



April 25, 2021

The Honorable Louis Luchini  
Chair, Committee on Veterans and Legal Affairs  
Maine Legislature

The Honorable Chris Caiazzo  
Chair, Committee on Veterans and Legal Affairs  
Maine Legislature

**Re: Statement in Support of L.D. 1417**

Dear Chair Luchini, Chair Caiazzo, and Members of the Committee,

The Campaign Legal Center (CLC) respectfully submits this statement to the Committee in support of L.D. 1417, a bill to ban direct corporate contributions to candidates. 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 citizen's right to participate in the democratic process.

Legislative Document 1417 aims to protect Maine elections from corruption and the appearance of corruption by ensuring that candidates and elected officials answer to their constituents and not just to the influence of wealthy special interests. Specifically, the principal goal of L.D. 1417 is to ban direct corporate contributions to candidates and "leadership PACs"—that is, political committees controlled by legislators. Taking this step, Maine would join 23 other states and federal law in banning direct corporate contributions to candidates, consistent with well-established precedent that governments may adopt restrictions on direct corporate contributions to candidates "to counter the appearance and reality of corruption."<sup>1</sup>

As explained below, L.D. 1417 provides important safeguards against corruption in Maine elections. In particular, provisions of L.D. 1417 would prohibit direct corporate contributions to committees that are authorized or controlled by candidates or officials, which create a high risk of quid pro quo corruption or its appearance. In addition to these

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<sup>1</sup> *FEC v. Beaumont*, 539 U.S. 146, 155 (2003).

important provisions, we also recommend two amendments to the bill. Thus, we respectfully urge the Committee to support L.D. 1417.

### **L.D. 1417: A Ban on Direct Corporate Contributions to Maine Candidates**

Currently under Maine law, corporations may make contributions directly to candidates. The U.S. Supreme Court has long recognized such contributions can have “potentially deleterious influences” on elections.<sup>2</sup> Additionally, although not specifically provided for by Maine law, elected officials are permitted to operate so-called “leadership PACs,” that is, political action committees—in addition to their own authorized campaign committee—ostensibly operated for the purpose of supporting or opposing candidates in elections other than their own. Because “leadership PACs” are controlled by elected officials, they are substantially similar to candidate committees.

Legislative Document 1417 would reduce the risk of corruption and its appearance in Maine elections by implementing two important policy changes: 1) prohibiting direct corporate contributions to candidates and leadership PACs; and 2) imposing limits on the contributions a leadership PAC may make and receive. Each of these policies, along with suggested amendments, are discussed in detail below.

#### **1. Banning direct corporate contributions to candidates is a well-established and constitutionally permissible tool to prevent corruption.**

Corporate contributions to candidates should be barred in Maine elections because they have long been recognized as a potential source of real and apparent corruption in our political system. L.D. 1417’s prohibition of direct corporate contributions to candidates and leadership PACs is firmly supported by history and Supreme Court doctrine.

The first federal campaign finance law in the United States banned corporations from making contributions in connection with federal elections.<sup>3</sup> Congress’s rationale for the Tillman Act of 1907 remains salient today: protecting against real and apparent corruption stemming from corporate spending in U.S. elections.<sup>4</sup> In addition to the federal corporate contribution ban, 23 states have also adopted a ban on direct corporate contributions to candidates.<sup>5</sup>

In *FEC v. Beaumont*, the Supreme Court upheld the federal ban, specifically affirming its importance in preventing both actual corruption and the appearance of

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<sup>2</sup> *Id.* at 152 (internal quotations omitted).

<sup>3</sup> *Id.* at 153.

<sup>4</sup> Robert E. Mutch, *Campaigns, Congress, and Courts, The Making of Federal Campaign Finance Law* 7 (1988).

<sup>5</sup> Alaska Stat. § 15.13.074(f); Ariz. Rev. Stat. § 16-916(A); Ark. Code Ann. § 7-6-203(a)(1)(B); Colo. Const. art. 28, § 3; Conn. Gen. Stat. § 9-613(a); Iowa Code Ann. § 68A.503(1); Ky. Rev. Stat. Ann. § 121.025; Mass. Gen. Laws ch. 55, § 8; Mich. Comp. Laws Ann. 169.254(1); Minn. Stat. Ann. § 211B.15 subd. 2; Mo. Const. art. 8, § 23(3); Mont. Code Ann. 13-35-227; N.C. Gen. Stat. Ann. § 163-278.15(a); N.D. Cent. Code § 16.1-08.1-03.5; Ohio Rev. Code § 3599.03(A); Okla. Stat. Ann. tit. 21, § 187.2(A); 25 Pa. Stat. § 3253(a); R.I. Gen. Laws § 17-25-10.1(h); Tex. Elec. Code Ann. § 253.094(a); Wash. Rev. Code § 42.17A.405(12); W. Va. Code Ann. § 3-8-8(a); Wis. Stat. Ann. 11.1112; Wyo. Stat. Ann. § 22-25-102.

corruption in our political system.<sup>6</sup> The Court also concluded that the corporate contribution ban serves the government's important interests in preventing the circumvention of contribution limits.<sup>7</sup> Because corporations are entities on paper but not actual people, individuals who create and control a corporation can otherwise exceed limits on their own contributions by routing money through the corporation, or several corporations, undermining contribution limits altogether.<sup>8</sup>

The constitutionality of corporate contribution bans has been repeatedly affirmed, with courts holding that these laws are “closely drawn” to advance the government's critical interests in preventing real and perceived corruption in the political process. Courts routinely decline to “second guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared,” regardless of differing organizational structures, purposes, or financial resources.<sup>9</sup> In the Supreme Court's most recent decision upholding the federal ban, the Court affirmed that the ban is constitutional when applied to a nonprofit advocacy corporation.<sup>10</sup> As recently as 2019, the Supreme Judicial Court of Massachusetts upheld that state's corporate contribution ban, and the U.S. Supreme Court declined to consider an appeal of that decision.<sup>11</sup>

To ensure Maine's political processes are more soundly protected from the corrupting potential of corporate contributions and to prevent the filtering of corporate money through other entities, CLC recommends expanding the ban to prohibit all direct corporate contributions, regardless of who the recipient may be. Under L.D. 1417, corporate contributions are banned to candidates and leadership PACs but not to political action committees, party committees, and caucus committees. Expanding L.D. 1417's prohibition in this way would bring the Maine corporate contribution ban in line with the bans in federal law and most other states. Of the 23 states that ban corporate contributions to candidates, 19 of those states ban such contributions to state political parties<sup>12</sup> and 18 ban such contributions to political action committees.<sup>13</sup>

Federal law is particularly salient on this point: direct corporate contributions are banned entirely.<sup>14</sup> Instead, corporations are permitted to set up voluntary separate segregated funds, which are subject to contribution limits and recordkeeping and disclosure requirements similar to other PACs, with additional solicitation, fundraising, and other

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<sup>6</sup> *Beaumont*, 539 U.S. at 155 (2003).

<sup>7</sup> *See, e.g., McConnell v. FEC*, 540 U.S. 93, 144 (2003).

<sup>8</sup> *Beaumont*, 539 U.S. at 155.

<sup>9</sup> *FEC v. Nat'l Right to Work Comm.*, 459 U.S. 197, 210 (1982); *see also FEC v. Nat'l Conservative PAC*, 470 U.S. 480, 500 (1985) and *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 402 (2000).

<sup>10</sup> *FEC v. Beaumont*, 539 U.S. 146 (2003).

<sup>11</sup> *1A Auto v. Dir. of Office of Campaign & Political Fin.*, 105 N.E.3d 1175 (Mass. 2018), cert. denied, 139 S.Ct. 2613 (2019).

<sup>12</sup> Campaign Fin. Inst., Contribution Limits, Corporation to State Parties, [https://cfinst.github.io/#contribution-limits?question=CorpToPartyLimit\\_Max&year=2018](https://cfinst.github.io/#contribution-limits?question=CorpToPartyLimit_Max&year=2018) (last visited Apr. 22, 2021).

<sup>13</sup> Campaign Fin. Inst., Contribution Limits, Corporation to PACs, [https://cfinst.github.io/#contribution-limits?question=CorpToPACLimit\\_Max&year=2018](https://cfinst.github.io/#contribution-limits?question=CorpToPACLimit_Max&year=2018) (last visited Apr. 22, 2021).

<sup>14</sup> 52 U.S.C. § 30118(a).

rules.<sup>15</sup> Critically, federal law prohibits a corporation from making any contributions to its separate segregated fund using its general treasury monies.<sup>16</sup> The contributions to the separate segregated fund come from individuals, and corporations are instead permitted to use their general treasury monies only to pay for the establishment, administration, and solicitation of funds to its separate segregated fund.<sup>17</sup> And corporations may only solicit funds from a specified class of individuals, like stockholders, executive and administrative personnel, or members, among others.<sup>18</sup> These separate segregated funds permit balance allowing some participation by corporations in the federal electoral process while prohibiting the corrupting potential of direct corporate contributions.<sup>19</sup>

Perhaps recognizing the problem of corporate money filtering through other entities, L.D. 1417 currently proposes to bar political committees, political action committees—including caucus committees—party committees, or any other political committee other than a leadership PAC or separate segregated fund committee from contributing to candidates. This provision, though, is overbroad and unduly restrictive and would have the effect of favoring leadership PACs, separate segregated funds, and unions over all other political committees, including political parties, with respect to candidate contributions. This restriction should be removed from L.D. 1417 and, in its place, the corporate contribution ban should be expanded to ban contributions by corporations to all political committees that may contribute to candidates.

## **2. Imposing limits on contributions that leadership PACs may make or receive furthers the goal of reducing quid pro quo corruption and its appearance.**

Contribution limits are a cornerstone of campaign finance law at the federal, state, and local level across the country, and have been upheld as an important tool against corruption since *Buckley v. Valeo*.<sup>20</sup> Legislative Document 1417 makes an important change to current law in Maine by limiting the contributions a leadership PAC may receive and may make to others. Under the bill, a leadership PAC is limited to receiving contributions in amounts that do not exceed the amounts that a candidate may receive from an individual and leadership PACs also may not make contributions to candidates in excess of the candidate contribution limits that apply to individuals.

Subjecting leadership PACs to contribution limits is plainly constitutional under Supreme Court precedent because the limits protect against quid pro quo corruption and the appearance of such corruption. Under federal law, leadership PACs, as a species of political committee, are subject to the same contribution limits as other “nonconnected”

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<sup>15</sup> See generally, 52 U.S.C. § 30118; see also, Federal Election Commission, FEC Campaign Guide for Corporations and Labor Organizations, <https://www.fec.gov/resources/cms-content/documents/colagui.pdf> (January 2018).

<sup>16</sup> 52 U.S.C. § 30118(a).

<sup>17</sup> 52 U.S.C. § 30118(b)(2).

<sup>18</sup> 52 U.S.C. § 30118(b)(4).

<sup>19</sup> *FEC v. Beaumont*, 539 U.S. 146, 162-163 (2003).

<sup>20</sup> 424 U.S. 1, 23-38 (1976). See also *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377 (2000).

PACs.<sup>21</sup> Five years after the Supreme Court in *Buckley* broadly upheld contribution limits to federal PACs, the Court reaffirmed the constitutionality of limiting the amount a PAC may receive in contributions from individuals and other entities because such limits furthered the sufficiently important “governmental interest in preventing the actual or apparent corruption of the political process.”<sup>22</sup> Further, the Court upheld the limit on giving to PACs because it served the interest of preventing circumvention of contribution limits, generally, and would thus “protect the integrity of the contribution restrictions upheld” in *Buckley*.<sup>23</sup> In turn, the Supreme Court has also approved limits on how much a PAC may contribute to a candidate. In *Nixon v. Shrink Mo. Gov’t PAC*, a Missouri political action committee sought to contribute to a candidate in excess of the state’s \$1,000 contribution limit.<sup>24</sup> Evaluating the constitutionality of Missouri’s limits, the Supreme Court again reaffirmed that contribution limits on PACs giving to candidates were justified by the same concerns as in *Buckley*, that reasonable limits on contributions served to prevent corruption and the appearance corruption.<sup>25</sup>

In addition to supporting contribution limits with respect to leadership PACs, CLC also recommends including restrictions on the use of funds a leadership PAC receives. At the federal level and in other states that have similar leadership PACs, these types of committees have been ripe for abuse, operating more as slush funds for the controlling officeholder or candidate than for the stated purpose of supporting fellow candidates.<sup>26</sup> One analysis found that only 45% of leadership PAC spending went towards contributions to other candidates and committees.<sup>27</sup> Instead, more money was spent on personal luxuries like a \$54,000 trip to Disney World and \$64,000 in tickets to Broadway shows.<sup>28</sup> In Michigan, a 2017 analysis found that state-level leadership PACs raised hundreds of thousands of dollars, often from corporations and wealthy special interests, but only 72% of those funds were contributed to other committees.<sup>29</sup> Reports in Maine have pointed to

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<sup>21</sup> 52 U.S.C. § 30116; *see also* Federal Election Commission, Contribution Limits, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/> (last visited Apr. 22, 2021).

<sup>22</sup> *Cal. Med. Ass’n v. FEC*, 453 U.S. 182, 197-198 (1981). The Court in this case also declined to strike down the limits under an Equal Protection rationale, finding that “differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions and corporations, on the other, reflect a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process.” *Id.* at 201.

<sup>23</sup> *Id.* at 199.

<sup>24</sup> 528 U.S. 377, 383 (2000).

<sup>25</sup> *Id.* at 388.

<sup>26</sup> *See generally*, CAMPAIGN LEGAL CENTER AND ISSUE ONE, ALL EXPENSES PAID: HOW LEADERSHIP PACS BECAME POLITICIANS’ PREFERRED TICKET TO LUXURY LIVING, <https://www.issueone.org/wp-content/uploads/2018/07/All-Expenses-Paid-How-Leadership-PACs-Became-Politicians-Preferred-Ticket-to-Luxury-Living-Report.pdf> (July 19, 2018).

<sup>27</sup> *Id.* at 3.

<sup>28</sup> *Id.* at 9.

<sup>29</sup> Michigan Campaign Finance Network, What Are Leadership PACS and Why Are They Becoming Bigger Players in Michigan?, <https://mcfn.org/node/6832/what-are-leadership-pacs-and-why-are-they-becoming-bigger-players-in-michigan> (last visited Apr. 22, 2021).

similar abuses of leadership PAC funds.<sup>30</sup> The substantial evidence of apparent misuse of these types of committees establishes a clear need to establish strong rules prohibiting the use of leadership PAC funds for personal gain.

Due to the risk of corruption associated with spending leadership PAC money for items that are, at best, remotely related to elections, CLC recommends adopting restrictions that prohibit elected officials from converting their leadership PAC funds for personal uses.

### 3. Conclusion

CLC respectfully urges the Committee to support protecting Maine elections by taking favorable action on L.D. 1417 to ban direct corporate contributions to candidates, including with respect to our proposed amendments. Thank you for the opportunity to submit this statement in support of this important legislation. If you have further questions, please do not hesitate to contact us.

Respectfully submitted,

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<sup>30</sup> Steve Mistler, *Ethics Commission Dismisses PAC Complaint Against Maine State Senate Candidate*, MAINE PUBLIC RADIO (Oct. 4, 2020) <https://www.mainepublic.org/politics/2020-09-30/ethics-commission-dismisses-pac-complaint-against-maine-state-senate-candidate>; see also MAINE CITIZENS FOR CLEAN ELECTIONS, POLICY BRIEF: MAINE DOES NOT NEED LEADERSHIP PACS, [https://www.maineanelections.org/sites/default/files/fact\\_sheets/Leadership%20PAC%20Policy%20Brief%20draft%20031417.pdf](https://www.maineanelections.org/sites/default/files/fact_sheets/Leadership%20PAC%20Policy%20Brief%20draft%20031417.pdf) (Mar. 17, 2017).