

Overview of Post-Arizona Free Enterprise Policy Alternatives



With a 40-year track record, chapters in 35 states, and nearly 400,000 supporters and activists across the country, Common Cause is one of the nation's most effective grassroots advocacy organizations dedicated to reforming government and strengthening democracy in America.

About Common Cause

As founder John Gardner put it, “Common Cause is about making political decision-makers accountable to their constituents.” In that vein, the issue of money and politics has been paramount.

In states across the country, Common Cause has played a lead role in putting money and politics issues in the spotlight, leading the fight to pass many state public financing laws, pay-to-play measures, contribution limits, and strong disclosure laws as well as spearheading campaigns bringing diverse groups together to work for meaningful reforms.

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Most recently, Common Cause has helped pass numerous reforms. Examples include:

- In North Carolina, the creation of a full public financing system for judicial candidates running for state Court of Appeals and Supreme Court
- In Connecticut, the first state-wide “clean elections” public financing law passed by a state legislature
- Public financing of municipal elections in Albuquerque and Santa Fe
- The matching system in New York City, and in 2009, full public financing for candidates for State Supreme Court in Wisconsin
- In California, during the spring of 2011, Common Cause built a coalition of diverse community groups to pass Measure H (“H for Honesty”) in Los Angeles City, allowing for the expansion of public campaign financing in that city and banning large city contract bidders from donating to city campaigns.

None of these fights has been won single-handedly.

During 2010, for example, Common Cause and Public Campaign joined together with a range of partners in the most intensive campaign yet to bring public financing to congressional elections, developing a small-donor matching system and accomplishing the simultaneous roll-out of complementary bills in both chambers, ultimately securing 165 House sponsors and 25 Senate sponsors for the Fair Elections Now Act and its passage out of the Committee on House Administration.

Every advance in the states has been the result of multiple groups working together to strategize, mobilize their constituencies, and negotiate, often with Common Cause playing a lead role.

The same can be said for the campaigns of the past 18 months, in which an increasingly broad and diverse spectrum of allies has worked to defend and preserve these gains.

In the wake of the Supreme Court’s decision in *Citizens United*, Common Cause with its public education and research affiliate, the Common Cause Education Fund, has been a leader in launching a national conversation around corporate accountability in our elections, promoting state and federal legislative proposals and direct

shareholder resolutions requiring disclosure and approval of any election spending.

Common Cause and the Common Cause Education Fund are grateful for the support of our members, major donors and the leadership of funders in the foundation community whose contributions have made our work possible.

In particular, we want to acknowledge support from the Ford Foundation and Piper Fund for their support for this convening of leaders and advocates. We also want to extend a special thank you to the Rockefeller Brothers Fund whose support made this report possible.

THE AUTHORS WISH TO THANK

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In June 2011, in *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, the United States Supreme Court invalidated the trigger funds provisions¹ in Arizona's public campaign financing program. Arizona's trigger funds provision provided additional public funds to publicly financed candidates who were outspent by privately financed opponents and/or independent groups.

New Legal Environment

The Court, having ruled in 1976² that money spent in campaigns is essentially equivalent to speech, concluded that the trigger funds provision was an impermissible burden on the speech of privately financed candidates and independent groups.

Specifically, the Court reasoned that privately financed candidates and independent expenditure groups would stop spending money (speaking) over the threshold amounts that trigger the granting of additional funds to publicly financed candidates.

As a result of the Court's decision in *Arizona Free Enterprise Club*, public campaign financing

programs that tie benefits for publicly financed candidates to spending by privately financed candidates or independent groups now stand on constitutionally shaky grounds.

Benefits for publicly financed candidates may include the granting of additional public funds, or the increase of a matching ratio in the case of partial public financing programs.³

This report lays out a number of policy alternatives to trigger funds provisions contained in public campaign financing programs.

There are two main types of public campaign financing programs, and this paper provides solutions for each type of program.

First, there are "full" or "clean money" programs, under which candidates raise a certain number of small contributions and then receive a lump sum grant of public funds.

Second, there are "partial" or "matching" programs, under which candidates receive a match of public funds based on their receipt of private contributions. For instance, a candidate could receive \$200 in public funds for every \$100 private contribution.



Trigger funds provisions serve a number of important purposes. It is important to keep those goals in mind when determining which alternative to trigger funds best suits a jurisdiction's needs.

The Purpose of Trigger Funds

First, trigger funds allow publicly financed candidates to remain competitive when outspent by privately financed opponents and independent expenditure groups.

Trigger funds provide privately financed candidates with enough money to respond to communications advocating for their defeat and/or for the election of their opponents.

Second, trigger funds provisions preserve limited public resources by only providing additional funds to candidates when they need those funds to respond to spending by opponents and outside groups.

Third, the availability of trigger funds makes it more appealing for candidates to opt into public campaign financing programs. Those programs, in turn, serve a number of compelling governmental interests.

For instance, public campaign financing programs reduce corruption or its appearance by lessening the need for candidates to rely on private contributions.

These programs also free candidates from the burdens of private fundraising, and allow them to interact with all of their potential constituents, not just those who can and will give campaign contributions.

In addition, public campaign financing programs allow qualified candidates — who may not be independently wealthy, or have a pre-existing network of financial support — to competitively run for office.

Further, these programs strengthen the public's confidence in their democracy by demonstrating that its elected representatives are not indebted to private campaign contributors.

There is, of course, no one solution that will be appropriate for every jurisdiction. Jurisdictions should consider a variety of factors, such as: past use of trigger funds, the competitiveness of elections (including differences between open seat races and races involving an incumbent),⁴ budgetary and administrative constraints,⁵ and the political feasibility of any changes.

Policy Alternatives to Trigger Funds Provisions

Considering these factors will help to ensure that a jurisdiction's chosen path provides candidates with sufficient funds to competitively run for office, while simultaneously preserv-

ing public resources by providing no more funds than are necessary, and ensuring that public funds are used only for legitimate political activities.

Successful campaign reform is still possible after Arizona Free Enterprise, and there are a number of policy options available to reform advocates.

REMOVE TRIGGER FUNDS PROVISIONS

One option for jurisdictions to consider is to simply remove the trigger funds provision in their public campaign financing programs.

This is a feasible and straightforward solution in jurisdictions where candidates rarely use trigger funds (because of relatively low spending by pri-

vately financed candidates and/or independent groups). For instance, trigger funds are not commonly used in judicial races.

This option is also politically appealing because it reduces the costs of public campaign financing programs. This approach was taken in Santa Fe as discussed in Appendix 1.⁶

INCREASE THE LUMP SUM GRANT OR THE RATIO OF THE MATCH OF PUBLIC FUNDS

Jurisdictions with full public campaign financing can opt to give participating candidates a larger lump sum grant, thereby ensuring that participating candidates have enough money to competitively run for office without being able to resort to trigger funds.

The amount of the grant could include the amount of the old grant plus all or some of the trigger funds previously available. Jurisdictions could also take into account the past history of campaign spending, voter registration, and whether spending is significantly different for open seat races, as opposed to races that include an incumbent candidate.

In jurisdictions that have partial public campaign financing programs, one option would be to increase the ratio of the match.

For instance, instead of receiving \$200 for every \$100 of private money raised (a 2-to-1 match), candidates could receive \$300, \$400 or \$500 for every \$100 of private money raised (a 3-to-1, 4-to-1, or 5-to-1 match).

This would increase the ability of candidates to run competitive races when faced with high spending opponents and/or independent groups.

The City of Los Angeles recently implemented this approach, raising the matching ratio from 1-to-1 to 3-to-1. Additional details on Los Angeles' public campaign financing law can be found in Appendix 1.

To begin with, the amount of the total funds available could include public funds previously available as trigger funds. The amount of the grant or the

matching ratio should be re-evaluated every few election cycles to ensure that it provides candidates with an appropriate level of funding. Unfortunately, this will present at least a minor administrative burden.

Under either of these options, public campaign financing programs would likely remain viable alternatives to candidates because they would potentially have the opportunity to receive the same amount in public funds as they could under programs containing trigger funds provisions.

However, either of these options could increase the cost of public campaign financing (as candidates do not always obtain trigger funds), and could in some cases provide candidates with more funds than are needed to competitively run for office.



IMPLEMENT A SMALL DONOR HYBRID OF FULL AND PARTIAL PUBLIC FINANCING

Another option for jurisdictions with public campaign financing programs is to implement a small donor model that provides candidates with an initial lump sum grant and then gives them the ability to raise private contributions that are matched with public dollars.⁷

The first step of this approach is identical to a full public campaign financing program.

First, candidates would collect small qualifying contributions – between \$5 and \$100, depending on the office sought – in order to reach a threshold amount. Candidates would then receive an allocation of public funds.⁸

The second step of this approach would be akin to a system of partial public campaign financing. Candidates could raise additional private contributions (at levels lower than the contribution limits applicable to private-

ly financed candidates), which would be matched by public funds at a ratio that enables participating candidates to run competitive campaigns.

For jurisdictions with full public financing, the small donor option⁹ essentially replaces a candidate's ability to obtain trigger funds with the opportunity to earn matching funds based on his or her own fundraising. For jurisdictions with partial public financing, this approach basically adds an initial lump sum grant to the pre-existing program.

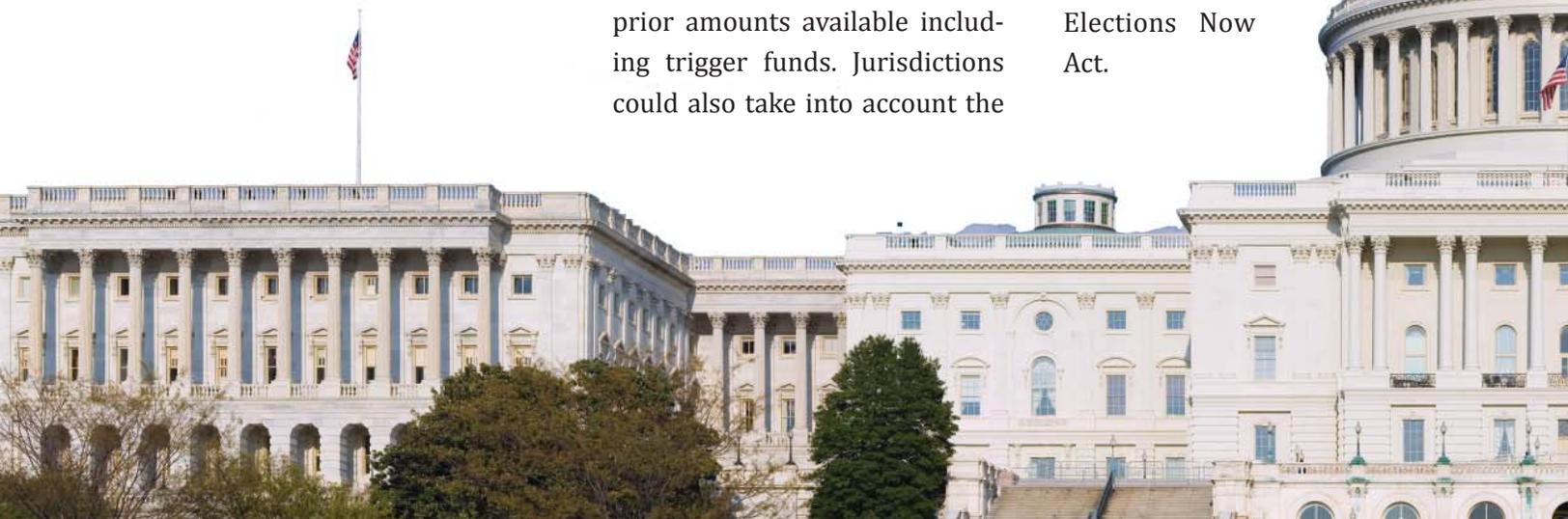
The small donor model is one of the leading policy proposals in our current post-Arizona Free Enterprise world. However, this option does require candidates seeking supplemental funds to devote time and resources to fundraising throughout a campaign.

Similar to option #2, the total amount of public funds available could be the same as the prior amounts available including trigger funds. Jurisdictions could also take into account the

past history of campaign spending, voter registration, past use of trigger funds, and whether spending is significantly different for open seat races, as opposed to races that include an incumbent candidate.

Jurisdictions could experiment with different variations on this theme. For instance, depending on the level of competition in the primary and general elections, jurisdictions could implement a matching funds program in the primary election, and full public campaign financing in the general election.

Small donor programs are under discussion in Arizona, New Mexico, and Hawaii while Connecticut has taken a first step in this direction. The public match ratio can range from 3-to-1 to 100-to-1. This paper provides more details in Appendix 1, which also describes the federal Fair Elections Now Act.



PROVIDE ADDITIONAL FUNDS BASED ON ALTERNATIVE CRITERIA

Jurisdictions could provide candidates with additional public funds over and above normal levels that are triggered by factors other than spending by opponents and/or independent grounds.

For instance, instead of receiving trigger funds, candidates could request additional funds based

on factors such as voter registration, polling data, prior campaign spending, the number of candidates participating in the election, and whether or not the sought after seat is an open seat or occupied by an incumbent.¹⁰

This approach would retain the goal of providing qualified candidates with additional funds

only in competitive races, but would measure competitiveness not based on candidate and independent expenditures, but based on the other factors listed above.

As discussed in Appendix 1, New York City implemented such a system of public campaign financing.

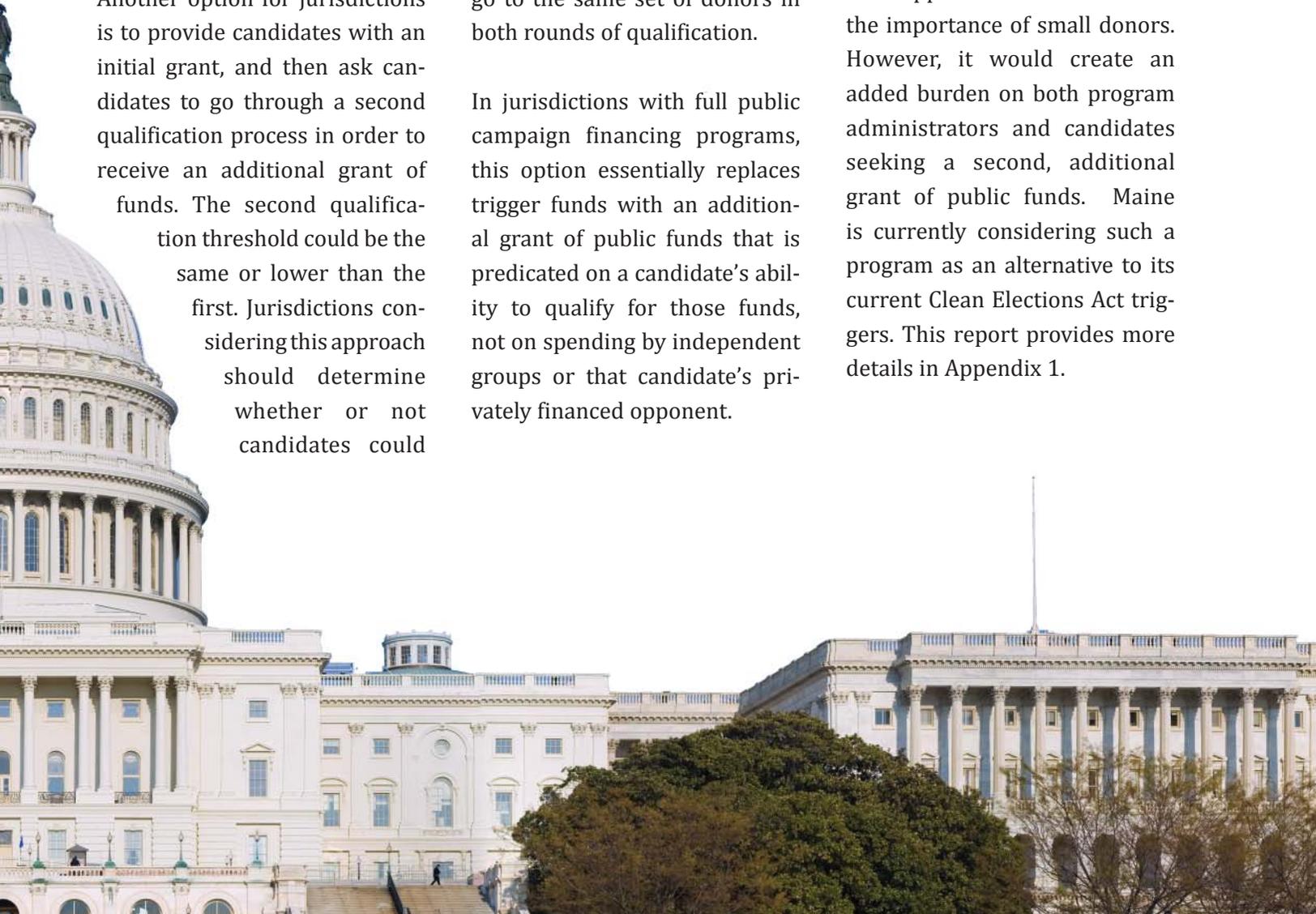
CREATE AN ADDITIONAL QUALIFICATION THRESHOLD

Another option for jurisdictions is to provide candidates with an initial grant, and then ask candidates to go through a second qualification process in order to receive an additional grant of funds. The second qualification threshold could be the same or lower than the first. Jurisdictions considering this approach should determine whether or not candidates could

go to the same set of donors in both rounds of qualification.

In jurisdictions with full public campaign financing programs, this option essentially replaces trigger funds with an additional grant of public funds that is predicated on a candidate's ability to qualify for those funds, not on spending by independent groups or that candidate's privately financed opponent.

This approach would focus on the importance of small donors. However, it would create an added burden on both program administrators and candidates seeking a second, additional grant of public funds. Maine is currently considering such a program as an alternative to its current Clean Elections Act triggers. This report provides more details in Appendix 1.



ADOPT PARTIAL PUBLIC CAMPAIGN FINANCING

Jurisdictions with full public financing programs could also consider switching to partial public financing systems.¹¹

The utility of this option will depend on the size of permissible contributions and the ratio of the match of public funds for private money. Instead of providing trigger funds based on spending by privately financed candidates and independent groups, this approach bases matching funds on a publicly-financed candidate's fundraising prowess.

Jurisdictions must weigh a number of considerations, including the amount of public funds necessary to implement a matching funds program, whether the system will advantage incumbents and wealthy candidates, and potential fears concerning actual or apparent corruption arising from an increase in the number and amount of private contributions.¹²

This paper discusses partial public funding programs in Los Angeles and New York City in Appendix 1.

ALLOW QUALIFIED CANDIDATES TO OBTAIN SUPPLEMENTAL FUNDS FROM POLITICAL ALLIES

Under both full and partial public campaign financing programs, jurisdictions could allow qualified candidates to obtain additional funds from other publicly financed candidates and/or political party committees up to certain limits.¹³

This provides another source of funds for candidates who would otherwise be able to obtain trigger funds.



PROVIDE A POLITICAL TAX CREDIT OR REBATE

Either as a stand-alone program, or as a portion of a larger public campaign financing system, jurisdictions can provide tax credits or rebates for political contributions.¹⁴ This reform is designed to bolster the role of small donors.¹⁵

Jurisdictions interested in implementing this approach should consider how to structure the program in a way that incentivizes new small donors, and doesn't just benefit individuals who would make political donations regardless of the tax benefits.¹⁶

See Appendix 1 for discussion of a Wisconsin proposal that includes a tax credit to encourage small dollar donations.

ALLOW ADDITIONAL PRIVATE FUNDRAISING

Under any of the models described above, jurisdictions can allow qualified candidates to continue raising private funds after the total amount of public funds has been disbursed.¹⁷

While this option increases the potential for actual or apparent corruption arising from private contributions, this concern can be mitigated by enforcing low contribution limits, as explained below. This approach also allows candidates to have the flexibility of continuing to raise and spend money in particularly competitive races.

One way of reducing fears concerning corruption would be to cap contributions at a level below the limits applicable to privately financed candidates. Another is to institute an overall spending cap, so that candidates cannot raise and spend unlimited sums.¹⁸

Implementing either of these proposals would also ensure that public financing does more than merely provide a "step up" for politicians, while asking them to sacrifice little in return for receiving scarce public resources.

Conclusion

In sum, jurisdictions seeking to design public campaign financing programs that will be safe from legal challenges based on *Arizona Free Enterprise* have a number of viable options. Jurisdictions can determine which option, or variation of options, best suits their needs by considering factors such as competitiveness of elections, past use of public funds (including trigger funds), past campaign expenditures, spending variations in open seat races as opposed to races involving an incumbent, and the overall appeal of a program to candidates.

Appendix 1

New Program Options

ARIZONA

Discussions are underway on legislative modifications to the Arizona Clean Elections Act, including adoption of a 5-to-1 match, but details are still being developed. For updates contact Arizona Advocacy Network at <http://www.azadvocacy.org/>

The following argues that Clean Elections have not caused extreme political polarization in Arizona: http://www.azadvocacy.org/images/stories/documents/criticisms_of_clean_elections_not_grounded_in_facts.pdf

CONNECTICUT

Connecticut amended its program between the 2010 primary and general elections with short-term fixes focused on the gubernatorial race. More revisions to other statewide and General Assembly races are under discussion.

For example, one bill would allow legislative candidates from “competitive districts” to raise additional qualifying contributions and receive a 3-to-1 match on those contributions. Candidates would be eligible only if they were running in (1) an open seat race or (2) a competitive district, which is defined as a district where for any two of the last three primaries or elections, whichever is applicable, the difference between the two top vote-getters is less than 10%.

http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=5021&which_year=2010&SUBMIT1.x=0&SUBMIT1.y=0&SUBMIT1=Normal

FEDERAL FAIR ELECTIONS NOW ACT

The federal Fair Elections Now Act provides for public funding for congressional races and offers a strong model for public campaign financing without triggers. Under Fair Elections, a candidate for the U.S. House of Representatives would need to collect donations totaling \$50,000 from at least 1,500 people to receive an initial grant based on average spending by winning candidates over the past two election cycles. For the 2010 elections, that would have amounted to approximately \$900,000, split 40% for the primary and 60% for the general.

For a U.S. Senate race, because states have widely varying populations, the number of qualifying contributions equals 2,000 plus 500 times the number of the state’s congressional districts. In Maine, for example, a U.S. Senate candidate would need to collect 3,000 qualifying contributions: a base of 2,000, plus an additional

500 for each of the two congressional districts. But in a state like Ohio, with 20 congressional districts, a U.S. Senate candidate would need 12,000 qualifying contributions before receiving Fair Elections funding.

Had Fair Elections been in place for the 2010 election, qualified U.S. Senate candidates would have received a base of \$1.25 million, plus \$250,000 per congressional district, split 33% for the primary and 67% for the general election. Qualified candidates for both chambers could then receive a 5-to-1 match on in-state private contributions of up to \$100. The Fair Elections bill provides that the total amount of public funds available in both the primary and the general is limited to three times the lump sum grant available in that election.

A fact sheet on Fair Elections Now Act is at: <http://www.common-cause.org/site/pp.asp?c=dkLNK1MQIwG&b=5413041>
H.R. 1404 is at: <http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.1404:#S.750> is at: <http://thomas.loc.gov/cgi-bin/query/z?c112:S.750:#>

HAWAII

In 2008, Hawaii adopted a pilot public funding program in Hawaii County, also known as the Big Island in the state of Hawaii. The County Council has 9 districts and all 9 seats are up for election every two years. This pilot began in 2010 and will continue for two more election cycles. The pilot program includes matching funds though they are called equalizing funds. In 2010 eight candidates qualified for public funds and five of those won. None of the participating candidates used the matching funds option.

House Bill 1575 was an Arizona Free Enterprise fix introduced during the 2011 legislative session that didn’t move out of committee. This legislative proposal would have provided public support to private contributions of up to \$20 at a 4-to-1 match while also increasing the overall amount of public funding available to participating candidates. HB 1575 is available at: http://capitol.hawaii.gov/session2011/lists/measure_indiv.aspx?billtype=HB&billnumber=1575

The 2012 pilot is underway and, in the absence of a legislative fix, program administrators are not implementing the matching funds provisions. Given that matching or equalizing funds were not used in 2010, this may not be an issue in this second round of the pilot program.

House Bill 1575 can be carried forward to the 2012 legislative session, but reform advocates are also working on a new bill with the goal of ensuring that Arizona Free Enterprise modifications are in place during the final round of the pilot program in 2014.

The pilot for Hawaii County Council races is a step towards modernizing Hawaii’s statewide partial public financing system, which is why advocates continue to work on Arizona Free Enterprise fixes to that program.

LOS ANGELES

The City of Los Angeles has a partial public financing program in which qualified candidates receive a 1-to-1 match on contributions of up to \$250. City Council candidates qualify by, among other things, raising \$25,000 in contributions of up to \$250. Contribution limits are set at \$500, but only the first \$250 counts for qualification and matching purposes.

In the past, qualified candidates received matching funds on a 1-to-1 basis, and then became eligible for additional matching funds at a 3-to-1 match and a higher spending limit if a privately financed opponent spent over a certain amount in his or her own funds on the campaign or when independent groups spent over a threshold amount. The law also provides that the applicable expenditure limit is lifted where a non-participating candidate spends more than the expenditure ceiling, or if an independent expenditure group spends more than \$50,000 concerning a City Council race.

Due to concerns raised by the Arizona Free Enterprise case, the City of Los Angeles will provide all candidates the higher matching ratio and maximum grant amounts for the 2011 special elections. Special election candidates will receive the 3-to-1 match on individual contributions of up to \$250, up to \$100,000 in matching funds for the primary, and a \$30,000 initial grant plus up to \$120,000 in matching funds for the general. The Ethics Commission is now considering long-term fixes to Los Angeles' public campaign financing law.

Ordinance 181834 was adopted in August 2011 and can be found at: http://clkrep.lacity.org/onlinedocs/2011/11-1241-s1_ord_181834.pdf

MAINE

The Maine Ethics Commission staff prepared an extensive report outlining two options for responding to Arizona Free Enterprise. One option is to increase the initial public funds grant. The second option is to disburse additional public support based on a candidate's completion of a second round of collecting qualifying contributions. Reform advocates have embraced the second option.

At its September meeting, the Commission approved the report but did not recommend one proposed fix over the other. The report, however, did, identify the status quo as being unacceptable and conclude that prompt legislative action is needed. The report is at: <http://www.maine.gov/ethics/pdf/2011ReportonImprovingMCEA.pdf>

The legislature's Legal and Veterans Affairs Committee received testimony on the two fix options at an October public hearing, during which the governor's office testified in favor of doing nothing. In the following work session, most committee members appeared to support some kind of fix, but deadlocked and adjourned without taking further action.

The political dynamics for reformers are challenging given the governor's opposition to Clean Elections and that a legislative fix will require a 2/3 vote when the legislature convenes in January in order to take effect in time for 2012 legislative campaigns.

NEW MEXICO

New Mexico faces Arizona Free Enterprise adjustments to programs in Albuquerque and Santa Fe as well as in its statewide program, the Voter Action Act. The Voter Action Act provides public funding for qualified candidates for New Mexico's Public Regulation Commission, Supreme Court and Court of Appeals.

New Mexico's Senate Bill 0294 bill introduced in 2011 would expand the Voter Action Act so that it also applies to the offices of governor, lieutenant governor, attorney general, state treasurer, state auditor, secretary of state, commissioner of public lands, state senator, and state representative. Senate Bill 0294 is a small donor model that includes 4-to-1 match of public support for private contributions of up to \$100, though policy details are still being discussed. <http://www.nmlegis.gov/Sessions/11%20Regular/bills/senate/SB0294.html>

The Albuquerque program's trigger mechanisms are no longer in effect because of that ordinance's severability clause. Modifying the program will likely occur within the context of a broader overhaul of Albuquerque's campaign finance laws since the Open and Ethical Elections Code is part of the city's charter. Charter changes require either a vote of 7 of 9 councilors or a popular vote on a ballot measure.

The Santa Fe program will be used for the first time in March 2012. In August 2011, this system's triggered matching funds provision was repealed. The need for future changes will be monitored, but this repeal approach seemed feasible given the political climate of Santa Fe that is expected to facilitate participation by all candidates.

NEW YORK CITY

Under New York City's partial public financing program, qualified candidates receive a 6-to-1 match on the first \$175 of campaign contributions. Contributions limits are much higher than \$175 (\$2,750 for City Council and \$4,950 for Mayor).

Candidates qualify for the matching funds by gathering a certain amount of funds from a minimum number of individual resident donors. For instance, City Council candidates must raise \$5,000 from 75 district residents. Mayor candidates must raise \$250,000 from 1,000 city residents.

In New York City, if no privately financed candidates raise or spend 20% or less of the spending limit applicable to publicly financed candidates, then the public funds available are capped at 25% of the usual spending limit. New York also provides that candidates can receive additional public funds when a privately financed opponent has significant endorsements, name recognition, or other media exposure. Specifically, additional public funds are available in the following situations:

- A privately financed candidate receives the endorsement of a citywide or statewide elected official or a federal elected official representing all or a portion of the area covered by the election; or two more endorsements from other city elected officials who represent all or a part of the area covered by the election; or endorsements of one or more membership organizations with a membership of over 250 members.
- A privately financed candidate receives 25% or more of the vote in an election for public office in an area encompassing all or part of the area that is the subject of the current election in the last eight years preceding the election.
- A privately financed candidate's name is substantially similar to the candidate's so as to result in confusion among voters.
- A privately financed candidate is a chairman or president of a community board or district manager of a community board (applicable only for borough president or City Council campaigns).
- A privately financed candidate's spouse, domestic partner, sibling, parent or child held elective office in an area encompassing all or part of the area of the covered election, in the past ten years.
- A privately financed candidate has significant media exposure in the twelve months preceding the election.
- Program administrators verify documentation of a participating candidate's request for additional funds in the situations described above. Obviously these New York City provisions increase administrative complexity and cost, but they provide ideas for ways to evaluate competitiveness that aren't linked to opposition fundraising.

Links to the New York City Campaign Finance Act as well as rules and administrative orders are at: <http://www.nycffb.info/candidates/candidates/law.aspx>

WISCONSIN

In "Ending Wealthfare As We Know It," the Wisconsin Democracy Campaign proposes a partial public financing program in which candidates qualify for matching funds by collecting signatures rather than contributions. Once candidates have qualified, they could receive a 4-to-1 match on contributions up to \$50, and a 3-to-1 match of contributions between \$50 and \$100. The proposal also contains a \$25 tax credit (\$50 for joint filers) for individual contributions of up to \$100. The proposal also dramatically reduces contribution limits from all sources to all candidates. Overall the proposal is focused on bolstering the power of small contributions. More details are at: <http://www.wisd.org/endinwealthfare.php>

Appendix 2

Resources

BRENNAN CENTER FOR JUSTICE

Small Donor Matching Funds: The NYC Election Experience
http://brennan.3cdn.net/8116be236784cc923f_iam6benvw.pdf

CAMPAIGN FINANCE INSTITUTE

Public Funding of Elections After Citizens United and Arizona Free Republic http://www.joycefdn.org/resources/content/8/8/3/documents/CFI_Report_Small-Donors-in-Six-Midwestern-States-2July2011.pdf

ANTHONY CORRADO, MICHAEL MALBIN, THOMAS MANN, AND NORMAN ORNSTEIN

Reform in an Age of Networked Campaigns
http://www.cfinst.org/books_reports/Reform-in-an-Age-of-Networked-Campaigns.pdf

CENTER FOR GOVERNMENTAL STUDIES

Public Campaign Financing in California: A Model Law for 21st Century Reform
http://www.cgs.org/images/publications/cgs_ca_cf_model_law.pdf

CENTER FOR GOVERNMENTAL STUDIES

Alternatives to Triggers: Public Campaign Financing After Arizona Free Enterprise
<http://cgs.org/images/publications/twestenontriggersfnl82711.pdf>

CENTER FOR GOVERNMENTAL STUDIES

Public Financing of Elections: Where to Get the Money?
<http://cgs.org/images/publications/twestenwheregetmoneyfnl excerpts92711.pdf>

Endnotes

1. Trigger funds provisions are sometimes referred to as “rescue funds” or “fair fight funds.” For the sake of simplicity, this report refers to “trigger funds.” Trigger funds are sometimes confused with “matching funds,” which will be used in this report to refer to jurisdictions that provide public funds based on “matching ratio” of private funds raised.

2. *Buckley v. Valeo*, 424 U.S. 1 (1976).

3. As discussed in this report, in some jurisdictions a publicly financed candidate is able to raise private money which is matched by public funds based on a certain ratio (for instance, 2-to-1), and that ratio increases (for instance, 4-to-1) when the publicly financed candidate is faced with heavy spending by privately financed candidates and/or independent groups.

4. New York City’s public campaign financing program, for instance, limits funds provided to candidates facing a privately financed candidate who does not engage in significant fundraising. A participating candidate can request more public resources based on certain criteria that are described in Appendix 1. Providing less public support to candidates in noncompetitive races is also a feature of the model California bill developed by the Center for Governmental Studies. See http://www.cgs.org/images/publications/cgs_ca_cf_model_law.pdf

5. During these tough economic times, those proposing changes that may increase the cost of the public campaign financing programs could face a particularly steep uphill battle. Public financing programs can become more costly because the amount of public funds available to candidates increases, and/or because the costs of administering the program increases. *Public Financing of Elections: Where to Get the Money?* by the Center for Governmental Studies is a helpful resource and is available at: <http://cgs.org/images/publications/twestenwheregetmoneyfnl excerpts92711.pdf>

6. For instance, Connecticut offers candidates an effective public campaign financing program that does not include trigger funds. A report on Connecticut’s successes, *Citizens’ Election Program 2010: A Novel System With Extraordinary Results*, can be found at: http://www.ct.gov/seec/lib/seec/publications/2010_citizens_election_program_report_final.pdf

7. A variation on this idea would be to give qualifying candidates a lump sum grant of public funds and then allow them to raise a certain amount of private contributions, which are lower than the normal contribution limits, and which are not matched with public funds.

8. Jurisdictions that have full public campaign financing could retain the same qualification requirements, and the same initial public funds allocation.

9. Fair Elections Now or small donor empowerment are other labels for this hybrid approach. Avoiding the term hybrid may be strategically advantageous because knowing about the two program types (full and partial public funding) being blended into a hybrid isn’t necessary to discuss the small donor approach. Indeed, use of the term hybrid could initiate discussion of the merits of

full and partial reform programs that could be a distraction from advocacy for the small donor model.

10. In *Alternatives to Triggers*, Tracy Westen proposes that one factor to be considered when determining whether candidates should receive additional public funds is public awareness of candidates based on polling.

11. Several cities have partial public funding programs. The Brennan Center highlighted the success of New York City’s program in *Small Donor Matching Funds: The NYC Election Experience*. This report is available at http://brennan.3cdn.net/8116be236784cc923f_iam6benvw.pdf. Appendix 1 provides a short description of New York City’s program.

12. *Reform in an Age of Networked Campaigns* recommends matching funds programs in both the primary and general elections, and provides that matching funds should only be provided for small contributions, which increases the role of small donors. A more detailed discussion is in this report by Anthony Corrado, Michael Malbin, Thomas Mann, and Norman Ornstein, and is available at http://www.cfinst.org/books_reports/Reform-in-an-Age-of-Networked-Campaigns.pdf. For more information about partial public campaign financing programs, and specifically how those programs can bolster the role of smaller donors, see the Campaign Finance Institute’s analysis of elections from 2006-2010 in six Midwestern states in *Public Funding of Elections After Citizens United and Arizona Free Enterprise* available at http://www.joycefdn.org/resources/content/8/8/3/documents/CFI_Report_Small-Donors-in-Six-Midwestern-States-2July2011.pdf

13. *Reform in the Age of Networked Campaigns* discusses the possibility of allowing national party committees to make unlimited coordinated expenditures in support of candidates by using funds raised from small donors, who in the aggregate give \$200 or less.

14. As an additional incentive for small donor participation, the Wisconsin Democracy Campaign includes a \$25 political tax credit (\$50 for joint filers) for contributions from individuals of up to \$100 in its matching funds program. Appendix 1 provides more information on Wisconsin’s proposal.

15. *Reform in an Age of Networked Campaigns* suggests that tax credits or rebates can help encourage small donations.

16. For instance, Oregon provides a tax credit for political contributions, but the majority of those availing themselves of the credit are higher earners who may have already been predisposed to make political contributions.

17. Arizona is considering adopting this approach.

18. For more discussion on the pros and cons of this approach, see *Reform in the Age of Networked Campaigns*.

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