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PACs aim to sway District 11 Senate race

By Jordan Bailey | Oct 06, 2016

The influx of out-of-state funds in support of Jonathan Fulford, D-Monroe, in his rematch against Senate President Mike Thibodeau, R-Winterport, has drawn attention to the influence of political action committees in clean elections campaigns.

Thibodeau and Fulford have a similar amount of money to work with, according to their latest filings: Thibodeau has raised \$26,672 as a traditionally funded candidate, and Fulford has raised \$3,000, the maximum allowed in seed money contributions for senate candidates running on Maine Clean Elections funds, and received \$27,000 in Maine Clean Elections payments.

But far more money is set to be spent on the District 11 race by independent groups hoping to sway the outcome. Clean elections may not be clean, but there is not much MCEA candidates can do about it.

Third party expenditures

While traditionally funded candidates may coordinate with their party committees on their campaigns — the Maine Republican Party Committee has also spent \$8,039 on the a video ad and mailings in Thibodeau's support — MCEA candidates may not receive donations, monetary or in-kind, from their party committees or coordinate with any political action committees working on their behalf, or those would be considered contributions.

But there are PACs working independently on Fulford's behalf. Rebuild Maine, a PAC started with a \$64,000 contribution from The Committee to Rebuild The Middle Class mainly representing unions, has spent \$2,889 on canvassing and print literature in support of Fulford as of Oct. 3.

Another PAC, Progressive Maine, whose sole declared purpose is to support Jonathan Fulford, was formed with a \$50,000 donation Aug. 15 from California-based SuperPac Progressive Kick Independent Expenditures, which supports "strongly progressive Democrats," according to its website. The SuperPAC has previously provided support for Bernie Sanders, according to its Federal Election Commission filings. The Progressive Maine PAC has reported no expenditures as of Oct. 4.

Fulford appeared surprised when asked about the \$50,000 PAC dedicated to his campaign during an interview at The Republican Journal office Sept. 22, and said he "didn't know it existed." He called Sept. 26 asking for the name of the PAC, and expressed frustration about the U.S. Supreme Court's rulings on independent expenditures in elections.

"The Supreme Court in its infinite wisdom ruled that money is free speech, and corporations are human," he said. "That is a ridiculous interpretation of reality."

In *Buckley v. Valeo* in 1976, the Supreme Court ruled that money constitutes protected political speech. The 2010 ruling in *Citizens United v. Federal Election Commission* gave unions and corporations the right to spend unlimited amounts of money in support of or opposition to individual candidates in an election. In *SpeechNow.org v. FEC*, it ruled that imposing limits on donations to groups making independent expenditures is unconstitutional.

Fulford said in a statement Sept. 27 and in a video posted Sept. 30 to his Facebook page that he does not encourage or endorse PAC expenditures on his behalf. Because he is unable to stop or coordinate with PACs campaigning for him, Fulford has pledged to propose legislation that challenges the Supreme Court's rulings regarding independent expenditures in elections.

Negative ads

Besides wanting to avoid corporate influence, Fulford has another reason to dislike PACs. Ads funded by PACs in support of his 2014 campaign were disrespectful in tone and may have cost him the election, he said. He lost to Thibodeau by 135 votes.

Thibodeau was also angered by the attack ads. He said in an interview at The Republican Journal office Sept. 23 that nearly \$100,000 was spent in the last campaign "telling Waldo County what a dirtbag Mike Thibodeau is."

The National Institute of Money in State Politics lists anti-Thibodeau expenditures totaling \$81,875 in the 2014 campaign by four PACs: Every Voice Maine, Maine Democratic Party, Patriot Majority Maine, and The Committee to Rebuild Maine's Middle Class.

Speaking slowly and enunciating every word, Thibodeau continued: "Is that really what we're supposed to do with state government? How do I convince the next person — 'cause this is my last campaign — how do I convince the next person who's been successful in their lives, that's respected in their community, to step forward and run for this office that pays a whopping \$12,000 a year? How do we attract good people to serve when we want to demonize the other folks? That's not the way we should be doing things."

Fulford used a legal window of opportunity at a meeting that took place a year before he declared his 2016 candidacy to speak to other attendees who were involved with the PACs that had supported him in 2014.

"I told them I was not grateful at all, not one bit, and that I thought it was a huge mistake, it was the wrong tone to set," he said Sept. 22. "I told them 'If you're going to do independent expenditures in the future, which I can't stop you from and I'll have no knowledge of, I want you to go on the record and say I do not want negative advertising, period.'"

Thibodeau's PAC support

In his statement and video message, Fulford pointed out that Thibodeau receives most of his support from PACs and corporations, both as donations to his campaign and to PACs he controls.

"My opponent has three PACs that he controls, his own campaign PAC and is the trustee for two leadership PACs," the statement reads. "These PACs all receive money from individuals, corporations, law firms, and organizations that are opaque in their sources and interests."

Traditionally funded legislative candidates may receive up to \$375 in individual donations for each campaign (primary and general) from individuals, corporations and PACs, and they can coordinate with PACs for expenditures up to that contribution limit.

Top donors to Thibodeau's 2016 primary and general election campaigns include The Capital Leadership PAC and CMP Employees PAC, which each donated \$750, and 10 other Maine PACs. each of which donated \$375. These PACs' war chests come from a wide variety of sources including Maine banks, real estate agencies and healthcare businesses, and various national corporations. Out-of-state corporations Astrazeneca of Delaware, AnheuserBusch of Missouri, and Marathon Petroleum Co. LLP of Ohio, each donated \$375 directly, and Texas Instruments Inc. PAC of Texas donated \$375. Not including donations under \$50, Thibodeau also received approximately 50 donations from individuals.

While third-party expenditures allow dark money into Clean Elections campaigns, dark money enters traditionally funded campaigns when individuals or corporations give money to lobbying firms and law firms who in turn give money to PACs. Law firms are major donors to The Capital Leadership PAC, a top donor to Thibodeau.

Many PACs receive donations from a large number of donors and spread it in small amounts across many of candidates, making it difficult to trace the influence of any one corporation or interest over a particular candidate. Other PACs have relatively few donors and support only a few candidates, making it easier to infer influence. The Sound Science Good Business PAC, for example, was funded by corporations Monsanto of Missouri, Syngenta U.S. of North Carolina and MillerCoors of Illinois, and it donated \$375 each to only five state candidates, one of whom was Thibodeau.

Considering the \$375 contribution limit, it is not surprising that political science experts challenge the widely held assumption that PAC and corporate donations influence politicians' voting behavior. A study published in *State Politics and Policy Quarterly* in Dec 2014, "Does Public Election Funding Create More Extreme Legislators? Evidence from Arizona and Maine," found that "there is essentially no important difference in the legislative voting behavior of 'clean' funded legislators and traditionally funded ones in either Arizona or Maine: Those who are financed by private donors are no more or less ideologically extreme than those who are supported by the state."

A February 2016 study reported in *Legislative Studies Quarterly*, "Do Campaign Donors Influence Polarization? Evidence from Public Financing in the American States," the authors concluded from analysis of New Jersey Assembly's public financing pilot project and a synthetic case study approach that legislators vote virtually the same way when they are publicly or privately financed. The authors also found a negligible effect through state-level analyses of the public financing programs in Arizona and Maine.

Leadership PACs

More influential may be the unlimited donations to leadership PACs that legislators control. Thibodeau is an officer on The Senate Republican President's Fund and the Maine Senate Republican Majority PAC. He can distribute those funds as he chooses to support legislators' re-election campaigns. Fulford said leadership PACs are a major way in which power and influence is exerted in Augusta.

"He is not the only one who does this; even Democratic leaders have leadership PACs," Fulford said Sept. 22. "This system in itself leads to poor governing, because it leads to the appearance at least ... of conflict of interest between the people who've received that money and actually representing the best interests of the people of Maine."

Responding to accusations that he is influenced by donors, Thibodeau said he was once criticized for receiving a tobacco company donation to a PAC he controls.

"Well let me tell you, the only bill that I can think of that any tobacco company would be interested in was whether or not we were going to allow vaping in public places," he said. "Check the record and see how I voted. I just think it was odd that we were going to allow vaping when we didn't allow smoking. I voted to not allow it."

LD 1108 added smoking devices that give off vapor off vapor (e.g., e-cigarettes) to the definition of smoking that is banned in public places. A review of the roll call vote for LD 1108 shows that Thibodeau voted against a version of the bill which would have lessened the proposed restrictions on e-cigarettes to only apply at hospitals, schools and day care centers. The full ban passed the House, and passed the Senate without a roll call vote. The bill went into effect without the governor's signature.

Others have pointed to a \$1,000 donation in March by SunRun Inc., a California solar company, to The Maine Senate Republican Majority PAC as influencing Thibodeau's stance on the failed solar bill, which had wide public and Maine solar industry support but was opposed by national solar companies. The Senate unanimously supported an alternative version of the bill but the House failed to override the governor's veto. Critics theorize Thibodeau and the rest of the Senate Republicans voted for the alternative version as a political move, knowing that the governor would veto it and the House would not override it. They say his lack of vocal support for the bill supports this interpretation of his motivations.

"You know I'm a busy guy and there were plenty of people that were vocal," Thibodeau said Sept. 23. "It's the first time I've ever seen a politician criticized for their lack of being vocal. That passed the Senate unanimously. My responsibility is to be the Senate president, not the House president. I think that that's just not a fair criticism."

The perception of influence of corporate and PAC money leads to public mistrust of politicians, and Thibodeau says he combats that perception by "purposely not knowing" who donates to his campaign and PACs.

"When you're the Senate president, your name ends up on the caucus PAC and the PAC called the Senate President's Fund, it just does," he said. "I purposely don't want to know gifts to the PACs. You know why? Because I don't want anybody to perceive that that's influencing the decision I make... I don't want to know... I want to be able to look at everything that comes before the Senate without any perceived influence."

Fulford's ideas for new legislation — requiring all candidates to run as Clean Elections candidates, preventing corporations from giving money to leadership PACs and challenging the Supreme Court's stance on the legality of third-party expenditures — suggest he is looking to eliminate the possibility of influence altogether.

To truly accomplish that would require a new Supreme Court ruling.

Correction: An earlier version of this story reported that Mike Thibodeau voted against including e-cigarettes in the ban on smoking in public places. This was incorrect; he voted against an amended, less restrictive version of the bill which would have banned e-cigarettes only at hospitals, schools and day care centers.

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Jordan M Bailey
Reporter
207-338-3333 ext. 109
[Email Me](#)

Jordan Bailey has been working for The Republican Journal since 2013. She studied philosophy at Boston College and has experience in marine science education and journalism. She lives in Belfast.

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