



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

To: Joint Standing Committee on Veterans and Legal Affairs
From: Jonathan Wayne, Executive Director
Date: December 2, 2023
Re: Report and Legislation Requested in P.L. 2023, Chapter 244

Background. In 2021, the Maine Legislature enacted reforms to Maine campaign finance law that, among other things, prohibited business entities (corporations, nonprofits, and labor organizations) from contributing to candidates and political action committees (PACs) formed by legislators.¹ The 2021 law also developed in Maine campaign finance law the concept of a “separate segregated fund,” which is an element of the federal campaign finance system that prohibits corporations and labor organizations from using their general treasury funds to contribute to candidates or political committees for the purpose of influencing federal candidate elections.

When the 2021 law took effect on January 1, 2023, it provoked some negative reaction due to its restrictions on campaign finance activity and because the 2021 law introduced a layer of complexity that had not existed previously in Maine campaign finance law. Also, some interest groups believed the Commission was too restrictive in how it interpreted the new law with respect to PACs formed by business entities.

In [P.L. 2023, Chapter 244](#), the Legislature repealed the 2021 law and directed the Commission to consult with the Office of the Attorney General and draft legislation to achieve a narrower set of reforms:

1. prohibiting a business entity from making contributions to candidates but allowing a business entity to make contributions to caucus PACs and party committees,
2. prohibiting a business entity from making any contributions to leadership PACs, and
3. prohibiting a leadership PAC from accepting contributions from other entities that exceed contribution limits to candidates in an election cycle.

¹ [P.L. 2021, Chapter 274](#).

This memo and the attached legislation represent the Commission's response to P.L. 2023, Chapter 244.

National context. It is not unusual for governmental jurisdictions in the United States to prohibit corporations and labor organizations from contributing to candidates. According to May 2023 [research](#) by the National Council of State Legislatures, 23 states prohibited corporations from contributing to candidates for state office. At the federal level, corporations and labor organizations may not use their general treasury funds to contribute to candidates. Some of these laws have been successfully defended in constitutional challenges.²

Proposed legislation. After consulting with the Office of the Attorney General, the Commission staff submits the attached legislation that would prohibit business entities from contributing to candidates and leadership PACs and would establish contribution limits for leadership PACs.

PACs formed by corporations, nonprofits, and labor organizations. In response to testimony received by the Legislature in 2023, the Commission has drafted the attached legislation to be less restrictive concerning PACs formed by business entities. As drafted, a corporation, nonprofit or labor organization could establish a PAC and contribute its general treasury funds to the PAC. The PAC could collect contributions from business entities to the same extent as other PACs. The PAC's campaign funds would not be considered business entity funds solely because the PAC was controlled by a business entity.

Some advocacy organizations or other associations may wish to form a PAC and ballot question committee as a separate legal entity, such as a corporation or limited liability company. The Commission staff proposes creating a narrow exception that would exclude these entities from being considered business entities. As long as they were organized for the sole purpose of influencing elections, these committees would not be considered a business entity and could contribute to candidates and leadership PACs. Similar language may be found in the regulations of the Federal Election Commission. 11 CFR 114.12(a).

² See, e.g., *Fed. Election Comm'n v. Beaumont*, 539 U.S. 146, 123 S. Ct. 2200, 156 L. Ed. 2d 179 (2003); *IA Auto, Inc. v. Director of the Office of Campaign & Political Fin.*, 480 Mass. 423, 105 N.E.3d 1178 (2018), *cert. denied*, 139 S. Ct. 2613, 204 L. Ed. 2d 263 (2019).

Financial management requirements for PACs, party committees, and ballot question committees. The attached legislation includes two subsections (21-A M.R.S. §§ 1015(12) and 1056-E(5)) that would forbid PACs, party committees, and ballot question committees from using funds that “derive from a business entity” to contribute to a candidate or leadership PAC. Similar provisions were part of the 2021 law. This language was intended to keep funds originating from business entities from flowing through registered political committees to candidates and leadership PACs.

In the opinion of the Commission staff, the practical effect of this language is: if a PAC, party committee, or ballot question committee wishes to contribute to candidates or leadership PACs, in most cases the committee will need to establish internal procedures to make sure that no part of those contributions consist of funds derived from a business entity. These procedures could include, for example, establishing an accounting system to track funds derived from business entities or a separate bank account for money received from business entities.³

While the rationale for these provisions is understandable, they would make some PACs’ and party committees’ management of their campaign funds more complex. If the Legislature is concerned about the practical implications of asking PACs and party committee to track or segregate funds derived from business entities, it could modify or delete §§ 1015(12) and 1056-E(5).

One complicating factor is that state party committees and some of the largest PACs receive contributions from national sources that may mix together funding from individuals and business entities. This raises a policy question: when contributing money to candidates and leadership PACs, must PACs and party committees categorize those “mixed” funds as derived from business entities? If the Legislature would like to include §§ 1015(12) and 1056-E(5) in any bill, the Commission would encourage the Legislature to address this policy question.

³ In drafting §§ 1015(12) and 1056-E(5), the Commission did not use the phrase “funds that derive, in whole or in part, from a business entity” that was in the 2021 law. This change in language is intended to avoid an overly restrictive interpretation of the attached bill. Hypothetically, assume that a PAC has \$1,000 in its campaign account, and that \$500 is from business entities and \$500 is from individuals. If the PAC wishes to contribute \$500 to a leadership PAC, the law should not be interpreted to mean that is forbidden because the funds contributed to the leadership PAC arguably derive in part from business entities. The Commission recognizes that opinions may differ on how best to draft these provisions. If members of the Veterans and Legal Affairs Committee prefer the “in whole or in part” language, it could be inserted into §§ 1015(12) and 1056-E(5).

Potential for a constitutional challenge. Each of the caucuses in the Maine Legislature has a PAC that is controlled by the caucus' leader(s). These PACs are defined as a "caucus PAC" in 21-A M.R.S. § 1053-C.

As directed in Chapter 244, the attached legislation treats caucus PACs and leadership PACs differently. Caucus PACs could receive unlimited contributions from business entities (corporations, nonprofits, and labor organizations) whereas leadership PACs could not accept any contributions from business entities. This would reduce opportunities for leadership PACs to raise campaign funds. In 2023, the Maine Legislature received comments expressing this was unfair to legislators who wish to form a PAC to influence elections and become leaders.

The Veterans and Legal Affairs Committee should be aware that treating these two types of PACs differently could result in a constitutional challenge to the attached law. In May 2023, two PACs and their officers filed a constitutional challenge to this aspect of the 2021 law. *Libby v. Schneider*, 1:23-cv-00221-JDL (D. Me. May 30, 2023). The plaintiffs argued that the restrictions on leadership PACs in the 2021 law violated First Amendment rights to free speech and association and the right to equal protection guaranteed by the Fourteenth Amendment of the U.S. Constitution. *Libby v. Schneider*, Complaint at ¶¶ 50-51, 58-61. The plaintiffs voluntarily dismissed their lawsuit after the 2021 law was repealed.

If the attached legislation were enacted, it is foreseeable that it could be challenged on these or other grounds. If the Veterans and Legal Affairs Committee would like more information on the defensibility of the attached law, we recommend consulting directly with the Office of Attorney General.

Thank you for your consideration of this report and the attached legislation.

21-A M.R.S. § 1015. Limitations and prohibitions on contributions and expenditures

1. Limits on cContributions by individuals. An individual may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$1,950 ~~in any per~~ election for a gubernatorial candidate, more than \$475 for a legislative candidate, more than \$575 for a candidate for municipal office and more than \$975 ~~in any per~~ election for any other candidate. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse or domestic partner. ~~Beginning December 1, 2024, contribution limits in accordance with this subsection are adjusted every 2 years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by \$25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.~~

2. [Repealed]

2-A. [Repealed]

Note: person defined in § 1001(3)

2-B. Limits on contributions by others~~Committees; corporations; associations.~~ ~~A political committee, political action committee, ballot question committee or other committee, firm, partnership, corporation, association or organization~~ A person that is not a business entity may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$1,950 ~~in any per~~ election for a gubernatorial candidate, more than \$475 for a legislative candidate, more than \$575 for a candidate for municipal office and more than \$975 ~~in any per~~ election for any other candidate. ~~Beginning December 1, 2024, contribution limits in accordance with this subsection are adjusted every 2 years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by \$25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.~~

2-C. Adjustment of limits for inflation. Beginning December 1, 2024, contribution limits in this section are adjusted every 2 years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by \$25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

3. [Repealed]

4. Political committees; intermediaries. For the purpose of the limitations imposed by this section, contributions made to any political committee authorized by a candidate to accept contributions on the candidate's behalf are considered to be contributions made to that candidate. If the campaign activities of a political action committee within a calendar year primarily promote or support the nomination or election of a single candidate, contributions to the committee that were solicited by the candidate are considered to be contributions made to the candidate for purposes of

the limitations in this section. For purposes of this subsection, solicitation of contributions includes but is not limited to the candidate's appearing at a fundraising event organized by or on behalf of the political action committee or suggesting that a donor make a contribution to that committee.

For the purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, that are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate are considered to be contributions from that person to the candidate. The intermediary or conduit shall report the original source and the intended recipient of the contribution to the commission and to the intended recipient.

5. Other contributions and expenditures. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate.

The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees or their authorized agents is considered to be a contribution to that candidate.

6. Prohibited expenditures. A candidate, a treasurer, a political committee, a party or party committee, a person required to file a report under this subchapter or their authorized agents may not make any expenditures for liquor to be distributed to or consumed by voters while the polls are open on election day.

7. Voluntary limitations on political expenditures. A candidate may voluntarily agree to limit the total expenditures made on behalf of that candidate's campaign as specified in section 1013-A, subsection 1, paragraph C and subsections 8 and 9.

8. Political expenditure limitation amounts. Total expenditures in any election for legislative office by a candidate who voluntarily agrees to limit campaign expenditures as provided in subsection 7 are as follows:

- A. For State Senator, \$25,000; and
- B. For State Representative, \$5,000.
- C. [Repealed]

Expenditure limits are per election and may not be carried forward from one election to another. For calculation and reporting purposes, the reporting periods established in section 1017 apply.

9. Publication of list. The commission shall publish a list of the candidates for State Representative and State Senator who have agreed to voluntarily limit total expenditures for their campaigns as provided in section 1013-A, subsection 1, paragraph C.

For the purposes of subsections 7 and 8 and this subsection, "total expenditures" means the sum of all expenditures made to influence a single election that are made by a candidate or made on the

candidate's behalf by the candidate's political committee or committees, the candidate's party or the candidate's immediate family.

10. Business entity defined. For purposes of this section, "business entity" means a firm, partnership, corporation, incorporated association, labor organization or other organization, whether organized as a for-profit or a nonprofit entity. "Business entity" does not include a political committee organized for the sole purpose of influencing elections and that is incorporated for liability purposes only.

11. Prohibition on contributions by a business entity. A business entity may not make contributions to a candidate or provide money or anything of value to an intermediary with the direction that it be contributed to a candidate.

12. Funds derived from a business entity. A party committee, political action committee, or ballot question committee may not make any monetary contributions to a candidate using funds that derive from a business entity. The committee may comply with this restriction through an accounting system that tracks funds and substantiates their origin or by maintaining a separate bank account for contributions that derive from a business entity. The commission may review or audit any accounting system for consistency with this subsection. Nothing in this subsection prohibits a committee that has received nonmonetary contributions from a business entity from making monetary contributions to a candidate within the limits described in subsection 2-B. For purposes of this subsection, no funds shall be construed to derive from a business entity solely because that business entity established the committee contributing such funds nor because that business entity made any nonmonetary contributions to the committee.

~~21-A M.R.S. § 1015. Corporate Contributions~~

~~Contributions made by a for-profit or a nonprofit corporation including a parent, subsidiary, branch, division, department or local unit of a corporation, and contributions made by a political committee or political action committee whose contribution or expenditure activities are financed, maintained or controlled by a corporation are considered to be made by that corporation, political committee or political action committee.~~

- ~~1. Single entities. Two or more entities are treated as a single entity if the entities:
 - ~~A. Share the majority of members of their boards of directors;~~
 - ~~B. Share 2 or more officers;~~
 - ~~C. Are owned or controlled by the same majority shareholder or shareholders;~~
 - ~~C-1. Are limited liability companies that are owned or controlled by the same majority member or members; or~~
 - ~~D. Are in a parent-subsidiary relationship.~~~~
- ~~2. Sole proprietorships. A sole proprietorship and its owner are treated as a single entity.~~

21-A M.R.S. § 1052. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

...

4-C. Leadership political action committee. "Leadership political action committee" means a political action committee, other than a caucus political action committee under section 1053-C, that was directly or indirectly established by a current member of the Legislature or that is directly or indirectly maintained or controlled by a current member of the Legislature.

...

21-A M.R.S. § 1056-E. Limits and prohibitions on contributions to leadership political action committees

1. Limits on contributions by individuals. An individual may not make contributions to a leadership political action committee aggregating more in a calendar year than the amount that the person may contribute to a legislative candidate in any election under section 1015, subsection 1.

2. Limits on contributions by others. A person that is not a business entity may not make contributions to a leadership political action committee aggregating more in a calendar year than the amount that the person may contribute to a legislative candidate in any election under section 1015, subsection 1.

3. Business entity defined. For purposes of this section, "business entity" has the same definition as in section 1015(10).

4. Prohibition on contributions by a business entity. A business entity may not make contributions to a leadership political action committee or provide money or anything of value to an intermediary with the direction that it be contributed to a leadership political action committee.

5. Funds derived from a business entity. A party committee, political action committee, and ballot question committee may not make any monetary contributions to a leadership political action committee using funds that derive from a business entity. The committee may comply with this restriction through an accounting system that tracks funds and substantiates their origin or by maintaining a separate bank account for contributions that derive from a business entity. The commission may review or audit any accounting system for consistency with this subsection. Nothing in this subsection prohibits a committee that has received nonmonetary contributions from a business entity from making monetary contributions to a leadership political action committee within the limits described in this subsection 2. For purposes of this subsection, no funds shall be construed to derive from a business entity solely because that business entity established the committee contributing such funds nor because that business entity made any nonmonetary contributions to the committee.