

ENHANCING VALUES:
*Practical Campaign
Reforms for States*

Second Edition



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REFORMS FOR STATES, 2ND EDITION
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REFORM IN THE STATES: A MESSAGE FROM PROJECT DIRECTOR ANTHONY CORRADO

The 2004 elections were characterized by a dramatic increase in small donor fundraising and the success of public campaign funding programs in states across the nation. In federal elections, the implementation of a ban on soft money, which was part of the reform legislation known as McCain-Feingold, encouraged political parties and candidates to broaden their fundraising efforts and reach out to new, low-dollar donors. The national political parties successfully adapted to the McCain-Feingold reforms, raising more money in regulated hard dollars in the 2004 election than they had raised in unregulated soft dollars and hard dollars combined in any previous election. This new grassroots emphasis, which was promoted by the use of the Internet, led to a record number of new small donors in the political process and strengthened the financial base of the national parties.

At the state level, innovative campaign finance laws are working to expand civic participation and provide candidates with the funds needed to wage winning campaigns. The success of public funding systems in state elections in Arizona and Maine, local elections in New York City, and judicial elections in North Carolina signal the victory of the small donor and provide models for future reform. Consequently, other states are now recognizing the value of public funding and adopting similar systems, as indicated by the recent enactment of a statewide public campaign funding law in Connecticut—the first such statute to be initiated and passed by a state legislature.

As this second edition of *Enhancing Values: Practical Campaign Reforms for States* demonstrates, public funding offers a comprehensive approach to campaign finance reform. The 2004 elections provided states like North Carolina with the first opportunity to test the new system. In that year, twelve out of fourteen judicial candidates applied for and received public campaign funding. In 2006, eight out of nine judicial candidates received public funds. Such high levels of candidate participation are also found in other states that offer the public funding option.

This new edition of *Enhancing Values: Practical Campaign Reforms for States* incorporates new campaign finance language from the Bipartisan Campaign Reform Act of 2002 and the “lessons learned” from public campaign financing programs in the states. This important policymaking tool is the work of scholars and professionals in the field of campaigns and elections, and provides valuable guidance for improving our democracy.

Anthony Corrado
Project Director



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TABLE OF CONTENTS

Reform in the States: A Message from Anthony Corrado	i
Acknowledgements.....	ii
Introduction.....	1
Chapter 1: Public Campaign Funding Programs.....	5
<i>Maine’s Full Public Campaign Funding Law</i>	10
<i>Arizona’s Full Public Campaign Funding Law</i>	12
<i>2006 Maine House Primary Elections</i>	14
<i>2006 Maine House General Elections</i>	14
<i>2006 Maine Senate Primary Elections</i>	15
<i>2006 Maine Senate General Elections</i>	15
<i>Arizona 2006 Primary Election Candidates</i>	16
<i>Arizona 2006 General Election Candidates</i>	16
<i>Arizona 2006 General Election Winners</i>	16
<i>The Value of Public Funding</i>	17
<i>Public Funding, Women and Minorities</i>	18
<i>New York City’s Public Matching Funds Law</i>	22
<i>Connecticut’s Full Public Campaign Funding Law</i>	24
<i>New York City Candidate Participation</i>	26
<i>North Carolina 2004 Election Results</i>	27
Chapter 2: The Backdrop of Private Campaign Finance Regulation.....	29
Appendix A.....	35
Appendix B.....	36
Appendix C.....	36
About The Reform Institute.....	37



INTRODUCTION

THE PRINCIPLES *and Goals of Reform*

Campaign finance laws enhance the quality of our democracy by promoting the fundamental principles and values of a free society. An effective system of campaign funding ensures that candidates and other participants in the political process have an opportunity to gather the resources needed to wage viable campaigns and share their views with the public. By doing so, the laws expand the choices available to voters and promote more robust public debate. An effective funding system also protects the integrity of the political process by minimizing corruption, reducing the influence of money, and fostering equality of political participation. In fulfilling these goals, campaign finance rules can strengthen our democracy and restore faith in government and public officials. These rules can help reconnect citizens to the political process; encourage greater individual involvement in public affairs; and produce a more responsive, transparent, and accountable government.

Campaign finance reform alone will not resolve all of the problems in our political system, but well-crafted reforms make a valuable contribution to the health of our democracy.

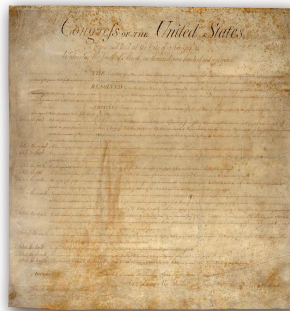
Most importantly, they can revitalize the basic principles that form the foundation of our government. This is especially true when comprehensive approaches to reform are adopted. But even small changes can make a big difference in promoting the cause of good government.

To be effective, campaign finance laws should aim to achieve the following objectives, which constitute the basic purposes of regulation in this area.

1. Campaign finance laws should provide adequate funding for political campaigns.

Money is said to be the “mother’s milk” of politics, because it is the means of acquiring the goods and services needed to wage viable campaigns. The health and vitality of our democracy depends in part on the ability of candidates, parties, and political groups to garner the resources needed to make their case to voters. Any system of campaign finance should ensure that candidates and other active citizens have a fair opportunity to conduct well-funded, competitive campaigns.

Campaign finance laws must preserve the freedom of speech and political association, and allow candidates and others to amass the funds needed



to engage in effective advocacy. The rules should not be so restrictive as to impose unfair burdens on candidates and political organizations or to impede their ability to raise the funds needed to communicate with the electorate. Instead, they should encourage citizens to express their views and to participate financially in election campaigns. At the same time, the law should balance this objective with the other principles of reform to protect against the detrimental effects that unregulated money can have in the political system.

2. Campaign finance laws should protect the integrity of the political process.

The U.S. Supreme Court, almost three decades ago, held that the “primary interest” served by campaign finance legislation “is the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates’ positions and on their actions if elected to office.”¹

Campaign finance laws must protect the integrity and legitimacy of representative government against the corruptive and undue influence that can accompany political gifts. Without strong safeguards to diminish the influence of money in the political process, the representative character of our democracy is undermined and public confidence and trust in government is lost.

The threat of corruption or undue influence is greatest when there are no limits placed on political contributions, and when contributions are not disclosed to the public in a timely manner. Campaign finance regulations should contain strong measures that prohibit the exchange of campaign donations for political quid pro quos and prevent donors from buying access to elected officials or candidates for office through large political gifts. At a minimum, the rules should:

- Prohibit large, unregulated political contributions
- Prohibit contributions from corporations, regulated utilities, and labor unions

- Prohibit cash contributions, except for small individual donations
- Place reasonable limits on contributions from individuals and political committees
- Require full public disclosure of contributions to candidates, parties, and political committees
- Require full public disclosure of the monies raised and spent on independent expenditures and electioneering communications.

The best regulatory approaches go beyond the disclosure and regulation of contributions. These systems seek to reduce the role of private money by providing public resources to candidates for the financing of their campaigns. In the most comprehensive program of reform, candidates are able to receive public resources to finance their campaigns, eliminating altogether the need to raise substantial amounts of money in private contributions. Other approaches to reform offer public resources to candidates as an incentive to encourage small donations from individuals, thereby empowering small contributors, broadening citizen participation in the financing of elections, and diminishing the role of large donors and special interests.

3. Campaign finance laws should ensure transparency and public accountability.

Elections provide citizens with an opportunity to vote for the candidates and policy choices that best represent their views. In order for individuals to make informed decisions, they need to have access to information about the candidates and their positions. This includes access to information about the sources of a candidate’s support and the sources supporting the messages being distributed to influence elections and public policy debates. Full, timely, and effective public disclosure of the financial activity that takes place in elections is thus an essential requirement of any campaign finance system.

Full public disclosure of the monies raised and spent in connection with elections offers a number of benefits. First, disclosure promotes

transparency and thus facilitates public scrutiny of the financial transactions that take place in an election. As the experience with financial transactions in the business community and other areas of the private sector has demonstrated, rules that promote transparency and public review can be an effective vehicle for identifying and addressing financial abuse. Disclosure is therefore a necessary, but not sufficient, means of safeguarding the integrity of the political process and thwarting corruption.

Second, disclosure helps promote a more informed electorate. By providing information about the sources of funding backing a candidate or political group, disclosure provides citizens with important information that can help to distinguish the choices they face. Furthermore, it enhances the ability to hold public officials accountable for the financial practices that take place in an election.

Finally, disclosure facilitates more effective enforcement of the law. It yields a public record of the contributions and expenditures made in each election, which makes it easier for enforcement agencies to monitor the transactions that take place in a campaign and identify violations of law.

The most effective disclosure rules require more than a simple accounting of the monies raised and spent in a campaign. To be effective, the rules must ensure timely reporting and include provisions for making information available to the public in an easily digestible form. The rules should also require timely reporting of independent expenditures and monies spent on electioneering communications, and special reporting requirements for contributions or expenditures made late in a campaign. The best systems provide for electronic disclosure, facilitating public access via the Internet, in a form that can be easily searched by voters who seek information about a particular candidate or political committee, or the contribution activities of particular donors. This is the most efficient means of ensuring that all citizens have an opportunity to access the information they seek on campaign funding.

4. Campaign finance laws should empower citizens and reduce the influence of special interests.

A truly representative government that reflects the will of the people and enjoys the confidence and trust of its citizens can only be achieved by reducing the influence of special interests in government. Campaign finance rules should not favor monied interests. Rather, they should empower individuals and expand their influence. Reforms that enhance the role of individuals increase the responsiveness of the political system and restore the power of individual citizens to determine the outcome of elections and the direction of government policy.

“THERE IS NO ENEMY OF FREE GOVERNMENT MORE DANGEROUS AND NONE SO INSIDIOUS AS THE CORRUPTION OF THE ELECTORATE.”

—THEODORE ROOSEVELT

FOURTH ANNUAL MESSAGE TO CONGRESS, 1905

The key to reducing the influence of special interests and returning power to individual citizens is to increase the value of individual donors who give small amounts to the candidates of their choice. Reforms that serve this purpose include:

- Voluntary public campaign funding programs that emphasize low-dollar qualifying contributions
- Programs that offer public matching subsidies on individual contributions to amplify the value of small contributions
- Tax credit incentives to encourage individuals to participate financially in political campaigns
- Rules that promote individual participation by allowing contributions to be made via the Internet.

5. Campaign finance rules should encourage electoral competition.

Elections best serve their purpose when they are characterized by high levels of competition. Competitive elections offer voters more meaningful choices. They attract greater interest within the electorate and produce higher levels of voter participation. They also attract a larger number of candidates, since individuals considering service in public office are more likely to stand for election when they know they have a fair chance in seeking an office. When elections are competitive, citizens win.

Money is not the only factor that affects the level of competition in an election. Ballot access rules and the methods used to draw district lines also play an important role in determining the fairness and independence of electoral contests. But campaign finance laws can enhance the fairness of elections and the quality of choices available to voters by ensuring that incumbent officeholders and the wealthy do not have an unfair advantage in election campaigns. The rules should help to level the playing field by incorporating reforms that serve to improve the resources available to the challengers. Such an approach helps to ensure that elections are decided on the basis of a candidate’s message, not the size of a campaign’s war chest.

To encourage competition, campaign finance laws should include such reforms as:

- Voluntary public campaign funding with accompanying limits on campaign spending for candidates who accept public resources
- Supplemental public funding to help candidates maintain competitive levels of

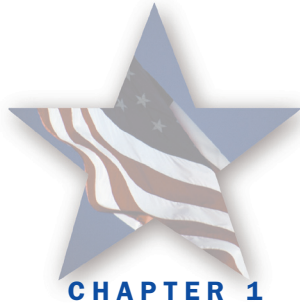
spending when facing privately funded, high-spending opponents

- Rules that encourage participation in broadcast candidate debates, at least for candidates running for statewide office
- Provisions that require the Secretary of State or other appropriate election official to prepare and disseminate to the public impartial voter guides offering information about candidates and ballot propositions.

6. Campaign finance laws should guarantee effective enforcement and administrative support.

Effective administration and enforcement of the law is an essential component of any regulatory system. Indeed, the recent experience with campaign finance regulation at the national and state and local levels suggests that the objectives of reform will only be achieved if regulations are independently administered, vigilantly monitored, and strictly enforced.

Any effort to regulate the role of money in politics must give due regard to the needs to administer and enforce the law. Most importantly, the laws should establish an independent, unelected agency responsible for administering and implementing regulations, set forth clear enforcement procedures, and contain strict penalties for violating the rules. Adequate budgetary support and staffing is also essential, since the agency or office responsible for the law can carry out its functions only if it has the resources to perform all of its duties. Too often the benefits of reform have been diminished by the failure to provide administrators with the necessary authority and resources.



PUBLIC CAMPAIGN *Funding Programs*

States and localities throughout the country have adopted major campaign finance reforms in recent years that have established new methods of campaign funding and demonstrated the benefits of comprehensive reform. These efforts have been based on bold and innovative approaches that use public funds as a means of financing campaigns and empower individual citizens by emphasizing the strategic importance of low-dollar contributions.

Public financing programs recognize that elections are a public good and offer qualified candidates the option of using public funds, instead of contributions from high-dollar donors and special interests, to pay for their campaigns. This approach to reform has been adopted by several states and localities, with the laws typically varying from state to state, offering diverse solutions to the problems associated with money in politics. Some programs, such as those used in Maine, Arizona, and Connecticut, provide qualified candidates with full funding that essentially frees candidates from the need to raise private contributions and provides each candidate with a fixed and equal amount of money equivalent to the sum they are allowed to spend under campaign spending caps. Other programs, such as the system used in New York City elections, offer candidates the option of qualifying for matching subsidies on small

contributions as a means of reducing the emphasis on fundraising and creating incentives for broadening the participation of small donors.

Public financing improves the political process in a variety of ways. Public funding reduces the amount of time candidates have to spend raising money and their reliance on powerful special interest groups. It breaks down financial barriers, enabling more candidates to seek public elected office and thus increasing the choices available to voters. And it encourages greater individual participation in the financing of campaigns by raising the value and relative importance of contributions from individuals who give low-dollar amounts.

Full Public Funding Programs

The most comprehensive approach to reform is a system of full public campaign funding for candidates seeking office. This system, often called “Clean Money” reform, establishes a voluntary program of public financing that is designed to provide participating candidates with the monies needed to wage a viable campaign for elective office. The public funding programs in Maine, Arizona, and Connecticut represent the best examples of this type of reform.

Full public funding programs are based on a number of common features. All of these programs are voluntary, since constitutional doctrine precludes states from requiring candidates to use

public funds. Candidates who choose to receive public funding become eligible by raising a certain number of qualifying contributions from individual donors, typically in the amount of \$5. Candidates are also allowed to raise a limited amount of “seed money” to launch their campaigns and begin the process of gathering qualifying contributions. To be eligible, candidates must also agree to abide by established ceilings on campaign spending, and forego any additional campaign fundraising or the expenditure of any personal funds on their campaigns. Candidates who qualify for funding by meeting these requirements receive a fixed amount of public money that will allow them to spend the sum permitted under the spending cap applicable to their campaigns.

FOR ELECTIONS TO FULFILL THEIR PROMISE, CANDIDATES MUST BE ABLE TO CARRY OUT WELLFUNDED AND ROBUST CAMPAIGNS.

Candidates who decide not to accept public funding are allowed to raise private contributions from sources and in amounts regulated by state contribution limits. These candidates are not subject to spending limits. However, if a publicly funded candidate is facing a non-publicly funded opponent whose spending exceeds the spending allowance established by the public funding rules, the law usually provides supplemental funds to the publicly funded candidate to help ensure a level financial playing field. Public funding programs thus offer a safeguard so that wealthy candidates or high-spending contenders do not gain an unfair financial advantage by forgoing public funds.

Key Features of Public Campaign Funding Laws

As this brief summary suggests, the success of a full public funding system depends on a number of key provisions.

Level of Benefit: No feature of a public financing system is more important than the level of support it provides to participating candidates. For elections to fulfill their promise, candidates must be able to carry out well-funded and robust campaigns. If a public financing program does not provide the funding needed to conduct a viable campaign, candidates will have little incentive to participate and none of the objectives of this reform will be achieved. A public financing program must provide resources to candidates that are ample enough to encourage participation and fund competitive or hotly contested races. In full public funding programs, this means that:

- The law must permit reasonable levels of spending. Since the grants awarded to candidates are based on the amounts they are permitted to spend, the level of support is directly related to the spending limit. Spending allowances should not be set so low as to make it difficult for candidates to communicate their views effectively to voters. At the same time, they should not be so high that they have little effect on the cost of campaigns. States that have successfully implemented full public funding programs have based benefits on the average amount spent by candidates in the two elections immediately preceding the implementation of public funding. This average amount is usually reduced by a fixed percentage to reflect the fact that publicly financed candidates do not need to spend money raising funds.
- The law should distinguish between different offices and types of campaigns. Benefit levels should be related to the costs of the office being sought and the type of election being contested. At a minimum, different benefit levels are needed for state-wide elections, senate elections, and house elections or between different levels of judicial positions for judicial races. Separate sums of money should be provided for primary elections and general elections, with funding provisions for runoff elec-

tions, where appropriate. These amounts should be adjusted to account for gerrymandered districts where additional funding for primary campaigns may be needed. In addition, benefit levels and spending ceilings should be adjusted for contested and uncontested elections.

- The law should adjust benefit levels in advance of each election cycle to ensure that the incentive to participate in public funding does not diminish.

Eligibility Requirements: Public funding programs must establish reasonable eligibility requirements that conform to the objectives of this reform. The qualifying threshold should be low enough to encourage broad participation by a wide range of candidates in order to increase access to the political process, expand the range of choices available to voters, and enhance electoral competition. It should be designed to empower individual citizens by basing qualifications for funding on a demonstration of voter support through the raising of small donations. The eligibility requirements must also include provisions that reduce the emphasis on money in campaigns, control rising costs, and prohibit candidates from raising additional funds. At the same time, qualifying thresholds should be set high enough to discourage frivolous candidacies or the granting of public resources to candidates who prove incapable of demonstrating an appropriate level of public support.

- Candidates should qualify for public funding by raising a fixed number of small qualifying contributions from individuals who are registered voters in their state or district. In the states that have successfully implemented this reform, the amount of a qualifying donation is set as low as \$5, so as not to exclude any individual eligible to vote. The number of contributions required to become eligible should vary depending on the office being sought, with the highest requirement set for statewide candidates. In lieu of raising a spe-

cific number of contributions, qualifying thresholds should also include an aggregate sum that a candidate needs to raise in order to be eligible for public campaign support as is the case in Connecticut.

- Eligibility should also be based on a candidate's consent to abide by certain financial restrictions including, at a minimum, agreeing to limit campaign spending, forgo any additional private fundraising for the campaign, and refrain from making expenditures from personal funds in support of the campaign.
- Only candidates who have first qualified for the ballot should be certified to receive public funds.
- Qualifying contributions collected by candidates who become eligible for public money should be deposited into the account or fund used to finance the public funding program. These contributions will thus become one source of financing for the program.

**THE QUALIFYING THRESHOLD SHOULD
EXPAND THE RANGE OF CHOICES AVAILABLE
TO VOTERS**

Seed Money: Most first-time candidates for state legislative or constitutional office begin a campaign without the name recognition or donor base enjoyed by incumbent officeholders or established politicians. To help these candidates initiate their campaigns and start the work needed to get on the ballot and gather qualifying contributions, the law should allow candidates to raise some money to serve as the “seed money” for a campaign.

- Candidates should be permitted to raise a limited amount of seed money from private contributions to start up their campaigns. All seed money should come from strictly limited contributions from individuals. For example, in the Arizona

2006 election cycle, gubernatorial candidates could collect up to \$46,440 in seed money, while legislative candidates could collect up to \$2,980. In an effort to focus on low dollar contributions, individual seed money contributions should range from \$100 to \$250, and should be adjusted for inflation. The rules should allow seed money to be donated by any United States citizen.

- Candidates who accept public funding should not be permitted to collect or spend seed money contributions once they are certified to receive public resources. One option for any unexpended seed money funds is to contribute these monies to the account or fund used to pay for the public funding program.
- All seed money contributions and expenditures should be duly reported and publicly disclosed.

PUBLIC FUNDING PROGRAMS SHOULD OFFER MATCHING FUNDS IN ORDER TO FACILITATE COMPETITION.

Matching Funds: Candidates are more willing to accept public funds when participation in the program does not put them at a major financial disadvantage. This means that public financing must provide benefits that are ample enough to allow participating candidates to compete against high-spending, privately financed opponents or wealthy opponents with the resources to finance a campaign out of their own pockets. Because nonparticipating candidates are not required to limit their spending, they may in some circumstances be able to outspend their publicly financed challengers. This possibility may serve to discourage participation and is one of the arguments commonly advanced against publicly funded elections. In order to address this issue, public funding programs should

offer matching funds or supplemental funding to publicly financed candidates facing free-spending nonparticipating opponents.

- Supplemental matching funds should be available to publicly funded candidates who face nonparticipating opponents who spend more than the amount permitted under the public funding spending ceilings. Once a nonparticipating candidate exceeds the spending limit by more than 10 percent, a publicly funded challenger should receive additional public resources to match that opponent's spending. Publicly funded candidates should be eligible for matching funding up to a sum equal to three times as much as the amount of the original grant (i.e., they should be able to receive up to 200 percent more than the size of the original grant in supplemental funding). This approach allows a publicly funded candidate to compete and be heard, even in the most competitive and high-spending contests.
- Supplemental matching funds should also apply to any independent expenditures made in an election either against a publicly funded candidate, including expenditures made by 527 committees, or in favor of a nonparticipating opponent. Public resources awarded to match independent spending should be included in the overall limit on the amount of matching funds a publicly funded candidate may receive.
- To promote the efficacy of matching funds, nonparticipating candidates should be subject to additional pre-election filing and disclosure requirements to ensure that participating candidates can receive timely payments to match any spending that might occur in close proximity to an election.

Financing: Adequate, reliable, and sustainable financing is essential to any public funding program. Without adequate financing, this reform cannot achieve its objectives. Any pro-

gram of public financing must include funding mechanisms that can guarantee the resources needed to make such programs a success.

Various mechanisms are being used to finance public funding programs. These include alternatives that do not rely on appropriations from general revenues and the use of taxpayer dollars. Arizona, for example, funds its program entirely without the use of general revenues. Possible sources of revenue include:

- A surcharge on certain civil and criminal fines and penalties. In Arizona, this mechanism produces about 60 percent of the revenue needed for its program. When a violator of a state law(s) is assessed a fine, a 10 percent fee is added to the fine, which is allocated directly to the account used to finance the public funding program. For example, \$10 is added to a \$100 speeding ticket and then deposited into the public funding account. This surcharge is applied to fines for speeding, parking infractions, HOV violations, and criminal penalties. In *May v. Brewer*, the U.S. Supreme Court has upheld the constitutionality of this approach.
- Qualifying contributions collected by candidates to qualify for public benefits, and deposits of unexpended seed money revenues collected by publicly financed candidates.
- A tax check-off on state individual income tax forms that allows tax filers to designate contributions to the program.
- Unclaimed property reclaimed by the state, is the major source of funding for the Citizens' Clean Election Fund in Connecticut. This fund takes in about 20 million dollars per year.
- States can conduct an alternative funding mechanism study.
- Annual appropriation. An annual appropriation from general revenues is one of the principal mechanisms used in Maine to generate the monies for its program. This approach, however, does not guarantee reliable or sustainable support, since it subjects funding to the uncertainties of the legisla-

tive appropriations process and the dictates of state budget laws. The efficacy of this approach depends on the strength of legislative support in favor of public funding. In Maine, the public funding statute requires an annual transfer of a set amount from general revenues to the public financing program on or before January 1 of each year.

- Regardless of the methods employed, all revenues for public funding should be deposited in a special account dedicated to this purpose.

ADEQUATE, RELIABLE AND SUSTAINABLE FINANCING IS ESSENTIAL TO ANY PUBLIC CAMPAIGN PROGRAM

Enforcement: Systems with the most effective enforcement mechanisms rely on an independent commission to administer and enforce the law. An independent, unelected agency should be responsible for monitoring and reviewing candidate disclosure reports, certifying candidate eligibility for the receipt of public funds, determining payment of matching funds, disseminating information contained in disclosure reports to the public, and issuing regular reports on the aggregate financial activity in each election cycle. It should also have the authority to penalize candidates who fail to comply with the requirements of the law, in addition to transmitting findings of violations to the Attorney General for prosecution. The agency must also have adequate staff and funding to carry out its responsibilities.

The Advantages of Full Public Funding

The experience with public financing has demonstrated the value of this approach as a means of bringing about fundamental change in the ways campaigns are financed. Comprehensive public funding programs can reduce the influence of high-dollar donors and special interests

Maine’s Full Public Campaign Funding Law

Maine’s public funding program was adopted through a ballot initiative in November 1996 that approved the Maine Clean Elections Act, which established the first state program of full public financing for gubernatorial and state legislative candidates. Publicly financed elections were first held in 2000. The major provisions of the program include:

Qualifying for Public Funds: After signing and filing a declaration of intent to seek certification as a Maine Clean Elections Act candidate, a candidate must collect a set number of \$5 contributions from registered voters in the electoral district relevant to the office being sought (e.g., legislative candidates must collect contributions from registered voters in their district).

These contributions must be in the form of a check or money order and made payable to the Maine Clean Election Fund in support of a particular candidate. The number of contributions that has to be raised depends on the office being sought.

- A gubernatorial candidate must collect at least 2,500 contributions.
- A state senate candidate must collect at least 150 contributions.
- A state house candidate must collect at least 50 contributions.

Seed Money: An individual may raise seed money contributions in amounts not to exceed \$100 per individual donor. Individuals may only collect and spend seed money contributions prior to becoming a candidate and during the “qualifying

period” for public funding, which extends from November 1 of the year before the election to March 16 of the election year for gubernatorial candidates, or January 1 through March 16 of the election year for state senate and house candidates. Candidates may not collect or spend seed money contributions after being certified to receive public funding. The amount of seed money a candidate may collect is limited to \$500 for a state house candidate, \$1,500 for a state senate candidate, and \$50,000 for a gubernatorial candidate.

Candidate Funding: Candidates certified to be qualified for public funding receive amounts based on the average sum spent by comparable candidates in the previous two election cycles. In 2006, legislative candidates were eligible for initial grants of varying amounts, depending on the office and character of the race.

Matching Funds: Matching funds are triggered when a publicly funded candidate is outspent by a privately funded opponent. When a campaign disclosure report shows that the sum of a nonparticipating (i.e., not publicly funded) candidate’s funds raised or borrowed, expenditures, or obligations, alone or in conjunction with independent expenditures, exceeds the amount distributed to a publicly funded candidate(s) competing for the same seat, the participating candidate(s) is given additional public funds equivalent to the amount of the excess spending reported by a nonparticipating opponent. This supplemental funding is limited to two times the initial distribution provided to a participating candidate. So, for example, in a contested general election



	Uncontested Primary	Contested Primary	Uncontested General	Contested General
Senate	\$1,927	\$7,746	\$8,033	\$20,082
House	\$512	\$1,504	\$1,745	\$4,362

*Amounts distributed are equal to the average amount of campaign expenditures made by each candidate during election races for the immediately preceding 2 years for each election. For example, the uncontested primary for 2006 is equal to the average amount of campaign expenditures made by each candidate during all uncontested primary races for the immediately preceding two primary elections.

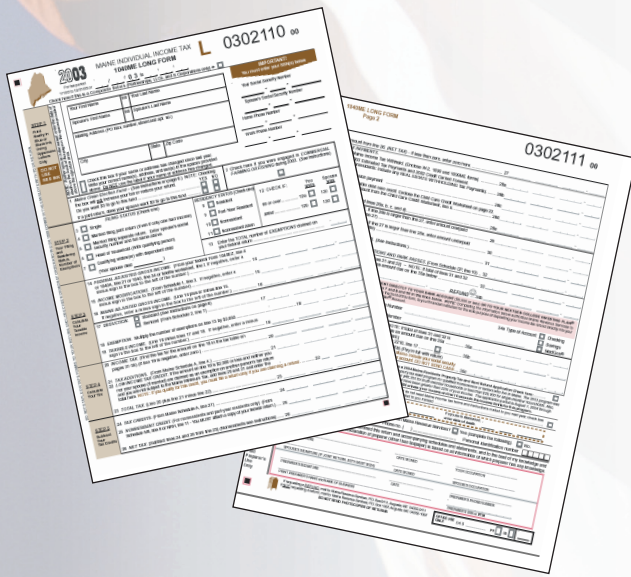
Maine's Full Public Campaign Funding Law (Continued)

contest for a state senate seat, a publicly funded candidate receives an initial distribution of \$20,082 and may receive up to an additional \$40,164 in matching funds, for a total public distribution of \$60,246.

Financing: Revenue for the public funding program is deposited in a special, dedicated, non-lapsing fund called the Maine Clean Election Fund (MCEF). MCEF is used to finance the payments made to candidates, as well as the administrative and enforcement costs of the program. The principal source of revenue is an annual transfer of \$2 million from the state's general fund revenues, which, according to statute, is to be transferred by the State Treasurer on or before January 1 of each year. Revenues are also provided by: (1) a tax checkoff program on state individual income tax forms that allows resident tax filers to designate \$3 to be paid into the fund (a husband and wife who file jointly may each designate \$3); (2) the \$5 contributions raised by candidates to qualify for public funding, which are deposited in the MCEF once a

candidate is certified to receive public money; (3) unspent seed money contributions deposited by candidates after being certified for public funding; (4) voluntary contributions made by individuals to the fund; and (5) any monies received from fines, penalties, or interest. In addition, any public funds distributed to candidates that are not spent after a candidate has lost a primary or general election, are returned to the MCEF.

Administration and Enforcement: Responsibility for administering the law, including management of the MCEF, is held by Maine's Commission on Governmental Ethics and Election Practices. The Commission consists of five members appointed by the Governor, subject to confirmation by the state legislature. The Commission employs an executive director and staff to carry out the day-to-day administration of the program. The Commission has authority to investigate violations of the law by any candidate and authority to assess civil penalties.



Arizona's Public Campaign Funding Law

In November 1998, Arizona voters passed the Citizens Clean Elections Act, which established a system for publicly funding candidates for statewide and state legislative offices. This voluntary program was first used in the 2000 elections. Major provisions of the program include:

Eligibility Requirements: To participate in the public funding program, candidates must collect a limited number of \$5 contributions from registered voters in their respective districts or, in the case of statewide candidates, in their state. These contributions may only be collected during a defined "qualifying period." For candidates for statewide office, this period runs from August 1 of the year before the election until 75 days prior to the general election; for legislative candidates, it runs from January 1 of the election year until 75 days prior to the general election. The number of qualifying contributions that must be obtained depends on the office. In 2006, the minimum thresholds were set as follows:

Office	Minimum Number/ \$5 Qualifying Contributions
Governor	4,200
Secretary of State	2,625
Attorney General	2,625
State Treasurer	1,575
Superintendent of Public Instruction	1,575
Corporation Commissioner	1,575
Mine Inspector	525
State Legislature	210

Limits on Personal Contributions: To receive public financing, candidates must also agree to limit personal and family spending on their campaigns. For example, a candidate for state legislature is limited to a maximum of \$1,160 in personal contributions, which includes contributions

from immediate family members, each of whom may give no more than \$120.

Seed Money: Individuals are allowed to raise "early contributions" to explore a candidacy or initiate an effort to qualify for public funding. These contributions are limited to \$120 per individual donor, with adjustments for inflation every two years. The amounts candidates may raise from early contributions is set at different levels, depending on the office. In 2006, legislative candidates were allowed to receive up to \$2,980 in early contributions; corporation commission candidates, \$11,910; and gubernatorial candidates, \$46,440.

Levels of Funding: The amount of public financing a candidate receives varies on the basis of the office being sought and whether a race is contested or not. Major party candidates in contested races in 2006 were eligible for base public funding grants, not including matching funds, in the following amounts:

Office	Primary Election	General Election
Governor	\$453,849	\$680,774
Secretary of State/ Attorney General	\$95,550	\$143,325
Treasurer/Corp. Commissioner	\$47,770	\$71,655
Superintendent of Public Instruction	\$47,770	\$71,655
Mine Inspector	\$23,890	\$35,835
Legislature	\$11,945	\$17,918

Independent candidates are eligible to receive 70 percent of the amount of these initial primary and general election payments. An unopposed candidate is eligible to receive public financing in an amount equal to the sum of the qualifying contributions he or she collects.

Matching Funds: Candidates participating in the public funding program are eligible to receive matching payments when an opposing, nonparticipating candidate spends an amount in excess of the spending limit set by the public financing distributions. Matching



Arizona's Public Campaign Funding Law (Continued)

funds are also provided to participating candidates to respond to independent expenditures made in support of an opposing candidate or against the participating candidate. A candidate may receive up to three times the amount of the original public funding payment in matching funds.

Disclosure and Reporting Requirements: All candidates must file regular disclosure reports of their expenditures and contributions. These reports must be filed electronically with the Secretary of State and must be made available for public inspection.

- To ensure the timeliness and efficacy of matching fund payments, nonparticipating candidates must also file “trigger reports” when certain dollar amounts are exceeded. These reports are used to determine the amount of additional public funding that should be provided to the participating candidate. A nonparticipating candidate must file supplemental campaign finance reports when he or she spends more than 70 percent of the primary campaign spending limit applied to a publicly funded opponent, or receives contributions, less the expenditures made during a primary, that exceed 70 percent of the general election spending limit applied to a publicly funded opponent.
- Any individual or entity that makes independent expenditures on behalf of a candidate must report the expenditure once it exceeds a threshold amount established by the law. Thereafter each additional independent expenditure totaling an established amount must be reported as well.

Financing: Revenues for the program are deposited in a dedicated account called the Citizens Clean Elections Fund (CCEF). These revenues are generated from a number of funding mechanisms, including: (1) an

additional surcharge of 10 percent imposed on all civil and criminal fines and penalties collected pursuant to the provisions of the law; (2) a voluntary check-off on state income tax forms that allows an individual to designate \$5 to the CCEF and receive a \$5 reduction of the amount of tax to be paid; (3) voluntary donations to the CCEF for which individuals may receive a dollar-for-dollar tax credit not to exceed the higher amount of 20 percent of the tax amount on the donor's tax return or \$530 per taxpayer; (4) qualifying contributions received by candidates; and (5) amounts received from civil penalties imposed on violators of the Act.

Administration and Enforcement: The law establishes an independent commission, The Citizens Clean Elections Commission, which is responsible for administration and enforcement. There are five members of the Commission who serve single terms of office and are not eligible for reappointment. No more than two of the five may be members of the same political party, nor may more than two be residents of the same county. Individuals who have been appointed to, elected to, or run for political office, or served as an officer of a political party in the previous five years are not eligible for appointment.

To encourage compliance, the law contains strict penalties for violations, including:

- Penalties for violating reporting requirements include fines of \$120 per day for legislative candidates and \$350 per day for statewide candidates.
- Public financed candidates who exceed the contribution or spending limits face a penalty of ten times the amount of the excess contribution or expenditure.
- A knowing violation by a participating candidate may result in that candidate having to repay from personal funds the amount expended from his or her campaign account.

in election campaigns, eliminate the financial barriers to political participation, and place the power to decide elections back into the hands of the voters. Where this reform has been adopted, citizens have quickly seen major improvements in the character and quality of elections.

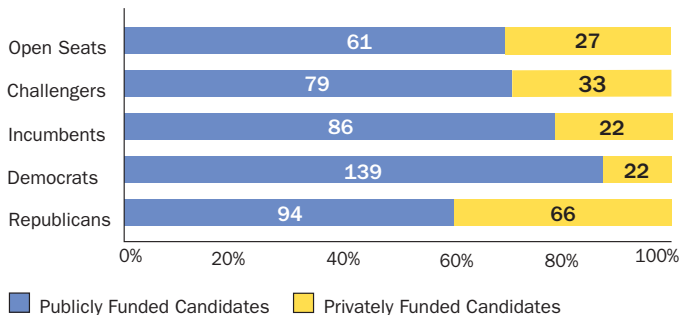
Protects against corruption by reducing the influence of high-dollar donors

By making public resources available to candidates, full public funding reduces the dependence of politicians on high-dollar donors and special interests. It decreases candidates' dependence on high-dollar gifts, not by trying to reduce campaigning, but by offering candidates a neutral source of alternative funding. It gives candidates the option of substituting public resources for private gifts, which reduces the role of monied interests in campaigns and the potential for corruption in the political process.

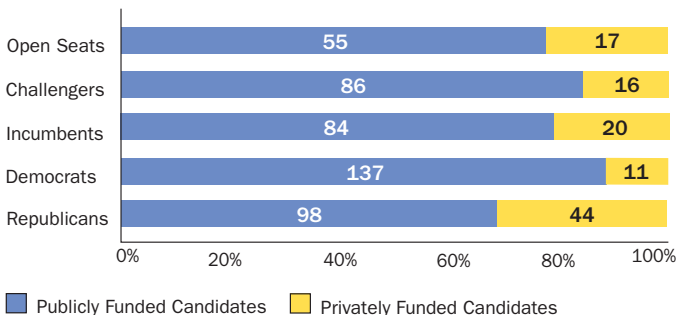
For example, since Maine implemented public financing in 2000, the role of private money has declined sharply. Private contributions have dropped from \$3 million in 1998 (the last election prior to the establishment of public funding) to \$900,000 in 2002 and then to less than \$500,000 in 2006.² This decline reflects the growing number of candidates who have decided to use public funds to finance their campaigns. In 2006, 79 percent of the general election candidates seeking seats in the Maine House and 86 percent of those seeking seats in the Senate chose public funding to pay for their campaigns. As a result, of the \$3.8 million spent by all legislative candidates, more than \$3.1 million, or 83 percent of the money, came from public sources rather than private interests.³

Similarly, in Arizona, of the \$14.8 million spent by legislative candidates in 2006, more than \$9.3 million, or about 62 percent, came from public funds.⁴ Over half of the general election candidates seeking seats in the House or Senate ran publicly financed campaigns. In that year Arizona also held elections for statewide offices, and 16 of the 23 major statewide candidates relied on public money to pay for their campaigns. Those who won office with public financing include the Governor, Secretary of State, Attorney General, State Treasurer, State Mine Inspector, and the two Corporation Commissioners whose seats were up for election.⁵ As a result, Arizona's state government is now led by a group of public servants who can focus on the concerns of citizens, rather than big money donors.

★ 2006 MAINE HOUSE PRIMARY ELECTIONS ★



★ 2006 MAINE HOUSE GENERAL ELECTIONS ★



Provides the campaign resources to ensure broad candidate participation

Public financing revitalizes our democracy by providing adequate resources and encouraging a high level of candidate participation. Publicly financed candidates do not have to spend their time focusing on the money chase, trying to raise the funds needed to wage a campaign. Instead, these candidates spend most of their time meeting with voters and sharing their views on the issues confronting their states. By

freeing candidates from the need to raise large sums of money, public financing eliminates the financial barriers that prevent many citizens from seeking public office. This reform opens the doors to elective office for those who lack ties to monied interests and expands the choices available to voters.

In both of the states that have adopted this reform, candidate participation has been very high. Whether Republican or Democrat, incumbent or challenger, large numbers of those seeking office have chosen the public funding alternative. In the 2006 election in Maine, for example, most of the candidates seeking seats in the state legislature ran with public funding, including:

- In House races, 73 percent of primary candidates and 80 percent of House general election candidates
- In Senate races, 81 percent of primary contenders and 87 percent of general election candidates
- More than 81 percent of Senate incumbents and 80 percent of House incumbents
- In House races, 86 percent of the Democrats and 58 percent of the Republicans in the primaries; 92 percent of the Democrats and 69 percent of the Republicans in the general election.
- In Senate races, 70 percent of the Republicans and 90 percent of the Democrats in the primaries; 85 percent of the Republicans and 91 percent of the Democrats in the general election.

Public financing has also gained great popularity among legislative candidates in Arizona. In the 2006 elections, public financing was used by:

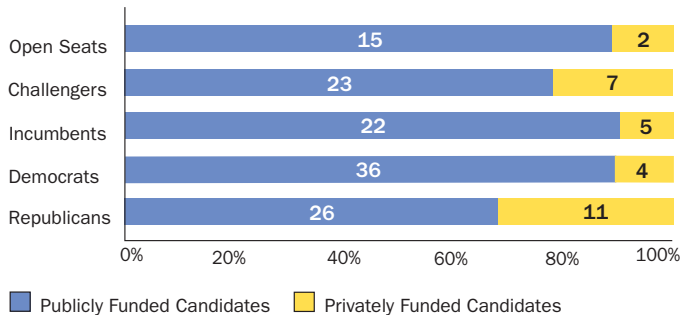
- 63 percent of the major party statewide candidates during the primary elections and 66 percent of the statewide candidates in the general election
- 56 percent of the legislative candidates in the primary elections and 49 percent of those who ran in the general election

- 72 percent of the Democratic candidates in the primary elections and 52 percent of the Republican primary contenders
- 73 percent of the Democratic general election candidates and 45 percent of the Republican general election candidates

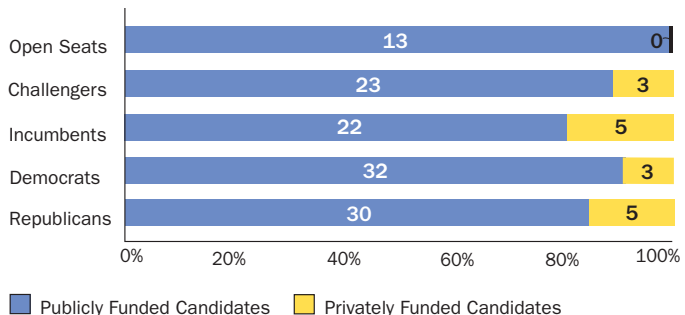
Expands voter choice and improves competition

Public financing is an especially important source of funding for challengers who lack the advantages of incumbency or ties to wealthy constituents. Of the 286 candidates who chose the public alternative in Maine’s 2006 elections, 178 were challengers facing incumbents or individuals competing for open seats. Public funding provided these candidates, who did not have the access to donors and benefits enjoyed by incumbents, with the resources needed to compete for election. In this way, public financing served to increase citizens’ access to the political process, encourage more citizens to run for office, and

★ 2006 MAINE SENATE PRIMARY ELECTIONS ★



★ 2006 MAINE SENATE GENERAL ELECTIONS ★



promote better funded and more competitive campaigns.

Public financing eliminates the financial barriers that discourage many citizens from running for public office. By doing so, it offers voters a more diverse pool of candidates and

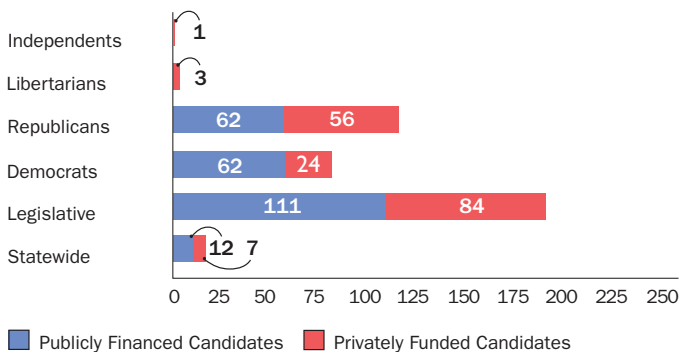
allows new voices to be heard in election campaigns. Challengers are able to achieve financial parity with their opponents, or at least obtain the monies needed to mount competitive campaigns against established incumbents. While challengers still face the problems posed by restrictive ballot access rules, partisan districting efforts, and incumbency advantages, they have a better opportunity to compete and a more level financial playing field in publicly financed elections. States with public financing have seen an increase in the number of candidates, a greater number of contested primary and general election races, and greater opportunities for non-incumbents to win office. The reform has improved competition and empowered voters by presenting them with more meaningful choices at the ballot box.

The early experience with full public funding programs indicates that this reform has been particularly valuable in encouraging the participation of candidates who represent constituencies that have traditionally been underrepresented in the political process. A growing number of female candidates are seeking elective office with the help of public financing. In 2006, 72 percent of the women who ran for seats in the Maine legislature accepted public funds, as did 68 percent of the women contesting legislative races in Arizona.⁶ Public financing has also increased the opportunities for African-American candidates. In Arizona, more than half the African-American candidates in 2006 relied on public resources to finance their campaigns. Public financing thus promotes more robust political debate by expanding the range of views and perspectives engaged in public discourse.

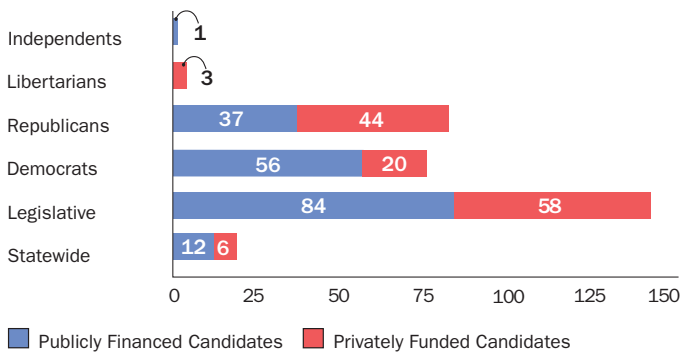
Diminishes the influence of independent expenditures by special interest groups

One of the major questions raised about public funding programs is whether they encourage independent expenditures by political groups. The concern is that public funding may make it easier for special interests to influence an election, since these groups can spend unlimited amounts of money independently for or against

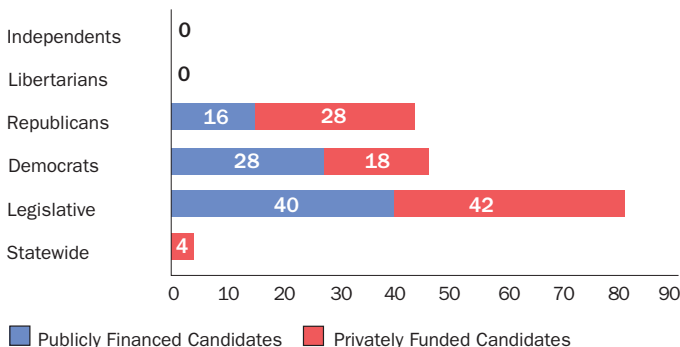
★ ARIZONA 2006 PRIMARY ELECTION CANDIDATES ★



★ ARIZONA 2006 GENERAL ELECTION CANDIDATES ★



★ ARIZONA 2006 GENERAL ELECTION WINNERS ★



The Value of Public Funding

In November of 1998, Arizona voters approved a clean elections initiative, creating a campaign finance system that offers full public financing to candidates for state offices who choose to reject special interest contributions and agree to campaign spending limits. Since 2000, the system has been actively changing the face of Arizona politics for the better.

While many elected officials and potential candidates were originally very wary of the system, those who decided to run as “clean” candidates quickly lauded the idea. Republican Marc Spitzer, an Arizona Corporation Commissioner, ran as a publicly funded candidate and highly recommends this method. “I am not a novice campaigner, having run for office successfully four times under traditional private financing and in 2000 under Arizona’s Clean Elections law. The comparison is stark. Clean elections empowers the constituency, gives voices to thousands of voters, expands opportunities and enhances democracy. Clean elections is about bringing back grassroots, one-to-one politics, the way it used to be, instead of high-dollar media campaigns financed by huge contributions from the well-heeled. Clean elections is about the restoration of democracy.”

Public financing has not only begun to restore democracy in Arizona, it has also opened the door to women and people of color who wish to become public officials. In 2000, because of the availability of public resources, more women and people of color were able to take advantage of the option to run for office. Of the women who

ran, 98 percent said they would not have entered the race without public money. Similarly, 80 percent of Latino candidates said public funding was a factor in their decision to seek office.

State Representative Meg Burton Cahill, a Democrat and a potter by profession who is married to a bricklayer, boasts about being a politician who authentically represents her blue-collar friends, neighbors and constituents. She narrowly defeated a powerful Republican incumbent, and says that “without the clean elections option, I would not have run for office and subsequently defeated a powerful incumbent and the future Speaker of the House.”

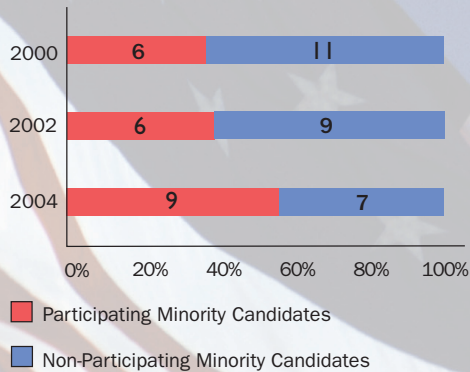
In Arizona, public financing is a popular program that is engaging more Arizonians in the political process, either as a candidate or as a voter. Citizens in this state are better represented because the program has encouraged candidates to become more grassroots-oriented. Representative Leah Landrum Taylor, a Democrat who serves as House Assistant Minority Leader, summarized the experience with the clean elections law by noting that it offered “a good opportunity for individuals to get out there, talk to more of their constituents, do more of an effort to reach more individuals... I would definitely run again as a Clean Election candidate... The response was phenomenal.”

Candidate statements quoted in Marc Breslow, Janet Groat, and Paul Saba, *Revitalizing Democracy* (Northeast Action 2002). This report is available at <http://www.neaction.org/revitalizingdemocracysummary.pdf>.

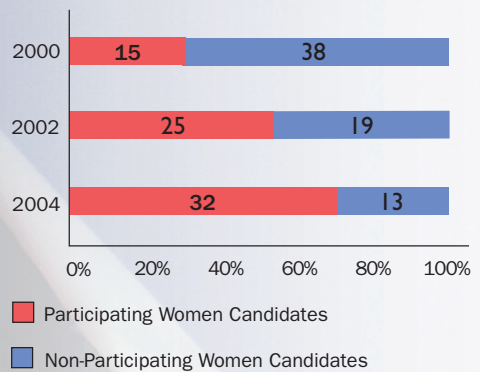
Public Funding, Women, and Minorities

Public funding programs have begun to break down barriers to participation by allowing increased numbers of women and minorities to participate in political races. By removing wealth as a major factor in political campaigning, public funding has provided voters with more choices and competitive elections. In both Maine and Arizona the number of women and minorities running for office has increased since the 2000 elections. More strikingly, the number of female and minorities running publicly funded campaigns in both states has increased dramatically.

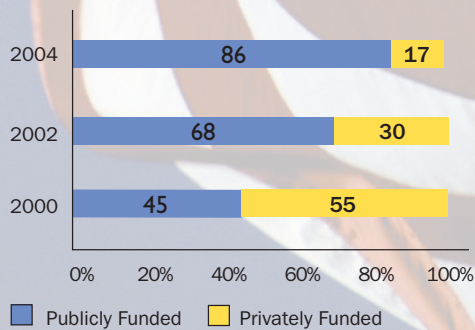
★ ARIZONA GENERAL ELECTIONS: ★
MINORITIES AND PUBLIC FUNDING



★ ARIZONA GENERAL ELECTIONS: ★
WOMEN AND PUBLIC FUNDING



★ MAINE GENERAL ELECTIONS: ★
WOMEN AND PUBLIC FUNDING



Source: Maine Citizens for Clean Elections, "2002-2004 General Election Comparison", <http://www.mainecelelections.org/>

a publicly funded candidate, while the candidate has to abide by spending limits. This may give independent spenders an unfair advantage.

To date, independent expenditures have not been a major problem in publicly funded elections or discouraged candidates from participating in the program. Whether they will become more of an issue in the future is uncertain. In Maine, for example, there was minimal independent spending during the 2000 elections. In 2006, a rise in independent expenditures occurred, but the extent to which it was related to publicly financing is not clear. A combined total of \$627,000 in independent expenditures was reported for all legislative races, with some expenditures made in 51 percent of the House contests and 32 percent of the Senate contests.⁷ While independent spending was more frequent in races featuring one or more publicly funded candidates, it occurred in 45 percent of the races in which no major candidate accepted public funds. The vast majority of these efforts were concentrated in highly competitive electoral districts.

Even if independent spending does occur in some races, full public financing programs offer a major advantage over other campaign finance systems by providing participating candidates with matching funds to respond to the messages of independent spenders. This approach ensures that candidates will have the resources needed to engage in effective advocacy of their own positions, without imposing constraints on the speech of other citizens or groups engaged in an election campaign. Moreover, it helps establish a level playing field so that a wealthy candidate or well-funded interest group can not drown out the voice of any opponents and diminish the information available to voters.

In addition to providing matching funds, public financing should include provisions that not only promote the efficacy of matching programs, but also promote accurate tracking and reporting of independent spending. These include provisions to require supplemental “trigger” reports from candidates who do not opt for public funding when they reach certain

thresholds of receipts or expenditures that suggest that they may exceed the public funding spending limits; strict and timely disclosure of independent expenditures, including immediate reporting of expenditures reaching certain established threshold amounts; and the extension of matching funds and reporting requirements to include all electioneering communications made to influence the outcome of an election.

IN 2006, 72 PERCENT OF THE WOMEN WHO RAN FOR SEATS IN THE MAINE LEGISLATURE ACCEPTED PUBLIC FUNDS, AS DID 68 PERCENT OF THE WOMEN CONTESTING LEGISLATIVE RACES IN ARIZONA.

Public Funding Incentive Programs

Campaign finance systems that offer some type of partial public subsidy represent another worthwhile alternative for reform. These systems are not as comprehensive as full public financing, but they can bring about significant changes in campaign funding that promote many of the major objectives of reform.

Public funding incentive programs use public resources to encourage greater citizen participation in the financing of campaigns. Typically, these programs offer candidates a partial public subsidy in the form of matching funds on low-dollar contributions from individual donors. The objective of this approach is to enhance the value and relative importance of low-dollar contributions, thereby providing individuals with a greater incentive to make a contribution to the candidate of their choice. Similarly, it encourages candidates to emphasize grassroots fundraising and provides them with a means of raising the monies needed to wage a competitive campaign. This reform thus empowers individuals and reduces the risk of corruption in the political process by diminishing the role of high-dollar gifts and special interest money in election campaigns.

**Key Features of Public Funding
Incentive Laws**

Most of the key features of full public financing programs previously identified apply equally to public funding incentive laws or partial subsidy programs. Like full public financing systems, public incentive programs are only effective if they provide a level of benefits substantial enough to encourage high candidate participation. They should permit reasonable levels of spending that allow candidates to

**“PUBLIC CAMPAIGN FUNDING HAS
MADE POSITIVE CHANGES IN THE WAY
CANDIDATES RUN THEIR CAMPAIGNS,
ALLOWING THEM TO SPEND MORE TIME
WITH VOTERS.”**

—SENATOR JOHN MCCAIN

wage competitive campaigns. The eligibility criteria for qualifying for public resources should be designed to promote broad participation, but should not encourage non-viable candidacies. They should also incorporate a means of allowing publicly funded candidates to level the playing field when facing nonparticipating, free-spending opponents. Finally, any program must have reliable and sustainable sources of financing, and provisions to ensure effective administration and enforcement of the law.

The principal difference that has to be considered in partial public funding systems relates to the different type of benefit offered by this approach. Instead of providing candidates with a public grant based on the amount they are permitted to spend in their campaigns, partial systems provide candidates with public money based on the amounts they raise from certain low-dollar contributions. For example, in presidential primary campaigns at the national level, the federal matching funds program offers eligible candidates a \$1-to-\$1 match on the amount

contributed by an individual up to \$250. In the program used in New York City, individual contributions of \$250 or less are matched on a \$4-to-\$1 basis, so that a contribution of \$50 from an individual donor provides a participating candidate with \$200 in public support for a total of \$250 in campaign revenue. In exchange for this benefit, candidates must agree to limit their campaign spending and adhere to contribution restrictions on the private donations they raise for their campaigns.

As these examples suggest, the extent to which public incentive programs fulfill their purpose depends in part on the conditions of eligibility, the level of benefit, and the range of eligible contribution amounts.

Eligibility Requirements: To be eligible for public matching subsidies, candidates should be required to demonstrate a threshold level of public support. The most common approach is to require candidates to raise a certain threshold number of contributions and a certain aggregate amount of money. For example, in New York City Council elections, a candidate must raise 75 contributions of \$10 or more from residents of the council district for a total of at least \$5,000 in order to be eligible for matching funds.

- Only contributions from individual donors who are U.S. citizens should be accepted as qualifying contributions and be eligible for matching funds. Qualifying contributions that determine eligibility for public funding should come solely from residents or registered voters in the relevant electoral district (e.g., from within the legislative district for a state legislative candidate or within the state for a statewide candidate).
- Only contributions raised within an established “qualifying period” should be eligible for matching payments. For example, only individual contributions in eligible amounts received after January 1 of an election year should be eligible for matching payments. Such a provision helps to ensure that only recent, timely contributions are eligible for matching in a particular race. It also helps to ensure that public matching fund rules

do not serve to encourage early fundraising and the further lengthening of political campaigns.

- As a condition for accepting public matching funds, a candidate must comply with certain fundraising and spending restrictions. A candidate should have to agree to abide by limits on campaign spending and to agree to a pre-determined limit on the expenditure of personal funds in support of the campaign.

Level of Benefit: The level of matching funding provided in a public incentive program should be consonant with the objectives of this approach. Since the principal purpose of public matching funds is to increase the importance of small-dollar donors and promote grassroots fundraising, while at the same time providing candidates with public resources to reduce the time and effort needed to raise money, matching funds should be concentrated on low-dollar contributions. At a minimum, these programs should provide a \$1-to-\$1 match on low-dollar contributions. An even greater incentive would be provided by a multiple match on low-dollar contributions, such as \$2 or \$4 in public matching money for every \$1 received from individual in contributions of no more than \$100.

- Matching fund benefits should be adjusted to distinguish between the different offices and types of campaigns, with higher amounts of spending—and thus higher potential amounts of public funding—permitted in contested elections.
- The law should adjust spending limits and the amount of a matchable contribution in advance of each election cycle in order to ensure that the incentives offered by public financing do not diminish.
- Candidates who face no opposition should receive reduced amounts of matching funds, or be ineligible to receive such payments. If such candidates are allowed to receive some funding, the total amount they may receive should be capped at a relatively low level to conserve public resources. This will avoid the problem that has occurred in

some places, where candidates who face no opposition qualify for significant amounts of matching money, even though they do not need it.

- Regardless of the level of benefit, participating candidates should be required to return any unspent matching funds to the account or fund used to finance the matching program. One way to determine the amount to be repaid is to determine the portion of a candidate's total campaign monies that came from public matching payments, and apply this percentage to the amount of unspent money remaining in a campaign account after the election.

“THE 4-TO-1 MATCH ALLOWED PEOPLE FROM MY DISTRICT, WHICH IS A DISTRICT THAT IS RELATIVELY POOR, TO MAKE THEIR DONATIONS COUNT.”
—NY COUNCILWOMAN HELEN FOSTER

Contribution Limits: Since matching programs provide candidates with public resources, but still allow candidates to raise money from private sources, some programs impose stricter fundraising limits on publicly financed candidates. For example, candidates who choose to accept public funds may be subject to stricter limits on contributions raised from private donors than candidates who do not participate in the program. This approach is another means of reducing the role of high-dollar donors.

The Advantages of Public Incentives

Partial public funding in the form of matching funds on low-dollar donations can make a valuable contribution to the health of our democracy by shifting the emphasis in campaign fundraising away from high-dollar contributors and special interest money, and by increasing citizen participation in the political process. By leveraging the role and value of small donors, public

New York City's Public Matching Funds Law

Rocked by several corruption scandals that threatened to undermine public confidence in New York City's municipal government, the New York City Council adopted a series of ethics reforms in the mid-1980s. The most prominent of these reforms was the Campaign Finance Act, which was designed to limit the role and influence of private money in the political process. The act was signed into law on February 29, 1988.

The Campaign Finance Act established a program of public matching funds for individual contributions in New York city elections, including the contests for Mayor and Borough President, as well as City Council. Originally, the law provided public matching payments on a \$1-to-\$1 basis on individual contributions of up to \$1,000. The law was subsequently amended in 1990, 1992, and again in 1998. The revisions changed the terms of the program to a \$4-to-\$1 match on contributions of \$250 or less from residents of the city. Initially, this \$4-to-\$1 rate was only available to candidates who agreed not to accept corporate contributions, which at the time were allowed in New York City elections. Soon thereafter, corporate contributions were banned, and the \$4-to-\$1 benefit has been applied to the eligible contributions submitted by all participating candidates.

The major features of the New York City program include:

Eligibility Requirements: To qualify for public matching funds, a candidate must raise a minimum number of contributions of \$10 or more, as well as a certain amount of money. The amounts a candidate has to raise varies depending on the office being sought.

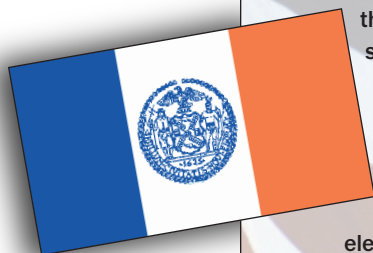
- A mayoral candidate has to raise 1,000 contributions and total funds of at least \$250,000.

- A candidate for the office of public advocate or comptroller has to raise 500 contributions for a total of at least \$125,000.
- A candidate for borough president has to raise 100 contributions from residents of the borough for a total of at least two cents (\$0.02) per borough resident, or \$10,000, whichever is the greater amount.
- A candidate for city council must raise 75 contributions from residents of the council district for a total of at least \$5,000.
- Candidates who participate in the public funding program must also agree to limits on campaign spending and limits on contributions. The contribution limits apply to the aggregate amount a candidate may receive from any single contributor during the four-year election cycle. The aggregate amount a candidate may receive from a donor varies on the basis of the office being sought. The limits are as follows:

Office	Amount
Citywide office	\$4,950
Borough President	\$3,850
City Council	\$2,750

Level of Benefit: Candidates who qualify for public funding can receive \$4 in public funds for each \$1 contributed by an individual up to \$250. The total amount of public matching money that a candidate may receive as a result of any individual's contribution is \$1,000.

- A candidate who decides to accept public funding may receive public matching payments that total up to 55 percent of the spending limit applicable to that candidate's race. In the 2009 elections, the total amounts of public money that may be accrued by a candidate are as follows:



New York City's Public Matching Funds Law (Continued)

- A mayoral candidate may receive total matching fund payments that do not exceed \$3,150,400 per election.
- A candidate for the office of public advocate or comptroller may receive a total of \$1,969,550 per election.
- A candidate for borough president may receive a total of \$708,950 per election.
- A candidate for city council may receive a total of \$82,500 per election.

These limits on public matching funds are raised when a participating candidate is facing a nonparticipating opponent who spends more than the amount established by the public funding spending ceilings. In this circumstance, the spending limit in the race is raised and a publicly funded candidate may receive up to 67 percent of the amount that can be permissibly spent in public funds. In 2009, the total amount of the public funding that a participating candidate may receive in each election in these circumstances is:

Mayor	\$3,818,667
Public Advocate	\$2,387,333
Comptroller	\$2,387,333
Borough President	\$859,333
City Council	\$100,000

Enforcement and Administration: The New York City Campaign Finance Board is responsible for administering this system. The Board is an independent, nonpartisan agency that consists of five members. Two members are selected by the Mayor and two members are chosen by the Speaker of the City Council. The Mayor and Speaker may not appoint two members from the same political party. The Chairman is appointed by the Mayor in consultation with the Speaker. Board members serve staggered, fixed terms of office and, once appointed, cannot be removed at the will of the appointing authority.

Financing: Financing for the program is from city general revenues. The Campaign Finance Act requires the Campaign Finance Board to submit an estimated budget to the mayor for inclusion in the city's executive budget. A provision in the City Charter, approved by voters shortly after the adoption of the act, gives the Campaign Finance Board authority to draw program funding directly from the city's general fund if an insufficient amount has been appropriated to fill candidates' matching fund claims. This "draw down" provision is unique to New York City and is considered a last-resort funding mechanism. To date, it has never been utilized.

Connecticut's Full Public Campaign Funding Law

When Governor Rell signed the Connecticut State Comprehensive Campaign Reform Act in December of 2005, she created the first program for publicly funded elections passed by a state legislature. This program will undergo its first test in the 2008 election cycle. Major provisions of the bill include:

Eligibility Requirements: In order to participate in the public funding program, candidates must meet in-state, or in-district resident requirements for their office. Candidates must also collect low-dollar contributions in order to reach a qualifying threshold set at:

Office	Qualifying Threshold in contributions of \$100 or less
Governor	\$250,000
Statewide	\$75,000
State Senate	\$15,000
House	\$5,000

Levels of funding: Different funding levels for different race, allow those running for more prominent statewide offices to communicate their messages effectively to a larger audience and run competitive races.

Office	Primary Election Grant	General Election Grant
Governor	\$1.25 million	\$3 million
Statewide	\$375,000	\$750,000
State Senate	\$35,000 (\$75,000)	\$85,000
House	\$10,000 (\$25,000)	\$25,000

() = Amount in party dominant district

Candidates in races that are not competitive are only eligible for 30 percent of the applicable amount.

Personal Funds: When candidates qualify for public funding they agree to limit their use of personal funds during the campaign. The amount of the original grant is then

reduced by the amount of personal funds each candidate contributes to their own campaign.

Office	Amount of Personal Funds
Governor	\$20,000
Statewide	\$10,000
State Senate	\$2,000
House	\$1,000

Matching Funds: In order to ensure that publicly funded candidates are not hindered by a high spending, privately funded opponent, or independent expenditures, matching funds are, available to program participants. These funds are placed in the participating candidates account when non-participating opposition spending reaches 90 percent of their spending limit. These funds are made immediately available to the candidate when opponent spending exceeds the participating candidates spending limit. Funding disbursement occurs again when participating candidates are overspent by 115 percent, 140 percent, and 165 percent of their original grants. Matching funds are available up to 100 percent of the original grant.

Minor Party Candidates: Minor parties must have received at least 10 percent of the vote in the previous election for their candidate to become eligible for matching funds. Qualifying parties receiving 10 percent of the vote previously are eligible for one-third of the general election grant in each race. Those that received at least 15 percent of the vote may receive two-thirds of the general grant. While those that received 20 percent or more of the vote are eligible for the full grant amount.

Reporting Requirements: Enforcement of this law falls to the State Elections Enforcement Commission, where all campaign finance reports are filed. Penalties for failing to file the required reports by the deadline include civil penalties of not more than \$10,000.

incentive programs reduce the risk of corruption, provide benefits great enough to ensure candidate participation, and help to improve the choices available to voters by increasing the resources available to challengers.

Reduces the risk of corruption and expands citizen participation

Public matching fund programs are designed to reduce the risk of corruption in the political process by encouraging candidates to finance their campaigns largely from low-dollar contributions and public resources. These programs also serve to diminish the influence of particular donors or special interests and increase the funding available to candidates by expanding the number of individuals who contribute to campaigns.

When New York City adopted its program, the City Council hoped that the availability of public incentives would entice more New York City residents to make small contributions and thus enhance the importance of those who could not afford to make larger donations. The reform has fulfilled this purpose. According to the New York City Campaign Finance Board, the number of contributions to candidates who have decided to participate in the program nearly doubled between 1997 and 2001, growing from 71,600 in 1997 to 139,400 in 2001.⁸ As a result, the 2001 elections, which were especially competitive due to the implementation of a term limits law, involved the largest number of contributors in the program's history.

The New York City program has served to increase the participation of small donors in the electoral process. In 2006, 37 percent of the contributions received by candidates came from contributions of \$1 to \$250. The highest proportion of contributions to participating candidates came from donations of \$250 or less, which accounted for nearly 85 percent of the total number of contributors.⁹ As Councilwoman Helen Foster, who represents a primarily African-American district in the Bronx noted, “the \$4-to-\$1 match allowed

people from [her] district, which is a district that is relatively poor, to make their donations count. I was very encouraged. People would come and give me \$10 and happily give the \$10 knowing that it would multiply.”¹⁰

A multiple matching benefit on low-dollar contributions not only led to an increase in the number of contributors, but also led to an increase in the size of contributions. In 2001, the most common contribution was in the amount of \$250. In 2006, it was the maximum matchable amount, \$250. Councilman David Yassky observed that “people undoubtedly gave more money than they otherwise would have, because of the campaign finance system. I explained the matching system, somebody would give me a check for \$100, who I think would have given \$50 because of every dollar being matched 4-to-1.”¹¹

“[THE PROGRAM] GAVE ME THE FREEDOM THAT I DIDN'T HAVE TO ENTER INTO ANY ARRANGEMENTS, WHETHER SPOKEN OR EXPECTED, IN TERMS OF PAYBACK IF I BECAME ELECTED.”

—MARY MURKOWITZ, NYC CANDIDATE

Provides the campaign resources needed to ensure broad candidate participation

Public matching fund programs typically experience high levels of participation from candidates. This type of reform offers many benefits to candidates. It provides substantial sums of public money to candidates who emphasize low-dollar donors, thus making it easier to finance a campaign. It reduces the emphasis on fundraising in campaigns by decreasing the amount of money candidates have to raise from private donors. It encourages candidates to spend more time reaching out to their constituents and gives constituents a greater stake in the election. It is therefore not surprising

that most candidates are willing to participate in matching fund programs where they are offered.

Multiple match benefit programs have been particularly successful in encouraging candidate participation. New York City, for example, has witnessed increasing interest among candidates and stronger candidate participation throughout the years. Since 1991, a majority of the candidates on the ballot in city elections have opted into the program, and most of these candidates have successfully met the qualification requirements and received public funds. In 2006, 79 percent of the 355 participants who appeared on the ballot received a total of more than \$24 million in public funds.¹²

Improves voter choice

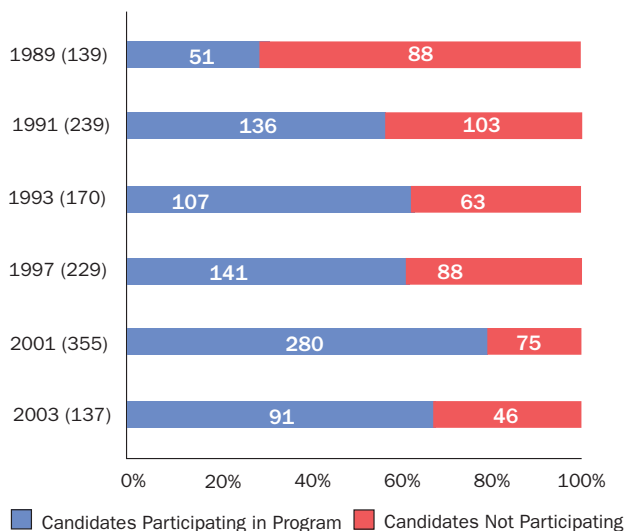
Public matching funds enhance the choices available to voters by reducing the financial barriers to candidate participation and allowing more of those who are willing to run for public office to raise the monies needed to mount a campaign. One of the benefits of public incen-

tive programs is that they provide vital resources to challengers. Candidates running against established incumbents and first time candidates often lack large bases of financial support or access to high-dollar contributors. As a result, in traditional private financing systems, they often find it difficult to raise the funds needed to have their voices heard or to compete effectively against better financed opponents. The availability of public matching funds helps to address this problem by enhancing the relative value of the contributions made by a challenger’s supporters. Although incumbents also receive the same benefit, the availability of public money has proven to be much more important to challengers.

For example, in 2006, public funds constituted 61 percent of the total campaign monies available to candidates who participated in the New York City program. The 38 participating city council incumbents received about \$5.5 million in public funds, which represented 56 percent of the total public funding distributed to candidates for city council. The 88 challengers received about \$4.3 million in public funds, which represented 44 percent of the total public funds paid out. While the amounts were basically the same, public funds made up 53 percent of the monies available to challengers and 25 percent of the total campaign funds available to incumbents. Public funding was almost twice as important to challengers as it was to incumbents.¹³

Public matching funds help to level the playing field for challengers, giving them a better opportunity to compete. While challengers may not receive as much money as participating opponents, as is the case with full public funding systems, matching funds increase the relative amount of money challengers have to spend on a campaign and thus makes it easier for them to present their case to voters. The availability of these public resources thus empowers voters and strengthens their role in the electoral process. Democracy is revitalized by this approach to reform.

★ NEW YORK CITY CANDIDATE PARTICIPATION ★



Source: New York City Campaign Finance Board, “Campaign Finance Summary 2003 Council District Elections”, http://www.nycfb.info/public_disclosure/summ_03.htm

North Carolina 2004 Election Results

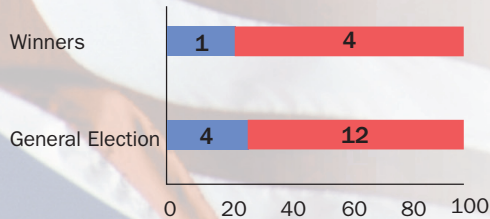
In October of 2002, the North Carolina General Assembly passed the Judicial Campaign Reform Act signed into law by Governor Easley. This law created a system of public campaign funding available to all appellate judicial candidates in the state of North Carolina. Funding for this program comes from:

- voluntary state income-tax check-offs
- voluntary tax check-offs for lawyers on their privileged license tax
- civil penalties imposed on violators of the act
- voluntary donations

The 2004 judicial race in North Carolina was the first test of the new program. In the general election:

- 14 of the 16 candidates running for office applied for public funds and 12 were certified to receive public campaign funding
- 4 of the 5 judges that took office were publicly funded and the privately funded judicial candidate had applied for public funds but not been certified.
- 1.9 million dollars were collected for the North Carolina Public Campaign Financing Fund.
- Over 1 million dollars were donated through state income tax check-offs alone.
- Candidates received a combined total of \$1,497,725 in public funds.
- In the 2006 judicial race, 9 out of 12 candidates have filed for public funding and 8 have been certified to receive public funds.

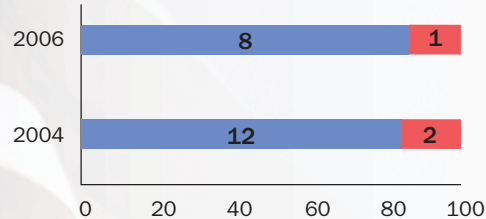
★ NORTH CAROLINA JUDICIAL ELECTIONS: ★
2004 RESULTS



Private Funding Public Funding

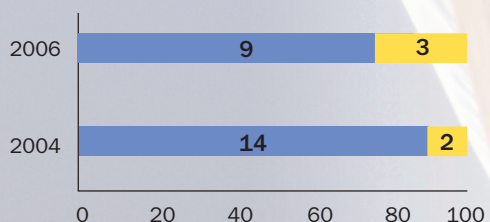
Source: www.voterowned.com, "Voter Owned Election Facts"

★ NORTH CAROLINA JUDICIAL ELECTIONS: ★
CANDIDATES RECEIVING PUBLIC FUNDS

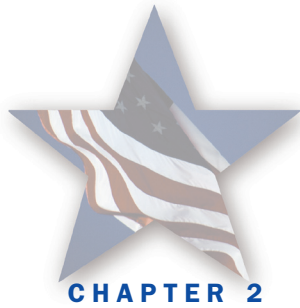


Received Funding Did Not Receive Funding

★ NORTH CAROLINA JUDICIAL ELECTIONS: ★
APPLICANTS FOR PUBLIC FUNDS



Applied for Funding Privately Funded



The Backdrop of PRIVATE CAMPAIGN FINANCE REGULATION

Public financing programs of all types must operate on a foundation of private campaign finance regulation. A public financing program that did not restrict traditional private contributions, for example, would fail to achieve many of its aims. It would neither greatly reduce the pressure candidates feel to raise money for their campaigns nor enhance individual participation by raising the value and relative importance of those who can afford to give only low-dollar amounts. Similarly, a scheme that neither limited contributions to political parties nor limited the amounts of expenditures political parties could coordinate with their candidates would, practically speaking, undercut any public financing program. Individuals and corporations wanting to influence a candidate or just boost that candidate's prospects could contribute to that candidate's party instead. Indeed, private campaign finance regulation is so important for achieving so many goals that all states provide for some form of it, even those without public funding.

Private campaign finance regulation rests on five different features, any combination of which a state can adopt. To achieve its primary aims, however, a public funding program must

rest on most, if not all, of these features. These features are

- Disclosure of permissible private spending above threshold amounts
- Bans on spending from certain sources, most often from business corporations and unions
- Limitations on the amounts persons and entities can contribute to political candidates, parties, and to political committees
- Restrictions on coordination of spending among candidates, parties, political committees, and individuals
- Regulation of so-called “electioneering communications”

Some of these features are long-standing, some are new; some pose controversy, some do not. All, however, are constitutionally permissible means to prevent corruption and all help underpin any system of public funding.

Disclosure

Of all these regulatory strategies, disclosure is the most widely used and the least controversial. Three important policies underlie it. First, disclosure provides critical information about where campaign money comes from and where it goes. This information helps voters evalu-

ate candidates. With it voters can better locate candidates on the issues, better see the interests to which particular candidates are likely to be receptive, and thus better predict the candidates' policies once in office. Second, disclosure deters corruption by bringing large contributions and expenditures to public light. Publicity both discourages some from spending money to buy influence over public officials and allows voters more easily to detect special favors that a successful candidate may give to financial supporters once in office. As Justice Brandeis wrote, "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." Third, disclosure provides the data necessary to enforce other private campaign finance regulations. Without reporting, for example, it would be very difficult for any public authority to detect violations of its other campaign finance requirements, including those of public funding. Disclosure is the minimum requirement of any workable regime of campaign finance regulation—public or private.

Recognizing this, all fifty states and the District of Columbia require disclosure of some information on contributions above a certain amount to candidates, parties, or political committees. Arizona, for example, requires candidates and political committees to report on loans and contributions received and expenditures made. All contributions above \$25 and all expenditures regardless of amount must be itemized and the contributors and recipients identified. Maine also requires candidates and political committees to report all contributions and expenditures and requires detailed information of any individual contribution over \$50, including the name, address, occupation, principal place of business, if any, of the contributor, along with the contribution amount.

Source Bans

A less universal feature of many states' regulation of private spending is a ban on direct election spending from certain sources, particularly business corporations and unions. Three

separate policies support source bans. First, corporate source bans protect the integrity of the political marketplace by preventing entities whose purpose is to amass economic power from converting it into political power. When their spending is banned, corporations cannot obtain an unfair advantage over individuals in the political marketplace. Second, bans protect shareholders and union members who have paid money into a corporation or union for economic purposes from having that money used to support political candidates whom they may oppose. Corporate shareholders who strongly support particular candidates for public office will not find the corporation using its considerable economic resources to oppose them. Third, bans on direct corporate and union spending ensure that major shareholders and individual union members cannot use the corporation or union to evade any spending limitations placed on them as individuals. Without a corporate ban, for example, two major owners of a corporation could circumvent whatever spending limits apply to them as individuals by arranging for the corporation itself to spend money on candidate elections.

Recognizing that individuals connected to business corporations and unions might have important common interests, however, states that prohibit direct contributions typically allow business corporations and unions to set up and administer associated political committees. The corporations and unions can usually pay for a committee's set-up, administration, and solicitation expenses but not make any contributions to the account that the committee uses to fund its own political contributions and expenditures. Funds spent on behalf of state candidates must come from individuals connected in certain close ways to the business corporation or union itself and are often limited.

Approximately 20 states prohibit direct contributions to candidates, political party committees, or other political committees and direct expenditures to influence elections by business corporations and approximately 15 prohibit such contributions and expenditures by unions.

The remaining states mostly cap contributions although a few, like New Mexico and Virginia, place no limit on them at all except during times around state legislative sessions. Arizona, for example, prohibits direct corporate and union contributions to candidates entirely, while Maine allows business corporations and unions to contribute no more than \$500 to a candidate for governor and no more than \$250 to a candidate for any other office. Arizona likewise takes a stricter approach to direct corporate and union contributions to political parties. It prohibits both. Maine, by contrast, allows both to contribute unlimited amounts to parties.

Contribution Limitations

Many states limit the amount of money people and political committees can contribute to state candidates, state parties, or state political committees. Although states may be tempted to enact contribution limits in order to level the playing field among contributors, that policy cannot by itself constitutionally support them. States rely instead on a different policy of long-recognized authority: preventing corruption and the appearance of corruption. The threat of corruption has several forms. First, a candidate can promise a vote in return for a contribution. This form—so-called quid pro quo corruption—is the least controversial. Everyone condemns it. In fact, because bribery laws independently protect against it, many, including some on the Supreme Court, have argued that campaign finance laws need not worry over it. Second, a contribution can cloud a candidate’s independent judgment. In this view, a contribution that influences a candidate to vote differently than she otherwise would destroys the sacred relationship between voter and representative. It leads to representatives shirking their responsibilities by following interests other than those they should. Third and most controversially, the access a contribution gains a contributor can lead to the appearance of corruption, if not actual corruption. Even if access does not secure

actual influence over government officials, the second form of corruption, the Supreme Court has found that it can certainly lead to its appearance.

“THE DANGER IS THAT OFFICEHOLDERS WILL DECIDE ISSUES NOT ON THE MERITS OR THE DESIRES OF THEIR CONSTITUENCIES, BUT ACCORDING TO THE WISHES OF THOSE WHO HAVE MADE LARGE FINANCIAL CONTRIBUTIONS VALUED BY THE OFFICEHOLDER.”

—SUPREME COURT IN MCCONNELL V. FEC

All three forms of corruption justify limits not only on contributions to candidates but also on contributions to political parties and political committees. If the law limited candidate contributions but left contributions to political parties and political committees untouched, individuals could seek undue influence over and access to candidates by contributing to these intermediaries. As the Supreme Court found in upholding prohibitions on so-called “soft money,” a form of previously unlimited contributions to political parties, in the recent litigation over the Bipartisan Campaign Reform Act of 2003 (the “McCain-Feingold” legislation), these intermediaries can serve as conduits. In return for contributions, which they can then turn over to their candidates, parties can provide special access. As the Supreme Court put it, “[t]he record ... is replete with ... examples of national party committees peddling access to federal candidates and officeholders in exchange for large soft-money donations.” So routinized was this practice, in fact, that the “national party committees actually furnish[ed] their own menus of opportunities for access to would-be soft-money donors, with increased prices reflecting an increased level of access.”

For these reasons, approximately 70 percent of the states and the District of Columbia limit contributions. Nearly all, moreover, limit contributions by individuals and committees in the same way. (South Dakota and Wyoming do, however, cap individual contributions while allowing unlimited contributions by political committees.) Arizona limits individual contributions to \$760 to any statewide candidate, to \$296 to any legislative candidate, and to \$370 to a candidate for local office. Ordinary political committees are limited to giving these same amounts, but so-called “Super PACs,” which receive donations of at least \$10 from 500 or more people, can contribute up to \$3,784 to any statewide candidate, \$1,512 to any legislative candidate, and \$1,890 to any local candidate. In addition, Arizona limits overall contributions to candidates from a single individual to \$3,530 in a single calendar year and overall contributions to political committees from a single individual to the same amount. Arizona has no overall contribution limit for political committees.

Maine has a somewhat simpler system. Apart from special limits on contributions that can qualify a candidate for public funding, it limits individuals and political committees from contributing over \$500 to a gubernatorial candidate per election cycle and over \$250 to any other candidate per election cycle. It also limits an individual, but not a political committee, from making aggregate contributions to candidates of over \$25,000 in any calendar year. Neither Arizona nor Maine limits contributions by individuals or political committees to political parties.

Limitations on Coordinated Expenditures

The Supreme Court has long drawn a line between contributions to a candidate, which can be reasonably limited, and independent expenditures made by an individual or political committee to support or defeat a candidate, which cannot. Truly independent expenditures, in the Court’s view, both pose less danger

of corruption and impose a greater burden on individual speech than do contributions. Independent expenditures, after all, are directed by the individual herself, not handed over to another for spending.

Coordinated expenditures, however, are a different matter. As the Court has noted, “expenditures made after a ‘wink or nod’ often will be as useful to the candidate as cash.” In such cases, the candidate has approved how the money will be spent even if he never receives it himself. For all intents and purposes, coordinated expenditures function the same as contributions and should be regulated for the same reasons. Otherwise, would-be contributors will simply circumvent any contribution limitations by making direct campaign expenditures coordinated with a candidate. Regulating the one form of spending and not the other makes little sense.

States that limit individual contributions thus generally limit coordinated expenditures as well. In fact, they usually just treat them as a form of contribution. Arizona, for example, expressly excludes independent expenditures from the definition of “contribution,” thereby counting coordinated expenditures the same as contributions themselves. Maine, by contrast, specifically says that “any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate... is considered to be a contribution to the candidate.” Either way the final result is the same: coordinated expenditures are effectively regulated as contributions.

Regulation of “Electioneering Communications”

The most controversial and recent type of regulation of private campaign spending concerns so-called “electioneering communications.” Traditionally, regulation—whether disclosure requirements, source bans, or limits—focused primarily on contributions to and expenditures on political campaigns. Other forms of spending in politics, like funding advertising on general political issues rather than on candidates, escaped regulation entirely. On the

national level, for example, most federal courts held that spending on advertising that did not expressly advocate the election or defeat of a particular federal candidate escaped regulation even when it featured the candidate prominently. An ad could, for example, criticize a candidate right before an election but so long as it asked the viewer to write the candidate a letter rather than to vote against her no campaign finance requirements touched it—even when it prominently featured and identified the candidate and no one else.

Such a regime led to obvious problems. A corporation that wanted to influence a race and get “credit” for its help from a successful candidate could spend unlimited amounts of money running electioneering ads that did not engage in express advocacy. The corporation would not even have to disclose what it was doing. Likewise, an individual who wanted to exceed any contribution limits and avoid restrictions on coordinated expenditures could do the same. This ability to run sham “issue ads” allowed end runs around the law and undercut the anti-corruption policies underlying all the provisions source bans, contribution limits, disclosure requirements, and coordination restrictions of the campaign finance regime in place.

Several states have tried to address this type of advertising. The federal government has gone furthest, however, and the Supreme Court has upheld its approach. In the Bipartisan Campaign Reform Act of 2002 (BCRA), Congress adopted a bright-line test to identify “electioneering communications.” Its definition covers only (1) broadcast, cable, and satellite communications (2) clearly identifying a candidate for federal office (3) airing within 60 days before a general or 30 days before a primary election, which (4) can be received by 50,000 or more people in the jurisdiction the candidate seeks to represent. BCRA then applies this definition in two different ways. It requires disclosure of disbursements for “electioneering communications” by individuals totaling more than \$10,000 in a calendar year

and bars business corporations and unions and any nonprofit that received any money from business corporations and unions from spending any general treasury funds on them.

SEVENTY PERCENT OF STATES AND THE DISTRICT OF COLUMBIA LIMIT CONTRIBUTIONS

The Court easily upheld the disclosure requirements placed on those engaging in “electioneering communications.” It simply noted that “the important state interests [usually supporting] disclosure requirements—providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions—apply in full to BCRA[.]” and then documented how the lower courts’ prior approach had allowed spenders to conceal their identities from the public, a practice which, in the Court’s view, did “not reinforce the precious First Amendment values that Plaintiffs argue are trampled by BCRA”

The Court also upheld the prohibition against business corporations and unions spending from their general treasuries to fund electioneering communications—even with disclosure. The Court noted that the prohibition was not complete. Business corporations and unions could always spend for such advertising from their connected-political committees and they could spend from their general treasuries for political communications that fell outside this specific category of advocacy. The only real question was whether the bar was overbroad. The Court held that it was not because electioneering communications not containing express advocacy “are the functional equivalent of express advocacy.” “[T]he vast majority of [covered] ads,” the Court thought, “are intended to influence the voters’ decisions and have that effect.”

Since the Supreme Court has upheld BCRA’s approach to “electioneering communications”

and that approach effectively forecloses circumvention of all the other campaign financing protections, any state that now wishes to address this type of advertising should consider following the federal approach. In addition to being constitutional, it has several attractive features. First, its bright lines make it easy to apply in practice and should minimize litigation. Second, by covering only broadcast, cable, and satellite communications in a short time window before the election, it leaves much important political speech unaffected. State political debate can thus remain robust

and lively. Third, its coverage of only those ads targeted to a particular candidate's constituency means that genuine non-electioneering communications can still feature a candidate if that makes them more effective elsewhere. Finally, many of the particular conditions and thresholds in the federal definition can be changed to better reflect local conditions. A particular state may believe that the time windows should be shorter or that a much smaller targeting figure is appropriate. So long as the new requirements are reasonable, there should be no constitutional difficulty.

ENDNOTES

1. *Buckley v. Valeo*, 424 U.S. 1, 25.
2. Candidate information based on the official election canvass of the Maine Secretary of State and the Maine Citizens for Clean Elections List of Participating Candidates for the 2006 Election Cycle, November 8, 2006.
3. *Ibid.*
4. Candidate information based on the official election canvass of the Arizona Secretary of State and the Citizens Clean Elections Commission List of Certified Participating Candidates for the 2006 Election Cycle, November 8, 2006.
5. *Ibid.*
6. Candidate information based on the official election canvass of the Arizona Secretary of State and the Citizens Clean Elections Commission List of Certified Participating Candidates for the 2006 Election Cycle, November 8, 2006.
7. Candidate information based on the official election canvass of the Maine Secretary of State and the Maine Citizens for Clean Elections List of Participating Candidates for the 2006 Election Cycle, November 8, 2006.
8. New York City Campaign Finance Board, *A Report on the 2005 Election: Public dollars for the Public Good*, Vol. 2, September 2006, pp. 33-54, 3, 85.
9. *Ibid.*
10. *Ibid.*
11. *Ibid.*
12. *Ibid.*
13. *Ibid.*

Appendix A: Maine State Legislature Candidate Participation Statistics¹**Chart 1: Maine House of Representatives**

	2004 Primary	2004 General	2006 Primary	2006 General
House Candidates	348	321	308	278
Publicly Funded House Candidates (%)	245 (70.4%)	249 (77%)	226 (73.4%)	225 (80.9%)
Republican Candidates	164	149	160	142
Publicly Funded Republican Candidates (%)	96 (58.5%)	103 (69%)	94 (58.7%)	98 (69%)
Democratic Candidates	163	146	161	148
Publicly Funded Democratic Candidates (%)	136 (83.4%)	127 (87%)	139 (86.3%)	137(92.6%)
Incumbents	22	105	108	104
Publicly Funded Incumbents (%)	18 (82%)	77 (73%)	86 (79.6%)	84 (80.8%)
House Challengers	124	114	112	102
Publicly Funded Challengers (%)	82 (66%)	86 (75%)	79 (70.5%)	86 (84.3%)
Open Seat Candidates	119	102	88	72
Publicly Funded Open Seat Candidates (%)	89 (75%)	86 (84%)	61 (69.3%)	55 (76.4%)

Chart 2: Maine State Senate

	2004 Primary	2004 General	2006 Primary	2006 General
Senate Candidates	81	73	74	66
Publicly Funded Senate Candidates (%)	63 (77.8%)	58 (79%)	60 (81.1%)	58 (87.9%)
Republican Candidates	39	17	37	35
Publicly Funded Republican Candidates (%)	29 (74.4%)	14 (82%)	26 (70.2%)	30 (85.7%)
Democratic Candidates	40	18	40	35
Publicly Funded Democratic Candidates (%)	33 (82.5%)	15 (83%)	36 (90%)	32 (91.4%)
Incumbents	22	21	27	27
Publicly Funded Incumbents (%)	18 (82%)	17 (81%)	22 (81.5%)	22 (81.5%)
Senate Challengers	24	21	30	25
Publicly Funded Challengers (%)	17 (71%)	17 (81%)	23 (76.7%)	23 (92%)
Open Seat Candidates	35	31	17	13
Publicly Funded Open Seat Candidates (%)	28 (80%)	23 (74%)	15 (88.2%)	13 (100%)

Appendix B: Arizona State Legislature Candidate Participation Statistics²

	2006 Primary	2006 General	2006 General Election Winners
Privately Funded Candidates for State wide Offices	7	6	0
Publicly Funded Statewide Candidates	12	12	4
Privately Funded for Legislative Offices	84	58	40
Publicly Funded Legislative Candidates	111	84	42
Privately Funded Democratic Candidates	24	20	28
Publicly Funded Democratic Candidates	62	56	18
Privately Funded Republican Candidates	56	44	16
Publicly Funded Republican Candidates	62	37	28
Privately Funded Libertarian Candidates	3	3	0
Publicly Funded Libertarian Candidates	0	0	0
Privately Funded Independent Candidates	1	0	0
Publicly Funded Independent Candidates	0	1	0

Appendix C: New York City Candidate Participation Statistics³

	1993	1997	2001	2003	2006
Total Candidates	170	229	355	137	252
Candidates Participating in the Program (%)	107 (63%)	141 (62%)	280 (78%)	91 (66%)	188 (74.6%)
Candidates Receiving Public Funds (%)	66 (39%)	82 (36%)	200 (56%)	75 (55%)	108 (42.8%)

ENDNOTES

1. Maine Citizens for Clean Elections, "2002-2004 General Election Comparison", <http://www.maineckleanelections.org/>
 Maine Citizens for Clean Elections, "2004 Primary Election Statistics", <http://maineckleanelections.org>
 "List of all Candidates for the 2006 General Election." Compiled and issued by the Maine Secretary of State. www.maine.gov/sos
2. Arizona Citizens Clean Elections Commission, "2004 Election Demographics", www.ccec.state.az.us
 "List of all Candidate Committees for the 2006 Primary Election." Compiled and issued by the Arizona Secretary of State.
www.sos.state.az.us
 "List of all Candidate Committees for the 2006 General Election." Compiled and issued by the Arizona Secretary of State.
www.sos.state.az.us
3. New York City Campaign Finance Board, "Campaign Finance Summary 2003 Council District Elections", http://www.nycffb.info/public_disclosure/summ_03.htm
 New York City Campaign Finance Board, A Report on the 2005 Election: Public dollars for the Public Good, Vol. 2, September 2006, pp. 33-54,3,85.



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The Institute’s distinctive network is reflected in the members of our Advisory Board – a bipartisan group of notable academics, legal experts, election administrators, and public officials. This includes the Honorable Ralph Munro (Former Secretary of State, Washington State), Tami Buhr (Harvard University), Marion Just (Wellesley College), Norm Ornstein (American Enterprise Institute), Tom Mann (Brookings Institution), Anthony Corrado (Colby College), U.S. Senator Lindsey Graham, David Pottruck (former CEO, Charles Schwab), and former U.S. Senators David Boren and Bob Kerrey. These and other members of the Board have joined forces to carry forward the reform agenda from a centrist vantage point.

The Reform Institute’s Board of Directors is comprised of former Congressman Charles Bass (R-NH), Charles Kolb (Committee for Economic Development), Cheryl Perrin (Campaign for America), and Pam Pryor (We Care America). In addition, Daniel Ortiz of the University of Virginia’s School of Law serves as Legal Advisor. Cecilia Martinez serves as Executive Director.

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