

Testimony of Peter L. Murray in Support of LD 2232 – An Act to Limit Contributions to
Political Actions Committees that Make Independent Expenditures.

Before the 131 Maine Legislature, Committee on Veterans and Legal Affairs

March 6, 2024

Senator Hickman, Representative Supica, Members of the Veterans and Legal Affairs

Committee:

My name is Peter Murray. I have lived and practiced law in Portland, Maine since 1967. Thank you for permitting me to present my testimony via Zoom. My wife underwent a serious foot operation yesterday, which requires me to be at home to take care of her.

My testimony is submitted in support of LD 2232, “An Act to Limit Contributions to Political Action Committees that Make Independent Expenditures.” This legislation offers the State of Maine an opportunity to lead our nation in coming to terms with the flood of big money in the form of contributions to SuperPACS that threaten to submerge the will of the Maine electorate in important contested elections.

While contributions to political candidates to support their campaigns are currently regulated in terms of source and amount, contributions to so called SuperPACS that often make massive and unregulated “independent” expenditures in political campaigns have not been effectively regulated either here in Maine or elsewhere in the United States since shortly after the Supreme Court decided *Citizens United v. FEC* in 2010. The result of this lack of regulation has been huge increases in dark money contributions and expenditures designed to influence key races such as the recent Senatorial contest between Susan Collins and Sara Gideon and the Pine Tree Power referendum last year.

For more than a decade since *Citizens United* was decided, it has been generally assumed that the Supreme Court's reasoning in that case would prevent states or the Federal Government from effectively regulating the limitless sums currently being expended to influence political races. Recently, however, some reform-minded legal scholars have taken another hard look at *Citizens United*. Although that decision makes clear that "independent" political expenditures enjoy a high degree of protection under the First Amendment, there may be some room for constitutional regulation of contributions to the political action committees that make the expenditures. It is hard to believe that large contributions to a SuperPAC that then made independent expenditures to influence an election would not affect the behavior of an office holder whose candidacy had been benefited by such contributions. For example, Senator Robert Menendez is alleged to have provided political favors in exchange for contributions to a designated SuperPAC. Under the current system, neither the SuperPAC nor the public would be aware of such an arrangement. Even though large PAC expenditures may be immune from regulation, large contributions to PAC's can raise a sufficient issue of *quid pro quo* corruption or the appearance of this kind of corruption to support regulation according to principles accepted in *Citizens United*.

LD 2232 puts this proposition to the test. The bill sets a \$5,000 annual limit on any individual's or corporate entity's contributions to any single political action committee that makes direct expenditures for the purpose of influencing an election. It also requires political action committees that make expenditures to report to the Maine Commission on Governmental Ethics and Election Practices on the total amount of contributions received from each contributor.

The bill does not forbid contributions to PACS that make expenditures, it merely sets a generous limit on the amount of such contributions per contributor per PAC per year and requires that the identify of the contributors and amount of the contributions be reported. It should be noted that this regulation does not apply to those PACS which make regulated contributions to candidates. It only tries to limit, to some extent, the huge flow of unregulated money that is flowing to PACS that make “independent” expenditures directly.

In my opinion, and the opinions of other lawyers who have looked hard at this approach, the regulation incorporated in LD 2232 would not unconstitutionally trammel anyone’s First Amendment rights. By focusing on the contributions, rather than the expenditures, the regulation addresses the appearance of corruption that is generated by big contributions to PACs that make expenditures to influence elections. Candidates are strictly limited in the size of contributions they may accept for their campaigns. However, the large contributors who wish to influence a candidate’s performance in office need only make their excess contributions to a SuperPAC that will make independent expenditures in support of the favored candidate. The corrupting effect is pretty much the same as if the money had been given to the candidate directly. By limiting a contributor’s annual contributions to any one PAC to \$5,000, LD 2332 makes it hard for any one contributor to deploy a large enough sum for any candidate that would exercise a corrupting influence.

There is no doubt that the enactment of LD 2232 by the Legislature, or its enactment by referendum if the Legislature does not take its opportunity to step up on this one, will lead to legal challenges by the big money contributors and perhaps by the media purveyors that these contributions enrich. In my judgment, this is a battle that the State of Maine, with the support

of national groups dedicated to reducing the influence of big money in politics, can win. And if it does win, Maine's law will be a model for the nation. We will finally be able to make some progress in regulating and reducing the influence of big money on American elections.

It may be tempting to the Committee and to the Legislature simply to pass on this one, to allow the citizen-initiated bill that is LD 2232 to go out to the people in referendum this fall. However, the results of the last referendum dealing with election finance should give us all a pretty good idea where the people of Maine stand. LD 2232 is a challenge to us all to do anything we can to save our political system. Please report this remarkable piece of legislation "Ought to Pass",

Peter L. Murray

Peter Murray
Portland
LD 332

Dear Committee Clerk - This submission is intended for LD 2232, scheduled for hearing at 1:05 this afternoon. However the electronic interface did not allow me to select that hearing, so here it is for the 1:00 hearing. Can you retrieve this for the 1:05 hearing? I will be watching on Zoom and will be glad to deliver the testimony over Zoom. Thank you!