



TO: The Honorable Senator Nichi Farnham, Senate Chair
The Honorable Representative Michael Beaulieu, House Chair
Joint Standing Committee on Veterans and Legal Affairs

DATE: February 16, 2011

RE: LD 196, An Act Regarding Unenrolled Candidates under the Maine Clean Election Act
Sponsored by Representative H. Cotta

Maine Citizens for Clean Elections OPPOSES LD 196.

This bill creates a new hurdle for unenrolled Clean Election candidates to clear before receiving Clean Election funding in the general election. It asks the Secretary of State to fashion a scheme by which voters in a primary would choose between unenrolled candidates for the purpose of determining which one could receive Clean Election funds.

MCCE's objections are as follows:

This bill is unnecessary. We're not sure exactly what the problem is that must be fixed. Only once in the six cycles of Clean Elections has there been a race with more than one qualified unenrolled candidate. This was a 2008 House race in Auburn, an area that has sometimes been represented by an independent in the State House. In 2010, a grand total of three unenrolled candidates qualified as Clean Election candidates, and that includes all state races. In prior years there has been some concern that the qualifying threshold might be too low, allowing somewhat marginal candidates to qualify. The levels were raised for all offices, and today it cannot be said that it is too easy, nor that we have too many independent candidates.

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 State Employees Association/SEIU Local 1989, Maine Women's Lobby, NAACP-Portland, Sierra Club Maine Chapter

The bill is unfair. Unenrolled candidates are not members of a political party, and so they do not participate in primary elections. The idea that those running in the same race – rare as that is – would first compete against each other before competing in the general election for which they have already qualified is at odds with what it means to be unenrolled. Voters who offer five dollar Qualifying Contributions to unenrolled candidates do so for the very same reason that they offer them to party candidates: they want candidates they support to have the opportunity to run a Clean Election campaign. For unenrolled candidates, that means a general election campaign. Party primaries in Maine assume that candidates are competing for votes from the same pool of voters. For independents, that assumption could not be made.

The bill is open to First and Fourteenth Amendment challenges. One of the strengths of the Maine Clean Election Act is that the qualifying threshold is the same for all candidates who run for the same office. Attempting to craft one level for major party candidates and another for third party or independent candidates is not consistent with the equal protection clause of the Fourteenth Amendment of the United States Constitution. By allowing unenrolled candidates to qualify, and then snatching the public campaign funds which are the benefits of qualifying away from all but one, the system could be viewed as an overt infringement of First Amendment rights. In Connecticut, the legislature crafted a Clean Elections-style reform bill with different rules for third party and unenrolled candidates. That provision of the law was challenged and tossed out by the Court. Should LD 196 pass, you can be sure that it will be challenged, and there is no reason to think that it would not meet the same fate.

The bill would be complicated and expensive to implement. Surely the Secretary of State would try and rise to the challenge of creating a non-primary primary for unenrolled candidates if this bill becomes law. But deploying the staff resources that would be necessary to accomplish the task cannot be viewed as a good use of public resources. Whatever process is crafted might never be used, making this an empty and unnecessary exercise. Much time would be spent figuring out answers to questions like, “Who gets to vote in a non-primary

primary?” As with any new election law, election officials would have to be trained and the public would have to be informed. The Ethics Commission would need to do whatever rulemaking was necessary to create this new element to the Clean Election system. Candidates would have to have a higher public distribution in order to compete. The race would presumably have to be run under Clean Election rules, so there would need to be resources for matching funds in case independent expenditures came into play. And a fundraising scheme would have to be created to allow the Clean Election candidate who did not win the non-primary primary to raise money to compete, since this candidate would still be in the race, just without the public funds for which she or he had qualified.

Surely someone will argue that the bill will ultimately save money by eliminating candidates from the gubernatorial election. In three cycles of Clean Elections in that race, Maine has seen only one unenrolled candidate successfully qualify. Since that time, the qualifying bar has been raised significantly. The threshold is very high, and any candidate who gets over it has earned their place on the general election ballot and the right to public funds to run a competitive race.

The bill is inconsistent with Maine’s political culture. Maine people pride themselves on their independence, and our history includes many instances of successful independent candidates who rise and lead. One can’t assume that unenrolled candidates are less viable than party candidates, and one can’t assume that unenrolled candidates who run against each other have appeal to similar groups of voters. A primary between these candidates just makes no sense.

The bill does not benefit voters. Voters need choices, and in Maine, unenrolled candidates are often a popular choice. If it was ever used, this bill would say to voters, “Your choices are all on the ballot, but you only get to hear from one of the independents.”

For all these reasons and more, we urge you to vote Ought NOT to pass on LD 196.