



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

To: Commission
From: Jonathan Wayne, Executive Director
Date: May 6, 2024
Re: Two Questions for Other Business

On November 7, 2023, Maine voters approved Question 2 (attached), which proposed a new section of Maine Election Law forbidding foreign governments from making expenditures or contributions to influence candidate or ballot question elections in Maine. The question also directed the Commission to issue an annual report on proposals in the U.S. Congress to amend the federal constitution to allow for greater regulation of how money is raised and spent to influence elections:

For 7 consecutive years beginning on July 31, 2023, the Commission on Governmental Ethics and Election Practices shall issue a report, following public comment, identifying anticorruption amendment proposals introduced in Congress, and the members of Maine's Congressional Delegation sponsoring such proposals.

By researching publicly available information, Commission staff has identified six congressional resolutions introduced during 2023-2024 proposing relevant constitutional amendments. The informational website of the U.S. Congress confirms which resolutions have been co-sponsored by Maine's congressional delegation. At the May 8, 2024 meeting, could we please discuss:

- (1) Question 2 calls on the Commission to issue a report "after public comment." Advocates for a constitutional amendment have suggested to me that the Commission should hold a public hearing on the proposed constitutional amendments. Does the Commission want to hold a public hearing or (alternatively) should staff invite written comments only?
- (2) Should the report focus on which members of Maine's delegation have sponsored the resolutions or should the report include other potential supportive activities by our delegation, such as engaging with members of Congress or others. The second option would probably require sending a request for information to the delegation.

As background, I have also attached a resolution from the 126th Maine Legislature that is referenced in Question 2.

An Act to Prohibit Campaign Spending by Foreign Governments and Promote an Anticorruption Amendment to the United States Constitution

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 21-A MRSA §1064 is enacted to read:

§1064. Foreign government campaign spending prohibited

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Contribution" has the meanings given in section 1012, subsection 2 and section 1052, subsection 3.

B. "Electioneering communication" means a communication described in section 1014, subsection 1, 2 or 2-A.

C. "Expenditure" has the meanings given in section 1012, subsection 3 and section 1052, subsection 4.

D. "Foreign government" includes any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country other than the United States or over any part of such country and includes any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. "Foreign government" includes any faction or body of insurgents within a country assuming to exercise governmental authority, whether or not such faction or body of insurgents has been recognized by the United States.

E. "Foreign government-influenced entity" means:

(1) A foreign government; or

(2) A firm, partnership, corporation, association, organization or other entity with respect to which a foreign government or foreign government-owned entity:

(a) Holds, owns, controls or otherwise has direct or indirect beneficial ownership of 5% or more of the total equity, outstanding voting shares, membership units or other applicable ownership interests; or

(b) Directs, dictates, controls or directly or indirectly participates in the decision-making process with regard to the activities of the firm, partnership, corporation, association, organization or other entity to influence the nomination or election of a candidate or the initiation or approval of a referendum, such as decisions concerning the making of contributions, expenditures, independent expenditures, electioneering communications or disbursements.

F. "Foreign government-owned entity" means any entity in which a foreign government owns or controls more than 50% of its equity or voting shares.

G. "Independent expenditure" has the meaning given in section 1019-B, subsection 1.

H. "Public communication" means a communication to the public through broadcasting stations, cable television systems, satellite, newspapers, magazines, campaign signs or other outdoor advertising facilities, Internet or digital methods, direct mail or other types of general public political advertising, regardless of medium.

I. "Referendum" means any of the following:

(1) A people's veto referendum under the Constitution of Maine, Article IV, Part Third, Section 17;

(2) A direct initiative of legislation under the Constitution of Maine, Article IV, Part Third, Section 18;

(3) A popular vote on an amendment to the Constitution of Maine under the Constitution of Maine, Article X, Section 4;

(4) A referendum vote on a measure enacted by the Legislature and expressly conditioned upon ratification by a referendum vote under the Constitution of Maine, Article IV, Part Third, Section 19;

(5) The ratification of the issue of bonds by the State or any state agency; and

(6) Any county or municipal referendum.

2. Campaign spending by foreign governments prohibited. A foreign government-influenced entity may not make, directly or indirectly, a contribution, expenditure, independent expenditure, electioneering communication or any other donation or disbursement of funds to influence the nomination or election of a candidate or the initiation or approval of a referendum.

3. Solicitation or acceptance of contributions from foreign governments prohibited. A person may not knowingly solicit, accept or receive a contribution or donation prohibited by subsection 2.

4. Substantial assistance prohibited. A person may not knowingly or recklessly provide substantial assistance, with or without compensation:

A. In the making, solicitation, acceptance or receipt of a contribution or donation prohibited by subsection 2; or

B. In the making of an expenditure, independent expenditure, electioneering communication or disbursement prohibited by subsection 2.

5. Structuring prohibited. A person may not structure or attempt to structure a solicitation, contribution, expenditure, independent expenditure, electioneering communication, donation, disbursement or other transaction to evade the prohibitions and requirements in this section.

6. Communications by foreign governments to influence policy; required disclosure. Whenever a foreign government-influenced entity disburses funds to finance a public communication not otherwise prohibited by this section to influence the public or any state, county or local official or agency regarding the formulation, adoption or amendment of any state or local government policy or regarding the political or public interest of or government relations with a foreign country or a foreign political party, the public communication must clearly and conspicuously contain the words "Sponsored by" immediately followed by the name of the foreign government-influenced entity that made the disbursement and a statement identifying that foreign government-influenced entity as a "foreign government" or a "foreign government-influenced entity."

7. Due diligence required. Each television or radio broadcasting station, provider of cable or satellite television, print news outlet and Internet platform shall establish due diligence policies, procedures and controls that are reasonably designed to ensure that it does not broadcast, distribute or otherwise make available to the public a public communication for which a foreign government-influenced entity has made an expenditure, independent expenditure, electioneering communication or disbursement in violation of this section. If an Internet platform discovers that it has distributed a public communication for which a foreign government-influenced entity has made an expenditure, independent expenditure, electioneering communication or disbursement in violation of this section, the Internet platform shall immediately remove the communication and notify the commission.

8. Penalties. The commission may assess a penalty of not more than \$5,000 or double the amount of the contribution, expenditure, independent expenditure, electioneering communication, donation or disbursement involved in the violation, whichever is greater, for a violation of this section. In assessing a penalty under this section, the commission shall consider, among other things, whether the violation was intentional and whether the person that committed the violation attempted to conceal or misrepresent the identity of the relevant foreign government-influenced entity.

9. Violations. Notwithstanding section 1004, a person that knowingly violates subsections 2 through 5 commits a Class C crime.

10. Rules. The commission shall adopt rules to administer the provisions of this section. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

11. Applicability. Notwithstanding section 1051, this section applies to all persons, including candidates, their treasurers and authorized committees under section 1013-A, subsection 1; party committees under section 1013-A, subsection 3; and committees under section 1052, subsection 2.

Sec. 2. Accountability of Maine's Congressional Delegation to the people of Maine with respect to federal anticorruption constitutional amendment.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Actively support and promote" means to sponsor or cosponsor in Congress a joint resolution proposing pursuant to the United States Constitution, Article V an anticorruption constitutional amendment, and to advance such constitutional amendment by engaging, working and negotiating with others in Congress, the State of Maine and the United States in good faith and without respect to party partisanship to secure passage of such constitutional amendment in Congress so that Maine and the several states may consider ratification of such constitutional amendment.

B. "Anticorruption constitutional amendment" means a proposed amendment to the United States Constitution that is consistent with the principles of the Maine Resolution and the reaffirmation of the Maine Resolution.

C. "The Maine Resolution" means the joint resolution, Senate Paper 548, adopted by the 126th Legislature of the State of Maine on April 30, 2013 calling for an amendment to the United States Constitution to "reaffirm the power of citizens through their government to regulate the raising and spending of money in elections."

2. Reaffirmation of the Maine Resolution. The Maine Resolution is hereby reaffirmed and clarified to call on each member of Maine's Congressional Delegation to actively support and promote an effective anticorruption amendment to the United States Constitution to secure the following principles and rights:

A. That governmental power derives from the people, and influence and participation in government is a right of all the people and under the Constitution of Maine and the United States Constitution, should not be allocated or constrained based on the use of wealth to influence the outcome of elections and referenda; and

B. That Maine and the several states, and Congress with respect to federal elections, must have the authority to enact reasonable limits on the role of money in elections and referenda to secure the rights of the people of Maine to free speech, representation and participation in self-government; the principles of federalism and the sovereignty of the State of Maine and the several states; and the integrity of Maine elections and referenda against corruption and foreign influence.

3. Accountability. For 7 consecutive years beginning on July 31, 2023, the Commission on Governmental Ethics and Election Practices shall issue a report, following public comment, identifying anticorruption amendment proposals introduced in Congress, and the members of Maine's Congressional Delegation sponsoring such proposals.



SUMMARY

This initiated bill makes the following changes to the election laws.

1. It prohibits a foreign government-influenced entity from making, directly or indirectly, a contribution, expenditure, independent expenditure, electioneering communication or any other donation or disbursement of funds to influence the nomination or election of a candidate or the initiation or approval of a referendum. It prohibits a person from knowingly or recklessly providing substantial assistance, with or without compensation, in the making of an expenditure, independent expenditure, electioneering communication or disbursement in violation of this prohibition. It prohibits a person from knowingly soliciting, accepting or receiving a contribution or donation in violation of this prohibition and prohibits a person from knowingly or recklessly providing substantial assistance, with or without compensation, in the making, solicitation, acceptance or receipt of a contribution or donation in violation of this prohibition.

2. It prohibits a person from structuring or attempting to structure a solicitation, contribution, expenditure, independent expenditure, electioneering communication, donation, disbursement or other transaction to evade the prohibitions and requirements in the initiated bill.

3. It requires, whenever a foreign government-influenced entity disburses funds to finance a public communication to influence the public or government officials on issues of state or local policy or foreign relations, that the communication include a clear and conspicuous statement naming the foreign government-influenced entity as a sponsor of the communication.

4. It directs each television or radio broadcasting station, provider of cable or satellite television, print news outlet and Internet platform to establish due diligence policies to prevent the distribution of communications for which foreign government-influenced entities have made prohibited expenditures, independent expenditures, electioneering communications or disbursements and further directs an Internet platform to, upon discovery, immediately remove any such communications from its platform.

5. It provides that the Commission on Governmental Ethics and Election Practices may assess a penalty of not more than \$5,000 or double the amount of the contribution, expenditure, independent expenditure, electioneering communication, donation or disbursement involved in the violation, whichever is greater, for a violation of the initiated bill.

6. The initiated bill also calls on each member of Maine's Congressional Delegation to actively support and promote an effective anticorruption amendment to the United States Constitution to reaffirm the power of citizens through their government to regulate the raising and spending of money in elections.

7. For 7 consecutive years beginning July 31, 2023, the initiated bill requires the Commission on Governmental Ethics and Election Practices to issue a report, following public comment, identifying anticorruption amendment proposals introduced in Congress and the members of Maine's Congressional Delegation sponsoring such proposals.

STATE OF MAINE

—
**IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN**
—

**JOINT RESOLUTION MEMORIALIZING THE UNITED STATES
CONGRESS TO PASS A CONSTITUTIONAL AMENDMENT TO
REVERSE THE RULING OF THE UNITED STATES SUPREME
COURT IN CITIZENS UNITED V. FEDERAL ELECTION
COMMISSION**

WE, your Memorialists, the Members of the One Hundred and Twenty-sixth Legislature of the State of Maine now assembled in the First Regular Session, most respectfully present and petition the United States Congress as follows:

WHEREAS, United States Supreme Court rulings, beginning with *Buckley v. Valeo* and continuing through *Citizens United v. Federal Election Commission* and others, disproportionately elevate the role of wealthy special interests in elections and diminish the voices and influence of ordinary Americans; and

WHEREAS, Maine citizens wish to develop effective tools for self-governance, including strong laws governing elections and campaign finance; and

WHEREAS, the current legal landscape severely constrains the range of options available to citizens, frustrating efforts to reduce the influence of moneyed interest in elections and in government; now, therefore, be it

RESOLVED: That We, your Memorialists, hereby declare our support for an amendment to the United States Constitution regarding campaign finance that would reaffirm the power of citizens through their government to regulate the raising and spending of money in elections; and be it further

RESOLVED: That We, your Memorialists, call upon each Member of the Maine Congressional Delegation to actively support and promote in Congress an amendment to the United States Constitution on campaign finance; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the President of the United States Senate, to the Speaker of the United States House of Representatives and to each Member of the Maine Congressional Delegation.