



March 10, 2012

Jonathan Wayne
Executive Director
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135

Re: Proposed Rule 2012-P10 and 2012-P11

Dear Director Wayne:

On behalf of Maine Citizens for Clean Elections (“MCCE”) we appreciate the opportunity to submit these comments on proposed rules number 2012-P10 and 2012-P11.

MCCE is a nonpartisan organization that has been advocating for the full and effective implementation of the Maine Clean Election Act since it was passed in 1996. As part of its mission MCCE works for reform that is inclusive, fair, just, consistent with constitutional values, fiscally responsible, and workable.

General Comments:

We believe that the following principles should guide the Commission whenever it considers possible changes to the rules governing the MCEA system and other campaign finance and reporting regulations:

- Keep true to the spirit of the laws, whether passed by the legislature or by initiative;
- Regarding the amount and timing of disclosure, be guided by the strong public interest in access to all information at the time and in the format when it is of the most use to the public;
- Keep the rules clear to help ensure high compliance;
- Make every effort to ensure that changing technologies and the evolving use of new media don't create gaps in the disclosure system;
- Beware of the unprecedented national trend to thwart the principles of disclosure and cloak more and more campaign activity in secrecy.

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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Specific Comments:

1. Reporting Schedule for Independent Expenditures.

We have no objection to replacing the quarterly reports with a 60-day pre-election report, since there are few if any independent expenditures during the rest of the campaign cycle. We also do not object to moving the reporting deadline from 14 days to 11 days for clarity and simplicity.

Our single greatest concern with the current reporting system for independent expenditures is that the public often does not receive information about the true source of the funds for the expenditure – information which we believe is vitally important to an informed public.

We are not suggesting that there is a need for additional reporting when a single person makes an expenditure from his or her own funds, or when a committee makes an expenditure from a single pool containing funding commingled from a variety of sources. When, however, a person or committee is acting as a conduit for a contributor who has earmarked their contribution to be spent in a particular way, the public has an interest in knowing the true source of the funds and the nature of the earmarking. Without this, the disclosure of the expenditures alone is hollow and even misleading. We would ask that the rules regarding accelerated reporting of independent expenditures address these scenarios so that the public has information not only about the money that is spent but the source of the funds – at least where the funds can be traced to one source.

We believe accelerated contribution reporting by PACs and those making independent expenditures is feasible. Under current rules, candidates must engage in accelerated reporting of large contributions toward the end of a campaign. There is no reason this rule could not be applied to others engaged in electoral advocacy.

2. Expanding the “press exemption” to internet publishers of news and commentary.

We support a clear but limited bona fide press exception that is appropriate for the variety of new media now common in campaigns.

The draft rule sets forth a five-part test for determining whether an internet-based publication should be entitled to the press exemption. We believe the five-part test is generally appropriate, except under part “d.” we do not believe that the “purpose” test should be required. If the person or entity publishing the item is being compensated or reimbursed by a candidate or committee, etc., that should be enough. There is no need to also prove that the purpose was to influence an election.

As a matter of drafting, the first sentence of paragraph 10 seems redundant and potentially confusing. Those items are already exempt by function of the definition of expenditure elsewhere in the rule (and statute). For clarity this section of the rules should be limited to laying out the test for what kind of “internet periodical publications” are entitled to the expenditure exception.

3. “Testing the waters” provisions for “contributions” and “expenditures”.

Where a contributor gives a gift for the purpose of influencing the election, it is a “contribution” under the current statutory definition. 21-A M.R.S.A. 1012 (2)(A)(1). Once that occurs, the Commission has authority to treat the recipient as a “candidate” and apply all the limitations and reporting requirements in the law.

We are concerned that candidates are tempted to “game the system” – side-stepping contribution limits and reporting requirements on the grounds that the donor supposedly is not intending to influence the election, or the recipient supposedly is still only exploring a possible candidacy. While there is some subjectivity in the test, there is nothing about the exploratory phase that makes it more difficult to discern the donor’s intent than it would be later in the campaign. Thus, complaints that the test is unclear should be taken with a grain of salt.

As the Commission considers a new rule for exploratory activities, we would suggest that reporting requirements and contribution limits may be analyzed separately. While we think there is some rationale for waiving campaign finance reporting requirements during the “exploratory” or “testing the waters” phase (especially when a person ultimately chooses not to run for office), we do not see any rationale for waiving contribution limits. Simply put, we think contribution limits should apply during all phases of the campaign – even the earliest. And we think there is adequate authority for considering any gift to a person that relates to that person’s possible candidacy to be a “contribution” subject to the limits – regardless of when that gift is received.

For reporting requirements, we would favor a “bright line” test. For purposes of clarity, we would suggest that the Commission establish a dollar amount of campaign finance activity beyond which reporting is necessarily required. This is preferable to the factor set forth in the draft rule – “what could reasonably be expected to be used for exploratory activities”. There should be different dollar amounts for House, Senate and Gubernatorial campaigns. The seed money amounts in the MCEA might provide a good guide to what these exploratory amounts should be.

4. Disclaimer exemption for certain expenditures less than \$100 made independent of any candidate or campaign.

We support this rule and offer only a few comments.

First, rather than a new definition of “independent,” perhaps the definition set forth in Rules Ch. 1 at Section 10 (2)(C) could be used. Although the context is somewhat different, there may be some value in having only one definition to which all stakeholders could become accustomed.

Second, perhaps the rule could be redrafted with greater clarity and simplicity. For example:

No disclaimer is required of any handbill, campaign sign or internet or email communication costing less than \$100 if it is produced and distributed without any suggestion, request, direct or indirect authorization or compensation from any candidate or committee or agent thereof.

This exemption does not apply to any handbill, campaign sign or internet or email communication made by any person who is required to register or file campaign finance reports with the Commission.

5. Repeal of accelerated reporting schedule for non-MCEA candidates.

We acknowledge the rationale for changing this reporting requirement in light of the elimination of matching funds, but we note that the information previously reported for purposes of calculating matching funds also had value to the general public. We do not propose any changes to the draft rule, but ask that the existing reporting requirements be closely monitored in the 2012 election cycle to determine whether the public would benefit from any additional reporting by privately funded candidates in the future.

6. Membership Communications reporting schedule.

We support the adoption of a schedule, but ask whether it should be parallel with the other reporting requirements which are triggered 11 days before the election rather than three days before as proposed.

7. Circulation Form for Qualifying Contributions.

We have no objection to giving Commission staff more flexibility in devising a clear and straightforward qualifying contribution form. We believe, however, that there is an important public purpose served by verifying whether the circulator was paid or a volunteer, and that the forms were signed in the circulator's physical presence. Eliminating those requirements would be a concern for us. At the very least, if this revision is approved we would appreciate the opportunity to work with the staff on a revised form.

8. Using MCEA Funds for Vehicle Travel Reimbursement.

We support and welcome this change as it will enhance transparency regarding the use of MCEA funds for travel – one area where record keeping and reporting are somewhat more complicated compared to the more straightforward purchase of goods and services.

Thank you again for considering these comments. We look forward to continuing to work with you and the Commission.

Sincerely yours,

A handwritten signature in black ink that reads "John Brautigam". The signature is written in a cursive style with a large, looped "J" and "B".

John Brautigam