



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

DATE: March 23, 2011

RE: LD 798, An Act To Prohibit Nonresidents from Contributing to Maine Political Campaigns or  
Candidates *Sponsored by Senator Troy Jackson*

---

**Maine Citizens for Clean Elections is pleased to offer testimony NEITHER FOR NOR AGAINST LD 798.**

LD 798 would impose a geographical limit on who may contribute to privately funded Maine candidates, Clean Election candidates and ballot question campaigns.

We understand and appreciate Senator Jackson's concern about contributions from out of state interests. It is only natural to want Maine elections and their funding sources to be as closely tied to our home state as possible. We are generally in favor of laws that put Maine people in the driver's seat. At the same time, we believe that LD 798 raises serious constitutional red flags, which should give the committee pause.

The constitutional and policy concerns are different for each of the bill's three provisions, so we will take them one at a time.

**Ban out-of state contributions to privately funded Maine candidates.** While the courts are split on the constitutionality of geographic source limits for contributions to candidate campaigns, such bans are struck down more often than not. Courts generally agree that all people have a right to express themselves in elections no matter where they live. For example, in *VanNatta v Keisling*, the Ninth Circuit Court of Appeals said that the State of Oregon could restrict out-of-state residents' right to vote, but that it could not restrict their right to express themselves, including by making campaign contributions, to Oregon 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

In contrast, the State of Alaska successfully defended limits (but not a ban) on out-of-state contributions because Alaska provided compelling evidence that differential treatment was merited.

**Writing Reform** ([http://www.brennancenter.org/content/resource/writing\\_reform\\_2010/](http://www.brennancenter.org/content/resource/writing_reform_2010/)), the Brennan Center for Justice’s comprehensive guide for reformers, sums up the case this way:

By contrast, in *Alaska Civil Liberties Union*, the Alaska Supreme Court pointed to facts peculiar to the state of Alaska—including its geographic isolation, its “100 years of experience” with attempts by outsiders “to remold Alaska,” and the ability of non-residents collectively to “overwhelm Alaskans’ political contributions” —as justification for monetary limits on contributions from non-residents. *See* 978 P.2d at 614-17. The court specifically distinguished the Alaska law from the Oregon limit on out-of-*district* contributions and declined to follow the reasoning of *VanNatta*.

Thus, to survive legal challenge any special limit on out-of-state contributions would have to be based on some compelling interest of the state. We do not know of any state that has successfully defended a full ban on out-of-state contributions.

There are also policy implications to a geographic limit as there are with all limits. Privately funded candidates need to be able to amass the resources they need in order to effectively reach voters, so lawmakers must consider the cumulative impact of all the various limits and restrictions in campaign finance laws.

Some of the concerns about geographic limits come from the relative wealth of different constituencies within a jurisdiction. For example, a candidate with a wealthy in-state constituency would have a better chance of raising sufficient funds under this ban than would a candidate with a poor in-state constituency who, in order to run a competitive race, might need to tap out-of-state donors who have an interest in Maine. This concern is somewhat muted in Maine since we offer an alternative to private funding. But MCCE believes that it is important that both our private and public funding systems be excellent, so this point deserves some consideration.

**Ban Seed Money contributions from out-of-state individuals.** LD 798 would amend the Maine Clean Election Act to limit Seed Money – the already very limited private money in our Clean Election system – to in-state donors. Because the Clean Election system is voluntary, this provision is less likely to run afoul of the Constitution, but that does not necessarily make it advisable policy.

In legislative races, Seed Money is optional, is capped at \$500 for House candidates and \$1,500 for Senate candidates, and generally is raised from individuals close to the candidate. It is a “get the campaign off the ground” exercise, not a fundraising imperative. Especially for first-time candidates, the opportunity to go to family and old friends for these \$100-or-less donations makes it doable. Relatives and old friends may or may not live in Maine, but it is hard to see any harm to Maine people by allowing them to contribute Seed Money.

In the gubernatorial race, a threshold amount of Seed Money is mandatory, and there is already a geographic limit on who may give. Only contributions from registered Maine voters count toward the mandatory Seed Money amount. The remaining allowable Seed Money, \$160,000, can come from any individual, in-state or out, and is subject to a limit of \$100 just like all Seed Money contributions.

The cap on Seed Money was raised from \$50,000 to \$200,000 for 2010, but no gubernatorial candidate raised the full amount.

**Ban out-of-state contributions to Maine ballot issue campaigns.** Ballot issue campaigns are a very difficult area to regulate since the state’s justification for regulation is far weaker than with candidate campaigns. In particular, the state’s compelling interest in preventing corruption or the appearance of corruption from large financial gifts is crucial in candidate campaigns but non-existent in issue campaigns simply because an issue can not be “corrupted.”

Recognizing the right to free speech and free association, and lacking concern about corruption, courts have routinely struck down contribution limits to ballot initiatives while upholding the disclosure requirements that allow voters to know the source and size of contributions. We know of no limit or ban that has survived a court challenge.

To sum up, MCCE believes that defending the provisions of LD 798 would be a very heavy lift for the State of Maine, and we respectfully suggest that the committee seek legal advice before moving forward on the bill. In addition, we believe the policy ramifications deserve thoughtful consideration.

Thank you for the chance to weigh in on LD 798.