



Testimony before the Joint Standing Committee on Veterans and Legal Affairs

LD 904, An Act To Increase Fairness in Campaign Financing

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 904, An Act To Increase Fairness in Campaign Financing. 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.

Under longstanding Maine law, contribution limits are applied on a per-election basis. And in Maine, the primary election and general election are separate elections. Therefore, a candidate can receive a contribution up to the limit in the primary election, and if the candidate advances to the general election, he or she can receive a second contribution from the same contributor up to the limit.

This makes sense. Candidates have expenses during the primary election campaign and then later have additional expenses for the general election.

Independent candidates have no primary election, and therefore cannot take advantage of this two-contribution system.

During the 2014 campaign a court decision led to a temporary change in this system. The court said that contributors to an independent candidate should be afforded the same right to contribute that is afforded to contributors to party candidates. The court said the two-contribution system was unfair to the independent candidates' contributors, especially under the particular circumstances at play in 2014 where neither of the major-party candidates had a contested primary election.

Now the legislature must address the court decision and consider what permanent changes need to be made.

MCCE recognizes that independent candidates must have the rights recognized by the court. On the other hand, the solution should not, and need not, open a big hole in Maine's contribution limits. The integrity of Maine's contribution limits should be preserved to the greatest extent possible.

The best solution is simply to give contributors to independent candidates two bites at the apple – one for the primary election and one for the general election. Even though independent candidates don't actually appear on the ballot for a primary, we think this is the solution that causes the least disruption.

This is also the approach that is applied under federal election law to candidates for Congress. Independent candidates can accept two contributions as though they have a primary, even though they do not. This is comparable to party candidates accepting contributions during the primary even if the primary is not contested.

This is preferable to doubling the contribution limit and eliminating the separate contribution for the primary. That would allow candidates to receive much larger contributions in many instances, and we think the people of Maine don't want huge contributions playing such a large role in campaigns.

LD 904 appears to simply double the contribution limit, with the stipulation that only half can be applied during the primary election. The problem we see with this bill is that contributors in the June – November period could give twice as much than under current law. It effectively doubles the general election limit for all candidates. That is a huge change in the contributions limits, and the court decision can be addressed without going down that path.

The attachment to our testimony includes MCCE's comments to the Ethics Commission on this general issue.

Thank you for the opportunity to testify.

January 19, 2015

Jonathan Wayne
Executive Director
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135

Re: Contribution Limits in Races With Primary Elections

Dear Director Wayne:

Please accept these brief comments regarding contribution limits in Maine legislative and gubernatorial elections. I submit these comments on behalf of Maine Citizens for Clean Elections (“MCCE”).

MCCE has long advocated for the faithful application of low, voter-approved contribution limits in legislative and gubernatorial races. Comparatively low limits are part of Maine’s tradition of a citizen legislature, where a high value is placed on person-to-person, retail campaigns. Maine’s contribution limits have never interfered with contributors’ freedom of association or with the ability of candidates to conduct successful campaigns.

Unfortunately, in recent years the legislature has eroded those reasonable restrictions – most dramatically in the case of gubernatorial campaigns. Maine voters set contribution limits for gubernatorial candidates at \$500 at the ballot in 1996. Since then, the limit for gubernatorial candidates was increased by the legislature to \$750 in 2009, and then doubled to \$1,500 in 2011.

We understand that the recent *Woodhouse* case has prompted the Commission to further examine how contribution limits are applied in races where party candidates qualify for the general election ballot through a primary election.

When considering possible changes, we believe the Commission and legislature can and should address any equal protection concerns in a manner that maintains the intention of the current contribution limits to the greatest extent possible. As the Commission considers this issue we would like to offer a few guiding principles:

- A contribution limit does not equate to a spending limit. Limiting large contributions does not limit the ability of a candidate to raise and spend money, as there is almost an infinite number of contributors who could be solicited for contributions at the limit or below. They merely limit the large contributions that reach a level that is dangerous and potentially corrosive to our democracy.
- A contribution limit must be grounded in a definite timeframe. The most sensible timeframe is the period between elections, because the point of raising the funds is to pay for expenses incurred in an election. That is, each candidate should have a contribution limit for any one contributor that applies to the next election. Until the *Woodhouse* decision, Maine contribution limits were always applied on a per-election basis.
- Contribution limits should bear some relationship to the candidate’s funding needs. Where a candidate has to compete in two elections and fund the expenses of those efforts, it is reasonable to allow a candidate to have two separate contributions from the same contributor. A candidate with only one election will need less money.

- Candidates who amass more funds than they need during the primary and who “carry forward” those surplus funds to the general election have an unfair advantage over party candidates who have to spend heavily to prevail in a primary and over non-party candidates who cannot accept contributions for a primary.
- Candidates not seeking a party nomination must obtain twice as many signatures to appear on the ballot as party candidates. Therefore, non-party candidates have no primary but may face real expenses during the months leading up to their deadline for qualifying for the ballot. (In 2014 the deadline was June 2, 2014.)
- Competitive elections inspire great creativity among candidates seeking to maximize their advantages. Thus, it is prudent to anticipate – and minimize – candidate behavior that might “game the system” by, for example, cultivating bogus primary “opposition” where it would be financially advantageous to do so, or by converting cash to non-cash campaign goods to circumvent rules limiting the ability to “carry forward” resources from the primary to the general election.

Informed by those considerations and others, we favor an approach that would maintain the current system to the greatest extent possible, while addressing the concerns in *Woodhouse*. Specifically, MCCE supports treating contributors to candidates who do not have a primary as though they do have a primary for purposes of the application of the “per election” contribution limit. Thus, although an independent gubernatorial candidate is not on the June ballot and therefore does not “have” a primary election, he or she is a contestant in a campaign for which state law does create a primary election system. Therefore, under the reasoning in *Woodhouse*, his or her contributors should be able to give for two separate elections during that cycle. While we would want to review the details of any proposal, we would support that general approach, with the caveat below. We also note that this is the treatment of contribution limits under federal law for candidates who have no primary election.

Our support for this position is qualified by the need to eliminate the unfair practices of allowing candidates to carry-forward large war chests of campaign cash raised prior to the primary election but not spent at that time. Any proposal based on the need to treat contributors equally should also recognize that candidates must be treated equally. And where a candidate has a hard-fought and expensive primary, allowing the general election opponent to amass extra funds at that time violates the principle of equal treatment. Eliminating the ability to carry forward cash from the primary would advance the principle of fairness and also close a loophole that has weakened the system of contribution limits.

Whatever recommendation the Commission might take, we urge you do everything possible to address the *Woodhouse* decision without unduly weakening this aspect of Maine’s campaign finance system.

Thank you for the opportunity to comment on this question. A representative of MCCE will be present for the Commission’s meeting when this item appears on the agenda.

Sincerely,



Andrew Bossie
Executive Director