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## Public Campaign Financing: The Path from Plutocracy to Pluralism

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Michael Clyburn<sup>1</sup>

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any national bank or any corporation organized by authority of any laws of Congress, to make a money contribution in connection with any election to any political office.*<sup>2</sup>

— Tillman Act of 1907

### INTRODUCTION

At the turn of the century, powerful corporate interests wielded heavy influence over government policy at the state and federal levels in large part through providing the majority of funding for election campaigns of those who would do their bidding. In 1907, the Tillman Act<sup>3</sup> was the first congressional attempt to change this dynamic.<sup>4</sup> One hundred years later, the battle still rages for the loyalty of our elected officials.

At the turn of the twenty-first century, the people began a concentrated effort to counteract the pervasive influence of the moneyed interests on the campaigns, and thus, on the priorities of our elected officials at the state and city level. The Maine Clean Elections Act of 1996<sup>5</sup> established the first statewide comprehensive public campaign financing (PCF) option in the nation.<sup>6</sup> Arizona followed two years later with its own PCF program for all statewide and legislative offices.<sup>7</sup> By 1997, twenty-one states had various limited forms of PCF.<sup>8</sup>

Washington House Bill 1360 would create a PCF program for legislative and state executive offices. This article is an analysis and critique of that

proposed legislation, introduced in the 2007 Washington legislative session.<sup>9</sup> While that legislation is based on the successful models in Maine and Arizona, this article establishes criteria for evaluating the effectiveness of PCF programs in fulfilling the goals of increasing citizen participation and representative responsiveness to constituents, and reducing the influence of big money on the political process.

Section I explains the basics of PCF and the constitutional framework under which it falls. It also examines two successful examples of PCF programs from Maine and Arizona and compares them with Washington State's proposed bill. By comparing Bradley Smith's article opposing PCF with an article supporting it by Jamin Raskin and John Bonifaz, Section II establishes the criteria for evaluating an effective PCF program. Section III applies those criteria to the proposed Washington bill and contains proposals for modifications that will make the Washington bill more effective in fulfilling those criteria. Section III also presents funding proposals, both for the calculation of funding for candidates and for the funding of the program itself. Section IV presents two additional proposals addressing reform in broadcast media and the propriety of the initiative process as the means of establishing a PCF program. Lastly, Section V includes information about future plans for legislation in Washington, some of the strategies Washington Public Campaign plans to use to promote this legislation, and information on how Washington citizens can get involved in promoting the idea of PCF and establishing such a program in Washington.

## I. PUBLIC CAMPAIGN FINANCING: THE BASICS

### A. *Constitutionality*

Any PCF program must fit within the federal constitutional parameters established in *Buckley v. Valeo*<sup>10</sup> and *Republican National Committee v. Federal Election Commission*.<sup>11</sup> The basic holding from *Buckley* is that government cannot limit an individual's expenditure on her own campaign

nor can it limit an independent's expenditure in support of a candidate.<sup>12</sup> A limit on direct contributions by an individual to a candidate is acceptable because it is only a minor imposition on that individual's freedom of speech.<sup>13</sup> And, most importantly for this article, a voluntary agreement by a candidate to limit one's expenditures in exchange for receiving public funding passes constitutional muster.<sup>14</sup> *RNC v. FEC* reaffirmed the constitutionality of a voluntary choice between unlimited private fundraising and the voluntary agreement to abide by expenditure limits in exchange for receiving public funds.<sup>15</sup>

### *B. Common Elements*

Historically, most efforts at campaign finance reform fall into two general categories—income and expenditures. PCF programs involve a combination of the two: providing the income out of public funds in return for an agreement by the candidate to limit expenditures. With the organic, grassroots growth of the PCF revolution, there are naturally many variations among state programs, but there are also several main elements that almost all programs have in common.

Before turning to an evaluation of the proposed Washington legislation, this article will take a brief look at the successful PCF programs in Maine and Arizona. It will describe the common provisions of all three programs and compare the parameters and limits used in each of them.

#### **1. Qualifying**

In order to qualify for public funds, a candidate must collect a specified number of qualifying donations (usually five dollars)<sup>16</sup> from citizens within the represented district during the qualifying period. A candidate is permitted to use a certain amount of her own money or collect a limited number of larger “seed” donations in order to finance the gathering of the qualifying donations.<sup>17</sup>

At the end of the qualifying period, the candidate must submit the required number of qualifying donations, including the name and address of each individual who gave a donation.<sup>18</sup> The state conducts a verification process on a random selection of donors, much like the certification of an initiative petition. Once the candidate is certified as eligible, she must agree to refrain from fundraising, accept no private donations, and limit expenditures to the amount provided by the PCF program.<sup>19</sup>

## **2. Public Funding**

Each certified candidate is provided with a specified amount of campaign funds. These amounts are specified for each different elective office for which PCF is available. In some instances, the amount is expressed as a formula rather than a specific dollar amount.

Most PCF programs include a matching funds provision in case a nonparticipating candidate significantly outspends the publicly financed candidate.<sup>20</sup> In calculating the opponent's spending totals, expenditures by independent organizations made on behalf of an opponent or against the publicly funded candidate are included.<sup>21</sup> These methods of categorizing independent expenditures and of providing matching funds to a publicly funded candidate who is outspent by her opponent are designed to allow publicly funded candidates to stay competitive with privately funded opponents.

## **3. Maximum Limits of Funds**

However, to ensure that big moneyed interests cannot bankrupt a PCF program, each state has established a maximum cap on the amount of matching funds provided to any single candidate.<sup>22</sup> In Maine, the matching funds are limited to two times the original amount distributed for a primary or general legislative election, and for a gubernatorial primary. The matching fund for the gubernatorial general election is limited to the amount of the original distribution.<sup>23</sup> In Arizona, the total distribution is

limited to three times the original spending limit for any particular campaign.<sup>24</sup> The Washington bill provides for a matching funds limit of five times the original spending limit for any particular campaign.<sup>25</sup>

In addition to these caps on state contributions to individual campaigns, Arizona's PCF program contains a provision that the total annual spending will be limited to an amount equal to five times the number of individual income tax forms filed during the preceding year.<sup>26</sup> Maine and Washington both include a provision for reducing the amount of matching funds paid out if the necessary funds for full financing are not available.<sup>27</sup> In Maine, the commission may also request additional funding from the legislature to make up any shortfall.<sup>28</sup>

#### 4. Program Comparison

**Table 1: Public Funding amounts for each of the three state programs.**

		Maine	Arizona	Washington
	Population	1,321,574	6,166,318	6,395,768
Seed Money	Individual Donation	\$100	\$100	\$100
	Governor	\$50,000	\$40,000	\$40,000
	Senate	\$1,500	\$3,230	\$12,000
	House of Representatives	\$500	\$3,230	\$12,000
Qualifying Donation	Individual Amount	\$5	\$5	\$5
Number Required	Governor	3,250	4,000	4,000
	Senate	150	200	200
	House of Representatives	50	200	200
PCF Funding	Governor Primary	\$200,000	\$638,220	\$500,000
	Governor General Election	\$600,000	\$957,330	\$750,000
	Legislature Primary		\$12,921	\$25,000
	Legislature General Election	Senate \$20,000 House 4,300	\$19,381	\$30,000
Maximum Funds Cap	Governor Primary	\$600,000	\$1,914,660	\$3,000,000
	Governor General Election	\$1,200,000	\$2,871,990	\$4,500,000

SOURCE: *H.R.B. 1360 §6, 2007 Reg. Sess. (Wash. 2007); ARIZ. REV. STAT. ANN. §16-945; ME. REV. STAT. ANN. tit.21-A§1122(9).*

## **5. Program Funding**

Finally, this section will compare the sources of revenue that each of these three states employs to fund its PCF program. There are some sources that are common to all three. The accumulated five dollar qualifying contributions from each candidate are deposited into the PCF fund.<sup>29</sup> All fines and penalties for the violation of any campaign financing or reporting law are paid into the PCF fund.<sup>30</sup> In addition, any unspent monies in a publicly funded candidate's account, whether from seed contributions not spent in the qualifying stage,<sup>31</sup> primary funds not spent before the primary election,<sup>32</sup> or general election funds not spent during a campaign, must be paid back into the PCF fund.<sup>33</sup>

It is apparent that these funding sources common to all three programs will provide only a percentage of the funding necessary for a successful PCF program. Each state also provides additional sources of funding.

In Maine, there is a three dollar check-off option on the state income tax form,<sup>34</sup> similar to the presidential campaign funding check-off option on the federal income tax form. A taxpayer may designate three dollars (six dollars for joint return filers) of her state income tax to go to the PCF fund.<sup>35</sup> There is also a provision for voluntary donations to the fund.<sup>36</sup> Finally, two million dollars is transferred from Maine's general fund (which comes primarily from sales tax and income tax)<sup>37</sup> to the PCF fund each year. There is also a provision for borrowing from future allocations, or, as mentioned above, for requesting additional funding from the legislature.<sup>38</sup>

Arizona also has a check-off option (five dollars per filer) on its state income tax form.<sup>39</sup> In addition, Arizona provides an annual dollar-for-dollar tax credit for individual donations to the PCF fund (up to five hundred dollars or 20 percent of the taxes owed, whichever is higher.)<sup>40</sup> A portion of Arizona's PCF funding is provided through a 10 percent surcharge on all civil and criminal fines.<sup>41</sup>



The Washington bill makes no specific provisions for funding the PCF program, except the provisions, mentioned above, which all three states have in common. Presumably, the program would receive funding from the state general fund, but the level of funding is not specified.

## II. CRITERIA FOR EVALUATION

Before analyzing a particular PCF program, it is advantageous to establish the desirable criteria to be fulfilled by any proposed PCF program. This section examines two sets of criteria proposed by experts in the field, and then establishes the criteria by which this article will evaluate the proposed Washington bill.

### A. *Bradley Smith's Criteria*

Bradley A. Smith teaches election law at Capital University Law School. He is one of the nation's leading authorities on election law and campaign finance.<sup>42</sup> He served for five years on the Federal Election Commission, including serving as chairman of the commission in 2004.<sup>43</sup> In his article "Some Problems with Taxpayer-Funded Political Campaigns," he argues against government-funded campaign financing and in favor of unregulated private donations as the preferred method of funding political campaigns.<sup>44</sup> He establishes the following criteria against which to judge any method of campaign financing: administrability, flexibility, opportunity, competitiveness, and communication.<sup>45</sup>

#### 1. **Administrability**

"First, a system of campaign finance should be easy to administer."<sup>46</sup> Smith maintains that a completely unregulated system of private contributions satisfies this criterion absolutely.<sup>47</sup> If campaign funding were totally unregulated, the government would have no administrative costs, and the candidate would have only the cost of any self-imposed record keeping permitting her to contact previous supporters when reelection time rolled

around.<sup>48</sup> However, Smith does concede that a well-designed PCF program that attracted widespread participation could lower administrative costs more than the current system of regulated private donations, with its concomitant “enforcement, auditing, and disclosure costs.”<sup>49</sup>

## **2. Flexibility**

“Second, [a system of campaign finance] should be flexible—able to adapt quickly to changing political environments, new technologies, and evolving campaign techniques.”<sup>50</sup> Based on the premise that politics is a “rapidly changing field”<sup>51</sup> and that government is “notoriously slow at adjusting to changing realities,”<sup>52</sup> Smith basically argues that no system, except a totally unregulated one, can meet this criterion.<sup>53</sup> In addition, he sees any government attempt at reform as vulnerable to gridlock because the two major parties continually maneuver for reform measures tailored to give their own party a systematic advantage over the other.<sup>54</sup>

## **3. Opportunity**

“Third, [a system of campaign finance] should, if not necessarily foster more candidacies and entries into politics by political newcomers, at least not overly discourage such challenges.”<sup>55</sup> Here, Smith’s position, opposed to government funding of political campaigns and in favor of deregulated private funding, is clear in the choice of wording. If this criterion were asserted as a positive—it *should* foster more candidacies and entries by newcomers—then PCF would likely be the best system for meeting it. By watering down the criterion with his “not overly discourage” language, Smith dilutes the advantage that PCF presents in fulfilling this criterion. Smith’s starting premise for the discussion of this criterion is another indication of his general bias: “There is little reason to believe that there are a large number of viable candidates for office who cannot raise the necessary funds in a deregulated system.”<sup>56</sup> This statement is only true if “viable candidates” are defined as ones who can attract the support of the

wealthy and the corporate interests who provide the overwhelming majority of the funding in an unregulated private donation system.

#### **4. Competitiveness**

“Fourth, [a system of campaign finance] should, if not necessarily promote more competitive races, at least not overly insulate incumbents from challenge.”<sup>57</sup> Here, Smith again vacillates in the articulation of the criterion in order to negate the decided advantage that adequately-funded PCF programs have in creating more competitive contests. Smith acknowledges that the success of PCF programs in increasing competitiveness depends on an adequate level of funding. “Thus, a government financing system with an expenditure cap that sets the limits high enough may make races more competitive, while a system that sets the spending level too low may make races less competitive.”<sup>58</sup>

#### **5. Communication**

“Finally, [a system of campaign finance] should provide candidates with adequate funds to communicate with and educate voters.”<sup>59</sup> Whatever system of financing is used, it will not be successful unless it provides candidates with adequate means to effectively communicate with the voters. Because communication depends on funding, Smith’s discussion of this criterion is similar to that of the previous criterion. He argues that any system of financing established by incumbents sets funding limits that ultimately benefit incumbents.<sup>60</sup>

#### **6. Summary**

It is clear from Smith’s article that he believes an unregulated system of private campaign financing is the optimum method. His primary argument centers around his belief that our elected representatives will inevitably design a system which promotes the incumbents’ self-interest,<sup>61</sup> and that

government is too moribund and partisan to ever be able to design a system that can evolve as campaigns and circumstances do.<sup>62</sup>

*B. Raskin and Bonifaz's Criteria*

“Jamin Raskin is a professor of constitutional law at American University’s Washington College of Law and director of its Program on Law and Government and its Marshall-Brennan Constitutional Literacy Project.”<sup>63</sup> John Bonifaz is the founder, original executive director, and current general counsel for the National Voting Rights Institute (NVRI).<sup>64</sup> Today NVRI is a prominent legal and public education center committed to preserving the right of all citizens to vote and participate in the electoral process on an equal and meaningful basis.<sup>65</sup>

In their article, “The Constitutional Imperative and Practical Superiority of Democratically Financed Elections,”<sup>66</sup> Jamin Raskin and John Bonifaz argue in favor of PCF. They start with a similar set of criteria as Smith.

The six criteria—three of constitutional dimension and three practical in nature—are as follows: (1) the extent to which all citizens are meaningfully able to run for office; (2) the extent to which all social groups find themselves fairly represented in the ranks of candidates for public office and are able to exercise effective influence on the political process as a whole; (3) the extent to which meaningful democratic debate is facilitated and citizens are empowered to express their points of view; (4) the extent to which the social costs of campaigning are kept down; (5) the extent to which “frivolous” candidacies are discouraged; and (6) the amount of time that elected officials, their staffs, and other candidates end up spending on raising money and reporting campaign contributions.<sup>67</sup>

**1. Meaningful Participation**

While *Buckley v. Valeo*<sup>68</sup> and *Republican National Committee v. Federal Election Commission*<sup>69</sup> equated campaign contributions with free speech, Raskin and Bonifaz view their first two criteria as addressing the issue of

equal protection:<sup>70</sup> “The key First Amendment issue at stake in this debate is not the right of the wealthy to spend up to the heavens, but the right of all citizens, poor and wealthy alike, to speak and participate meaningfully in the electoral process.”<sup>71</sup> Where Raskin and Bonifaz state these rights positively, Smith employs watered down criteria framed in the negative (e.g., not to overly discourage political newcomers,<sup>72</sup> not to overly insulate incumbents from challenges<sup>73</sup>) in order to negate the strengths of PCF. Raskin and Bonifaz assert that the current system of campaign financing does discourage newcomers and insulate incumbents.<sup>74</sup>

## 2. Democratic Dialogue

In their third criterion—the system should facilitate meaningful democratic debate—Raskin and Bonifaz aver that the “two values underlying free speech: democratic dialogue and individual self-expression”<sup>75</sup> are more fundamental values than the “spending is the equivalent of speech”<sup>76</sup> argument in *Buckley*. In this respect, Raskin and Bonifaz agree with Judge J. Skelly Wright who said,

Paradoxically, by equating political spending with political speech and according both the same constitutional protection, the Court placed the first amendment squarely in opposition to the democratic ideal of political equality. This perverse result derives from a narrow view of freedom of expression, divorced from the broader ideals of our political system.<sup>77</sup>

## 3. Social Costs

Raskin and Bonifaz’s fourth criterion—the social costs of campaigning are kept down—is similar to Smith’s concerns about the cost of a PCF program. Smith’s focus is on the likelihood that a PCF program would be underfunded by cost-conscious legislatures and as a result would not foster competitive races.<sup>78</sup> However, in their calculation of the social costs of the current system, Raskin and Bonifaz include the subsidies and tax breaks given out to campaign backers by legislators as well as the cost of pressing

social issues such as affordable housing and universal healthcare, which are not high on the legislative priority list that is controlled by the moneyed interests who currently fund the campaigns.<sup>79</sup>

#### **4. Frivolous Candidates**

Raskin and Bonifaz's fifth criterion of excluding frivolous candidates is included in Smith's opportunity criterion.<sup>80</sup> However, where Smith equates the ability to raise money with the viability of a candidate,<sup>81</sup> Raskin and Bonifaz dismiss fundraising capabilities as irrelevant to the seriousness or frivolity of a candidacy, citing the Supreme Court in *Bullock v. Carter*.<sup>82</sup>

#### **5. Time Requirements**

Raskin and Bonifaz's final criterion is similar to Smith's ease of administration criterion. Both agree that a well-constructed PCF program would be easier and less expensive to administer than the current regulated system of private donations.<sup>83</sup> Where Smith expresses skepticism that such a system can be constructed or passed by Congress,<sup>84</sup> Raskin and Bonifaz consider how much time currently spent fundraising could be used by incumbents to perform their elected duties and by challengers and incumbents alike to actually talk to citizens and debate the issues.<sup>85</sup>

#### **6. Summary**

While Smith firmly agrees with the holding in *Buckley* that campaign contributions are free speech and believes that the best system of campaign financing should not limit that speech, Raskin and Bonifaz argue that political equality—the right to participate in the political process as a voter and candidate—is a more fundamental value and a more suitable goal for campaign financing systems to aspire to. Smith and Raskin and Bonifaz agree that a system should provide adequate funding for legitimate candidates and prevent frivolous ones, but they disagree on how to define these terms.

*C. This Article's Criteria*

Having looked at the criteria articulated in these two articles, one sympathetic to PCF and the other opposed, this article establishes its own criteria with which to analyze the PCF bill introduced in the 2007 Washington State Legislative Session. Ease of administration is a desirable criterion for any government program: local, state, or federal, regardless of its goals or subject matter. Smith and Raskin and Bonifaz included ease of administration in their criteria. However, I believe that the guiding principle is to design the simplest program that is effective in achieving the goals. In other words, effectiveness should be valued more than ease of administration. Therefore, ease of administration is not one of the specific criteria used to evaluate Washington's proposed PCF program.

The overall goal of any legislation pertaining to campaigns or elections is to encourage citizen participation and to strengthen a government of the people, for the people, and by the people. With that ultimate goal in mind, this article proposes the following criteria for evaluating a PCF program.

**1. Access**

An effective PCF program creates an environment where citizens with innovative ideas or community support can mount an effective campaign for an elective office. The challenge is to strike a balance between creating a robust and varied primary campaign season and limiting the costs to the program, thereby encouraging new ideas and candidates while discouraging the waste of public funds.

**2. Focus**

An effective PCF program creates political campaigns that include significant candidate/voter interaction and that focus on issues and solutions. Any PCF program will make this possible by freeing up the time and energy a candidate must devote to fundraising under the current system. An effective program will actively foster these types of campaign activities.

### **3. Funding**

To be effective, a PCF program must provide a level of funding that allows a publicly funded candidate to mount a competitive campaign. An ideal PCF program will be funded in a manner that does not create an added financial burden on lower- and middle- income citizens. This principle is derived from the fact that, under the current campaign financing system, the working people cannot afford an adequate “voice” in the process. Indeed, this is one of the primary complaints about the current system: “[l]ess than one percent of the nation’s population contributed seventy-seven percent of all campaign funds raised in the 1992 election cycle.”<sup>86</sup> Philosophically, the tax burden of funding campaigns cannot fall on those who cannot afford to participate fully under the current system.

### **4. Adaptability**

In order to stay relevant and effective over time, a PCF program must have a monitoring and review system to evaluate the changing realities of campaigns. The level of funding provided to qualified candidates, the amount of funding required for the overall program as participation increases, and the qualifying requirements for candidates will all require adjustment over time, and an effective PCF program will have a built-in mechanism to provide these adjustments. In addition, the breadth of human ingenuity will invariably find loopholes and bypasses in the most carefully and comprehensively crafted legislation. A periodic review of the funding levels and qualifying requirements would thus be necessary for the continued effectiveness of a PCF program.

### **5. Summary**

The criteria set out above are totally compatible with those established by Raskin and Bonifaz. The primary addition is the philosophical principle that the tax burden of funding a PCF system should not fall on those who cannot afford to participate in the current system. Also added is the



adaptability criterion that incorporates the flexibility principle of Smith. However, where Smith expresses great doubt that any government-regulated system can exhibit that flexibility, this article proposes methods of achieving that flexibility that can be incorporated into a PCF system.

Smith's criteria of opportunity, competitiveness, and communication are also incorporated into these criteria, but are more definitively stated here as desirable qualities than the equivocal definitions given by Smith. As noted above, the criterion of ease of administration is accepted as a desirable goal by this article's criteria, but it is subordinate to the goal of an effective system.

### III. PROPOSALS FOR WASHINGTON STATE PUBLIC CAMPAIGN FINANCING

This section analyzes the PCF program in Washington House Bill 1360 under the criteria established in this article and proposes changes to make it more effective.

#### A. *Statement of Purpose*

Deborah E. Schneider (J.D. 1999 Washington University), in her note "As Goes Main? [*sic*] The 1996 Main [*sic*] Clean Election Act," analyzes several court cases that were brought as challenges to Maine's public campaign finance program.<sup>87</sup> After this analysis she advises that states which are considering similar reforms "should consider the implications of the legal challenges to the MCEA (Maine Clean Elections Act) and draft their reforms accordingly."<sup>88</sup> Because the prevailing standard of analysis is one of whether the program is narrowly tailored to further the state's compelling interest,<sup>89</sup> her primary recommendation is that any reform legislation include an explicit and extensive set of "Findings and Declarations"<sup>90</sup> which articulates the problems the legislation is aimed at solving, the principles it is designed to enhance, and the compelling state interests it is furthering.<sup>91</sup>

The proposed Washington House Bill 1360 contains only two sentences of purpose:

The purpose of this act is to create a system of clean elections for state office campaigns through public financing, thereby focusing campaigns on issues and away from the sources of campaign contributions. Public financing of campaigns will limit the influence of large contributors and special interests in political campaigns.<sup>92</sup>

While these statements contain the essence of the purpose and may be enough to convince the already converted, a much stronger statement must be made to assure that any court analysis can determine the fundamental state interests being served and the narrow tailoring of the program to serve those interests. The “Declaration of Policy” that accompanied Washington’s Public Disclosure Act<sup>93</sup> provides a good example.<sup>94</sup> It is much more explicit and detailed in describing the problems addressed and the reasons for the solutions offered.

Here, then, is a proposed statement of findings and declarations based on Schneider’s recommendations, Washington’s Public Disclosure Act, and the model bill on the website of Public Campaign:<sup>95</sup>

The free and sovereign people of the state of Washington, in order to promote greater participation by more of its citizenry in the political process of electing representatives, do hereby establish this public campaign finance program (PCF). It is in the best interest of the state and of its people to have a wide variety of candidates running for office and to have its political campaigns focused on communication to and interaction with the voters on the pressing issues of the day. With the ever increasing cost of political campaigns, candidates find that they must spend more of their time fundraising and less time talking to the voters.

Article 1, §19 of the Washington State Constitution states that “[a]ll elections shall be free and equal.”<sup>96</sup> We institute this PCF program in order to further promote the equal opportunity of all citizens to run for office in

the state of Washington. The current system of campaign financing undermines this equality of opportunity. Currently in Washington, a large majority of campaign funding comes from a small minority of wealthy donors, who thus determine which candidates will be presented to the voters. When representatives supported by this wealthy class of donors pass legislation that creates tax breaks and subsidies for those same interests, this undermines the public's trust in its government and creates the appearance, if not the actual existence, of bribery and corruption.

In order to promote public trust in state institutions of government and greater participation in campaigns for elective offices, to free candidates from the rigors of fundraising and encourage more focus on the issues and interaction with the people, and to reduce the influence of large campaign donors on elections and on legislative deliberations, we the people of Washington State implement this PCF program.<sup>97</sup>

#### *B. Access*

The first criterion established by this article is access: an effective PCF program creates an environment where citizens with innovative ideas or community support can build the grassroots support necessary to mount an effective campaign for an elective office.

The number of qualifying contributions required in the Washington bill mirrors those in Arizona's PCF program.<sup>98</sup> With roughly equivalent populations, one can surmise that the resulting increase in access for Washington will be similar to that of Arizona. In Arizona, a comparison of the first full election year after the implementation of PCF with the last full year before implementation shows a 24 percent increase in the number of candidates participating in the primary.<sup>99</sup> Similar results in Washington will provide new voices and ideas to the political debate. With more candidates in the primary it is likely that a more robust discussion of the issues will ensue.

*C. Focus*

The second criterion is focus: an effective PCF program will create political campaigns that include significant candidate-voter interaction and focus on issues and solutions. By freeing candidates from the time-consuming rigor of fundraising, any PCF program will leave more time available for PCF-funded candidates to debate the issues and interact with voters. However, to be truly effective, a program should require participation in certain events by candidates in order to qualify them for public funding.

The proposed Washington bill mandates that a publicly funded candidate participate in two primary campaign debates and two public debates during the general election campaign period.<sup>100</sup> The bill should go further and require each candidate to host at least two town-hall meetings during each election cycle, primary and general. At each town-hall meeting, the candidate would be required to listen to citizens' comments on issues that are important to them. Each meeting would be structured to allow ample time for citizen comments and then time for the candidate to respond and articulate her thoughts on the issues raised by citizens.

Ideally, a candidate would be actively involved in collecting the qualifying contributions—talking to voters and explaining why she wants to represent them. As an incentive to encourage this interaction with voters, a candidate would be required to personally collect 25 percent of the requisite qualifying donations. For a legislative seat, this means the candidate would have to successfully interact with fifty voters in her district. For a candidate for governor, perhaps a more realistic requirement would be 10 percent, or four hundred voters.

Arguably, a hate group, a religious sect, or some other special interest group could collect enough qualifying signatures and donations to put forth a candidate to run on public money. Evaluation and adjustment of the number of donations required will minimize this possibility, but not totally eliminate it. A program designed to stimulate a free and robust exchange of

ideas must accept that eventuality. However, the debate and town hall participation requirements will make apparent the ideology of those candidates, and the common sense and good judgment of the voting citizens will ensure that a fringe candidate will not move on to the general election.

#### *D. Funding*

The third criterion, funding, has two important aspects: the amount of funding provided to the candidates and the method of funding the PCF program. First, an effective PCF program must provide adequate funding for a candidate to mount a competitive campaign. Washington's proposed bill falls short in this regard. The second aspect is the philosophical principle that the burden of funding this program cannot fall on those who cannot afford to make meaningful contributions under the current system of private campaign funding.

##### **1. Adequate Funding**

In the 2004 election, the two major party candidates for governor spent over \$6 million each in the combined primary and general election campaigns.<sup>101</sup> Under the proposed bill, a candidate would receive \$500,000 for the primary campaign.<sup>102</sup> If outspent by a privately funded opponent, a candidate is eligible to receive a maximum of five times that amount, or \$2.5 million.<sup>103</sup> In the general campaign, the publicly funded candidate would receive \$750,000, and if outspent, a maximum of \$3.75 million.<sup>104</sup> Thus, a candidate for governor would have needed the maximum amount of matching funds just to keep up in the 2004 governor's race.

The wide range of spending for legislative campaigns makes analysis of funding levels more complex. For instance, in 2006, both major party candidates for the state senate in the Forty-eighth District raised over \$365,000,<sup>105</sup> while the winning candidate in the Sixth District raised over \$500,000.<sup>106</sup> In contrast, the two major party candidates for the state senate in the Thirteenth District raised only \$100,000 combined.<sup>107</sup> Campaigns for

seats in the state house of representatives are generally less expensive. The amount of money raised by winning candidates in 2006 ranged from over \$300,000 in the Twenty-eighth District to just over \$42,000 in the Forty-second District.<sup>108</sup>

Considering the wide variety of expenditures in legislative races and the fact that the maximum possible funding provided for a gubernatorial candidate under the proposed bill would barely have been enough to be competitive, this article recommends a provision based on past spending, similar to Maine's formula for funding its legislative races. Maine's formula dictates that "the amount of revenues to be distributed is the average amount of campaign expenditures made by each candidate during all contested primary [or general] election races for the immediately preceding 2 primary [or general] elections, . . . for the respective offices of State Senate and State House of Representatives."<sup>109</sup>

This article proposes calculations based on the average spending level for each specific seat. In other words, the funding level for a primary Senate race in the Forty-second District would be an average of the amounts spent by every candidate for that specific seat in the previous two primary elections. The funding level for a gubernatorial general election would be the average of the amounts spent by every candidate in the last two general gubernatorial elections. Of course, the matching funds provision would still exist to assure that each publicly funded candidate would stay competitive with a privately funded opponent.

Establishing a single formula to be applied to every elective office covered in the PCF program serves several purposes. First, the initial level of funding provided would be adequate in many instances because it would be tied to historical spending levels in that particular race. The inclusion of low-spending minor candidates in the calculation, especially in primary campaigns, would serve to insure that the initial funding level would not be excessive. Second, because the formula is always based on the two most recent races for any particular position, there would be no need for a

periodic inflationary adjustment or separate evaluation of the cost of campaigning. By recalculating the relevant average before each election cycle, those adjustments would automatically be included.

In addition, as more candidates opt for public funding, the cost of campaigning should gradually decline, especially when both major party candidates for a specific seat opt for public financing. Given the self-regulating nature of this formula, the limit on matching funds paid out to a candidate outspent by a privately financed opponent could be set at 100 percent of the initial funding levels.

It is conceivable that the moneyed interests who stand to lose under a PCF system may, at some point, mount an arms-race type of assault and attempt to bankrupt the PCF system by dramatically increasing the level of spending in specific races. The cap on matching funds is designed to avoid that eventuality. Ideally, the voting public would see the motivation behind such tactics and express their disapproval in the voting booth.

## **2. Program Funding**

The second aspect of the funding criterion for an effective PCF program is the method and level of funding the program itself. Some detractors of PCF have labeled it “welfare for politicians.”<sup>110</sup> However, a clear analysis of the whole picture yields a different conclusion.

Our current system is welfare for corporations. Corporate executives and other wealthy individuals provide the majority of funding for political campaigns. Public money is given out—in the form of subsidies, tax credits, and highly profitable contracts—to corporate and other moneyed interests (the major donors in the current campaign funding paradigm). This wealthy minority launders public money, and then, disguised as private donations, gives it back to the incumbents for their reelection campaigns.

This article proposes that the state impose new taxes on those same corporate and wealthy interests to provide the funding source for a PCF program. In essence, the state would launder the tax dollars to remove any

strings that would have been attached to donations given as private contributions to specific candidates under the current paradigm. Then the clean money is distributed equitably to all candidates who qualify and choose to participate in the PCF program. Of course, the wealthy individuals and moneyed interests are still free to donate directly to those candidates who choose not to participate in the PCF program.

Specifically, this article proposes an excise tax on luxury purchases—all motor vehicle sales over \$35,000, all jewelry sales over \$5,000, and all real estate sales over \$750,000. While motor vehicles and real estate can certainly be considered necessities, this tax is designed to target only those homes and vehicles that fall into the luxury category. This tax represents a substantial price increase on those items, but anyone shopping at that level can certainly afford to pay 5 to 10 percent more and is likely someone who regularly contributes to political campaigns under the current private financing system. Thus, funding from the program comes from the wealthy class, which has historically provided a large majority of private campaign donations.

Washington Public Campaigns has estimated that a comprehensive PCF program for the nine statewide executive offices, the state Supreme Court and appellate judges, and all legislative seats in the House and the Senate would cost approximately \$22 million a year.<sup>111</sup> This is an annualized figure based on the ebb and flow of Washington's various election cycles. Based on the experience in Arizona and Maine, it can be expected that participation in the program would start slowly and grow over the course of the first decade.

The luxury tax proposed here would provide the money necessary for the start-up phase, and the rates could be adjusted up or down as the funding requirements stabilize. This article presents the philosophical grounds for the source of the funding, not a detailed analysis of the adequacy of the particular tax proposed.



*E. Adaptability*

Adaptability is the final criterion for a successful PCF program. The formula for calculating the level of funding for each seat, proposed above, would serve as an automatic adjustment of the amount of funding paid out for specific races. The funding level for the program itself should be reviewed every four years to maintain adequate reserves for fully funding all certified PCF candidates.

Also, the required number of five dollar contributions a candidate must collect to qualify for PCF should be evaluated every time the state goes through a redistricting process (after each national census). The redistricting commission could handle that task along with its current ones, and thus insulate the qualifying requirements from self-serving changes proposed by incumbents. In addition to adjusting the numbers to reflect changes in population, the number of qualifying contributions can be adjusted to maintain the balance between encouraging new candidates and avoiding the waste of public funds. The Washington Public Disclosure Commission, with which Washington House Bill 1360 places all administrative and enforcement duties, could handle the monitoring of attempts to circumvent the intent of this act.

## IV. TWO ADDITIONAL PROPOSALS

*A. Public Airtime*

One further proposal would require a change at the federal level. Congress should direct the Federal Communications Commission to enact a requirement for all television and radio stations to provide free airtime to candidates for office and for required debates and town hall meetings. Raskin and Bonifaz also propose this requirement.<sup>112</sup> Because the airwaves belong to the public and the users of those airwaves merely lease the right to use their frequencies, this requirement is in the best interest of the true owners of those airwaves—the public. In support of the constitutionality of

this proposal, Raskin and Bonifaz cite *Red Lion Broad. Co. v. FCC*<sup>113</sup> in which Justice White, writing for the unanimous court,

redefined our conception of mass media licensees . . . [as] less like individual speakers and more like public meeting places . . . [where] the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the 1st Amendment.<sup>114</sup>

The specific time donation requirements should be a balance between the level needed for effective communications and the level beyond which serious harm to the lessees' financial well-being would occur. This would not require donations of all airtime currently purchased but a minimum level commensurate with the jurisdictional level of the specific campaign.

If implemented, this requirement would dramatically reduce the cost of campaigning at all levels and benefit publicly and privately funded candidates alike. By reducing the cost of media campaigning, the amount of funding necessary for an effective campaign would be lower, and thus, ultimately reduce the cost of a PCF program.

#### *B. Initiative of the People*

The last proposal concerns the method of enacting a PCF program. PCF programs foster wider participation in our representative democratic system of government and restore public trust and confidence in our elected officials. It is only logical for this type of reform *for* the people to come *from* the people. The programs in Maine and Arizona were implemented through the citizen initiative process, and this article proposes that the same process be used in Washington.<sup>115</sup>

It will require a strong grassroots advocacy to institute a PCF program in Washington, whether through legislation or through the initiative process. Thus, public education and inspiration work will be necessary to create a groundswell of support for the initiative process. Creating a push of advocacy directed at the legislature would require the same steps.

However, it is likely that a PCF program would ultimately be presented for a vote of the people even if it originated from legislation. Over the last ten years, the Washington legislature has shown a marked reluctance to enact controversial legislation of any kind without at least an advisory vote of the people. Even if the legislature passed PCF legislation, it is quite likely that opposition to the program would mount a referendum drive, which if successful would result in a vote of the people. Ultimately, the initiative route provides for the vote of the people and saves the time and energy of pursuing the alternative methods.

Additionally, campaign finance reform instituted by incumbents is likely to favor incumbents, if not in fact, then at least in the perception of the general public.<sup>116</sup> Smith relies extensively on this concept in arguing against PCF and uses the spending limits set by Congress in 1997 as an example: “Every challenger spending less than the proposed limit in Senate campaigns had lost in each of the 1994 and 1996 elections, whereas every incumbent spending less than the limit had won.”<sup>117</sup> (This comment is in no way intended to imply that Washington House Bill 1360 favored incumbents in any fashion.)

There are also positive synergistic reasons for the initiative approach beyond avoiding the negatives associated with the legislative approach. The process of gathering signatures for an initiative would provide an experiential educational opportunity to display the candidate qualification process of the PCF program in action. The correlation between gathering signatures for an initiative petition and collecting qualifying donations for a PCF program could be further emphasized by requesting a five dollar donation to the “pass Initiative #xx” campaign from each signer of the initiative petition. This would further mirror the candidate qualifying procedure and show the whole process at work. Thus, the process for qualifying the initiative would be the same as the process proposed by the initiative for a candidate to qualify for PCF.

Once the initiative qualified for the ballot, the opposition campaign would likely arise from those who have the most to lose if it passed—the large and influential donors under the current private financing system. This opposition would probably be funneled through an astroturf organization—an organization claiming to be grassroots opposition but actually funded and directed by the big money interests affected by the initiative. However, existing disclosure requirements make it possible to discover the actual source of the funding.

This is another synergistic opportunity for educating the public. The more funding rallied by the opposition, the clearer the need for reform would become. There is no better illustration of the way large campaign contributions influence politicians than a well-funded opposition to the very legislation attacking that system. Under the matching funds trigger mechanism in the PCF program, independent expenditures for a privately funded opponent generates more money for a publicly funded candidate. In the same fashion, massive financial support for defeating the initiative would provide a more clear and compelling reason for its passage. The rallying cry could be, “If we prevent big money from buying *this* election, we can stop them from buying every election!”

#### V. TAKE ACTION

PCF is the reform to make all other reforms possible. PCF allows our elected representatives to consider reform proposals on their merits and on how those proposals will affect the lives of their constituents rather than the wallets of big donors. It is a reform whose time has come, and the examples in Arizona and Maine, plus the limited programs in several other states, show that PCF can be successful in creating more responsive and representative governments.

However, PCF threatens the power of the entrenched controllers of campaigns and elections—the wealthy donors. Control of campaigns equals control of public policy priorities under the current private financing

system. These wealthy donors will not surrender their control willingly. Reform must happen the way any populist reform has happened in the history of this country—the people must demand it!

Several organizations are working for PCF at the federal level and proposed bills were submitted in both houses last year. Public Campaign is a powerful national force and serves as a clearinghouse of ideas and efforts.<sup>118</sup> However, at the state and local level, more and more successful PCF programs are being established. “Some form of Clean Elections has passed in eight states and two municipalities—Maine, Vermont, Arizona, Massachusetts, North Carolina, New Mexico, New Jersey, and Connecticut as well as Portland, Oregon and Albuquerque, New Mexico.”<sup>119</sup>

Seattle, Washington, implemented PCF for city elective offices in 1972.<sup>120</sup> However, a little-noticed provision hidden in a 1992 “campaign finance reform” initiative prohibited any governmental entity in Washington from implementing a plan to use government funds to finance campaigns.<sup>121</sup> This provision was repealed in the 2008 legislative session.<sup>122</sup> The City of Seattle and King County are currently exploring the idea of PCF.

In this state, Washington Public Campaigns is the organization spearheading the efforts. Their website, [www.washclean.org](http://www.washclean.org), discusses the current course of action: “In the coming months, we intend to focus on 1) educating the public, 2) organizing support groups in the counties and districts, 3) creating alliances, 4) gathering data to make the case for clean elections, and 5) supporting federal legislation.”<sup>123</sup>

How does one get involved in promoting PCF? Educate yourself and your friends and neighbors. Washington Public Campaigns provides resources, speakers, volunteer opportunities, and promotional and informational materials.<sup>124</sup>

Encourage organizations with which you are involved to support the drive for PCF. Success at implementing that reform will make the work of every social service, environmental, or social justice organization in the

state easier in the long run by creating a legislature of representatives more sensitive to human needs and less responsive to corporate greed.

## VI. CONCLUSION

The cost of conducting a successful political campaign continues to rise at all levels: federal, state, and local. Elected representatives may have to spend up to four hours per day just raising money for reelection.<sup>125</sup> Public campaign financing offers a better way. In Washington State it has been estimated that approximately four dollars per person per year would adequately fund a PCF program for all statewide elective offices, all legislative seats, and all upper level judicial races.<sup>126</sup> The PCF programs in Maine and Arizona are successful examples that show how PCF can work to free candidates from the time consuming efforts of fundraising and the implied and real obligations to big donors.

It is possible to devise a funding mechanism for a PCF program that does not impose any new tax burden on the working class. The initiative process provides a way for ordinary citizens to implement a PCF program and to educate fellow citizens about the benefits of PCF at the same time. I firmly believe that public campaign financing is the reform that will make all other reforms possible.

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<sup>2</sup> Tillman Act of 1907, Pub. L. No. 59-36, 34 Stat. 864.

<sup>3</sup> *Id.*

<sup>4</sup> Jamin Raskin & John Bonifaz, *The Constitutional Imperative and Practical Superiority of Democratically Financed Elections*, 94 COLUM. L. REV. 1160, 1162 n.3 (1994).

<sup>5</sup> ME. REV. STAT. ANN. tit. 21-A, §§ 1121-1128 (2008).

<sup>6</sup> Deborah E. Schneider, *As Goes Main? The 1996 Main Clean Election Act: Innovations and Implications for Future Campaign Finance Reforms at the State and Federal Level*, 55 WASH. U. J. URB. & CONTEMP. L. 235, 255 (1999).

<sup>7</sup> ARIZ. REV. STAT. ANN §§16-940-16-961 (1998).

<sup>8</sup> Schneider, *supra* note 6, at 245 n.43.

<sup>9</sup> S. 5510, 60th Leg., 2007 Reg. Sess. (Wash. 2007); H.R. 1360, 60th Leg., 2007 Reg. Sess. (Wash. 2007).

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

<sup>11</sup> *Republican Nat'l Comm. v. Fed. Election Comm'n*, 445 U.S. 955 (1980).

<sup>12</sup> *Buckley*, 424 U.S. at 59.

<sup>13</sup> *Id.* at 20.

<sup>14</sup> *Schneider*, *supra* note 6, at 244.

<sup>15</sup> *Id.*

<sup>16</sup> H.R. 1360, 60th Leg., 2007 Reg. Sess. § 4(2)(c) (Wash. 2007); ARIZ. REV. STAT. ANN. § 16-946(B)(3) (1998); ME. REV. STAT. ANN. tit. 21-A, § 1125(3). The Arizona and Maine statutes will hereinafter be cited in short form where appropriate; however, to aid in clarity and avoid confusion, a parenthetical will be added indicating the state which enacted the statute.

<sup>17</sup> H.R. 1360 § 6 (the candidate's personal money is considered seed money and may only be spent during the qualifying period); § 16-945(B) (Ariz.) (specified early contributions and personal monies may be spent during the exploratory and qualifying period); tit. 21-A, § 1125(2) (Me.) (subsequent to becoming a candidate and prior to certification, a candidate may not accept any contributions except for seed money contributions).

<sup>18</sup> H.R. 1360 § 3(6); § 16-941 (Ariz.); tit. 21-A, § 1125 (Me.).

<sup>19</sup> H.R. 1360 §§ 3(1), (5); § 16-941(A) (Ariz.); tit. 21-A, § 1125(6) (Me.).

<sup>20</sup> H.R. 1360 § 11(1); § 16-952 (Ariz.); tit. 21-A, § 1125(9) (Me.).

<sup>21</sup> H.R. 1360 § 11(2); § 16-952 (Ariz.); tit. 21-A, § 1125(9) (Me.).

<sup>22</sup> Tit. 21-A, § 1125(9) (Me.); § 16-952(E) (Ariz.); H.R. 1360 § 11(1).

<sup>23</sup> Tit. 21-A, § 1125(9) (Me.).

<sup>24</sup> § 16-952(E) (Ariz.).

<sup>25</sup> H.R. 1360 § 11(1).

<sup>26</sup> § 16-949(A) (Ariz.).

<sup>27</sup> H.R. 1360 § 11(3); tit. 21-A, § 1125(13) (Me.).

<sup>28</sup> Tit. 21-A, § 1124(3) (Me.).

<sup>29</sup> U.S. Census Bureau, Annual Estimates of the Population for the United States, Regions, States, and Puerto Rico: April 1, 2000 to July 1, 2007 (2007), <http://www.census.gov/popest/states/NST-ann-est.html>.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> H.R. 1360 § 6; ARIZ. REV. STAT. ANN. § 16-945 (1998); tit. 21-A, § 1122(9) (Me.).

<sup>33</sup> H.R. 1360 § 6; § 16-945 (Ariz.); tit. 21-A, § 1122(9) (Me.).

<sup>34</sup> H.R. 1360 § 6; § 16-945 (Ariz.); tit. 21-A, § 1122(9) (Me.).

<sup>35</sup> Tit. 21-A, § 1125(2)(A) (Me.).

<sup>36</sup> § 16-945(A)(2) (Ariz.).

<sup>37</sup> H.R. 1360 § 6.

<sup>38</sup> Tit. 21-A, § 1125(2)(B) (Me.).

<sup>39</sup> § 16-945(A)(2) (Ariz.) (calculating based on a formula of ten percent of the total expenditure limit for the primary and general elections as a seed money limit).

<sup>40</sup> H.R. 1360 § 6.

- <sup>41</sup> Tit. 21-A, § 1125(2)(C) (Me.).
- <sup>42</sup> § 16-945(A)(2) (Ariz.) (calculating based on a formula of ten percent of the total expenditure limit for the primary and general elections as a seed money limit).
- <sup>43</sup> H.R. 1360 § 6.
- <sup>44</sup> In all three states, these qualifying donations must be exactly five dollars and come from individuals who are currently residents of the electoral district of the office the candidate is seeking. *Id.* § 4(2)(a); § 16-946(B)(3) (Ariz.); tit. 21-A, § 1122(7)(A-B) (Me.).
- <sup>45</sup> Tit. 21-A, § 1125(3)(A) (Me.).
- <sup>46</sup> § 16-950(D)(5) (Ariz.).
- <sup>47</sup> H.R. 1360 § 4(2).
- <sup>48</sup> Tit. 21-A, § 1125(3)(B) (Me.).
- <sup>49</sup> § 16-950(D)(1) (Ariz.).
- <sup>50</sup> H.R. 1360 § 4(2).
- <sup>51</sup> Tit. 21-A, § 1125(3)(C) (Me.).
- <sup>52</sup> § 16-950(D)(1) (Ariz.).
- <sup>53</sup> H.R. 1360 § 4(2).
- <sup>54</sup> Tit. 21-A, § 1125(8)(E) (Me.).
- <sup>55</sup> § 16-961(G)(5) (Ariz.).
- <sup>56</sup> H.R. 1360 § 10(1)(b).
- <sup>57</sup> Tit. 21-A, § 1125(8)(F) (Me.).
- <sup>58</sup> § 16-961(H) (Ariz.) (calculating an amount no more than fifty percent greater than the amount for the primary).
- <sup>59</sup> H.R. 1360 § 10(2)(b).
- <sup>60</sup> § 16-961(G)(1) (Ariz.).
- <sup>61</sup> H.R. 1360 § 10(1)(a).
- <sup>62</sup> National Institute on Money in State Politics, Maine 2006—All Contributions, [http://www.followthemoney.org/database/StateGlance/contributor\\_details.phtml?&g=19&s=ME&y=2006&so=a&p=4#sorttable](http://www.followthemoney.org/database/StateGlance/contributor_details.phtml?&g=19&s=ME&y=2006&so=a&p=4#sorttable) (last visited Nov. 3, 2008).
- <sup>63</sup> *Id.*
- <sup>64</sup> § 16-961(H) (Ariz.).
- <sup>65</sup> H.R. 1360 § 10(2)(a).
- <sup>66</sup> ME. REV. STAT. ANN. tit. 21-A, §§ 1125(9), (8)(E), (8)(F) (2008) (\$200,000 initially and up to \$400,000 in matching funds for the primary; \$600,000 initially and up to \$600,000 in matching funds for the general election).
- <sup>67</sup> §§ 16-952(E), -961(G)(5) (Ariz.).
- <sup>68</sup> H.R. 1360 § 11(1).
- <sup>29</sup> *Id.* § 2; § 16-946(A) (Ariz.); tit. 21-A, § 1124(2)(A) (Me.).
- <sup>30</sup> H.R. 1360 § 16(7)(c); § 16-942(E) (Ariz.); tit. 21-A, § 1124(2)(H) (Me.).
- <sup>31</sup> H.R. 1360 § 6; § 16-945(B) (Ariz.); tit. 21-A, § 1124(2)(D) (Me.).
- <sup>32</sup> H.R. 1360 § 14(1); § 16-953(A) (Ariz.); tit. 21-A, § 1124(2)(E) (Me.).
- <sup>33</sup> H.R. 1360 § 14(2); § 16-953(B) (Ariz.); tit. 21-A, § 1124(2)(E) (Me.).
- <sup>34</sup> § 1124(C) (Me.).
- <sup>35</sup> *Id.*
- <sup>36</sup> *Id.* § 1124(2)(G).



<sup>37</sup> *Id.* § 1124(2)(B).

<sup>38</sup> *Id.* § 1124(3).

<sup>39</sup> ARIZ. REV. STAT. ANN. § 16-954(A) (1998).

<sup>40</sup> *Id.* § 16-954(B).

<sup>41</sup> *Id.* § 16-954(C).

<sup>42</sup> Capital University Law School, Bradley A. Smith—Biography, <http://www.law.capital.edu/Faculty/Bios/bsmith.asp> (last visited Nov. 3, 2008).

<sup>43</sup> *Id.*

<sup>44</sup> Bradley A. Smith, *Some Problems with Taxpayer-Funded Political Campaigns*, 148 U. PA. L. REV. 591 (1999).

<sup>45</sup> *Id.* at 593.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 594.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 595.

<sup>50</sup> *Id.* at 593.

<sup>51</sup> *Id.* at 596.

<sup>52</sup> *Id.* at 597.

<sup>53</sup> *Id.* at 598.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 593.

<sup>56</sup> *Id.* at 599.

<sup>57</sup> *Id.* at 593.

<sup>58</sup> *Id.* at 605.

<sup>59</sup> *Id.* at 593.

<sup>60</sup> *Id.* at 606.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 598.

<sup>63</sup> American University Washington College of Law, Jamie Raskin—Biography, <http://www.wcl.american.edu/faculty/bio/raskin.pdf?rd=1> (last visited Nov. 3, 2008).

<sup>64</sup> John Bonifaz, About John, <http://www.johnbonifaz.com/about> (last visited Nov. 3, 2008)

<sup>65</sup> *Id.*

<sup>66</sup> Raskin & Bonifaz, *supra* note 4.

<sup>67</sup> *Id.* at 1160.

<sup>68</sup> Buckley v. Valeo, 424 U.S. 1 (1976).

<sup>69</sup> Republican Nat'l Comm. v. Fed. Election Comm'n, 445 U.S. 955 (1980).

<sup>70</sup> Raskin & Bonifaz, *supra* note 4, at 1167

<sup>71</sup> *Id.* at 1165.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 1178.

<sup>75</sup> *Id.* at 1170 n.30; Buckley v. Valeo, 424 U.S. 1, 16 (1976).

<sup>76</sup> Buckley, 424 U.S. at 16.

<sup>77</sup> J. Skelly Wright, *Money and the Pollution of Politics: Is the First Amendment an Obstacle to Political Equality?*, 82 COLUM. L. REV. 609, 632 (1982).

<sup>78</sup> Smith, *supra* note 44, at 605.

<sup>79</sup> Raskin & Bonifaz, *supra* note 4, at 1184–85.

<sup>80</sup> Smith, *supra* note 44, at 602.

<sup>81</sup> *Id.* at 599.

<sup>82</sup> Raskin & Bonifaz, *supra* note 4, at 1187.

<sup>83</sup> Smith, *supra* note 44, at 595; Raskin & Bonifaz, *supra* note 4, at 1203.

<sup>84</sup> Smith, *supra* note 44, at 595.

<sup>85</sup> Raskin & Bonifaz, *supra* note 4, at 1188.

<sup>86</sup> *Id.* at 1177.

<sup>87</sup> Schneider, *supra* note 6.

<sup>88</sup> *Id.* at 269.

<sup>89</sup> *Buckley*, 424 U.S. 1, 10 (quoting *Buckley v. Valeo*, 519 F.2d 821, 841 (1975)).

<sup>90</sup> Schneider, *supra* note 6, at 269.

<sup>91</sup> *Id.*

<sup>92</sup> H.R. 1360, 60th Leg., 2007 Reg. Sess. § 1 (Wash. 2007).

<sup>93</sup> Codified as WASH. REV. CODE § 42.17.010 (1998).

<sup>94</sup> It is hereby declared by the sovereign people to be the public policy of the state of Washington:

- (1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.
- (2) That the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty, and fairness in their dealings.
- (3) That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interest.
- (4) That our representative form of government is founded on a belief that those entrusted with the offices of government have nothing to fear from full public disclosure of their financial and business holdings, provided those officials deal honestly and fairly with the people.
- (5) That public confidence in government at all levels is essential and must be promoted by all possible means.
- (6) That public confidence in government at all levels can best be sustained by assuring the people of the impartiality and honesty of the officials in all public transactions and decisions.
- (7) That the concept of attempting to increase financial participation of individual contributors in political campaigns is encouraged by the passage of the Revenue Act of 1971 by the Congress of the United States, and in consequence thereof, it is desirable to have implementing legislation at the state level.
- (8) That the concepts of disclosure and limitation of election campaign financing are established by the passage of the Federal Election Campaign Act of 1971 by the Congress of the United States, and in consequence thereof it is desirable to have implementing legislation at the state level.

(9) That small contributions by individual contributors are to be encouraged, and that not requiring the reporting of small contributions may tend to encourage such contributions.

(10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.

(11) That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

The provisions of this chapter shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying, and the financial affairs of elected officials and candidates, and full access to public records so as to assure continuing public confidence of fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected. In promoting such complete disclosure, however, this chapter shall be enforced so as to insure that the information disclosed will not be misused for arbitrary and capricious purposes and to insure that all persons reporting under this chapter will be protected from harassment and unfounded allegations based on information they have freely disclosed. *Id.*

<sup>95</sup> Public Campaign, Annotated Model Legislation for Clean Money/Clean Elections Reform, <http://www.publiccampaign.org/modelbill#101> (last visited Nov. 3, 2008).

<sup>96</sup> WASH. CONST. art. I, § 19.

<sup>97</sup> Some language in this part is suggested by Public Campaign. Public Campaign, *supra* note 95.

<sup>98</sup> H.R. 1360, 60th Leg., 2007 Reg. Sess. § 3(2) (Wash. 2007); ARIZ. REV. STAT. ANN. § 16-950(D) (1998).

<sup>99</sup> THE CLEAN ELECTIONS INSTITUTE, THE ROAD TO VICTORY: CLEAN ELECTIONS SHAPES 2002 ARIZONA ELECTIONS 8 (2002), <http://www.azclean.org/documents/2002RoadtoVictory-Final.pdf>.

<sup>100</sup> H.R. 1360 § 13.

<sup>101</sup> National Institute on Money in State Politics, Washington 2004—Candidates, [http://www.followthemoney.org/database/StateGlance/state\\_candidates.phtml?s=WA&y=2004&f=G](http://www.followthemoney.org/database/StateGlance/state_candidates.phtml?s=WA&y=2004&f=G) (last visited Nov. 3, 2008).

<sup>102</sup> H.R. 1360 § 10(1)(b).

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> National Institute on Money in State Politics, Visual Analysis Tools—(m)c50, <http://www.followthemoney.org/database/graphs/competitive/index.phtml> (last visited Nov. 3, 2008).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> ME. REV. STAT. ANN. tit. 21-A, §§ 1125(8)(A), (8)(C) (2008).

<sup>110</sup> Smith, *supra* note 44, at 606; Steve Lonigan, *Welfare for Politicians*, POLITICKERNJ.COM, June 11, 2008, <http://www.politickernj.com/lonigan/20718/welfare-politicians>.

<sup>111</sup> John E. King, *Cost Estimates for a Program of Public Financing of Campaigns for State-Level Political Offices and Appellate Judicial Offices in Washington*, WASHINGTON PUBLIC CAMPAIGN, May 5, 2007, <http://www.washclean.org/Library/cost-estimate-5-7-07.pdf>.

<sup>112</sup> Raskin & Bonifaz, *supra* note 4, at 1195–96.

<sup>113</sup> *Red Lion Broad. Co. v. FCC*, 395 U.S. 367 (1969).

<sup>114</sup> Raskin & Bonifaz, *supra* note 4, at 1197.

<sup>115</sup> ME. REV. STAT. ANN. tit. 21-A, § 1121 hist. n. (2008); ARIZ. REV. STAT. ANN. § 16-954 hist. n. (1998).

<sup>116</sup> Smith, *supra* note 44, at 606.

<sup>117</sup> *Id.*

<sup>118</sup> See Public Campaign, Who We Are, <http://www.publiccampaign.org/about> (last visited Nov. 3, 2008).

<sup>119</sup> WASHINGTON PUBLIC CAMPAIGN, A BRIEF HISTORY OF CLEAN ELECTIONS (2007), <http://www.washclean.org/Library/Brief-History-of-Public-Campaigns.pdf>.

<sup>120</sup> Washington Public Campaign, Why Do We Need Public Campaign Funding?, <http://www.washclean.org/whypublicfunding.htm> (last visited Nov. 3, 2008).

<sup>121</sup> H.R. Rep. 59-1436, 2006 Reg. Sess., at 1 (Wash. 2006), available at <http://apps.leg.wa.gov/documents/billdocs/200506/Pdf/Bill%20Reports/House/1436.HBR.pdf> (“In November of 1992, Washington voters approved Initiative 134 (I-134), which imposed limitations on campaign contributions. Initiative 134 prohibited the use of public funds for financing political campaigns for state or local office.”).

<sup>122</sup> S. 5278, 60th Leg., 2008 Reg. Sess. (Wash. 2008); H.R. 5278, 60th Leg., 2008 Reg. Sess. (Wash. 2008).

<sup>123</sup> WASHINGTON PUBLIC CAMPAIGN, THE ROAD AHEAD FOR CLEAN CAMPAIGNS (2007), <http://www.washclean.org/Library/the-road-ahead.pdf>.

<sup>124</sup> Washington Public Campaign, Materials to Download, <http://www.washclean.org/download.htm> (last visited Nov. 3, 2008).

<sup>125</sup> This was observed by Curtis Ellis, who trains people to run for office as a political consultant at a grassroots-oriented firm. NAOMI WOLF, GIVE ME LIBERTY: A HANDBOOK FOR AMERICAN REVOLUTIONARIES 43–44, 77 (2008).

<sup>126</sup> Washington Public Campaigns, A Better Way: The Fight for Clean Campaigns, <http://www.washclean.org/betterway.htm> (last visited Nov. 3, 2008).