



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 968 An Act To Require Participating Candidates Who Are Principal Officers of Political Action Committees To Give a Percentage of Funds to the Maine Clean Election Fund,
Sponsored by Representative Denise Harlow

Maine Citizens for Clean Elections offers testimony neither for nor against LD 968.

This bill is a novel approach to the perennial issue of Clean Election candidates having their own so-called leadership PACs. Rather than banning the practice as is often proposed, this bill would require that 25% of funds raised, an amount that would be capped at \$1,000 for House candidates and \$5,000 for Senate candidates, be deposited into the Maine Clean Election Fund. MCCE appreciates the effort to bolster the Fund, but we must raise both constitutional and policy concerns about this proposal.

First, the constitutional concerns. Generally speaking, courts favor policies that enhance the First Amendment right to free speech and free association; and when a law limits such activity, a court would look for some rationale to support the restriction. A law that basically “takes” one quarter of the lawful donations that are raised for some political purpose might be suspect, even in the context of a voluntary public funding system. We suggest that the committee seek a legal opinion about whether this might be considered an impermissible “tax on speech.”

As for the policy considerations, we are not certain if the primary goal of this proposal is to discourage Clean Election candidates from having PACs, or to use private fundraising to fill the Clean Election coffers. If the former, we fear the ironic and unintended consequence that such a requirement could spur a higher level of private fundraising by Clean Election candidates. If \$25 of each \$100 in contributions is lost, then a candidate must get more and bigger donations to reach a fundraising goal.

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

But perhaps the goal is to use private fundraising to fill the Clean Election Fund coffers. With a cost of just \$2 per person per year, Clean Elections has, for ten years, kept to the budget that Maine people set out in the 1996 referendum. That initiative called for public funds to finance the program, with additional voluntary contributions made through Qualifying Contributions, the income tax check-off, and other contributions to the Fund. Penalties for certain violations of the law also go into the Fund. Mandatory contributions from other sources such as PACs were not contemplated, and the wisdom of doing so now is open to debate.

Maine has been largely successful in getting the big money out of the campaigns of candidates for state office for two reasons: 1) An option for full public funding and 2) reasonable contribution limits for privately funded candidates. We understand the concerns that are raised when candidates participating in the Clean Election public funding system also establish and participate in fundraising for political action committees (PACs). Although there are only a relatively few candidates in each cycle who choose to have a PAC, in too many instances PAC funds are raised from exactly the same special interest groups that our public funding system was designed to avoid.

At the same time, we also have concerns about privately funded candidates who may raise additional funds from their campaign contributors – without limit – into their PAC, potentially making a mockery of existing contribution limits. As we have testified in the past and testify again today, we prefer solutions that treat all candidates the same, and that start by placing reasonable limits on the amount of contributions that may be raised by PACs.

The best reforms will lessen the influence of big money in Maine races, preserve the disclosure that PACs provide, and protect the First Amendment rights of speech and association that are the bedrock of our political system. We look forward to working with Representative Harlow and the Committee to advance these goals.

Thank you.

Alison Smith, Co-president