

Maine Citizens for Clean Elections

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TO: The Honorable Senator Lisa T. Marraché, Senate Chair
The Honorable Representative John L. Patrick, House Chair
The Joint Standing Committee on Legal and Veterans Affairs

DATE: April 18, 2007

RE: **LD 1316** "An Act to Define Campaign Communications Requiring Matching Clean Elections Funding"

Maine Citizens for Clean Elections (MCCE) testifies in opposition to LD 1316.

MCCE believes that Representative MacDonald's bill to provide matching funds for virtually every paid communication naming or showing a candidate throughout the campaign is overly broad and unworkable. Should it become law, we believe it is unlikely to pass constitutional muster.

When the Maine Clean Election Act was drafted, it included a system for reporting both candidate spending and independent expenditures. These reports often trigger matching funds, and the result is that candidates enjoy relative parity when it comes to available resources.

In coming up with a reporting system that would survive a court challenge, much care was taken to balance the needs of the state to have timely reports in order to make the matching funds system work, and burdening political speakers with reporting requirements. The courts have cautioned that the burdens of disclosure must never be so much as to silence voices in an election, and that is one reason why spending of less than \$100 does not have to be reported. Maine's system strikes the balance pretty well, though like most things there is some room for improvement.

We agree that more independent electioneering should be captured in the matching funds system, but we believe the way to do that is to expand the existing reporting requirement for independent expenditures. Specifically, we propose extending the so-called "rebuttable presumption" period from 21 to 60 days before the general election. During this period, any communication that costs \$100 or more and names or depicts a clearly identified candidate is presumed to be made for the purpose of influencing the election. If that is not the purpose, the person making the expenditure may rebut that presumption. Examples are a candidate who is also a realtor who advertises in a local paper each week or a business owner whose name is also the name of the business.

It is not appropriate to presume that every single paid communication that names or shows a candidate at any time is electioneering. A good example is when the Legislature is in session in the spring and advocacy groups and others publish information about legislation of interest and name sponsors and cosponsors. Another is the distribution of flyers asking people to call a particular Senator or Representative and ask her or him to vote a certain way on a bill. It is not

Maine Citizens for Clean Elections is a nonpartisan coalition of organizations that have worked together to pass Maine's Clean Election Act and that continue to work together to support and defend its use and the integrity of its implementation. Its members include AARP, Common Cause Maine, the League of Women Voters of Maine, Maine AFL-CIO, Maine People's Alliance and Peace Action Maine.

appropriate that this kind of spending be required to be reported for the purpose of triggering matching funds.

We believe the extension of this provision to 60 days is fair, constitutional and effective. The “rebuttable presumption” provides a sort of safety valve to make sure that non-political communications do not inadvertently get captured in the matching funds system. It also eliminates the need for the Ethics Commission to wrestle with whether or not particular messages constitute “express advocacy” or not. Campaign finance laws are about regulating money, not speech, and the clarity of the “rebuttable presumption” provision works very well to keep the focus where it needs to be.

Our rationale for extending the period to 60 days before the general election is simple: in Maine, campaigns begin in earnest just after Labor Day. We think that an extension to 60 days would capture every significant independent expenditure and would do so in a timeframe that put matching funds in the hands of eligible candidates early enough to be useful to candidates.

We urge you to pursue this more reasonable approach, and to vote “Ought not to pass” on LD 1316.