



**TO:** The Honorable Senator Nancy B. Sullivan, Senate Chair  
The Honorable Representative Pamela Jabar Trinward, House Chair  
The Joint Standing Committee on Legal and Veterans Affairs

**DATE:** February 18, 2009

**RE:** LD 312, "An Act To Require Campaign Finance Reports of Independent Expenditures To Contain a Copy of an Advertisement," Rep. Magnan, sponsor

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**Maine Citizens for Clean Elections (MCCE) testifies neither for nor against LD 312.**

The Maine Clean Election Act contains a matching funds provision that relies on reports of both candidate spending and independent expenditures. These reporting requirements were challenged on constitutional grounds in federal court. While the requirements were upheld, care must be taken to make sure that subsequent changes in the law do not jeopardize its constitutionality. The matching funds system is absolutely key to the successful functioning of the Maine Clean Election Act.

LD 312 raises particular concerns relating to the expedited reporting schedule that is in effect for large expenditures and expenditures made in the last 2 weeks of the campaign. These expenditures must be reported within 24 hours. The purpose of this expedited reporting is to make the matching funds system work well. LD 312 would require additional information that is not directly related to the issuance of matching funds, thus it may raise a constitutional red flag.

In reviewing the accelerated reporting requirement for privately funded candidates, Judge Brock Hornby wrote in his 1999 decision in *Daggett v Webster*, "The state's only legitimate interest in requiring the additional reports is to keep track of their funding so that the matching funds system will work. All the Commission needs to know in the additional reports, therefore, are the total contributions and expenditures." In a related footnote, Hornby states, "If significantly more detail were required in the reports... I would have serious doubts about constitutionality."

While the rationale for reporting of independent expenditures is somewhat different than for candidate reports, it is not unreasonable to think that a court would apply the same thinking to the 24 hour reports of independent expenditures.

We urge the Committee to seek a legal opinion before moving forward with LD 312.

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MCCE Co-chair  
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**Member Organizations**

AARP Maine, Common Cause Maine, League of Women Voters of Maine, League of Young Voters, Maine AFL-CIO, Maine Council of Churches, Maine People's Alliance/Maine People's Resource Center, Maine Women's Lobby, NAACP-Portland, Natural Resources Council of Maine, Peace Action Maine