



Testimony before the Joint Standing Committee on Veterans and Legal Affairs

LD 1613, An Act To Define “Agent” and “Candidate’s Political Committee” in the Laws Regarding Limitations on Campaign Contributions and Expenditures

and

LD 1631, An Act to Clarify What Constitutes a Contribution to a Candidate

Monday, January 27, 2014

Senator Tuttle, Representative Luchini and members of the Joint Standing Committee on Veterans and Legal Affairs:

Thank you for the opportunity to comment on LD 1631, An Act to Clarify What Constitutes a Contribution to a Candidate. We will also offer a few comments on LD 1613, An Act To Define “Agent” and “Candidate’s Political Committee” in the Laws Regarding Limitations on Campaign Contributions and Expenditures.

My name is BJ McCollister, and I am the Program Director of Maine Citizens for Clean Elections.

Maine Citizens for Clean Elections (MCCE) is a nonpartisan organization that works in the public interest to advocate for, defend and improve the Maine Clean Election Act and related campaign finance law. We have been at this work since the 1990’s. Whenever there is legislation relating to our campaign finance and reporting system, MCCE works to bring forward what’s best for the people of Maine.

Maine people support limiting money in elections by an overwhelming majority. Maine has had a strong system of contribution limits for many years. The federal government and 46 other states have contribution limitations or restrictions, going back to the Tillman Act of 1907 and the Federal Corrupt Practices Act of 1925.

As the United States Supreme Court said in *Buckley v. Valeo*, “To the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined. Although the scope of such pernicious practices can never be reliably ascertained, the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem is not an illusory one.” The Court went on to say, “the avoidance of the appearance of improper influence is . . . critical . . . if confidence in the system of representative Government is not to be eroded to a

disastrous extent."¹

These important limitations, however, would be meaningless if candidates could simply direct prospective contributors to spend large amounts of money to help their campaigns without actually contributing to their formal campaign committee. To make sure that contribution limits work, they must be accompanied by restrictions on coordinated spending. To do otherwise creates a gigantic loophole, allowing massive circumvention of contribution limits. In most states and the federal system, coordinated spending is treated as a contribution. This ensures that no such loophole occurs, and protects the integrity of contribution limits.

In Maine, unfortunately, we have seen the “coordination” rules erode, threatening to open up this loophole once again. And that is why LD 1631 and LD 1613 are before you today.

The law needs to be updated for three reasons:

1. The public needs to be assured that candidates are not beholden to any one large contributor;
2. Candidates and contributors need clear rules about when an expenditure becomes “coordinated” and therefore must be counted as a contribution; and
3. The Ethics Commission needs a clear standard that it can apply in enforcement proceedings.

LD 1631 creates a clear-cut rule that whenever someone affiliated with a candidate campaign makes an expenditure, that expenditure is a contribution. It provides a clear definition of “affiliation” to include officers of the campaign, anyone who has been an employee or contractor of the campaign, the campaign manager, and the spouse or domestic partner of the candidate.

LD 1631 also ensures that everyone named as a campaign officer or manager is subject to the same standard. A treasurer or campaign manager is considered “affiliated” with the campaign even if they claim to serve “in name only.”

LD 1631 provides clarity and certainty to everyone involved in financing candidate campaigns. It also provides reassurance to the public that the system of campaign contribution limits is working to protect the democratic process.

Finally, LD 1631 does not eliminate the “coordination” provisions of existing law. The new “affiliation” test is added to provide clarity at least in those instances where a person has a clear role and relationship with the campaign.

¹ 413 U.S. at 565.

The second bill – LD 1613 – also addresses this issue, and we appreciate the efforts of the Commission, Director Wayne, and Chairman Luchini to address this issue. The approach in LD 1613 is a step in the right direction, but we think LD 1613 does not provide the clarity and simplicity that is required.

We strongly encourage the Committee to clarify this area of the law. While we prefer the approach in LD 1631, we recognize that there may be more than one way to solve this problem, and we would like to offer our expertise to help produce a bill that will earn the Committee's approval. We'd encourage the committee to support LD 1613, LD 1631, or some combination of the two.

We would appreciate the chance to work with the Committee, the bills' sponsors, and the Commission staff in the days ahead or at the work session.