



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

DATE: January 12, 2022

RE: LD 1754, An Act To Modify the Reporting Requirements for Major Contributors to Ballot Question Campaigns

Good morning Senator Luchini, Representative Caiazzo, and members of the committee.

My name is John Brautigam. I'm a resident of Falmouth. I am here today on behalf of Maine Citizens for Clean Elections. I am testifying neither for nor against LD 1754.

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.

Public awareness of who is spending money to influence our elections is essential to democracy. But sometimes those people resist transparency, and it can be quite challenging to ensure that the public has this information. That is why eight years ago MCCE wrote one of the nation's first "top funder disclosure" laws. This was part of the successful 2015 citizen initiative that also strengthened the Maine Clean Election Act. This law requires public disclaimers revealing the funding sources behind independent expenditures in candidate races.

Since then, the legislature also enacted stronger disclosure requirements applicable to citizen initiatives and ballot question campaigns.

It is important that all such requirements strike the proper balance between the public need to know and the legitimate interests of the contributors. It is also important that these requirements are clear and definite so that the regulated entities know exactly how to comply and Commission staff have sufficient parameters to enforce the law.

With time, stakeholders and the Ethics Commission occasionally identify improvements in these disclosure and reporting requirements. We appreciate that work by the Ethics Commission and generally support their recommendations.

Regarding LD 1754, we offer a few specific comments. First, Section 2 empowers those contributing over \$100,000 to request partial waivers of the disclosure requirements. These partial waivers are referred to as “modifications.” The first factor the Commission may consider in modifying the statutory requirements relates to whether the major contributor has staffing and other resources to readily comply with the requirement. The second factor the Commission may consider relates to whether the public interest is served by disclosure of the information. Both of these factors are policy decisions, but they also have implications for commission staff and entities striving to comply. When enacting this statute in 2017, the legislature established the relatively high threshold of \$100,000 as the point where—in its judgment—the public interest outweighs the administrative burden. Maybe the experience since this was enacted would suggest amending that threshold. That would keep this important policy decision in the hands of elected officials. However, the language in LD 1754 – asking the Ethics Commission staff to consider “modifications” of that threshold – puts staff in the position of trying to decide where the public interest in disclosure outweighs the burden. This is not intended to denigrate the excellent staff of the Ethics Commission. But asking them to recalibrate this policy determination on a case-by-case basis could lead to a weakening of enforcement and a confusion of the appropriate roles.

If the problem is that the statute is not clear enough about the relevant sources of funding, we suggest that it could be amended (see attached) to provide greater clarity that we are not seeking disclosure of revenue received in the ordinary course of business or transfers between wholly-owned affiliates.

The Commission reportedly received feedback from some major contributors that compliance with the existing law was burdensome. That is not a new argument — it was anticipated and addressed by the choice of the \$100,000 threshold, and by the exclusion of any funding received that will not be used for a people’s veto referendum or a direct initiative. As noted, those are legislative policy decisions. We would like to understand the nature of any administrative difficulty, or whether the resistance is motivated by other considerations. Perhaps the clarification suggested above will suffice. We hope any contributors who raised these concerns are here today to describe the problem.

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

Possible amendment language:

An Act To Modify the Reporting Requirements for Major Contributors to Ballot Question Campaigns

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 21-A MRSA §1060-A, sub-§1, ¶B, as enacted by PL 2017, c. 418, §4, is amended to read:

B. "Major contributor" means a person, other than an individual or a committee, that makes one or more contributions aggregating in excess of \$100,000 to a ballot question committee or political action committee for the purpose of initiating or influencing any one people's veto referendum campaign or any one direct initiative campaign.

Sec. 2. 21-A MRSA §1060-A, sub-§4, ¶E, as enacted by PL 2017, c. 418, §4, is amended to read:

E. The names of the 5 largest sources of funds received by the major contributor during the period beginning 6 months prior to the first contribution made to the recipient committee and ending on the date of the filing of the report. This paragraph does not apply to funds:

(1) received by the major contributor that are restricted to purposes that are unrelated to a people's veto referendum or direct initiative campaign in the State,

(2) derived in the normal course of business of the major contributor, or

(3) received from another entity that is owned in whole or in part by the major contributor

~~A major contributor may request a modification to the requirements of this paragraph. In considering a request for a modification, the commission shall consider the financial and staffing resources of the major contributor, the financial cost and amount of time it would reasonably take to gather the information, the public interest in having access to the information and other relevant factors. The commission may accept a financial disclosure report required under any other law to satisfy the requirements of a modification to this provision; and~~

Sec. 3. 21-A MRSA §1060-A, sub-§5, as enacted by PL 2017, c. 418, §4, is repealed and the following enacted in its place:

5. Noncompliance. The commission may assess a civil penalty against a person that does not comply with the requirements of this section. The preliminary penalty is 10% of the total contributions required to be reported or \$50,000, whichever is less, for:

A. A recipient committee that fails to provide timely notice to a major contributor under subsection 2;

B. A recipient committee that fails to provide a copy of the notice to the commission under subsection 2. If the commission assesses a penalty under paragraph A, the commission may not also assess a penalty under this paragraph; and

C. A major contributor that fails to file a timely report required under this section or that files a report that does not substantially conform to the disclosure requirements of this section or rules adopted under this section.

Sec. 4. 21-A MRSA §1060-A, sub-§6 is enacted to read:

6. Waiver request; final penalty. Not later than the 14th calendar day after the date the person receives notice of the preliminary penalty from the commission under subsection 5, the person may request a waiver of the penalty in full or in part. In considering a request for a waiver under this subsection, the commission shall consider:

A. For violations under subsection 5, paragraphs A and B:

(1) Whether, as a result of the late notice, the due date for a report required by this subchapter is later than if a timely notice had been received;

(2) Whether the recipient committee made a bona fide effort to provide notice to the major contributors;

(3) The amount of the contributions required to be reported; and

(4) Other relevant factors; and

B. For violations under subsection 5, paragraph C:

(1) The failure of the recipient committee to provide notice of the reporting requirement to the major contributor;

(2) The number of days the report is late;

(3) The amount of the contributions required to be reported; and

(4) Other relevant factors.

A person requesting a determination on a waiver may either appear in person or designate a representative to appear on the person's behalf or may submit a sworn statement explaining the mitigating circumstances for consideration by the commission. After a commission meeting, the commission shall mail notice of the final determination of the commission and the penalty, if any, imposed pursuant to this subsection to the person against whom the commission is assessing the penalty. If the person against whom the commission is assessing the penalty does not request a waiver, the preliminary penalty calculated by the commission is final. The commission shall mail final notice of the penalty to the person against whom the commission is assessing the penalty. A final determination by the commission on a waiver may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.