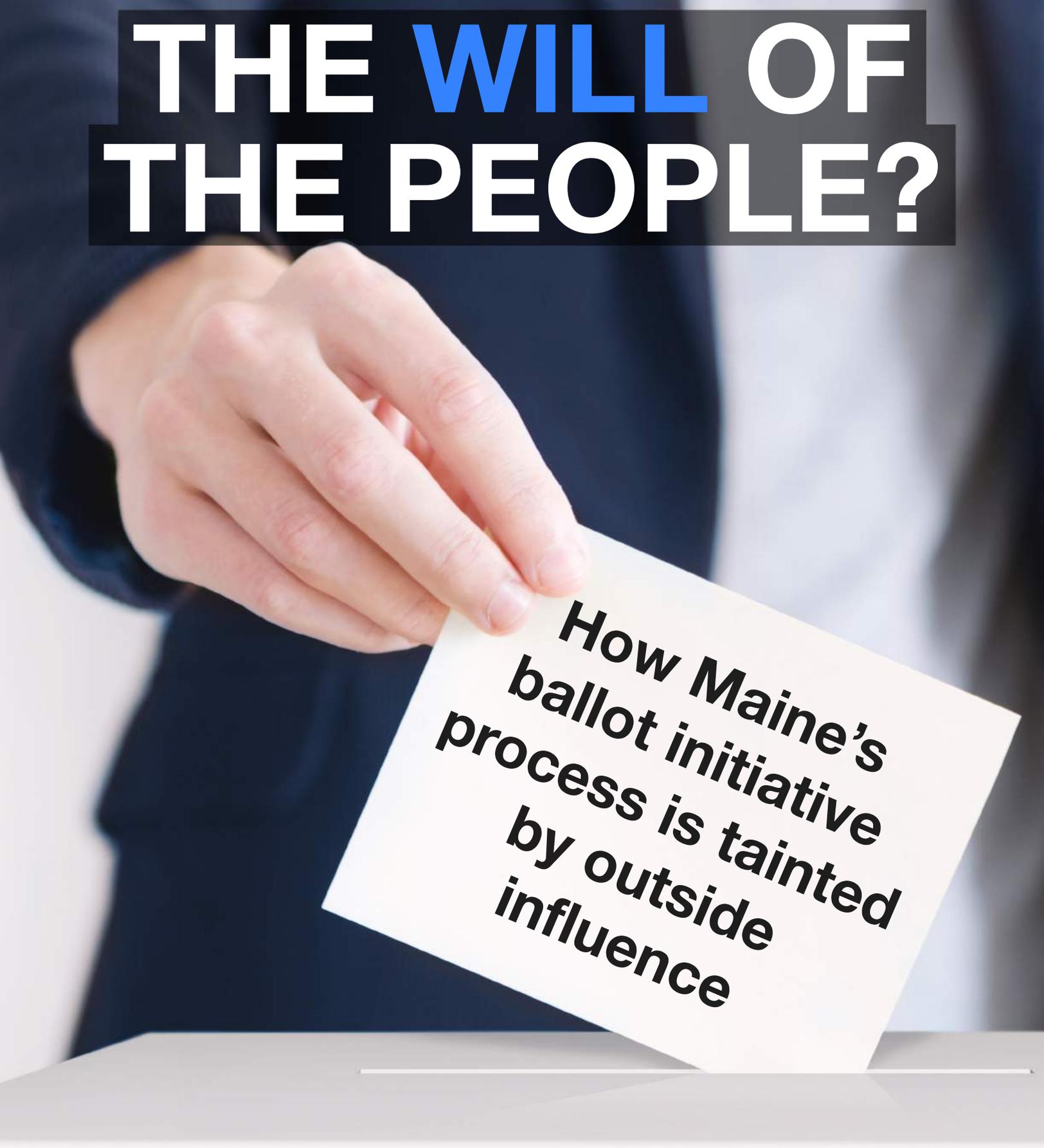


THE **WILL** OF THE PEOPLE?

A close-up photograph of a person's hand holding a white ballot paper. The hand is positioned as if about to place the ballot into a grey ballot box. The background is blurred, showing a person in a dark suit and light shirt. The text on the ballot is printed in a bold, black, sans-serif font and is tilted to match the angle of the paper.

**How Maine's
ballot initiative
process is tainted
by outside
influence**

**Jacob Posik
Liam Sigaud**

August 2018

A MAINE HERITAGE POLICY CENTER REPORT

THE MAINE HERITAGE POLICY CENTER

THE WILL OF THE PEOPLE?

*How Maine's ballot initiative process is
tainted by outside influence*

AUGUST 2018

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ABOUT THE MAINE HERITAGE POLICY CENTER

The Maine Heritage Policy Center is a research and educational organization whose mission is to formulate and promote conservative public policies based on the principles of free enterprise; limited, constitutional government; individual freedom; and traditional American values – all for the purpose of providing public policy solutions that benefit the people of Maine.

MHPC's staff pursues this mission by undertaking accurate and timely research and marketing these findings to its primary audience: the Maine Legislature, nonpartisan Legislative staff, the executive branch, the state's media, and the broad policy community. MHPC's products include publications, articles, conferences, and policy briefings.

Governed by an independent Board of Directors, The Maine Heritage Policy Center is a nonprofit, nonpartisan, tax-exempt organization. MHPC relies on the generous support from individuals, corporations, and foundations, and does not accept government funds or perform contract work.

INTRODUCTION

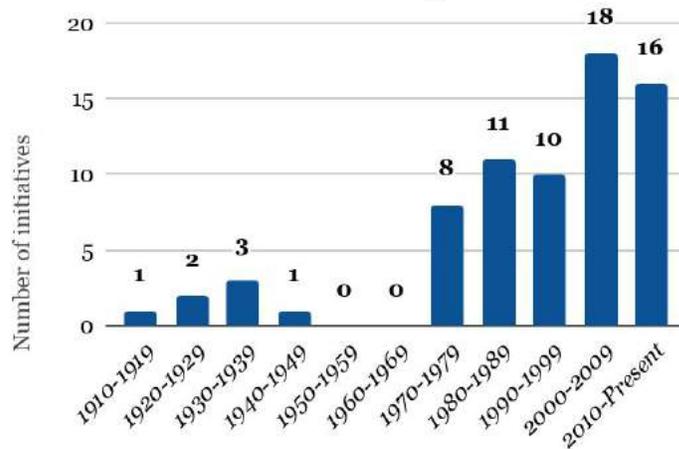
In 1908, Maine voters approved a legislatively-referred constitutional amendment to adopt a statewide initiative and referendum (I&R) process that allows citizens to initiate and repeal legislation through indirect initiative and veto referendum. The amendment to adopt Maine’s I&R system was initiated by advocates of municipal ownership of public utilities who wished to use the system as a means to achieve that goal.^[1]

Relative to states with similar systems in place since the early 20th century, Maine’s ballot initiative system has been used somewhat sparingly, however its usage has spiked significantly in recent decades.^[2] Between 1910 and 1969, Maine voters considered just seven ballot measures initiated by their peers. From 1970 to 2009, however, Maine’s I&R system was utilized 47 times (Figure 1). Since 2010, 16 initiative or veto referendums have appeared on the Maine ballot (including 2018 ballot questions). Similarly, the number of initiatives dealing with tax and budget issues has surged from just 10 between 1910 and 1969 to 35 between 1970 and 2018. (Figure 2).

Initiative and referendum systems are intended to serve citizens when a legislative body neglects to adequately represent voters, particularly by failing or refusing to act on policies that an overwhelming majority of its constituents support. In recent years, however, Maine’s I&R process has been utilized extensively

by advocacy groups who use outside money to achieve narrow victories at the ballot box. Today, the process is regularly exploited by out-of-state interest groups that, often without formalized opposition, use Maine as a laboratory for ambitious policy proposals that could not withstand the deliberative scrutiny of the Maine Legislature.

Figure 1: I&R Questions Appearing on Maine Ballot by Decade

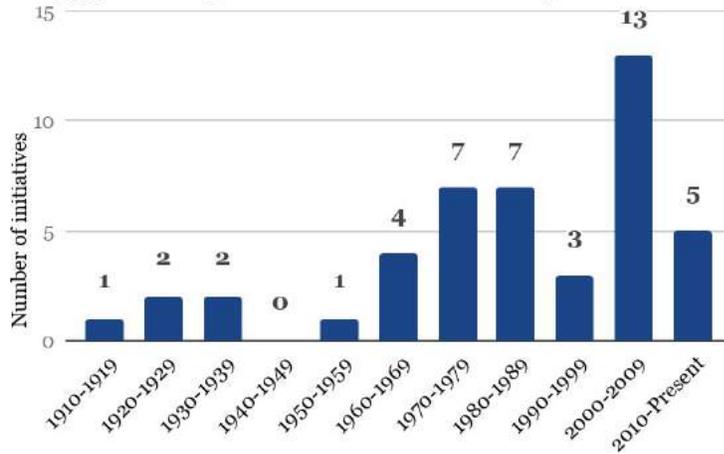


Source: National Conference of State Legislatures

¹ <http://www.iandrinstute.org/states/state.cfm?id=10>

² <http://www.iandrinstute.org/data.cfm>

Figure 2: Tax and Budget Measures Appearing on Maine Ballot by Decade



Source: National Conference of State Legislatures

This drastic spike in the utilization of Maine’s I&R system makes it timely to examine the influence of groups that shape public policy at the ballot box. This report, drawing on data collected from the Maine Commission on Governmental Ethics and Election Practices (Maine Ethics Commission, or MEC), the Maine Department of the Secretary of State, and other sources, will provide an overview of the laws and rules governing Maine’s ballot initiative process

and examine the weaknesses of Maine’s system relative to other states. In addition, this report seeks to quantify the influence of groups registered to support or oppose ballot initiatives between 2009 and 2017, and to determine whether the financial support or opposition to each measure originated primarily from in- or out-of-state sources.

This data will enable us to provide accurate estimates of the total funds raised by participating groups over this period. To evaluate how our data measures up to groups who have performed similar analyses, our estimates are compared to figures compiled by the nonpartisan National Institute on Money in Politics, a revered campaign finance watchdog organization that operates FollowTheMoney.org (FTM). The figures published on FollowTheMoney.org are aggregates of contribution filings collected from Maine Ethics Commission and similar state-level disclosure agencies, and are offered for public consumption free of charge. Supporters of the institute hail FTM as “the nation’s only nonpartisan, verifiable archive of contributions to political campaigns in all 50 states.”^[3]

While the National Institute on Money and Politics offers a valuable public service through FollowTheMoney.org, the data featured on its website “double counts” funds, meaning when a Maine-based political action committee (PAC) or ballot question committee (BQC) contributes to another, it is recorded in final contribution tallies. Similarly, the aggregate fundraising figures for each ballot question featured on FTM include all contributions received by supporting committees, even if a committee weighed in on multiple initiatives in a single cycle (FTM adequately discloses that its figures represent double counted

³ <https://www.macfound.org/maceirecipients/91/>

funds). Nonetheless, this methodology is imperfect for reasons identified later in this report. The data compiled by The Maine Heritage Policy Center (MHPC) for this report does not double count contributions made in committee-to-committee transfers, nor double count funds in annual fundraising estimates that were contributed to groups that weighed in on more than one ballot question within a single cycle.

MAINE'S BALLOT INITIATIVE PROCESS

In Maine, a ballot question can be a legislatively-referred statute or constitutional amendment, a citizen-initiated statute, or a veto referendum. Maine employs an indirect initiative system that allows the state legislature to enact a ballot measure before it goes out to voters. Indirect initiatives are laws crafted by citizens and referred to the legislature once proponents have collected enough signatures for the measure to qualify for the ballot.

Qualifying initiatives in Maine are subject to a process whereby the state legislature may enact the law, take no action, or submit a competing measure for voters to consider simultaneously. If the original initiative is not enacted by the legislature, only then can it be referred to the people for statewide vote. The legislature may not amend initiatives before they appear on the ballot, nor can they prevent a statewide vote from occurring (except to enact a measure before it is referred for statewide vote). This process in Maine is referred to as the Citizen Initiative process. Signatures collected for indirect initiatives must be filed with the Secretary of State by the 50th day of the first regular legislative session or the 25th day of the second regular session of the legislature.^[4]

Veto referendums, commonly referred to as the “People’s Veto” in Maine, are ballot questions that ask voters if they want to reject a new law passed by the legislature. Signatures collected for People’s Veto referendums must be filed within 90 days of the adjournment of the legislative session in which the law targeted for repeal was passed by the legislature.^[5] The legislature may also refer issues, such as constitutional amendments or bond measures, to voters for statewide vote. Maine citizens do not have the power to directly initiate constitutional amendments or legislation for statewide vote without formal action by the Maine Legislature.

To begin circulating a petition for an issue to appear on the ballot, petitioning organizations are required to file an application that must include the full language of the initiative, a summary of its purpose, and signatures from six registered voters. Maine’s Department of

⁴ <https://www.maine.gov/sos/cec/elec/citizens/inipak.html>

⁵ <https://www.maine.gov/sos/cec/elec/citizens/peoppak.html>

the Secretary of State then reviews the application to ensure it conforms to drafting protocols, and may work with the Office of the Revisor of Statutes and sponsoring group to formulate final language.

The Office of the Revisor of Statutes is responsible for formulating a concise summary of the proposal to be included with initiative petitions, and the Office of Fiscal and Program Review is required to prepare a fiscal impact statement that summarizes how the proposal affects state revenues. Once the Secretary of State has approved the content of the initiative, petitions are disbursed to sponsors, who are responsible for printing copies for circulation. Sponsors then solicit signatures from Maine citizens in hopes of obtaining enough signatures to meet or exceed the threshold outlined in the Maine Constitution.^[6]

The sponsor of an indirect initiative or veto referendum is currently required to obtain 61,123 valid signatures from Maine citizens to move a measure onto the ballot, which meets the constitutional requirement of 10 percent of the total votes cast for governor in the most recent gubernatorial election.^[7]

Petition circulators are required to, in the presence of a notary public, sign an affidavit affirming that the circulator witnessed every citizen act of signing the petition.^[8] To legally circulate a petition in Maine, you must be a registered voter; indirectly requiring circulators to be residents of Maine.^[9] Once the circulation process is complete, signatures are submitted to municipal election clerks for certification and are then given to the Secretary of State to verify whether the measure qualifies for the ballot.^[10] Signatures may be collected for up to 18 months after the Secretary of State has furnished petitions. A signature is valid for one year after it is signed on a petition.

If the Secretary of State determines an initiative or referendum qualifies, it must be given space on the ballot, and the question that appears before Maine voters must be “simple, clear, concise and direct,” at the full discretion of the Secretary of State.^[11] In Maine, the final ballot language is not determined until the Secretary of State accepts proposed changes to the language during a 30-day public comment period.^[12] After accepting public comment, the Secretary of State reviews the proposed modifications, makes changes if necessary, and finalizes the ballot language. Individuals and organizations may also pay a \$500 fee to have public comments published in the Secretary of State’s *Citizen’s Guide to the*

⁶ https://ballotpedia.org/Laws_governing_the_initiative_process_in_Maine

⁷ <https://www.maine.gov/legis/const/#a4>

⁸ <http://www.mainelegislature.org/legis/statutes/21-A/title21-Asec902.html>

⁹ <http://www.mainelegislature.org/legis/statutes/21-A/title21-Asec903-A.html>

¹⁰ <http://www.mainelegislature.org/legis/statutes/21-A/title21-Asec905.html>

¹¹ <http://www.mainelegislature.org/legis/statutes/21-A/title21-Asec906.html>

¹² <http://www.mainelegislature.org/legis/statutes/21-A/title21-Asec905-A.html>

Referendum Election, which is published before each election in which Maine voters consider citizen-initiated ballot questions.^[13]

Maine law does not prevent petition circulators from receiving payment for collecting signatures for indirect initiatives or veto referendums. Paid circulators must, however, register with the Maine Ethics Commission. Citizens may not be compensated by circulators for providing their signature for a ballot initiative.^[14] Committees supporting or opposing an initiative that raise or spend more than \$5,000 must register with Maine Ethics Commission.^[15] Contributions of \$5,000 or more and expenditures of \$1,000 or more in the last 13 days leading up to an election must be reported to Maine Ethics Commission within 24 hours of receipt.^[16]

THE FLAWS OF MAINE’S SYSTEM

Maine’s ballot initiative system is beginning to show its age. Since Maine’s I&R system was adopted in 1908, 17 other states have passed a version of their own, and many have implemented checks and balances on their systems that do not exist in Maine. Some of the most common regulations imposed on I&R processes by state governments include subject restrictions, signature distribution requirements, and supermajority or percent of vote provisions.

Figure 3: States Imposing Common Initiative Restrictions		
Subject Restrictions	Signature Distribution Requirements	Supermajority and Percent of Vote Provisions
Alaska, Arizona, California, Colorado, Florida, Missouri, Montana, Nebraska, Nevada, Ohio, Oklahoma, Oregon, Utah, Washington, and Wyoming	Alaska, Arizona, Florida, Idaho, Massachusetts, Mississippi, Missouri, Montana, Nebraska, Nevada, Ohio, Utah, and Wyoming	Florida, Illinois, Massachusetts, Mississippi, Nebraska, Nevada, Oregon, Washington, and Wyoming

Source: Initiative & Referendum Institute, National Conference of State Legislatures

SUBJECT RESTRICTIONS

The system approved by Maine voters over a century ago does not impose a rule requiring initiatives to involve a single subject or issue, nor are there any restrictions concerning the subject matter of a ballot measure in Maine. More than half (15) of the 26 states with some

¹³ <https://www.maine.gov/sos/cec/rules/29/chaps29.htm>

¹⁴ <http://www.mainelegislature.org/legis/statutes/21-A/title21-Asec904-B.html>

¹⁵ <https://www.maine.gov/ethics/bqcs/index.htm>

¹⁶ <https://www.maine.gov/ethics/pacs/reporting.htm>

form of I&R process employ a single subject rule, and three-fifths of these states adopted their systems after Maine.^[17]

Half of the 24 states that maintain initiative systems bar petitioners from initiating ballot questions based on the subject matter of the initiative. For example, initiatives in Alaska and Wyoming may not dedicate revenues, make or repeal appropriations, or affect the judiciary. Massachusetts prohibits measures related to religion, the judiciary, specific appropriations, the 18th Amendment of the Constitution, and anything inconsistent with the rights of individuals as enumerated in the Constitution. Similarly, Mississippi does not allow ballot questions to repeal or modify the state's Bill of Rights, public employees' retirement system, right-to-work provision, or the initiative process itself.^[18] Maine's system does not employ any such subject restriction.

Several states prevent citizens from initiating the same, or substantially similar, proposals within a defined period of time. Citizens in Massachusetts, Mississippi, and Utah, for example, may not initiate the same measure over a two-year period. Voters in Nebraska must wait three years to initiate the same proposal, and for repeat measures in Oklahoma, the signature threshold to achieve ballot status substantially increases if the same measure has been initiated within the last three years. Wyoming does not allow the same ballot measure to be initiated more than once in five years.^[19] Maine law does not limit how soon a failed initiative can be reattempted or raise the signature threshold for repeat measures to achieve ballot status.

SIGNATURE DISTRIBUTION REQUIREMENTS

As Maine's population has become more concentrated in southern and coastal areas over the last century, ballot measures have increasingly reflected the interests of urban populations. Maine—unlike many other states—does not employ signature distribution requirements for petition circulators, meaning any proportion of signatures may be collected from any subdivision of the state. As a result, signature gatherers often ignore whole counties, and particularly rural areas, when collecting signatures.

Since the adoption of Maine's I&R system, Maine's demographic landscape has changed dramatically (Figure 4). In 1910, the state's population was much more evenly distributed, making it unlikely that one part of the state could unilaterally impose its will on the rest of the state. Because of increasing urbanization and population declines in rural areas over past decades, however, it is now possible for the residents of Cumberland and York

¹⁷ Initiative & Referendum Institute, National Conference of State Legislatures

¹⁸ <http://www.ncsl.org/research/elections-and-campaigns/initiative-subject-restrictions.aspx>

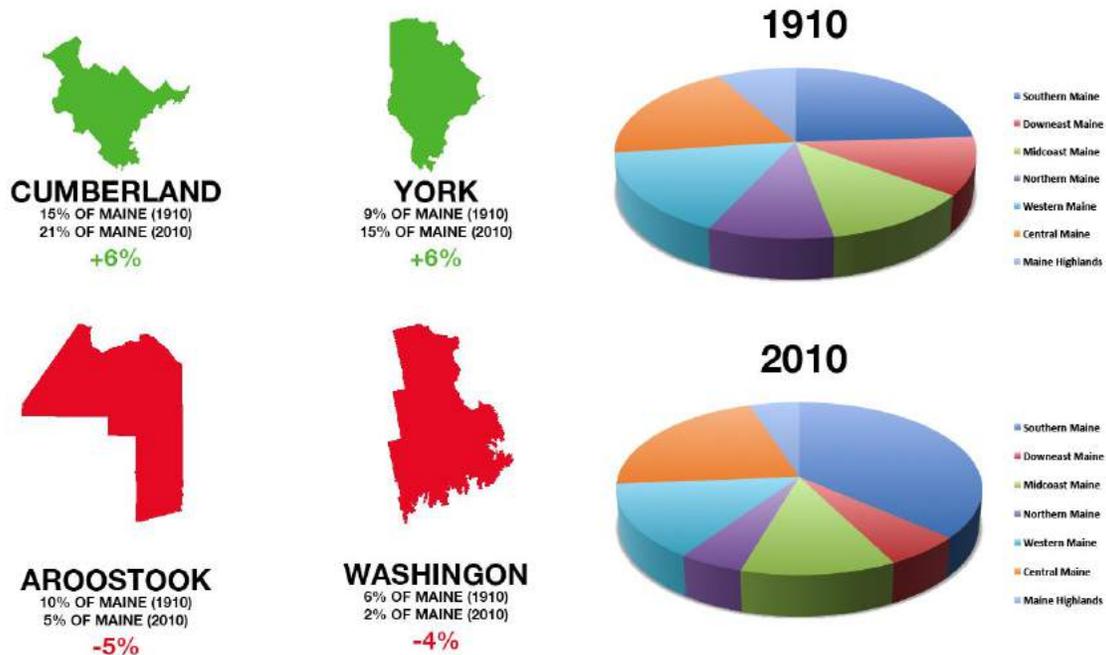
¹⁹ http://sos.wy.state.wy.us/Elections/Docs/Initiative_Process.pdf

Counties to place proposals on the ballot that could be detrimental to interests in other areas of the state. Legislative testimony submitted by the Sportsman’s Alliance of Maine in 2017 contends that the sponsoring groups of Question 1 in 2014 and Question 3 in 2016 received the majority of their signatures in the First Congressional District, totalling 74 and 70 percent, respectively.^[20]

Consider, for example, the residents of Cumberland and York Counties made up 24 percent of the state population in 1910, but constituted 36 percent by 2010. Conversely, Aroostook and Washington Counties—which comprised 16 percent of the state population in 1910—had just seven percent in 2010. Today, the combined population of Cumberland and York counties is nearly 500,000 people, more than one-third of the entire state.

FIGURE 4: SHIFT OF MAINE POPULATION BY COUNTY AND REGION

Source: MHPC Analysis of U.S. Census Data



More than half (13) of the 24 states that grant initiative rights to their citizens have geographic distribution requirements for signature collection, preventing sponsoring groups from gathering signatures exclusively in the most densely populated urban areas.^[21] These provisions ensure all voters, not just those in urban areas, have a say in which proposals achieve ballot status, which is incredibly important as Maine moves from a geographically well-distributed state to one dominated by a single region.

²⁰ <https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=43082>

²¹ <http://www.iandrinstute.org/docs/Almanac-Signature-and-SS-and-GD-Requirements.pdf>

SUPERMAJORITY AND PERCENT OF VOTE PROVISIONS

Nine states impose unique but notable regulations on the proportion of affirmative votes required to enact initiatives or constitutional amendments, and in some states that threshold may depend on the percent of votes cast for or against an initiative relative to the total number of votes cast in an election.

Nevada requires initiative constitutional amendments to pass by a majority vote in two successive general elections, and is the only state that imposes such a requirement.^[22] In Colorado, constitutional amendments require the approval of 55 percent of voters.^[23] Massachusetts allows initiatives and constitutional amendments to be enacted by simple majorities if the number of votes cast on the measure equal 30 percent of the total votes cast in the election. Mississippi, Nebraska, and Washington employ similar provisions at varying thresholds.^[24] In Florida, constitutional amendments require the affirmative vote of 60 percent of those voting on the measure. Constitutional amendments that impose new taxes or fees require the approval of two-thirds of Florida voters voting in the election in which the amendment is considered.^[25]

In contrast, initiatives and referendums in Maine may pass by simple majorities. Similarly, while constitutional amendments may only be referred to voters after a two-thirds vote in both chambers of the legislature, they may also be enacted by a simple majorities.^[26]

PARAMETERS OF THE DATA

To properly account for the double counting phenomenon, the findings in the following sections of this report exclude contributions made by one registered PAC or BQC to another between 2009 and 2017, and utilize donor state data from Maine Ethics Commission filings to delineate in-state and out-of-state contributions. Further, to delineate funds raised by groups that participated in more than one ballot initiative in a single cycle, we relied on Schedule B expenditure data (expenditures to support or oppose) listed in Maine Ethics Commission filings for the findings featured in Figures 5-13. Thus, the fundraising totals attributed to these groups, reflected in annual fundraising figures in Figures 9-13, are conservative estimates for a number of reasons.

²² <http://www.iandrinstitute.org/states/state.cfm?id=18>

²³ <https://www.denverpost.com/2016/12/28/amendment-71-law-raise-the-bar-ballot-measures/>

²⁴ <http://www.ncsl.org/research/elections-and-campaigns/supermajority-vote-requirements.aspx>

²⁵ <http://www.leg.state.fl.us/Statutes/Index.cfm?Mode=Constitution&Submenu=3&Tab=statutes#A11S05>

²⁶ <https://www.maine.gov/legis/lawlib/lldl/constitutionalamendments/index.html>

First, we do not double count contributions. Second, unlike BQCs, PACs are allowed to have operating expenditures, meaning some of the funds they raised were not spent to directly support or oppose an initiative. Third, many PACs and BQCs remain active after participating in a campaign cycle to engage in future initiatives. In these instances, groups may elect not to use all of the funds they raise and carry a portion into the following year. These remaining funds were not allocated for groups that participated in more than one initiative in a single cycle.

However, another method we employed to attribute fundraising totals resulted in marginally higher values than the figures published on FollowTheMoney.org, particularly among legislatively referred initiatives. If a group participated in ballot initiatives in consecutive years, the fundraising totals we attributed to them reflect only the funds raised within the year they participated in the initiative. If a group established a PAC or BQC a year or more before they participated in an initiative (and participated in no other initiatives), our fundraising estimates also include funds raised within two years leading up to the initiative. This decision was made primarily to account for all funds raised to support Question 1 in 2017, as well as other initiatives where sponsoring groups enjoyed a head start on fundraising. Negative values in Figures 5A-13A reflect the amount by which MHPC estimates exceeded FollowTheMoney.org figures.

As a matter of transparency, it is also worth noting that MHPC provided intellectual support on a small number of initiatives that appeared on the ballot over this timeframe. For this study, all fundraising estimates attributed to participating groups were formulated in the same manner.

IMPACT OF 'DOUBLE COUNTING'

Allied PACs and BQCs registered with Maine Ethics Commission frequently share financial resources in the form of cash and in-kind contributions throughout a campaign. A contribution from one registered PAC or BQC to another should not be included in fundraising totals because the contributing group first acquired those funds from another source; whether it be through loans, small contributions from supporters, or large donations from commercial or nonprofit sources. Therefore, the totals reflected on FollowTheMoney.org are generally bloated relative to the real amount of dollars used in Maine's ballot question campaigns. In 2016 alone, we identified nearly \$1.2 million in double counted funds. Further, when aggregating total contributions received by position (support or oppose) among all ballot questions in a single cycle, the funds reflected on FTM

double count contributions more than once, provided that one or more committees participated in more than one ballot question campaign in a single cycle.

In addition, double counting funds transferred among participating groups in a ballot cycle can inaccurately inflate the proportion of funds received from in-state sources. A 2013 report published by Maine Citizens For Clean Elections called the phenomenon of committee-to-committee transfers “ingrained” in Maine’s campaign finance system and found that these transactions, including ones for legislative races, accounted for 43 percent of all reported contributions in the 2012 cycle.^[27]

Pages 11-19 compare figures from FollowTheMoney.org (FTM) and findings prepared by The Maine Heritage Policy Center (MHPC) using Maine Ethics Commission data.

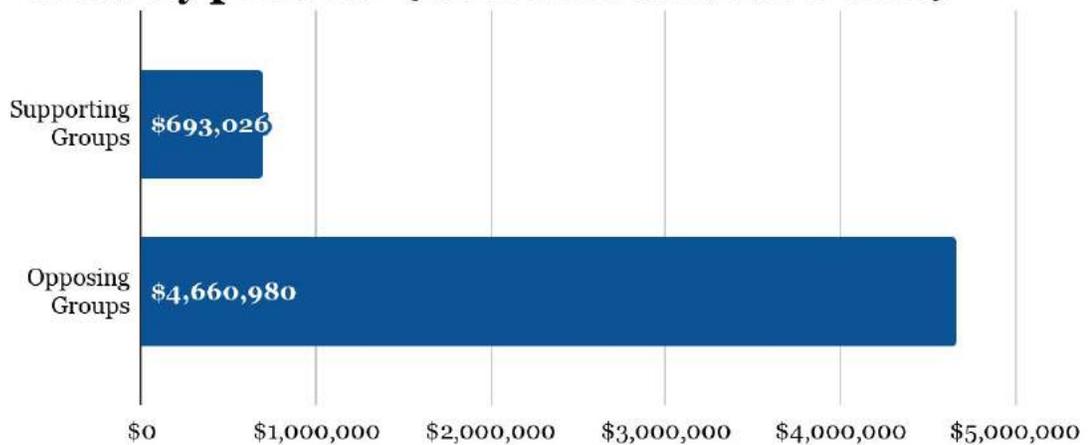
²⁷ https://www.mainelection.org/sites/default/files/web/MCCE_Report06_2013MoneySurges_Letter_0.pdf

2009 CYCLE

Figure 5: Fundraising Totals by Question and Position (FTM data vs. MHPC data)				
Funds Raised to Support (FTM data)	Funds Raised to Oppose (FTM data)	Question	Funds Raised to Support (MHPC data)	Funds Raised to Oppose (MHPC data)
\$3,920,965	\$6,562,229	1	\$3,320,109	\$5,898,119
\$87,171	\$3,259,368	2	\$24,064	\$794,084
\$62,697	\$506,500	3	\$63,944	\$457,000
\$360,446	\$3,377,235	4	\$330,136	\$1,895,149
\$163,845	\$0	5	\$163,845	\$0
\$0	\$0	6	\$0	\$0
\$0	\$0	7	\$0	\$0

Source: MHPC analysis of MEC data, FollowTheMoney.org, 2009-2017

Figure 5A: Difference in 2009 aggregate fundraising totals by position (FTM data vs. MHPC data)



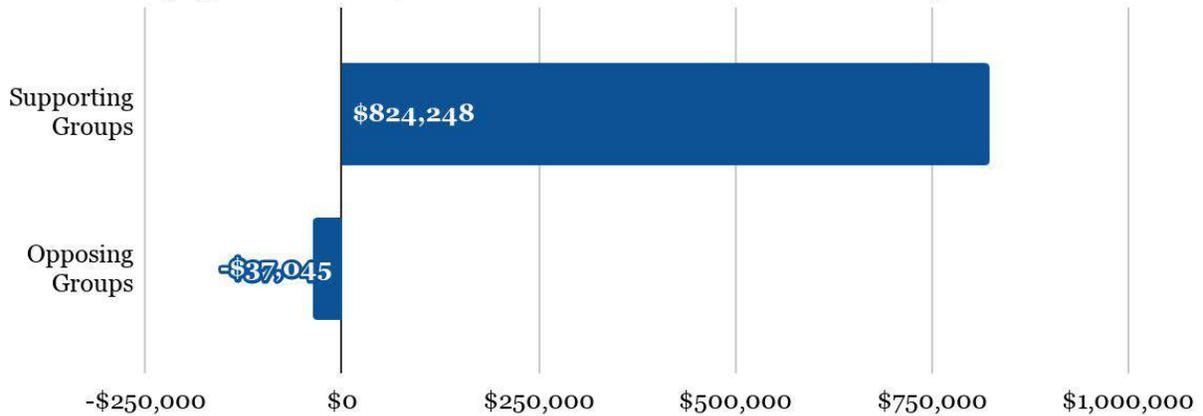
Source: MHPC analysis of MEC data, FollowTheMoney.org, 2009-2017

2010 CYCLE

Figure 6: Fundraising Totals by Question and Position (FTM data vs. MHPC data)				
Funds Raised to Support (FTM data)	Funds Raised to Oppose (FTM data)	Question	Funds Raised to Support (MHPC data)	Funds Raised to Oppose (MHPC data)
\$406,948	\$696,667	1 (Primary)	\$583,608	\$743,675
\$407,650	\$0	2	\$270,942	\$0
\$176,802	\$0	3	\$1,844	\$0
\$176,802	\$0	4	\$4,387	\$0
\$176,802	\$0	5	\$1,844	\$0
\$4,371,953	\$801,804	1 (General)	\$4,343,052	\$791,841
\$275,018	\$0	2	\$118,034	\$0
\$532,862	\$0	3	\$376,878	\$0

Source: MHPC analysis of MEC data, FollowTheMoney.org, 2009-2017

Figure 6A: Difference in 2010 aggregate fundraising totals by position (FTM data vs. MHPC data)



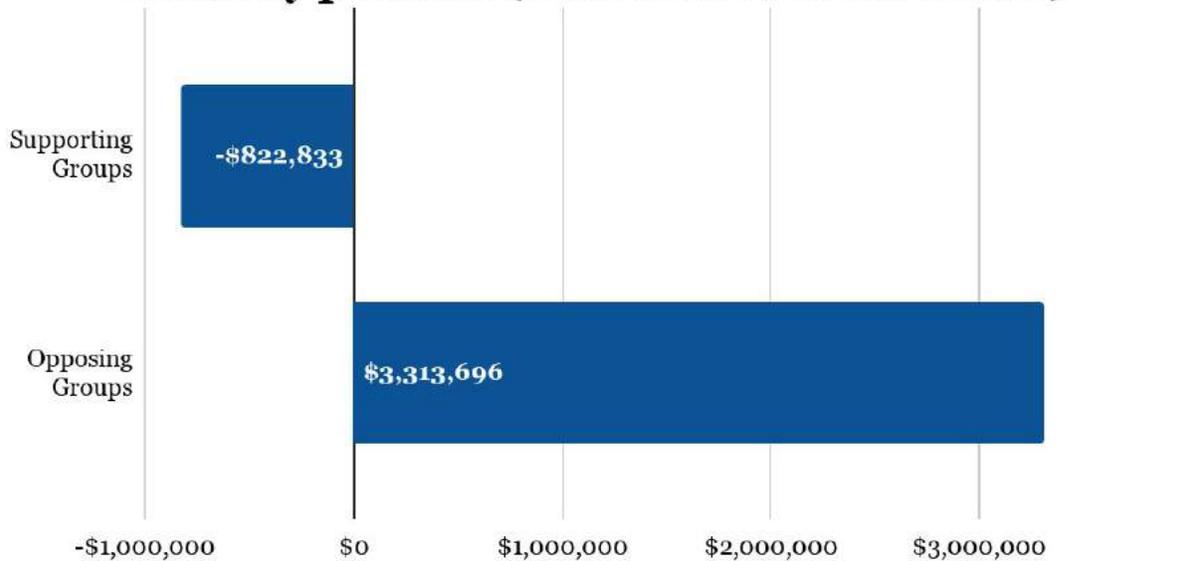
Source: MHPC analysis of MEC data, FollowTheMoney.org, 2009-2017

2011 CYCLE

Figure 7: Fundraising Totals by Question and Position (FTM data vs. MHPC data)				
Funds Raised to Support (FTM data)	Funds Raised to Oppose (FTM data)	Question	Funds Raised to Support (MHPC data)	Funds Raised to Oppose (MHPC data)
\$1,375,162	\$344,926	1	\$1,062,177	\$366,377
\$4,200,299	\$2,091,854	2	\$5,330,492	\$706,506
\$589,498	\$2,097,479	3	\$595,123	\$147,680
\$0	\$0	4	\$0	\$0

Source: MHPC analysis of MEC data, FollowTheMoney.org, 2009-2017

Figure 7A: Difference in 2011 aggregate fundraising totals by position (FTM data vs. MHPC data)



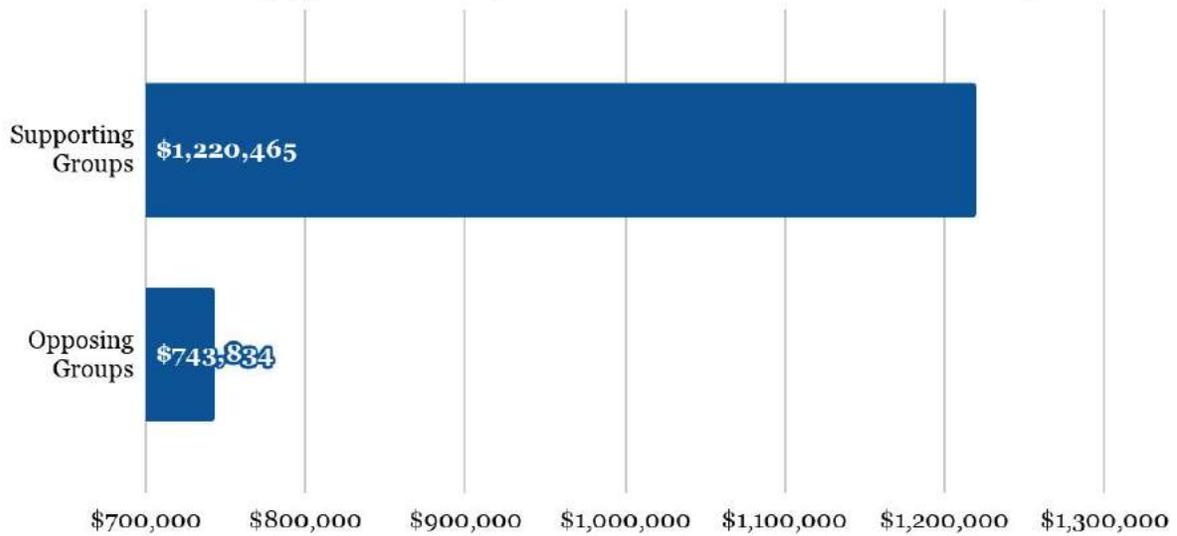
Source: MHPC analysis of MEC data, FollowTheMoney.org, 2009-2017

2012 CYCLE

Figure 8: Fundraising Totals by Question and Position (FTM data vs. MHPC data)				
Funds Raised to Support (FTM data)	Funds Raised to Oppose (FTM data)	Question	Funds Raised to Support (MHPC data)	Funds Raised to Oppose (MHPC data)
\$8,507,128	\$2,572,511	1	\$7,484,267	\$1,828,677
\$88,658	\$0	2	\$74,718	\$0
\$180,739	\$0	3	\$25	\$0
\$1,500	\$0	4	\$25	\$0
\$1,500	\$0	5	\$25	\$0

Source: MHPC analysis of MEC data, FollowTheMoney.org, 2009-2017

Figure 8A: Difference in 2012 aggregate fundraising totals by position (FTM data vs. MHPC data)



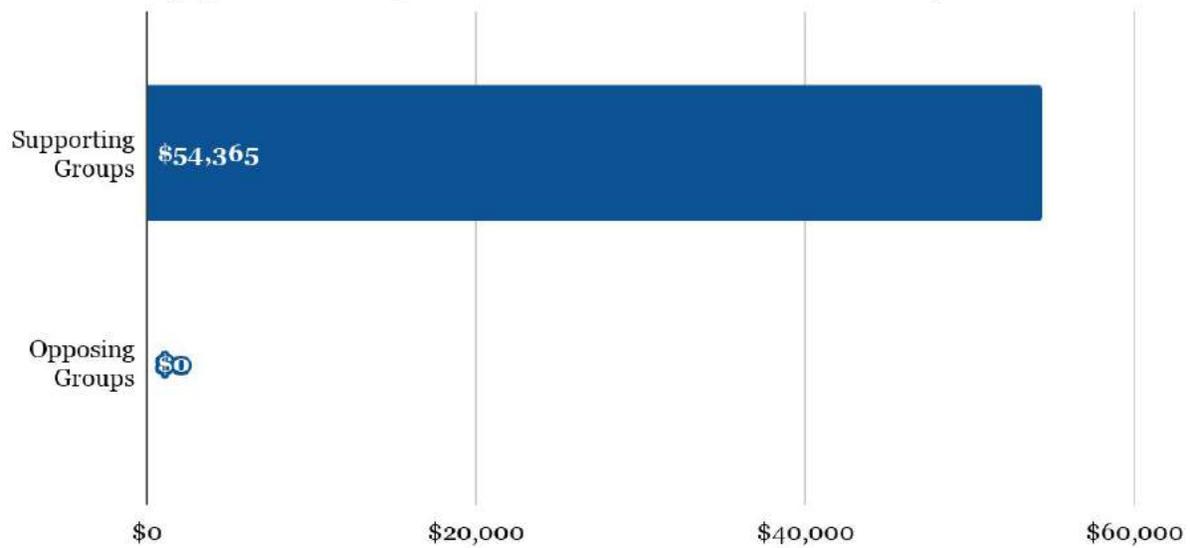
Source: MHPC analysis of MEC data, FollowTheMoney.org, 2009-2017

2013 CYCLE

Figure 9: Fundraising Totals by Question and Position (FTM data vs. MHPC data)				
Funds Raised to Support (FTM data)	Funds Raised to Oppose (FTM data)	Question	Funds Raised to Support (MHPC data)	Funds Raised to Oppose (MHPC data)
\$0	\$0	1	\$0	\$0
\$136,575	\$0	2	\$188,785	\$0
\$0	\$0	3	\$0	\$0
\$207,756	\$0	4	\$237,756	\$0
\$366,200	\$0	5	\$229,625	\$0

Source: MHPC analysis of MEC data, FollowTheMoney.org, 2009-2017

Figure 9A: Difference in 2013 aggregate fundraising totals by position (FTM data vs. MHPC data)



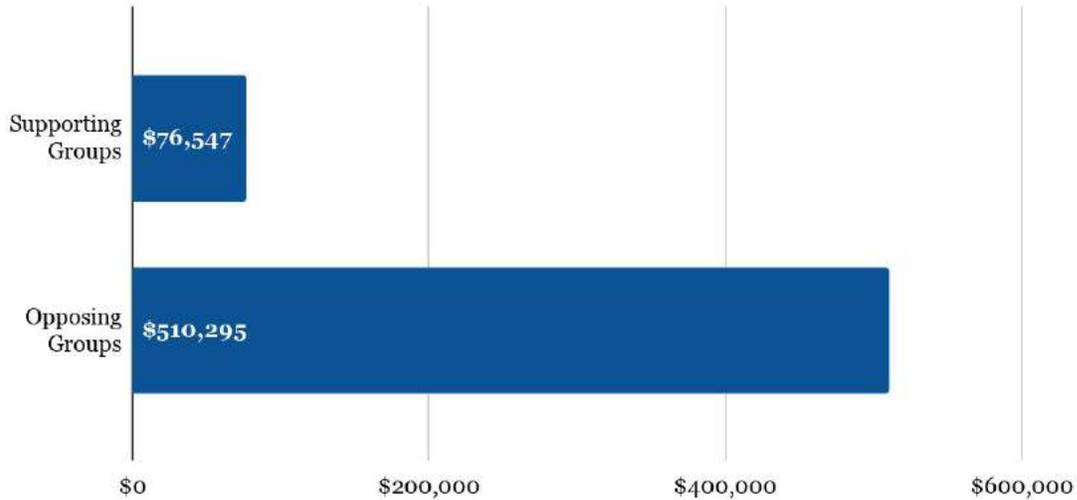
Source: MHPC analysis of MEC data, FollowTheMoney.org, 2009-2017

2014 CYCLE

Figure 10: Fundraising Totals by Question and Position (FTM data vs. MHPC data)				
Funds Raised to Support (FTM data)	Funds Raised to Oppose (FTM data)	Question	Funds Raised to Support (MHPC data)	Funds Raised to Oppose (MHPC data)
\$3,050,499	\$3,262,524	1	\$3,047,203	\$2,752,229.09
\$107,821	\$0	2	\$147,594	\$0
\$98,713	\$0	3	\$89,486	\$0
\$392,282	\$0	4	\$388,055	\$0
\$52,857	\$0	5	\$48,681	\$0
\$91,286	\$0	6	\$119	\$0
\$79,346	\$0	7	\$75,119	\$0

Source: MHPC analysis of MEC data, FollowTheMoney.org, 2009-2017

Figure 10A: Difference in 2014 aggregate fundraising totals by position (FTM data vs. MHPC data)



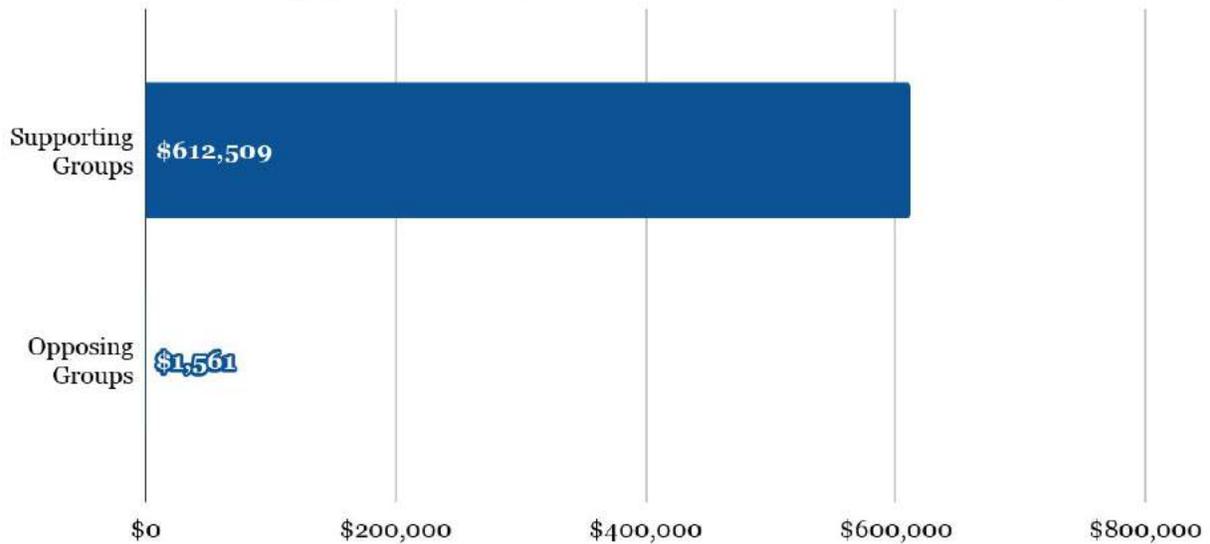
Source: MHPC analysis of MEC data, FollowTheMoney.org, 2009-2017

2015 CYCLE

Figure 11: Fundraising Totals by Question and Position (FTM data vs. MHPC data)				
Funds Raised to Support (FTM data)	Funds Raised to Oppose (FTM data)	Question	Funds Raised to Support (MHPC data)	Funds Raised to Oppose (MHPC data)
\$2,658,795	\$48,738	1	\$2,052,150	\$50,299
\$5,864	\$0	2	\$0	\$0
\$0	\$0	3	\$0	\$0

Source: MHPC analysis of MEC data, FollowTheMoney.org, 2009-2017

Figure 11A: Difference in 2015 aggregate fundraising totals by position (FTM data vs. MHPC data)



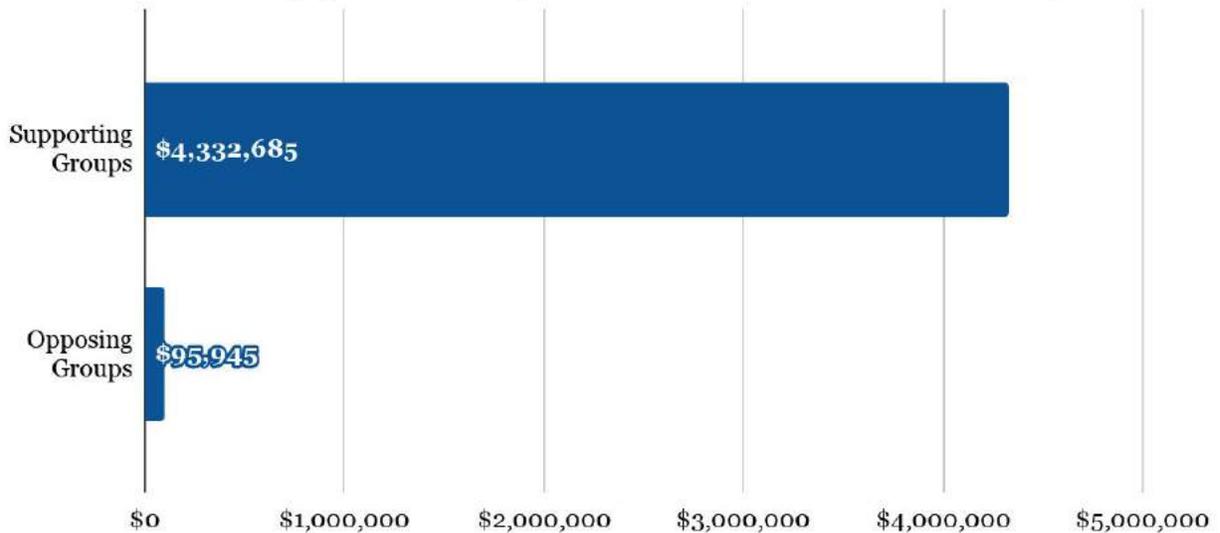
Source: MHPC analysis of MEC data, FollowTheMoney.org, 2009-2017

2016 CYCLE

Figure 12: Fundraising Totals by Question and Position (FTM data vs. MHPC data)				
Funds Raised to Support (FTM data)	Funds Raised to Oppose (FTM data)	Question	Funds Raised to Support (MHPC data)	Funds Raised to Oppose (MHPC data)
\$3,466,439	\$278,713	1	\$3,678,905	\$50,299
\$3,728,970	\$505,863	2	\$3,546,130	\$0
\$7,780,885	\$1,333,907	3	\$5,860,479	\$0
\$2,901,758	\$182,553	4	\$1,497,186	
\$2,792,697	\$0	5	\$1,755,364	
\$0	\$0	6	\$0	

Source: MHPC analysis of MEC data, FollowTheMoney.org, 2009-2017

Figure 12A: Difference in 2016 aggregate fundraising totals by position (FTM data vs. MHPC data)



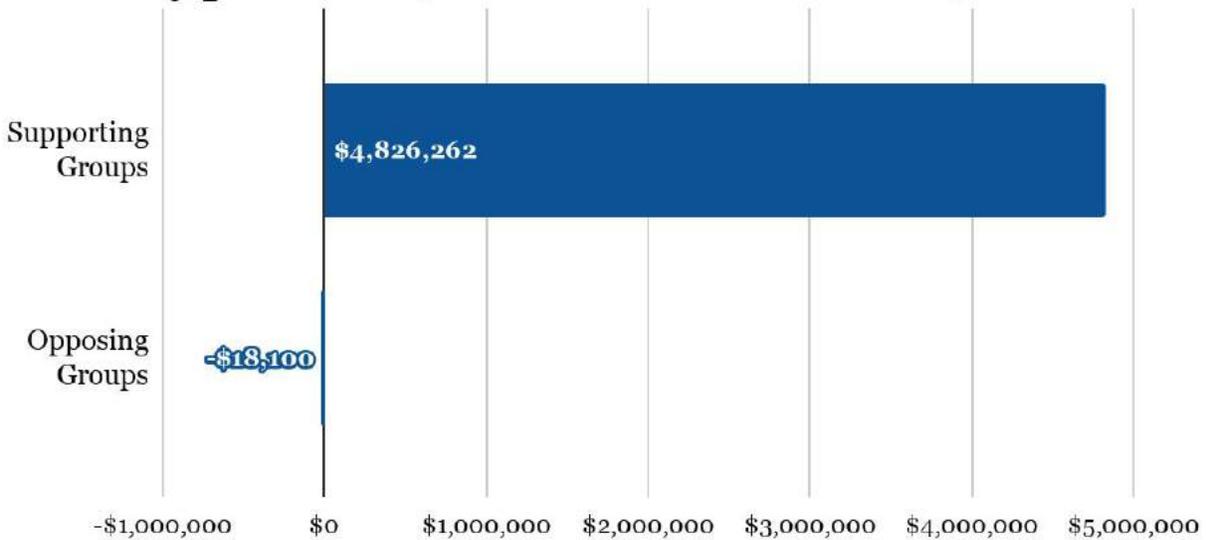
Source: MHPC analysis of MEC data, FollowTheMoney.org, 2009-2017

2017 CYCLE

Figure 13: Fundraising Totals by Question and Position (FTM data vs. MHPC data)				
Funds Raised to Support (FTM data)	Funds Raised to Oppose (FTM data)	Question	Funds Raised to Support (MHPC data)	Funds Raised to Oppose (MHPC data)
\$0	\$0	1 (Primary)	\$0	\$0
\$13,537,753	\$723,198	1 (General)	\$9,922,433	\$723,198
\$3,829,944	\$427,785	2	\$2,772,394	\$445,885
\$0	\$0	3	\$0	\$0
\$206,000	\$0	4	\$52,608	\$0

Source: MHPC analysis of MEC data, FollowTheMoney.org, 2009-2017

Figure 13A: Difference in 2017 aggregate fundraising totals by position (FTM data vs. MHPC data)



Source: MHPC analysis of MEC data, 2009-2017

OTHER FINDINGS

Because ballot initiatives and veto referendums in Maine must be crafted so that a ‘yes’ vote signifies support of the petition, sponsoring groups are always considered the “supporters” of a ballot measure. Supporting groups routinely outperformed their opposition in total funds raised between 2009 and 2017, and accepted a far greater share of contributions from out-of-state sources.

In fact, groups supporting ballot questions received more than 75 percent of the \$81.3 million raised by all participating groups over this period (Figure 14). This 3-to-1 fundraising advantage in favor of supporting groups reflects a difference of more than \$42 million in total funds raised. Among the \$81,321,456 in total funds contributed, 71 percent of funds were contributed from out-of-state sources, 23 percent came from within Maine, and six percent of funds were non-itemized.

Non-itemized funds represent contributions made to participating groups for which a donor state could not be identified. These contribution types include general treasury transfers and contributions of \$50 or less. In addition, for a short period of time during our study period, BQCs were not required to provide information on contributions of \$100 or less. Figures 14-16 exclude \$8,252.05 raised by the Maine Democratic State Committee BQC, which both supported and opposed ballot measures in 2010.

Figure 14: Total Funds Raised by Position 2009-2017		
Position	Total Funds Raised	Percent of Funds Raised
Support	\$61,728,776.26	75.91%
Oppose	\$19,584,427.27	24.09%
Total	\$81,313,203.53	100.00%

Source: MHPC analysis of MEC data, 2009-2017

Between 2009 and 2017, Maine voters saw an average of six ballot questions per year for which supporting and opposing groups raised a combined \$9 million; \$2.1 million from in-state sources and \$6.4 million from outside Maine; and \$550,000 in non-itemized contributions.

Groups supporting ballot initiatives raised a significantly smaller proportion of funds within the state (18 percent) than did opposing groups (40 percent). In addition, more than 75 percent of the funds raised by groups supporting ballot initiatives came from out-of-state contributors. While opposing groups raised a greater share of funds inside Maine, they still received more than half of their funding (53 percent) from outside sources (Figures 15 and 16). More than two-fifths of all questions considered by voters over this period, including legislatively referred matters, faced no formalized opposition but recorded supporting contributions.

Figure 15: Funds Raised by Donor State Among Supporting Groups 2009-2017

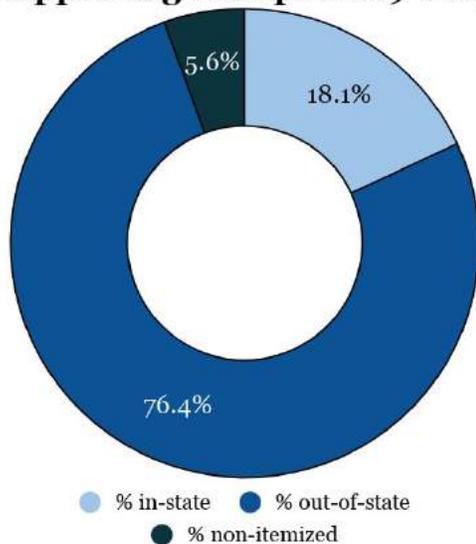
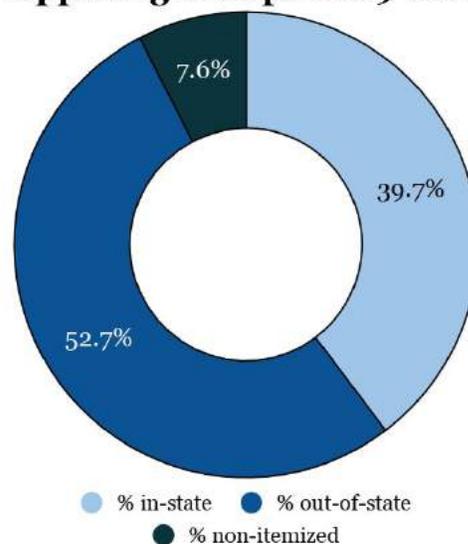


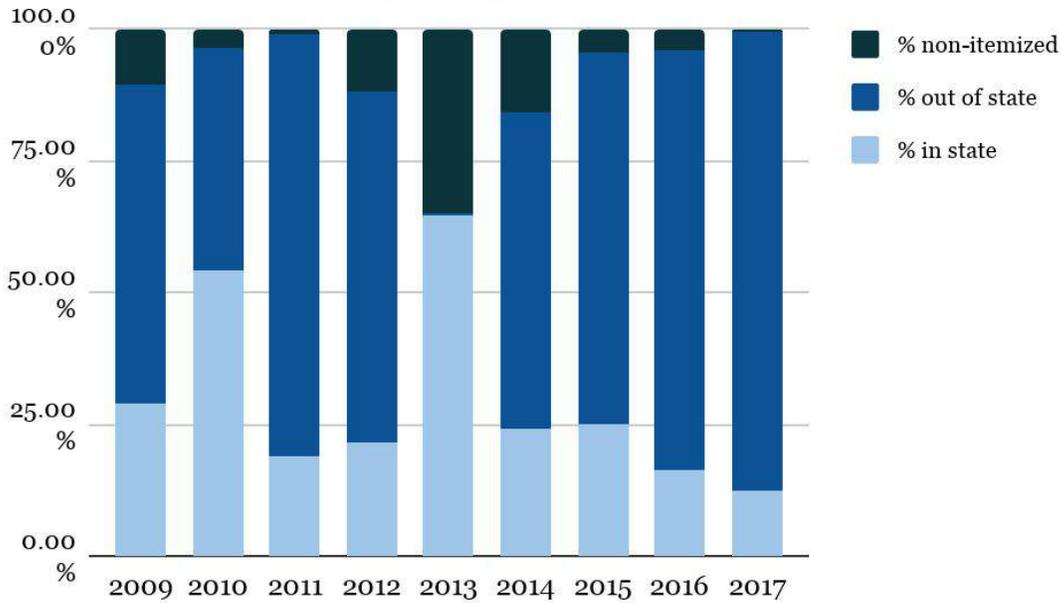
Figure 16: Funds Raised by Donor State Among Opposing Groups 2009-2017



Source: MHPC analysis of MEC data, 2009-2017

The proportion of funds contributed from outside entities averaged roughly 61 percent over the period and sharply increased to 80 and 87 percent in 2016 and 2017, respectively (Figure 17). More funds were raised from out-of-state sources than in-state sources in all but two years (2010 and 2013). Groups participating in ballot questions in 2013 received just \$1,250 from outside entities, and 2013 was the only year where less than 42 percent of contributions originated from outside of Maine. It was also the only year where less than \$1.5 million in funds were raised from out-of-state sources. Intuitively, the 2013 ballot featured only bond issues; no citizen initiatives or veto referendums appeared on the ballot. The next closest sum of out-of-state funding in a single cycle is \$1.52 million in 2015, which represented 70 percent of all funds raised that year.

**Figure 17: Funds Raised by Donor State
(all groups, 2009-2017)**



Source: MHPC analysis of MEC data, 2009-2017

A number of groups raised funds that account for a sizeable portion of all funds raised over the period (Figure 18). For example, the Mainers for Responsible Gun Ownership Fund BQC in 2016 raised \$5,848,470 to support Question 3, a figure that represents seven percent of all funds raised between 2009 and 2017. The \$9.9 million raised by groups supporting Question 1 in 2017 accounts for 12 percent of all funds raised.

Further, as seen in Figure 18, some groups funding ballot initiatives in Maine may be bankrolled entirely by out-of-state groups, without a penny contributed by Maine people. All of the groups that received 100 percent of their funding from out-of-state sources in Figure 18 supported initiatives that proposed new casinos in Maine. In Figure 18, non-itemized contributions represent the remaining funds and their corresponding percentages when the sum of in-state and out-of-state contribution percentages does not equal 100 percent.

Figure 18: Top 10 Fundraisers for Ballot Questions by Individual Group between 2009-2017 by Individual Group

Rank	Year	Question	Position	Group	Funds Raised	% in state	% out-of-state
1	2016	3	Support	Mainers for Responsible Gun Ownership	\$ 5,848,470	9.9%	89.8%
2	2017	1	Support	Progress for Maine	\$5,019,914	0%	100%
3	2011	2	Support	Putting Maine to Work	\$4,875,738	0%	100%
4	2009	1	Oppose	No on 1 Protect Maine Equality	\$4,635,854	39.2%	54.8%
5	2012	1	Support	Mainers United for Marriage	\$4,296,191	34.2%	54.0%
6	2016	1	Support	Campaign to Regulate Marijuana like Alcohol	\$3,541,154	1.9%	97.8%
7	2017	1	Support	Horseracing Jobs Fairness	\$3,470,965	0%	100%
8	2010	1	Support	Maine Taxpayers Taking Charge	\$3,400,109	0%	45.6%
9	2016	2	Support	Citizens Who Support Maine's Public Schools	\$3,364,845	21.6%	77.9%
10	2014	1	Support	Mainers for Fair Bear Hunting	\$3,047,203	8.7%	89.7%

Source: MHPC analysis of MEC data, 2009-2017

Some groups, despite raising more funds than their opponents, failed to prevail during the election. For example, groups opposing Question 3 in 2016 prevailed at the ballot despite being out-fundraised approximately 5:1. In addition, groups supporting all five citizen

initiatives on the ballot in 2016 received their funds primarily from out-of-state sources, with the smallest proportion coming from groups that supported Question 5 (ranked-choice voting), which received 63 percent of their collective funding from contributors outside Maine.

Figure 19: Characteristics of Ballot Initiatives (2009-2017)

Year	Measures where supporting groups received primarily out-of-state funding	Measures where opposing groups received primarily out-of-state funding	Prevailing measures funded primarily from out-of-state	Measures where prevailing side raised less funds
2009	Questions 1 & 5	Questions 1 & 4	Questions 1 & 5	Question 1
2010	Question 3 (General)	Question 1 (General)	Question 3 (General)	Question 1 (Primary)
2011	Questions 2 & 3	Question 1	None	Questions 2 & 3
2012	Question 1	Question 1	Question 1	Question 2
2013	None	None	None	None
2014	Question 1	None	None	Question 1
2015	Question 1	None	Question 1	None
2016	Questions 1, 2, 3, 4 & 5	Questions 1 & 3	Questions 1, 2, 4 & 5	Question 3
2017	Questions 1 & 2 (General)	None	Question 2 (General)	Question 1 (General)

Source: MHPC analysis of MEC data, 2009-2017

WHO IS FUNDING MAINE'S SYSTEM?

Outside groups and individuals that influence ballot initiatives in Maine frequently influence questions in other areas of the country (Figure 20). Many groups and individuals provide simultaneous financial support to initiatives, often times of similar substance, in different states within the same year, or over the course of several years. The largest contributions from out-of-state entities frequently originated from Washington D.C., New York, or California.

**Figure 20: 2016 Maine Initiatives Supported by Contributors
Influencing Initiatives in Other States**

Question	Supporting Groups	Largest Individual Contributors	Largest Commercial or Nonprofit Contributors	Contributors' ties to initiatives in other states
1	Campaign to Regulate Marijuana Like Alcohol, Legalize Maine	Richard J. Steves Jr., Scott Bannister, Jonathan Lewis	New Approach PAC, Marijuana Policy Project, Drug Policy Alliance	Q4 MA '16; Prop 64 CA '16; Prop 205 AZ '16; Initiative 735 WA '16
2	Citizens Who Support Maine's Public Schools, Maine State Employees Association PAC, Maine AFL-CIO PAC, Planned Parenthood Maine Action Fund PAC, Maine Center for Economic Policy BQC, Maine People's Alliance BQC	David Case, Donald McLaughlin, Susan Bartovics, Rebecca Lambert, Daniel Amory Cyrus Hagge, Peter Arabadjis, Timothy Wyant, Donald Sussman	National Education Association, Maine Education Association, AFL-CIO, United Association, Rebuild Maine, Planned Parenthood Federation of America, Rebuild Maine, The Fairness Project, Open Society Policy Center, Center For Community Change Action, Maine State Employee Association	Q2 MA '16; Amendment 1 GA '16; Measures 94 & 97 OR '16
3	Mainers for Responsible Gun Ownership Fund Brady Campaign to Prevent Gun Violence	Joshua Bekenstein, Nicholas Hanauer, Stephen King	Everytown for Gun Safety, Americans for Responsible Solutions, Maine Moms Demand Action for Gun Sense Fund	Q1 NV '16; Q2 MA '16; Initiative 1491 WA '16
4	Mainers for Informed Voters - A Project of BISC, Fairness Project Maine, Mainers for Fair Wages	Mary Quinn Delaney, Stephen Silberstein, Rachel Hendrickson, Josh Bowen	The Fairness Project, National Education Association, Restaurant Opportunities Center	Props 55, 56, 57, 62, & 66 CA '16
5	Bates College Democrats PAC, Committee for Ranked Choice Voting, Fair Vote - BQC, The Chamberlain Project PAC & BQC	Nelson Peltz, Mary Palmer, Horace Hildreth Jr., Nicholas Wagner, Stephen Scott, Ryan Sepassi	The Chamberlain Project, Maine Citizens for Clean Elections, Fair Vote, Ginn Law LLC, Action Now Initiative, Level the Playing Field	Amendment 1 GA '16; Prop 124 AZ '16

Source: National Institute on Money in Politics (FollowTheMoney.org)

These findings suggest that the support behind Maine ballot initiatives originates not within Maine, but from outside interests who seek to influence ballot question outcomes in multiple states. While Maine citizens have the power to initiate and repeal legislation on

their own, they frequently act on behalf of outside special interests that fund ballot initiatives in several states.

INCONSISTENCIES WITH MAINE ETHICS COMMISSION DATA

Data collected from the Maine Ethics Commission and their website revealed some errors and irregularities that, at times, hindered our work. Part of this is due to information systems updates at Maine Ethics Commission occurring within the time range of our study. For example, between 2009 and 2011, some entries in the contribution data exports among participating groups were labeled as Maine Clean Elections Act payments, which is not possible or permissible under state law.

To eliminate double counting, contributions made to all participating PACs and BQCs between 2009 and 2017 were uploaded into spreadsheets where formulas were used to identify when one registered committee gave to another. This should have made the elimination of double counting a rather seamless process, however numerous human errors in data entry made by reporting groups rendered our formulas somewhat useless. A large portion of the troubles experienced were due to human errors in filings—some small and others significant—that you would expect to be resolved by Maine Ethics Commission staff upon receipt of a filing.

In some instances, reporting groups used abbreviations or acronyms instead of spelling out the full name of an entity, or failed to include the terms “PAC” or “BQC” in their filings. This is a significant error because laypersons seeking to obtain campaign finance information on ballot question groups may not know what these acronyms or abbreviations denote, or whether the contributed funds originated from the founding organization, or the PAC or BQC established by the founding organization. In other instances we encountered minor spelling errors like “Maine’s People Alliance” [sic] instead of “Maine People’s Alliance,” and “Maine Republican Party” [sic] instead of “Maine Republican Party.”

In addition, some of the earlier contribution data exports miscategorized contribution entities and donor state entries, making it difficult to decipher whether funds were contributed by a founding organization or the PAC or BQC established by the organization. The difficulty of this task compounded when trying to delineate in- vs. out-of-state funding. For these discrepancies, we relied on original filings rather than data exports and consulted with Maine Ethics Commission staff for guidance.

Perhaps the most glaring error in the data came not at the fault of Maine Ethics Commission, but the groups supporting Question 1 in 2017. Three BQCs supporting the York County casino initiative—Lisa Scott, Miami Development Concepts LLC, and International Development Concepts LLC—failed to disclose more than their initial financial reports, which revealed \$4.2 million in loans to the Horseracing Jobs Fairness BQC.

An investigation by Maine Ethics Commission found that these groups, all LLCs owned by Lisa Scott, did not register until Maine Ethics Commission began questioning the Horseracing Jobs Fairness BQC (HRJF BQC) about the source of previous contributions made by Lisa Scott (as an individual, not her BQC) to HRJF BQC totalling an equivalent \$4.2 million.

The investigation concluded that Lisa Scott received \$4.2 million from three outside commercial entities; two firms owned by her brother Shawn Scott—Bridge Capital LLC of the Northern Mariana Islands and Capital Seven LLC of Nevada—and Regent Able Associate Co., Ltd, an international firm domiciled in Tokyo, Japan. Further, the investigation found that Lisa Scott and her companies were “merely conduits to funnel money from Capital Seven/Bridge Capital and Regent Able to HRJF BQC to finance the project,” and confirmed that she never produced documentation supporting that she and her companies received \$4.2 million in the form of loans.^[28]

In November 2017, just days before the election, the Maine Ethics Commission imposed a record \$500,000 in fines against four committees supporting the initiative, a figure 10 times larger than any other penalty levied by the commission.^[29] Question 1 failed resoundingly on Election Day, with 83 percent of voters rejecting the measure.

Overall, the data maintained and published by Maine Ethics Commission for public consumption is useful and reliable, and the commission offers a valuable public service to the people of Maine. The majority of inconsistencies within the data were caused by human errors in filings and internal systems updates that affected how the information was converted and maintained over time.

²⁸https://drive.google.com/file/d/0B_W8V6ab5O57UjFIZ2lGc0NNZm4wDmUwdDhSN0w5RVluVVdN/view?usp%3Dsharing

²⁹<https://bangordailynews.com/2017/11/03/politics/maine-ethics-panel-slaps-casino-campaign-backers-with-record-500000-in-fines/>

POLICY SUGGESTIONS

Established more than a century ago, Maine's I&R system is in desperate need of reform. Outside groups have dominated contributions since 2009, a trend that is unlikely to reverse on its own. Because Maine's ballot initiative system was adopted to allow Maine people—and only Maine people—to initiate and repeal legislation at the ballot box, the state should undertake efforts to limit the exploitation by outside groups, improve transparency, and enhance public trust in the system.

A significant step has been taken in this direction already through the enactment of LD 1865 in the Second Session of the 128th Legislature, a law that requires major contributors (\$100,000 or more) of ballot question campaigns to disclose their top five donors to the public. However, to ensure the system continues to serve its intended purpose, Maine should consider a number of other ballot initiative reform measures that would bring fairness, equity, and real Maine people back into the fold.

To do so, Maine must:

1. Impose geographic distribution requirements for signature collection.
2. Enact subject restrictions that prevent initiatives from encompassing several policy issues, dedicating revenues, or making or repealing appropriations.
3. Require the Maine Legislature to hold public hearings on citizen initiatives.
4. Increase the threshold of affirmative votes required for constitutional amendments to pass at the ballot.
5. Print fiscal impact statements directly on each ballot.

As previously mentioned, there are a number of ballot restrictions imposed in other states that Maine does not currently employ. The first of which Maine should consider is a geographic distribution requirement for signature collection. Given the uneven distribution of Maine's population, petitioning groups should be required to collect an equal proportion of signatures in both of Maine's congressional districts to prevent one district from overpowering the other. A similar but more impactful reform would be to require petitioning groups to collect an equal amount of signatures in all 35 of Maine's Senate districts. These reforms would help ensure that individual and regional interests throughout the state are more accurately reflected on the ballot.

In addition, Maine must consider subject restrictions that bar initiatives from dedicating revenues and making or repealing appropriations, as the number of initiatives dealing with tax and fiscal issues has spiked in recent decades. Another solution would be to require that initiatives that appropriate funds identify a funding mechanism, and initiatives that reduce expenditures identify which programs be cut. Regardless, the danger of crafting complex tax and budget policy at the ballot is well documented,^[30] and compounds when the Legislature elects not to hold public hearing on an upcoming ballot initiative. In these instances, the indirect initiative process is undoubtedly being exploited to suppress public information about a ballot measure.

Requiring that citizen-initiated legislation be sent to the committee of jurisdiction for public hearing could resolve these matters, though it is sure to face opposition from the special interests that drive ballot initiative campaigns. In 2001, the National Conference of State Legislatures commissioned the NCSL I&R Task Force to study the use of ballot initiatives and veto referendums and their impact on representative democracy. The task force recommended that state legislatures hold public hearings on initiatives once they achieve ballot status and found that the “opportunities for abuse of the [I&R] process outweigh its advantages,” therefore states without ballot initiative systems should not adopt them.^[31]

Further, Maine should consider imposing supermajority requirements for legislatively-referred constitutional amendments that appear on the ballot, similar to what Colorado voters enacted through Amendment 71 in 2016, which was passed fittingly with 55 percent of the vote. Another solution would be to impose a rule similar to Nevada that requires amendments to pass by majority vote in successive general elections. A 2005 entry in the California Law Review concludes, “initiatives amending the constitution should require a supermajority or successive vote for passage and strictly adhere to single-subject and separate-vote requirements,” to ensure I&R systems live up to the ideals of their creators.^[32]

Finally, Maine should consider publishing fiscal impact statements directly on ballots to better inform voters about the financial implications of a proposal. The final report issued by Maine’s Commission to Study Alternative Voting Procedures, the Citizen Initiative Process and Minor Party Ballot Access in 2006 found that 13 states require fiscal impact reporting during specific stages of the I&R process, five of which print fiscal impact statements directly on the ballot.^[33]

³⁰ <https://californiapolicycenter.org/ballot-box-budgeting-wreaks-havoc-on-california-budget-beware-of-props-51-55-and-56/>

³¹ <http://www.ncsl.org/research/elections-and-campaigns/task-force-report.aspx>

³² <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1294&context=californialawreview>

³³ http://digitalmaine.com/cgi/viewcontent.cgi?article=1145&context=opla_docs

By enacting these reforms, Maine can promote fairness within our I&R process and mitigate the harmful, unintended consequences that result from abuse of the system. While it would be wrong to impose contribution limitations on outside organizations, the steps outlined above would require them to pursue initiatives that better reflect the interests of Maine people, and to expend resources more deliberately if they wish to influence public policy at the ballot box in Maine.

CONCLUSION

Whether groups supported or opposed ballot measures between 2009 and 2017, the majority of the funds they raised originated from out-of-state sources. To combat the growing influence of outsiders, Maine must enact ballot initiative reform measures that put the interests of real Maine people ahead of the interests of deep-pocketed advocacy groups.

Maine's ballot initiative process was established to allow Maine people—not outside groups—to influence public policy at the ballot box. The implementation of the reforms described above would maintain the intent of Maine's I&R system while marginally curtailing the historically unchecked influence of outside groups.

The 128th Legislature was filled with partisan squabbles related to the citizen initiatives passed by voters in 2016, all of which received significant majorities of their funding from out-of-state sources. Lawmakers in the 128th Legislature dedicated considerable amounts of time and resources to modifying these proposals, as all four initiatives passed by voters in 2016 have been altered in some fashion to resolve issues within the statutes that were evident from the moment they achieved ballot status. Further, the government shutdown that occurred in July 2017—the first of its kind in Maine since 1991—was largely attributed to taxes and education funding associated with Question 2.^[34]

Maine should not waste public resources cleaning up the mess caused by outside groups influencing ballot initiatives. Thus, it becomes incumbent upon Maine people to mobilize for and support reforms that establish adequate checks and balances on the I&R process that would make for more effective governance.

Ultimately, Maine would be better off with these reforms.

³⁴ <http://www.wabi.tv/content/news/UPDATE-Budget-Missed-Majority-Vote-in-Maine-House-of-Representatives-431894483.html>

This is a special publication of the The Maine Heritage Policy Center. All information in this report is from sources considered reliable, however may be subject to inaccuracies, omissions, and modifications.

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