

# 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: September 14, 2011

Re: Draft Report on Maine Clean Election Act Program

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I have attached for your consideration a draft version of the report on suggested changes to the Maine Clean Election Act program. There is a fair amount of material in the report which you reviewed for the last meeting.

The following sections are new or are largely rewritten:

- Summary (pages 1-2)
- Description of Legislative Proposal #1 (pages 9-10)
- Description of Legislative Proposal #2 (pages 12-14)
- Costs of Legislative Proposals #1 and #2 (pages 15-19)
- Recommendations from the Commission (page 26-27)

Please let me know of any changes I should make to the report. I am hoping that you will be willing to adopt the report at your September 19 meeting, with or without changes.

The members of the Joint Standing Committee on Veterans and Legal Affairs will be meeting on September 26 to consider nominations from the Governor, and would be interested in hearing about the report at that time.

Thank you.

## Summary

The Maine Ethics Commission appreciates the opportunity to propose changes to the Maine Clean Election Act (MCEA) program in order to address the loss of matching funds due to the Arizona Free Enterprise Club's Freedom Club PAC v. Bennett decision by the U.S. Supreme Court. (Resolve Chapter 103 of the 125<sup>th</sup> Legislature, attached to this report as page A-1) The judicial elimination of matching funds is a significant change to the program. In the last four election cycles, generally 40% - 50% of the legislative MCEA candidates in races considered to be competitive received some matching funds and all gubernatorial MCEA candidates received matching funds.

The Commission believes that there is still time to modify the Maine Clean Election Act in response to the Court's decision so that the 2012 election year can begin in an orderly and predictable way – provided that in the coming weeks the Joint Standing Committee on Veterans and Legal Affairs in consultation with legislative leadership is able to reach a consensus on a legislative fix. In order to facilitate a consensus, the Commission has advanced two proposals relating to legislative candidates – either of which would be a significant improvement over the status quo.

The Commission views prompt legislative action as an imperative. Legislative caucuses are already recruiting candidates. Candidates will be deciding in October, November, and December 2011 how they will finance their 2012 campaigns. They deserve to know whether a Maine Clean Election Act program will be available in 2012 that will meet their needs or whether they should begin collecting traditional campaign contributions of up to \$350 per donor.

The MCEA was initiated and enacted by the citizens of Maine. The program should be suitable for the needs of most candidates who would like to participate in the program, including for individuals who are new to running for office. The Commission staff projects that the current MCEA program will be unacceptable to a significant portion of 2012 legislative candidates (maybe around 25%), because the program no longer includes matching funds and because funding for 2012 legislative candidates was reduced by 5% earlier this year by the Legislature.

The program was designed to bring new people of every political stripe into the political process and the program has been successful in achieving that goal. Reforming the legislative program should be oriented toward preserving the opportunity for new candidates to run and to represent their districts. If the program develops in such a way that funding is adequate only for well-known incumbents or candidates running in "safe" districts, it will not be fulfilling the goals of the program as intended by Maine citizens when they enacted the law.

In this report, the Commission has developed two proposals that are worthy of serious consideration. Legislative Proposal #1 would provide a fixed amount to all MCEA candidates in the 2012 general election. This proposal has the virtue of simplicity for candidates and the caucuses. Its weakness is that in order to provide sufficient campaign funding for candidates with greater needs, the Commission would pay an unnecessary large amount to candidates who have more modest requirements.

Legislative Proposal #2 is intended to address this issue of differing campaign needs. It would provide a basic level of funding to most 2012 general election candidates, but would allow candidates to qualify for additional public campaign funds by collecting a greater number of \$5 qualifying contributions. The Commission has proposed higher qualifying requirements for these supplemental payments in order to contain the cost of the program by funneling these supplemental public dollars to those candidates who truly need them. The Commission recognizes that allowing candidates to qualify for higher levels of public funding raises a concern about cost, which we address the issue on pages 15-19 of the report. The Commission believes there are reasons to project that a small minority of candidates (16% - 25%) of the legislative candidates will seek the higher levels of campaign funding if there were available in 2012.

This report also includes

- a preliminary discussion of changing the gubernatorial program. The Commission staff would be pleased to develop these ideas further if any members of the policy committee are interested; and
- some ideas for simplifying the campaign finance reporting procedures for PACs, parties, and some candidates in the closing weeks of the campaign. The Commission does not endorse all of these changes because of the trade-offs with public disclosure. Nevertheless, the Commission members are advancing these specific ideas in order to be responsive to suggestions received a July 28 public hearing.

## **Background on Maine Clean Election Act**

### **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.

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.

### **Key Features of the Current MCEA Program**

Since the program's 1996 enactment by Maine voters, the Maine Legislature has made improvements to the program, but has not changed the basic structure of the program. I have Attached to this memo is 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 A2-A3).

*Full public campaign financing.* The MCEA program was designed as a system of full public funding. After candidates 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 must demonstrate that they have a threshold of public support by collecting 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. The goal is to have everyday Mainers able to support their candidates by giving a modest donation from their personal funds.

*Limit on 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.

## **Statistics: Participation in Program and Payments to Candidates**

*Legislative program.* The attached two-page Legislative Factsheet on the Maine Clean Election Act Program (pages A4-A5) 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.
- Total payments to legislative candidates 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 A6) provides an overview of participation in the program by candidates for governor.

- 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.
- 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 terms of cost, the gubernatorial part of the program has made 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.

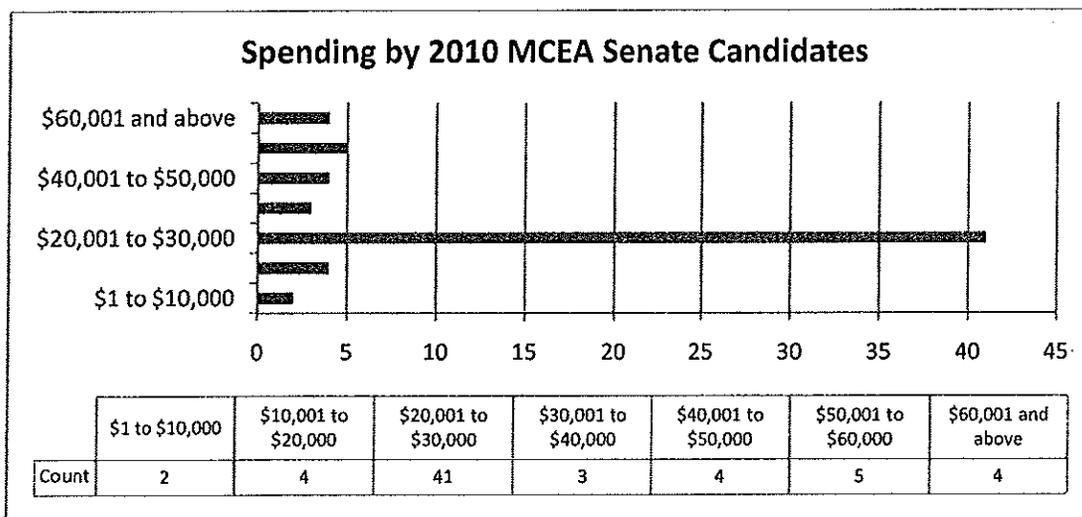
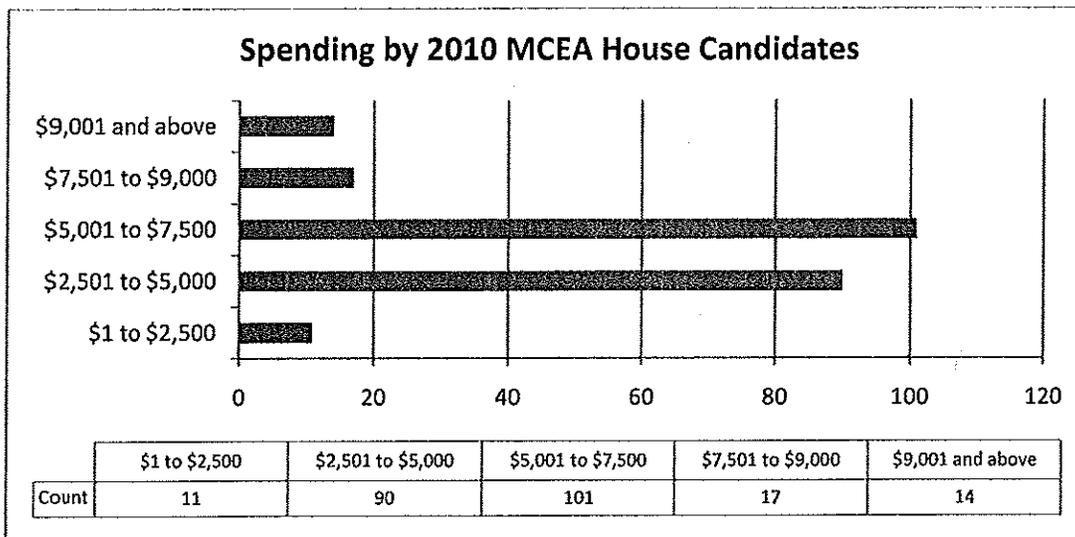
#### *Advantage #1 – Allocation of Public Dollars*

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 of 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.

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.

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.

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.

<b>Office</b>	<b>Candidate</b>	<b>How the Candidate Financed their Campaign</b>	<b>Matching Funds Paid to the Candidate</b>	<b>Independent Expenditures Made to Oppose the Candidate</b>
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 MCEA 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.

<b>Traditionally Financed Candidates with Higher Spending</b>	<b>Office Sought</b>	<b>Expenditures</b>	<b>Opponent</b>	<b>Opponent's MCEA Funding</b>
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 ?

*Reduction of payment amounts for 2012.* 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

### Legislative Proposal #1: Candidates Would Receive a Fixed Amount for the General Election (page A7)

Under Legislative Proposal #1, legislative candidates would qualify for MCEA funding in the same manner as they currently do. After qualifying, legislative candidates would receive one payment for the primary election, which the candidate would receive upon qualifying in April. (page A7)

The program would provide the candidate with a fixed amount for the general election in two payments. The Commission would make the first payment automatically after the June primary. The second of these payments would be available to the candidates at their request after September 1 of the election year. The Commission agrees with testimony we received that finding ways to allow candidates to leave “money on the table” could reduce the cost of the program and reduce inefficient spending by some candidates.

The difficulty with Legislative Proposal #1 is that no single amount will be right for all candidates. On one hand, some candidates believe that they need more campaign funds, either because they anticipate needing to respond to independent expenditures, they fear being outspent by an opponent, or because they are first-time candidates or are challenging an incumbent. If the amount of MCEA funding available to these higher-need candidates is too small, this citizen-initiated program will not be an option for them and the candidates will not join. On the other hand, some candidates need less, either because they are incumbents who are well-known in their districts, or because their party affiliation, district characteristics, or other factors make their election relatively safe. To pay these candidates a larger amount than they need would be a needless use of public funds.

The Commission suggests doubling the amount of seed money that legislative candidates may collect. This will help keep the program an attractive funding option for candidates while sticking to the core concept of a system of full public financing. The seed money maximums have stayed the same since the program since enactment in 1996. The Commission also suggests letting candidates use unspent seed money to make purchases even after the candidates have qualified for public funding.

To make up for the loss of matching funds, the Commission proposes that the amount of general election funding should be 50% more than candidates received in the 2010 general elections (\$6,216 for House candidates and \$28,617 for Senate candidates).

	<b>House</b>	<b>Senate</b>
Seed money (maximum receivable)	\$1,000	\$3,000
Primary Election Payment (no opponent*) (April)	\$500	\$2,000
General Election Payment #1 (June)	\$5,000	\$21,000
General Election Payment #2 (upon request of candidate after Sept. 1)	\$1,216	\$7,617
<b>Total campaign funding for the election cycle</b>	<b>\$7,716</b>	<b>\$33,617</b>

\*If the candidate were opposed in the primary election, House candidates would receive \$1,500 (House) or \$6,000 (Senate). Replacement candidates would be on a later schedule.

*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.
- Some candidates will appreciate that their fundraising (collecting \$100 seed money contributions and \$5 qualifying contributions) ends fairly early in the election year by April 20.
- 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 estimating 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. (See the Advantage #2 discussion above on pages 6-8.) In their testimony, the Clean Election advocates referred to this as the “sitting duck problem.” This could be a factor for incumbents as well as challengers in deciding whether to participate in the program.
- Depending on the amount of the fixed payment, some candidates who are running against a well-financed opponent could find a fixed payment unacceptable because an opponent could outspend them by a factor of 50%, 100%, or more. 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.
- If the amount of the basic funding for the general election were too low (e.g., \$4,000 for a House candidate) it might be insufficient to run an effective campaign for a candidate who is new to campaigning and who is challenging an incumbent 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. Attracting new candidates to run for office and participate in the program is one of the core objectives of the Act.

**Legislative Proposal #2: Candidates Could Qualify for One or Two Supplemental Payments for the General Election (page A8)**

Under Legislative Proposal #2 (summarized on page A8), candidates would qualify for a basic level of MCEA funding as they currently do and would have the option of receiving additional funds by collecting more qualifying contributions. After the Commission certifies that a candidate has qualified, candidates would automatically receive a payment in April for the primary election and a payment after the primary election for the general election.

Similar to the first proposal, the Legislature may wish to consider reserving part of the general election payment for a later period in the election year – for example, after September 1. The Commission agrees with testimony that encouraging candidates to leave “money on the table” could reduce the cost of the program and reduce wasteful spending by some candidates.

As with the first proposal, the Commission suggests permitting legislative candidates to collect more seed money – up to double the current total. This is intended to increase the attractiveness of the overall program while maintaining the concept of full public financing.

As shown on page A8, the basic level of MCEA funding (when added to seed money) would allow candidates to spend the following total amounts for the 2012 legislative cycle:

	<b>House</b>	<b>Senate</b>
<b>Basic Funding</b>	\$6,500	\$30,000

If candidates believe that they need additional funding for the general election, they could qualify for up to two supplemental payments of MCEA funds by investing the effort in collecting additional qualifying contributions beyond the number needed just for certification. (See page A8) Through receiving these supplemental payments, they would have access to one of two higher levels of campaign funding:

	<b>House</b>	<b>Senate</b>
<b>High Funding</b>	\$9,000	\$42,500
<b>Maximum Funding</b>	\$11,500	\$55,000

To qualify for the high or maximum level of MCEA funding, House candidates would have to collect an additional 30 or 60 qualifying contributions. Senate candidates would have to collect an additional 100 or 200 qualifying contributions.

These thresholds have been proposed to make the higher levels of funding within reach for those candidates who have a genuine need for them, but to discourage candidates from

qualifying for these funds needlessly. The MCEA advocates have suggested even higher thresholds in order to be sure that Legislative Proposal #2 is affordable for the state. Those suggestions are worth considering by the Legislature. The Commission has declined to include them in its proposal because the Commission staff has also received suggestions from staff of the legislative caucuses that if the qualifying thresholds for the supplemental payments that are too high, that will produce a kind of “sticker shock” both for candidates and for the caucuses that could affect the overall acceptability of Legislative Proposal #2.

The Commission proposes that candidates who have collected a qualifying contribution from a donor to qualify as an MCEA candidate could not collect a second qualifying contribution from that donor to qualify for supplemental payments. The Commission agrees with testimony received that qualifying for supplemental funding should be a demonstration by the candidate that he or she has a higher level of support within the district. Allowing a donor to make two contributions does not demonstrate a higher level of support.

Legislative candidates could begin collecting the additional qualifying contributions as early as January 1. The Commission’s proposes a deadline of June 30 for collecting and submitting the additional qualifying contributions for the supplemental payments. This deadline has been chosen after receiving firm viewpoints from some of the legislative caucuses that in the fall of the election year candidates should be focusing on other campaign activities – not qualifying for public funding. Highly motivated candidates could complete the qualifying process, even for the highest level of funding, by March or April of the election year.

The Commission received strong disagreement on the June 30 deadline from the Clean Election advocates. The advocates believe it is a mistake to cut off the opportunity at the end of June. They do not think that a candidate should be foreclosed from seeking additional funding later in the campaign if factors arise then that would require the candidate to purchase more advertising, for example. The Commission does not have a strong view on this issue, and has chosen the June 30 deadline to encourage legislative consensus. The Commission believes that, administratively, its staff could accept additional qualifying contributions until the 18<sup>th</sup> day before the general election (the second Friday before the election).

Every year, a number of individuals are recruited to replace party nominees who have withdrawn after the primary election. These replacement candidates begin their campaigns in June or July. The Commission suggests that replacement candidates would have later deadlines (after June 30) for qualifying for all levels of funding. In addition, if an MCEA candidate’s opponent withdrew and was replaced, the MCEA candidate would also have a later deadline to qualify for higher levels of funding because a change in one’s opponent can change the strategic needs in a legislative race.

As explained in the section below entitled Cost of Legislative Proposals, the Commission believes there are valid reasons to expect that most MCEA candidates would be satisfied with qualifying for the basic level of funding. In the Commission's cost projections, it projects that a minority of candidates would attempt to receive high or maximum levels of MCEA funding.

*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 Commission'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 Commission 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.

### **Costs of Legislative Proposals #1 and #2**

Baseline for comparison. As discussed above, earlier this year the Maine Legislature enacted Resolve Chapter 89, which directed a 5% reduction in MCEA funding to legislative candidates in the 2012 elections. After this reduction, the Commission staff projected the total cost of the MCEA program in 2012 to be \$3,462,806. The assumptions underlying this projection are displayed in the column entitled "5% Reduction from 2010" on page A9 (the cost projection for Legislative Proposal #1). (Note: this column does not take into consideration the loss of matching funds from the program resulting from the June 2011 Arizona Free Enterprise Club decision.)

### Factors Considered in Making Cost Projections

*2010 Candidate Spending and Returns of Funds.* In estimating how many candidates will choose to join the MCEA program in 2012, the Commission (primarily through its staff) has required some reference data for projecting what 2012 candidates will view as their needs for campaign funds. The Commission has relied, to a large extent, on what candidates actually spent in 2010 as the best indicator of what 2012 candidates will believe that they will need to spend to win their elections. The bar charts on pages **[insert]** of this report provide a general idea of the amounts legislative candidates spent in 2010.

The Commission acknowledges that this approach contains an inherent limitation – the spending by 2010 MCEA candidates was capped by the amount of funding that the candidates received from the state. There may be a possibility that if MCEA candidates have the opportunity to choose to qualify for additional campaign funds over the basic payment in 2012, they may qualify for and spend more than their 2010 counterparts.

However, there is an important factor that could counter and minimize that possibility. During 2010 and earlier election years, the total amount spent by a candidate was not entirely contingent upon the candidate's effort, as it would be under Proposal #2, but included matching funds which the candidate received automatically and without any additional effort on his or her part. If Legislative Proposal #2 were adopted for 2012, campaign spending by MCEA candidates would be limited by the factor that candidates need to devote scarce resources and time to qualifying for the funds. That element of Proposal #2 could be a factor in reducing the total cost of the program in 2012 relative to 2010.

*Competitiveness of Senate Races.* On the Senate side, the Commission also relies on an informal premise that in recent general elections somewhere between 5-10 Senate races have been more competitive in the sense that the outcomes were widely viewed as difficult to predict. These races were more likely to have higher spending by candidates and by outside groups. For example, in 2010, there were 16 MCEA candidates who spent between \$30,000 and \$63,959. Most of these higher-spending candidates were running the districts that were viewed as very competitive. If Legislative Proposal #2 were enacted, the Commission believes it is reasonable to assume that Senate candidates in the less competitive districts tend not to qualify for the supplemental payments.

*Guidance from the caucuses.* In past election years, some of the legislative caucuses have strongly urged their candidates to participate in the MCEA program because of its perceived advantages. Now that matching funds are not part of the program, the Commission expects the caucuses will not provide this advice to 2012 candidates (or at least, not as strongly), and this will reduce participation in the MCEA program.

Legislative Proposal #1. The Commission projects that the total cost of the 2012 legislative program for Proposal #1 will be \$2,985,892. (please see page A9) The program would cost roughly \$500,000 less than the pre-Arizona Free Enterprise Club estimates.

While the savings is attractive, it comes at a cost. The Commission projects that Legislative Proposal #1 (even with the 50% increase in funding from 2010) would be unacceptable to roughly 25% of the Senate candidates and 14% of the House whom we projected would join the program in 2012. The Commission views this is a significant downside for a citizen-initiated program that should be a viable option for most legislative candidates who would like to join it.

Legislative Proposal #2. Projecting the cost of this proposal requires estimating how many candidates would join the MCEA program and how many candidates would qualify for one or two supplemental payments. As shown on page A10, the Commission projects that if

Legislative Proposal #2 were enacted the following numbers of candidates would qualify for the different levels of funding:

	Senate	House
General Election Payment alone	47	185
Receive Supplemental Payment #1	5	35
Receive Supplemental Payment #2	11	12
<b>Total</b>	<b>63</b>	<b>232</b>

The staff projects that this would increase the cost of the 2012 program by \$94,644, when compared to the pre-Arizona Free Enterprise Club total of \$3,462,806. This represents 2.7% of the projected cost of the 2012 program. There is a very real possibility that the cost of the program will be less than the pre-Arizona Free Enterprise Club total, if, for example, fewer than 63 Senate candidates joined the program.

If Legislative Proposal #2 were enacted, why wouldn't all candidates qualify for supplemental funding?

The Commission has received the question: if Legislative Proposal #2 were enacted, wouldn't all candidates try to qualify for the supplemental payments? This is the major concern that has been expressed concerning Legislative Proposal #2. The Commission believes that there are convincing reasons to expect that probably a small minority of candidates: 16% of House candidates and 25% of Senate candidates will qualify for the supplemental payment.

*Adequacy of the Basic Payment Amounts Alone*

Under Legislative Proposal #2 (see page A8), a 2012 candidate who qualified for the basic level of general election funding alone (without receiving either supplemental payment) would be able to spend a total of (including seed money and the primary election payment)

- \$6,500 for House candidates
- \$30,000 for Senate candidates

Based on actual amounts spent by 2010 legislative candidates, the Commission staff projects that these basic campaign spending amounts of \$6,500 and \$30,000 would be sufficient for 80% of the House candidates and 75% of Senate candidates. As pointed out above, many candidates will not need large amounts of funding because their re-election is relatively safe, or because they are well-known in their districts, or they have significant assets from previous elections (e.g., campaign signs).

*High Degree of Effort.* It takes valuable time and resources to collect qualifying contributions. The Commission staff has heard from a number of Senate candidates that it is a major operation to collect 175 qualifying contributions needed to qualify for any MCEA funding.

Candidates would only receive the supplemental payments if their campaigns were willing to put in significant amounts of additional effort. To receive the maximum funding:

- Senate candidates would have to collect a total of 375 qualifying contributions by June 30
- House candidates would have to collect a total of 120 qualifying contributions by June 30

Given this high degree of effort to receive the supplemental payments, the Commission staff projects that only those candidates who believe that they have a strong need for these funding will attempt to qualify. Other candidates will realize that their scarce personal and volunteer time is spent on other campaign activities.

Many MCEA candidates do not “max out” their campaign spending

Given the competitive nature of elections, certainly some candidates take the view that they should raise and spend as much money as is reasonably possible to promote their message. But not all candidates behave in this manner. The Commission staff regularly hears from MCEA candidates who believe that they should show restraint in how they spend MCEA campaign funds out of a recognition that these funds ultimately come from Maine taxpayers.

This anecdotal evidence is supported by the actual numbers of candidates who returned funds and the amounts of MCEA funds that candidates were eligible to spend to promote their elections, but were returned to the Maine Clean Election Fund instead.

**2010 House Candidates**

<b>Amount returned</b>	<b># of Candidates Returning this Amount</b>
\$1,001 or more	46
\$501 - \$1,000	26
\$251 - \$500	21

**2010 Senate Candidates**

<b>Amount returned</b>	<b># of Candidates Returning this Amount</b>
\$2,501 or more	6
\$1,001 - \$2,500	6
\$500 - \$1,000	10

While some candidates will try for the higher levels of funding, the 2012 counterparts of these candidates will probably not seek the maximum public campaign funds available.

For all of these reasons (primarily the work involved in qualifying), the Commission staff projects that 17 Senate candidates and 47 House candidates will seek one or both of the supplemental payments. The program can absorb this higher level of funding, and still stay within available resources for 2012.

**Comments from the Public**

The Commission has offered the public three different opportunities to comment on reforming the MCEA program to address the loss of matching funds. Most recently, on August 18, 2011, the Commission held a public hearing to receive comments on Legislative Proposals #1 and #2. The Commission received testimony from Alison Smith, the President of the Maine Citizens for Clean Elections, and from Rep. Michael E. Carey of Lewiston. For your convenience, their comments are summarized in a bullet point format below, and audio recordings of their comments are available at [www.maine.gov/ethics/meetings](http://www.maine.gov/ethics/meetings).

The Commission accepted written comments through August 10, 2011. The written comments received by the Commission are attached for your consideration as pages A11-A22. They include a letter signed by leaders of the House Democratic caucus and the House Democratic members of the Veterans and Legal Affairs Committee. At a July 28, 2011 meeting, members of the public were invited to comment on three general concepts for modifying the MCEA program. The Commission received comments from Daniel I. Billings, the Chief Legal Counsel of the Governor and from the Maine Citizens for Clean Elections. Mr. Billings' comments are summarized below.

Summary of comments from Alison Smith at the August 18, 2011 public hearing

*Regarding Legislative Proposal #1:*

- The strength of Legislative Option #1 is its simplicity – a single distribution of a fixed amount. However, in this case, simplicity does not create good policy.
- The distribution amount has to be sufficient so that MCEA candidates will have enough to run a reasonable campaign and have enough in reserve for the last weeks before the election.
- Unless the distribution amount is much higher than even what the staff proposed, MCCE is concerned that the program will not be attractive to a wide array of candidates or suitable for the variety of races in an election cycle.
- Whatever option is finally adopted, the system should be designed so that a qualified challenger can compete with an incumbent
- If the distribution amount is set too low, the public funding program could become an incumbent protection program. That is counter to the spirit of the law which is to provide an opportunity for an array of candidates to run for office.
- It is important to avoid letting the program become one that is only viable for incumbents, candidates in “safe” districts, and candidates who will ultimately lose. That does not provide real value to Maine citizens.
- Setting the amount too high would provide most candidates with too much money, which would not be a good use of public money.
- This proposal creates a “sitting duck” problem. If it is known that MCEA candidates have only a fixed amount to spend, it is very clear how much is necessary to outspend them. MCEA candidates will not have access to any additional public or private funds to spend on their campaign in the race heats up in the final weeks of the campaign.
- If Legislative Option #1 is adopted, the MCCE approves of the suggestion that the distribution for the general election be made in two increments, one after the primary election and one later in the campaign upon request of the candidate. The initial amount may be enough for some candidates and they may never request the second payment. However, they will know that they have some funds available to them if their race heats up.

*Regarding Legislative Proposal #2:*

- This proposal comes the closest to filling the gap left in the program after the U.S. Supreme Court decision.
- It achieves the goal of getting resources to the competitive races that need additional funds above the initial distribution in an effective and efficient manner.

- It avoids the constitutional issues because whether a candidate gets supplemental funds does not depend on an opponent's or independent group's spending.
- A potential downside is that in order for it to work within the program's resources, most candidates would have to opt out of receiving one or both of the supplemental payments.
- By setting a higher initial distribution, perhaps \$6,000 for a House race and \$27,000 for a Senate race, many candidates may forgo seeking supplemental funds.
- One objection MCCE has to the staff proposal is the cutoff date of June 30. Most candidates will see the wisdom of qualifying early. But the MCCE does not see the wisdom of preventing a candidate from qualifying for supplemental payments later.
- Some candidates may not know how competitive their race will be by June 30. They might not even know who they are running against if the candidate from the opposing party in the primary is replaced.
- A significant upside of a later deadline is that fewer candidates will feel that they have to qualify for supplemental payments at the outset and may not seek supplemental payments at all.
- A later cutoff date for qualifying for supplemental funds would eliminate the "sitting duck" problems because opponents could not be certain how much the MCEA candidate would have to spend.

*Regarding other changes proposed by Commission staff:*

- MCCE sees no harm in doubling the amount of seed money contributions candidates can raise. In fact there may be a benefit in doing so, if the amount to primary candidates is reduced and there are no supplemental funds available to primary candidates.
- MCCE does not agree with the staff proposal that would allow candidates to roll unspent seed money forward after a candidate is certified.
- MCCE agrees with some of the suggestions of the Commission staff regarding changes to the reporting requirements. However, the requirements should fit comfortably with the new distribution scheme and they should not reduce the amount of campaign finance information disclosed to the public.

Summary of comments from Representative Michael E. Carey of Lewiston at the August 18, 2011 public hearing

- The original policy of the Maine Clean Election Act was to have a balance between providing candidates with sufficient funding and safeguarding the public's money by having an efficient means to distribute the funds.
- Legislative Proposal #1 would either provide too much or too little money to run a campaign.

- Since public funds cannot go to the most competitive races based on an opponent's spending or independent expenditure, candidates will have to take the responsibility of determining how much funding they need for their particular race.
- Legislative Proposal #1 should have more tiers with small amounts for each tier. Candidates will have more options for the amount of funding they need to qualify for. Otherwise, some candidates will be forced to take more funds than they actually need.
- There should be increasing levels of difficulty for each tier of funding.

Summary of comments from Daniel I. Billings, Chief Legal Counsel of Governor Paul LePage, at the July 28, 2011 public hearing

- The Governor, said that the Governor has been advised of the issues regarding changes to the Maine Clean Election Act in light of the Supreme Court case. He said the Governor does not have any fixed position on this issue but is interested in the process as it goes through the Commission and the Legislature. The Governor remains opposed to keeping the gubernatorial part of the MCEA.
- Mr. Billings advised the Commission that in reviewing possible changes to the MCEA, the legislative and gubernatorial programs should be considered separately because they are very different types of campaigns. He said the fact that very few legislative candidates receive matching funds indicates that the current initial amounts are appropriate and sufficient. However, the elimination of matching funds in the gubernatorial program has a much larger impact on the viability of an MCEA gubernatorial candidate.
- A viable option would be to do nothing since the only part of the program affected by the U.S. Supreme Court decision is matching funds. The rest of the program remains constitutional. It is a false premise that the Supreme Court decision has created a crisis and he cautioned against a rush to make changes. He suggested simply moving forward with the law as is, without matching funds, for the next election and see how it plays out and then make changes from that point, if necessary.
- Mr. Billings would support changes in the reporting requirements. There are substantial and burdensome requirements that were adopted to implement the policies behind matching funds which are no longer necessary. The reporting requirements regarding certain electioneering communications, 24-hour reports, and accelerated reports should be re-examined to see whether they are necessary after the elimination of matching funds.
- Another part of election law that should be reconsidered is contribution limits. He said when the Act was adopted there was a substantial reduction of the limits from \$1,000 per person and \$5,000 per political committee or party to \$250 per individual or entity. More recently, that amount was raised to \$350.
- Candidates' decisions to participate in the program were based on pragmatism not necessarily on the popularity of the program. He said that he would advise candidates

to run as a MCEA candidate, mostly because of the matching funds component of the program. He said without matching funds, there will be less incentive or pressure for candidates to participate in the program.

## **Gubernatorial Program**

### *Recent Strengthening of Eligibility Requirements*

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, 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.

### *2011 Legislation concerning Gubernatorial Funding*

In the 2011 session, legislation was introduced to end the gubernatorial part of the program (L.D. 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 (L.D. 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 cannot predict whether a majority of members of the 125<sup>th</sup> 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.

### *Ideas for Changing the Gubernatorial Program*

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.

Because changing the legislative portion of the program is more urgent, the Commission and its staff have focused more on the legislative part of the program. The Commission received few written or oral comments specifically related to the gubernatorial funding.

So, the Commission does not have a specific policy proposal that it endorses at this time to address the loss of matching funds. Nevertheless, the Commission staff has developed some concepts (discussed below), in case any members of the 125<sup>th</sup> Legislature would like to give them more consideration. The staff would be pleased to develop them further if there is any interest.

*Alternative – full funding.* One alternative is to maintain the current high standards for qualifying for gubernatorial funding and to make 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).

An MCEA candidate who was opposed in a primary and general election could receive up to \$200,000 in seed money and \$1,800,000 in public campaign funds. Providing this level of funding to a gubernatorial candidate in the program would be consistent with the Arizona Free Enterprise Club decision, because the amounts of the payments would not be dependent on spending by the candidate's opponent or by independent spenders.

Prior to the Arizona Free Enterprise Club decision, the Commission staff projected that any 2014 gubernatorial candidates in the MCEA program would receive the maximum public funds available (including full matching funds). So, this concept is intended to provide the same amounts of funding that the staff anticipated paying to any 2014 gubernatorial candidate in the MCEA program.

*Alternative – reducing public funding to gubernatorial candidates.* There are certainly options to reduce the cost of the gubernatorial part of the program, if the Legislature is open to changing the nature of the MCEA program for gubernatorial candidates to move away from a system of full public campaign financing. These would include a hybrid system of public campaign funding and collecting campaign contributions that are small enough to be consistent with the public

objectives of the law. Those small donations could be matched with public funds at a rate of 2-1, 4-1, or 6-1. Or, gubernatorial candidates could qualify for supplemental payments of public funds based on collecting a greater number of qualifying contributions. These alternatives would be a departure from the original design of the program, however, and could be opposed politically by some proponents of the program. The Commission staff would be pleased to work with any member of the Joint Standing Committee on Veterans and Legal Affairs or leadership who is interested in more specific proposals.

*Simplifying the qualification process.* 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, 124<sup>th</sup> 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.

#### **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 does not endorse any specific proposal, but the Commission staff has given thought to opportunities to how campaign finance disclosure could be simplified due to the elimination of matching funds from the program.

*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 considering 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.

*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, some Legislators might wish to explore whether two-day reporting is necessary during the 60 days before a general election. One alternative would be to establish two or three periodic reporting deadlines during that 60-day period that would make filing less burdensome for PACs and parties. This would involve a longer waiting period, however, between when voters received a paid communication and the disclosure of the financial costs of that communication to the Commission.

## **Recommendations from the Commission**

*1. Status quo is unacceptable.* The MCEA program was enacted by Maine voters in 1996 to provide the opportunity of running for office to more candidates and to reduce the role of fundraising and campaign contributions in the political process. To enact promote these goals, the MCEA program needs to meet the campaign needs of most candidates who would like to join the program.

The combination of 5% less funding for 2012 candidates (Resolve Chapter 89) and the judicial removal of matching funds (AZ Free Enterprise Club decision) will make the program unviable

for a significant portion of 2012 candidates. Based on the amounts that candidates actually spent in 2010, the Commission staff estimates that 25% or 30% of candidates who might have joined the program before the court decision will choose not to do so, under current law. This should not be acceptable to the Maine Legislature. A legislative fix is needed.

*2. Need for Prompt Action.* The time for finalizing the benefits and restrictions of the 2012 MCEA program is in the next few weeks. Candidates will be deciding in October, November, and December 2011 how they will be financing their 2012 campaigns. Legislative caucuses are recruiting candidates. The candidates who considering sacrificing a significant part of their lives for public service deserve to know whether it is in their best interests to begin accepting limited seed money or to accept contributions of up to \$350 per donor.

If the members of the Joint Standing Committee on Veterans and Legal Affairs committee are able to reach a consensus in October after conferring with their fellow caucus members, the resulting legislation could be considered by the Maine Legislature in January 2012. The Commission appreciates that the MCEA program has its proponents and skeptics, and that any election law matter can involve differences in outlook. Nevertheless, an orderly election process in 2012 makes negotiation and consensus imperative. Maine voters deserve no less. That negotiation and consensus should happen in October 2011, rather than January 2012.

*3. Two Legislative Proposals.* As shown on pages A7 and A8, the members of the Commission have developed two proposals relating to legislative candidates that deserve serious consideration. The proposals include various policy choices concerning levels of funding, eligibility requirements, and timing of qualifying, but variations also merit consideration as well. In addition to these two basic concepts, the Legislature may wish to consider other alternatives, such as a midpoint between the two proposals of allowing candidates to qualify for one supplemental payment. The Commission staff is available to assist members of the Veterans and Legal Affairs Committee and leadership with any fiscal estimates or other information.

*4. Gubernatorial program.* The Commission's primary focus has been on the legislative portion of the program. It is not prepared to endorse a specific proposal on changing the gubernatorial program at this time. Nevertheless, the Commission staff has prepared some general concepts as alternatives for how gubernatorial funding could work consistent with the Arizona Free Enterprise Club decision. If any Legislators are interested in developing these as alternatives to the current law, the Commission staff would be pleased to work with them.

The Commission is grateful for the opportunity to make suggestions to the 125<sup>th</sup> Legislature for addressing the loss of matching funds from the MCEA program. The Commission and its staff would be pleased to provide any other assistance needed by the Legislature. Thank you for your consideration of this report.

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 Part of 2010 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 Legislative 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 Gubernatorial Part of 2010 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
<b>Primary Total</b>	<b>\$316,440</b>	<b>\$1,799,774</b>	<b>\$2,116,214</b>
General Initial Payment	\$2,189,844	\$600,000	\$2,789,844
General Matching Funds	\$794,722	\$600,000	\$1,394,722
<b>General Election Total</b>	<b>\$2,984,566</b>	<b>\$1,200,000</b>	<b>\$4,184,566</b>
<b>Total Payments for 2010</b>	<b>\$3,301,006</b>	<b>\$2,999,774</b>	<b>\$6,300,780</b>

## GENERAL ELECTION MATCHING FUNDS PAID TO LEGISLATIVE CANDIDATES

Election Year	Candidates Receiving Matching Funds	Total Paid	Average	Median
<b>House</b>				
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
<b>Senate</b>				
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
<b>House</b>		
\$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
<b>Senate</b>		
\$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

(assumes candidate has opponent in general election)

### House

	<b>Funding Amounts</b> (increase of 50% from 2010)	<b>To Qualify</b>	<b>When are Public Funds Available?</b>
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)
General election payment #1	\$5,000		June 2012 (payment would be automatic)
General election payment #2	\$1,216		After Sept. 1, 2012 (upon request of candidate)
Maximum campaign funds available	<b>\$7,716</b>		

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

	<b>Funding Amounts</b> (increase of 50% from 2010)	<b>To Qualify</b>	<b>When are Public Funds Available?</b>
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)
General election payment #1	\$21,000		June 2012 (payment would be automatic)
General election payment #2	\$7,617		After Sept. 1, 2012 (upon request of candidate)
Maximum campaign funds available	<b>\$33,617</b>		

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 2 - Optional Supplemental Funds based on QC Collection

(assumes candidate has opponent in general election)

### House - Spending Amounts

	Basic	High	Maximum	To Qualify
Seed money	\$1,000	\$1,000	\$1,000	
Primary election payment (April)	\$500	\$500	\$500	Candidates must collect 60 qc's by April 20, 2012.
Basic payment for general election (June) (portion could be reserved for after Sept. 1)	\$5,000	\$5,000	\$5,000	
Optional supplemental payment #1 (after Sept. 1 upon request)	---	\$2,500	\$2,500	Candidates must collect additional 30 qc's by June 30, 2012. (total of 60)
Optional supplemental payment #2 (after Sept. 1 upon request)	---	---	\$2,500	Candidates must collect additional 30 qc's by June 30, 2012. (total of 90)
Maximum campaign funds available	<b>\$6,500</b>	<b>\$9,000</b>	<b>\$11,500</b>	

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 - Spending Amounts

	Basic	High	Maximum	To Qualify
Seed money	\$3,000	\$3,000	\$3,000	
Primary election payment (April)	\$2,000	\$2,000	\$2,000	Candidates must collect 175 qc's by April 20, 2012.
Basic payment for general election (June) (portion could be reserved for after Sept. 1)	\$25,000	\$25,000	\$25,000	
Optional supplemental payment #1 (after Sept. 1 upon request)	---	\$12,500	\$12,500	Candidates must collect additional 100 qc's by June 30, 2012. (total of 275)
Optional supplemental payment #2 (after Sept. 1 upon request)	---	---	\$12,500	Candidates must collect additional 100 qc's by June 30, 2012. (total of 375)
Maximum campaign funds available	<b>\$30,000</b>	<b>\$42,500</b>	<b>\$55,000</b>	

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.

**2012 Cost Projection for Legislative Proposal 1  
(Fixed Payment Approach)**

	2008	2010	2012 Projected Totals <sup>3</sup>		
	Actual	Actual	5% Reduction from 2010 <sup>1</sup> (pre-AZ Free Enterprise)	Legislative Proposal #1 (50% increase from 2010)	Savings <sup>2</sup>
Primary Election Initial Payments	\$348,347	\$312,779	\$344,259	\$263,050	(\$81,209)
Primary Election Matching Funds	\$20,509	\$3,661	\$30,000	\$0	(\$30,000)
General Election Initial Payments	\$2,120,992	\$2,189,844	\$2,160,667	\$2,722,842	\$562,175
General Election Matching Funds (net returns)	\$464,187	\$794,722	\$927,880	\$0	(\$927,880)
<b>Total</b>	<b>\$2,954,035</b>	<b>\$3,301,006</b>	<b>\$3,462,806</b>	<b>\$2,985,892</b>	<b>(\$476,914)</b>

<sup>1</sup> Resolve, Chapter 89 (LD 726)

<sup>2</sup> Compared to projected 2012 program cost (pre-AZ Free Enterprise Club)

<sup>3</sup> 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 (pre-AZ Free Enterprise Club)		Legislative Proposal #1 (50% increase from 2010)	
<b>Initial Payments for Primary</b>						
House - Contested Candidates	31	43	45	\$64,296	39	\$58,050
House - Uncontested Candidates	209	196	206	\$100,198	176	\$88,200
<b>HouseTotal</b>	<b>240</b>	<b>239</b>	<b>251</b>	<b>\$164,494</b>	<b>215</b>	<b>\$146,250</b>
Senate - Contested Candidates	14	6	10	\$73,587	5	\$28,800
Senate - Uncontested Candidates	47	55	58	\$106,178	44	\$88,000
<b>SenateTotal</b>	<b>61</b>	<b>61</b>	<b>68</b>	<b>\$179,765</b>	<b>49</b>	<b>\$116,800</b>
<b>Total Initial Payments for Primary</b>				<b>\$344,259</b>		<b>\$263,050</b>
<b>Initial Payments for General</b>						
House - Contested Candidates	234	232	244	\$960,579	209	\$1,297,901
House - Uncontested Candidates	15	3	3	\$3,897	3	\$5,538
<b>HouseTotal</b>	<b>249</b>	<b>235</b>	<b>247</b>	<b>\$964,477</b>	<b>212</b>	<b>\$1,303,439</b>
Senate - Contested Candidates	59	62	66	\$1,196,191	50	\$1,419,403
Senate - Uncontested Candidates	0	1	0	\$0	0	\$0
<b>SenateTotal</b>	<b>59</b>	<b>63</b>	<b>66</b>	<b>\$1,196,191</b>	<b>50</b>	<b>\$1,419,403</b>
<b>Total Initial Payments for General</b>				<b>\$2,160,667</b>		<b>\$2,722,842</b>

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.

**Cost Estimate of Legislative Proposal #2  
(Supplemental Payments)**

	House Candidates			Senate Candidates		
	Payment Amount	Number of candidates	Projected payments	Payment Amount	Number of candidates	Projected payments
<b>Primary Election</b>						
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>
<b>Total for Primary Election</b>			<b>\$162,500</b>			<b>\$170,000</b>
<b>General Election - Contested</b>						
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>
<b>Contested General Election Total</b>			<b>\$1,307,500</b>			<b>\$1,912,500</b>
<b>General Election - Uncontested</b>						
Initial payment	\$1,650	3	<u>\$4,950</u>	\$8,250	0	<u>\$0</u>
<b>Uncontested General Election Total</b>			<u>\$4,950</u>			<u>\$0</u>
<b>Total for General Election</b>			<b>\$1,312,450</b>			<b>\$1,912,500</b>
<b>Total for Primary &amp; General Elections</b>			<b>\$1,474,950</b>			<b>\$2,082,500</b>
<b>Total Payments for 2012 Elections</b>			<b>\$3,557,450</b>			

- 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.



**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.

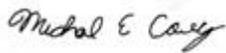
In that light we believe that changes to comply with the McComish decision should be minimal and respect the spirit and goals of the citizen-created and enacted law.

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.mainelections.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 28<sup>th</sup> 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 124<sup>th</sup> 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

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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*<sup>1</sup> 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.<sup>2</sup> 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.

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

<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

### 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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> Numerous successful New York City politicians have hailed the

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<sup>3</sup> 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](http://www.greenbergresearch.com/articles/2425/5613_Campaign%20Finance%20Memo_Final.pdf).

<sup>4</sup> MCCE Brief, *supra* note 2, at 13.

<sup>5</sup> *Id.* at 17-18.

<sup>6</sup> Miller, *supra* note 2, at 15 (2010).

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

<sup>8</sup> 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](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.”<sup>9</sup>

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.”<sup>10</sup>

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.<sup>11</sup> These very high rates of participation have been stable for over a decade.<sup>12</sup>

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.<sup>13</sup> 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.

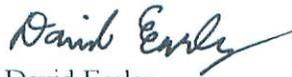
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The Brennan Center is delighted that the Commission is taking swift steps to restore an effective public financing system in Maine. We believe it is vital to the continued vibrancy of the state’s democratic system. The Brennan Center would be happy 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

<sup>9</sup> MIGALLY & LISS, *supra* note 2, at 14.

<sup>10</sup> *Id.* at 13.

<sup>11</sup> 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](http://www.nyccfb.info/PDF/per/2009_PER/2009PostElectionReport.pdf).

<sup>12</sup> *See id.*

<sup>13</sup> *See* 424 U.S. 1, 106-09 (1976).

## Wayne, Jonathan

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**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