

Maine Citizens for Clean Elections

P.O. Box 18187, Portland, ME 04112
www.mainecelelections.org
info@mainecelelections.org

(207) 664-0696 Ann Luther, Co-Chair
(207) 879-7440 Alison Smith, Co-Chair
(207) 799-1596 Jill Ward, Program Director

Testimony before the Commission on Governmental Ethics and Election Practices

Re: Qualifications for Maine Clean Election Act Gubernatorial Candidates

Alison Smith, Co-Chair, Maine Citizens for Clean Elections

June 27, 2008

On behalf of Maine Citizens for Clean Elections (MCCE), a coalition of individuals and organizations committed to the continued successful implementation of the Maine Clean Election Act (MCEA), I am pleased to submit testimony with respect to the MCEA's gubernatorial public funding system.

Public funding in the gubernatorial race is important, and it is integral to the Clean Election system.

Let me begin by stating clearly that, to anyone concerned about the role of special interest money in Maine elections, the race for governor is by far the single most important race. The governor is our only popularly elected statewide state official. The governor's office is unarguably the most powerful in the state, and the case can be made that reducing the influence of private money on this highest state office is among the MCEA's most important functions.

The gubernatorial public funding system is a critical and integral component of the Maine Clean Election Act. It is not in any way separate from the legislative system. Maine voters created and passed into law a program that provides limited public dollars to all candidates for state office who qualify for funding. Although we have heard legislators say that the gubernatorial system was an "add-on" to the citizen-initiated law, this is simply not true. It is and always was one system, one Fund, one program for all state races.

The gubernatorial system benefited from an exhaustive review in the 123rd Legislature.

MCCE understands that it is important to continually examine the law and its implementation to ensure it is working as Maine voters intended. Both this Commission and the Legislature have taken their evaluation roles seriously ever since the law went into effect, and MCCE has participated in every legislative and administrative review.

After the 2006 election, both the Ethics Commission and the Legal and Veterans Affairs Committee conducted many hearings and work sessions, discussed countless policy proposals, and engaged the public, including our coalition, in an exhaustive evaluation of the 2006 election cycle. The problems that were experienced in the gubernatorial race

Maine Citizens for Clean Elections is a nonpartisan coalition of individuals and organizations that have worked together to help 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 organizational members include AARP, Common Cause Maine, the League of Women Voters of Maine, Maine AFL-CIO, Maine People's Alliance, NAACP-Portland, Maine Council of Churches and Peace Action Maine.

due to the behavior of several candidates created an appropriate sense of urgency among lawmakers and informed every discussion.

The result was that significant changes were made, including making it harder to qualify for gubernatorial funding and giving the Commission specific authority to decertify candidates. Obviously, there has been no opportunity to test these changes, so there is no evidence on which to base a case for need of the sorts of additional changes that are contemplated in the Commission's June 3rd memo. For the most part, the ideas in that memo were considered by the 123rd Legislature and either adopted or rejected. For example, the number of Qualifying Contributions was raised by a substantial 30 percent, but lawmakers declined to institute mandatory Seed Money or equalizing the length of the qualifying period for unenrolled and party candidates.

What is the rationale for further review prior to the 2010 election?

The Commission would do well to consider why there is such unprecedented attention being given to the gubernatorial system at this time. We believe it springs from several different concerns. First, the Legislature is concerned about the cost of the program. Second, there is anxiety that a so-called "fringe" candidate may qualify, wasting taxpayer dollars. These are both legitimate concerns and are important elements of any policy discussion and are more fully discussed below.

Other concerns provide less solid ground for policy changes. There is general unease about the state of the economy, for example, but this is not a problem that can be addressed through tweaks to the Clean Election program. There is also some residual resistance to the concept of public funding itself. This opposition, by itself, is no basis for policy revisions.

It is important to remember that opponents of public funding lost the fight in 1996 when the referendum passed with 56 percent of the vote, and they lost again in 2000 when the state won the federal lawsuit that sought to overturn the law. While each successive legislature has thoroughly debated the merits of the program and addressed concerns, each election cycle has revealed a high level of satisfaction among candidates and the general public. We have a successful program that remains a model for constitutional, workable reform.

Funding the Clean Election program

Legislators sometimes complain to us that Maine voters approve expensive programs and leave it up to legislators to fund them, but this is not the case when it comes to Clean Elections. The voter-approved Maine Clean Election Act contains a responsible, incremental funding mechanism that has proven adequate to fund the full program through 2010. Our current funding challenges arise wholly because successive legislatures and governors spent monies in the Clean Election Fund on other state programs.

This action has subjected elected officials to much criticism from the editorial pages and from Maine people, and that pressure has ensured that adequate monies were returned in time for the 2006 and 2008 election cycles. Although we have to remind them of their obligation every year, there is widespread consensus that those funds were borrowed, and the intent was always to return them to the Fund. This year's supplemental budget contained language calling for the restoration of much of the remaining borrowed funds in the 2010 and 2011 budgets. This will go a long way toward ensuring sufficient resources for the 2010 election. If there is a gap to fill in that cycle it will be much smaller thanks to this language and to the efforts of many rank and file legislators who made the case in their caucuses that the will of Maine voters must be honored.

Despite these facts, we continue to hear from legislators that the gubernatorial program costs too much. In fact, the distribution amounts were set by the Legislature in a change to the original law, and the Legislature seems satisfied with these levels. The only real attempt to lower the cost of the program has come from legislators who think the state should fund fewer candidates. Proponents of this idea have made different proposals that have one thing in common. All aim to make it harder for candidates who do not belong to one of the two major parties to receive public funds; some impose additional qualifications and others simply raise the bar higher for those candidates. MCCE has consistently opposed proposals that seek to implement a tiered system based only on major party affiliation.

The “fringe” candidate concern

MCCE fully supports the notion that the qualifying process must serve to separate the viable candidates from the nonviable ones. Candidates must demonstrate that they have the support of a substantial number of Maine voters in order to receive funding. That being said, Maine's electoral history simply disproves the notion that third party and independent candidates are always less viable than those in a major party.

While we think it is wrong to make policy based on a faulty assumption – that all non-major party candidates are probably “fringe” candidates – we agree that the bar must not be set too low, especially in the gubernatorial race. The sums received by candidates are appropriate for those who are prepared to run a serious statewide race with at least the potential for broad appeal. Maine has a rich history of quirky, one-issue candidates who bring something unique to the race, but who are not serious enough about winning to actually build the organization necessary to run a viable campaign. The qualifying process has so far been successful at sifting out those candidates, and MCCE is in favor of rigorous evaluation to make sure that in each cycle, the qualifying hurdle is set at the right height.

Changes made by the 123rd Legislature

During the 2006 gubernatorial race, concerns were raised that it was too easy for candidates to qualify. The legislature responded to this concern by raising the qualifying bar from 2,500 to 3,250 Qualifying Contributions – a 30 percent increase over 2006.

Reports we have received indicate that this higher threshold will be difficult to meet, as was the earlier, lower threshold. Every candidate who has successfully qualified, both in 2002 and 2006, has said it was a very difficult process. Many other candidates tried and failed to complete the process because they didn't have the support or the organizational capacity necessary.

MCCE believes the increase in the number of Qualifying Contributions was appropriate, and we think it is sufficient. Of course, there is no way to test this until the 2010 election, but 30 percent is certainly a significant increase.

The legislature also put more tools in the Ethics Commission toolkit that we believe will strengthen the Commission's ability to identify non-viable candidates. There is more accountability in the use of money orders, for example. Importantly, the Commission now has specific authority to decertify candidates under certain circumstances, and MCCE strongly supports this measure. Every gubernatorial candidate engaged in the qualifying process will understand from the beginning that their campaign will be subject to a rigorous audit. New restrictions on paying themselves, family members and businesses they own will ensure that no candidate is able to use Clean Election funding as a personal enrichment scheme.

In 2007, the legislature also permitted candidates to accept Qualifying Contributions over the Internet. We support this change and think it appropriately recognizes the growing use of the Internet by the public. It is also a cost-effective way for candidates to reach supporters and engage new voters in the electoral process.

There is some anxiety that this new candidate tool will make it much easier to gather Qualifying Contributions and possibly introduce new avenues for nonviable candidates to game the system. These concerns did not pan out in the legislative races this year. Only three Senate candidates and 13 House candidates collected half or more of their Qualifying Contributions online, though 243 candidates in total received at least one on-line. What participating candidates have told us is that even though it is a convenient option, it takes more than an email to get people to act. While we are mindful that the online option became available fairly late in the qualifying period, we are unconvinced that offering the online option has taken the challenge out of the qualifying process. We don't see evidence that further action must be taken prior to 2010 to reset the qualifying bar because of this change.

Keeping the system viable

MCCE is not prepared to endorse any additional statutory changes to the gubernatorial qualifying process at this time, feeling that the changes made by the 123rd Legislature adequately address the problems that were seen in 2006. Our system is basically sound, and there is no evidence to suggest that the law must be rewritten or the process changed radically. We are especially skeptical of changes that would replace Maine's tested system with elements of other states' laws whose success is yet unproven and where there are unresolved constitutional challenges. In addition, the later changes are made in the

cycle, the more difficult it is for candidates to make an informed choice about how to fund their campaigns. Potential candidates are wrestling with that decision right now and are likely to make up their minds within the next 6 months to a year, so this is no time to make big, fundamental changes.

As this process unfolds, we will actively engage in all public discussions to make sure the public interest is upheld. We will oppose changes that codify an advantage for major party candidates. We will consider changes that are relatively uncomplicated, enhance the viability of the system and are consistent with the principles that underlie the Maine Clean Election Act.

Non-statutory change to enhance viability: Raise the Seed Money cap

As important as it is to keep “fringe” candidates from receiving public funds, it is equally critical to ensure that the Clean Election option appeals to Maine’s strongest, most viable gubernatorial candidates.

While we believe the timing is not right for statutory changes, we do want to recommend that the Commission begin the rulemaking process to increase the Seed Money cap for gubernatorial candidates. The cap that is in effect today is \$50,000, an amount that was set back in the early 1990s when the law was drafted.

We have not heard legislative candidates complain that their seed money caps are inadequate, but the issue has been raised in our conversations with potential gubernatorial candidates. It is a concern worth addressing, since Seed Money is the only money available to candidates as they prepare to run for a statewide race and before public funds are received in the spring of 2010.

The statute specifically permits the Commission to revise the seed money amounts by rule in order to “ensure the effective implementation of this chapter.” We believe that raising the Seed Money cap will do just that by enhancing the attractiveness of the Clean Election system to strong candidates for governor. The change is in keeping with the higher costs for everything from gasoline to printing as well as the significantly higher qualifying threshold that 2010 candidates will be asked to meet.

If this change is made, the contribution limit for Seed Money will remain at \$100 per donor, ensuring that no individual donor wields undue influence. Corporations and political action committees will still be barred from making Seed Money contributions. It will still remain exactly what it is supposed to be: limited private money that candidates may raise early in their campaigns to get the campaign off the ground and successfully fulfill the requirements of the qualifying process.

Raising the Seed Money cap does not increase the cost of the Clean Election program. Any unspent Seed Money is deducted from the initial distribution, ensuring that candidates start out on a level playing field.

MCCE believes there is little harm in substantially increasing the Seed Money cap. Candidates must be able to raise and spend adequate resources to lay the groundwork for a successful campaign. The existing individual contribution and source limits ensure that this change will not allow big special interest money into Clean Election races.

For the purpose of kicking off your discussion, we suggest doubling it to \$100,000.

The rulemaking process will provide ample opportunity for interested parties to be heard, both on the merits of the change in general and on the specific amount, and we encourage the Commission to begin that process very soon.

Conclusion

We do not foresee the day that the Commission and the Legislature will stop scrutinizing the Clean Election program. As is true of all public programs, rigor must be used to ensure that public dollars are well spent, and that the purpose of the program is being fulfilled. Evaluation is important both for accountability to the public and for guidance to lawmakers as they contemplate changes to the law.

Given the thorough examination and substantial changes that were made this year and last, we ask the Commission to keep in mind these three words: **Do no harm.**

Thank you for the opportunity to comment. We are happy to answer questions about any proposals that are under consideration today.