



TO: The Honorable Senator Craig Hickman
The Honorable Representative Laura Supica, Co-Chairs
Members of the Joint Standing Committee on Veterans and Legal Affairs

DATE: March 8, 2023

RE: LD 737 - An Act to Prohibit Government Contracting Organizations from Influencing Elections

Good morning Senator Hickman and Representative Supica.

My name is Anna Kellar. I'm a resident of Portland. I am Executive Director OF Maine Citizens for Clean Elections. I am submitting testimony in qualified support of LD 737 - An Act to Prohibit Government Contracting Organizations from Influencing 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 and campaign finance laws that serve the public interest. 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 believes that our government should be responsive to the will of the people and that it should be free from undue influence, corruption, and the appearance of corruption. We support measures that encourage governmental ethics and that give citizens confidence that state business is being conducted in the public's best interests.

LD 737 would prohibit certain entities with government contracts from making certain types of political contributions. In general we think this would be a good policy for Maine to adopt. Maine would join the federal government, which has barred contributions from contractors for over 80 years. 52 U.S.C. § 30119(a)(1) (formerly 2 U.S.C. § 441c). This federal rule applies to all contractors from very large corporations such as Lockheed Martin to individual nurses working for a federal public health project.¹ Seventeen other states have such laws. See attached list.

We share the sponsor's concern that financial ties from campaign contributions could undermine the integrity of both our democratic process and state procurement efforts. At the very least, it creates an appearance of undue influence which diminishes public confidence in both. We can all agree that protecting our democratic process and ensuring the most cost-effective use of taxpayer dollars in state procurement decisions are two of the most important priorities of state policy.

¹ The prohibition on contractor contributions was strengthened in 1986 with the passage of the Federal Acquisition Regulation (FAR). The FAR requires federal contractors to certify that they have not made and will not make any political contributions in violation of FECA.

Government contractors are often in a unique position to influence state politicians due to their close relationships with those in power. Elected officials can wield their influence at two points in the process. First, they can influence appropriations that may be very lucrative to vendors of goods and services. Secondly, once an appropriation has been made, elected officials can influence the agency that is implementing a procurement effort.

While acknowledging that our state's procurement procedures are designed to isolate vendor selection from political influence, and without denigrating state employees, we acknowledge that the bill sponsor's concern is reasonable. This behavior can lead to a perception of impropriety and undermine public trust in government. At the start of this year a ban on contributions from corporations to Maine candidates took effect. This new ban will address many of the concerns about contributions from government contractors. The more comprehensive prohibition on donations from state contractors to PACs and party committees in LD 737 would further safeguard against corruption and ensure that government contracts are awarded based on merit and not political connections.

This law clearly passes constitutional muster. The United States Supreme Court in decisions going back to *Buckley v. Valeo* (1976) has repeatedly upheld the constitutionality of limits on political contributions as a means of preventing corruption and ensuring the integrity of our democratic process. The federal prohibition on contractor contributions has been the subject of legal challenges, with some arguing that it violates the First Amendment right to free speech. However, the second-highest court in the federal system recently upheld the constitutionality of the prohibition, recognizing the government's interest in preventing corruption and the appearance of corruption. *Wagner v. Federal Election Commission*, 793 F.3d 1 (2015).

It is reasonable to ask whether there are any instances of this kind of corruption in Maine. We have not seen any overt corruption of this type to date. Maine has relatively low limits on contributions to candidates, strong rules on lobbying and lobbyist contributions, and of course a Clean Elections system. But such limits do not apply to political parties or caucus committees, nor do they apply to independent expenditure committees.

We believe that state employees working on procurement are ethical and hardworking. But many vendors seeking state contracts are not based in Maine and may not share our concern over avoiding the appearances of undue influence. For example, in 2016 a scandal involving an out-of-state contractor overtook the State of Nebraska.² The State had awarded a very large contract to a Fortune 500 company which had given "a tsunami" of contributions during the procurement process. The gifts included over \$150,000 in contributions to the Governor, State Senators, a major party political committee in the state, and every member of the legislative committee of jurisdiction. The contractor was awarded the contract, which subsequently turned out to be a disaster for the state.³

² Nebraska Money in Politics, Part 2, Nebraska Campaign Finance Laws Compared to Surrounding States.
<https://lwnnebraska.org/wp-content/uploads/2020/06/LWVNE-Money-in-Politics-Report-Part-2.pdf>

³ There have been several other high-profile cases where the ban on contractor contributions was egregiously violated. One example is the case of the Enron Corporation, which was a major federal contractor and also a significant contributor to political campaigns. In the 2000 election cycle, Enron and its executives gave over \$2 million to federal candidates, parties, and committees. After Enron's collapse in 2001, it was revealed that the company had used its political contributions to gain access and influence in Washington, including securing favorable treatment in the awarding of government contracts. This raised

The problem of the appearance of corruption is real. If a contractor contributes to a candidate who is elected to a position with influence over the awarding of government contracts, it could be seen as an attempt to gain favoritism or an unfair advantage in the bidding process, or more likely, in regulating the affected sector. Of course, legislators and the governor don't personally award contracts, but they do have control over the appropriation of funding and the types of projects and vendors to which it is applied. They also have regular interactions with state agencies and those who make procurement decisions. It is not hard to see how contributions from prospective vendors could undermine public trust in the fairness and impartiality of government decision-making. There is also evidence to suggest that campaign contributions are not merely a problem of optics, but can actually have an influence on the award of contracts.⁴

Though we generally support the concept, the text of LD 737 raises some specific questions. First, the bill refers to unions, but it is not entirely clear whether the reference to "contract" includes a collective bargaining agreement, and if so how the \$500,000 threshold would be applied. It is unlikely that any individual union member has a contract with the State worth \$500,000. The aggregate of all salary payments to individual union members and other employees resulting from a collective bargaining agreement could easily exceed \$500,000. But the union itself is a separate entity from the individual members. So it is not clear how LD 737 would apply to unions and their members.

Second, the scope of the proposed law is also unclear. Would it prohibit a contractor from making *any* contribution to "a candidate, a political action committee, a political party or a political organization registered as a tax-exempt organization . . ." ? Or would it only prohibit contributions specifically used in an "effort to influence an election in the State . . ." ? Either interpretation is possible. Where First Amendment rights are involved, it is important to minimize any uncertainty.

Third, contributions to organizations registered with the IRS under U.S. Code section 501(c)(4) are covered by the bill but apparently contributions to organizations such as super PACs and 527 groups are not included. We question why the bill takes the approach, since super PACs and 527 groups are even more "political" than 501(c)(4) nonprofit organizations. More fundamentally, applying the prohibition to non-profit organizations might extend the scope too far. We suggest that the bill focus on contributions to candidates, independent expenditure committees, and political party committees where the appearance of undue influence is the most direct.

Fourth, the term "contribution" is not defined in the bill. The term is defined in the campaign finance section of the statutes as it applies to something of value given to a candidate, party committee or political action committee. Title 21-A, sections 1012(2) and 1052(3). The definition in Title 21-A does not address money received by a 501(c)(4) non-profit that does not report as a PAC. The bill would be strengthened by a clear

concerns about the integrity of the federal contracting process and led to calls for further reform of the campaign finance system. Another example is the case of Brent Wilkes, a defense contractor who was convicted of bribing former Rep. Randy "Duke" Cunningham (R-CA) in exchange for millions of dollars in federal contracts. Wilkes and his associates had made significant political contributions to Cunningham and other members of Congress in an effort to secure favorable treatment for their company.

⁴ Christopher Witko, Campaign Contributions, Access, and Government Contracting, *Journal of Public Administration Research and Theory: J-PART*, Vol. 21, No. 4 (October 2011), pp. 761-778, Oxford University Press.

definition of "contribution" either by reference to Title 21-A or added to this section of Title 5.

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

Contractor Contribution Regulations Enacted in Other States

At least seventeen states have enacted limits or prohibitions on campaign contributions from prospective and/or current governmental contractors or licensees.

1. Cal. Gov't Code §84308(d)
2. Conn. Gen. Stat. §§ 9-612(g)(1), (2)
3. Haw. Rev. Stat. § 11-355 30
4. Ill. Comp. Stat. 500/50-37
5. Ind. Code §§ 4-30-3-19.5, -19.7
6. Ky. Rev. Stat. Ann. §121.330
7. La. Rev. Stat. Ann. § 18:1505.2(L), id. §27:261(D)
8. Mich. Comp. Laws § 432.207b
9. Neb. Rev. Stat. §§ 9-803, 49-1476.01
10. N.J. Stat. Ann. §§ 19:44A-20.13, -.14
11. N.M. Stat. Ann. §3-1-191.1(E)
12. Ohio Rev. Code § 3517.13(I)-(Z) 53
13. Pa. Cons. Stat. § 895.704-A(a)
14. S.C. Code Ann. § 8-13-1342
15. Vt. Stat. Ann. tit. 32, § 109(B)
16. Va. Code Ann. § 2.2-3104.01
17. W. Va. Code § 3-8-12(d).

Source: amicus brief found at

https://www.fec.gov/resources/legal-resources/litigation/wagner_amici_brief.pdf, pages 4-12.

**National Conference on State Legislatures Bill Tracking
Recent Legislative Initiatives Relating to Contractor Contributions**

Topics: Government Contractors/Employees/Unions
States: All States
Year: 2023

HI S 1450

Campaign Contributions

Date of Last Action: 1/24/2023

Author: Ihara (D) **Additional Authors:** Awa (R);Elefante (D)

Topics: Disclosure, Government Contractors/Employees/Unions

Summary: Requires all public contractors to explicitly agree through a provision in their public contracts to be subject to the prohibition and penalties for any violations of campaign finance laws.

History: [Click for History](#)

IL H 2808

Election Code

Date of Last Action: 2/16/2023

Author: Delgado (D)

Topics: Other Contributions, Government Contractors/Employees/Unions

Summary: Amends the Election Code, provides that a contractor that provides equipment and services for automated law enforcement, automated speed enforcement, or automated railroad grade crossing enforcement systems to municipalities or counties or any political action committee created by such a contractor may not make a campaign contribution to any political committee established to promote the candidacy of a candidate or public official in an aggregate value over \$500 in a calendar year/.

History: [Click for History](#)

ME S 295

State Contracts

Date of Last Action: 2/15/2023

Author: Brakey (R) **Additional Authors:** Bennett (R);Timberlake (R);Harrington (R);Andrews (R)

Topics: Contribution Limits, Other Contributions, Government Contractors/Employees/Unions

Summary: Requires that every contract with the state in an amount over \$500,000 have a clause that prohibits the other contracting party from influencing state elections through contributions to a candidate, a political action committee, a political party or a political organization that is a tax-exempt organization/.

History: [Click for History](#)

MA H 817

Campaign Vendors

Date of Last Action: 3/29/2021

Author: Mirra (R)

Topics: Disclosure, Government Contractors/Employees/Unions

Summary: Relates to campaign vendors.

History: [Click for History](#)

NH H 1252

Political Contributions Made by Business Entities

Date of Last Action: 1/5/2022

Author: Love (R)

Topics: Government Contractors/Employees/Unions

Summary: Prohibits any business organization that receives grants from the state of New Hampshire from making any contribution to any candidate or political committee.

History: [Click for History](#)

NJ S 394

Campaign Contributions

Date of Last Action: 1/11/2022

Author: Johnson (D)

Topics: Other Contributions, Administration and Enforcement, Government Contractors/Employees/Unions

Associated Bills: NJ A 1842 - Identical

Summary: Prohibits businesses receiving State development subsidies from making certain campaign contributions.

History: [Click for History](#)

NJ A 1842

Campaign Contributions

Date of Last Action: 1/11/2022

Author: Park (D)

Topics: Other Contributions, Administration and Enforcement, Government Contractors/Employees/Unions

Associated Bills: NJ S 394 - Identical

Summary: Prohibits businesses receiving state development subsidies from making certain campaign contributions.

History: [Click for History](#)

[NY S 2920](#)

2023

Political Contribution by Business With State Contracts

Date of Last Action: 1/26/2021

Author: Addabbo (D)

Topics: Contribution Limits, Disclosure, Government Contractors/Employees/Unions

Summary: Prohibits political contributions by businesses that have been awarded state contracts.

History: [Click for History](#)

[NY A 5839](#)

Government Vendor Contributions

Date of Last Action: 5/20/2021

Author: Galef (D) **Additional Authors:** Gottfried (D);Paulin (D);Rivera J (D);McDonough (R);Abinanti (D);Davila (D);Simon (D);Manktelow (R)

Topics: Other Contributions, Disclosure, Administration and Enforcement, Government Contractors/Employees/Unions, Definitions

Associated Bills: (2021) NY S 483 - Same as

Summary: Relates to government vendor contributions, provides that it shall be unlawful during the restricted vendor contribution period for any person, organization, or business entity that submits a bid, quotation, offer or response to a state governmental entity posting or solicitation for a procurement to make a contribution to any officeholder of or with authority over the state governmental entity or entities responsible for issuing such procurement posting or solicitation.

History: [Click for History](#)

[PA H 709](#)

Public Contracting

Date of Last Action: 3/1/2021

Author: Zabel (D) **Additional Authors:** Dellosa (D);Krajewski (D);O'Mara (D);Webster (D);Shusterman (D);Sanchez (D);Otten (D);Lee (D);Innamorato (D);Hanbidge (D);Freeman (D);Ciresi (D);Burgos (D);McNeill J (D);Madden (D);Hill-Evans (D);Schweyer (D);Davis (D);Moul (R);Galloway (D)

Topics: Disclosure, Administration and Enforcement, Government Contractors/Employees/Unions, Definitions

Summary: Relates to ethics in public contracting, provides for definitions and for disclosure of contributions by contractors.

History: [Click for History](#)

PR S 112

Political Party Donations and Disclosure

Date of Last Action: 1/12/2021

Author: Bernabe (CVM)

Topics: Other Contributions, Disclosure, Government Contractors/Employees/Unions

Summary: Creates the Law to Prohibit Donations to Political Parties or Candidates by Government Contractors and Force Government Contractors to Disclose their Donations and Political Expenses, prohibits donations to political parties or candidates by government contractors, forces potential government contractors and contractors to disclose their donations and political expenses, create the Registry of donations and expenses of government contractors.

History: [Click for History](#)

PR S 341

Government Contracts and Political Donations

Date of Last Action: 4/29/2021

Author: Rivera Schatz (PNP)

Topics: Other Contributions, Disclosure, Government Contractors/Employees/Unions

Summary: Amends Law 222 of 2011, the Law for the Supervision of the Financing of Political Campaigns in Puerto Rico, to establish a general prohibition so that no natural or legal person, who has contracts or aspires to have contracts with the Government of Puerto Rico can make political donations or expenses related to political campaigns 90 days before the general elections, having a government contract or after obtaining said contract.

History: [Click for History](#)

SC S 312

Unlawful Contributions and Expenditures

Date of Last Action: 1/12/2021

Author: Fanning (D)

Topics: Other Contributions, Disclosure, Government Contractors/Employees/Unions

Associated Bills: (2021) SC H 3523 - Similar

Summary: Relates to unlawful contributions and expenditures, prohibits members of the General Assembly or candidates for the General Assembly from soliciting or accepting campaign contributions from a utility, company, corporation, entity, joint venture, or person who possesses or maintains an exclusive right to conduct its business, enterprise, operations, or activities statewide or within a geographically defined area or territory pursuant to an act of the General Assembly.

History: [Click for History](#)

SC H 3523

Unlawful Contributions and Expenditures

Date of Last Action: 1/12/2021

Author: Cobb-Hunter (D)

Topics: Other Contributions, Disclosure, Government Contractors/Employees/Unions

Associated Bills: (2021) SC S 312 - Similar

Summary: Relates to unlawful contributions and expenditures, prohibits members of the General Assembly or candidates for the General Assembly from soliciting or accepting campaign contributions from a utility, company, corporation, entity, joint venture, or person, as defined in section 8-13-1300, who possesses or maintains an exclusive right to conduct its business, enterprise, operations, or activities statewide or within a geographically defined area or territory pursuant to an act of the General Assembly.

History: [Click for History](#)

VA S 45

Campaign Finance

Date of Last Action: 1/12/2022

Author: Petersen (D) **Additional Authors:** Kory (D);LaRock (R);Roem (D)

Topics: Other Contributions, Government Contractors/Employees/Unions, Definitions

Summary: Relates to campaign finance, relates to prohibited contributions to candidates, prohibits candidates, campaign committees, and political committees from soliciting or accepting contributions from any public utility, as defined in the bill, and prohibits any public utility or any political committee established by such public utility from making any such contribution.

History: [Click for History](#)

VA H 71

Campaign Finance

Date of Last Action: 1/12/2022

Author: Ware R (R) **Additional Authors:** Kory (D);Freitas (R);Roem (D);Hudson (D)

Topics: Other Contributions, Government Contractors/Employees/Unions, Definitions

Summary: Relates to campaign finance, relates to prohibited contributions to candidates, relates to Phase I Utility and Phase II Utility, prohibits candidates, campaign committees, and political committees from soliciting or accepting contributions from any public utility, as defined in the bill, and prohibits any public utility or any political committee established by such public utility from making any such contribution.

History: [Click for History](#)