March 13, 2025

The Honorable Craig Hickman
Senate Chair, Veterans & Legal Affairs Committee
Maine Legislature

The Honorable Laura Supica
House Chair, Veterans & Legal Affairs Committee
Maine Legislature

Re: Statement in Support of L.D. 951

Dear Chair Hickman, Chair Supica, and Members of the Committee,

Campaign Legal Center (CLC) respectfully submits this statement to the Committee in support of L.D. 951, a bill to require the disclosure of sources of big campaign spending in Maine elections. 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 American's right to participate in the democratic process.

Since the Supreme Court's 2010 decision in *Citizens United v. FEC*, outside spending in elections has skyrocketed, increasing from $205 million in 2010 to over $4.2 billion in 2024.[1] In Maine, outside spending has followed the same trend.[2] Some outside spenders have used methods designed to evade disclosure laws, allowing wealthy special interests to hide themselves as the true sources of money

[1] OpenSecrets, *Outside Spending*, https://www.opensecrets.org/outside-spending/ (accessed Feb. 27, 2025).
[2] FollowTheMoney.org Chart of Independent Spending in Maine, 2006-2022, https://www.followthemoney.org/show-me?dt=2&is-s=ME&f-fc=2,3#[{1|gro=is-s,is-y (accessed Feb. 27, 2025). *See also* MAINE CITIZENS FOR CLEAN ELECTIONS, THE SHELL GAME: HOW INDEPENDENT EXPENDITURES HAVE INVADED MAINE SINCE *CITIZENS UNITED* (2013) https://www.mainecleanelections.org/sites/default/files/web/MCCEReport11_TheShellGame_Letter.pdf.

used to influence elections.[3] As big outside spending increasingly impacts elections, campaign finance laws must protect the integrity of our elections by ensuring voters know which wealthy special interests are spending big money to influence their votes.

CLC has carefully reviewed L.D. 951, and it is a constitutional piece of legislation that would increase transparency and reduce secret spending in Maine elections. As explained below, L.D. 951 would require big outside spenders in Maine elections to disclose the original sources of money used for that spending. The bill also updates Maine's on-ad disclaimer requirements to ensure political ads provide viewers with information about the original sources of funds used to pay for those ads. These reforms are consistent with well-established U.S. Supreme Court precedent affirming the importance of transparency in campaign spending to "insure that the voters are fully informed about the person or group who is speaking."[4]

I. L.D. 951 would increase transparency in Maine elections by providing more information to voters about who is really spending big money to influence their votes.

L.D. 951 amends Maine campaign finance transparency law to establish a system for tracing big money spent in Maine elections back to its original source. Requiring transparency for the original sources of big money spent on elections promotes First Amendment interests by providing the public with the information necessary to engage in democratic self-government and to hold their elected representatives accountable.

A. L.D. 951 would reveal the original sources of large contributions spent to influence Maine elections.

Under current Maine law, when any group raises or spends money above certain thresholds in state elections, that group must register with the Maine Commission on Governmental Ethics & Election Practices as a political action committee or ballot question committee, as appropriate,[5] and file public reports disclosing basic information about its political spending, including direct contributors of more than $50.[6] Maine law also requires political ads to include a

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[3] *See, e.g.*, BRENDAN FISCHER & MAGGIE CHRIST, CAMPAIGN LEGAL CTR., DIGITAL DECEPTION: HOW A MAJOR DEMOCRATIC DARK MONEY GROUP EXPLOITED DIGITAL AD LOOPHOLES IN THE 2018 ELECTION, (2019) https://campaignlegal.org/sites/default/files/2019-03/FINAL%20Majority%20Forward%20Issue%20Brief.pdf; *see also* Anna Massoglia, *Outside spending on 2024 elections shatters records, fueled by billion-dollar 'dark money' infusion*, OPENSECRETS (Nov. 5, 2024), https://www.opensecrets.org/news/2024/11/outside-spending-on-2024-elections-shatters-records-fueled-by-billion-dollar-dark-money-infusion.

[4] *Citizens United v. FEC*, 558 U.S. 310, 348 (2010) (internal citations and quotation marks omitted).

[5] 21-A M.R.S. §1052-A(1).

[6] 21-A M.R.S. §§1059 *and* 1060.

disclaimer stating who paid for the ad and the top direct contributors to the ad sponsor.[7] But when wealthy special interests play shell games and funnel money through other entities that then pass it along to groups paying for political ads, those wealthy special interests can evade public identification as the sources of big money spent in elections.[8] This kind of secret spending, sometimes called "dark money," deprives voters of critical information about who is really paying for election-related messaging.[9]

L.D. 951 would reduce secret spending in Maine elections by requiring more transparency for big outside spenders. Specifically, certain political committees—called "covered committees" in the bill—that receive one or more contributions of at least $10,000 in the aggregate from a single contributor and spend more than $50,000 on expenditures for candidate elections or ballot measures in an election cycle must disclose the sources of "original funds" received during the election cycle from large contributors. "Original funds" generally means the personal funds of individuals, like money received from salaries or wages, or the business income of organizations. A covered committee must identify in its disclosure reports to the Ethics Commission each person contributing over $10,000 in original funds during the election cycle and any intermediaries that transferred $5,000 or more in original funds before those funds were received by the covered committee, including the dates and amounts of those transfers. A covered committee reports this original source information in its regular reports to the Ethics Commission.

L.D. 951 also would incorporate this enhanced transparency for political ads run by covered committees, ensuring that voters know who is really funding that messaging. Although identifying the sponsor of a political ad is important, it does not tell voters the whole story, especially when those ads are sponsored by groups that receive significant funding from wealthy special interests. Under the bill, the top donor disclaimer on ads run by covered committees would include, in addition to the sponsor of the ad, the sponsor's top three contributors of original funds. In other words, wealthy special interests would no longer be able to evade disclosure in on-ad disclaimers simply by using intermediaries.

To facilitate the disclosure of original sources of funds spent on elections, L.D. 951 establishes a notice and opt-out system, requiring covered committees to notify donors that their donations may be used for election spending in Maine and allowing donors to opt out of having their donations spent for such purposes. This

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[7] 21-A M.R.S. §1014.

[8] *See, e.g.*, Steve Mistler, *Pulse Newsletter: Tax Filings Shine Light On Democratic Dark Money In Maine*, MAINE PUBLIC (Dec. 4, 2021) https://www.mainepublic.org/politics/2020-12-04/pulse-newsletter-tax-filings-shine-light-on-democratic-dark-money-in-maine.

[9] In one study of Maine state elections, dark money spending jumped from under $20,000 in 2006 to over $1.6 million in 2014, just one election cycle after *Citizens United* was decided. *See* CHISUN LEE, ET AL., BRENNAN CTR. FOR JUSTICE, SECRET SPENDING IN THE STATES 7 (2016), https://www.brennancenter.org/our-work/research-reports/secret-spending-states.

system enables contributors to control whether their donations to groups engaged in different types of spending will be spent on elections. Under the bill, a contributor that does not opt out is required to specify whether the funds are the contributor's own original funds or are "pass-through" funds from another source. If contributors opt out, their donations may not be used on elections and, therefore, those donors will not be included in the covered committee's disclosure reports or named in a political ad's top donor disclaimer. If a donor receives notice that its donations may be used for election spending in Maine and does not respond within 21 days of receiving the notice, the donor's funds are presumed to have been opted out and may not be spent by the covered committee to influence Maine elections.

Finally, to ensure that covered committees have the information necessary to complete their disclosure reports, L.D. 951 requires donors who give more than $10,000 to a covered committee to identify each source of original funds providing $2,500 or more constituting the contribution and any intermediaries that previously transferred $2,500 or more of the contribution. Under the bill, donors do not need to identify the original sources of all funds in their possession but, instead, need only inform the covered committee of the original sources of the specific funds being contributed. The covered committee may rely on this information to make its required reports, unless the covered committee has reason to know the information is false or incomplete.

B. L.D. 951's transparency provisions promote First Amendment interests and are consistent with long-standing U.S. Supreme Court precedent.

Voters have the right to know about the political messages they receive—including who is funding those messages—and requiring transparency for the original sources of big money spent on elections is critical to making that right a reality for Maine voters. Knowing who is spending big money to support a campaign helps voters determine who supports which positions and why. As the U.S. Supreme Court has repeatedly recognized in decades of decisions upholding campaign finance disclosure provisions:

> "[D]isclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches."[10]

The Court's precedents have long recognized that transparency in election spending improves the functioning of government and its responsiveness to the

[10] *Buckley v. Valeo*, 424 U.S. 1, 66-68 (1976) (per curiam) (internal quotation marks and footnote omitted).

public. In its foundational campaign finance decision, *Buckley v. Valeo*, the Court upheld disclosure laws enacted following the Watergate scandal and identified three important interests advanced by campaign finance disclosure: (1) providing voters with information necessary to evaluate candidates and make informed decisions; (2) deterring corruption and the appearance of corruption by shining a light on campaign finances; and (3) aiding enforcement of other campaign finance laws, like contribution limits.[11]

Since *Buckley*, the Court has consistently reaffirmed the constitutionality of campaign finance disclosure laws.[12] In *McConnell v. FEC*, the Court upheld the federal Bipartisan Campaign Reform Act's expanded disclosure system, which was designed to address the problem of "independent groups [who] were running election-related advertisements 'while hiding behind dubious and misleading names.'"[13] Notably, in *Citizens United v. FEC*, even as the Court struck down limits on corporate election spending, the Court again upheld—by an 8-to-1 vote—the constitutionality of federal election disclosure laws that applied to that spending, stating that "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."[14]

Following *Citizens United*, the federal courts of appeals have continued to affirm the constitutionality and importance of state election disclosure laws.[15] In 2023, the U.S. Court of Appeals for the Ninth Circuit upheld the constitutionality of a San Francisco law requiring independent spenders and ballot issue committees to include certain "secondary contributors" in disclaimers on political ads.[16] Similar to L.D. 951's requirement for covered committees to include top donors of original funds in their on-ad disclaimers, San Francisco's secondary contributor requirement is "designed to go beyond the ad hoc organizations with creative but misleading

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[11] *Id.*

[12] *See McConnell v. FEC*, 540 U.S. 93, 189-202 (2003) (approving disclosure rules for "electioneering communications," a type of political ad that evaded disclosure requirements under *Buckley*'s narrow interpretation of "express advocacy."); *Citizens United*, 558 U.S. at 366-71; *John Doe No. 1 v. Reed*, 561 U.S. 186 (2010); *see also First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 792 n.32 (1978) ("Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected.").

[13] *McConnell*, 540 U.S. at 197 (citation omitted).

[14] *Citizens United*, 558 U.S. at 369.

[15] *See, e.g.*, *Gaspee Project v. Mederos*, 13 F.4th 79 (1st Cir. 2021); *Indep. Inst. v. Williams*, 812 F.3d 787 (10th Cir. 2016); *Yamada v. Snipes*, 786 F.3d 1182 (9th Cir. 2015); *Del. Strong Families v. Attorney Gen. of Del.*, 793 F.3d 304 (3d Cir. 2015); *Vt. Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118 (2d Cir. 2014); *Justice v. Hosemann*, 771 F.3d 285 (5th Cir. 2014); *Worley v. Fla. Sec'y of State*, 717 F.3d 1244 (11th Cir. 2013); *Real Truth About Abortion Inc. v. FEC*, 681 F.3d 544 (4th Cir. 2012); *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464 (7th Cir. 2012); *Nat'l Org. for Marriage v. McKee*, 649 F.3d 34 (1st Cir. 2011); *Human Life of Wash. v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc).

[16] *No on E, San Franciscans Opposing the Affordable Housing Production Act v. Chiu*, 85 F.4th 493 (9th Cir. 2023).

names and instead expose the actual contributors to such groups."[17] In upholding this law, the Ninth Circuit found that the city's requirement was substantially related to the governmental interest in informing the electorate "[b]ecause the interest in learning the source of funding for a political advertisement extends past the entity that is directly responsible."[18]

More recently, both federal and state courts in Arizona have upheld Arizona's Voters' Right to Know Act (VRKA) against federal First Amendment and related Arizona constitutional challenges.[19] The VRKA contains similar requirements to L.D. 951: Under the VRKA, any person that spends "more than $50,000 in statewide campaigns or more than $25,000 in any other type of campaigns" in Arizona must disclose donors and intermediaries who transfer more than $5,000 in original funds during the election cycle.[20] To facilitate this disclosure, Arizona's law includes notice, opt-out, and recordkeeping requirements similar to those in L.D. 951.[21] And like L.D. 951, Arizona's VRKA requires covered persons to name their three largest donors of original funds in their on-ad disclaimers.[22]

In wholly upholding the VRKA against facial challenges under the First Amendment, the federal district court found that Arizona's law "is supported by a strong governmental interest" in informing the electorate about who is really funding political ads "and imposes only minimal burdens."[23] Of particular note, the court concluded that requiring the disclosure of the "entire of chain of donors" was narrowly tailored to promoting an informed electorate because "[i]dentifying the actual funders of [political] communications cannot be achieved any other way."[24]

Finally, the Supreme Court has long recognized that laws cannot constitutionally discriminate against the poor.[25] This principle is especially critical

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[17] *Id*. at 505 (internal citations and quotation marks omitted).
[18] *Id.* at 506.
[19] *See Ams. for Prosperity v. Meyer*, 724 F. Supp. 3d 858 (D. Ariz. 2024), *appeal docketed*, No. 24-2933 (9th Cir. May 8, 2024); *Ctr. for Ariz. Policy v. Ariz. Sec'y of State*, 560 P.3d 923 (Ariz. Ct. App. 2024), *petition for review filed*, No. CV-24-0295-PR (Ariz. Dec. 9, 2024). In a related case, the Arizona Court of Appeals did preliminarily enjoin a portion of the law, on separation of powers grounds, that would have limited the Arizona legislature's power to pass laws prohibiting or limiting administrative rules or enforcement actions by the agency implementing the VRKA. *Toma v. Fontes*, 553 P.3d 881, 896-98 (Ariz. Ct. App. 2024), *appeal argued sub nom. Montenegro v. Fontes*, No. CV-24-0166-PR (Ariz. Mar. 6, 2025). Because the appeals court concluded the provision was severable, the injunction did not impact the disclosure requirements of the VRKA. *Id.* at 898. Importantly, there is no similar provision in L.D. 951.
[20] Ariz. Rev. Stat. §§ 16-971(7), 16-973(A)(6), (7).
[21] Ariz. Rev. Stat. § 16-972.
[22] Ariz. Rev. Stat. § 16-974(C); Ariz. Admin. Code § 2-20-805(B).
[23] *Ams. for Prosperity*, 724 F. Supp. 3d at 874.
[24] *Id.* at 877-78.
[25] *See, e.g.*, *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996) (finding unconstitutional a state statute requiring payment of court fees in order to appeal termination of one's parental rights); *Boddie v. Connecticut*, 401 U.S. 371 (1971) (finding unconstitutional a state law restricting the right to divorce based on the ability to pay court fees and costs).

in the context of elections and voting rights.[26] Political power and influence should not be allocated based on wealth, and while *Citizens United* protects wealthy special interests' right to spend unlimited amounts independently to influence elections, disclosure laws protect the countervailing right of the electorate to assess the credibility and merits of the messages paid for by that spending.

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In the wake of *Citizens United*, wealthy special interests have been able to funnel their campaign spending through webs of nonprofits and other entities that do not have to publicly disclose their donors, leaving voters in the dark about who is really funding political ads. Requiring big outside spenders to publicly disclose the original sources of money they spend in Maine elections is the solution to ending secret spending in Maine elections. In doing so, Maine would join states across the country enacting enhanced election transparency laws, like Arizona's Voters' Right to Know Act, thereby protecting and strengthening Mainers' right to know who is spending big money to influence their votes. As the U.S. Court of Appeals for the First Circuit explained in upholding a Rhode Island election transparency law, "a well-informed electorate is as vital to the survival of a democracy as air is to the survival of human life."[27]

II. Conclusion.

In light of the important changes this bill would make to strengthen Maine's transparency laws, CLC respectfully urges the Committee to support L.D. 951. Thank you for the opportunity to submit this statement in support of this important legislation. Please do not hesitate to contact us if you have further questions.

Respectfully submitted,

/s/
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[26] *See, e.g.*, *Bullock v. Carter,* 405 U.S. 134, 144 (1972) (striking down a filing fee requirement as a condition for a candidate to have his name placed on the ballot, and explaining, "we would ignore reality were we not to recognize that this system falls with unequal weight on voters, as well as candidates, according to their economic status"); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966) (striking down a state statute requiring payment of a poll tax as a voter qualification).
[27] *Gaspee Project v. Mederos*, 13 F.4th 79, 95 (1st Cir. 2021).