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TESTIMONY OF MICHAEL KEBEDE
LD 1702 – Ought Not to Pass

An Act to Amend Election Polling Place Candidate Restrictions

Joint Standing Committee on Veterans and Legal Affairs

April 24, 2025

Senator Hickman, Representative Supica and members of the Joint Standing Committee on Veterans and Legal Affairs, good afternoon. My name is Michael Kebede and I am policy director for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions through advocacy, education, and litigation. On behalf of our members, I urge you to oppose LD 1702 because it would unconstitutionally restrict core political speech.

Section 3 of LD 1702 would impose content-based restrictions on citizens' rights to free speech. The prohibition in this section would only apply to certain types of speech (collecting or soliciting voter signatures or campaign contributions) and not to others. The specific speech being regulated is core political speech, which includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters related to political processes.[1]

In a case where the U.S. Supreme Court has struck down a restriction on the circulation of electoral petitions in Colorado, the Court explained,

> Although a petition circulator may not have to persuade potential signatories that a particular proposal should prevail to capture their signatures, he or she will at least have to persuade them that the matter is one deserving of the public scrutiny and debate that would attend its consideration by the whole electorate. This will in almost every case involve an explanation of the nature of the proposal and why its advocates support it. Thus, the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as "core political speech."[2]

The fact that the restriction proposed in LD 1702 applies to petitions for candidates and not to ballot questions only raises the stakes. That is because "individuals who circulate petitions on behalf of candidates for office

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[1] *Mowles v. Maine Commission on Governmental Ethics and Election Practices*, 958 A.2d 897, 902, 2008 ME 160, ¶¶ 6-7.
[2] *Meyer v. Grant*, 486 U.S. 414, 421–22 (1988).

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typically 'must speak to a broader range of political topics' than those who circulate petitions in support of ballot initiatives."[3]

Though content-based regulations of core political speech are strongly disfavored, they are not universally prohibited. So long as the government has a compelling justification and the restriction is narrowly-tailored to fulfil that justification, and there is no other less-restrictive alternative, the regulation will survive a First Amendment challenge. For example, in *Burson v. Freeman*, the Supreme Court upheld a Tennessee law that prohibited solicitation of voters and display of campaign material within 100 feet of the entrance to polling places on election day.[4] In *Burson*, the Court observed that the restriction served two compelling interests: protecting the right of citizens to vote freely without undue influence, and ensuring that elections are conducted with integrity.[5] It noted that restrictions of the kind enacted by Tennessee were part of a long line of reforms designed to protect voters from race-based intimidation and corruption.[6]

Maine already has restrictions of this kind in place, and we are not aware of any evidence that they are not sufficiently protective of the right to vote or the integrity of elections. In fact, Maine consistently ranks among the states with the highest voter turnout, and our election laws are a model for states that are interested in expanding the right to vote. If there was evidence that additional laws are needed to ensure that people are able to cast their ballot without undue influence, and free from racial harassment, we would be the first in line to support them. But Section 3 of this bill will, at most, protect voters from minor inconveniences, and that is not a compelling enough reason to impose a content-based restriction on core political speech.

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[3] *Lerman v. Bd. of Elections in City of New York*, 232 F.3d 135, 149 (2d Cir. 2000). The Seventh Circuit squarely addressed this issue in *Krislov v. Rednour*, 226 F.3d 851, 861 (7th Cir. 2000). In that case, Illinois argued that the Supreme Court's jurisprudence on ballot question initiative circulators was inapplicable because those cases involved ballot access petitions for initiatives and not candidates. The Seventh Circuit said

> This is not a particularly relevant distinction . . . . To the extent it is relevant, it suggests that the burden on the candidates is even greater than that placed on those who circulate petitions for ballot initiatives. For the ballot initiative proponent will generally seek support for the one narrow issue presented in the initiative, while the typical candidate embodies a broad range of political opinions, and thus those who solicit signatures on their behalf must speak to a broader range of political topics.

226 F.3d 851, 861. (*Citing Colorado Republican Fed. Campaign Comm. v. FEC,* 518 U.S. 604, 629 (1996) (Kennedy, J., concurring and dissenting) (people often give effect to their views by selecting and supporting candidates who reflect those views); *Lubin v. Panish,* 415 U.S. 709, 716 (1974) (voters assert their preferences through candidates)).

[4] *See* 504 U.S. 191, 193 (1992).

[5] *See id.* at 198- 99.

[6] *See id.* at 205.

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We urge you to oppose LD 1702.