



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 28, 2011

RE: LD 848 Resolve, Directing the Commission on Governmental Ethics and Election Practices to  
Study Modifying the Maine Clean Election Act Sponsored by Senator John Patrick

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**Maine Citizens for Clean Elections (MCCE) testifies in strong support of LD 848.**

In Washington, DC this morning, the United States Supreme Court heard oral argument in the case of *McComish v Bennett*. This challenge to Arizona's Clean Election matching funds system is the basis of a similar lawsuit that was filed here in Maine in August of 2010. That case, alternatively called *Cushing v McKee* and *Respect Maine PAC v McKee*, is on hold in the Federal District Court pending the outcome of *McComish*.

Because of the similarity of the Arizona and Maine Clean Election matching funds systems, it is likely that an adverse ruling in *McComish* would have an effect on Maine's law. But a decision from the Court is months away, and it is impossible to say what that decision will be. The Court could uphold the matching funds system. It could overturn the matching funds system on broad constitutional grounds. It could overturn the matching funds system on narrow grounds, perhaps even focusing on an aspect of the system that is unique to Arizona. Since matching funds are such an important and integral part of the Clean Election system, many legislators and citizens are concerned that after the *McComish* decision, our law may need amendment in order to remain viable. But it is very unlikely that the Court will rule early enough for amendments to be made in the First Regular Session of the 125<sup>th</sup> Legislature. Many Court observers predict a decision in June of this year.

LD 848 lays out a process and a reasonable timeline for the decision to be reviewed, recommendations made, and amendments proposed. It requires the Ethics Commission to study the Supreme Court decision and make recommendations to this committee no later than

**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

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October 15<sup>th</sup> of this year. It requires this committee to vote out a bill based on the Ethics Commission recommendation no later than December 1<sup>st</sup>.

This approach has several advantages to the approaches taken in other bills. Rather than asking the Committee to speculate on what the Supreme Court decision will be, it defers that discussion until the decision is known. It allows for ample public input, as the Ethics Commission and this Committee each conducts their part of the process in public meetings, hearings, and worksessions. It allows the full legislature to vote on any modifications to the matching funds system well before any matching funds would come into play in the 2012 election. The full legislature would have the opportunity to vote on a modified system in January 2012, giving candidates certainty before they choose how to fund their races.

MCCE believes in the constitutionality of the Maine Clean Election Act, including the matching funds system, and we have been involved in defending the law in each court challenge since the law passed in a 1996 citizen-initiated referendum. MCCE and four candidate-amici filed an amicus brief in the *McComish* case, as well.<sup>1</sup> We believe that the factual record built over ten years in Maine shows that matching funds enhance political speech and do not chill First Amendment rights.

We fervently hope that this Resolve is passed and never needed. But if Maine's law is undermined by the decision on Arizona's law, then Maine people must have a chance to fix it. The fix might be a substantial reworking of the Clean Election system, and it might be a relatively minor adjustment. Either way, this Resolve provides the most sensible and workable process to address that challenge.

We urge a unanimous OUGHT TO PASS vote on LD 848.

Thank you.

Alison Smith, Co-president

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<sup>1</sup> Read our full brief from a link at <http://www.maineanelections.org/133.html>