



TO: The Honorable Louis Luchini
The Honorable Chris Caiazzo, Co-Chairs
Members of the Joint Standing Committee on Veterans and Legal Affairs

DATE: April 26, 2021

RE: LD 1414 – An Act To Prohibit Candidates for President or Federal Office from
Donating to State Political Action Committees

Good morning Senator Luchini and Representative Caiazzo.

My name is John Brautigam. I live in Falmouth, and I am here today as legal counsel and policy advisor for Maine Citizens for Clean Elections. I am testifying neither for nor against LD 1414 – An Act To Prohibit Candidates for President or Federal Office from Donating to State Political Action Committees. We appreciate the sponsor and co-sponsors for bringing this forward and for furthering the conversation about money in politics.

Maine Citizens for Clean Elections has been the leading campaign finance organization in Maine for over twenty years and one of the nation's most respected state-based organizations advocating for democratically funded elections. We are proud of our national reputation. But we are all Mainers, and our nonpartisan mission has always been with and for the people of this state.

The bill language is simple: "A political action committee may not accept a contribution from a candidate for President or federal office." The bill aims at a certain narrow category of contributors – candidates for Congress or President. Federal candidates raise and spend an enormous amount of money. The two leading presidential candidates in 2020 spent over \$1.77 billion combined. That was just a fraction of the overall spending when one includes PACs and independent expenditures, as shown by the graph attached to this testimony. Finances in the US Senate race of Sara Gideon and Susan Collins were detailed in this recent national report, charting the breath-taking total amounts raised and spent. <https://americanpromise.net/wp-content/uploads/2021/04/Under-the-Avalanche.pdf> This runaway spending is a huge issue to the general public. One question we heard more than any other last year was, "What can we do about this out-of-control political spending?"

Certain court cases limit what we can do to address the public's concern, but there are always new ideas to try. We can understand why someone may want to create a barrier between the astronomical level of spending by federal candidates and spending by Maine state candidates, and perhaps that is the goal of this bill.

The reason we are neither for nor against is that the bill leaves a couple of questions unanswered. For one, the goal of the bill is not entirely clear. When restricting campaign spending activity, courts often look to the state's justification in enacting a new rule. For example, when a PAC gives to a candidate, the state has an interest in preventing the corruption of that candidate or the appearance of corruption. But what is the state interest when the candidate is the contributor rather than the recipient? What is the benefit to the public in telling a candidate that they cannot give to a PAC, and telling a PAC that it cannot accept money from a candidate? In the event of a legal challenge, it would be important to be able to articulate answers that would withstand rigorous scrutiny.

Also, could this bill be circumvented by allowing a political party committee, nonprofit, or corporation to accept contributions from federal candidates and then pass them on to a conventional PAC? Would this effectively nullify the intent of the bill?

These are questions that the Committee may wish to consider. We would be happy to discuss this further should the Committee wish to move forward with the bill.

Finally, there may be limits on the scope of a state's jurisdiction and what it can do to regulate the activity of federal candidates, who are already subject to a host of federal laws. For your information, the Federal Election Commission has established guidelines for how candidate funds may be paid out and to whom. Those guidelines are minimal, perhaps reflecting possible constitutional issues relating to restrictions on these funds. One clear rule is that candidates may not convert funds for their own use.

<https://www.fec.gov/resources/cms-content/documents/candgui.pdf>

Thank you for the opportunity to testify. I would be happy to answer any questions from the Committee.

2020 Election Crushes Spending Records

Total federal spending in the 2020 election reached \$14.4 billion, establishing itself as the most expensive election in U.S. history by a large margin.

