



Testimony before the Joint Standing Committee on Taxation

LD 1285 An Act To Tax Political Expenditures Made Immediately before an Election

April 27, 2017

Senator Dow, Representative Tipping, and members of the Joint Standing Committee on Taxation:

Thank you for the opportunity to testify on LD 1285 – An Act To Tax Political Expenditures Made Immediately before an Election.

My name is Bob Howe of Howe Cahill. I am here today on behalf of Maine Citizens for Clean Elections.

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 mission has always been with and for the people of this state.

For over twenty years we have studied Maine's campaign finance system, identified ways to make it more representative, and worked to implement improvements. Our latest major undertaking was the successful 2015 citizen initiative to restore the Maine Clean Election Act following a negative court decision.

Our democratic process is based on the concept of government of, by and for the people. It is also based on the idea of one person-one vote. These cornerstones are deeply supported by the public and are not the subject of partisan dispute.

MCCE believes that money can sometimes have a very corrosive effect on those important principles. Particularly when large amounts of money are spent by unaccountable sources, and when it is spent in the crucial final days of a campaign, it can tend to drown out the voices of discussion and debate in the community and unduly distort the public dialogue. When one deep pocket – possibly from out of state – can outspend all the candidates and their local supporters, what does that do to our cherished tradition of self-government?

Long ago MCCE decided that the best, foundational solution is to create a voluntary public funding system which allows candidates who show strong public support to communicate directly with voters.

LD 1285 would take a different approach. This bill would place a high tax on certain political expenditures. At a rate of 50%, we believe the tax is so high as to be not intended as a source of

revenue, but to prevent those expenditures from happening. Whether or not that is the intention, it could be the effect of this tax.

While we share the sponsor's frustration with the undemocratic effect of these large, last-minute expenditures, we also know that courts have ruled that independent expenditures are "political speech" entitled to protection under the First Amendment. At MCCE, we believe that free and open political speech is very important for our democracy. Although we don't agree with the court decisions equating money with speech, and while we do think that First Amendment values are enhanced when all voices can be heard, we want to draw your attention to that issue. As Richard Hasen, an expert on election and campaign finance law, said of a similar measure when it was proposed in California, "You can't design a tax with the purpose of trying to suppress speech. ... The clear import of something like this would be to discourage people from making independent expenditures." That may be the intent, and we might be sympathetic, but under current precedent, it would surely be challenged in the courts and found unconstitutional.

Because of this consideration, our testimony is neither for nor against LD 1285.

Thank you very much. We are happy to take any questions.