

## MEMORANDUM

**TO:** Commission on Strengthening Utah's Democracy  
**FROM:** Stefan P. Brutsch of Parsons Behle & Latimer  
**DATE:** March 2009  
**SUBJECT:** Public Funding of Political Campaigns and Parties

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The following law summary briefly analyses the various laws and alternatives relating to the public funding of political campaigns. It sets forth Utah's current law, other states' laws and approaches to the issues, and touches on some of the commentary regarding the pros and cons of the various alternatives.

### **I. Description of Utah's Current Law**

Currently, Utah political candidates' campaigns receive no public funds.<sup>1</sup> Utah does, however, provide public grants to state and county Constitution, Democratic, Libertarian, and Republican political parties.<sup>2</sup> The grant program receives \$2 in funding when a state income-tax filer checks a box on a Utah Individual Income Tax Return (Form TC-40).<sup>3</sup> Marking the income tax check-off does not increase a filer's tax liability or reduce a filer's return.<sup>4</sup> Rather, it allows the filer to designate \$2 of his or her tax liability for the political party of that filer's choice. A filer must have a tax liability in order to designate funds.<sup>5</sup> In 2005 (the last year for which complete statistics can be located), 16.8 percent of Utah filers elected to contribute \$2 to a political party, resulting in a total of \$168,186 in public funds going to county and state political parties.<sup>6</sup> Utah does not require participating political parties to make any concessions, such as accept spending limitations, to receive public funds.

### **II. Statistics Concerning Utah's Approach and Alternative Approaches**

Most states do not provide public funds for political parties or for state-office election

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<sup>1</sup> Lobbying, PACs & Campaign Finance: 50 State Handbook, § 46:111 (2009 ed.), Peter C. Christianson, Peter J. Coyle, Edward E. Poliakoff, Jocelyn Y. Dwyer, eds.

<sup>2</sup> See Utah Code § 59-10-1312

<sup>3</sup> See Utah Code § 59-10-1311(1)(b).

<sup>4</sup> See Utah Code § 59-10-1311(2)(d)(ii).

<sup>5</sup> See Utah Code § 59-10-1311(1)(a)(i).

<sup>6</sup> Utah Tax Commission, *Statistics of Updated Returns* (Dec. 31, 2005), <http://tax.utah.gov/esu/income/processing/ystats05.PDF>.

campaigns. Four states,<sup>7</sup> however, fully fund candidates' campaigns for certain state offices, while nine other states provide partial public funding for candidates running for certain state offices.<sup>8</sup> Nine states, including Utah, provide funds to political parties.<sup>9</sup>

### III. Examples of Alternative Approaches

In the states that publicly finance candidates and parties, the public financing programs must be voluntary.<sup>10</sup> However, public funds are oftentimes provided on the condition that public-funding participants limit campaign spending, submit to a financial audit, and/or share with the public more financial information than is typically required.<sup>11</sup> Public financing programs fall into two categories: (1) "clean elections" programs that fully finance election campaigns with public funds and that forbid candidates from raising contributions from private sources; and (2) "partial public funding" programs where public funds comprise only part of a participating candidate's expenditures, and candidates continue to raise and spend funds from private sources within the limits stipulated by law.

#### A. "Clean Elections" States

##### 1. Vermont

An example of a state with a "clean elections" program is Vermont, though it provides public financing solely to candidates for governor and lieutenant governor.<sup>12</sup> To qualify for public funds, a gubernatorial candidate must raise a certain amount of money from individual contributors, which is commonly termed "seed money." In Vermont, a gubernatorial candidate must raise at least \$35,000 in seed money, collected from no fewer than 1,500 qualified individual contributors making a contribution of no more than \$50 each.<sup>13</sup> A qualified

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<sup>7</sup> Those four states are Vermont, Maine, Arizona, and Connecticut. The National Conference of State Legislatures compiles each state's various laws regarding the public funding of campaigns and maintains that information on its website. National Conference of State Legislatures, [http://www.ncsl.org/print/legismgt/clean\\_elections.pdf](http://www.ncsl.org/print/legismgt/clean_elections.pdf). The table is attached as Appendix 1. In addition to the four states listed by the National Conference of State Legislatures as providing full public funding to certain candidates, North Carolina implemented a pilot program to provide full public funding to candidates for Commissioner of Insurance, State Auditor, and Superintendent of Public Instruction in 2008. See Voter Owned Elections Act, N.C. Stat. § 163-278.99, et seq. In addition, North Carolina, and New Mexico as well, provide full public funding to candidates running for appellate judicial positions. See N.C. Stat. § 163-278.63 et seq.; N.M. Stat. Ann. 1-19A-1 to 1-19A-17.

<sup>8</sup> Those nine states are Maryland, Michigan, New Jersey, Florida, Rhode Island, Hawaii, Minnesota, Nebraska, and Wisconsin. National Conference of State Legislatures, [http://www.ncsl.org/print/legismgt/part\\_cand\\_fin.pdf](http://www.ncsl.org/print/legismgt/part_cand_fin.pdf). The table is attached as Appendix 2.

<sup>9</sup> Those nine states are Arizona, Iowa, Idaho, Minnesota, New Mexico, North Carolina, Virginia, Rhode Island, and Ohio. See Table 4 at <http://www.ncsl.org/programs/legismgt/about/PubFinOverview.htm#Tab%201#Tab%201>.

<sup>10</sup> *Buckley v. Valeo*, 424 U.S. 1, 57, 65 (1976).

<sup>11</sup> The Federal government's presidential public funding system for the primary-election period requires all publicly funded candidates to limit spending, submit to an audit, and disclose all "matchable" contributions (which may be below the regular disclosure threshold of \$200). See 26 U.S.C. § 9031, et. seq.

<sup>12</sup> See 17 V.S.A. § 2854.

<sup>13</sup> 17 V.S.A. § 2854(a)(1).

contributor is an individual registered to vote in Vermont, and no more than twenty-five percent of qualified contributors may reside in the same county.<sup>14</sup> The gubernatorial candidate will then receive flat grants of \$75,000 for the primary election and \$225,000 for the general election, to the extent funds are available.<sup>15</sup> Incumbent candidates receive eighty-five percent of those amounts. In addition to raising seed money, gubernatorial candidates must limit themselves to spending \$300,000 for the two year election cycle (the amount of the grant given to each candidate for the primary election is reduced by the amount of seed money that candidate raised).<sup>16</sup>

## 2. Arizona

Arizona sponsors the nation's most extensive public-financing program. All statewide and legislative candidates may participate. The state distributes a public grant at the beginning of the primary-election and general-election periods that is intended to cover the entire cost of campaigning. To qualify for public funding, a candidate must raise "seed money"—a certain number of \$5 contributions from registered voters eligible to vote for or against that candidate's election.<sup>17</sup> Candidates must also agree to an overall spending limit on campaign expenditures and to forgo private contributions.<sup>18</sup> Sixty percent of all Arizona primary-election candidates participated in the program in 2006.<sup>19</sup> The program distributed \$9.4 million in public funds during the 2006 election cycle—the state's last statewide election.<sup>20</sup> Funding comes from: (1) a 10 percent surcharge on all civil penalties and criminal fines; (2) a voluntary \$5 check-off box on Arizona income return forms; (3) a voluntary dollar-for-dollar tax credit on donations of up to \$610; and (4) civil penalties paid by candidates.<sup>21</sup>

### **B. Michigan—A Partial Public Funding State**

An example of a state that provides partial public funding is Michigan, which, like Vermont, only provides public funding for gubernatorial candidates. In Michigan, a candidate may receive a \$2 public-funds match for each \$1 of qualifying contributions raised, provided that

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<sup>14</sup> 17 V.S.A. § 2854(b).

<sup>15</sup> See 17 V.S.A. § 2855(b)(1).

<sup>16</sup> See 17 V.S.A. § 2855(c). Compared to Vermont's public funding system, Maine's program has higher limits for spending and provides more funds to candidates. For example, Maine provides \$200,000 to each qualifying gubernatorial candidate in the primary election, and \$600,000 to each candidate in the general election.<sup>16</sup> Moreover, Maine's law has a trigger mechanism that releases additional public funds to participating candidates whose privately funded opponents raise or spend more than the permissible amount that a publicly funded candidate can receive in campaign finance grants, up to double the initial funds received by the candidate. 21-A M.R.S.A. § 1125(9). In Maine, the state makes significant appropriations to the public funding system.

<sup>17</sup> Ariz. Rev. Stat. § 16-950.

<sup>18</sup> Ariz. Rev. Stat. § 16-941.

<sup>19</sup> Ariz. Citizens Clean Elections Comm'n, Funding Sources Clean Elections, <http://www.azcleanelections.gov/cccecweb/cccecays/cccecPDF.asp?docPath=docs/FundingSources.pdf> (2006).

<sup>20</sup> Ariz. Citizens Clean Elections Comm'n, 2006 Candidate Disbursements, <http://www.azcleanelections.gov/cccecweb/cccecays/elections/disb2006.asp>.

<sup>21</sup> Ariz. Rev. Stat. § 16-954.

the candidate raises a minimum of \$75,000 in qualified contributions.<sup>22</sup> A qualifying contribution is a contribution of \$100 or less.<sup>23</sup> Each candidate is limited to receiving \$990,000 in the primary election and \$1,125,000 in the general election.<sup>24</sup> A candidate who accepts public funds is limited to spending \$2,000,000 in each the primary and general election.<sup>25</sup>

#### **IV. Pros and Cons of Alternative Approaches**

##### **A. Pros**

Proponents of publicly financed campaigns argue that public funding: (1) reduces corruption by eliminating or diminishing large-dollar contributors' undue influence on public officials; (2) frees candidates to reach out to voters by removing time demands placed on candidates to fund-raise; (3) levels the financial playing field among candidates; and (4) opens the electoral process to more candidates.<sup>26</sup> In addition, partial public funding programs that offer a public "match" may encourage candidates and parties to raise small-dollar contributions from private sources. Public funding supporters also point out that voluntary public-funding programs are the only constitutionally permissible way to impose spending limits on candidates and thus control skyrocketing campaign costs.

##### **B. Cons**

Opponents of public financing assert that most funding programs do not offer a sufficient net benefit to legitimate candidates, meaning that often only obscure candidates participate.<sup>27</sup> On the other hand, if a public financing program does attract front-running candidates, it requires a significant outlay of taxpayer dollars. Critics argue that this money would be better directed to other priorities that have less abstract objectives.<sup>28</sup> Opponents also note that overall spending limits that often accompany public-financing programs can do nothing to curb independent spending. Spending limits thus do little to control aggregate spending on elections, and may even harm the political process by empowering outside groups rather than elected officials and

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<sup>22</sup> M.C.L.A. § 169.264.

<sup>23</sup> M.C.L.A. § 169.212.

<sup>24</sup> See M.C.L.A. 169.264-65.

<sup>25</sup> See M.C.L.A. § 169.267.

<sup>26</sup> See Michael E. Campion, *The Maine Clean Election Act: The Future of Campaign Finance Reform*, 66 Fordham L. Rev. 2391, 2395 (1998); Jason B Frasco, *Full Public Funding: An Effective & Legally Viable Model for Campaign Finance Reform in the States*, 92 Cornell L. Rev. 733, 742-743 (2007).

<sup>27</sup> Porto, Brian L., *Where Do We Go From Here? Vermont Campaign Finance After Randall v. Sorrell*, 32-WTR Vt. B.J. 30, 35 (2007) ("No candidate for governor or lieutenant governor in Vermont sought public funds for the 2002 elections or for the 2006 elections; in 2004, only Progressive Steve Hintgen, who ran for lieutenant governor, participated in the public financing system. . . . Vermont's public funding mechanism also appears inadequate when considered in light of the \$726,899 that Governor James Douglas, a Republican, spent to win reelection in 2006 and the \$622,285 spent by his Democratic challenger, Scudder Parker.")

<sup>28</sup> See generally, John R. Samples, *Welfare for Politicians?: Taxpayer Financing of Campaigns* (Cato Inst. 2005).

established political parties.<sup>29</sup> Finally, opponents of public funding of campaigns argue that public financing laws are, as a whole, “coercive in [the] effort to encourage candidates to become publicly funded and therefore unconstitutionally burdens the First Amendment rights of candidates.”<sup>30</sup> Nevertheless, many public-funding programs have been upheld as constitutional.

#### V. Process to Amend Utah Law

To alter Utah’s current public-funding approach, the Utah Code must be amended.

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<sup>29</sup> See Raymond J. La Raja, and Matthew Saradjian, *Maine Clean Elections: An Evaluation of Public Funding for Legislative Elections*, University of Massachusetts Policy Center, (2004)..

<sup>30</sup> *Daggett v. Comm. on Gov’t Ethics & Election Practices*, 205 F.3d 445, 452 (1st Cir. 2000).

# Appendix 1



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

**Public Financing of Election Campaigns**  
**Candidate Campaigns: Full Public Financing ("Clean Elections")**

To qualify for public funds, candidate must raise (or spend):		Public funds are disbursed according to:		Spending Limits	
Seed Money	In contributions satisfying the following criteria:	Distribution method or matching ratio	Up to a maximum amount of:		
<b>STATES WITH PUBLIC FUNDING FOR GUBERNATORIAL CANDIDATES ONLY</b>					
<b>Vermont</b> 17 VSA §§ 2851-2856	Gov: \$35,000 Lt. Gov: \$17,500	Contributions of no more than \$50 each from no fewer than 1,500 (gov.) or 750 (lt. gov.) individuals who are registered to vote in Vermont  No more than 25% of total qualifying contributors may be residents of the same county	Flat grant for full amount, to the extent that funds are available	Primary / general Gov: \$75,000 / \$225,000 Lt gov: \$25,000 / \$75,000  For both, grant for primary election is reduced by an amount equal to the candidate's qualifying contributions  Incumbents receive 85% of above-listed amounts	Per two-year election cycle:  Gov: \$300,000 Lt gov: \$100,000 Other statewide: \$45,000 State sen: \$4,000 + \$2,500 for each additional seat in the senate district State rep: \$2,000 in single-member districts; \$3,000 in two-member districts Incumbents of statewide offices: 85% of the amounts above Incumbents in the legislature: 90% of the amounts above
<b>STATES WITH PUBLIC FUNDING FOR GUBERNATORIAL AND LEGISLATIVE CANDIDATES</b>					
<b>Maine</b> <sup>a</sup> 21-A MRSA §1121 et seq.	Candidate must receive the following number of qualifying contributions: Gov: 2,500 State Sen: 150 State Rep: 50	\$5 contributions from registered voters within the candidate's district	Flat grant for full amount; paid at beginning of primary and general election periods	Amount equal to spending limit	75% of average expenditure for office sought in 2 previous general elections. Legislative candidates in uncontested elections receive a smaller grant (about 1/3 of the grant for candidates in contested elections) 2006 amounts: Primary / general Gov: \$200,000 / \$400,000 State Sen: \$7,746 / 20,082 State Rep: \$1,504 / 4,362

Continued on next page

Source: National Conference of State Legislatures  
 December 2005

For more information, contact Jennie Drage Bowser at 303-364-7700.

To qualify for public funds, candidate must raise (or spend):		Public funds are disbursed according to:		Spending Limits	
Seed Money	In contributions satisfying the following criteria:	Distribution method or matching ratio	Up to a maximum amount of:		
<b>STATES WITH PUBLIC FUNDING FOR GUBERNATORIAL, OTHER STATEWIDE AND LEGISLATIVE CANDIDATES</b>					
<b>Arizona<sup>a</sup></b> §16-940 et seq.	Candidate must receive the following number of qualifying contributions:  For 2008 election: Legis: 220 For 2006 election: Gov: 4,000 AG, Sec St: 2,500 Other SW: 1,500 Legis: 220	\$5 contributions from registered voters within the candidate's district	Flat grant for full amount; paid at beginning of primary election period and beginning of general election period	Party cand: amt equal to spending limit Independent cand: amt equal to 70% of spending limit Unopposed cand: amt equal to \$5 x number qualified contribs for cand	For 2008 election: Primary / general Legis: \$12,921 / \$19,382  For 2006 election: Primary / general Gov: \$453,849 / \$680,774 AG & Sec St: \$95,550 / \$143,325 Other SW: \$47,770 / \$71,655 Legis: \$11,945 / \$17,918
<b>Connecticut<sup>c</sup></b>	Gov: \$250,000 Other SW: \$75,000 Senate: \$15,000 House: \$5,000	For gubernatorial candidates, at least \$225,000 (\$67,500 for other statewide candidates) must come from contributions from state residents of up to \$100. For senate candidates, at least 300 contributions (150 for candidates for state house) of \$5 - 100 must come from residents of municipalities included, in whole or in part, in their legislative district.	Flat grant for full amount; paid at beginning of primary and general election periods.	Primary / General Gov: \$1.5 million / 3 million Other SW: \$450,000 / 750,000 Senate: \$50,000 / 85,000 House: \$15,000 / 25,000  Candidates may contribute personal funds, limited to the following amounts: Gov: up to \$20,000 Other SW: up to \$10,000 Senate: up to \$2,000 House: up to \$1,000	Primary / General Gov: \$1,250,000 / 3,000,000 Other SW: \$375,000 / 750,000 Senate: \$35,000 / 75,000 House: \$10,000 / 25,000 Unopposed major party candidates receive 30% of the full amount for the general election. A major party candidate opposed only by a minor party or petitioning candidate receives 60% of the full amount in the general election.

- (a) If a non-participating candidate's spending (added together with independent expenditures) exceeds the established limits, matching funds are provided to any opposing participating candidate, and spending limits are re-adjusted
- (b) The public financing provisions in Massachusetts were enacted by a citizen initiative in 1998 and have not yet been used in an election. The provisions require an appropriation by the Legislature before they can be implemented.
- (c) Connecticut's public financing program takes effect in 2008 for legislative candidates and in 2010 for statewide candidates, with one exception: legislative candidates participating in special elections may begin receiving grants on December 31, 2006. The amounts represented in this table are for major party candidates in regular elections. Different amounts apply for major party candidates in special elections, and for minor party and petitioning candidates in any election

Source: National Conference of State Legislatures  
 December 2005 (Arizona updated July 2007)  
 For more information, contact Jennie Drage Bowser at 303-364-7700.

# Appendix 2