



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

DATE: February 3, 2021

RE: LD 53 – An Act To Limit Political Advertising

---

Good morning Senator Luchini and Representative Schneck.

My name is Anna Kellar. I'm a resident of Portland. I am here today as Executive Director of Maine Citizens for Clean Elections. I am testifying neither for nor against the concept bill LD 53 - An Act To Limit Political Advertising.

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 2020 elections provided a vivid reminder of the pervasive impact on our democracy of large amounts of money originating from a small number of corporations and wealthy contributors. Many of those who funded candidate elections are not Mainers, but spend their money here to try to tip the balance of the elections in one way or another to have an impact on the balance of power in Washington D.C. The money flows through candidate campaigns, special interest PACs, and political party committees.

In 2020 we heard repeatedly how many everyday voters found this phenomenon offensive and even obscene. They are searching for a solution that would slow the avalanche of advertising on television, in the mailbox, and through nearly every other conceivable medium.

Representative O'Connell's concept bill is a response to the frustration of many who feel that campaigns should be returned to the people. We understand that the intention of this bill is to honor the promise of one-person, one-vote that seems lost in a torrent of 30-second advertisements – many vacuous or misleading.

We agree that something must be done to return the focus of our elections to the people, and to preserve and protect the principle of one-person, one-vote. However, content-based laws are "presumptively unconstitutional," *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015); *Cent. Radio Co.*

*Inc. v. City of Norfolk*, 811 F.3d 625, 633 (4th Cir. 2016). The courts have held that political speech is entitled to special protection under the First Amendment. *See, e.g., Burson v. Freeman*, 504 U.S. 191, 196 (1992) (“[T]he First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office.” (quoting *Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989))). Regulations of political speech therefore “trench[] upon an area in which the importance of First Amendment protections is at its zenith.” *Meyer v. Grant*, 486 U.S. 414, 425 (1988). A ban or restriction on advertising would almost certainly be subjected to strict scrutiny review and would likely be struck down by the courts.

The legal restrictions imposed by cases such as these have led many folks to pursue other policy options such as public funding programs, or contribution limits and restrictions – instead of bans on advertising. In fact, Maine has made great strides in these areas and has served as a model for other states and cities that aim to keep people in the driver’s seat of elections. It is challenging work thanks to court precedents that have, over the years, limited the constitutional paths to reform. We stand ready to pursue worthwhile ideas that improve elections and strengthen democracy, and we believe there are ways to preserve and protect First Amendment rights and also ensure that voters are well-served.

We look forward to the other testimony today and to the full draft of the concept bill when possible. We are happy to provide any assistance to the Committee as it works on this and related bills.

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