the political spectrum giving tens of thousands of dollars, much of it from out of state.

Legislators of both parties have taken advantage of the leadership PAC loophole. But just because that is the way things have been done doesn't mean the state can't do better. Campaign finance laws must protect the ideal of "government of, by and for the people," and a ban on leadership PACs is a positive step.

Clean Election candidates who operate leadership PACs have been singled out for special criticism, since they are prohibited from taking special interest money for their own campaigns. But that is not solely a Clean Elections problem. Privately-funded candidates have accepted special interest PAC contributions 10, 20 or even 30 times larger than the contribution limit that applies to their own campaigns. Ending that practice can help restore confidence in democracy.

Leadership PACs and the concerns that go along with them are not unique to Maine. The South Carolina House of Representatives recently voted 115 to 1 to enact a ban on leadership PACs in that state.

PAC reform should also enhance transparency.

Today's confusing web of political committees makes it difficult for the public to understand who is paying to influence state elections. Large transactions between PACs, parties and other political players obscure the sources of funding and the relationships among donors. Real PAC reform can simplify that complex network and enhance the public's access to information.

Maine people are clear that they want to reduce the influence of big money in politics. They want their leaders to be accountable to the people. Maine people want lawmakers to close the leadership PAC loophole and limit the opportunities for moneyed interests to influence state representatives.

The leadership PAC loophole must be closed for all candidates. We hope legislators have the courage to stand up for their constituents and enact a comprehensive leadership PAC ban this session.

John Brautigam served in the Legislature from 2004 to 2008 and is now an attorney for Maine Citizens for Clean Elections. He lives in Falmouth.