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Sent: Thursday, May 25, 2023 10:02 AM
To: Caswell, Lynne <Lynne.Caswell@legislature.maine.gov>
Subject: LD 1590

This message originates from outside the Maine Legislature.

Hi Lynne,

Some concerns about the constitutionality of LD 1590 have been brought to our attention. Because the bill has a compelled disclosure requirement, it implicates the First Amendment and would likely be subject to the “exacting scrutiny” test. This test has two prongs: 1) there must be a “substantial relation” between the disclosure requirement and a “sufficiently important” governmental interest; and 2) the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights. There is little doubt that there is an important governmental interest in requiring disclosure of who is donating large sums to influence Maine elections. A challenger could make a substantial argument, though, that this measure is overbroad because it requires disclosure in instances where it does not sufficiently serve the governmental interest at stake. We are concerned about our ability to successfully defend such a challenge. Also, if a challenge were successful, the challenger would likely be awarded attorneys’ fees, which could be significant.

If the Committee would find it helpful, we would be happy to provide further information.

-Chris



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