



**Testimony of Tim Moore-President/CEO**  
**Maine Association of Broadcasters**  
**February 28, 2024**

To the distinguished members of the Commission on Governmental Ethics and Election Practices, I appreciate the opportunity to comment on the proposed amendments to the Commission's rules to implement 21-A.M.R.S. 1064—which prohibits certain entities from making contributions and expenditures regarding Maine elections.

My name is Tim Moore and I am the President/CEO of the Maine Association of Broadcasters, a non-profit organization representing the interests of over 150 Radio and Television stations throughout the State of Maine.

As you are aware, the MAB has joined with the Maine Press Association to seek permanent injunction against the implementation of this law—arguing that it is both unconstitutional—a clear violation of the First Amendment—and also that it is both vague and unreasonably burdensome to media outlets, tasking them with the responsibility—under the threat of fines and penalties—of somehow investigating and documenting the specific source of funding for any and all entities wishing to place legitimate political speech on our outlets. Such a requirement would be close to impossible for Maine's broadcast stations, many of which are small family-owned operations.

While Maine broadcasters share the concerns of election interference from foreign influences—and clearly the public as well given the margin that Question 2 passed, this law does nothing to address what we believe are the true concerns of Maine voters—the barrage of social media infiltration by foreign governments with sinister intentions, millions of bots—and now, the prospect of deep-fakes and Artificial Generative Intelligence designed to deceive.

No, this simplistic Referendum question—the goals of which—prohibiting foreign election interference—everyone could agree on in principle—was actually a thinly-veiled attempt to silence Maine's electric utilities from participating in a political forum that would impact hundreds of thousands of Maine residents, the thousands of Maine people who are employed by these companies—and the tax burden each Maine citizen could be saddled with. Because these American companies have a degree of foreign ownership, this fact was seized upon as a means of eliminating one entire side of the debate over whether the state should take over the Maine's electric utilities.

To be clear, the MAB took no position then—nor do we now—regarding what was Question 3 last November. We do find it interesting that the very same electorate which resoundingly voted in favor of

Question 2 on Foreign Election interference---also voted overwhelmingly against Question 3—a government takeover of Maine’s electric utilities---which are at least partially foreign-owned.

In the legal arguments, there have been interpretations of case law, of statutes, of precedents and many other scenarios used by both sides in making their case. Unless you are a lawyer, much of this is “in the weeds”. But laws can dictate outcomes—and sometimes unintended consequences. Regardless of where one stands on this issue, one thing is for certain:

Had this law been in effect before the last election cycle, it would have been ILLEGAL for Maine broadcast stations to air any political ad against the state takeover of the electric utilities. Illegal for the utilities to make their position known. Illegal for broadcasters and newspapers to accept these ads. Those in favor of such a takeover would have been the ONLY voice allowed to be heard. Proponents of Question 3—who cried foul for being outspent by the utilities-(a situation they could have addressed with more robust fundraising)---instead apparently believe that the remedy to being outspent is to completely silence their opposition, making it illegal for these companies to participate in a public policy debate upon which their very survival was at stake.

Had only the Pro-Question 3 voices been heard, Maine people would be forced to make their decision without hearing both sides---just one side—which we believe is contrary to the ideal of robust American political discourse. Without both sides being heard, the outcome could have been completely different.

Does the State have the right to silence a legitimate political voice—citing the possibility of foreign influence—without a shred of evidence to back it up--- and by selecting a percentage of ownership out of thin air as the threshold for eliminating those voices? We believe they do not.

The MAB position has been mischaracterized as to be advocating for foreign advertisers. Maine broadcasters are not advocating for advertisers, foreign or otherwise. We are advocating for our audiences, the people of Maine, whom we believe are entitled to hear ALL political voices in a public debate—and we are adamantly opposed to any government-imposed ban on these voices.

Governor Mills also cited her concerns about the constitutionality of what was LD1610 when she vetoed the legislation---at which point proponents placed on the ballot . We wholeheartedly agree with her decision—and have included her letter to the Legislature last July explaining her reasoning in our submitted documents, along with our Declarations.

Since as of this writing, Judge Torresen has yet to rule on our petition for permanent injunction, we respectfully ask the Commission to refrain from taking any action with regard to rulemaking until that decision is handed down.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE**

**MAINE PRESS ASSOCIATION** )  
 )  
**and** )  
 )  
**MAINE ASSOCIATION OF** )  
**BROADCASTERS,** )  
 )  
                                  **Plaintiffs,** )  
 )  
**v.** )  
 )  
**MAINE COMMISSION ON** )  
**GOVERNMENTAL ETHICS AND** )  
**ELECTION PRACTICES, et al.** )  
 )  
                                  **Defendants.** )

Civil Action No. \_\_\_\_\_

**DECLARATION OF DAVID ABEL IN SUPPORT OF PLAINTIFFS' MOTION FOR  
TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION**

Pursuant to 28 U.S.C. § 1746, I, David Abel, declare and state as follows:

1. For over fourteen years, I have been President and General Manager of WMTW-TV (Channel 8), an ABC network affiliate, and WPXT-TV (Channel 51) a CW network affiliate, both owned by Hearst Television Inc. and serving southern Maine viewers as broadcast television stations assigned to the Portland-Auburn, Maine designated market area. I have been in the broadcast television industry for over thirty years.

2. Our stations' primary mission is to keep viewers informed, educated, safe, and entertained. We also engage in many community service activities (e.g., food drives, telethons, awareness events, etc.) and frequently work with non-profit community service organizations throughout the State of Maine.

3. As of July 2023, the Portland-Auburn, Maine designated market area we serve includes a total of about 429,000 households.

4. For close to four years, I have been the Board Chair of the Maine Association of Broadcasters (“MAB”). I have been active on the Board of Directors for MAB for most of the time I have been President and General Manager of WMTW and WPXT.

5. I respectfully submit this declaration in support of Plaintiffs’ Motion for a Temporary Restraining Order/Preliminary Injunction regarding An Act to Prohibit Campaign Spending by Foreign Governments and Promote an Anticorruption Amendment to the United States Constitution (the “Act”).

6. WMTW-TV, WPXT-TV, and MAB members would be subject to Section 7 of the Act and its due diligence requirements. Specifically, the Act mandates that each media outlet “shall establish due diligence policies, procedures and controls that are reasonably designed to ensure that it does not broadcast, distribute or otherwise make available to the public a public communication for which a foreign government-influenced entity has made an expenditure ... in violation of this section.”

7. “Foreign government-influenced entity,” in turn, is defined under Section 1 of the Act as (a) a foreign government or (b) an organization in which a foreign government or foreign government-owned entity: (1) has a 5% or more beneficial ownership in that organization; or (2) “directs, dictates, controls or directly or indirectly participates in the decision-making process” of that organization with regard to that organization placing political advertising.

8. These provisions impose on the media, including broadcast television stations like WMTW-TV and WPXT-TV, requirements that no broadcaster would be able to satisfy in the vast majority of political advertisement placements to the best of my knowledge.

9. In rare cases, media would be able to comply with the requirements where a political advertiser is a self-identified foreign government or a public entity has disclosed

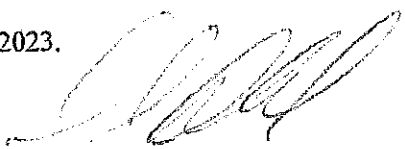
publicly its complete ownership structure, including any foreign ownership interests. But those instances are few and far between. The vast majority of political advertisers are private entities (such as, political action committees) for which there is no information available regarding ownership interests, let alone whether there is a foreign government-influenced entity that “directly or indirectly participates in the decision-making process” of that advertiser. To the best of my knowledge, there are no means available to ascertain what the Act mandates the media to “ensure” and subjects the media to significant penalties for failure to ensure what is in most cases impossible to ensure.

10. To further complicate the matter and adding another layer of complexity to complying with the mandate, political advertising on broadcast television stations like WMTW-TV and WPXT-TV is almost always placed by and through advertising agencies who act as intermediaries, managing the direct relationships with advertisers. In the overwhelming majority of instances, our sales teams never directly interact with or work with an advertiser or its staff.

11. For the reasons explained above, I respectfully urge the Court to enjoin enforcement of section 7 of the Act.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th date of December, 2023.



DAVID ABEL

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE**

<p><b>MAINE PRESS ASSOCIATION</b></p>	}	
and	}	
<b>MAINE ASSOCIATION OF BROADCASTERS,</b>	}	
<b>Plaintiffs,</b>	}	Civil Action No. 2:21-cv-00107-NT
v.	}	
<b>MAINE COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES, et al.</b>	}	
<b>Defendants.</b>	}	

**DECLARATION OF TIMOTHY MOORE IN SUPPORT OF PLAINTIFFS' MOTION FOR  
TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION**

Pursuant to 28 U.S.C. § 1746, I, Timothy Moore, declare and state as follows:

1. I am President/CEO of The Maine Association of Broadcasters ("**MAB**").
2. MAB is a non-profit organization representing over 130 Radio and Television Stations in the State of Maine. MAB advocates for broadcasters statewide on issues of importance to FCC-regulated licensees/operators and by extension to all citizens of Maine they serve.
3. With over 30 years of experience in Maine, I am in constant contact with owners, station managers and rank-and-file workers in the broadcast industry, seeking their input on concerns they have regarding their economic interests and their never-ending dedication to serving Maine communities. I also have decades of experience managing commercial radio stations.

4. I respectfully submit this declaration in support of Plaintiffs' Motion for a Temporary Restraining Order/Preliminary Injunction. I describe my objections to the portion of An Act to Prohibit Campaign Spending by Foreign Governments and Promote an Anticorruption Amendment to the United States Constitution (the "Act") applicable to Maine broadcasters, including their stations and their websites.

5. On July 12, 2023, following a unanimous vote of the MAB Board of Directors, we submitted a letter urging Governor Janet Mills to veto L.D. 1610, which became Question 2 on the November 2023 ballot; our letter is attached as **Exhibit 1**.

6. Maine Radio & TV stations are expressly targeted for regulation in Section 7 of the Act. In addition, some Maine Radio & TV stations operate websites which run political advertisements and thus MAB members are also subject to regulation under section 7 of the Act because they operate what the Act describes as "Internet Platforms."

7. Maine Radio & TV stations broadcast paid content from both individuals and businesses advertising products and services as well as from political, advocacy and non-profit organizations and entities communicating views about the issues of the day, including the nomination or election of a candidate or the initiation or approval of a referendum.

8. MAB objects to Section 7 of the Act because it (A) imposes vague and ambiguous standards on Maine Radio & TV stations making it impossible for our members to know what they are legally allowed to do; (B) requires Maine Radio & TV stations to institute burdensome due diligence regulations that will cause them to delay or not run at all some significant amount of truthful political speech that MAB members would have broadcast in the past; and (C) requires Maine Radio & TV stations to remove truthful political speech thus taking away their right to exercise their own independent judgment about what their audiences should be able to

see and hear. The Act threatens Maine Radio & TV stations with substantial financial penalties if they do not comply.

### Vague and Confusing Standards

9. The provisions of Section 7 of the Act are unclear and confusing.

10. I do not know what "due diligence policies, procedures and controls" are meant to require, but I understand that the use of the word "and" means that we are required to have all of three of them and that each of them means something different. I do not know and believe that no one knows what any of these terms mean in the context of the Act. What "due diligence policies" would be required to comply with the Act? I am unaware of any relevant policy that we might look to as a model. I do not know and believe that no one knows what "procedures" are meant to be in this context. I also do not know what "controls" means here. I gather that "due diligence policies, procedures and controls" must mean something serious and substantial because they must be "reasonably designed to ensure" (per the Act) that Maine Radio & TV stations do not make available to the public a public communication that would violate the Act, but I can only guess at what these provisions actually require of our members.

11. The "reasonably designed to ensure" standard is also vague. The statute does not say who decides what is "reasonable" and puts us at risk of being second-guessed after-the-fact about what was "reasonable." What is "reasonable" appears to be a discretionary call inviting different Maine Radio & TV stations to draw different lines between what is reasonable and unreasonable, depending on their time and resources.

12. Section 7 of the Act applies to "a public communication for which a foreign government-influenced entity has made an expenditure, independent expenditure, electioneering communication or disbursement." The Act does not say whether it applies only to payments



made to our members. The "has made" phrasing suggests to me that it may apply whenever payments or disbursements are made to anyone in connection with a "public communication." Does the Act apply to guest editorials, and other types of content for which a foreign government-influenced entity may have made a "disbursement" to someone other than our members in connection with the content? Does the Act apply even where a "public communication" is part of a news story? We are left to speculate.

13. This ambiguity is a problem because Maine Radio & TV stations do not know what they are required to do to comply with the Act. To avoid legal risk, I expect that they will end up refusing to accept some political advertisements because the Act is vague and confusing. I expect that if they cannot tell if an advertiser qualifies as a "foreign government-influenced entity" they may not accept advertisements from that advertiser. Because of ambiguity in the Act, I expect that Maine Radio & TV stations will end up not broadcasting some political advertisements that actually comply with the Act. Because the Act is ambiguous, it will cause Maine Radio & TV stations to delay or reject some political advertisements and that will hurt broadcasters' revenue.

14. As mentioned, advertisers ask MAB members to broadcast and post to their websites advertisements within hours of order placement. The Act's ambiguity and due diligence requirements (as described below) will be time consuming and costly as MAB members attempt to determine whether an advertiser complies with the Act. Audiences will not see or hear some advertisements as quickly as would be true but for the Act, and some will miss seeing some advertisements altogether. People who listen to or watch our members' broadcasts one day may not do so the next day.

## Due Diligence Policies, Procedures and Controls

15. As stated in the MAB Letter to the Governor, the Act would essentially require all Maine broadcast outlets to become “detective agencies”—tasked with determining the source of all political funding and applying some (unknown) means of obtaining the ownership structure with regard to foreign government ownership, control, or participation. The short lead time between the broadcast order and on-air placement make this task impossible.

16. Those radio and television stations that are affiliated with a network have no local ability to control, alter or remove advertising and content that is fed through the network and passed on to be broadcast on the local outlet. Advertisements that violate the Act could be delivered via a network, thus making local stations potentially liable for content not within their control.

17. Requirements for due diligence policies betray a basic lack of understanding regarding the manner in which broadcast time is placed. Often, an order is received electronically—usually from an advertising agency. The turnaround time from order received to broadcast can sometimes be a matter of hours. The advertising agency—or political organization (if an advertisement is received by a station directly) does not divulge the ownership structure of the entity placing the advertising—and ad agencies probably do not possess this information, especially to the degree of percentages owned or controlled and by what entities. And Maine Radio & TV stations typically have no way of knowing who “indirectly participates in the decision-making process” at an advertiser.

18. Our members’ current advertising workflow does not include due diligence policies, procedures and controls to identify “foreign government-influenced entities.” To develop due diligence policies, procedures and controls reasonably designed to ensure that they

do not broadcast, distribute, or otherwise make available to the public a communication for which a foreign government influenced entity has made an expenditure—as required by the Act—would require that Maine broadcasters hire and train staff and incur burdensome legal fees and other costs without ensuring that even internally “cleared” advertisements are in fact, allowable under the Act.

19. This type of detective work to attempt to screen out certain types of advertisers would impose a significant administrative burden and strain already limited resources at Maine Radio & TV stations. Contrary to perception, most broadcast outlets in Maine are small businesses that struggle to meet ever-rising costs, FCC fees and requirements, all while serving the communities of Maine.

20. Broadcast outlets are dealing with significant financial challenges with the ever-changing media landscape. These financial hardships have affected our members and the administrative burdens imposed by the Act impose considerable additional burdens on our members when their resources are already very strained. The Act forces MAB members to divert resources from editorial and news reporting functions to perform government-mandated due diligence that has the additional downside of forcing them to screen out a source of revenue (paid advertisements) that supports their businesses. For some broadcasters, this would become an existential situation. Maine Radio & TV stations face three unsatisfactory scenarios: (a) reject political advertisements altogether and lose significant revenue; (b) accept advertisements which pass whatever due diligence procedures are employed—at a cost that may neutralize the revenue itself; or (c) accept the advertisements and revenue (with the costs of vetting the advertiser) but still risk a large fine if the station’s due diligence fails to uncover evidence of foreign

government ownership exceeding 5%. None of these options are attractive. The Act discourages Maine Radio and TV stations accepting political advertisements.

21. To the best of my knowledge, information and belief, there is no list of "foreign government-influenced entities." MAB members would not be left to conduct their own investigations, which would likely vary from one broadcaster to the next depending on resources, time, and risk tolerance for potential violations of the Act.

22. To the best of my knowledge, there is no way for MAB members to reasonably identify many "foreign government influenced entities." If an entity self-identifies as a foreign government, that much would be obvious. And a few entities that have engaged in political speech in Maine are well-known to be owned in part by foreign governments. But the term "foreign government-influenced entities" (as defined by the Act) also includes several other categories of entities that our members would have no practical way to identify. To even attempt such identification would be a substantial research project.

23. I am also concerned that despite attempting to engage in burdensome due diligence, the Act's requirements could be easily evaded. Some entities may not know if they qualify as foreign government-influenced given the broad and ambiguous definition in the Act. And whether an entity qualifies may change depending on changes in ownership over time. Those entities willing to violate the Act could easily hide ownership using shell entities, making it impossible for MAB members to ferret out whether an entity is actually subject to the Act's prohibitions.

#### **Objection to Government Censorship**

24. Maine Radio & TV stations have a proud heritage of exercising independent editorial judgment regarding the news, opinion, and advertising content they broadcast. Our

members may decide not to broadcast certain material that in their judgment does not belong on the air or on their websites. Whether it is misleading consumer advertising, profanity or violates acceptable community standards, our members are obligated under FCC regulations—and their own judgement—to reject advertising that they deem unacceptable. Our members are proud of this track record and we guard this independence vigorously. MAB believes that maintaining freedom to broadcast political speech is an integral part of the service its members provide to the public.

25. To my understanding section 7 of the Act requires that if a Maine Radio & TV stations discovers that a public communication has been published on its website in violation of the Act it “shall immediately remove the communication” and submit some form of mandatory notification to a state government agency even if the content otherwise is accurate and meets editorial standards and FCC requirements.

26. MAB strongly objects to government telling our members that they cannot broadcast truthful political advertisements of a type that they have run for many years. Separate and apart from whatever rights our advertisers themselves may have, we believe that our members have their own independent rights as operators of radio and TV stations and websites to decide what political speech to broadcast and that those rights are protected by the First Amendment.

27. MAB strongly objects to government imposing due diligence requirements and telling MAB’s members to immediately remove truthful political advertisements, but exempting other businesses that make available public communications for which foreign government-influenced entities have made an expenditure, independent expenditure, electioneering communication or disbursement, including persons who engage in political speech using

billboards, signs, pamphlets, books, and websites. As for websites in particular, Maine cannot possibly expect to regulate all websites around the globe. This is a loophole for anyone wishing to influence Maine voters or elections.

28. MAB strongly objects to government dictating to us that we immediately remove truthful political advertisements when, on information and belief, foreign government-influenced entities are able to pay for content intended to influence elections on social media websites like Facebook, Instagram, Tik-Tok, YouTube, and similar online platforms but they are, on information and belief, exempt from complying with the Act because of Section 230 of the Communications Decency Act of 1996 (47 U.S.C. § 230).

29. MAB strongly objects to the threat of substantial financial penalties if our members do not comply with the Act.

30. Because of the substantial compliance burdens, threat of liability, and precedent that would be set by acceding to a government regulation of our political advertising content, broadcasters in Maine would necessarily have to reexamine whether to accept political issue advertising. They would not take such a decision lightly. The loss of political advertising would have a meaningful financial impact on them and would likely reduce the resources available to newsrooms, which are supported by advertising revenue. Each station's investment in news, public affairs and community service is directly impacted by the overall economic health of that local operation. Significant revenue declines resulting from this Act will compel stations to cut back operational costs, with expensive news operations often the first budget item to suffer. This is not a good outcome for Maine communities.

## Our Mission

31. The loss of political advertising would be a loss to audiences and would undermine MAB's mission and the missions of our members. Protecting our members right to engage in political discourse is central to our mission. Maine Radio & TV stations are one of the primary forums for discussion of local candidates and political issues in Maine, including referenda. Maine broadcasters devote significant airtime to referenda issues, including objective news reporting about, for example, ballot questions. Advocacy for one side or another takes place largely in advertisements, where each side has the opportunity to state their case. An informed electorate should hear all points of view, but the Act would effectively silence some points of view because the speaker is tainted with as little as 5% foreign government ownership regardless of whether a foreign government has any influence or role in the advertisement.

32. Also of concern to me is that the Act applies to friendly allies of the United States like Canada, with which Maine shares close historic ties, and which to the best of my knowledge, information and belief, has not engaged in fraudulent schemes to influence Maine elections.

33. The loss of the political speech barred by the Act would undermine the democratic process in the communities we serve. While foreign entities with more than 5% foreign government ownership are present in Maine—and are stakeholders in referenda issues (as in this fall's campaign for Question 3, which proposed a publicly owned power company)—these entities are legal, they employ thousands of Maine people, and pay Maine income and property tax. To silence them in what may be an existential (for them) political debate is unfair and contrary to the First Amendment.

34. I share concern about fake social media activity and advertisements by foreign governments hostile to the United States through automated social media platforms like

Facebook or Tik Tok. But I am unaware of any effort by a foreign government to use of fake accounts or deliberately false speech to manipulate advertising or other content broadcast on air or published on websites of Maine Radio & TV stations.

35. I do not believe the Act's provisions regarding news and broadcast organizations effectively address the issue of fake social media activity because there are too many loopholes. The Act does not control fake accounts on social media or offshore websites. Nefarious actors could easily hide their ownership making it impossible for Maine Radio & TV stations to distinguish between advertisers that are permitted to broadcast political speech in Maine and those that are prohibited by the Act from doing so. Maine citizens are exposed to these social media messages constantly. Imposing due diligence and censorship obligations on Maine broadcasters is not going to put a dent in that activity.

36. For the reasons explained above, I respectfully urge the Court to enjoin enforcement of section 7 of the Act.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6 date of December, 2023.

Signed: \_\_\_\_\_

Printed Name \_\_\_\_\_

Timothy G Moore





Jahel E. Mills  
GOVERNOR

STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

July 19, 2023

The 131st Legislature of the State of Maine  
State House  
Augusta, Maine

Dear Honorable Members of the 131st Legislature:

By the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing L.D. 1610, *An Act To Prohibit Campaign Spending by Foreign Governments and Promote An Anti-Corruption Amendment to the United States Constitution*.

L.D. 1610 attempts to prohibit businesses and other entities with foreign government “influence” – a term that is poorly defined in the bill – from participating in both candidate elections and the citizen-initiated referendum process through monetary expenditures. On this point, the bill is similar to L.D. 194, *An Act to Prohibit Contributions, Expenditures, and Participation by Foreign Government-owned Entities to Influence Referenda* (130<sup>th</sup> Legis. 2021), a bill I vetoed last session due to potential Constitutional issues.

My concerns about the Constitutionality of the bill remain. But more broadly, while I strongly support and share the desire to find ways to prevent foreign influence in our elections, the language of the bill is too broad and would likely result in the unintended consequence of effectively silencing legitimate voices, including Maine-based businesses, in debates that would impact their interests.

On top of this concern, L.D. 1610 also attempts to regulate the activities of the press and other media outlets, which I believe runs afoul of the First Amendment and is counter to the longstanding tradition and cornerstone of a free press in America.

### **L.D. 1610’s Regulation of Political Speech**

The core of the bill restricts who may participate in political debate, but the First Amendment provides its strongest protections to such political speech (*Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 223 (1989)), with the Supreme Court generally rejecting restrictions on speech in political campaigns other than to prevent *quid pro quo* style corruption (*Fed. Election Comm’n v. Cruz*, 132 S. Ct. 1638, 1652 (2022)).



GOVERNOR OF MAINE

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L.D. 1610's proponents point to a Federal District Court decision in *Blumen v. FEC*, 800 F. Supp. 281 (D.D.C. 2012), as support for the constitutionality of the bill's prohibition on expenditures by foreign government-influenced entities. But *Blumen* involved the review of a very different law. At issue in that case was a prohibition only on contributions by *foreign nationals*, whereas this bill would also apply to Maine-based businesses that have, for example, investment from a public pension fund of a foreign city or province that has no interest in influencing a referendum. And importantly, *Blumen* only addressed a prohibition on contributions to candidates, political action committees, and political parties, all of which create the potential for *quid pro quo* corruption. This bill, however, also prohibits expenditures on citizen referenda; but the Supreme Court has explained that the risk of *quid pro quo* corruption "simply is not present in a popular vote on a public issue." *First Nat'l. Bank of Boston v. Bellotti*, 98 S. Ct. 1407, 1423 (1978).

While some states have restrictions on foreign nationals and foreign corporations from participating in ballot initiatives, L.D. 1610 is different from those statutes in ways that are problematic:

1. L.D. 1610 does nothing to prohibit a foreign national from contributing to or making expenditures in a ballot initiative campaign;
2. The definition of a foreign entity as one that has 5 percent investment by a foreign government is so broad that it could theoretically incorporate businesses that are 95 percent owned and operated by citizens of Maine. Moreover, most states that bar foreign entities from contributing to a ballot initiative focus on where the business is incorporated or has its principal place of business. If the entity is a domestic subsidiary of a foreign business, they require United States citizens to determine how to make campaign donations. Here, however, the definition of a "foreign-influenced entity" requires one to know the level of foreign government investment in a privately held or publicly traded business – a much more in depth and difficult question to answer.
3. Under L.D. 1610, the same business that is barred from influencing the electorate as they consider a statute at referendum may retain a paid lobbyist to influence legislators as they consider enacting a statute – an odd and somewhat contradictory distinction to make that, in essence, says lawmakers are due certain information from certain messengers but not the people of Maine.

### **L.D. 1610's Regulation of the Press and Media Outlets**

Most troubling, however, is that L.D. 1610 attempts to regulate the activities of the press in two primary ways.

First, it requires internet platforms to "immediately remove" communications paid for by a foreign government-influenced entity, which is likely in violation of the First Amendment, and penalizes media outlets if they do not do so. But the Supreme Court has consistently protected the right of the press to carry truthful information of public concern, even when a third party violated the law



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in providing that information. *Bartnicki v. Voper*, 532 U.S. 514, 535 (2001). And paid advertising is entitled to the same First Amendment protection as editorial content. *New York Times v. Sullivan*, 376 U.S. 254, 265-66 (1964).

Second, L.D. 1610 also contains a “due diligence” provision that would require media outlets to ensure they do not publish communications “directly or indirectly” paid for – something that is, again, very difficult to discern – by a “foreign government-influenced entity,” under threat of significant financial penalties.

The Maine Association of Broadcasters, in urging me to veto this bill, wrote that this provision will “essentially require broadcast outlets to become detective agencies, tasked with investigating the source of funding for any and all campaigns.” Similarly, the Maine Press Association wrote that the provision “would restrict and burden speech about public issues in Maine by forcing news outlets to create an oppressive, time-consuming, and costly self-censorship regime.” I share these concerns and have enclosed their letters for the Legislature’s review and consideration.

### Conclusion

While L.D. 1610 is flawed, I agree that we should, and we can, take a stand against dark money in our elections by reaffirming the Legislature’s support for an amendment to the U.S. Constitution, as described in Section 2 of L.D. 1610. And we can find a way to prevent foreign influence in our elections by enacting a more narrowly tailored and easily understood statute. Foreign actors have, and will, attempt to influence elections in America, but in attempting to protect our citizens from such nefarious actors, we should not create a bureaucratic morass that will entrap and silence otherwise legitimate voices and undermine the fundamental American cornerstones of free speech and free press. For the reasons set forth above, I return L.D. 1610 unsigned and vetoed, and I urge the Legislature to sustain this veto.

Sincerely,



Janet T. Mills  
Governor



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July 13, 2023

Governor Janet T. Mills  
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**RE: LD 1610 - An Act to Prohibit Campaign Spending by Foreign Governments  
and Promote an Anticorruption Amendment to the United States Constitution**

Dear Governor Mills:

The Maine Press Association strongly opposes and urges you to veto LD 1610 because it violates the Article I, Section 4 of the Maine State Constitution<sup>1</sup> and the First Amendment of the United States Constitution<sup>2</sup>. It violates their members' constitutional right to be free from laws "regulating or restraining the freedom of the press" and from freely speaking, writing, and publishing sentiments on any subject. Me. Const. art. I, § 4. Of particular concern to their members—and something that appears to have received scant attention before now—is that LD 1610 would impose a burdensome self-censorship regime on news outlets by requiring the creation of "due diligence procedures, policies, and controls" to screen communications for violations of the political spending limitations imposed by Section 2 of LD 1610. This is enforceable by onerous civil penalties and an obligation to remove any content discovered to violate the legislation. These sections of LD 1610 stand out as they directly impose an onerous censorship mandate directly on news outlets.

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<sup>1</sup> "Section 4. Freedom of speech and publication; libel; truth given in evidence; jury determines law and fact. Every citizen may freely speak, write and publish sentiments on any subject, being responsible for the abuse of this liberty; no laws shall be passed regulating or restraining the freedom of the press; and in prosecutions for any publication respecting the official conduct of people in public capacity, or the qualifications of those who are candidates for the suffrages of the people, or where the matter published is proper for public information, the truth thereof may be given in evidence, and in all indictments for libels, the jury, after having received the direction of the court, shall have a right to determine, at their discretion, the law and the fact." Me. Const. art. I, § 4.

<sup>2</sup> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I.

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It is one thing to burden direct political participants with campaign spending restrictions,<sup>3</sup> but quite another to impose burdensome, vague, and costly compliance requirements that threaten neutral third-party news outlets with penalties and injunctions for publishing political speech.<sup>4</sup> The latter is plainly unconstitutional. The due diligence and penalty provisions of LD 1610 are Sections 7 and 8, as follows:

**7. Due diligence required.** Each television or radio broadcasting station, provider of cable or satellite television, print news outlet and Internet platform shall establish due diligence policies, procedures and controls that are reasonably designed to ensure that it does not broadcast, distribute or otherwise make available to the public a public communication for which a foreign government-influenced entity has made an expenditure, independent expenditure, electioneering communication or disbursement in violation of this section. If an Internet platform discovers that it has distributed a public communication for which a foreign government-influenced entity has made an expenditure, independent expenditure, electioneering communication or disbursement in violation of this section, the Internet platform shall immediately remove the communication and notify the commission.

**8. Penalties.** The commission may assess a penalty of not more than \$5,000 or double the amount of the contribution, expenditure, independent expenditure, electioneering communication, donation or disbursement involved in the violation, whichever is greater, for a violation of this section. In assessing a penalty under this section, the commission shall consider, among other things, whether the violation was intentional and whether the person that committed the violation attempted to conceal or misrepresent the identity of the relevant foreign government-influenced entity.

This legislation constitutes a prior restraint on speech because it purports to tell news outlets what they can and cannot publish. We are unaware of any legal precedent upholding this kind of prior restraint on publication of political speech by independent news outlets.

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<sup>3</sup> The MPA does not take a position here about whether election spending restrictions only on “foreign government-influenced entities” (a defined term in LD 1610) may be unconstitutional, but notes that Justice Stevens considered such restrictions to violate the majority’s rationale in *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 424 (Stevens, J., dissenting) (“If taken seriously, our colleagues’ assumption that the identity of a speaker has *no* relevance to the Government’s ability to regulate political speech . . . would appear to afford the same protection to multinational corporations controlled by foreigners as to individual Americans: To do otherwise, after all, could “enhance the relative voice” of some (*i.e.*, humans) over others (*i.e.*, nonhumans).”) The *Citizens United* majority specifically did “not reach the question whether the Government has a compelling interest in preventing foreign individuals or associations from influencing our Nation’s political process.” *Id.* at 362.

<sup>4</sup> See *Washington Post v. McManus*, 944 F.3d 506, 515 (4th Cir. 2019) (distinguishing between customary campaign finance regulations burdening political actors from “platform-oriented” legislation posing “First Amendment problems of its own” and upholding injunction against Maryland’s Online Electioneering Transparency and Accountability Act).

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We are also unaware of any precedent upholding laws imposing any sort of mandatory “due diligence” process on news outlets before they can publish political speech. LD 1610 would restrict and burden speech about public issues in Maine by forcing news outlets to create an oppressive, time-consuming, and costly self-censorship regime. The “due diligence” process is not something that news outlets can be required to do. And the content limitations imposed by LD 1610 would infringe newspaper’s right to editorial control over their published content.<sup>5</sup> Will the government periodically investigate the sufficiency of whatever “due diligence” regime news outlets might adopt? News outlets can only guess at what acceptable due diligence might entail. LD 1610 also has an unconstitutional chilling effect on speech by deterring newspapers from publishing any content that *may* violate the prohibition in LD 1610.<sup>6</sup> None of this comports with the First Amendment.

The compliance costs associated with LD 1610’s mandated “due diligence policies, procedures and controls” itself gives rise to constitutional problems. The expense of compliance “makes certain political speech more expensive to host than other speech because compliance costs attach to the former and not to the latter.”<sup>7</sup> This result is to discourage news outlets from accepting political advertisements. This is yet another constitutional problem. LD 1610 would be subject to strict scrutiny constitutional review and would fail such review.

Although we are writing this letter urging you to veto LD 1610 for the purpose of protecting the freedom of speech and the press, we cannot ignore the implications that it will have on entities with a legitimate interest in the Maine economy and political process. LD 1610 applies to any “foreign government-influenced entity” which is defined as any entity that is just 5% or more owned by any entity that is 50% or more owned or controlled by a foreign government. It appears that an entity that is 95% owned by Maine residents, for example, could still be subject to LD 1610. It also appears that LD 1610 would apply regardless of whether a foreign government-owned entity participates in any decision related to election spending; a purely passive minority ownership stake in a multinational enterprise with a domestic subsidiary operating independently in Maine could be prohibited from participating in the political process in Maine. As an advocate for freedom of speech generally, the MPA would have serious objections to LD 1610 even if all of the requirements targeting news outlets were removed.

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<sup>5</sup> *Id.* at 258 (“A newspaper is more than a passive receptacle or conduit for news, comment, and advertising.<sup>24</sup> The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment.”)

<sup>6</sup> See *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 257 (1974) (“Faced with the penalties that would accrue to any newspaper that published news or commentary arguably within the reach of the right-of-access statute, editors might well conclude that the safe course is to avoid controversy. Therefore, under the operation of the Florida statute, political and electoral coverage would be blunted or reduced.”)

<sup>7</sup> *Washington Post v. McManus*, 944 F.3d 506, 516 (4th Cir. 2019).

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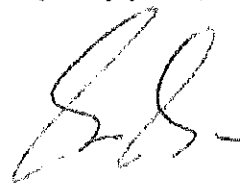
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In the 130<sup>th</sup> Legislature, Governor Mills, you *vetoed* LD 194 – An Act to Prohibit Contributions, Expenditures, and Participation by Foreign Government-owned Entities to Influence Referenda. LD 194, (130th Legis. 2021). Although LD 1610 made some changes, overall, it is even more objectionable because it now imposes a burdensome new censorship regime on news outlets. In that veto letter you recognized the First Amendment problems posed by barring companies from “any form of participation in a referendum is offensive to the democratic process, which depends on a free and unfettered exchange of ideas, information, and opinion.” And that limitations on core political speech “are highly suspect as a constitutional matter.”

You ended your LD 194 veto letter by recognizing that the legislation would “deprive voters of information and opinion” from certain companies and that the voters should be able “to sort through competing views as they consider how to cast their vote in any referendum.” Our country is built on the pillar of a free speech and press, and LD 1610 attempts to put restrictions on the work of the press in disseminating information to the public. Supporters of this bill might dislike certain companies that lawfully operate in this State, but that is not justification to impose unprecedented—and unconstitutional—burdens on news outlets.

Please veto LD 1610 to show the people of Maine that you recognize the First Amendment infirmities with this legislation and the unacceptable burdens it would impose on Maine’s news outlets. Thank you for your consideration.

Very truly yours,



Sigmund D. Schutz, Esq.

SDS:apl

cc: Maine Press Association Legislative Committee  
Jeremy Kennedy, Chief of Staff  
Anne E. Sedlack, Esq.



July 12, 2023

The Honorable Janet T. Mills  
Governor of Maine  
1 State House Station  
Augusta, ME 04333

Dear Governor Mills,

On behalf of Maine broadcasters, this letter formalizes our strong opposition to LD 1610- An Act to Prohibit Campaign Spending by Foreign Governments and Promote an Anticorruption Amendment to the United States Constitution.

One of the primary functions of the Maine Association of Broadcasters is to be a watchdog regarding proposed legislation that violates the First Amendment or would cause harm to Maine Radio and Television stations, operating 365 days a year in the public interest.

We believe that this bill achieves both negative consequences.

Of particular concern are Sections 7 and 8:

7. "Due diligence required. Each television or radio broadcasting station, provider of cable or satellite television, print news outlet and Internet platform shall establish due diligence policies and controls that are reasonable designed to ensure that it does not broadcast, distribute or otherwise make available to the public a public communication for which a foreign government-influenced entity has made an expenditure, independent expenditure, electioneering communication, donation or disbursement in violation of this section."

This requirement places an almost impossible burden on Maine broadcasters, operating on fast-turnaround deadlines for placing advertising and often with a skeleton staff. This law would essentially require broadcast outlets to become detective agencies, tasked with investigating the source of funding for any and all campaigns. Most definitely not reasonable and of prohibitive cost. We believe there are also potential violations of the First Amendment with this broad scope of requirement, particularly since several parameters used (such as "electioneering communication" and "independent expenditure") are not expressly defined.



8. "Penalties. The commission may assess a penalty of not more than \$5,000 or double the amount of the contribution, expenditure, independent expenditure, electioneering communication, donation or disbursement involved in the violation, whichever is greater, for a violation of this section."

Again, the parameters of defining what constitutes a violation is ambiguous at best—and the penalties are excessive and left up to the discretion of the "commission".

The MAB won't speculate on what motives lay at the heart of this proposed legislation, but our association can definitively promise that Maine broadcasters will suffer significant harm should this become law, a scenario that will surely invite a legal challenge.

On behalf of Maine Television and Radio stations, we ask that you veto this flawed legislation-and thank you in advance for your consideration.

Sincerely,



Tim Moore  
President/CEO  
Maine Association of Broadcasters

cc: Tim Feely-Deputy Legal Council  
Tom Abello-Legislative Director  
David Abel-Hearst Television, Board Chair MAB  
Corey Garrison-Bennett Radio Group, MAB Board  
Jeff Pierce-Wreaths Across America, MAB Board  
Paul Dupuis- Stony Creek Broadcasting, MAB Board  
Herb Ivy-Townsquare Media, MAB Board  
Kim Lee, Gray Television, MAB Board  
Stan Bennett, Bennett Radio Group, MAB Board  
Kelly Landeen, Gray Television, MAB Board  
Matt Barnard, Portland Radio Group, MAB Board