



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 59 - An Act To Define the Term "Unenrolled Political Action Committee"

Good afternoon Senator Luchini and Representative Caiazzo.

My name is Anna Kellar, and I am a resident of Portland. I am here today as Executive Director of the Maine Citizens for Clean Elections and MCCE Action. I am testifying neither for nor against LD 59 – An Act To Define the Term "Unenrolled Political Action Committee."

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.

MCCE is a non-partisan organization; we do not favor either of the two major political parties or any of the smaller political parties. We also recognize that many voters and candidates do not align with any political party, and we think policy should not favor or disfavor any person or group who chooses to be unenrolled. At the same time, we recognize that parties play an important role in organizing citizen engagement and channeling political impulses.

We believe that legislators who are not aligned with a political party should be treated fairly and equitably in the conduct of legislative business, the allocation of legislative resources, and with respect to any rules regulating fundraising and campaign activities.

Although most lawmakers have been aware of the concept of "leadership PACs" and "caucus PACs" for many years, until recently these terms were only informal labels applied to certain political action committees, and had no special legal meaning. That is, any person or group of people has always had the power to form a political action committee. And a political action committee formed by legislators or by a legislative caucus is really no different from any of the dozens of other political action committees operating in Maine at any time. The rules and reporting requirements are much the same.

There is no law needed to allow anyone to form a PAC – whether a partisan legislator, a caucus, an unenrolled legislator, or a person on the street.

The one area where Title 21-A singles out a special type of legislative PAC relates to payment for recounts. Section §1018-B, sub-§2 allows a candidate in a recount to accept donations of unlimited size from “party committees and caucus political action committees” This would appear to give an advantage to a recount candidate who is in a political party and/or who is aligned with a caucus political action committee. However, the section also allows “attorneys, consultants and their firms” to make donations directly to any candidate in the recount, without limitation. Since nearly all donations in recounts consist of the in-kind contribution of attorneys, consultants and their firms, current law already allows independent candidates to accept this crucial type of support without running afoul of contribution limits or restrictions. For transparency purposes, these donations must be reported to the Ethics Commission.

In addition, since a recount happens a few weeks after voting ends, there is a reasonable question whether in-kind contributions of attorney time during a recount could be construed as an attempt to influence an “election” and therefore that they might not meet the definition of “contribution” under the law. The statute refers to these as “donations,” rather than “contributions.”

We also note that the bill seems to say that there is only one “unenrolled” caucus PAC per chamber. In our experience, unenrolled legislators often do not share the same interest in forming a unified caucus with each other. The notion of an “unenrolled caucus” is not well-formed, yet seems to be central to the idea of this bill. Requiring all unenrolled legislators in a chamber to participate in choosing one caucus leader and forming one PAC may raise some unique issues.

Finally, current law allows Clean Election candidates to help with caucus PAC fundraising even though Clean Election candidates cannot have their own PACs. Section 8 of LD 59 would extend that rule to Clean Election candidates who are independent and who wish to assist with the fundraising for an independent caucus PAC. If the Committee is inclined to move ahead with the general idea of this bill, we think this accommodation is a fair way to treat unenrolled legislators using Clean Elections.

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