

Agenda

Item #2



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: August 12, 2011
Re: Proposals for Changing the Maine Clean Election Act Program

This memo is to provide you with background information and proposals on behalf of the Commission staff for changing the Maine Clean Election Act (MCEA) program for purposes of the study required by Resolve Chapter 103 (attached to this memo as page A13). In this memo, we suggest for your consideration two proposals for the legislative part of the program, and discuss our preliminary views concerning changes to the gubernatorial part of the program.

Written comments received to date are attached directly after this memo as pages A1 to A12. They include comments from members of the Joint Standing Committee on Veterans and Legal Affairs and the House Democratic leadership. The Commission received valuable comments from three witnesses at your July 28 hearing, which are summarized in the meeting minutes. We suggest you offer the public a continued opportunity to comment at the August 18 meeting.

Accomplishing the Goals of the Act Requires a Viable Program

Any modification of the MCEA program should adhere to the core objectives of the public when it enacted the citizen initiative. To do that, the MCEA program must continue to provide candidates with a viable funding alternative to traditional campaign fundraising. Maine voters initiated and enacted the Maine Clean Election Act in order to

- minimize the influence of political contributions and fundraising in candidate elections,
- provide candidates with the opportunity to spend more time on voter contact and other campaign activities, and
- encourage new candidates to run for public office.

Over the past six election cycles, the MCEA program has made a significant impact in accomplishing these goals. The program can continue to achieve these goals only if candidates opt into the program. If candidates perceive that the program will not meet the individual needs of their particular race, they will not join. A public campaign funding program with few participants does little to reduce the role of campaign contributions in candidate campaigns, which is what Maine voters declared that they wanted by passing the 1996 citizen initiative.

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Key Features of the Current MCEA Program

Since the program's 1996 enactment by Maine voters, the Maine Legislature has not changed the basic structure of the program, although it has made improvements over the years. I have attached a two-page outline of how legislative and gubernatorial candidates qualified for payments in the 2010 elections and the amounts of the payments available to 2010 candidates (pages A14-A15).

Full public campaign financing. The MCEA program was designed as a system of full public funding. Candidates are permitted to raise limited seed money contributions of up to \$100 from individuals while qualifying for public funding. After they qualify, they cannot accept any campaign contributions. This program design is different from some "hybrid" public campaign financing programs which have existed since the 1970s and which allowed candidates to accept both traditional campaign contributions and public funding.

Voter participation in the qualifying process. To qualify for public funds, the candidates are required to collect a minimum number of qualifying contributions from registered voters in their districts. Qualifying contributions were originally contributions of exactly \$5 made payable to the Maine Clean Election Fund, but under current law the contributions may be \$5 or more.

Limit spending. When joining the MCEA program, a candidate implicitly agrees to a limit on his or her campaign spending. The candidate is allowed to spend a small amount of seed money and the public campaign funds that they have received from the state, and no other source of money.

Operations of the MCEA Program – Statistics

Legislative program. The attached two-page Legislative Factsheet on the Maine Clean Election Act program (pages A16-A17) provides a statistical overview of the MCEA program for legislative candidates. In the past four election years, the MCEA program has enjoyed a high level of participation for legislative candidates. Around 300 candidates in each general election have participated in the program, which represents about 80% of general election candidates. The cost of the legislative program has averaged around \$3 million.

In the past four elections, 45% - 50% of legislative candidates have qualified to receive matching funds. In 2010, the median amount of matching funds received by a House candidate was \$1,706, which is a significant increase in campaign funding over the initial payment of \$4,144 for the general election. The median amount of matching funds received by a Senate candidate was \$7,535. In total, the matching funds component of the program is about 25% of the total cost of the legislative program.

Gubernatorial program. Maine Clean Election Act funding has been available for candidates for Governor in three election years – 2002, 2006, and 2010. The attached Gubernatorial Factsheet (page A18) provides an overview of participation in the program by candidates for governor.

- Since 2002, a total of five general election campaigns have been financed with MCEA funding.
- In addition, four campaigns qualified for MCEA funding for the primary election, but the candidates lost the primary election and did not receive general election funding.
- In 2007 and 2009, the Maine Legislature made qualifying for gubernatorial funding to be significantly more challenging than in the original law enacted by Maine voters.
- In terms of cost, the gubernatorial program makes up about 1/3 of the cost of the MCEA program in the four-year election cycle.

How the Matching Funds Payments Functioned

The matching funds system was not perfect, and some observers have expressed valid criticisms of how it operated. Nevertheless, it did have some advantages for the state and for candidates who opted into the MCEA program, which could be incorporated into a modified MCEA program beginning in 2012.

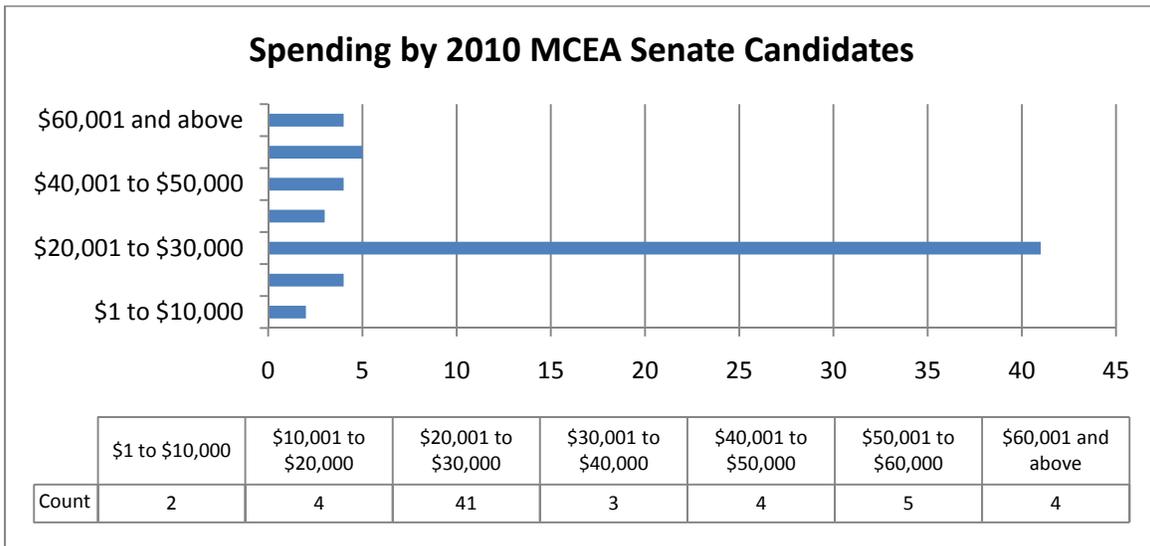
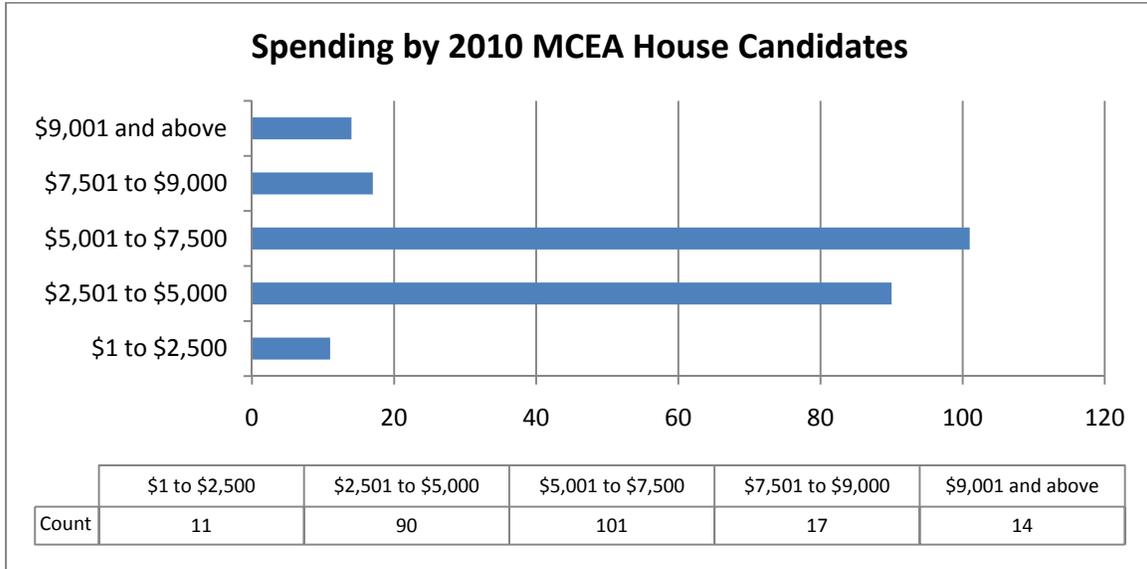
Advantage #1 – Allocation of Public Dollars

The original MCEA program as enacted by Maine voters took into account that different candidates have different financial needs and that the public campaign funding program ought to match those needs. The matching funds component was designed to allocate scarce public dollars to those candidates who needed a higher level of funding. Some candidates may have greater needs than others because they are running against an opponent who could raise and spend a great deal of campaign funds. Others may need more because independent groups are spending money to influence the outcome of the election.

In general, the matching funds provided more public campaign funds to candidates in legislative races which were financially competitive, meaning that

- an MCEA candidate would receive more public campaign funds if outside groups were making independent expenditures against the candidate or in favor of the candidate's opponent, or
- an MCEA candidate would receive more funds if they were running against an opponent who raised a large amount of traditional campaign contributions.

As a result of matching funds, the total amount spent by MCEA candidates for the House or Senate has varied across candidates within each election cycle. This is illustrated in the following two bar charts, which count the number 2010 House and Senate candidates whose total campaign spending fell within different brackets. While there is a large group of 2010 candidates whose spending falls in a middle bracket, the availability of matching funds allowed some candidates to spend more campaign funds in order to respond to independent expenditures or to keep pace with traditionally financed opponents.



Advantage #2 – Responding to Independent Expenditures

For better or worse, independent expenditures are now a predictable part of legislative and gubernatorial elections. Most often, independent expenditures are made by the political parties, party-affiliated PACs, or other interest groups to purchase mailings or advertisements. Some

legislative candidates are concerned about the impact of independent expenditures in their particular race. They may fear, in particular, that they will be personally criticized by negative independent expenditures made to oppose them.

In this environment, some candidates will naturally be concerned that if the total public campaign funds available to them is set too low, they will be unable to respond to independent expenditures. The matching funds component of the MCEA program was designed to meet this concern by guaranteeing candidates that they would have access to more campaign funds if independent expenditures were made in their race.

According to campaign finance reports, in the 2010 legislative races, a total of \$550,271 was spent by independent groups on communications to oppose specific candidates, and \$934,741 was spent by independent groups in support of specific candidates.

To weigh this concern from the perspective of the individual candidate who might be considering whether to join the MCEA program, here is a chart of the “top-ten” House and Senate candidates who had the most independent expenditures made against them.

Office	Candidate	How the Candidate Financed their Campaign	Matching Funds Paid to the Candidate	Independent Expenditures Made to Oppose the Candidate
Senate	Simpson, Deborah L.	MCEA	\$38,156.00	\$99,900.97
Senate	Perry, Joseph C.	MCEA	\$38,156.00	\$78,914.47
Senate	Crockett, Patsy	MCEA	\$38,156.00	\$76,159.34
Senate	Trinward, Pamela J.	MCEA	\$38,156.00	\$70,063.50
Senate	Schatz, James M.	MCEA	\$38,156.00	\$65,387.50
Senate	Bliss, Lawrence	MCEA	\$38,156.00	\$17,402.86
Senate	Nutting, John M	Traditional	---	\$17,133.86
Senate	Hill, Dawn	MCEA	\$19,748.15	\$16,142.62
Senate	Piotti, John F.	MCEA	\$2,594.21	\$15,319.00
Senate	Sullivan, Nancy	Traditional	---	\$6,167.24
Representative	O'Brien, Andrew R.	MCEA	\$3,544.63	\$2,753.74
Representative	Cleary, Richard C.	MCEA	\$2,002.70	\$1,900.42
Representative	MacDonald, W. Bruce	MCEA	\$3,954.54	\$1,729.24
Representative	Eaton, Robert N.	MCEA	\$1,480.95	\$1,721.42
Representative	Rankin, Helen	MCEA	\$3,936.06	\$1,608.20
Representative	Magnan, Veronica G.	MCEA	\$1,289.69	\$1,573.86
Representative	Jones, Pat R.	MCEA	\$2,827.32	\$1,502.46
Representative	Score, Michael F.	MCEA	---	\$1,491.71

Representative	Peterson, Matthew	MCEA	\$2,362.22	\$1,485.46
Representative	Blodgett, Anna D.	MCEA	\$2,319.70	\$1,478.32

The availability of matching funds to the MCEA candidates in these 2010 races may not have controlled the outcome of their elections, but the matching funds did allow the MCEA candidates to spend additional money if they wished to respond to the independent expenditures.

Advantage #3 – Avoiding Being Outspent by an Opponent

Matching funds also reassured candidates that if they ran against a candidate who was traditionally financed and who could raise or spend a large amount of campaign contributions, the MCEA program would give them access to greater campaign funds to be competitive. The following chart lists the 2010 traditionally financed candidates who had the highest spending – the “top five” from the House and “top five” from the Senate.

The five House races in the chart illustrate how the matching funds were intended to function to provide additional campaign funding to an MCEA candidate who had a well-financed opponent. If no matching funds were available, MCEA candidates David Van Wie, Shelby Wright, Mackenzie Simpson, and Thomas Gruber would have received only \$4,144 in campaign funds to spend for the general election, which was less than one-half of their opponents). With matching funds, they had access to a greater amount of campaign funds, even though they had opted into a system of full public campaign funds and could not raise traditional campaign contributions.

Traditionally Financed Candidates with Higher Spending	Office Sought	Expenditures	Opponent	Opponent's MCEA Funding
Eleanor M. Espling	Representative	\$13,635	David A. Van Wie (MCEA)	\$10,438
Andre E. Cushing III	Representative	\$12,973	Shelby D. Wright (MCEA)	\$8,209
Richard M. Cebra	Representative	\$10,810	Mackenzie P. Simpson (MCEA)	\$10,237
Meredith N. Strang Burgess	Representative	\$9,984	Thomas Harrison Gruber (MCEA)	\$10,277
Kathleen D. Chase	Representative	\$9,505	Fred R. Houle (Traditional)	n/a
John M Nutting	Senate	\$21,360	Garrett Paul Mason (MCEA)	\$19,078
Bill Diamond	Senate	\$16,803	Ann-Marie Grenier (MCEA)	\$19,078
Nancy Sullivan	Senate	\$14,608	Owen Bruce Pickus (MCEA)	\$19,078
Kevin L. Raye	Senate	\$14,595	F. James Whalen (Traditional)	n/a
Debra D. Plowman	Senate	\$13,519	Sherman G. Leighton (Traditional)	n/a

What is the Status Quo After the Arizona Free Enterprise Club Decision ?

During the 2011 legislative session (before the Arizona Free Enterprise Club decision), the Maine Legislature directed the Commission to reduce the amounts of 2012 payments to MCEA funds by 5%. (Resolve Chapter 89) After the 5% reductions, the amounts of the 2012 initial payments are shown in the following table:

House	Primary	General
Uncontested	\$486	\$1,299
Contested	\$1,429	\$3,937

Senate	Primary	General
Uncontested	\$1,831	\$5,981
Contested	\$7,359	\$18,124

Most candidates receive the amounts in the shaded boxes, because they are uncontested in the primary election and contested in the general election.

This is not the first legislative reduction in payment amounts to MCEA candidates. In 2008, the Legislature reduced the amounts for the general election by 5%. In 2010, the payment amounts were the same as in 2008. The net effect of these reductions is that the 2012 general election payment amounts for House candidates are lower than they were in 2002, and the 2012 general election payment amounts for Senate candidates are lower than they were in 2006. The Commission has received comments from the Maine Citizens for Clean Elections that the 2012 payment amounts may be too low for a first-time challenger to compete with an established incumbent.

Two Proposals for Legislative Program

The Commission staff has considered comments received to date and through meetings with representatives of the legislative caucuses and election reform advocates. For your consideration, we describe below two proposals for changing the legislative part of the MCEA program.

Legislative Proposal #1: Candidates would Receive a Fixed Amount for the General Election (page A19)

Basic concept. After qualifying for MCEA funding, legislative candidates would receive a fixed payment for the primary election in April and a fixed payment for the general election in June. Candidates could spend no other funds – public or private – for the primary or general elections. Three alternative versions of this concept are shown on page A19.

Amounts of payments. As noted above, the amounts of the general election payments for 2012 candidates are currently set at \$3,937 (House) and \$18,124 (Senate). The Commission staff has received some suggestions that the payment amounts for the general election should be increased from the 2010 levels in order to make up for the loss of matching funds. After the Commission's July 28 meeting, Commissioner Youngblood suggested increasing payments to House candidates by \$1,100 and increasing payments to Senate candidates by \$5,300. These increases represent the average amounts of matching funds paid to House and Senate candidates in the past four elections. Commissioner Healy suggested taking the amount set aside to pay candidates for Governor and dividing that amount among legislative candidates in the program. The Maine Citizens for Clean Elections have consistently suggested that, in order to achieve the objectives of attracting new candidates and promoting more competitive elections, payment amounts should be sufficient for new candidates who are challenging incumbents.

In response to these suggestions, the Commission staff has prepared the attached sheet entitled Legislative Proposal #1 (page A19). It shows the campaign funding available to MCEA candidates under current law (column 1A), and it shows the amount of funding available to candidates if they received 25% or 50% more than in 2010 (columns 1B and 1C).

Suggestion: Reserving Some General Election Funds until September. If the Commission suggests increasing the payment amounts for the general election, it might want to suggest reserving part of the general election payment until September of the election year. Candidates could elect to receive the second payment in writing. Some comments to the Commission staff have suggested that this could encourage candidates to participate in the program. Making this second payment optional might also reduce the cost of the program, because some candidates might opt not to receive this payment.

Considerations for and against Legislative Proposal #1

Pro's

- This system is simple and easy for candidates to understand. A simple program will assist the legislative caucuses in explaining the system to potential candidates.
- The system is fair in the sense that all general election candidates in the program have access to the same amount of campaign funds.
- One aspect of the current MCEA program that candidates appreciate is that their fundraising (collecting \$100 seed money contributions and \$5 qualifying contributions) ends fairly early in the election year by April 20. This proposal continues this feature of the current program.

- Because legislative candidates would receive one fixed amount for the general election under this proposal, it is easier for the Commission staff to project the cost of the legislative program in 2012 and 2014. The main variable is projecting how many candidates would join the program.

Con's

- If Legislative Proposal #1 were enacted by the Maine Legislature, some portion of candidates who might wish to opt into the MCEA program would decline to join, because they are worried about being overwhelmed by independent expenditures, especially if they believe that their race will be the focus of independent groups. (See the Advantage #2 discussion above on pages 4-5.) This could be a factor for incumbents as well as challengers in deciding whether to participate in the program.
- House candidates who are running against a well-financed opponent could find an initial general election payment of \$4,000 to \$5,000 unacceptable because they could be outspent by a factor of 50%, 100%, or more. The same would be true for a Senate candidate who would receive a payment of \$20,000 to \$25,000. While money does not determine elections, no candidate wants to know that they are heading into an election year at a competitive disadvantage with their opponent.
- Regardless of whether there is a well-financed opponent or the prospect of significant independent spending, a single payment of \$4,000 to \$5,000 may be insufficient to run an effective campaign for House candidates who are new to campaigning and are challenging incumbents or running for an open seat. New candidates may have greater financial needs in order to run an effective campaign to establish the candidate in the minds of the voter over the course of the five months of the general election. While a payment of \$20,000 to \$25,000 may seem substantial for Senate candidates, they have a much larger geographic area to cover and a significantly larger number of voters to reach. Attracting new candidates to run for office and participate in the program is one of the core objectives of the Act. A single payment option may not be compatible with the financial needs of new candidates.

Cost

The Commission staff has made projections concerning the cost of payments to candidates in Proposals #1B and #1C. (Please see page A20) These projections are preliminary and subject to change based on any comments the Commission receives at the August 18 meeting or informally at the staff level. Both of these projected costs are less than the total cost of the program that we projected before the Arizona Free Enterprise Club decision.

Legislative Proposal #2: Candidates could Qualify for One or Two Supplemental Payments for the General Election (page A21)

Basic concept. After qualifying for MCEA funding, candidates would automatically receive a payment for the primary election and a payment for the general election. If candidates believe that they need additional funding for the general election, they can qualify for up to two supplemental payments of MCEA funds by collecting additional qualifying contributions beyond the number needed for certification. Candidates could collect the contributions for the supplemental funding between January 1 and June 30 of the election year, which would give the candidates the option of starting early to collect the additional qualifying contributions.

Letting candidates qualify for varying amounts of public funds has been part of public campaign financing programs that have succeeded in attracting candidates since the 1970s. Generally, these have been hybrid programs in which candidates could collect traditional campaign contributions and receive public funding. Legislative Proposal #2, however, is designed to be consistent with the public's intent in passing the Act and the public's expectations developed over the past six elections that participation in the MCEA program means not accepting large private contributions.

Amounts of payments. As shown on page A21, the staff suggests that candidates would qualify for MCEA funding under the same requirements that are in place today (collecting 60 qualifying contributions for House candidates and 175 qualifying contributions for Senate candidates). The staff proposes increasing the amounts of the general election payments to \$5,000 (House) and \$25,000 (Senate) because, based on spending in previous elections, we expect that most candidates would stop at these amounts and would not attempt to qualify for the supplemental payments.

For those candidates who believe that they need additional funding, they could raise additional qualifying contributions to receive one or two supplemental payments of MCEA funds. They could begin collecting contributions as early as January 1 of the election year. If they were highly motivated, they could complete all qualifying in March or April. The final deadline for submitting contributions to qualify for supplemental funds would be June 30 of the election year. (As is discussed below, the Commission staff has included this feature in the staff proposal in order to meet the suggestions from the legislative caucuses.)

If a House candidate collected 30 additional qualifying contributions between January 1 and June 30, they would qualify to receive one supplemental payment of \$2,500. If they raised 60 additional qualifying contributions during that period, they would receive two supplemental payments of \$2,500 (for a total of \$5,000). The supplemental payments would become available on September 1 and October 1. On the Senate side, candidates could qualify to receive one or two additional payments of \$12,500. (see page A21)

Considerations for and against Legislative Proposal #2

Pro's

- This proposal is intended to let candidates seek the amount of public campaign funds to meet the needs of their individual race.
- Some candidates may wish to qualify for more campaign funding, because they are first-time candidates or are challenging an incumbent. If so, the supplemental payments are a vehicle for them to accomplish that objective.
- The prospect of supplemental payments greatly increases the acceptability of the program for those candidates who are worried about being outspent by independent groups or by their traditionally financed opponents who have no limits on their spending. If candidates decide not to join the program based on a perception, well-founded or not, that the program cannot respond to their campaign needs, the viability of the program as an alternative to traditional fundraising will be diminished.
- By maintaining a high level of participation by providing a range of funding sufficient for the campaign needs of most candidates, this option will advance the program's objectives to minimize the influence of political contributions and fundraising in candidate elections, encourage more candidate contact with voters, and provide the means for new candidates to run for office.

Con's

- This proposal relies on the candidates' ability to assess their campaign's financial needs and choose an adequate level of funding. However, candidates cannot always predict their actual financial needs, particularly if they are new to campaigning. Some candidates may qualify for more supplemental funds than they need; others less than they need. Candidates who underestimate their financial needs may find themselves without enough funds to run a competitive campaign and without the possibility of receiving any more public funding or private contributions.
- The feature of supplemental payments complicates the task of projecting the cost of the program, because it requires projecting the numbers of candidates who will seek to qualify for the supplemental payments. The staff's projected costs are discussed below.
- This option would increase the workload on those candidates who wish to receive more campaign funds. The process of collecting \$5 contributions was designed to be a way for

candidates to interact with voters and a vehicle for everyday Mainers to support candidates. However, the staff has heard from some candidates that collecting qualifying contributions is a difficult and time-intensive process. Some candidates may view the collection of additional qualifying contributions to be a burden and a distraction from other campaign activities.

Key design issue. One key issue is when to allow candidates to qualify for the additional payments. In discussing this with the legislative caucuses, the feedback I have received from the majority of the caucuses is that the period during which qualifying contributions may be raised should not extend into the fall of the election year, when candidates should be engaged in more important campaign activities such as getting their political message to voters directly through door-to-door contacts or other campaigning. On the other hand, the Maine Citizens for Clean Elections have argued to the Commission staff that candidates should be allowed to qualify until October 1 of the election year, in order to give candidates the flexibility to decide later in the election year whether to seek supplemental funds to respond to changed conditions in their race.

I understand both points of view, but I have included the June 30 deadline for this proposal for two reasons. First, it is consistent with a feature of the current program that is popular with candidates (ending the collection of qualifying contributions early in the year). Second, it is responsive to the preferences of the legislative caucuses. I would suggest that at the June 28 meeting you provide an opportunity for public comment so that you can hear comments on this issue and others.

Cost

The Commission staff has made preliminary projections concerning the cost of payments to candidates in Proposal #2. These payments are largely based on spending by 2010 legislative candidates. Based on how much individual 2010 candidates spent, we have made projections concerning how many 2012 candidates would attempt to qualify for one or two of the supplemental payments. According to our projections, Proposal #2 would increase the cost of the 2012 legislative program by a small amount (less than \$100,000) compared to the cost of the program we projected before the Arizona Free Enterprise Club decision.

Proposal for Gubernatorial Program

In the 2011 session, legislation was introduced to end the gubernatorial part of the program (LD 120). The Joint Standing Committee on Veterans and Legal Affairs voted to carry the bill forward to the 2012 session, and it was not debated on the floor of the House or Senate. In addition, an amendment was drafted for another bill (LD 659) that would have sent to Maine voters the question of whether candidates for Governor should continue to be funded under the MCEA. The Commission staff has no idea whether a majority of members of the 125th Legislature will vote during the Second Regular Session to end this part of the citizen-initiated program, to send this part of the program to Maine voters, or to make no changes.

By eliminating matching funds from the MCEA program, the Arizona Free Enterprise Club decision effectively cut in half the general election campaign funds available to an MCEA candidate for Governor (from \$1,200,000 for the general election to \$600,000). The court decision thus rendered the gubernatorial program an untenable option for any serious candidate for Governor. The Commission staff believes that the Commission's study should include a recommendation for the gubernatorial part of the MCEA program.

In recent years, the qualifications for the gubernatorial part of the program have been strengthened to make the program available to those candidates who can show that they have the support of a substantial number of Maine voters. This was achieved through requiring the collection of 3,250 qualifying contributions (2007) and \$40,000 in seed money contributions from Maine registered voters (2009).

In 2010, three serious candidates qualified for MCEA funding: former State Senator Peter Mills; former State Representative and Conservation Commissioner Patrick McGowan; and former Senate President Elizabeth Mitchell, who became the Democratic nominee. In the view of the Commission staff, the 2007 and 2009 changes in the eligibility requirements for gubernatorial candidates greatly diminished the likelihood that frivolous candidates or candidates who lack public support will qualify for MCEA funding.

The Commission staff has not had sufficient time to solicit views on the gubernatorial program. We have a preliminary suggestion for changing the MCEA program to respond to the Arizona Free Enterprise Club decision. We suggest maintaining the current high standards for qualifying for gubernatorial funding and making the following campaign funding available to gubernatorial candidates who qualify:

- An MCEA candidate for governor could continue to collect up to \$200,000 in seed money.

- An MCEA candidate who was in a contested primary election for governor would receive a single payment of \$600,000 of MCEA funds for the primary election (the current maximum amount of primary election funding).
- An MCEA candidate for governor who is in a general election would receive a single payment of \$1,200,000 for the general election (the current maximum amount of general election funding).

In 2010, the Commission staff received feedback that the qualification process for gubernatorial funding was too bureaucratic due to the two fundraising requirements of collecting \$40,000 in seed money and \$3,250 in qualifying contributions, and the rigorous documentation requirements for each. The Commission staff would like to explore streamlining the qualification process by combining seed money and qualifying contributions for gubernatorial candidates, along the lines of legislation previously proposed by Sen. Peter Mills (L.D. 1189, An Act to Simplify and Improve the Maine Clean Election Laws, 124th Legislature). Under this concept, candidates could collect qualifying contributions made payable to their campaign, which they could deposit and spend before qualifying for public funding. Each donor could give between \$5 and \$100. To qualify for MCEA funding, candidates would need to collect 3,250 qualifying contributions and at least \$40,000. In order to keep the qualification requirements relatively high, it might be advisable for gubernatorial candidates to collect at least \$50,000 in qualifying contributions.

The Commission staff could continue to develop this proposal for the report responding to the Arizona Free Enterprise Club decision, or it could seek more input and make a proposal to you for 2012 legislation.

Other issue – Increasing seed money

The Commission staff has received comments from a few sources that legislative candidates should be able to raise more seed money. The current maximum amounts are \$500 for House candidates and \$1,500 for Senate candidates. These were approved in 1996, and since then the consumer price index has increased 44%.

In order to raise the campaign funding available to legislative candidates, the Commission staff has included in its proposals an increase in the maximum amounts of seed money candidates may collect (up to \$1,000 for House and \$3,000 for Senate). We also suggest deleting the requirement in current law for candidates to spend all seed money before qualifying for public funds.

Other issue - Amending disclosure requirements

Many states have more rapid reporting requirements for large financial transactions by PACs, party committees, and candidates in the last one or two weeks before an election (after the final “regular” campaign finance report is due). Over time, Maine’s disclosure requirements in this area have been amended to facilitate the payments of matching funds to candidates.

Since Maine is no longer going to pay matching funds, the Commission received public comment at the July 28 public hearing that the state should amend these requirements to make them more reasonable for PACs, parties, other independent spenders and candidates. The Commission staff has also received questions from the Maine Republican Party inquiring about possible changes in this area.

The Commission staff is concerned about the challenge of reaching a consensus in this area, but we make the following proposal.

Accelerated reporting. The MCEA required traditionally financed candidates who had an MCEA opponent to file three summary reports showing their total fundraising and spending to date. The only purpose of this extra reporting for traditional candidates was to facilitate the payment of matching funds to the opponent. The Commission staff recommends eliminating this requirement.

24-hour reporting for PACs, party committees, and candidates. Before 2004, candidates, PACs, and party committees were required to file reports within 48 hours of receiving large contributions or making large expenditures. In 2004, at the suggestion of the Commission, the Legislature changed the 48-hour reporting requirement to a 24-hour reporting requirement in order improve the payment of matching funds. (P.L. 2003, Chapter 628) In light of the elimination of matching funds from the MCEA program, the Commission staff believes it is worth proposing a change back to 48-hour reporting and reinstating the language that the reports may be filed by noon on the next business day if the 48-hour deadline falls on a day when the state government is closed. We believe this is sufficient for disclosure of large financial transactions.

Schedule for of independent expenditure reporting. Under the Commission’s current rule, independent expenditures in excess of \$250 per candidate that are made within 60 days before an election must be reported within two calendar days. Then, in the last 13 days before the election, independent expenditures in excess of \$100 must be reported within one calendar day of the expenditure.

With the elimination of matching funds, the Commission staff believes two-day reporting is not necessary for the 60 days before a general election. We believe two or three periodic reporting deadlines could be established during that 60-day period that would make filing less confusing for PACs and parties, and would continue to provide good disclosure for candidates and the public.

Schedule for Completing the Report

The Commission is required by Resolve Chapter 103 to submit a report to the Legislature by October 15, 2011 including any suggested changes to the MCEA. Then, the Joint Standing Committee on Veterans and Legal Affairs (VLA) must meet and report out legislation by December 1, 2011. The staff believes that if the Commission recommends a single proposal, that recommendation would simplify the committee's consideration of this issue. On the other hand, it might also make sense to recommend one proposal, but to also to provide a second proposal to the VLA Committee as an alternative.

I am trying to confirm whether the VLA Committee is going to meet during the week of September 12 or 19 to hold hearings on any nominations by the Governor and whether the Committee would have any interest in hearing the Ethics Commission's report on the same day. If so, it might facilitate the legislative process if the Ethics Commission were to meet during the week of September 6-9 (just after Labor Day) to approve the final report and suggested changes. However, that time frame may not be practical for the Commission. (I am scheduled to be away for a family vacation during the week of August 22.) If the VLA Committee does not need to hear from the Ethics Commission in mid-September, then there is no rush for the Commission to complete the report by early September.

Staff Recommendations

Both of the legislative proposals outlined above are worth serious consideration, and the Commission staff understands the arguments in favor of both proposals. While the staff does prefer one option over the other, we are ready to work on and to develop whatever proposals you support in the report for the Legislature.

On the whole, the Commission staff is more supportive of Legislative Proposal #2, which would allow MCEA candidates to receive an initial payment and to qualify for supplemental payments. The staff has assessed the features of each proposal in light of the core objectives that the public sought to achieve when it enacted the Maine Clean Election Act – to minimize the role of political contributions and fundraising in candidate's campaigns, encourage more candidate contact with voters, and provide the means for new candidates to run for office. To realize this public's intent in enacting the law, the program should offer a viable alternative financing system in order to attract candidates to participate.

The strength of Proposal #2 is that it offers a range of funding so that candidates who are in competitive races will have access to sufficient funds to run an effective campaign. We believe that feature will promote the long-term viability of the MCEA program. If the total funds available for House and Senate races is fixed at \$4,000 or \$5,000 and \$20,000 or \$25,000, respectively, a significant number of candidates may not find the program to be a viable option because it does not address the needs of candidates in competitive races or first-time candidates. Proposal #2 provides a reasonable replacement for matching funds and will meet the campaign needs of most candidates who choose to participate.

Thank you for your consideration of this memo.



STATE OF MAINE
HOUSE OF REPRESENTATIVES
2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002

August 10, 2011

Jonathan Wayne, Executive Director
Ethics and Election Practices Commission
135 State House Station
Augusta, ME 04333-0135

Dear Director Wayne,

In light of recent court rulings regarding the Clean Elections Act and the Commission's call for comments regarding changes we felt it important to provide some general points and principles we are convinced must be kept in mind when crafting changes to Maine's clean election act due to the loss of matching funds.

Maine citizens initiated Clean Elections through the petition process, which passed with strong voter support. Maine people see the program as a way to remove corruption and the appearance of corruption from Maine state politics. In order to achieve that goal the law provided for sufficient funding for candidates to run for office as clean elections candidates.

Maine's matching fund provision of the Clean Election Act, was an astute provision that balanced sufficient funding with efficiency; it ensured that races would be funded sufficiently to be competitive but scarce public resources would go to the most competitive races. The law has been a success - 80% of current legislators were elected after funding their campaigns through the Clean Elections program.

The Supreme Court's recent decision strikes the matching funds mechanism - specifically invalidating efficiency as a policy goal. We, as a state and as policy makers, however are faced with maintaining the core goals of Clean Elections that were mandated by the Maine voters while at the same time taking into account our scarce resources.

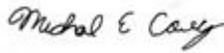
In that light we believe that changes to comply with the McComish decision should be minimal and respect the spirit and goals of the citizen-created and enacted law.

Specifically, we believe that we need to ensure that any changes to the law reflect the Act's original goals by maintaining sufficient funding for all races. Additionally, any solution must be reasonable and measured. If a candidate is concerned about having sufficient funds to mount a competitive race the viability of the program and the positive benefits it has created could be put at risk. Candidates in hotly contested elections must have sufficient funding, and they should have a higher responsibility to qualify for higher

funding. Finally, proposals should take into consideration as much as is feasible the varying nature of each individual campaign and ensure that the clean election candidate is engaged and has the ability to secure proper funding.

We thank you for your work on this important issue and look forward to crafting thoughtful legislation that will move the Clean Election Process forward.

Respectfully,



Rep. Mike Carey



Rep. Linda Valentino



Rep. Diane Russell



Rep. Thomas Longstaff



Rep. Emily Cain



Rep. Terry Hayes



August 10, 2011

To: Commission on Governmental Ethics and Election Practices
From: Maine Citizens for Clean Elections
Re: Post-*McComish* changes to Maine law

Thank you for the opportunity to comment on possible changes to the Maine Clean Election Act.

Maine Citizens for Clean Elections (MCCE) is a nonpartisan coalition of groups and individuals that works in the public interest to advocate for, increase public support for, defend and improve the Maine Clean Election Act and related campaign finance law. We have been at this work since the 1990's. Whenever changes to this citizen-initiated law are contemplated, MCCE attempts to bring the point of view of Maine citizens to the decision-making table. We also bring the collective experience and expertise of allied legal and policy experts to help ensure that amendments are in keeping with good policy and legal precedents.

The U.S. Supreme Court decision in *Arizona Free Enterprise Club/McComish v Bennett* and Judge Singal's subsequent ruling in Maine were disappointing but not unexpected. The ruling was narrow; the constitutionality of public funding was affirmed. However, it is no longer possible for the State to distribute additional public funds to Clean Election candidates based on spending by other candidates or independent spenders. These "triggered" matching funds were declared to be unconstitutional.

One notable feature of the decision is the Court's clear rejection of "leveling the playing field" as an acceptable rationale for campaign finance laws. Although the defendants in Arizona made the case for triggered matching funds based on the prevention of corruption, the Court's majority pointed to evidence that the state had a level playing field in mind, citing language in the implementing rules that called the matching funds "equalizing funds." Thus, whatever recommendations the Commission ultimately makes to the Legislature must not be based on the desire for a level playing field.

SUCCESS OF CLEAN ELECTIONS

The Maine Clean Election Act has served the people of Maine well for more than 10 years. Strong supermajorities of Maine people support Clean Elections as evidenced in three separate polls this spring (available at <http://www.mainelection.org/polling.html>)

Member Organizations

AARP Maine, Common Cause Maine, EqualityMaine, League of Women Voters of Maine, League of Young Voters, Maine AFL-CIO, Maine Council of Churches, Maine People's Alliance/Maine People's Resource Center, Maine State Employees Association/SEIU Local 1989, Maine Women's Lobby, NAACP-Portland, Sierra Club Maine Chapter

and by the robust participation in the program. Eighty percent of legislative candidates and four gubernatorial candidates in 2010 opted in to the Clean Election system.

For six election cycles Maine people have had the opportunity to run for state office without relying on private campaign contributions or their own bank account, and this has encouraged countless qualified Mainers to run, win, and serve.

It's a viable system, and even first time candidates can receive enough funding to run a vigorous and competitive campaign.

Candidates like it because it's pretty simple to use and understand, and it allows them to spend time making contact with voters rather than raising money from political donors. Once they successfully qualify, they do no fundraising at all.

Voters like it for those reasons, too, and they appreciate that once elected, Clean Election legislators serve without being beholden to any special interest.

It's inclusive, it's fair, and it works.

MCCE believes that all of these benefits can still be achieved and these values upheld even after the Court overturned the matching funds provision.

CLEAN ELECTIONS WITHOUT "TRIGGERED" MATCHING FUNDS

Our matching funds system attempted to provide some assurance to Clean Election candidates that they would be able to sustain a level of campaign activity sufficient to the demands of their particular race, even if that race included an extraordinarily well-funded opponent or a high level of independent spending. The idea was to encourage broad participation in the system and expand public debate while targeting funds to where they were most needed.

In this new legal landscape, Maine must pursue its objectives without using the expenditures of a non-participating candidate or an independent spender as a trigger for increased funding to the Clean Elections opponent. While the matching funds system was integral to the Clean Election program, it was far from perfect. In each election cycle, matching funds and the expenditures that triggered them were the subject of many complaints. One perennial complaint was that the funds often were distributed too late to spend effectively.

Our new system can improve upon the old one by providing more certainty to candidates about what resources are available to them, and when.

ALTERNATIVE PUBLIC FUNDING MODELS

There are other models for public funding, and the Ethic's Commission's invitation to comment dated July 18, 2011 suggests three options to consider. Each of these options is endlessly variable, and no matter which is chosen there will be many details to work out. We offer here some general insights and considerations about these options.

1. **Allow candidates to requalify for additional funds** – This idea builds on the familiar and inclusive qualifying process that has been part of Clean Elections from the beginning. With the exception of Seed Money, candidates would still not accept private donations, but they would be able to collect and submit additional Qualifying Contributions from voters in their district in order to receive limited additional distributions later in the campaign. Rather than relying on the state to decide which races receive additional funds, the candidates themselves would weigh various factors and decide whether to pursue a higher level of funding. For those who choose it, this would somewhat change the nature of a Clean Election campaign, which today involves no money changing hands between candidates and donors or voters after qualifying. Spending would still be limited for participating candidates.

We think this could be a viable option. Candidates should be able to collect the additional Qualifying Contributions early in the campaign if they prefer, but should not be prohibited from raising them later, as long as the Commission has enough time to process them.

2. **Allow candidates to raise limited private donations** – This is the hybrid model that is a feature of the proposed Fair Elections Now Act in Congress; it is not a full public funding system. This system puts a premium on gathering modest private contributions. After qualifying initially, candidates would continue to raise and spend private contributions, certain of which would be matched with public funds.

This is an attractive option for some other jurisdictions, particularly those that do not yet have a public funding option. New York City has a system like this today.

MCCE does not favor this system because of our concern that the injection of private money into the system and the emphasis on fundraising could lessen the impact of Clean Elections and damage the program's credibility with the public. The idea that a public funding distribution may be spent in part on fundraising later in the campaign runs counter to the spirit of our program today. And candidates in Maine tell us over and over again is that one of the best aspects of Clean Elections is that participants do not have to engage in fundraising activities throughout the campaign. Because fundraising is very limited and is over early, candidates can spend most of their campaign time with voters.

In our conversations with Maine people, candidates, and legislators we find very little support for this model for our own state races.

3. **Allow candidates an initial distribution and no additional funds** – This option has the benefit of simplicity, but is not likely to have the broad appeal of our current system. Unless the initial distributions are very high – significantly higher than now, candidates would run the risk of being a “sitting duck” for outsized spending by an opponent or independent spenders, and they would have no opportunity to access additional funds to ratchet up their campaign communications under any circumstances. And if initial distributions were raised that high across the board, the program would provide too much money in many races. This would not be a careful use of public resources.

MCCE’s biggest concern with a single distribution is that the amount will be too low, thus creating a situation where only candidates in safe seats feel comfortable opting in. One of the great successes of Clean Elections is its ability to allow challengers and first-time candidates to have a shot at winning election. Incumbents have the advantage in a private funding system, and they retain some advantages even with public funding. Our Clean Election option must provide adequate resources for challengers and others who do not begin the campaign with all of the advantages of incumbency – widespread name recognition, a basement full of yard signs, etc.

VALUE BENCHMARKS TO CONSIDER

In rethinking Clean Elections after *Arizona Free Enterprise Club/McComish v Bennett*, it’s important to preserve the fundamental value and benefits of the system as much as possible. In addition to complying fully with the Supreme Court decision, the system must also be right for Maine. Our amended system should

- Be inclusive and fair: All qualified Mainers can participate; the system treats similarly situated candidates the same way; the burdens of compliance with the rules and qualifying for funds are proportionate to the benefits of receiving public funds
- Be viable for most races: Funding is adequate to run a competitive race and win, even against an incumbent
- Be simple and have some continuity with the current system: Candidates and voters alike are able to understand and participate in the process
- Remain true to the original intent: Minimize the importance of private campaign contributions and reduce their influence, increase transparency, strengthen ties between voters and candidates, provide opportunity for Maine people to run for state office and serve without ties to special interests.
- Provide good stewardship of public money: The cost of the system must be reasonable for the state, it must provide real value, and it must include sufficient accountability.

OPPORTUNITIES FOR IMPROVEMENT

MCCE believes that the new, amended system should be at least as good as the old one. We see several opportunities to improve upon the program, and we encourage the Commission to look for similar opportunities.

First, the revised system should provide certainty to candidates about what resources are available to them, and when. One of the strengths of Clean Elections is that candidates know from Day 1 what their budget will be – the only exception to this was the chance that matching funds might become available later in the campaign. Many times those funds were triggered very late in the election – often too late to be spent effectively. And, if reports by privately funded opponents or independent spenders were not filed in a timely way, funds were delayed, exacerbating the problem. The biggest fine ever levied by this Commission was against an independent spender that failed to report on time, but many observers feel that even a large fine may not deter a deep-pocketed interest group from attempting to gain an advantage.

Second, the demise of matching funds means that our reporting laws are out-of-date since several statutory requirements were narrowly designed to make the matching funds system work. We do not view this as an opportunity to lessen the amount of disclosure, but rather a chance to craft a sensible reporting schedule that provides important and timely information to reporters, candidates, and voters. Improving and simplifying disclosure where possible should be a goal of the amended law.

DISCLOSURE

Although recent court rulings have eroded some campaign finance laws, courts at every level have upheld transparency laws. In some ways, the case for disclosure is stronger today than ever before, and Maine should make sure that its laws are as strong as they should be. We do not call for an overhaul of Maine's disclosure laws at this time, but we do ask the Commission to consider these recommendations:

1. Eliminate reporting requirements that only apply to privately funded candidates in races that include one or more Clean Election candidates.
2. Align reporting dates with any other important dates in the amended system.
3. Broaden reporting so that all candidates are providing the same information to each other and to the public at the same time.
4. Strengthen the reports of independent expenditures to provide more and timelier information to Maine people.
5. Provide adequate and appropriate information to Maine voters during the active period of campaigns so that they go to the polls as informed as possible.

KEEPING OUR PUBLIC AND PRIVATE FUNDING SYSTEMS IN BALANCE

It was suggested at the July 28th public hearing that the post-*McComish* review should include consideration of raising contribution limits for privately funded candidates. MCCE vigorously opposes this idea.

Maine has campaign finance laws that aim to protect Maine people from corruption, the appearance of corruption and the threat of undue influence. Whether we are represented by legislators who used Clean Elections or not, we should all be protected from these ills. MCCE has spent much effort over the years arguing that the two systems must be kept in balance. Clean Elections is a voluntary system, and not all candidates use it. The alternative, private funding, must include the sorts of provisions -- reasonable limits, transparency, etc -- that give Maine people confidence in their elections and their government.

Contribution limits were raised and indexed to inflation by the 124th Legislature, and there is no evidence that the current limits are too low. We urge the Commission to reject higher contribution limits as part of the post-*McComish* recommendations.

CONCLUSION

Although we believe the Court erred, and that our matching funds system was a boon to and not a burden on First Amendment values, we strongly believe that this review gives Maine an opportunity to further strengthen our excellent Clean Election system. As long as the revised system is rooted in the values that underlie Clean Elections, and as long as it is workable for candidates, administrators and others, we believe it will be successful. We look forward to working with the Commission as the process continues.

Thank you again for the opportunity to comment.

BRENNAN
CENTER
FOR JUSTICE

Brennan Center for Justice
at New York University School of Law

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646.292.8310 Fax 212.463.7308
www.brennancenter.org

August 10, 2011

Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333-0135

Dear Chairman McKee and Members of the Commission:

The Brennan Center for Justice commends the state of Maine for taking steps to renew its commitment to public financing in light of the Supreme Court's recent *Arizona Free Enterprise v. Bennett*¹ decision. We would like to thank the Commission for the opportunity to comment on the future of the Maine Clean Election Act.

The Commission's efforts prove that public financing remains an important democratic reform. All of the proposals currently before the Commission are constitutionally viable ways to ensure the future of a robust and successful public financing program. Ultimately, Maine officials and voters must decide which solution will be best for Maine's elections. However, we would like to describe for the Commission in more detail one of the options currently on the table: permitting publicly funded candidates to raise money through a small donor multiple matching system.

A small donor matching fund program would be new to the state of Maine. However, it has operated successfully for many years in New York City. While it will be up to the state of Maine to determine how these benefits would translate to your own electoral races, we hope that the enclosed report (which is summarized briefly below) will help you to evaluate this option thoroughly.

We look forward to providing any assistance we can to support Maine's efforts to determine the best public financing for the unique needs of the state.

I. The Benefits of Public Financing

The benefits of public financing are extensive and well-documented, and are explained in greater detail in the enclosed report.² Most notably, public financing has reduced dependence on high-dollar donors, deterring corruption and the appearance thereof, and reinvigorated participation in a voter-centered democratic process.

¹ *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806 (2011).

² See ANGELA MIGALLY & SUSAN LISS, BRENNAN CTR. FOR JUSTICE, SMALL DONOR MATCHING FUNDS: THE NYC ELECTION EXPERIENCE 10-22 (2010). For other studies of the benefits of public financing, see, e.g., Brief of Amici Curiae Maine Citizens for Clean Elections, Lawrence Bliss, Pamela Jabar Trinward, Andrew O'Brien, and David Van Wie in Support of Respondents at 3-22, *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806 (2011) (Nos. 10-238, 10-239), 2011 WL 686403 [hereinafter MCCE Brief]; BREAKING FREE WITH FAIR ELECTIONS: A NEW DECLARATION OF INDEPENDENCE FOR CONGRESS (2007); Michael G. Miller, *Citizen Engagement and Voting Behavior in Publicly Funded Elections I* (2010) (unpublished working paper), available at <http://sites.google.com/site/millerpolsci/docs/Millercantime.pdf?attredirects=0>.

A. Public Financing Deters Corruption and the Appearance of Corruption

Private financing of elections carries the risk of creating an environment where legislative decisions are exchanged (explicitly or implicitly) for campaign funds. When a candidate receives significant donations from a particular special interest, he or she may feel compelled to support that donor's legislative priorities once elected. Even the appearance of corruption is damaging as it erodes already diminished public trust in government, elected officials, and the democratic process. At the national level, one 2010 survey found that 79% believed that members of Congress are "controlled" by those who fund their campaigns, while just 18% believed that voters hold sway.³

In its experience with the MCEA, Maine has had great success in ensuring that its state legislators can serve their constituents without being financially beholden to private interests. Indeed, for most candidates in Maine today, the only private contributions they ever seek are small donations under \$100.⁴

B. Public Finance Reinvigorates Participation in the Democratic Process

Public financing promotes democratic participation by encouraging new candidates to run for public office and allowing such candidates to spend more time engaging with voters.

With the prohibitive costs of candidacy tempered by public financing, jurisdictions have seen significant increases in the number and diversity of individuals running for office, thereby increasing electoral competition. Maine is no exception. In 2004, 98% of Maine's incumbents were challenged, and nearly two-thirds (64%) of races were competitive, as measured by the margin of victory in the election.⁵

Public financing can also shift candidates' focus away from fundraising and toward constituents. One study found that publicly financed candidates devote 10% more of their time to direct voter engagement than their privately financed counterparts.⁶ Public financing lets candidates connect with voters instead of dialing for dollars.

II. **The Benefits of New York's Small Donor Multiple Match Program**

In considering how best to protect the benefits achieved under the MCEA, the Commission should consider the success of New York City's small donor multiple match program, which currently matches small donations of up to \$175 at a rate of six-to-one.⁷ This model furthers the MCEA's goal of deterring corruption by releasing candidates from dependence on large donors, while also reinvigorating citizen participation in the democratic process.

The New York City experience illustrates these benefits. In 2009, typical participating candidates had more than double the number of contributors and almost triple the number of small donors than non-participating candidates.⁸ Numerous successful New York City politicians have hailed the

³ STAN GREENBERG ET AL., GREENBERG QUINLAN ROSNER RESEARCH, STRONG CAMPAIGN FINANCE REFORM: GOOD POLICY, GOOD POLITICS 2 (2010), available at http://www.greenbergresearch.com/articles/2425/5613_Campaign%20Finance%20Memo_Final.pdf.

⁴ MCCE Brief, *supra* note 2, at 13.

⁵ *Id.* at 17-18.

⁶ Miller, *supra* note 2, at 15 (2010).

⁷ N.Y.C. ADMIN. CODE § 3-705(2)(a) (2011).

⁸ See N.Y.C. CAMPAIGN FIN. BD., CANDIDATE FILINGS 1997-2009 (2010), available at http://www.brennancenter.org/page/-/Democracy/CFR/Candidate_Filings_1997_to_2009.pdf. In 2009, the median number of contributors for non-participating candidate was 141 donors; for participating candidates it was 305 donors. The median number of small donors for participating candidates was 269 donors; for non-participating candidates it was 91 small donors.

system, which, according to Public Advocate Bill de Blasio, allows candidates to “make small donors the centerpiece of the campaign.”⁹

By supercharging the power of small donors, the multiple match system encourages civic participation and drastically increases the number of citizens taking part in the political process by supporting candidates with small contributions. As former Manhattan Borough President C. Virginia Fields has explained, the structure of rewarding small donations “reduces the disparity in political participation based on wealth, and empowers groups who, historically, have been disproportionately less powerful in the political process.”¹⁰

By providing opportunities to candidates without access to deep-pocketed donors, the program encourages challenges to incumbents, preventing complacency and leading to a more robust and healthy democratic process. And, like Maine’s public financing program, the New York system has been widely embraced by candidates. In 2009, 93% of primary election candidates participated in the system, while 66% of general election candidates participated.¹¹ These very high rates of participation have been stable for over a decade.¹²

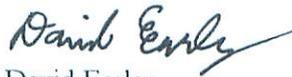
Finally, the small donor multiple match system is on solid constitutional ground. In *Buckley v. Valeo*, the Supreme Court endorsed the federal presidential public funding program, which releases public funding by matching small donations.¹³ The system does not rely on the “trigger provisions” held to unconstitutionally burden speech in *Arizona Free Enterprise*. Instead, candidates can respond to high-spending opposition by raising additional small donations. In this way, the multiple match system allows participating candidates to remain competitive regardless of the level of spending by their opponents.

The Brennan Center is delighted that the Commission is taking swift steps to restore an effective public financing system in Maine. We believe it is vital to the continued vibrancy of the state’s democratic system. The Brennan Center would be happy to lend our assistance to the Commission throughout this process. Please do not hesitate to contact us with additional questions or concerns.

Sincerely,



Mark Ladov
Counsel
Brennan Center for Justice



David Earley
Pro Bono Counsel
Brennan Center for Justice

⁹ MIGALLY & LISS, *supra* note 2, at 14.

¹⁰ *Id.* at 13.

¹¹ N.Y.C. CAMPAIGN FIN. BD., NEW YORKERS MAKE THEIR VOICES HEARD 140 (2010), available at http://www.nyccfb.info/PDF/per/2009_PER/2009PostElectionReport.pdf.

¹² *See id.*

¹³ *See* 424 U.S. 1, 106-09 (1976).

Wayne, Jonathan

From: Paula J Michaud [pjm2008@roadrunner.com]
Sent: Monday, July 25, 2011 11:18 PM
To: Wayne, Jonathan
Subject: Comments about MCEA

Mr. Wayne

I want to comment on MCEA. Please relay my ideas to the Commission during the July 28 meeting.

I think there ought to be a limit on the number of roadsigns politicians can put up, as well as amount of advertising they can do. I like the idea of debates being held and broadcast over the radio, television, and internet. That allows the candidates to relay their positions on certain issues, with each getting an equal amount of coverage.

If advertisement was limited, there would be less money spent overall. Also, I don't think incumbants should be allowed to get MCE funds. Their constituents should know how they stand on issues after they have served one term.

Paula Michaud
207 436-5201

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Resolve, Directing the Commission on Governmental Ethics and Election Practices To Study Modifying the Maine Clean Election Act

Sec. 1 Commission on Governmental Ethics and Election Practices to study the Maine Clean Election Act. Resolved: That the Commission on Governmental Ethics and Election Practices shall study the Maine Clean Election Act to address any adverse rulings by the United States Supreme Court in the case of McComish v. Bennett, No. CV-08-1550-PHX-ROS (D. Ariz. Jan. 20, 2010); and be it further

Sec. 2 Report. Resolved: That the Commission on Governmental Ethics and Election Practices shall submit a report of its findings including any suggested changes to the Maine Clean Election Act pursuant to the study under section 1 by October 15, 2011 to the Joint Standing Committee on Veterans and Legal Affairs. The Joint Standing Committee on Veterans and Legal Affairs shall report out legislation based on the report by December 1, 2011 for presentation to the Second Regular Session of the 125th Legislature; and be it further

Sec. 3 Transfer of funds; Commission on Governmental Ethics and Election Practices - Other Special Revenue Funds. On the effective date of this resolve, the State Controller shall transfer \$3,250 from the Commission on Governmental Ethics and Election Practices, Clean Elections Other Special Revenue Funds account to the Legislative General Fund account in the Legislature to fund the costs of 2 interim meetings of the Joint Standing Committee on Veterans and Legal Affairs to review the commission's report under section 2 and report out legislation.

Overview of Legislative MCEA Program

To Qualify

House candidates must collect at least 60 qualifying contributions
Senate candidates must collect at least 175 qualifying contributions
Qualifying contributions are donations of \$5 or more payable to Maine Clean Election
Fund made by registered voters in the candidate's district
Candidates must collect and submit qualifying contributions to Commission during
January 1 – April 20.

Seed Money (optional for legislative candidates)

Donations of up to \$100 from any individual
House candidates may collect up to \$500
Senate candidates may collect up to \$1,500
May be used for any purpose, but unspent seed money is deducted from initial payment
of public funds

Amounts of 2010 Initial Payments for Legislative Candidates (matching funds not shown)

House	Primary	General
Uncontested	\$512	\$1,368
Contested	\$1,504	\$4,144

Senate	Primary	General
Uncontested	\$1,927	\$6,296
Contested	\$7,746	\$19,078

Notes: most candidates receive the amounts in the shaded boxes, because they are uncontested in the primary election and contested in the general election.

As mentioned in memo, amounts of initial payments for 2012 are reduced by 5%.

**Maximum MCEA Funding Available to
2010 Candidates for the General Election**
(Pre-Arizona Free Enterprise Club Decision)

	Initial Payment for General Election	Maximum Matching Funds	Maximum MCEA Funding for General Election
House	\$4,144	\$8,288	\$12,432
Senate	\$19,078	\$38,156	\$57,234

Overview of 2010 Gubernatorial MCEA Program

To Qualify

Candidates must collect at least 3,250 qualifying contributions from registered ME voters
 Candidates must also collect \$40,000 in seed money from registered ME voters
 Candidates had the option of collecting up to \$200,000 in seed money nationwide

**Maximum MCEA Funding
Available to 2010 Gubernatorial Candidates**

Primary Election Initial Payment	Primary Election Matching Funds	General Election Initial Payment	General Election Matching Funds	Maximum Amounts Available for Both Elections
\$400,000	\$200,000	\$600,000	\$600,000	\$1,800,000

Legislative Factsheet on Maine Clean Election Act – Participation and Payments to Candidates

◆ PARTICIPATION BY LEGISLATIVE CANDIDATES

Election Year	MCEA Candidates in General Election	Total Candidates in General Election	Percentage Of MCEA Candidates
2000	116	350	33%
2002	231	370	62%
2004	308	391	78%
2006	313	386	81%
2008	303	373	81%
2010	295	385	77%

◆ TOTAL PAYMENTS TO MCEA CANDIDATES

Election Year	Legislative	Gubernatorial	Total
2000	\$965,608	N/A	\$965,608
2002	\$2,088,899	\$1,216,669	\$3,305,568
2004	\$2,799,617	N/A	\$2,799,617
2006	\$3,347,775	\$3,534,615	\$6,882,390
2008	\$2,954,035	N/A	\$2,954,035
2010	\$3,301,006	\$2,999,774	\$6,300,780

◆ TOTAL PAYMENTS TO 2010 MCEA CANDIDATES

	Legislative	Gubernatorial	Total
Primary Initial Payment	\$312,779	\$1,199,774	\$1,512,553
Primary Matching Funds	\$3,661	\$600,000	\$603,661
Primary Total	\$316,440	\$1,799,774	\$2,116,214
General Initial Payment	\$2,189,844	\$600,000	\$2,789,844
General Matching Funds	\$794,722	\$600,000	\$1,394,722
General Election Total	\$2,984,566	\$1,200,000	\$4,184,566
Total Payments for 2010	\$3,301,006	\$2,999,774	\$6,300,780

GENERAL ELECTION MATCHING FUNDS PAID TO LEGISLATIVE CANDIDATES

Election Year	Candidates Receiving Matching Funds	Total Paid	Average	Median
House				
2000	28 (35%)	\$56,161	\$2,006	\$1,631
2002	62 (35%)	\$95,626	\$1,542	\$1,150
2004	121 (48%)	\$197,904	\$1,636	\$1,207
2006	129 (52%)	\$381,923	\$2,960	\$2,619
2008	88 (36%)	\$185,210	\$2,121	\$1,825
2010	113 (48%)	\$248,758	\$2,201	\$1,706
Senate				
2000	12 (34%)	\$70,219	\$5,852	\$3,725
2002	23 (44%)	\$76,406	\$3,322	\$2,937
2004	27 (47%)	\$242,062	\$8,965	\$9,362
2006	22 (33%)	\$236,988	\$10,772	\$8,030
2008	27 (46%)	\$278,977	\$10,332	\$4,119
2010	35 (56%)	\$545,964	\$15,599	\$7,535

◆ NUMBER OF LEGISLATIVE CANDIDATES RECEIVING MATCHING FUNDS

	2008	2010
House		
\$0	177	139
\$1 to \$500	17	16
\$501 to \$1,000	9	16
\$1,001 to \$1,500	13	17
\$1,501 to \$2,000	11	13
\$2,001 to \$3,000	17	19
\$3,001 to \$4,000	13	13
\$4,001 to \$5,000	3	9
\$5,001 to \$6,000	1	4
\$6,001 to \$7,000	1	6
\$7,001 and above	3	0
Senate		
\$0	40	31
\$1 to \$5,000	15	16
\$5,001 to \$10,000	4	4
\$10,001 to \$20,000	2	3
\$20,001 to \$30,000	4	2
\$30,001 to \$40,000	2	10

Gubernatorial MCEA Factsheet

Election Year	Candidate	Party	Elections Funded Under MCEA	MCEA Funding	Total Expenditures (includes spending of seed money)
2002	James Libby	Republican	Primary only	\$314,067	\$327,867
2002	Jonathan Carter	Green Independent	Primary and general	\$902,602	\$925,865
2006	Barbara E. Merrill	Unenrolled	General election only	\$915,732	\$904,079
2006	Patricia LaMarche	Green Independent	Primary and General	\$1,115,155	\$1,127,129
2006	Chandler E. Woodcock	Republican	Primary and General	\$1,303,728	\$1,325,373
2006	S. Peter Mills	Republican	Primary election only	\$200,000	\$249,964
2010	Patrick K. McGowan	Democratic	Primary election only	\$599,998	\$670,834
2010	Elizabeth H. Mitchell	Democratic	Primary and general	\$1,799,800	\$1,909,958
2010	S. Peter Mills	Republican	Primary election only	\$599,975	\$644,522

Legislative Proposal 1 - Fixed Payment Amount for General Election (3 alternatives)

(assumes candidate has opponent in general election)

House

	1A (current law)	1B (increase of 25% from 2010)	1C (increase of 50% from 2010)	To Qualify	When are Public Funds Available?
Seed money	\$1,000	\$1,000	\$1,000		
Primary election payment (unopposed)	\$500	\$500	\$500	Candidates must collect 60 qc's by April 20, 2012.	April 2012 (payment would be automatic)
General election payment	\$3,937	\$5,180	\$6,216		June 2012 (payment would be automatic)
Maximum campaign funds available	\$5,437	\$6,680	\$7,716		

Notes: House candidates who have an opponent in the primary election would receive \$1,500 for the primary election.

Assumes candidate may collect double amount of seed money.

Senate

	1A (current law)	1B (increase of 25% from 2010)	1C (increase of 50% from 2010)	To Qualify	When are Public Funds Available?
Seed money	\$3,000	\$3,000	\$3,000		
Primary election payment (unopposed)	\$2,000	\$2,000	\$2,000	Candidates must collect 175 qc's by April 20, 2012.	April 2012 (payment would be automatic)
General election payment	\$18,125	\$23,848	\$28,617		June 2012 (payment would be automatic)
Maximum campaign funds available	\$23,125	\$28,848	\$33,617		

Notes: Senate candidates who have an opponent in the primary election would receive \$6,000 for the primary election.

Assumes candidate may collect double amount of seed money.

Legislative Proposal 1: Fixed Payment Approach - Projected Payments to 2012 MCEA Candidates

	2008		2010		2012 Projected Totals ³				
	actual		actual		5% reduction ¹	w/ 25% increase	cost/ (savings) ²	w/ 50% increase	cost/ (savings) ²
Primary Election Initial Payments	\$348,347		\$312,779		\$344,259	\$239,500	(\$104,759)	\$263,050	(\$81,209)
Primary Election Matching Funds	\$20,509		\$3,661		\$30,000	\$0	(\$30,000)	\$0	(\$30,000)
General Election Initial Payments	\$2,120,992		\$2,189,844		\$2,160,667	\$2,085,857	(\$74,810)	\$2,722,842	\$562,175
General Election Matching Funds (net returns)	\$464,187		\$794,722		\$927,880	\$0	(\$927,880)	\$0	(\$927,880)
Total	\$2,954,035		\$3,301,006		\$3,462,806	\$2,325,357	(\$1,137,450)	\$2,985,892	(\$476,914)

¹ Resolve, Chapter 89 (LD 726)

² Compared to projected 2012 program cost (pre-AZ Free Enterprise Club)

³ The total projected costs for the 25% and 50% scenarios do **not** take into account the unspent funds that will be returned after the election.

Projected Payments to 2012 Legislative Candidates

	2008	2010	5% Reduction from 2010	Fixed Payment of 25% Increase over 2010	Fixed Payment of 50% Increase over 2010
Initial Payments for Primary					
House - Contested Candidates	31	43	45	34	39
House - Uncontested Candidates	209	196	206	157	176
HouseTotal	240	239	251	191	215
Senate - Contested Candidates	14	6	10	5	5
Senate - Uncontested Candidates	47	55	58	41	44
SenateTotal	61	61	68	46	49
Total Initial Payments for Primary					
				\$109,500	\$116,800
				\$239,500	\$263,050
Initial Payments for General					
House - Contested Candidates	234	232	244	186	209
House - Uncontested Candidates	15	3	3	3	3
HouseTotal	249	235	247	189	212
Senate - Contested Candidates	59	62	66	47	50
Senate - Uncontested Candidates	0	1	0	0	0
SenateTotal	59	63	66	47	50
Total Initial Payments for General					
				\$1,108,909	\$1,419,403
				\$2,085,857	\$2,722,842

Assumptions: With a 25% increase over 2010 payment amounts, participation in the program is projected to drop by 20% for House candidates and 25% for Senate candidates. With a 50% increase over 2010 payment amounts, participation will drop by 10% for House candidates and 20% for Senate candidates.

Legislative Proposal 2 - Optional Supplemental Funds based on QC Collection

(assumes candidate has opponent in general election)

House

		To Qualify	When are Public Funds Available?
Seed money	\$1,000		
Primary election payment (unopposed)	\$500	Candidates must collect 60 qc's by April 20, 2012.	April 2012 (payment would be automatic)
	\$5,000		
General election payment		Candidates must collect additional 30 qc's by June 30, 2012.	June 2012 (payment would be automatic)
Optional supplemental payment #1	\$2,500	Candidates must collect additional 30 qc's by June 30, 2012.	Upon request of candidate at any time from Sept. 1 until 7 days before general election
Optional supplemental payment #2	\$2,500	Candidates must collect additional 30 qc's by June 30, 2012.	Upon request of candidate at any time from Oct. 1 until 7 days before general election
Maximum campaign funds available	\$11,500		

Notes: House candidates who have an opponent in the primary election would receive \$1,500 for the primary election. Post-primary replacement candidates - and opponents of those candidates - would have a later time period to collect supplemental QCs.

Senate

		To Qualify	When are Public Funds Available?
Seed money	\$3,000		
Primary election payment (unopposed)	\$2,000	Candidates must collect 175 qc's by April 20, 2012.	April 2012 (payment would be automatic)
	\$25,000		
General election payment		Candidates must collect additional 85 qc's by June 30, 2012.	June 2012 (payment would be automatic)
Optional supplemental payment #1	\$12,500	Candidates must collect additional 85 qc's by June 30, 2012.	Upon request of candidate at any time from Sept. 1 until 7 days before general election
Optional supplemental payment #2	\$12,500	Candidates must collect additional 85 qc's by June 30, 2012.	Upon request of candidate at any time from Oct. 1 until 7 days before general election
Maximum campaign funds available	\$55,000		

Notes: Senate candidates who have an opponent in the primary election would receive \$6,000 for the primary election. Post-primary replacement candidates - and opponents of those candidates - would have a later time period to collect supplemental QCs.

**Legislative Proposal 2: Optional Supplemental Funds
Projected Payments to 2012 MCEA Candidates**

	House Candidates			Senate Candidates		
	Payment Amount	Number of candidates	Projected payments	Payment Amount	Number of candidates	Projected payments
Primary Election						
Contested	\$1,500	43	\$64,500	\$6,000	10	\$60,000
Uncontested	\$500	196	<u>\$98,000</u>	\$2,000	55	<u>\$110,000</u>
Total for Primary Election			\$162,500			\$170,000
General Election - Contested						
Initial payment	\$5,000	185	\$925,000	\$25,000	47	\$1,175,000
One supplemental payment	\$7,500	35	\$262,500	\$37,500	5	\$187,500
Two supplemental payments	\$10,000	12	<u>\$120,000</u>	\$50,000	11	<u>\$550,000</u>
Contested General Election Total			\$1,307,500			\$1,912,500
General Election - Uncontested						
Initial payment	\$1,650	3	<u>\$4,950</u>	\$8,250	0	<u>\$0</u>
Uncontested General Election Total			<u><u>\$4,950</u></u>			<u><u>\$0</u></u>
Total for General Election			\$1,312,450			\$1,912,500
Total for Primary & General Elections			\$1,474,950			\$2,082,500
Total Payments for 2012 Elections			\$3,557,450			

- Assumes a 5% reduction in participation from the staff's projection for 2012 before *AZ Free Enterprise Club*.
- The distribution of candidates in the various spending brackets is roughly proportional to the actual spending in 2010.
- The total cost estimate does **not** take into account the unspent funds that will be returned after the election.