To: Maine Commission on Governmental Ethics and Election Practices

From: Maine Citizens for Clean Elections

Date: December 4, 2009

Re: Rulemaking

MCCE appreciates the opportunity to submit written testimony regarding rules dealing with the limited private fundraising that would be allowed within the Clean Election system should the system lack sufficient funds in 2010. It is important to have a good rule in place to deal with the possibility of a shortfall, but it is our fervent hope that available funding will be adequate for all qualified candidates.

Apportioning reductions across all candidates (paragraph C)

According to testimony received by the Commission, the legislative caucuses prefer across-the-board cuts to initial distributions while several gubernatorial candidates prefer cuts to potential matching funds. While we believe the logistics are simplest in making small, across-the-board cuts to initial distributions, there is sound rationale for doing the opposite in the gubernatorial race, where it is very likely that maximum matching funds will be authorized.

We believe the rule allows the Commission to accommodate the different wishes of legislative and gubernatorial candidates that have been expressed during the rulemaking process but suggest that paragraph C be reworked to more accurately reflect the fact that different races may be treated differently. Specifically, the language should allow for distributions as described in Option 1A in Jonathan Wayne's memo dated November 3, 2001, which most of the interested parties seem to prefer.

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Raising contributions to replace matching funds (paragraphs D and F)

Candidates who raise funds in advance of the authorization to spend matching funds should be required to hold these funds in a segregated fund as the draft rule requires. That makes sense since there has been no authorization to spend the funds, and there may never be authorization to spend them.

If the authorization has already been granted, we are not certain that rationale exists to raise those funds into a separate account. If the Commission believes that there is no practical benefit in requiring a consistent procedure and no harm in allowing candidates to raise contributions to replace authorized matching funds directly into the main campaign account, then the rule should be revised to require only that unauthorized funds be deposited into a segregated account. Otherwise candidates might inadvertently find themselves in violation of this rule, even though they had not done anything objectionable.

MCCE recommends that the rule state that these replacement funds are the final matching funds to be spent. In other words, these funds would be held in a segregated account until they are needed, when the Commission is unable to pay out any more from the Maine Clean Election Fund.

We agree with the elimination of the sentence in paragraph D that Jonathan Wayne suggests in his memo of November 10, 2009. We think the sentence which follows that one could also be dropped for the same reasons. That sentence reads, "The Commission shall, as much as possible, reserve revenues in the Fund to pay matching funds to candidates."

Disposal of unspent funds (paragraph F)

We recommend that any replacement contributions that are authorized to be spent and are commingled with public funds be treated in every way as public funds. Accordingly, we believe that any funds that remain in the candidate's main campaign account should be returned to the Maine Clean Election Fund as the statute currently demands.

Unauthorized funds that remain in a segregated account are another matter. To be consistent with the principles of the Clean Election system, we believe that candidates should have very limited options in disposing of these funds. It would not be appropriate for a Clean Election candidate to carry over funds to a subsequent campaign; make a gift to another candidate, political party or charity; or pay for expenses related to legislative service. Therefore we don't think the rule should refer to the existing statute that deals with privately funded candidates' surplus campaign funds.

We recommend that the rule state that candidates may either return these unspent contributions to the original donors or turn them over to the Maine Clean Election Fund or the state treasury.

Other issues

We wish to address several additional issues that were raised in written and oral testimony.

First, Democratic leadership proposes to apply new restrictions to these privately raised contributions, specifically to ban contributions from political action committees (PACs), corporations and lobbyists. In her oral testimony, Anya Trundy, representing the Democratic caucuses, confirmed that the proposal was not meant to ban lobbyists as individuals from making such a donation, only that lobbyists would not be allowed to use client or corporate funds to do so.

We agree that applying source limits to these to privately raised contributions is a good idea and would be consistent with the Clean Election program. All other private funds in the system come only from individuals, not PACs or corporations. We are uncertain whether such a change could be made in the rule; it might be made more appropriately to the statute.

Second, several gubernatorial candidates have proposed allowing them to raise additional contributions above and beyond the statutory cap in order to cover fundraising expenses. Their rationale is that no Clean Election candidate budgets for fundraising expenses once public funds are available. We do not believe that the statute allows private contributions to be raised beyond the limits set forth in statute.

Clean Election candidates enjoy an advantage because they do not need to put resources into raising money once they are qualified. Any shortfall that triggered private fundraising would be unfortunate, but it would not put the CE candidate at a disadvantage relative to privately funded candidates; more accurately, it would eliminate an advantage.

At the hearing, Mr. Mitchell expressed his concern that distribution amounts in the gubernatorial race might be too low for viability. The current legislature has already agreed on distributions for 2010, and candidates have made their funding decisions based on the current amounts, so we do not recommend changing them now. We agree that it is important that distribution amounts be sufficient for candidates to run vigorous, competitive races. The system will not continue to be successful if candidates are under-funded and lack adequate resources to communicate with voters. This is not a matter to be taken up in rulemaking, but it should be part of the Commission's review following the 2010 elections.

Thank you for the chance to weigh in on the draft rule, and please don't hesitate to contact us if we can provide any other information.