April 25, 2023

The Honorable Craig Hickman
Senate Chair, Veterans & Legal Affairs Committee
Maine Legislature

The Honorable Laura Supica
House Chair, Veterans & Legal Affairs Committee
Maine Legislature

Re: Statement in Support of L.D. 1590

Dear Chair Hickman, Chair Supica, and Members of the Committee,

Campaign Legal Center (CLC) respectfully submits this statement to the Committee in support of L.D. 1590, a bill to require the disclosure of sources of big campaign spending in Maine elections. CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy across all levels of government. Since the organization's founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, as well as in numerous other federal and state court cases. Our work promotes every American's right to participate in the democratic process.

Since the Supreme Court's 2010 decision in *Citizens United v. FEC*, outside spending in elections has skyrocketed, increasing from $205 million in 2010 to $2.9 billion in 2020.[1] In Maine, outside spending has followed the same trend.[2] Some outside spenders have used methods designed to evade disclosure laws, allowing wealthy special interests to hide the true source of money used to influence elections.[3] As big outside spending

[1] OpenSecrets, *Outside Spending*, https://www.opensecrets.org/outside-spending/ (accessed Apr. 19, 2023).
[2] FollowTheMoney.org Chart of Independent Spending in Maine, 2006-2022, https://www.followthemoney.org/show-me?dt=2&is-s=ME&f-fc=2,3#[{1|gro=is-s,is-y (accessed Apr. 19, 2023). *See also* MAINE CITIZENS FOR CLEAN ELECTIONS, THE SHELL GAME: HOW INDEPENDENT EXPENDITURES HAVE INVADED MAINE SINCE *CITIZENS UNITED* (2013) https://www.mainecleanelections.org/sites/default/files/web/MCCEReport11_TheShellGame_Letter.pdf.
[3] *See, e.g.*, BRENDAN FISCHER & MAGGIE CHRIST, CAMPAIGN LEGAL CTR., DIGITAL DECEPTION: HOW A MAJOR DEMOCRATIC DARK MONEY GROUP EXPLOITED DIGITAL AD LOOPHOLES IN THE 2018 ELECTION, (2019) https://campaignlegal.org/sites/default/files/2019-03/FINAL%20Majority%20Forward%20Issue%20Brief.pdf; *see also* Anna Massoglia & Karl Evers-Hillstrom, *'Dark Money' Topped $1 Billion in 2020, Largely Boosting Democrats*, CTR. FOR

increasingly impacts elections, campaign finance laws must protect the integrity of our elections by ensuring voters know which wealthy special interests are spending big money to influence their votes.

CLC has carefully reviewed L.D. 1590, and it is a constitutional piece of legislation that would increase transparency and reduce secret spending in Maine elections. As explained below, L.D. 1590 is intended to require big outside spenders in Maine elections to disclose the original sources of money used for that spending. The bill also updates Maine's disclosure law to ensure political ads provide viewers with information about the original sources of funds used to pay for those ads. These reforms are consistent with well-established U.S. Supreme Court precedent affirming the importance of transparency in campaign spending to "insure that the voters are fully informed about the person or group who is speaking."[4]

CLC recommends amending the bill to ensure that it accomplishes the intended goal of original source disclosure and to further strengthen and clarify its reporting requirements. By doing so, L.D. 1590 would provide Maine voters with necessary information about the wealthy special interests spending money to influence their vote.

I. L.D. 1590 would increase transparency in Maine elections by providing more information to voters about who is really spending big money spent to influence their votes.

L.D. 1590 amends Maine campaign finance transparency law to establish a system for tracing big money spent in Maine elections back to its original source. Requiring transparency for the original sources of big money spent on elections promotes First Amendment interests by providing the public with the information necessary to engage in democratic self-government and to hold elected representatives accountable.

A. L.D. 1590 would reveal the original sources of large contributions spent to influence Maine elections.

Under current Maine law, when groups raise or spend money above certain thresholds in state elections, they must register with the Maine Commission on Governmental Ethics & Election Practices as a political action committee or ballot question committee, as appropriate,[5] and file public reports disclosing basic information about their political spending, including direct contributors of more than $50.[6] Maine law also requires political ads to include a disclaimer stating who paid for the ad and the top direct contributors to the ad sponsor.[7] But when wealthy special interests play shell games and funnel money through other entities that then pass it along to groups paying for political ads, those wealthy special interests can evade public identification as the sources of big

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RESPONSIVE POLITICS (Mar. 17, 2021), https://www.opensecrets.org/news/2021/03/one-billion-dark-money-2020-electioncycle/.

[4] *Citizens United v. FEC*, 558 U.S. 310, 348 (2010) (internal citations and quotation marks omitted).

[5] 21-A M.R.S. §1052-A(1).

[6] 21-A M.R.S. §§1059 *and* 1060.

[7] 21-A M.R.S. §1014.

money spent in elections.[8] This kind of secret spending, sometimes called "dark money," deprives voters of critical information about who is really paying for election-related messaging.[9]

L.D. 1590 would reduce secret spending in Maine elections by requiring more transparency for big outside spenders—specifically, certain political committees spending more than $50,000 on expenditures for candidate elections or ballot measures in an election cycle. These big spenders—called "covered committees" in the bill—must disclose the sources of "original funds" received during the election cycle from certain contributors, as well as any third parties that passed the money along before reaching the spender. "Original funds" generally means the personal funds of individuals, like money received from salaries or wages, or the business income of organizations. A covered committee is required to report its original source information in its regular reports to the Ethics Commission.

L.D. 1590 also would incorporate this enhanced transparency for outside spending in on-ad disclaimers when covered committees run political ads, ensuring that voters know who is really funding that messaging. Although identifying the sponsor of a political ad is important, it does not tell voters the whole story, especially when those ads are sponsored by groups that receive significant funding from wealthy special interest groups. Under the bill, the top donor disclaimer on ads run by covered committees would include, in addition to the sponsor of the ad, the sponsor's top three contributors of original funds.

Finally, bill establishes a notice and opt-out system, requiring each covered committee to notify their large donors—called "covered contributors"—that their donations may be used for election spending in Maine and allowing donors to opt out of having their donations spent for such purposes. This system enables covered contributors to control whether their donations to groups engaged in different types of spending will be spent on elections. Under the bill, a covered contributor that does not opt out is required to identify whether its funds are "pass-through" funds from another source and, if so, identify the original sources of those funds. If covered contributors opt out, their donations will not be used on elections and, therefore, those donors will not be included in the covered committee's disclosure reports. If a covered contributor receives notice that its donations may be used for election spending in Maine and does not provide the original source information within 21 days, their funds are presumed to have been opted out and may not be spent by the covered committee to influence Maine elections.

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[8] *See, e.g.*, Steve Mistler, *Pulse Newsletter: Tax Filings Shine Light On Democratic Dark Money In Maine*, MAINE PUBLIC (Dec. 4, 2021) https://www.mainepublic.org/politics/2020-12-04/pulse-newsletter-tax-filings-shine-light-on-democratic-dark-money-in-maine.

[9] In one study of Maine state elections, dark money spending jumped from under $20,000 in 2006 to over $1.6 million in 2014, just one election cycle after *Citizens United* was decided. *See* CHISUN LEE, ET AL., BRENNAN CTR. FOR JUSTICE, SECRET SPENDING IN THE STATES 7 (2016), https://www.brennancenter.org/our-work/research-reports/secret-spending-states.

B. L.D. 1590's transparency provisions promote First Amendment interests and are consistent with long-standing U.S. Supreme Court precedent.

Voters have the right to know about the political messages they receive—including who is funding those messages—and requiring transparency for the original sources of big money spent on elections is critical to making that right a reality for Maine voters. Knowing who is spending big money to support a campaign helps voters determine who supports which positions and why. As the U.S. Supreme Court has repeatedly recognized in decades of decisions upholding campaign finance disclosure provisions:

> "[D]isclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches."[10]

The Court's precedents have long recognized that transparency in election spending improves the functioning of government and its responsiveness to the public. In its foundational campaign finance decision, *Buckley v. Valeo*, the Court upheld disclosure laws enacted following the Watergate scandal and identified three important interests advanced by campaign finance disclosure: (1) providing voters with information necessary to evaluate candidates and make informed decisions; (2) deterring corruption and the appearance of corruption by shining a light on campaign finances; and (3) aiding enforcement of other campaign finance laws, like contribution limits.[11]

Since *Buckley*, the Court has consistently reaffirmed the constitutionality of campaign finance disclosure laws.[12] In *McConnell v. FEC*, the Court upheld the federal Bipartisan Campaign Reform Act's expanded disclosure system, which was designed to address the problem of "independent groups [who] were running election-related advertisements 'while hiding behind dubious and misleading names.'"[13] Notably, in *Citizens United v. FEC*, even as the Court struck down limits on corporate election spending, the Court again upheld—by an 8-to-1 vote—the constitutionality of federal election disclosure laws that applied to that spending, stating that "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."[14]

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[10] *Buckley v. Valeo*, 424 U.S. 1, 66-68 (1976) (per curiam) (internal quotation marks and footnote omitted).
[11] *Id.*
[12] *See McConnell v. FEC*, 540 U.S. 93, 189-202 (2003) (approving disclosure rules for "electioneering communications," a type of political ad that evaded disclosure requirements under *Buckley*'s narrow interpretation of "express advocacy."); *Citizens United*, 558 U.S. at 366-71; *John Doe No. 1 v. Reed*, 561 U.S. 186 (2010); *see also First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 792 n.32 (1978) ("Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected.").
[13] *McConnell*, 540 U.S. at 197.
[14] *Citizens United*, 558 U.S. at 369.

Following *Citizens United*, the federal courts of appeals have continued to affirm the constitutionality and importance of state election disclosure laws.[15] Recently, the U.S. Court of Appeals for the Ninth Circuit upheld the constitutionality of a San Francisco law requiring independent spenders and ballot issue committees to include certain "secondary contributors" in disclaimers on political ads.[16] Similar to L.D. 1590's requirement for covered committees to include top donors of original funds in their on-ad disclaimers, San Francisco's secondary contributor requirement is "designed to go beyond the ad hoc organizations with creative but misleading names and instead expose the actual contributors to such groups."[17] In upholding this law, the Ninth Circuit found that the city's requirement was substantially related to the governmental interest in informing the electorate "[b]ecause the interest in learning the source of funding for a political advertisement extends past the entity that is directly responsible."[18]

Additionally, the Supreme Court has long recognized that laws cannot constitutionally discriminate against the poor.[19] This principle is especially critical in the context of elections and voting rights.[20] Political power and influence should not be allocated based on wealth, and while *Citizens United* protects wealthy special interests' right to spend unlimited amounts independently to influence elections, disclosure laws protect the countervailing right of the electorate to assess the credibility and merits of the messages paid for by that spending.

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In the wake of *Citizens United*, wealthy special interests have been able to funnel their campaign spending through webs of nonprofits and other entities that do not have to publicly disclose their donors, leaving voters in the dark about who is really funding political ads. Requiring big outside spenders to publicly disclose the original sources of money they spend in Maine elections is the solution to ending secret spending in Maine elections. In doing so, Maine would follow in the footsteps of recently passed enhanced

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[15] *See, e.g.*, *Gaspee Project v. Mederos*, 13 F.4th 79 (1st Cir. 2021); *Indep. Inst. v. Williams*, 812 F.3d 787 (10th Cir. 2016); *Yamada v. Snipes*, 786 F.3d 1182 (9th Cir. 2015); *Del. Strong Families v. Attorney Gen. of Del.*, 793 F.3d 304 (3d Cir. 2015); *Vt. Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118 (2d Cir. 2014); *Justice v. Hosemann*, 771 F.3d 285 (5th Cir. 2014); *Worley v. Fla. Sec'y of State*, 717 F.3d 1244 (11th Cir. 2013); *Real Truth About Abortion Inc. v. FEC*, 681 F.3d 544 (4th Cir. 2012); *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464 (7th Cir. 2012); *Nat'l Org. for Marriage v. McKee*, 649 F.3d 34 (1st Cir. 2011); *Human Life of Wash. v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc).

[16] *No on E, San Franciscans Opposing the Affordable Housing Production Act v. Chiu*, No. 3:22-CV-02785-CRB, 2023 WL 2397500 (9th Cir. 2023).

[17] *Id.* at *9 (internal citations and quotation marks omitted).

[18] *Id.*

[19] *See, e.g.*, *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996) (finding unconstitutional a state statute requiring payment of court fees in order to appeal termination of one's parental rights); *Boddie v. Connecticut*, 401 U.S. 371 (1971) (finding unconstitutional a state law restricting the right to divorce based on the ability to pay court fees and costs).

[20] *See, e.g.*, *Bullock v. Carter,* 405 U.S. 134, 144 (1972) (striking down a filing fee requirement as a condition for a candidate to have his name placed on the ballot, and explaining, "we would ignore reality were we not to recognize that this system falls with unequal weight on voters, as well as candidates, according to their economic status"); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966) (striking down a state statute requiring payment of a poll tax as a voter qualification).

election transparency laws across the country, like Arizona's Voters' Right to Know Act that overwhelming passed at the ballot this past November,[21] thereby protecting and strengthening Mainers' right to know who is spending big money to influence their votes. As the U.S. Court of Appeals for the Second Circuit recently explained in upholding a Rhode Island election transparency law, "a well-informed electorate is as vital to the survival of a democracy as air is to the survival of human life."

II. Recommendations to strengthen L.D. 1590.

CLC strongly recommends amending the bill to explicitly require covered committees to disclose the identities of sources of original funds and the amounts from each source. As currently drafted, L.D. 1590 would require covered contributors to identify the sources of original funds—and amounts of original funds from those sources—to the covered committee receiving those funds,[22] but the reporting obligation for covered committees does not explicitly require disclosure of the identities of the sources of original funds received by the committee and the amounts from each source.[23] This ambiguity could undermine the bill's efficacy, as the critical element of the bill's new disclosure requirements is the identification of the sources of original funds spent to influence elections.

CLC also recommends the following amendments to the bill to strengthen and clarify the reporting requirements:

A. Establish a minimum threshold for reporting the identities of sources of original funds. As noted above, the bill should be amended to explicitly require each covered committee to disclose in its reports to the Ethics Commission the identities of the sources of original funds received by the committee and the amounts from each source. Additionally, the bill should establish a threshold monetary amount of original funds above which the reporting of the identity of the source and amount of original funds is required. By establishing a minimum threshold above which sources of original funds must be reported, the disclosure requirements would appropriately focus on the sources of big money spent to influence Maine elections.[24]

B. Clarify the definition of "original funds." The definition of "original funds" should be amended to clarify that, in the case of a covered contributor donating "pass-through funds" to a covered committee, the covered contributor is required to identify the original source information for funds it receives from others that comprise those contributions. As currently drafted, the definition of "original funds" appears to encompass only a covered contributor's original funds.

C. Require detailed information about transfers of original funds by third parties. The reporting requirements should be amended to require covered committees to report more specific information about transfers of original funds by third parties before

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[21] Elizabeth Shimek, *Arizona Leads on Stopping Secret Spending*, CAMPAIGN LEGAL CTR. (Nov. 29, 2022), https://campaignlegal.org/update/arizona-leads-stopping-secret-spending.
[22] L.D. 1590, 131st Leg., 1st Spec. Sess. § 2 (Me. 2023).
[23] *See id.* at § 4.
[24] Similarly, adopting a minimum threshold for the sources of original funds that covered contributors must disclose to covered committees under section 2 of the bill would similarly streamline the bill's requirements to focus on the sources of big money spent in Maine elections.

those funds are donated to the covered committee, including the dates and amounts of those transfers. This additional information would ensure that large contributions can be traced effectively from the covered committee back to its original source.

D. Notice to all contributors. The bill should be amended to require covered committees to provide the notice to all of their donors and not only to covered contributors. Under the notice requirement as currently written, a donor to a covered committee who has given under $10,000 would not receive the notice and would, thus, not have the opportunity to opt those funds out of being used for election-related purposes in Maine. If the donor later exceeds the $10,000 threshold, there may be practical difficulties in effectively administering the opt-out process. For example, if such a donor opts out, the donor's intent may be undermined for earlier donated funds for which no notice was required and, as a result, were already spent by the recipient covered committee for election purposes. Requiring notice and the opportunity to opt out to all donors to covered committees ensures clarity of the obligations of both covered committees and their major donors.

CLC would welcome the opportunity to work with the Committee and other stakeholders to implement our recommendations.

III. Conclusion.

In light of the important changes this bill would make to strengthen Maine's transparency laws, CLC respectfully urges the Committee to amend L.D. 1590 as described above and to support the bill as amended. Thank you for the opportunity to submit this statement in support of this important legislation. Please do not hesitate to contact us if you have further questions.

Respectfully submitted,

/s/
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