



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: March 16, 2009

RE: LD 607, "An Act To Amend the Maine Clean Election Act as It Relates to Independent Expenditures," Senator Plowman, sponsor

Maine Citizens for Clean Elections (MCCE) testifies in support of LD 607.

This bill extends the so-called "rebuttable presumption" period before the general election from 35 days back to Labor Day. This eliminates one of the perennial problems that has occurred in every election since the Clean Election Act went into effect. It means that in races where there is at least one Clean Election candidate, for the entire active period of the general election campaign, all electioneering that names or depicts a clearly identified candidate will be included in the matching funds calculation.

Without the clarity provided by the the "rebuttable presumption" language, the Ethics Commission is asked to determine, over and over again, whether particular advertisements and mailers constitute express advocacy or not. In almost every case, the purpose of the communication is perfectly clear whether or not the specific words of express advocacy are used. It puts a governmental agency, the Ethics Commission, in the position of having to scrutinize the content of political speech, something which we believe should be avoided. In many cases, the Ethics Commissioners find that they do not agree on whether the communication is or is not technically an independent expenditure under the law. This does not happen in the final three weeks of the campaign thanks to the current 35-day reporting requirement. Since elections begin in earnest just after Labor Day, and since absentee voting starts just two or three weeks later, the proposed extension is entirely appropriate.

As specific cases before the Ethics Commission have been decided, the precedents that have developed are sometimes counterintuitive and often silly. In one high-profile example last year, a mail house's tiny edit inserting the word "for" – as in Joe Blow for Senate -- made after a proof had been approved, moved a mailing from the category of issue advocacy into the regulated world of express advocacy. "Joe Blow, Senate" would have been issue advocacy. "Joe Blow for Senate" was express advocacy. Since the went unnoticed by the party making the expenditure, this resulted in the late filing of a

Member Organizations

AARP Maine, Common Cause Maine, EqualityMaine, 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

report, delayed matching funds, and a significant fine, even though the substance of the mail piece was not changed at all.

We take this opportunity to remind the Committee that editorial boards, rank and file legislators, MCCE, and others have called for this change for years, and there is really no legitimate reason not to do it. We ask that you and the full legislature make this a top priority, and we thank Senator Plowman and her cosponsors very much for presenting this bill.

Some have raised the question of whether this change would result in the payment of more matching funds to candidates. There is no way to accurately predict what the outcome will be since it is not known whether the parties making expenditures will change their strategies because of the change. There are many other factors at work: the amount of money available to parties, PACS, and candidates; the number and competitiveness of races, etc. When the rebuttable presumption period lengthened from 21 days to 35 days between the 2006 election and the 2008 election, the total amount of matching funds paid to legislative candidates actually went DOWN significantly – from just under \$619,000 in 2006 to just over \$463,000 in 2008.

All parties will be free to engage in whatever political speech they desire for whatever purpose they desire throughout the election. The only difference is that they will no longer have the opportunity to surgically craft messages in election communications in order to avoid triggering matching funds to an opponent during the active period of the campaign. They may choose to change the timing of their expenditures. They may choose to make and report the same sorts of expenditures that are made today. Whatever the outcome, the change is a necessary and soundly constitutional one that should be made..

MCCE does not recommend extending the 21 day period before the primary election. The problem mentioned earlier has not arisen in the primaries, largely because the political action committees and party committees that are active in making independent expenditures are not as engaged during the primary season. In addition, broader reporting requirements during the primary would be more likely to sweep in non-election communications, especially if the Legislature were still in session during that longer period. An extension of similar duration before the primary election would include the first half of April, and that is not necessary or advisable. We believe the current 21 day time period prior to the primary election is adequate.

We strongly urge the Committee to vote “Ought to Pass” on LD 607.

Ann Luther, Co-Chair
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