



CLEAN ELECTIONS

Public Financing in Six States

including New Jersey's Pilot Projects

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FOREWORD

When the New Jersey Legislature proposed a *Clean Elections* program in 2004 as part of its ethics agenda, many questions were left unanswered. What are *Clean Elections*? Do other states have similar programs? What can we learn from them? By what processes were they enacted and what makes them unique? Most importantly, have they been successful?

The New Jersey Project of the Eagleton Institute of Politics was pleased to address these and other questions when presented with an opportunity to adapt an undergraduate thesis written by Benjamin Brickner of Lawrenceville, N.J. while he was a senior at Cornell University. Ben, together with Naomi Mueller, a graduate student at Rutgers's Edward J. Bloustein School of Planning & Public Policy and previously a reporter for the *Asbury Park Press*, updated and edited his thesis to produce this Guide to *Clean Elections* in New Jersey.

Brickner and Mueller's work enables the New Jersey Project to provide information about *Clean Elections* in an accessible format consistent with Eagleton's mission to educate citizens and encourage their participation in politics in order to strengthen our democracy. An important goal of *Clean Elections* is to enable individuals of modest means or those without established networks of political support to run for public office. *Clean Elections* allows candidates to focus their campaign activities on engaging the voters rather than raising campaign funds.

Clean Elections, which began in Maine during the mid-1990s as an effort to reform how campaigns are financed, is not widely known and its definition is not easy to find. New Jersey statutes do not provide one. Others have called *Clean Elections* the voluntary public financing of campaigns for public office. Common Cause describes *Clean Elections* as "public financing of political campaigns." Wikipedia calls it "a system of government financing of political campaigns." The Center for Governmental Studies reserves the term for "full public financing."

Although the word "clean" is often used in contrast to campaigns considered mean spirited or divisive, the term "clean elections" does not refer to how campaigns are run. Rather, *Clean Elections* is a type of campaign finance reform that offers candidates for elected office an alternative to private fundraising and an opportunity to run campaigns supported with public funds. To receive these funds, candidates must first demonstrate a threshold level of public support by collecting a minimum number of nominal contributions from registered voters. Candidates must also agree to rely solely upon public funds for all of their campaign expenses. *Clean Elections* seeks to neutralize a potential source of official corruption: the undue influence of private campaign contributors on the actions of our elected public officials.

This book is presented in four chapters that may be read individually or in sequence:

CHAPTER ONE illustrates the context of *Clean Elections* by describing historical American campaign finance reform and modern campaign finance practices.

CHAPTER TWO presents the common features of *Clean Elections* and describes how this program was designed in six states: Maine, Vermont, Arizona, Massachusetts, New Jersey and Connecticut.

CHAPTER THREE recounts how various political and legislative events led to *Clean Elections* in six states: Maine, Vermont, Arizona, Massachusetts, New Jersey and Connecticut.

CHAPTER FOUR details New Jersey's experience with *Clean Elections*, including adoption and implementation of the 2005 and 2007 pilot projects.

AN APPENDIX compares side-by-side the significant provisions of *Clean Elections* laws in six states: Maine, Vermont, Arizona, Massachusetts, Connecticut and New Jersey.

Because *Clean Elections* is relatively new in practice, its study is far from complete. We look forward to comments and suggestions for improving the usefulness of this publication and for keeping it current as the story of *Clean Elections* unfolds. In addition to the six states we discuss here, *Clean Elections* reform is underway and in various planning stages in cities, counties and states across the country, as well as in the United States Congress. We hope this contribution to the literature will assist these and other jurisdictions in adapting, adopting and amending *Clean Elections* to suit their unique political systems.

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New Brunswick, NJ
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ACKNOWLEDGMENTS

This guide to *Clean Elections* in New Jersey began with Benjamin Brickner, while he was a student at Cornell University. As a senior in 2004-05, Ben wrote his undergraduate thesis on *Clean Elections*, seeking an opportunity to explore the initiative in his home state of New Jersey and, more generally, to discover the historical context of this modern method of reform and to compare New Jersey's program with those of the states that inspired it. He added additional material in 2006 and has continued working on this manuscript while balancing his present dual degree studies in law and public administration. Throughout the project, Ben not only sought to expand the scope and reach of his original work, but also continued to contribute his intellectual talent, elegant writing style and unflinching commitment to representative democracy that is truly in service to its citizens.

While an Eagleton graduate fellow and student at the Bloustein School of Planning and Policy at Rutgers University, Naomi Mueller applied her editing and research skills to this project. Her journalistic experience, intelligence and organizational abilities, and keen insight into politics—particularly New Jersey's—were essential to the shaping and the completion of the book, a project that will never be truly complete.

Former State Senator William E. Schluter first brought Ben and his writing to our attention, thereby galvanizing the process that resulted in this book. Senator Schluter, with his experience as chair of the New Jersey Fair and Clean Elections Citizen Commission and his unwavering commitment to reform, also provided important details that helped us render a more accurate depiction of New Jersey's pilot projects.

Three individuals read and commented on the first draft. We are grateful for their interest, encouragement and editing advice. Gerald Pomper, Board of Governors Professor of Political Science (Emeritus), assisted us with his knowledge of politics and keen sense of how best to communicate with the public about the political process. Gail Ullman, past editor of the Princeton University Press, with a distinguished public service record and insatiable curiosity about politics, paid meticulous attention to the words we chose. Anna Mitchell, a political science Ph.D. candidate at Rutgers, contributed her enthusiasm for the theoretical and practical aspects of politics, a love of teaching, and wisdom beyond her years. Trudy Glucksberg generously applied her skills as an artist and designer to produce the cover.

Representatives from Maine's Commission on Governmental Ethics and Election Practices and Arizona's Clean Elections Institute provided invaluable insight during the final stages of the project, answering our questions and helping us better understand the operation of *Clean Elections* in their states.

The Community Foundation of New Jersey generously provided a grant making it possible to begin work on this book in 2006. Foundation Executive Director Hans Dekker recognized the importance of educating New Jerseyans about *Clean Elections* as a means of encouraging citizen participation in state politics and sharpening the intellectual focus on the influence of private money in public elections.

Our colleagues at the Eagleton Institute, particularly Linda Phillips and Kathy Kleeman, offered advice, support and interest in *Clean Elections* that helped us provide useful information about the initiative in our home state. Their commitment to public service, education and research into the practice of politics inspired us to make this project a reality.

— CHAPTER ONE —

A BRIEF HISTORY OF CAMPAIGN FINANCE REFORM IN THE UNITED STATES

How Clean Elections Fits within the Campaign Finance Reform Movement

“
There are two important things in politics. The first is money, and I can't remember what the second one is.
”

INTRODUCTION

For as long as there have been elections in the United States, there has been debate about how candidates should finance their campaigns. For as long as there have been campaigns to be financed, there has been debate about campaign finance reform. This issue is as old as the republic itself, predating such acronymous reform efforts as FECA and BRCA, the Watergate, Teapot Dome and Whiskey Ring financing scandals, and even the steadily increasing amount of spending that has made campaign finance reform an important issue today. At the heart of the debate lay tensions between economic inequality and the principle of one-person, one-vote; between political elitism and representative government; between paid political speech and First Amendment protections. Running throughout the history of campaign finance reform is a struggle among these competing interests. It is an ongoing conversation about the nature of American democracy and the permissible means of obtaining elected office.

In America's third century, candidates for elected office require an increasing sum of money to wage competitive campaigns. For example, successful congressional candidates raised on average \$1.9 million in 2006.¹ Freshmen members of the House seeking reelection raised on average \$1.7 million—\$2,300 *every* day of their first term in office.² Unless independently wealthy, each of these elected officials relied upon private actors—individuals, political parties and political action committees—for this funding. A public official-private actor relationship, without something more, is not necessarily troubling. When candidates become *dependent* upon this relationship to win office, however, the potential for corruption becomes apparent. Private financing of public campaigns provides well-funded interests with potentially greater access and greater influence within our government. These special interests are often incompatible with the broader interests that all elected officials have sworn to uphold. Public officials who become beholden to private contributors must navigate a web of conflicts, and experience tells us these are not easily overcome. At very least, large amounts of private money in public campaigns creates an appearance of impropriety, casting a shadow over public service and fueling greater skepticism of government.

Even before the U.S. Constitution was ratified, founding father James Madison understood special interest influence as “adverse to the rights of other citizens [as well as] the permanent and aggregate interests of the community.”³ Madison wrestled with this conflict, conceding that the same body of rights to be protected by the new government would also allow special interest influence of campaigns and elections. Eliminating one would entail eliminating the other, defeating the essential liberties of democracy. The impracticability of Madison's fanciful alternative, “giving to every citizen the same opinions,” foreshadowed the long-running tension between public and private interests. If the danger of special interests could not be avoided without also destroying American democracy, Madison concluded the danger could only be contained.

* Marcus Alonzo Hanna (1837 – 1904). Industrialist, U.S. Senator, and widely regarded as the father of big-money politics in the United States.

Two centuries before the Watergate scandal began the modern era of campaign finance reform, the Framers had already identified the movement's competing concerns: personal autonomy and purity of the political process. Though the scope of government activity has changed dramatically since the founding, the fundamental question remains the same: how can campaigns and elections be insulated from the corrosive influence of private interests without jeopardizing individual freedom? The history of campaign finance reform reflects an ongoing effort to balance these conflicting interests.

Article I, Section 4 of the U.S. Constitution assigns to individual states the responsibility for prescribing the "Times, Places and Manner of holding Elections for [U.S.] Senators and Representatives," while the Congress is permitted to "at any time by Law make or alter such Regulations."⁴ Reflecting eighteenth century concern for state sovereignty and local autonomy, the Constitution is silent on non-federal elections, deferring on these matters to the states' governments. While this arrangement of shared responsibility has resulted in a patchwork of election law nationwide, it has also permitted each state to experiment with different electoral methods and reform measures, creating what U.S. Supreme Court Justice Louis Brandeis called a "laboratory" of reform.⁵ This characterization proved accurate during the nineteenth and early twentieth centuries, when the nascent campaign finance reform movement was led by a small handful of states undertaking progressive and, in several cases, quite radical reform.

It was not until passage of the Voting Rights Act of 1965 that the federal government began to overshadow states in the regulation of elections to public office.⁶ Watergate followed nine years later, sparking additional reform efforts, particularly in the Congress. While continued reform has remained a national issue ever since, recent attention has returned to state and local campaign financing. During the last fifteen years, many states have enacted measures limiting campaign contributions and requiring additional disclosure of campaign expenditures. Several states have taken the additional step of providing public financing for political campaigns, including full public financing, also called *Clean Elections*.

Reform has come slowly and incrementally as lawmakers and judges struggle to reconcile wealth inequality with political equality without undermining individual rights enshrined by the Constitution. Given the length of its history, campaign finance reform has not surprisingly been characterized by some as an endless, Sisyphean task. As one source of private money is regulated or prohibited altogether, a new one has often been quick to fill the vacuum, leading the Supreme Court recently to quip that "[m]oney, like water, will always find an outlet."⁷

While campaign finance reform has enjoyed elevated prominence in the decades since Watergate, the movement itself and the issues associated with it are ubiquitous in popular government. The remainder of this chapter highlights federal and state campaign finance reform efforts from the nineteenth century to the present day.

EARLY FEDERAL REFORM

Modern campaign practices scarcely resemble those that prevailed when the nation's first federal offices were established. In America's first century, it was accepted and generally understood that the political party in power would spoil its supporters with lucrative government contracts as well as positions in the burgeoning federal bureaucracy.

Remnants of the spoils system exist today in the broad powers of executive appointment and legislative earmarking. Presidents and governors routinely appoint members of the same political party to fill their cabinets and

executive agencies. The list of private firms awarded public contracts often mirrors the list of contributors to successful campaigns for office. Modern patronage, however, lacks the overt corruption of extortion and bribery typical of earlier days. In eighteenth century America, appointed positions were often awarded to political loyalists, with little regard for experience or competence. In return, these employees were assessed fixed portions of their salaries, payable in cash to the party responsible for their employment. These assessments, legal in their day, were the primary means of funding for political parties.

Organized resistance to this arrangement did not emerge until the 1830s, just as national political organizations were taking shape.⁸ In 1837, Tennessee Congressman John Bell, a member of the Whig Party, introduced a bill to prohibit assessments of patronage positions. This was among the earliest federal campaign finance reform measures.⁹ With opposition Democrats in control of Congress, the White House and most political patronage, Bell's bill was short-lived. In 1840, substantially similar legislation was introduced in the wake of a scandal involving United States customs workers. Again, the bill went nowhere.

The first federal law to regulate assessments was enacted twenty-seven years later as a last-minute amendment to a Navy appropriations bill. Narrow in scope but bold in aspiration, the provision declared that "no officer or employee of the government shall require or request any workingman in any navy yard to contribute or pay any money for political purposes, nor shall any workingman be removed or discharged for political opinion."¹⁰ Widespread corruption during the Ulysses S. Grant administration, including graft and diversion of tax revenue for political purposes, forced the issue of patronage again.¹¹ Although the President was never implicated of any wrongdoing, his failure to denounce the malfeasance around him, combined with a legendary reputation for placing friends in high government office, further weakened his already anemic political standing. To pacify critics within his own party, Grant agreed to limit assessments to government officials appointed by the president and approved by the Senate.¹²

Rutherford B. Hayes, Grant's successor, took an additional step by issuing an executive order banning assessments altogether.¹³ In the same order, Hayes also eliminated political party affiliation requirements for government officials. Perhaps in consideration of the First Amendment, Hayes added, "[officers'] right to vote and to express their views on public questions . . . is not denied, provided it does not interfere with the discharge of their official duties."

The terms of Hayes's executive order, along with other provisions, were later written into statutory law as the Pendleton Civil Service Act of 1883.¹⁴ Among the first comprehensive reform measures in political financing, Pendleton was in part a reaction to the 1881 assassination of President James A. Garfield by a disgruntled office-seeker who had been denied a government job. The Act categorically prohibited assessments on the salaries of public servants, eliminating most political party funding and curtailing much of the associated corruption. The Act also established the Civil Service Commission to administer a system of competitive merit examinations and to award employment based on performance rather than political affiliation. Many government jobs were thereafter classified within the new civil service system and removed from the patronage system.

While assessments were no longer available as a source of political party funding, corporate contributions remained unregulated. Partisan fundraisers wasted little time adapting their tactics to accommodate the new law. Shortly after Pendleton was enacted, many politicians turned to wealthy business owners, demanding a share of their corporate profit in return for preferential, or even adequate, treatment by their government.¹⁵ These new assessments quickly became a principal source of funding for political parties, filling the patronage vacuum created by Pendleton. In exchange, corporate contributors and their associates were awarded unclassified jobs,

government business or both. With the federal government's role in economic and trade policy rapidly expanding during the late-1800s, favorable consideration from Congress and regulators was becoming increasingly profitable for business and industry. Political operatives were not shy in exploiting the new arrangement. In 1900, the chair of the Republican National Committee contacted several large corporations, suggesting that each "pay according to its stake in the general prosperity of the country and according to its special interest in the region."¹⁶ Wealthy interests thus enjoyed a closer, more productive relationship with their government. In exchange, these interests shouldered the growing cost of political campaigns and party establishments. Such bold solicitations, however, only hastened the sentiment that well-funded interests were corrupting the integrity of government.

Responding to growing appearances of impropriety as well as the remarkable sums spent during the 1896 and 1900 presidential campaigns, several states banned corporate contributions to political campaigns.¹⁷ Congress did not consider doing the same until several years later when President Theodore Roosevelt, embarrassed by allegations of quid pro quo during his 1904 campaign, included the policy in his domestic agenda. Roosevelt's commitment to the issue was demonstrated by its inclusion in three consecutive State of the Union messages.¹⁸ In 1905, the president told Congress "[t]here is no enemy of free government more dangerous and none so insidious as the corruption of the electorate" and recommended "the enactment of a law directed against bribery and corruption in Federal elections."¹⁹ Congress, however, remained unmoved. In 1906, Roosevelt took the additional step of calling for specific reform measures directed at elections for both federal and state office, proposing that "[a]ll contributions by corporations to any political committee or for any political purpose should be forbidden by law."²⁰ Again, Congress was unmoved. The following year, however, a coalition of public interest groups, editorial boards and public officials joined Roosevelt in calling for reform.²¹ Stirred to action by a corruption-weary public, Congress in 1907 adopted the Tillman Act forbidding "any corporation organized by authority of any laws of Congress, to make a money contribution in connection with any election to any political office."²² Notwithstanding its broad language, Tillman was far from comprehensive. Most businesses then, as now, had been incorporated under state law and were excluded from this restriction. A second provision, applicable to all corporations, was limited to campaigns for federal office. Most corporations were still able to contribute to state and local political party organizations and candidates. Nonetheless, the law marked a defining moment in the history of campaign finance reform. Just as Pendleton had done by creating the civil service system twenty-four years earlier, Tillman created new precedent by articulating a public interest in regulating corporate campaign contributions.

With yet another source of campaign funding within the crosshairs of government regulation, reformers turned their attention to campaign finance disclosure. Before 1910, campaigns and political party committees were not compelled to disclose their financial transactions. Receipts and disbursements remained secret and the public remained unaware of who was giving money to whom and for what purpose. As a result, political organizations and their benefactors operated with little public or regulatory oversight. This changed upon passage of the Federal Corrupt Practices Act (also known as the Publicity Act).²³ As amended the following year,²⁴ the Act required all federal campaign committees to report their finances both before and after primary and general elections. The Act broke additional new ground by establishing spending limits on federal campaigns and allowing states the discretion to set lower limits. Michigan, for example, established a primary election spending limit equal to one-quarter of the salary for the federal office sought.²⁵ In 1921, a Republican U.S. Senator was convicted under the Act for dramatically exceeding this limit.²⁶ When the case reached the U.S. Supreme Court later that year, the law was invalidated on the ground that Congress did not have authority to regulate nominating contests and, by extension, primary election contests.²⁷ What remained of the federal Publicity Act included inadequate penalties for violations. Although Congress was entrusted with enforcing the Act, it rarely did so.

By the 1920s, several factors led to a significant growth in campaign spending. In 1913, the Seventeenth Amendment established direct elections for United States Senators, creating a new class of political campaigns in need of funding. In 1920, the Nineteenth Amendment gave women the right to vote, creating a new class of voters in need of swaying. At the same time, primary elections began replacing elite conventions as the nominating tool of choice, creating yet another new class of political campaigns.

In 1925, Congress amended and substantially strengthened the Publicity Act by requiring quarterly reports from all interstate campaign committees and establishing a reporting threshold of \$100.²⁸ Consistent with the Supreme Court's ruling four years earlier, the new regulation excluded primary election contests. Enforcement authority once again was entrusted to Congress, but because the Act lacked an effective regulatory structure, its provisions went largely unenforced. No candidate for federal office was ever prosecuted under the Publicity Act after 1925, yet the Act remained the operative campaign finance regulation until the 1970s.²⁹

With the New Deal political realignment of 1932, Democrats found themselves in power following a sixteen-year hiatus. Republicans, on the other hand, were out of power and at a marked disadvantage with respect to campaign financing. With several of President Franklin Delano Roosevelt's New Deal policies being pro-worker, labor unions quickly developed into a potent political force overwhelmingly supportive of the Democratic Party.³⁰ While the Tillman Act barred corporate campaign contributions, labor union contributions, the emerging Democratic Party lifeblood, remained unregulated. This was not the case for long. In response to unions' escalating political activity and a succession of labor strikes perceived as detrimental to World War II mobilization efforts, the Congress in 1943 passed the War Labor Disputes Act, extending Tillman's provisions to organized labor.³¹ Notably, the Act was passed over President Roosevelt's veto and was designed by the Democratic Congress as a temporary measure to expire shortly after the war's end. The Republican majority elected to Congress in 1946, however, revived the ban by enacting the Labor-Management Relations Act, this time over President Truman's veto.³² The renewed federal rules prohibited not only corporations, but also labor unions from using any portion of their general funds for political purposes. Included were both direct contributions and indirect expenditures in support of a political party or campaign. Much of this regulation remains in place today.

Just as partisan fundraisers had adjusted to the new reality created by Pendleton's civil service reform, organized labor had quickly developed a new avenue for their political activity during the wartime prohibition on union campaign contributions. In 1943, the Political Action Committee ("PAC") was conceived as a vehicle for campaign contributions outside the scope of the War Labor Disputes and Labor-Management Relations Acts. By soliciting funds independent of union dues, labor PACs were able to sidestep the spirit, if not the letter of the law, which had only prohibited use of general treasury funds. Labor unions were the first to exploit this loophole and within a decade, more than a dozen PACs were active. Corporate entities followed suit in the early-1960s.³³

The growing prominence of political action committees coincided with a broader shift in the nature of political campaigns. The increasing reach of radio and television media in the post-war era fueled dramatic growth in campaign spending. Aggregate campaign expenditures by congressional candidates nearly doubled between 1956 and 1968 with media expenditures accounting for much of the growth.³⁴ In 1956, broadcast media costs amounted to 6.3 percent of total campaign spending. By 1968, this figure was nearly 20 percent. As the expense of mounting viable and competitive campaigns continued to climb, concern came from an unlikely source. With each passing election cycle, members of Congress became increasingly worried they would be unable to raise the funds necessary to wage multi-media reelection campaigns. This fear crested with the rise of a new class of candidates for public office—millionaires willing to part with substantial personal wealth to win elected office.

In the century after Congressman Bell first proposed legislation to regulate campaign financing, congressional action on the issue was almost exclusively reactionary. The Pendleton, Tillman and Publicity Acts were each enacted in response to political scandal. Relevant provisions of the Labor-Management Relations and the War Labor Disputes Acts were in response to political inequity and wartime necessity. With campaign costs on the rise and incumbents devoting increasing amounts of time and energy to the inelegant task of fundraising, Congress resorted to proactive measures.

The Federal Election Campaign Act (“FECA”) of 1971, the foundation of modern campaign finance regulation, marked Congress’s return to the issue after a twenty-five year hiatus.³⁵ Motivated by a fear of self-financed candidates and a sense that media costs alone were to blame for rising campaign costs, Congress enacted FECA to cap media expenditures and limit the amount candidates could contribute to their own campaigns. FECA also imposed ceilings on individual contributions to candidates and party committees, as well as on monetary transfers between political committees. The Act also strengthened reporting and disclosure requirements for all candidates and political committees, requiring itemization of all contributions above \$100.

Despite its far-reaching provisions, FECA failed to achieve its principal goal of bringing campaign spending under control. While the upward trend in media expenditures was briefly stabilized after FECA’s passage, the rise in overall spending continued. Despite new contribution ceilings and limitations on self-financing, total campaign spending increased more than 40 percent between 1968 and 1972.³⁶ One explanation for FECA’s failure was the absence of an enforcement agency empowered to administer the Act and to punish those who violated its provisions. Although disclosure and reporting requirements were in place during the 1972 presidential campaign, enforcement was inconsistent at best. Following the extraordinary scandal that still colors the modern campaign finance reform debate, the absence of an oversight body would be short-lived.

WATERGATE-ERA REFORM

In June 1972, five men were caught attempting to wiretap the Democratic National Committee headquarters in Washington’s Watergate Hotel. Several of the burglars were later discovered to have ties to the White House and in particular to the campaign Committee to Reelect President Richard M. Nixon.³⁷ The ensuing investigation spanned two years, culminating in the president’s resignation in August 1974. As details of the break-in emerged, a stark picture of routine campaign finance abuse appeared, including corporate contributions laundered through foreign banks and used to finance clandestine campaign operations.

The investigation revealed just how inadequate the existing campaign finance law was. Even months before Nixon’s resignation, the need for additional reform had become clear.³⁸ In March 1974, Congress began work on what would eventually become an ambitious and comprehensive revision of FECA, which had been enacted only three years earlier. Enacted days after Nixon’s resignation, the Federal Election Campaign Act amendments of 1974 included stricter disclosure rules, compelling additional reporting before and after Election Day, and restricted candidates to a single campaign committee for raising and spending campaign contributions.³⁹ The 1974 amendments also capped individual campaign contributions, limits that would remain unchanged for almost thirty years. The original ceiling on media-related expenditures was abandoned in favor of a ceiling on total expenditures scaled by constituency size and the office sought. Political parties and their campaign committees were also made subject to limits on independent expenditures that were coordinated with a particular candidate’s campaign.

Perhaps most important, the 1974 amendments created an independent, bipartisan Federal Election Commission (“FEC”) to administer the revised law and enforce its provisions. Correcting fundamental weaknesses in the original law, the FEC was empowered to collect financial disclosure reports, conduct investigations and audits, issue subpoenas, and assess civil penalties for noncompliance. Further, the FEC’s authority extended to both primary and general election cycles.

With the FECA amendments, the Congress finally implemented the nation’s first federal public financing program. Initially proposed in 1962 by President John F. Kennedy’s Commission on Campaign Costs,⁴⁰ the idea had received little support from Congress.⁴¹ In 1966, Congress took a tentative first step by attaching a public financing rider to an unrelated bill.⁴² The Presidential Election Campaign Fund Act proposed to supplement traditional private funds with public dollars. Because the program did not address private fundraising, perceived to be the true source of public corruption, opposition in Congress was widespread. As a result, the program was never funded and implementation was delayed indefinitely.

The FECA amendments of 1974 ended this delay, combining public funding with additional mechanisms designed to address the corrosive effects of private fundraising in presidential elections. During the primary election cycle, major party candidates were first required to cross a modest private fundraising threshold in at least twenty states. The first \$250 of each private contribution would then be matched by public funding once the candidate pledged to keep overall spending below a specified level. During the general election cycle, major party nominees were eligible to receive a \$20 million grant upon agreeing not to raise or solicit any additional funds from private sources. The Democratic and Republican national committees were eligible to receive \$2 million for their nominating conventions. Third party presidential candidates and their national committees were also eligible for public funding, however these amounts were smaller and in proportion to the party’s vote-share during the previous presidential election cycle. Finally, the new law also authorized modest tax deductions and credits for individuals who made campaign contributions to political candidates. By easing the fundraising burden on presidential candidates and their national party committees, the nation’s first federal public funding program sought to address the concern that rising campaign costs had contributed to the corruption at issue in Watergate.

In addition to cleaning up the campaign finance system, the 1974 amendments also sought to encourage wider social engagement in campaigns and elections. Despite the politically expansive Seventeenth and Nineteenth amendments, by the 1970s fewer than one in eight adults reported contributing any money to political candidates or parties.⁴³ The public financing funding mechanism, a voluntary federal income tax check-off, created a new, cost-free avenue for citizen participation in the electoral process. New tax deductions and tax credits provided additional incentive for individuals to contribute to candidate campaigns. By increasing overall participation and interest in the political process, these initiatives were intended to increase candidate contact with voters, particularly with those who were previously isolated from national campaigns.

FECA was as controversial as it was comprehensive and several of its provisions were promptly subjected to judicial scrutiny. The result was *Buckley v. Valeo*, a landmark U.S. Supreme Court decision that rivals Watergate for its subsequent impact upon modern campaign finance law.⁴⁴ In *Buckley*, the Court concluded that both campaign contributions and expenditures were forms of political speech protected by the First Amendment. FECA’s expenditure limits were deemed to impose unjustifiably “direct and substantial restraints on the quantity of political speech” and were accordingly invalidated.⁴⁵ The Court struck down restrictions on candidate self-financing on similar grounds.⁴⁶ The Court also invalidated limits on independent expenditures, including those made by a political party, finding them impermissibly vague and unconnected to “the governmental interest in preventing corruption and the appearance of corruption.”⁴⁷ In particular, the Court famously noted that only those

expenditures that “in express terms advocate the election or defeat of a clearly identified candidate” could be restricted.⁴⁸

Upon balancing the competing interests, however, the Court upheld FECA’s contribution limits, finding that they created only a “limited effect upon First Amendment freedoms” justified by a “basic governmental interest in safeguarding the integrity of the electoral process.”⁴⁹ The Court also upheld FECA’s provisions for public funding of primary elections, nominating conventions and general elections. Here, the Court found that elimination of “the improper influence of large private contributions [furthered] a significant governmental interest” for which public financing was well suited.⁵⁰ The Court stressed that acceptance of public funding and its associated restrictions was voluntary, noting that traditional avenues of campaigning remained open to all candidates.⁵¹ As such, the Court concluded public financing was “an appropriate means of relieving major-party Presidential candidates from the rigors of soliciting private contributions.”⁵²

After *Buckley*, the growth of private money in political campaigns continued, checked only by FECA’s ceiling on individual contributions and voluntary acceptance of fundraising restrictions associated with public funding of presidential campaigns. The FECA provisions that survived *Buckley* have provided the foundation for most subsequent reform efforts at the federal and state levels.

MODERN FEDERAL REFORM

Just as the Labor-Management Relations Act gave rise to the political action committee, *Buckley* yielded new means of circumventing FECA’s campaign finance regulations. *Buckley*’s holding that only express political advocacy could be regulated created a legal loophole for *soft money*, funds that are not contributed directly to a candidate’s campaign and are not used to advocate the election or defeat of a particular candidate.⁵³

The natural repositories of soft money were the national party committees and independent PACs. Wealthy donors could thus contribute vast amounts to these entities, technically independent of individual candidates, which were able to spend these funds on such party-building activities as voter registration and get out the vote drives. These largely unregulated contributions fueled much of the subsequent growth in campaign spending. Between 1992 and 2002, for instance, soft money expenditures rose nearly five-fold to a record \$496 million, a trend that was not limited to national party organizations.⁵⁴ State parties reported an equally impressive increase in soft money expenditures during the same period.⁵⁵

In a series of FEC rulings during the late-1970s, permissible uses of soft money were expanded to include *issue advertisements*, communications intended to comply with the unusually specific language of *Buckley*. In a footnote, the Court explained what it considered to be “express advocacy” by offering several examples including, “vote for,” “elect” and “support.”⁵⁶ The Court’s precision had the unintended effect of aiding party organizations and other interest groups in blurring the distinction between express advocacy and genuine issue advocacy.

By the 1990s, the rapid growth in soft money expenditures and a proliferation of unregulated issue ads led some members of Congress to advocate a new round of campaign finance reform. These efforts culminated in 2002 with the Bipartisan Campaign Reform Act (“BCRA,” also known as McCain-Feingold), which abolished soft money.⁵⁷ This legislation initially faced strong resistance in both Republican-led houses of Congress. Opposition to BCRA subsided in late-2001, however, after several members of Congress discovered their campaigns had

accepted money from the Enron Corporation, which was then embroiled in a massive accounting scandal and teetering on the brink of the largest bankruptcy in American history.

BCRA was signed into law in March and took effect in November, one day after the 2002 midterm elections, and included a complete ban on soft money contributions to party national committees. To compensate for the removal of this pillar of political fundraising, BCRA also increased the limits on hard money contributions—those made directly to candidates—from \$1,000 to \$2,000 and indexed them to inflation. The Act also removed the issue advocacy loophole by requiring that issue ads be paid for with hard money contributions under the new limits. Anticipating a new regulatory loophole, BCRA further specified how state and local party organizations could use federally regulated funds that were transferred to them from national party organizations.

Like the FECA amendments before it, BCRA was challenged in court immediately upon adoption. In *McConnell v. Federal Election Commission*, the Supreme Court found that BCRA's key elements passed constitutional muster, leaving the law largely intact.⁵⁸ The Court distinguished soft money as being less restrictive of protected political speech than hard money, which is spent by candidates directly. Since BCRA primarily regulated soft money, the Act's cumulative restriction of political speech was found to be minimal. The regulatory scheme was upheld as being "closely drawn" to advance important governmental interests in preventing "the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption."⁵⁹ Responding to claims that BCRA was broader than necessary to protect these interests, the court reflected upon the checkered history of campaign finance reform, noting "money, like water, will always find an outlet."⁶⁰ The wide reach of BRCA, the court concluded, was justified in preventing "circumvention of otherwise valid contribution limits."⁶¹

As of this writing, BCRA has been in force for only two congressional election cycles, making it difficult to determine whether the law has successfully tempered the influence of private money in campaigns for public office. Among the preliminary data:

- **Presidential Elections.** The 2004 presidential race was the most expensive in history, with receipts exceeding \$1 billion, a 56 percent increase over 2000.⁶² The 2008 cycle is shaping up to be another record-breaker, with nearly \$700 million raised eight months before Election Day.⁶³
- **Congressional Elections.** Congressional candidates raised \$1.21 billion during the 2004 election cycle and \$1.31 billion during the 2006 cycle, increases of 25 and 35 percent, respectively, over the last pre-BCRA election cycle in 2002.⁶⁴
- **Major Political Parties.** During the 2006 election cycle, political parties received \$903 million in hard money contributions, a 10 percent decrease from the last pre-BCRA cycle in 2002, when both hard and soft money were legal.⁶⁵
- **Political Action Committees.** PAC fundraising totaled \$310.5 million during the 2004 election cycle and \$372.1 during the 2006 cycle, increases of 10 and 32 percent, respectively, over the last pre-BCRA election cycle in 2002.⁶⁶

Since BCRA's passage, two notable trends have emerged. In 2004, for the first time since FECA made public financing available three decades earlier, both major party presidential candidates opted not to participate during the general election, choosing instead to raise and spend private funds. Another recent phenomenon is the emerging prominence of so-called *527 Groups*. Named for the section of United States Tax Code under which they are organized, *527 Groups* are largely unregulated by the FEC and state election commissions and are not

subject to the same contribution limits as ordinary PACs. While these organizations cannot contribute directly to or in coordination with federal candidates, they can still advance a political agenda through issue advertisements and direct mail, operating outside many of BCRA's restrictions. While the existence of these groups pre-dates BCRA—section 527 of the Tax Code was adopted in 1974—their activities attracted national attention during the 2004 election cycle when the 527 Group *Swift Boat Veterans for Truth* aired a provocative ad questioning presidential candidate John F. Kerry's Vietnam War service record.

The Court in *McConnell* may have been stating the obvious when saying it was “under no illusion that BCRA will be the last congressional statement on the matter [of campaign finance reform].”⁶⁷ Both the obsolescence of the presidential public financing program and the proliferation of unregulated 527 Groups virtually guarantee that Congress is not yet done. Furthermore, *McConnell* would not be the last judicial statement on the matter. In June 2007, the Supreme Court reexamined BCRA's restrictions, chipping away at *McConnell*'s broad rule by creating a significant new exception for issue advertisements.⁶⁸ Declaring, “enough is enough,” the Court's newest members signaled that future campaign finance reform efforts are likely to be examined with greater skepticism.⁶⁹

Notwithstanding these judicial decisions, BCRA represents the state of federal campaign finance regulation today, and it is within this framework that individual states continue to address the nature of campaign financing for state elected office.

REFORM IN THE STATES

Article I of the U.S. Constitution assigns shared responsibility for administering elections for federal office. While the states are responsible for prescribing the “Times, Places and Manner of holding Elections for [U.S.] Senators and Representatives,” Congress may, “at any time by Law make or alter such Regulations.”⁷⁰ Though the states are charged with redrawing congressional district lines after each census, each house of Congress “shall be the Judge of the Elections, Returns and Qualifications of its own Members.”⁷¹ The Congress, in short, has primary authority over campaigns and elections for federal office. The Constitution is silent, however, on the matter of campaigns and elections for local office. With few exceptions, the states are free to organize their election laws however they choose. This arrangement has permitted considerable variability in state and local election law.

From an academic perspective, such variation creates both problems and opportunities. While the federal government has a single set of campaign regulations, together the states have fifty. Each state has its own rules, regulations and precise definitions for such critical terms as *contribution* and *committee*. While the study of these rules and their effects can be tortuous at times, the fifty states also produce fifty data sets. Under the right circumstances, these data can be used to simulate the experimental and control conditions sought in true laboratory settings, enabling robust analysis of various public policies, including campaign finance reform efforts. This opportunity is among the “happy incidents of the federal system” leading U.S. Supreme Court Justice Louis Brandeis to observe “that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”⁷²

Most early attempts at campaign finance reform in the states amounted to courageous and novel experimentation, with the mixed results to prove it. Many of these experiments were guided by the same trends and scandals shaping the federal efforts discussed above. This shared experience has provided some consistency among the states' histories of reform, despite their independent lawmaking and regulatory structures.

As the Congress began exercising regulatory authority over commerce and the economy during the late-nineteenth century, favorable consideration from federal officials was becoming increasingly profitable for business and industry. As the cost of running for office increased, the regulators and those whom they regulated began to develop a mutually beneficial, wholly dependent and mostly legal relationship. Congress, led by the majority political party, looked favorably upon businesses and industries that helped its members remain in power. One Republican fundraiser in 1900 went so far as to contact several large corporations, suggesting that each “pay according to . . . its special interest in the region.”⁷³

At the start of the twentieth century, such relationships were not unique to the national government. From their earliest days, state and colonial governments had been the center of regulatory authority in the United States. Colonial governors and assemblies were responsible for enforcing a variant of English common law within their territories. This continued with the Articles of Confederation, under which the states retained their sovereignty and were nominally united by a weak central government. While the U.S. Constitution stripped most sovereign power from the states upon their admission to the union, the Constitution was notable for limiting the new federal government’s powers to those enumerated by its text. The Tenth Amendment makes this clear: “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”⁷⁴

Among its enumerated provisions, the Constitution also gave states ample authority over elections for federal office. The states’ legislatures were to determine how electors for President and Vice-President would be chosen⁷⁵ and until the Seventeenth Amendment, to select U.S. Senators.⁷⁶ The states’ executives were to fill vacancies arising in their congressional delegation.⁷⁷ These responsibilities, combined with near plenary power to regulate within their boundaries, ensured that the states would also be magnets for official corruption and targets for campaign finance reform. It has been said, for example, that “Standard Oil did everything to the Pennsylvania legislature except refine it.”⁷⁸

Compared to today’s closely monitored and highly regulated campaigns for public office, those of the nineteenth century were often messy affairs. State political parties competed for newspaper editorial support with their money as often as their ideas. In many respects, political parties operated in place of modern nonpartisan and bipartisan boards of elections by registering voters, printing ballots and monitoring polling places. Conflicts of interest and allegations of fraud were widespread. As the power of political bosses and their special interests grew during the late 1800s, states gradually began to assume greater oversight of campaign and electoral practices. Focusing initially on fraudulent voting and intimidation of voters by party operatives, this early wave of reform resulted in the secret ballot and nonpartisan voter registration.⁷⁹ As late as 1890, most states did not require any disclosure of campaign receipts and expenditures and, in the few that did, enforcement was poor. During the 1890s, New York, Massachusetts and California each adopted disclosure requirements. California’s Purity of Elections Act of 1893 required that detailed financial information be filed with the secretary of state.⁸⁰ The Act also banned independent expenditures, capped campaign expenditures in proportion to the salary of the office being sought, and prohibited *wheeling*, the practice of transferring money between political campaigns. Unlike many other contemporaneous reform measures, California’s law contained strict penalties for violators, including forfeiture of any public office won in violation of the Act. As creative as it was far-reaching, the regulation was repealed by California’s legislature in 1907 after being rendered essentially unenforceable and inoperative by the state’s supreme court.⁸¹

Two years later, in 1909, Colorado combined new financial disclosure requirements with the nation’s first system of public financing for political campaigns.⁸² As was the case in California, Colorado’s law was struck down

before it could be fully implemented.⁸³ Nonetheless, other states establishing their own public financing programs nearly a century later would embrace elements of the Colorado model. Specifically, Colorado's program would have provided public money to political parties, while preventing them from collecting additional contributions. The amount of funding each party received would have been determined by its performance during the previous election cycle. Candidates could raise their own money and accept public funds from their party organization, but were limited in the amount they could spend based upon the salary of the office sought.⁸⁴

Perhaps chastened by these judicial defeats, reform efforts in the states stalled until the federal government enacted the Federal Election Campaign Act of 1971. Spurred to action by the rising costs of campaigns and then by the Watergate scandal, nearly every state enacted some form of campaign finance reform between 1972 and 1974. These reforms included tighter disclosure requirements and lower limits on campaign contributions and expenditures.⁸⁵ As was also the case at the federal level, these regulatory changes did little to stem the rising cost of state electoral campaigns, nor did they succeed in stemming the apparent influence of private dollars in campaigns for public office. In a study of post-Watergate campaign finance in ten states, political scientist Herbert Alexander observed that "even the most stringent legislation will not wipe out corruption entirely The aim of reform must be to insulate the electoral system from abuses while assuring fairness and equity."⁸⁶ With hindsight, it appears that the cascade of state reform in the 1970s failed even to achieve these modest goals. Alexander concluded, "[i]t is not clear . . . that legislation will greatly alter the traditional system of private giving . . . the traditional channels are still open and functioning."⁸⁷

For as long as money has been part of American campaigns for elected office, advocates have been calling for campaign finance reform. On one hand, given the progress made during the last two centuries, it is difficult to argue that today's campaigns are more corrupt than yesterday's, which were subject to less scrutiny and a thinner body of regulation. On the other hand, never before has government been so entwined with the lives of the governed. Corruption of the functions of government, whether by special interests or self-interested public officials, threatens serious injury to the public interest.

At the center of the tension between special interests and the public interest is money. Political candidates need it to win public office and private individuals are willing to part with it to assist sympathetic elected officials with winning and keeping office. While such an arrangement, without more, is not necessarily troubling, as campaign costs and the regulatory power of government increases, so does the risk of corruption and conflict of interest. The history of campaign finance reform, particularly since Watergate, tells us that financial disclosure and contribution ceilings can limit this danger, but not eliminate it. For as long as candidates for public office continue to depend upon private contributions, the potential for corruption will continue. Recognizing this, a number of states have recently begun experimenting with full public financing in order to eliminate private money from public campaigns. The following chapters explore this type of campaign finance reform, also known as *Clean Elections*.

CHAPTER ONE

ENDNOTES

¹ OpenSecrets.org. “The Big Picture: The Price of Admission.” Available from, <http://www.opensecrets.org/bigpicture/stats.asp?cycle=2006&display=A&type=W>. Last accessed: Mar. 15, 2008.

² OpenSecrets.org. “The Big Picture: The Price of Admission.” Available from, <http://www.opensecrets.org/bigpicture/stats.asp?cycle=2006&display=A&type=F>. Last accessed: Mar. 15 2008.

³ Publius (James Madison). *The Federalist*, No. 10 (1787).

⁴ United States Constitution, article I, § 4.

⁵ *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (“It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”).

⁶ Voting Rights Act, 79 Stat. 437 (1965) (“An Act To enforce the fifteenth amendment to the Constitution of the United States, and for other purposes”).

⁷ *McConnell v. Federal Election Comm’n*, 540 U.S. 93, 224 (2003).

⁸ National political party conventions became popular following the presidential election of 1824, when factional strife caused multiple members of the Democratic-Republican Party to assume their Party’s mantle. None received a majority in the Electoral College, forcing a contentious resolution by House of Representatives. In 1831 the Anti-Masonic Party held the first national convention in Baltimore to select a single candidate supported by the entire party. The newly organized Democratic and National Republican Parties quickly followed suit.

⁹ Robert E. Mutch. “The First Federal Campaign Finance Bills,” in *Money and Politics*. Paula Baker, ed. University Park, Pa.: Pennsylvania State University Press, 2002 at 35.

¹⁰ Navy Appropriations Act, 14 Stat. 489 (1867) (“An Act making Appropriations for the Naval Service for the Year ending thirtieth June, eighteen hundred and sixty-eight”).

¹¹ On the issue of graft, *see* The Crédit Mobilier of America scandal of 1872; on diversion, *see* The Whiskey Ring of 1875.

¹² Legislative, Executive, and Judicial Appropriations Act, 19 Stat. 169 (1876) (“An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June thirtieth, 1877, and for other purposes”).

¹³ Rutherford B. Hayes. Executive Order of June 22, 1877. Available from, <http://www.presidency.ucsb.edu/ws/index.php?pid=68664>. Last accessed: Mar. 15, 2008.

¹⁴ Pendleton Civil Service Act, 22 Stat. 403 (1883) (“An Act to regulate and improve the civil service of the United States”).

¹⁵ Stephen Ansolabehere, et al. “Corruption and the Growth of Campaign Spending.” In Gerald C. Lubenow, ed. *A User’s Guide to Campaign Finance Reform*. Lanham, Md.: Rowman & Littlefield Publishers, Inc., 2001 at 25-46.

¹⁶ Herbert D. Croly. *Marcus Alonzo Hanna: His Life and Work*. Norwood, Mass.: Norwood Press, 1912 at 325.

¹⁷ George Thayer. *Who Shakes the Money Tree? American Campaign Practices from 1789 to the Present*. New York, NY: Simon and Schuster, 1974 at 50. In 1900, President William McKinley spent nearly \$7 million, then a record-breaking

sum, to defeat William Jennings Bryan (who was outspent 10-to-1). This is roughly \$181 million in 2008 dollars, or about half the amount spent by George W. Bush during his successful 2004 reelection campaign.

¹⁸ Theodore Roosevelt. Fourth, Fifth and Sixth State of the Union Addresses. State of the Union Addresses. Whitefish, Mont.: Kessinger Publishing, 2004 at 98, 136 and 188. *See also*, Anthony Corrado. “Money and Politics: A History of Campaign Finance Law,” in Anthony Corrado et al. The New Campaign Finance Sourcebook. Brookings Institution Press: Washington, D.C., 2005 at 12.

¹⁹ Roosevelt, Fourth Annual Message (Dec. 1904) in State of the Union Addresses at 123.

²⁰ Roosevelt, Fifth Annual Message (Dec. 1905) in State of the Union Addresses at 154.

²¹ Corrado, “Money and Politics: A History of Campaign Finance Law” at 12.

²² Political Contributions by Corporations Act, 34 Stat. 864 (1907) (“An Act To prohibit corporations from making money contributions in connection with political elections”).

²³ Publicity of Political Contributions Act, 36 Stat. 822 (1910) (“An Act Providing for publicity of contributions made for the purpose of influencing elections at which Representatives in Congress are elected”).

²⁴ Publicity to Political Contributions Act, 37 Stat. 25 (1911) (“An Act To amend [the Publicity of Political Contributions Act]”).

²⁵ Corrupt Practice Act, 1913 Mich. Pub. Acts 109 (“An Act to regulate and limit nomination and election expenses; to define and prevent corrupt and illegal practices in nominations and elections; to secure and protect the purity of the ballot, and to require accounts of nomination and election expenses to be filed, and providing penalties for the violation of this act”).

²⁶ The Republican U.S. Senator was Truman Handy Newberry, a wealthy Michigan businessman and former Secretary of the Navy. Newberry’s opponent in the 1918 U.S. Senate race was none other than Henry Ford. Newberry was alleged to have spent Michigan’s primary election limit twenty-five times over.

²⁷ *Newberry v. United States*. 256 U.S. 232 (1921). *Newberry* was reinterpreted and effectively overturned twenty years later by *United States v. Classic*, 313 U.S. 299 (1941). Nonetheless, it was not until passage of the Federal Election Campaign Act (FECA), 86 Stat. 3 (1971), that Congress finally reasserted its authority to regulate primary contests.

²⁸ Corrupt Practices Act, 43 Stat. 1070 (1925) (“An Act Reclassifying the salaries of postmasters and employees of the Postal Service, readjusting their salaries and compensation on an equitable basis, increasing postal rates to provide for such readjustment, and for other purposes”). The reporting threshold of \$100 is roughly equivalent to \$1,200 in 2008 dollars.

²⁹ Corrado, “Money and Politics: A History of Campaign Finance Law” at 15.

³⁰ *See, e.g.*, National Labor Relations Act, 49 Stat. 449, (1935), giving laborers the right to unionize. (“An Act To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes”).

³¹ War Labor Disputes Act, 57 Stat. 163 (1943) (“An Act Relating to the use and operation by the United States of certain plants, mines, and facilities in the prosecution of the war, and preventing strikes lock-outs, and stoppages of production, and for other purposes”).

³² Labor-Management Relations Act, 61 Stat. 136 (1947) (“An Act To amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes”).

³³ Corrado, “Money and Politics: A History of Campaign Finance Law” at 18.

³⁴ Herbert E. Alexander. Financing the 1972 Election. Lexington, Mass.: Lexington Books, 1976 at 78; Congressional Quarterly. Dollar Politics, 3rd ed., Congressional Quarterly, Inc., 1982 at 8.

³⁵ Federal Election Campaign Act (FECA), 86 Stat. 3 (1971) (“An Act To promote fair practices in the conduct of election campaigns for Federal political offices, and for other purposes”).

³⁶ Alexander, Financing the 1972 Election at 78.

³⁷ The Committee to Reelect President was better known by its unfortunate acronym, CREEP.

³⁸ Corrado, “Money and Politics: A History of Campaign Finance Law” at 22.

³⁹ Federal Election Campaign Act (FECA) Amendments, 88 Stat. 1263 (1974) (“An Act To impose overall limitations on campaign expenditures and political contributions, to provide that each candidate for Federal office shall designate a principal campaign committee, to provide for a single reporting responsibility with respect to receipts and expenditures by certain political committees, to change the times for the filing of reports regarding campaign expenditures and political contributions, to provide for public financing of Presidential nominating conventions and Presidential primary elections; and for other purposes”).

⁴⁰ Establishing the President’s Commission on Campaign Costs. Executive Order 10974, Nov. 8, 1961. 3 C.F.R. 496 (1959-1963). Available from, <http://www.lib.umich.edu/govdocs/jfkeo/eo/10974.htm>. Last accessed: Mar. 15, 2008.

⁴¹ U.S. President’s Commission on Campaign Costs. “Financing Presidential Campaigns.” Washington, D.C.: Government Printing Office, 1962.

⁴² Foreign Investors Tax Act, 80 Stat. 1539 (1966) (“An Act To provide equitable tax treatment for foreign investment in the United States, to establish a Presidential Election Campaign Fund to assist in financing the costs of presidential election campaigns, and for other purposes”).

⁴³ Herbert E. Alexander. Financing the 1992 Election. Armonk, N.Y.: M.E. Sharpe, Inc., 1995 at 8.

⁴⁴ *Buckley v. Valeo*, 424 U.S. 1 (1976).

⁴⁵ *Buckley*, 424 U.S. at 39.

⁴⁶ *Buckley*, 424 U.S. at 52.

⁴⁷ *Buckley*, 424 U.S. at 45.

⁴⁸ *Buckley*, 424 U.S. at 44.

⁴⁹ *Buckley*, 424 U.S. at 29, 58.

⁵⁰ *Buckley*, 424 U.S. at 96.

⁵¹ *Buckley*, 424 U.S. at 95.

⁵² *Buckley*, 424 U.S. at 96.

⁵³ By contrast, the term *hard money* is used to describe the strictly limited individual contributions made directly to a candidate for elected office.

⁵⁴ United States Federal Election Commission. “Party Committees Raise More Than \$1 Billion in 2001-2002.” Mar. 20, 2003. Available from, <http://www.fec.gov/press/press2003/20030320party/20030103party.html>. Last accessed: Mar. 15, 2008.

⁵⁵ Ray La Raja and Elizabeth Jarvis-Shean. “Assessing the Impact of a Ban on Soft Money: Party Soft Money Spending in the 2000 Elections.” Institute of Governmental Studies and Citizens’ Research Foundation, July 2001 at 6. Available from, http://www.cfinst.org/parties/papers/laraja_softmoney.pdf. Last accessed: Mar. 15, 2008.

⁵⁶ *Buckley*, 424 U.S. at 44 n.52 (restricting FECA's regulatory impact to "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject'").

⁵⁷ Bipartisan Campaign Reform Act (BCRA), 116 Stat. 81 (2002) ("An Act To amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform").

⁵⁸ *McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003).

⁵⁹ *McConnell*, 540 U.S. at 136 (citing *Fed. Election Comm'n v. Nat'l Right to Work Comm.*, 459 U.S. 197, 208 (1982)).

⁶⁰ *McConnell*, 540 U.S. at 224.

⁶¹ *McConnell*, 540 U.S. at 185.

⁶² United States Federal Election Commission. "2004 Presidential Campaign Financial Activity Summarized." Feb. 3, 2005. Available from, <http://www.fec.gov/press/press2005/20050203pressum/20050203pressum.html>. Last accessed: Mar. 16, 2008.

⁶³ OpenSecrets.org. "2008 Election Overview: State at a Glance." Available from, <http://www.opensecrets.org/overview/stats.asp?Cycle=2008>. Last accessed: Mar. 16, 2008.

⁶⁴ United States Federal Election Commission. "Congressional Candidates Spend \$1.16 Billion During 2003-2004." June 9, 2005. Available from, <http://www.fec.gov/press/press2005/20050609candidate/20050609candidate.html>. Last accessed: Mar. 16, 2008; OpenSecrets.org. "The Big Picture: The Price of Admission." Available from, <http://www.opensecrets.org/bigpicture/stats.asp?display=A&type=W&Cycle=2006>. Last accessed: Mar. 16, 2008.

⁶⁵ United States Federal Election Commission. "Party Financial Activity Summarized for the 2006 Election Cycle." Mar. 7, 2007. Available from, <http://www.fec.gov/press/press2007/partyfinal2006/20070307party.shtml>. Last accessed: Mar. 16, 2008.

⁶⁶ United States Federal Election Commission. "PAC Activity Continues to Climb in 2006." Oct. 5 2007. Available from, <http://www.fec.gov/press/press2007/20071009pac/20071009pac.shtml>. Last accessed: Mar. 16, 2008.

⁶⁷ *McConnell*, 540 U.S. at 224.

⁶⁸ *Federal Election Comm'n v. Wis. Right to Life, Inc.*, 127 S. Ct. 2652 (2007) (holding that BCRA's restrictions on the use of corporate funds to finance "electioneering communications" burdened political speech).

⁶⁹ *Wis. Right to Life*, 127 S. Ct. at 2672 (stating that strict judicial scrutiny will be applied to any provision that "burdens political speech"). A June 2008 decision invalidated BCRA's provision raising contribution limits on candidates who faced self-financed opponents. The Supreme Court declared that these variable limits were an impermissible burden on self-financed candidates' First Amendment right to robustly advocate their own election. *Davis v. Federal Election Comm'n*, 128 S. Ct. 2759 (2008).

⁷⁰ United States Constitution, article I, § 4.

⁷¹ United States Constitution, article I, § 5.

⁷² *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

⁷³ Herbert D. Croly. Marcus Alonzo Hanna: His Life and Work. Norwood, Mass.: Norwood Press, 1912 at 325.

⁷⁴ United States Constitution, amendment X.

⁷⁵ United States Constitution, article II, § 1.

⁷⁶ United States Constitution, article I, § 3; United States Constitution, amendment XVII.

⁷⁷ United States Constitution, article I, § 2; United States Constitution, amendment XVII.

⁷⁸ George Thayer. Who Shakes the Money Tree? American Campaign Practices from 1789 to the Present. New York, NY: Simon and Schuster, 1974 at 41.

⁷⁹ Far from being secret, political party-made ballots often varied in color, shape and size, facilitating the identification and intimidation of opposition party supporters.

⁸⁰ The Purity of Elections Act, 1893 Cal. Stat. 12 (“An Act To promote the purity of elections by regulating the conduct thereof, and to support the privilege of free suffrage by prohibiting certain acts and privileges in relation thereto, and providing for the punishment thereof”).

⁸¹ Repeal of the Purity of Elections Act, 1907 Cal. Stat. 671; *See Bradley v. Clark*, 133 Cal. 196 (1901) (declaring the affidavit requirement unconstitutional). *See also People v. Cavanaugh*, 112 Cal. 647 (1896) (holding that the Act did not apply to primary elections).

⁸² State Payment of Campaign Expenses Act, 1909 Colo. Sess. Laws 303 (“An Act Concerning campaign expenses of political parties and contributing thereto”).

⁸³ OpenSecrets.org. “A Brief History of Money in Politics.” Available from, <http://www.opensecrets.org/pubs/history/history4.html>. Last accessed: Mar. 16, 2008.

⁸⁴ *In re People ex rel, Galligan, State Treasurer, et al.* (unpublished opinion) (Colo. 1910). According to one observer’s account, “the chief objections were to the unequal treatment of parties and the lack of provision for any new party.” Robert Luce. Legislative Principles: The History and Theory of Lawmaking by Representative Government. Clark, NJ: The Lawbook Exchange, Ltd., 2006 at 433.

⁸⁵ Herbert E. Alexander. Campaign Money: Reform and Reality in the States. New York, NY: The Free Press, 1976 at 1-2.

⁸⁶ Alexander, Campaign Money: Reform and Reality in the States at 11-12.

⁸⁷ Alexander, Campaign Money: Reform and Reality in the States at 12.

— CHAPTER TWO —

AN INTRODUCTION TO *CLEAN ELECTIONS*: PUBLIC FINANCING OF PUBLIC CAMPAIGNS

How Clean Elections Operates Generally and in Six States

“
*I think I can say, and say with pride, that we have some legislatures that bring higher prices than any in the world.**
”

INTRODUCTION

Despite the novelty of public financing for public campaigns at the federal level, the concept is not new to the states. In 1909, Colorado became the first state to enact such a system to finance campaigns for state and local office.¹ Since the Colorado Supreme Court’s invalidation of this program the following year,² officials at all levels of government have struggled to balance the need for campaign finance regulation against constitutionally protected speech and association rights. At the heart of the campaign finance debate is a confrontation between the integrity of American democracy and the personal autonomy of its constituent members. The concept of *Clean Elections*—voluntary systems of full public financing for public campaigns—has emerged and evolved because of this struggle.

The federal government was the first to successfully implement public financing with the Federal Election Campaign Act Amendments of 1974, which included a two-cycle public funding program for presidential campaigns.³ During the primary election cycle, major party candidates who satisfied modest private fundraising requirements were eligible to receive a dollar-for-dollar match on the first \$250 of all individual contributions upon a pledge to keep overall spending below a specified level. During the general election cycle, major party nominees were eligible to receive a specified grant of public funding upon a pledge not to raise or solicit any additional funds from private sources. Minor party candidates were eligible for smaller amounts, scaled in proportion to their party’s vote-share during the previous presidential election cycle.

Over time, however, the presidential public financing program has failed to keep pace with the rising cost and accelerated schedule of modern presidential campaigns. In 2004, for the first time since the program’s adoption, both major party presidential nominees chose not to receive public funds during the general election cycle, privately raising nearly seven times the would-be spending ceiling.⁴ With its continued viability in doubt, two bills have been introduced to address the program’s deficiencies.⁵ As of this writing, however, neither bill had advanced beyond committee.

During the Watergate-inspired era of reform, public financing programs were adopted in more than twenty states, including Minnesota (1974), Idaho (1975), New Jersey (1975), Michigan (1976) and Hawaii (1979). The details of these programs vary widely. In New Jersey, for example, until 2005 only gubernatorial candidates were eligible to receive public funding.⁶ Idaho disburses to political parties the public funds raised from a voluntary \$1 tax return allocation, which can be earmarked to the political party of the taxpayer’s choosing.⁷ Hawaii limits the amount of public money candidates receive to 15 percent of the spending limits established for the office sought.⁸

* Mark Twain (1835 – 1910). “After Dinner Speech.” July 4, 1875.

Additionally, since 1985, more than a dozen local governments have enacted some form of public financing for elections within their jurisdictions. These programs display similar variation.⁹

OVERVIEW OF *CLEAN ELECTIONS*

The foremost goal of *Clean Elections* is to reduce the amount of private money in campaigns for public office. Doing so, it is argued, will lead to less public corruption and greater public confidence in government. *Clean Elections* also seeks to increase participation and diversity in the electoral process by lowering financial barriers to entry and making meaningful political participation more affordable.¹⁰ By reducing the private fundraising burden, *Clean Elections* also aims to give candidates more time to interact directly with the voters, enhancing responsiveness and accountability.

To reduce the amount of private money in electoral campaigns successfully, public funding programs seek to limit overall spending. *Partial* public financing, the more common variety, couples public funding with absolute expenditure ceilings. *Full* public financing—also known as *Clean Elections*—couples public funding with complete bans on private fundraising, effectively establishing expenditure ceilings equal to the amount of public funding. Since the U.S. Supreme Court opinion in *Buckley v. Valeo* held expenditure restrictions unconstitutional, participation in partial public financing and *Clean Elections* programs must be made voluntary.¹¹

Among the most important distinguishing features of public financing programs is the amount of money awarded to each participating candidate. Although these figures vary widely among the states, in most cases they merely supplement private fundraising, which is then capped as a condition of participation. After receiving public funding, candidates in these states are free to continue private fundraising until the cap is reached. In Minnesota, for example, candidates receive up to half of their expenditure limit in public funding.¹² In New Jersey, gubernatorial candidates receive roughly the same proportion from a two-for-one matching subsidy with a minimum fundraising requirement.¹³ Candidates in Hawaii receive a much lower proportion of public funds, about 15 percent. There, candidates for governor, lieutenant governor and mayor can raise and spend in private funds nearly six times what they receive in public funds.¹⁴ Partial public funding has been criticized by many reformers for its inability to achieve a key goal of public financing: elimination of undue influence of private, moneyed interests on those who campaign for and hold elected office.

The logical end of *partial* public funding is *full* public funding, also known as *Clean Elections*. Candidates who qualify to participate in *Clean Elections* programs receive a public grant amounting to 100 percent of the authorized campaign spending limit for their race. Public funding of presidential general election campaigns is one example of this type of program. There, major party nominees receive a lump sum in exchange for their agreement not to raise or spend additional funds.¹⁵

It was not until the mid-1990s that states began considering the adoption of similar programs. As of 2008, only eight states had enacted such reform. Of these, five were enacted by ordinary legislative means (Vermont, North Carolina, New Jersey, Connecticut and New Mexico). North Carolina and New Mexico's programs are limited to candidates for judicial office. At the municipal level, Portland, Oregon and Albuquerque, New Mexico both provide full public financing to campaigns for city offices.¹⁶ (See table on page 25.)

Maine, Arizona and Massachusetts's programs were adopted by popular initiative. Massachusetts's was repealed in 2003 after the legislature refused to fund the program. Portions of Vermont's program were invalidated by the

U.S. Supreme Court in 2006. New Jersey’s program was conducted as a limited pilot project in 2005 and 2007, with renewal in 2009 not automatic.

Jurisdictions That Have Enacted Full Public Financing*

Jurisdiction	Offices Covered	Method of Enactment	Year of Enactment
Arizona	Executive and Legislature	Ballot Initiative	1998
Connecticut	Executive and Legislature	Legislation	2005
Maine	Executive and Legislature	Ballot Initiative	1996
Massachusetts	Executive and Legislature	Ballot Initiative	1998 <i>(repealed in 2003)</i> ¹⁷
New Jersey	Limited Legislature	Legislation	2004
	Limited Legislature	Legislation	2007
New Mexico	Public Regulation Commission	Legislation	2003
	Judiciary	Legislation	2007
North Carolina	Judiciary	Legislation	2002
Vermont	Executive	Legislation	1997 ¹⁸
<hr/>			
Albuquerque, N.M.	City Offices	Ballot Initiative	2005
Portland, Or.	City Offices	Legislation	2005

While the goals of each of these programs are similar—maximizing the use of public funds while minimizing the use of private money—each state and locality has its own story of how *Clean Elections* was adopted and, in some cases, how the program fell apart. Several of these stories are recounted in Chapter Three. Despite being written at different times and in different locations, the various state *Clean Elections* laws are similar in many respects, with minor deviations to suit each state’s political and electoral landscapes. A side-by-side comparison of these laws is provided in the Appendix. Before moving on to a description of particular states’ programs, this chapter proceeds with a discussion of the common features of *Clean Elections* laws, including:

- **Declaration of Intent.** The official declaration of a candidate’s intent to participate in the *Clean Elections* program and to abide by its rules.
- **Seed Money.** The small amount of private funds permitted to be raised for the sole purpose of qualifying for public funding.

* Adapted from: Public Campaign. “States/Localities with Clean Elections.” Available from, <http://www.publiccampaign.org/where>. Last accessed: Mar. 17, 2008.

- **Qualifying Contributions.** The large number of nominal contributions solicited from registered voters and needed to demonstrate a candidate's viability and qualification for public funding.
- **Initial Allocation of Public Funding.** The method of calculating public funding and the manner of its disbursement to candidates.

Declaration Of Intent

In the states where *Clean Elections* are available to legislative and/or executive candidates, those who intend to participate must first declare their intention to do so. By requiring an official declaration of intent, states are able to extract a commitment from *Clean Elections* hopefuls that they will abide by the terms and conditions of the law during their time as certified *Clean Elections* candidates.

MAINE — *Clean Elections* hopefuls in Maine must file a Declaration of Intent with the Commission on Governmental Ethics and Election Practices, an independent agency responsible for administering the state's campaign finance laws. Candidates file their Declaration of Intent during a specified qualification period, which for party-affiliated candidates ends on April 15 of the election year.¹⁹ The declaration is a simple, one-page form signed by the candidate.²⁰

VERMONT — Participating candidates in Vermont must first file a Campaign Finance Affidavit during the summer preceding their election. This deadline is several months later than Maine's and occurs after the period to collect qualifying contributions has passed. Thus, Vermont's form requires candidates to list the qualifying contributions they have collected in addition to certifying their intent to become a *Clean Elections* candidate and to abide by the program's rules.²¹

ARIZONA — In Arizona, a Statement of Organization must be filed with the Secretary of State before any campaign activity occurs and during the qualifying period, which begins as early as the August during the year preceding the election. The statement also serves to establish candidates' campaign or exploratory committees as well as to indicate candidates' intention to participate in the *Clean Elections* program and their agreement to abide by the rules.²²

MASSACHUSETTS — The unimplemented *Clean Elections* program in Massachusetts would have required participating candidates to file a Declaration of Intent with the Office of Campaign and Political Finance. The law was silent as to the content of the declaration, stating only that it was to be filed during the election cycle and before the end of the qualifying period.²³

NEW JERSEY — In New Jersey's 2005 *Fair and Clean Elections* pilot project, General Assembly candidates in the two participating districts were required to file a *Declaration of Intent* prior to collecting qualifying contributions. The declaration was nearly identical to Maine's and was filed with the Election Law Enforcement Commission, the state agency responsible for administering the state's campaign finance laws.²⁴ New Jersey's legislative districts are each represented by two Assembly members. The 2005 Declaration stipulated that *Clean Elections* certification was contingent upon all candidates from the same political party satisfying the eligibility criteria and filing the Declaration. The Citizens' Clean Elections Commission, which oversaw the 2005 pilot, recommended that this provision be amended to allow candidates the option of running separately.²⁵ The legislature, however, chose to ignore the commission's advice, and maintained this requirement for the state's 2007 Pilot Project.

CONNECTICUT — The Citizens' Election Program requires candidates seeking to qualify for public funding to file an affidavit similar to the one required in Vermont. The affidavit certifies the candidate's intent to participate in the program and to abide by its rules.²⁶ The form is due to the State Elections Enforcement Commission by the fortieth day before general elections and twenty-five days before primary or special elections.²⁷

Seed Money

Although not universal among the states with *Clean Elections* programs, most states permit *Clean Elections* hopefuls to raise a small amount of money from private sources before beginning to collect qualifying contributions. Known as seed money, these funds provide candidates with some limited means to finance the operations necessary to qualify for public funding. Seed money is of particular assistance to non-incumbents and first-time candidates who lack name recognition and an established network of political support.

MAINE — In Maine, participating candidates are permitted to collect seed money from the time they file the Declaration of Intent until they are qualified as a *Clean Elections* candidate. Seed money must come from individual donors (excluding PACs, political parties and other candidate committees) who reside in the jurisdiction of the office sought. Further, seed money is limited in the aggregate (between \$500 and \$50,000, depending on the office sought) and in the individual contribution (\$100). The amount of public monies distributed to qualified candidates is reduced by the amount of seed money that remains, if any, at the time the candidate becomes eligible for funding.²⁸

ARIZONA — Arizona's seed money provisions are substantially similar to Maine's, including similar aggregate and individual contribution limitations. Any seed money remaining at the time a candidate qualifies for public funding is paid to the *Clean Elections* fund.²⁹

NEW JERSEY — Due to the limited nature of New Jersey's 2005 and 2007 pilot projects, participating candidates were permitted to use a limited amount of their existing campaign funds as seed money. Use of those funds was subject to two provisions: (1) that the contributions used were traceable to individual contributions below the individual seed money limitation (\$200 in 2005; \$500 in 2007) and (2) that aggregate expenditures did not exceed a specific threshold (\$3,000 in 2005; \$10,000 in 2007). Candidates' prior campaign balances were otherwise frozen for the duration of their participation in the pilot project.³⁰

VERMONT, MASSACHUSETTS AND CONNECTICUT — Vermont and Massachusetts's programs do not provide for seed money. Connecticut's, however, does permit candidates to spend small amounts of their own money. Unlike Maine, Arizona and New Jersey's 2005 pilot, these states allow candidates to retain and spend qualifying contributions during the qualifying period, in lieu of seed money.³¹

Qualifying Contributions

Among the most frequent criticisms of public financing is that any person, regardless of their ideology or political credibility, may qualify for public campaign funding. *Clean Elections*, it has been argued, may encourage a barrage of radical campaigns for public office, funded entirely by taxpayers. The spokesman for Not With the People's Money, an organization that opposed Arizona's *Clean Elections* ballot question in 1998, told *The Associated Press*, "I don't want my money [funding] a member of the Nazi Party The collection of money in campaigns is a qualifier. If you're a nut case, people aren't going to donate to you."³² Two years earlier, drafters

of the first state *Clean Elections* program in Maine employed precisely this logic to ensure candidates with little public support would be unable to qualify for taxpayer dollars to finance their campaigns.

Clean Elections hopefuls in all six states are required to collect a substantial number of nominal qualifying contributions from individuals residing in the jurisdiction of the office sought. This requirement is intended to prevent fringe candidates from making use of public funds, ensuring that only serious candidates with threshold public support become eligible for public financing.

MAINE AND ARIZONA — Both Maine and Arizona require candidates to collect contributions of exactly \$5 from a minimum number of voters. The required number varies depending on the office sought, ranging from 50 for Maine's House of Representatives to 4,410 for Arizona's Governor.³³ Both states have a prescribed period, known as the qualifying period, during which these contributions must be collected. The qualifying period generally occurs between the previous year's general election and the subsequent primary election. With the exception of seed money, qualifying contributions are the only private funds a participating candidate is allowed to collect. In both Maine and Arizona, these funds are deposited directly into the *Clean Elections* fund and are not available for candidates' use.³⁴

VERMONT, MASSACHUSETTS AND CONNECTICUT — Vermont, Massachusetts and Connecticut's programs have slightly different qualifying contribution requirements. In those states, the prescribed denomination is defined by a range, rather than a fixed amount. In Vermont, qualifying contributions may not exceed \$50; in Massachusetts and Connecticut, they must be at least \$5 and no more than \$100. In addition to requiring a minimum number of contributions, which varies by the office sought, the total dollar amount collected must exceed a certain threshold, which also varies by office. These contributions are retained by the candidate and may be used to cover expenses related to the campaign, including the cost of gathering additional qualifying contributions. In addition to requiring a minimum number of contributions, which varies by the office sought, the total dollar amount collected must cross a certain threshold, which also varies by office.³⁵

NEW JERSEY — As New Jersey discovered during its 2005 Pilot Project, setting the required number of qualifying contributions is a delicate balancing process. If the threshold is set too high, credible candidates may be unable to cross it. If the requirement is set too low, fringe candidates with little popular support may gratuitously draw taxpayer funds, reducing the amount available to mainstream candidates. Like Maine and Arizona, New Jersey in 2005 required candidates to collect a minimum number of qualifying contributions. Unlike those in Maine and Arizona, however, New Jersey candidates were required to collect qualifying contributions in two denominations: at least 1,000 five-dollar and 500 thirty-dollar contributions.³⁶ While these figures were increased to reflect New Jersey's larger voting age population, they were still higher than Maine and Arizona's, even after adjusting for this difference. Even after the governor intervened, postponing the deadline by several weeks, only two of ten candidates were able to qualify for public funding in 2005.³⁷

For the 2007 pilot, the legislature required candidates to collect contributions in only a single denomination (\$10). The legislature also established a lower, scaled threshold, with a minimum of 400 qualifying contributions required to receive any public funding. Public funding was increased until a maximum of 800 qualifying contributions were collected.³⁸

Initial Allocation of Public Funding

Upon satisfying all of the foregoing conditions, including the declaration of intent, a minimum number of valid qualifying contributions, and compliance with other relevant campaign finance regulation, candidates become eligible to receive an initial allocation of public funding.³⁹ The precise method used to determine these amounts varies by state. Most *Clean Elections* programs distinguish between primary and general elections, contested and uncontested races, major and minor parties, and the particular office sought. Public funding grants are normally larger for general election campaigns, contested races, major party candidates and races for statewide office. Conversely, public funding grants are normally smaller for primary election campaigns, uncontested races, minor party candidates and races for legislative office. Most states also distinguish between races for the upper and lower legislative houses, with the latter receiving less public funding.

MAINE — For gubernatorial campaigns in Maine, initial funding is fixed by statute at \$200,000 for the primary and \$600,000 for the general election. Legislative campaigns are classified as (1) primary or general, (2) uncontested or contested and (3) House or Senate. For all but one permutation, initial public funding is calculated from the average cost of campaigns sharing the same criteria during the previous two election cycles. For *uncontested* legislative general elections, the amount allocated is 40 percent of the figure for *contested* legislative general elections. Minor party candidates are eligible to receive only the smaller, uncontested campaign amounts during the primary election cycle, but are eligible to receive the full allocation during the general election cycle.⁴⁰

NEW JERSEY — For the only eligible race in 2005, general election to the General Assembly, New Jersey employed a similar averaging method, reducing its figure by 25 percent and subjecting it to an absolute cap of \$100,000.⁴¹ The 2007 pilot abandoned this method in favor of statutory allocations ranging from \$50,000 to \$100,000 depending on the number of qualifying contributions collected. Also new in 2007 was a distinction between contested and uncontested races, with candidates in the latter condition receiving only \$25,000.⁴² Even though the 2007 pilot involved races for both legislative chambers, the revised program did not distinguish between the two. During both pilot projects, qualified minor party candidates were eligible to receive only one-half of the amounts available to major party candidates.⁴³

VERMONT — In Vermont, public funding levels are fixed by statute and are reduced by the amount of the qualifying contributions collected, which the candidate retains. General election allotments are three times larger than primary election allotments. Vermont's *Clean Elections* program has three distinctive funding provisions. First, its funding levels are biased *against* incumbents, who receive only 85 percent of the statutory amount. Second, minor party candidates are eligible to receive the same amount as major party candidates. Third and finally, candidates who are uncontested in the general election receive no public funding, but are free to raise private funds subject to normal private contribution ceilings and *Clean Elections* aggregate spending limits.⁴⁴

ARIZONA — Arizona's public funding levels are also fixed by statute and are adjusted biennially for inflation. General election funding is 50 percent greater than primary election funding. Candidates running unopposed receive an amount equal to the dollar value of the qualifying contributions they have collected. Independent candidates receive 70 percent of the major party allocations. Arizona also provides candidates the option of reallocating some general election funding to their primary contest in "one-party-dominant" legislative districts where the gap between major party registration exceeds 10 percent.⁴⁵

MASSACHUSETTS — While allocations are normally larger during the general election cycle, this was not the case for the never-implemented *Clean Elections* program in Massachusetts, where candidates would have re-

ceived more during the primary election cycle.⁴⁶ In a state where Democrats commanded five-to-one supermajorities in both legislative chambers when *Clean Elections* was enacted in 1998, this inverted public funding schedule recognized that most electoral competition would occur during the primary election cycle.⁴⁷ Spending limits and public funding allocations would have varied by office and whether the race was contested, but no provision was made to distinguish minor party candidates.

CONNECTICUT — Connecticut's *Clean Elections* program follows a complicated statutory scheme that adjusts allocations for all of the factors discussed above, including the type of election (primary or general), the office sought (House, Senate or Statewide) and partisan affiliation (major or minor party). Connecticut's program also distinguishes between uncontested, contested and *nominally contested* races, where the candidate faces a minor party candidate who failed to qualify for public funding. Like Arizona, Connecticut also increases primary election allocations in "party dominant" legislative districts where the gap between major party registration exceeds 20 percent.⁴⁸

Additional Public Funding Considerations

MINOR PARTY CANDIDATES — Minor party candidates generally receive less funding in *Clean Elections* programs. Vermont is the only unconditional exception to this rule. In Maine, minor party candidates achieve parity only during the general election cycle.⁴⁹ Connecticut's minor party funding runs on a sliding scale, with minor party candidates achieving parity only if their party's vote-share in the previous election cycle exceeded 20 percent.⁵⁰

Several arguments have been advanced to support this disparate treatment. In many cases, minor party candidates are nominated by direct petition and do not participate in primary election contests. Even in states where minor parties do participate in primaries, these races are often uncontested and rarely comparable in scale to major party primary contests. Thus, the cost of nomination for minor party candidates is often lower, a fact that should be reflected in *Clean Elections* primary election cycle allocations. Furthermore, unlike the well-established two-party system, the number of minor parties may vary greatly over time. An influx of minor party candidates could unexpectedly render *Clean Elections* funds insolvent. This argument concludes that *Clean Elections* allocations to minor party candidates should be reduced in order to guard against this danger.

In response to these concerns, it has been argued that the qualifying contribution requirement is already in place to prevent the public fund from being tapped by candidates without reasonably broad support. If proliferation of minor parties presents a real problem, a more democratic solution would be to adjust the qualifying threshold. Or, states could establish a sliding scale, as Connecticut has done, varying minor party public funding in relation to past electoral performance. However, as with the number of required qualifying contributions, establishing such a scale would involve a delicate balancing process. Nevertheless, any of these mechanisms would check against the possibility of multiple minor party candidates qualifying for public funding in the absence of meaningful public support.

UNCONTESTED RACES — Candidates in uncontested races usually receive smaller allocations of public funding for a single, obvious reason: these candidates face no opposition. Connecticut takes the extra step of distinguishing *nominal* opposition and reduces funding accordingly.⁵¹ While Vermont provides no funding for uncontested candidates in general elections, these candidates remain free to raise funds from private sources, subject to certain limitations.⁵² None of the states discussed above completely restrict funding of uncontested races. To do so

would impede one of the goals of *Clean Elections*: facilitating candidates' interaction with voters, which requires funding irrespective of how many opponents a candidate faces.

INCUMBENCY — Vermont is the only state to distinguish between incumbent and challenger candidates.⁵³ That Vermont's *Clean Elections* program is biased *against* incumbent candidates is all the more surprising for having been passed by the legislature and signed into law by the non-term limited governor. The apparent motivations for this provision were to offset the existing advantages of incumbency and guard against the perception that *Clean Elections* in Vermont was being advocated to protect incumbents.⁵⁴

NON-PARTICIPATING OPPONENTS — Most states' *Clean Elections* programs offer participating candidates additional public funding if they are outspent by non-participating candidates or are specifically targeted by independent expenditures. These funds are often triggered when the non-participating candidate spends more than the initial public funding amount and are usually capped at two or three times the amount of initial funding. The constitutionality of these additional funds has been recently called into question. In June 2008, the Supreme Court invalidated a law that raised contribution limits on congressional candidates facing self-financed opponents. The Court declared that these variable limits were an impermissible burden on self-financed candidates' First Amendment right to robustly advocate their own election.⁵⁵ As of this writing, the effect of this ruling on additional *Clean Elections* funding provisions is unclear.

CLEAN ELECTIONS IN THE STATES

Although state *Clean Elections* programs share many standard features, each is also tailored to suit the adopting state's particular political and electoral landscapes. Common deviations include the number of qualifying contributions required and the amount of public funding allocated to each candidate, in order to reflect different state populations. The timing of each program also varies to suit each state's unique elections calendar. This chapter continues with a detailed discussion of the six states introduced above, including the electoral and political complexions as they relate to their *Clean Elections* programs. The order follows the sequence in which these states adopted their programs, beginning with Maine (1996) and concluding with Connecticut (2005). A side-by-side comparison of these programs is provided in the Appendix.

Maine

As of July 2007, Maine's estimated population was 1,317,207.⁵⁶ The state's legislature is bicameral, consisting of a House of Representatives and a Senate, with separate legislative districts drawn for each. With 151 seats in the House and thirty-five in the Senate, Maine's population per district is among the lowest, with House members representing 8,723 residents and Senators representing 37,634 residents on average.⁵⁷ Members of both chambers serve two-year terms and are limited to four consecutive terms of office in each house. Legislative elections are held during even-numbered years. The executive and other statewide officials serve four-year terms. The governor is elected during even-numbered, off-presidential election years (i.e., 2010 and 2014) and is not term limited.⁵⁸ Maine's primary elections are held on the second Tuesday in June.⁵⁹

Maine's Clean Election Act applies to campaigns for governor and state legislative office and began with the 2000 election cycle, when only legislative offices were on the ballot.⁶⁰ To qualify for public funding, candidates must demonstrate threshold public support by collecting a minimum number of \$5 qualifying contributions from

registered voters within the constituency of the office sought: at least 50 for the House, 150 for the Senate and 2,500 for Governor. Qualifying contributions are made payable to the Maine Clean Elections Fund. To facilitate the process of collecting these contributions, candidates are permitted to raise a limited amount of seed money from private contributors in denominations of \$100 or less. The aggregate limits of these contributions are \$500 for House candidates, \$1,500 for Senate candidates and \$50,000 for gubernatorial candidates.⁶¹

Once the requisite number of qualifying contributions has been verified, the candidate is certified as a participating candidate and is prohibited from raising additional funds from private sources. The initial amount of public funds disbursed to a participating major party candidate for legislative office varies by election cycle (primary or general) and whether the race is contested. With one exception, the amount disbursed is calculated by averaging the amount spent on equivalent campaigns during the previous two election cycles. For *uncontested* legislative general elections, the amount allocated is exactly 40 percent of the figure for *contested* legislative general elections. In 2008, these amounts ranged from \$512 to \$4,362 for House candidates and from \$1,927 to \$20,082 for Senate candidates. Minor party legislative candidates receive somewhat less money during the primary election cycle, reflecting the fact that these candidates are nominated by direct petition, rather than a primary election contest. During the general election cycle, all legislative candidates are funded equally. For the 2008 House races, all candidates running in contested elections received \$4,362; all Senate participating candidates received \$20,082 in 2006. All gubernatorial candidates receive \$200,000 in the primary election cycle and \$400,000 in the general election cycle, regardless of whether the campaign is contested. All participating legislative and gubernatorial candidates are eligible to receive additional funding if they are outspent by non-participating candidates or are specifically targeted by independent expenditures. These additional funds are capped at two times the amount of initial allocation.⁶²

Clean Elections in Maine is funded by a variety of sources, including direct appropriations, voluntary income tax check-offs and fines collected from violators of the Act.⁶³ Administration of the Act was assigned to the preexisting Commission on Governmental Ethics & Election Practices, comprised of five bipartisan commissioners appointed for three-year terms by the governor with the advice and consent of the Senate.⁶⁴

Vermont

As of July 2007, Vermont's estimated population was 621,254, roughly half of Maine's.⁶⁵ Vermont's legislature is bicameral, consisting of a House of Representatives and a Senate. The 150 members of the House are elected from 66 single-member districts and 42 two-member districts. The state's thirty Senators represent thirteen districts that elect between one and six members each. While population varies somewhat by district, Vermont's per district average is among the lowest, with the House members representing a mere 4,142 residents and Senators representing only 20,708 residents on average.⁶⁶ Members of both chambers serve two-year terms and are not term limited. Legislative elections are held during even-numbered years. The governor and lieutenant governor both serve four-year terms, are elected during even-numbered, off-presidential election years (i.e., 2010 and 2014) and are not term limited. Vermont's primary elections are held on the second Tuesday in September.⁶⁷

Vermont's campaign reform measure of 1997 has several components, one of which is *Clean Elections* funding of campaigns for governor and lieutenant governor.⁶⁸ The Act coupled the availability of public funding with drastically reduced ceilings on expenditures and individual contributions to candidates, political parties and PACs. In response to concerns that these limits would disproportionately harm challengers by rewarding established political networks, the Act reduces public funding allocations to incumbents by 15 percent.⁶⁹ Notwithstanding

this move, in 2006 all of the new expenditure and contribution limits were invalidated by the U.S. Supreme Court for infringing upon political speech protected by the First Amendment.⁷⁰ Because *Clean Elections* in Vermont does not provide for additional public funding when a participating candidate is outspent by a non-participating candidate, reinstatement of the old expenditure and contribution limits has rendered the program essentially defunct. A subsequent attempt to enact moderated limits was vetoed by the governor in 2007.⁷¹

Nonetheless, to qualify for public financing in 2006, candidates for governor or lieutenant governor could not spend more than \$2,000 or announce their candidacy before February 15. As in Maine, to qualify for public funding, candidates must demonstrate threshold public support by collecting a minimum number of qualifying contributions from registered voters within the state: at least 750 for lieutenant governor and 1,500 for governor. Unlike Maine, this threshold has a second element. Vermont qualifying contributions, which may not exceed \$50 individually, together must total at least \$17,500 for lieutenant governor and \$35,000 for governor. Vermont also imposes a geographical distribution requirement. No more than 25 percent of a candidate's qualifying contributors may reside in a single county. Also unlike Maine, there is no provision for seed money in Vermont's program. Instead, Vermont candidates may retain and spend qualifying contributions until they receive public funding.⁷²

Non-incumbent candidates for governor were eligible to receive up to \$75,000 during the primary and up to \$225,000 during the general election in 2006; non-incumbent candidates for lieutenant governor were eligible to receive up to \$25,000 and \$75,000 during these contests, respectively. Incumbents are eligible for only 85 percent of these amounts. In all cases, the value of qualifying contributions retained by a candidate is deducted from these figures. Candidates in an uncontested general election are not eligible for public funding, but are permitted to raise private funds subject to the contested general election spending limit and individual contribution maximums. Minor party candidates are eligible to receive the same amounts as major party candidates. None of these figures are adjusted for inflation or population changes.⁷³

Clean Elections in Vermont is funded by a variety of sources, including direct appropriations, annual corporate reporting fees and fines collected from violators of the Act. Individuals may elect to contribute via a tax add-on, which increases their overall tax burden.⁷⁴ Administration of the Act is assigned to the Secretary of State.⁷⁵

Vermont's *Clean Elections* program differs substantially from Maine's in several respects. First, the scope of eligible offices in Vermont is limited to the two executives and excludes legislative offices. Second, Vermont's program does not provide for seed money or private fundraising outside of the nominal qualifying contributions. Third, no additional funds are available to participating candidates outspent by their non-participating opponents. Together with the U.S. Supreme Court's invalidation of the Act's reduced expenditure and contribution levels, these features have reduced the appeal of *Clean Elections* in Vermont, making it a rarely used alternative to private fundraising in the state.

Arizona

As of July 2007, Arizona's estimated population was 6,338,755.⁷⁶ The state's legislature is bicameral, consisting of a House of Representatives and a Senate. The thirty legislative districts are multi-member, with two representatives and one senator representing each. With sixty seats in the House, and thirty in the Senate, Arizona's population per district is among the highest, with House members representing 105,646 residents and the Senators representing 211,292 residents on average.⁷⁷ Members of both chambers serve two-year terms and are limited to four consecutive terms in office. Legislative elections are held during even-numbered years. The executive and

other statewide officials serve four-year terms. The governor is elected during even-numbered off-presidential election years (i.e., 2010 and 2014) and is limited to two consecutive terms in office.⁷⁸ Arizona's primaries are held on the ninth Tuesday before the general election.⁷⁹

As implemented, the Arizona Citizens' Clean Election Act applies to campaigns for several statewide offices including Governor, Secretary of State, Attorney General and State Treasurer, in addition to all state legislative offices. The Act came into force for the 2000 election, when the entire legislature and one statewide officer stood for election. Arizona's program indexes dollar values to inflation and the number of personal income tax returns filed biennially.⁸⁰ Furthermore, the number of qualifying contributions may be changed by administrative rule every four years.⁸¹ The figures that follow reflect their most recent adjustment in 2007.

As in both Maine and Vermont, to qualify for public funding, candidates must demonstrate threshold public support by collecting a minimum number of \$5 qualifying contributions from registered voters within the constituency of the office sought: at least 220 for legislative candidates and 4,410 for gubernatorial candidates.⁸² Though the qualifying contributions are initially made payable to candidates, these funds are paid to the state Clean Elections Fund during the qualification process. To facilitate the process of collecting these contributions, candidates are permitted to raise a limited amount of seed money from private contributors in denominations of \$130 or less. The aggregate limits of these contributions are \$3,230 for legislative candidates and \$46,440 for gubernatorial candidates. Further, *Clean Elections* candidates are permitted to self-finance to a small degree: \$610 for legislative candidates and \$1,230 for gubernatorial candidates.⁸³

Once their qualifying contributions have been verified, candidates are certified as a participating candidate and are prohibited from raising additional funds from private sources. The amount of public funds disbursed to a participating major party candidate for legislative office varies by election cycle (primary or general) and whether the race is contested. The initial amount of public funding available to major party candidates in a contested primary election is \$12,921 for legislative office and \$638,222 for governor. Public funding levels for major party candidates in contested general elections are 50 percent higher: \$19,382 for legislative office and \$957,333 for governor. In all uncontested elections, candidates receive only \$5 for each qualifying contribution they submit during the qualification process. Independent candidates are limited to 70 percent of the amounts available to major party candidates.⁸⁴ All participating candidates are eligible to receive additional funding if they are outspent by non-participating candidates or are specifically targeted by independent expenditures. These additional funds are capped at three times the amount of the initial allocation.⁸⁵

Clean Elections in Arizona is funded by a variety of sources established by the Act itself, including a 10 percent surcharge on civil and criminal fines and penalties, a voluntary income tax check-off and revenue from fines imposed for violations of the *Clean Elections* rules.⁸⁶ Administration of the Act was assigned to the bipartisan Citizens' Clean Election Commission, which was also created by the Act.⁸⁷ Commissioners were initially to be nominated by judicial officials, with the governor and ranking members of both major political parties appointing from among the nominees. However, the state Supreme Court in 2000 ruled this arrangement unconstitutional for intruding upon the separation of powers and severed the provision from the Act.⁸⁸ Commissioners are now appointed directly by state officials.

Passage of the Arizona Citizens' Clean Election Act also affects non-participating candidates by imposing increased reporting requirements and a 20 percent reduction of private contribution limits.⁸⁹

Arizona's *Clean Elections* program differs substantially from Maine and Vermont's. First, public funding in Arizona is available to all legislative and a number of statewide candidates. Second, at three times the initial allocation, the cap on supplemental funding for participating candidates is substantially higher than in Maine and Vermont's programs. Third, Arizona's *Clean Elections* Act successfully tightened contribution and disclosure requirements for non-participating candidates, sidestepping a U.S. Supreme Court confrontation. Finally, public funding levels in Arizona are also subject to inflationary adjustments. Because the state's constitution makes it difficult for the Arizona legislature to amend programs adopted by popular initiative, this adjustment mechanism automatically prevents these figures from losing real value. Each of these features has encouraged participation in Arizona's program.

Massachusetts

As of July 2007, Massachusetts's estimated population was 6,449,755, roughly equivalent to Arizona's.⁹⁰ Massachusetts's legislature is bicameral, consisting of a House of Representatives and a Senate, with separate legislative districts drawn for each.⁹¹ With 160 seats in the House and 40 in the Senate, Massachusetts's population per district ranks near the median, with House members representing 40,311 residents and Senators representing 161,244 residents on average.⁹² Members of both chambers serve two-year terms and are not term limited.⁹³ Legislative elections are held during even-numbered years. The executive and other commonwealth-wide officials serve four-year terms. The governor is elected during even-numbered off-presidential election years (i.e., 2010 and 2014) and is not term limited. Massachusetts's primaries are held on the seventh Tuesday before the general election.⁹⁴

Clean Elections in Massachusetts was never fully implemented because the legislature declined to appropriate funding to the program and the enabling Act was repealed in 2003.⁹⁵ As enacted, the law was to take effect during the 2002 election cycle and would have applied to all legislative offices and several commonwealth-wide offices, including the governor and lieutenant governor. Public grants were to cover up to 85 percent of the amount candidates were permitted to spend and would have been permitted to raise the remaining 15 to 25 percent from private contributions of no more than \$100 each.⁹⁶

As in Maine, Vermont and Arizona, those seeking public funding in Massachusetts first needed to demonstrate threshold public support by collecting a minimum number of qualifying contributions from registered voters within the constituency of the office sought. The number of required qualifying contributions ranged between 200 for representatives and 6,000 for governor and could be no less than \$5 and no more than \$100.⁹⁷

Upon qualification, participating candidates were to receive public grants; the amount of the grants varied by the election cycle (primary or general), the office sought and whether the race was contested. Massachusetts did not distinguish major and minor party candidates. In the primary election, grants ranged between \$8,100 for representatives and \$1.6 million for governor. In the general election, grants ranged between \$4,850 for representative and \$1.1 million for governor.⁹⁸ Participating candidates would have become eligible for additional funding if they were outspent by non-participating candidates. These additional funds were to have been capped at two times the amount of the initial allocation. The law was silent on participating candidates as the target of negative third-party expenditures.⁹⁹ All figures were to have been adjusted for inflation biennially.¹⁰⁰ Administration of the Act was assigned to the preexisting Office of Campaign and Political Finance, an independent agency responsible for administering Massachusetts's campaign finance law.¹⁰¹

Massachusetts's *Clean Elections* law differs from Maine, Vermont and Arizona's in several important respects. First is the absence of *full* public financing. Massachusetts's program would have allowed participants to cover between 15 and 25 percent of their aggregate spending limits with private funds raised in small denominations. Second, Massachusetts's program provided *more* public funding during the *primary* election cycle than the general election cycle. With the exception of the executive office, partisan control of the commonwealth government has been consistently lopsided. During the 1997-98 legislative session, when the *Clean Elections* law was adopted, Democrats held 160 of the 200 seats in the legislature, including veto-proof majorities in both chambers.¹⁰² With this in mind, drafters of Massachusetts's *Clean Elections* law understood that most electoral competition would occur during the primary cycle and thus inverted the public grant schedule to provide additional funding for these nominating contests. Perhaps the most critical distinction is between the mode of enactment followed in Massachusetts, compared to that in Maine and Arizona. While all three states' programs were adopted by popular initiative, under the Massachusetts constitution, initiatives may not make specific appropriations.¹⁰³ Thus, while the voters were able to approve *Clean Elections* on their own, legislative action was still required to fund the program's implementation. The legislature was unwilling to do this, resulting in the ultimate failure and eventual repeal of *Clean Elections* in Massachusetts (discussed further in Chapter Three).

New Jersey

As of July 2007, New Jersey's estimated population was 8,685,920, highest of the states discussed herein.¹⁰⁴ Unlike most other states, New Jersey holds its legislative and gubernatorial elections during odd-numbered years. The state's legislature is bicameral, consisting of a General Assembly and a Senate. The forty legislative districts are multi-member, with two Assembly members and one Senator from each. With eighty seats in the Assembly and forty in the Senate, New Jersey's population per district is among the highest and almost identical to Arizona's, with Assembly members representing 108,574 residents and Senators representing 217,148 residents on average.¹⁰⁵ Members of the Assembly serve two-year terms; Senators are elected every four years, with a shorter, two-year term expiring after the decennial reapportionment (i.e., in years ending with 3).¹⁰⁶ Legislators are not term limited. Until 2010, when the state's first lieutenant governor takes office, the governor remains the only statewide elected official. The governor is elected during odd-numbered, off-presidential election years (i.e., 2009 and 2013) and is limited to two consecutive four-year terms.¹⁰⁷ New Jersey's primaries are held on the first Tuesday following the first Monday in June.¹⁰⁸

New Jersey's Fair and Clean Elections Pilot Project of 2005 was intended as a limited trial of *Clean Elections* in the state. Much of the enabling legislation bears resemblance to the language adopted by popular initiative in Maine and Arizona. Part (f) of the Act's findings section confirms this relationship. Given the unusual history and tortuous path of *Clean Elections* in New Jersey, it is interesting to note the stylistic tone of these findings, which suggests the program was intended more to restore a misguided public's faith in their state government than to reform the government itself. This section reads as follows:

2. The Legislature finds and declares that:
 - a. It is the opinion of many residents of this State that the current system of privately-financed campaigns for office of member of the Legislature allows individuals and committees who contribute large amounts of money to have an undue influence on the political process.
 - b. There is also the belief among many residents that under the current system, the free-speech rights of those candidates and voters who are not wealthy are diminished because the political

- process is influenced by individuals and committees who can afford to spend large amounts of money on political communications.
- c. The result of these beliefs is an erosion in public confidence in the democratic process and democratic institutions, leaving much of the electorate questioning whether their elected officials are accountable mostly to the major contributors who finance their campaigns.
 - d. It is possible that a voluntary clean money campaign finance system for legislative candidates would strengthen democracy in New Jersey by removing access to wealth as a major determinant of a citizen's influence within the political process.
 - e. Establishment of a clean elections pilot project would provide selected candidates for the offices of member of the General Assembly with equal resources with which to communicate with voters, reverse the escalating cost of elections and free those candidates from the chore of raising money, thus allowing them more time to conduct their official duties and communicate with their constituents.
 - f. This pilot project, based on the laws currently in effect in Maine and Arizona, would be a significant step towards strengthening public confidence in this State's democratic processes and institutions.¹⁰⁹

The 2005 Pilot Project applied only to candidates in two of the state's forty legislative districts, prompting the non-partisan reform institute Public Campaign to characterize it as "a toe in the water."¹¹⁰ Because there were no Senate elections in 2005, only candidates for General Assembly were eligible to participate. The enabling legislation called for the selection of two "competitive and moderately competitive districts that would lend themselves as meaningful 'test districts.'"¹¹¹ The chairs of the major political party organizations each chose one district from among three specified by the legislation.¹¹² While precise selection criteria for these districts were not detailed by the legislation, each was then represented by a single-party Assembly delegation, casting doubt as to whether any were truly "competitive" or "moderately competitive."¹¹³

As demonstrated by Massachusetts's *Clean Elections* experience, the absence of partisan competition is not required for a successful public financing program. There, with veto-proof Democratic majorities in both legislative chambers, Massachusetts's program provided greater public funding during the primary election cycle, when most of the electoral competition was bound to occur. New Jersey's 2005 Pilot Project, however, applied only to the general election cycle. Given the single-party dominance of the districts chosen for participation, New Jersey's *Clean Elections* was unlikely to have much effect on the final outcome of the 2005 election, since the most important contests would take place during the primary election cycle. Instead, the pilot project simply provided public funding to candidates previously chosen by their party and practically predestined for victory in the general election. Thus, an important goal of *Clean Elections*, increasing the number and diversity of candidates, was not tested by the 2005 Pilot Project. The pilot also did not permit any conclusions regarding intra-party competition or the overall amount of private money in campaigns for public office in New Jersey. Each of these variables was fixed by the enabling legislation.

New Jersey's 2005 Pilot Project exhibited several features similar to *Clean Elections* programs in other states. As in each of the four states discussed above, to qualify for public funding in New Jersey, candidates needed to demonstrate threshold public support by collecting a minimum number of qualifying contributions from registered voters within their legislative district. This requirement differed from the states discussed above in two important respects. First, qualifying contributions were required in two denominations: \$5 and \$30. Second, the number of

qualifying contributions required, 1,000 and 500 respectively, was higher than any other state's requirement for legislative candidates.¹¹⁴ To facilitate the process of collecting these contributions, candidates were permitted to raise a limited amount of seed money from private contributors in denominations of \$200 or less, with an aggregate limit of \$3,000.¹¹⁵

Once the required number of qualifying contributions was verified, the candidate was certified as a participating candidate and prohibited from raising additional funds from private sources. In 2005, initial disbursements were equal to 75 percent of the average expenditures for General Assembly races in the same district during the previous two election cycles, in 2001 and 2003.¹¹⁶ In the two participating districts, candidates received either \$65,100 or \$59,175.¹¹⁷ Initial disbursements to minor party candidates were 50 percent of the amount given to the major party candidates.¹¹⁸

Candidates who faced non-participating opponents became eligible to receive the public funding that opponent would have received had he or she participated, potentially doubling the funding available to participants.¹¹⁹ Participating candidates also became eligible for up to \$50,000 in supplemental funding if they were outspent by non-participating candidates. An additional \$50,000 in supplemental funding was available if participating candidates were targeted by independent expenditures. Thus, a *Clean Elections* candidate in 2005 was theoretically eligible to receive up to \$230,200.

The 2005 Pilot Project was funded primarily by direct appropriation, in addition to qualifying contributions collected by candidates and fines for violations of the Act.¹²⁰ Administration of the Act was assigned to the preexisting Election Law Enforcement Commission ("ELEC") and a newly created Citizens' Clean Elections Commission. ELEC was responsible for administering and enforcing provisions of the Act, receiving paperwork and verifying qualifying contributions.¹²¹ The Citizens' Clean Election Commission was responsible for reviewing the Pilot Project and recommending to the legislature whether it should be renewed and extended in 2007.¹²²

In May 2006, the commission issued its final report. The report called for an expanded pilot program the following year.¹²³ The legislature and governor responded the following March, enacting the 2007 New Jersey Fair and Clean Elections Pilot Project Act.¹²⁴ The renewed pilot followed several of the commission's recommendations, including elimination of the two-tiered qualifying contribution requirement, inclusion of Senate races, and augmentation of the public funding allocations. However, it also departed from the commission's recommendations in two important respects. First, the renewed pilot was expanded to cover only three legislative districts, rather than the recommended six. Second, the primary election cycle was not included in the 2007 Pilot Project, despite the commission's strong recommendation that it be included.¹²⁵

Specifics of the 2005 and 2007 Pilot Projects are detailed in Chapter Four.

Connecticut

As of July 2007, Connecticut's estimated population was 3,502,309, roughly half of Arizona and Massachusetts's and double that of Maine.¹²⁶ Connecticut's legislature is bicameral, consisting of a House of Representatives and a Senate, with separate legislative districts drawn for each. With 151 seats in the House and 36 in the Senate, Connecticut's population per district ranks near the median, with House members representing 23,194 residents and Senators representing 97,286 residents on average.¹²⁷ Members of both chambers serve two-year terms and are not term limited. Legislative elections are held during even-numbered years. The governor and lieutenant governor both serve four-year terms, are elected in even-numbered, off-presidential election years (i.e., 2010 and

2014) and are not term limited. Connecticut's primaries for state office are held on the second Tuesday in August.¹²⁸

Connecticut's Comprehensive Campaign Reform Act of 2005 contained several components.¹²⁹ In addition to providing *Clean Elections* funding for legislative and statewide office, the Act also:

- Banned lobbyists and state contractors from contributing to or soliciting contributions for most political campaign committees.
- Ended the routine practice of lobbyists and corporations circumventing contribution limits by purchasing advertising space in campaign fundraising programs.
- Limited the amounts many state employees could lawfully contribute to candidates seeking to become their superiors in the office in which they work.
- Made a number of adjustments to PAC regulations and other contribution limits.

Similar to each of the states already discussed, to qualify for public funding in Connecticut, candidates must demonstrate threshold public support by collecting qualifying contributions from registered voters. Specific requirements vary by statewide and legislative office. For governor and lieutenant governor, the relevant threshold is not the number of contributions, but their aggregate dollar amount. For example, gubernatorial candidates must collect at least \$250,000, only 90 percent of which need be raised from state residents. However, because qualifying contributions can be no greater than \$100, gubernatorial candidates will need to raise at least 2,500 qualifying contributions to reach the required aggregate threshold. Legislative candidates must collect a minimum dollar amount *and* a minimum number of contributions from residents of their legislative district. House candidates must collect 150 qualifying contributions totaling at least \$5,000; Senate candidates must collect 300 qualifying contributions totaling at least \$15,000.¹³⁰

As in Vermont, qualifying contributions in Connecticut also function as seed money, are paid directly to the candidate, and count against aggregate spending limits. Once a candidate qualifies to participate and agrees to these limitations, initial public grants vary by election cycle (primary or general), office sought and whether the race is contested. Primary cycle allocations range between \$10,000 for House candidates and \$1.25 million for gubernatorial candidates. General election allocations are slightly more than double that amount. All figures are adjusted biennially for inflation.¹³¹

Similar to Arizona's "one-party-dominant" optional reallocation of funds, Connecticut candidates in "party dominant" districts, where the gap between major party enrollment exceeds 20 percent, are eligible to receive additional funding during the primary election cycle.¹³² This feature recognizes the likelihood that in these districts, more competition is likely during the primary, rather than the general election cycle.

During the general election cycle, Connecticut's program is unique for its three-fold distinction between contested, uncontested and *nominally contested* races. Contested races are funded at the full amount; uncontested races are funded at 30 percent; *nominally* contested races, where the candidate faces opposition by a minor party candidate who failed to qualify for public funding, are funded at 60 percent.¹³³

Minor party candidates are not eligible for public grants during the primary election cycle. Funding during the general election cycle is scaled to the party's performance during the previous election. To receive any public funding, the party must have received at least 10 percent of the vote-share during the previous election. At that

level, minor party candidates receive one-third of the amount available to major party candidates. At 15 percent, the ratio would double to two-thirds. Finally, at 20 percent of the vote, the minor party candidate would achieve parity.¹³⁴ With this sliding scale, the legislature sought to prevent fringe candidates with little public support from using *Clean Elections* money to fund their campaigns. However, in conjunction with the qualifying contribution threshold, this tiered approach sets an unusually high bar for minor parties in a two-party dominant political system. While this particular issue was discussed when the state's legislature revised the program in 2006, no changes were made.¹³⁵

Connecticut's program is funded by a fixed amount of the proceeds generated by the sale of unclaimed property, with the law providing for diversion of corporate business tax revenues in the event of a shortfall.¹³⁶ The preexisting State Elections Enforcement Commission ("SEEC") was tasked with enforcing the Act's provisions, collecting the necessary paperwork and verifying qualifying contributions. The SEEC was also granted investigative powers and authority to assess civil penalties for noncompliance.

While Connecticut's *Clean Elections* program contains a framework similar to other states' public financing programs, it diverges in several respects. The most obvious is the complex formula used to calculate public grants. The intention is clear: to account for as many nuances in public campaigns as possible. It remains to be seen, however, whether such intricacy will help or hinder the program's ability to attract enough participants to test the premise that *Clean Elections* in Connecticut can attenuate the influence of private money in public campaigns. Given the tall barriers to entry, the program is likely to see few, if any, minor party candidates qualify for public funding. Another interesting feature of Connecticut's program is the reach of its enabling statute. Rather than simply graft public financing to existing campaign finance regulation, Connecticut took a more comprehensive approach, coupling public funding with prohibitions on contributions from state contractors and lobbyists, lower PAC contribution limits and limits on political party contributions to candidates. Several of the other *Clean Elections* state have been more circumspect, taking a more piecemeal approach to campaign finance reform. Most of these states also continue to see increases in private spending on elections, often in the form of independent expenditures, leading some critics to question the efficacy of *Clean Elections* in those states. Nevertheless, it is still too early to gauge the effect of Connecticut's far-reaching reform.

CHAPTER TWO ENDNOTES

¹ State Payment of Campaign Expenses Act, 1909 Colo. Stat. 303 (“An Act Concerning campaign expenses of political parties and contributing thereto”).

² *In re People ex rel, Galligan, State Treasurer, et al.* (unpublished opinion) (Colo. 1910). According to one observer’s account, “the chief objections were to the unequal treatment of parties and the lack of provision for any new party.” Robert Luce. Legislative Principles: The History and Theory of Lawmaking by Representative Government. Clark, NJ: The Lawbook Exchange, Ltd., 2006 at 433.

³ Federal Election Campaign Act (FECA) Amendments, 88 Stat. 1263 (1974) (“An Act To impose overall limitations on campaign expenditures and political contributions, to provide that each candidate for Federal office shall designate a principal campaign committee, to provide for a single reporting responsibility with respect to receipts and expenditures by certain political committees, to change the times for the filing of reports regarding campaign expenditures and political contributions, to provide for public financing of Presidential nominating conventions and Presidential primary elections; and for other purposes”).

⁴ United States Federal Election Commission. “Presidential Spending Limits 2004.” Available from, http://www.fec.gov/pages/brochures/pubfund_limits_2004.shtml; “2004 Presidential Campaign Financial Activity Summarized.” Available from, <http://www.fec.gov/press/press2005/20050203pressum/20050203pressum.html>. Last accessed: Mar. 17, 2008.

⁵ Presidential Funding Act, S. 2412, 110th Cong. (1st Sess. 2007). Available from, <http://thomas.loc.gov/cgi-bin/query/z?c110:S.2412;> Presidential Funding Act , H.R. 4294, 110th Cong. (1st Sess. 2007). Available from, <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR04294>. Last accessed: Mar. 17, 2008.

⁶ N.J. Stat. Ann. § 19:44A-33 (2007) (“Public funding [of gubernatorial elections]”).

⁷ Idaho Code Ann. § 35-2403 (2008) (“Election campaign fund – Distribution”).

⁸ Haw. Rev. Stat. § 11-218 (2007) (“Candidate funding; amounts available”).

⁹ See, e.g., Steven M. Levin. “Keeping it Clean: Public Financing in American Elections.” Los Angeles, Cal.: Center for Government Studies, 2006. Available from, http://www.cgs.org/images/publications/Keeping_It_Clean.pdf. Last accessed: Mar. 17, 2008.

¹⁰ Public Campaign. “All Over the Map: Small Donors Bring Diversity to Arizona’s Elections.” Available from, <http://www.publiccampaign.org/alloverthemap/>. Last accessed: June 1, 2008.

¹¹ *Buckley v. Valeo*, 424 U.S. 1, 39, 52 (1976).

¹² Minn. Stat. § 10A.31 (2007) (“Designation of Income Tax Payments”).

¹³ N.J. Stat. Ann. § 19:44A-33 (2007) (“Public funding [of gubernatorial elections]”).

¹⁴ Haw. Rev. Stat. § 11-218 (2007) (“Candidate funding; amounts available”).

¹⁵ United States Federal Election Commission. “Presidential Spending Limits 2008.” Available from, http://www.fec.gov/pages/brochures/pubfund_limits_2008.shtml. Last accessed: Mar. 17, 2008.

¹⁶ Public Campaign. “States/Localities with Clean Elections.” Available from, <http://www.publiccampaign.org/where>. Last accessed: Mar. 17, 2008.

¹⁷ Mass. Gen. Laws Ann. ch. 55A (2008), *repealed* by 2003 Mass. Acts 26.

- ¹⁸ The integrity of Vermont's program was severely compromised in 2006 after substantial portions were found by the U.S. Supreme Court to violate the First Amendment. *See Randall v. Sorrell*, 548 U.S. 230 (2006).
- ¹⁹ Me. Rev. Stat. Ann. tit. 21-A, § 1125 (2007) ("Terms of Participation").
- ²⁰ Maine Commission on Governmental Ethics and Election Practices. "2008 Declaration of Intent." Available from, http://mainegov-images.informe.org/ethics/pdf/forms/2008/can/doi_and_code.pdf. Last accessed: Mar. 17, 2008.
- ²¹ Vt. Stat. Ann. tit. 17, § 2852 (2007) ("Filing of Vermont campaign finance affidavit"); *see also* Vt. Stat. Ann. tit. 17, § 2351 (2007) ("Primary election").
- ²² Ariz. Rev. Stat. Ann. § 16-947 (2007) ("Certification as a participating candidate"); *see also* Ariz. Rev. Stat. Ann. § 16-961 (2007) ("Definitions").
- ²³ Mass. Gen. Laws Ann. ch. 55A, § 3 (2008) ("Declaration of Intent"), *repealed by* 2003 Mass. Acts 26. Available from, <http://www.mass.gov/legis/laws/seslaw98/sl980395.htm>. Last accessed: Mar. 18, 2008.
- ²⁴ New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121, § 7.
- ²⁵ New Jersey Citizens' Clean Elections Commission. "Final Report Submitted to the Legislature of the State of New Jersey." William E. Schluter, chair. May 8, 2006, at 7. Available from, http://www.njleg.state.nj.us/committees/NJCCEC_FINAL.pdf. Last accessed: Mar. 17, 2008.
- ²⁶ Connecticut State Elections Enforcement Commission. "Affidavit of Intent to Abide by Expenditure Limits and Other Citizens' Election Program Requirements." Available from, http://www.ct.gov/seec/lib/seec/CEF10_2008.pdf. Last accessed: Mar. 17, 2008.
- ²⁷ Conn. Gen. Stat. § 9-703 (2007) ("Affidavit certifying candidate's intent to abide or not abide by expenditure limits").
- ²⁸ Me. Rev. Stat. Ann. tit. 21-A, § 1125 (2007) ("Terms of participation").
- ²⁹ Ariz. Rev. Stat. Ann. § 16-945 (2007) ("Limits on early contributions").
- ³⁰ New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121 at 7-8; 2007 New Jersey Fair and Clean Elections Pilot Project Act, 2007 N.J. Laws 60 at 8.
- ³¹ Vt. Stat. Ann. tit. 17, § 2854 (2007) ("Qualifying contributions"); *see also* Conn. Gen. Stat. § 9-702 (2007) ("Citizens' Election Program established. Eligibility for grants"). Massachusetts's law was silent on the disposition of collected qualifying contributions.
- ³² Bob Baum. "Plan for state-funded campaigns narrowly approved." *The Associated Press*. Nov. 4, 1998.
- ³³ Me. Rev. Stat. Ann. tit. 21-A, § 1125 (2007) ("Terms of Participation"); *see also* Ariz. Rev. Stat. Ann. § 16-950 (2007) ("Qualification for clean campaign funding").
- ³⁴ Me. Rev. Stat. Ann. tit. 21-A, § 1125 (2007) ("Terms of Participation"); *see also* Ariz. Rev. Stat. Ann. § 16-946 (2007) ("Qualifying contributions"); *see also* Ariz. Rev. Stat. Ann. § 16-961 (2007) ("Definitions").
- ³⁵ Vt. Stat. Ann. tit. 17, § 2854 (2007) ("Qualifying contributions"); *see also* Mass. Gen. Laws Ann. ch. 55A, § 1 (2008) ("Definitions"). Available from, <http://www.mass.gov/legis/laws/seslaw98/sl980395.htm>. Last accessed: Mar. 18, 2008; *see also* Conn. Gen. Stat. § 9-704 (2007) ("Qualifying contributions").
- ³⁶ New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121 at 3.
- ³⁷ N.J. Exec. Order No. 51 (Codey), 37 N.J.R. 3749(a) (2005) ("Extension of Qualifying Period for Participating Candidates in the New Jersey Fair and Clean Elections Pilot Project").
- ³⁸ 2007 New Jersey Fair and Clean Elections Pilot Project Act, 2007 N.J. Laws 60 at 3.

³⁹ The availability of subsequent public funding varies by states and is usually made available when a *Clean Elections* candidate is outspent by a non-participating candidate or is made the object of adverse independent expenditures. These supplemental funds are discussed later in this chapter.

⁴⁰ Me. Rev. Stat. Ann. tit. 21-A, § 1125 (2007) (“Terms of Participation”).

⁴¹ New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121 at 10.

⁴² 2007 New Jersey Fair and Clean Elections Pilot Project Act, 2007 N.J. Laws 60 at 11.

⁴³ New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121 at 12; *see also* 2007 New Jersey Fair and Clean Elections Pilot Project Act, 2007 N.J. Laws 60 at 11. In 2007, minor party candidates could receive not more than \$50,000, which in most cases was half of the amount available to major party candidates.

⁴⁴ Vt. Stat. Ann. tit. 17, § 2855 (2007) (“Vermont campaign finance grants; amounts; timing”), *partially invalidated by* *Randall v. Sorrell*, 548 U.S. 230 (2006).

⁴⁵ Ariz. Rev. Stat. Ann. § 16-951 (2007) (“Clean campaign funding”); *see also* Ariz. Rev. Stat. Ann. § 16-961 (2007) (“Definitions”); *see also* Ariz. Rev. Stat. Ann. § 16-952 (2007) (“Equal funding of candidates”); *see also* Ariz. Rev. Stat. Ann. § 16-959 (2007) (“Inflationary and other adjustments of dollar values”).

⁴⁶ Mass. Gen. Laws Ann. ch. 55A, § 7 (2008) (“Clean Election Funds”), *repealed by* 2003 Mass. Acts 26. Available from, <http://www.mass.gov/legis/laws/seslaw98/sl980395.htm>. Last accessed: Mar. 18, 2008.

⁴⁷ State Library of Massachusetts. “State Senate Political Complexion (1867 to Date).” Available from, <http://www.mass.gov/lib/facts/spc.htm>; “State House of Representatives Political Complexion (1867 to Date).” Available from, <http://www.mass.gov/lib/facts/hpc.htm>. Last accessed: Mar. 17, 2008.

⁴⁸ Conn. Gen. Stat. § 9-705 (2007) (“Grants for primary and general election campaigns. Supplemental grants for petitioning and minor party candidates”).

⁴⁹ Me. Rev. Stat. Ann. tit. 21-A, § 1125 (2007) (“Terms of Participation”).

⁵⁰ Conn. Gen. Stat. § 9-705 (2007) (“Grants for primary and general election campaigns. Supplemental grants for petitioning and minor party candidates”).

⁵¹ Conn. Gen. Stat. § 9-705 (2007) (“Grants for primary and general election campaigns. Supplemental grants for petitioning and minor party candidates”).

⁵² Vt. Stat. Ann. tit. 17, § 2855 (2007) (“Vermont campaign finance grants; amounts; timing”), *partially invalidated by* *Randall v. Sorrell*, 548 U.S. 230 (2006).

⁵³ Vt. Stat. Ann. tit. 17, § 2855 (2007) (“Vermont campaign finance grants; amounts; timing”), *partially invalidated by* *Randall v. Sorrell*, 548 U.S. 230 (2006).

⁵⁴ Brief Of Respondents/Cross-Petitioners at 25-26, *Randall v. Sorrell*, 548 U.S. 230 (2006).

⁵⁵ *Davis v. Federal Election Comm’n*, 128 S. Ct. 2759 (2008).

⁵⁶ United States Census Bureau. “Annual Population Estimates 2000 to 2007.” Available from, <http://www.census.gov/popest/states/NST-ann-est.html>. Last accessed: Mar. 18, 2008.

⁵⁷ National Conference of State Legislatures. “Constituents per State Legislative District.” Available from, <http://www.ncsl.org/programs/legman/elect/cnstprst.htm>. Last accessed: Mar. 18, 2008.

⁵⁸ National Conference of State Legislatures. “Term Limits Laws.” Available from, <http://www.ncsl.org/programs/legman/about/citations.htm>. Last accessed: Mar. 18, 2008.

- ⁵⁹ The Green Papers. “Statutory Election Information of the Several States.” Available from, <http://www.thegreenpapers.com/slg/sei.phtml>. Last accessed: Mar. 18, 2008.
- ⁶⁰ Me. Rev. Stat. Ann. tit. 21-A, § 1121 *et seq.* (2007) (“The Maine Clean Election Act”).
- ⁶¹ Me. Rev. Stat. Ann. tit. 21-A, § 1125 (2007) (“Terms of Participation”).
- ⁶² Me. Rev. Stat. Ann. tit. 21-A, § 1125 (2007) (“Terms of Participation”).
- ⁶³ Me. Rev. Stat. Ann. tit. 21-A, § 1124 (2007) (“The Maine Clean Election Fund established; sources of funding”).
- ⁶⁴ Maine Commission on Governmental Ethics & Election Practices. <http://www.maine.gov/ethics/>.
- ⁶⁵ United States Census Bureau. “Annual Population Estimates 2000 to 2007.” Available from, <http://www.census.gov/popest/states/NST-ann-est.html>. Last accessed: Mar. 18, 2008.
- ⁶⁶ National Conference of State Legislatures. “Constituents per State Legislative District.” Available from, <http://www.ncsl.org/programs/legman/elect/cnstprst.htm>. Last accessed: Mar. 18, 2008.
- ⁶⁷ The Green Papers. “Statutory Election Information of the Several States.” Available from, <http://www.thegreenpapers.com/slg/sei.phtml>. Last accessed: Mar. 18, 2008.
- ⁶⁸ Vt. Stat. Ann. tit. 17, § 2851 *et seq.* (2007) (“Vermont Campaign Finance Option”).
- ⁶⁹ Vt. Stat. Ann. tit. 17, § 2855 (2007) (“Vermont campaign finance grants; amounts; timing”), *partially invalidated by Randall v. Sorrell*, 548 U.S. 230 (2006).
- ⁷⁰ *Randall v. Sorrell*, 548 U.S. 230 (2006), *following Buckley v. Valeo*, 424 U.S. 1 (1976).
- ⁷¹ S. 0164, 2007-08 Leg. Sess. (Vt. 2007) (“An Act Relating to Campaign Finance”).
- ⁷² Vt. Stat. Ann. tit. 17, § 2854 (2007) (“Qualifying contributions”).
- ⁷³ Vt. Stat. Ann. tit. 17, § 2855 (2007) (“Vermont campaign finance grants; amounts; timing”), *partially invalidated by Randall v. Sorrell*, 548 U.S. 230 (2006).
- ⁷⁴ Vt. Stat. Ann. tit. 17, § 2856 (2007) (“Vermont campaign fund”).
- ⁷⁵ Vt. Stat. Ann. tit. 17, § 2852 (2007) (“Filing of Vermont campaign finance affidavit”); *see also* Vt. Stat. Ann. tit. 17, § 2855 (2007) (“Vermont campaign finance grants; amounts; timing”), *partially invalidated by Randall v. Sorrell*, 548 U.S. 230 (2006); *see also* Vt. Stat. Ann. tit. 17, § 2856 (2007) (“Vermont campaign fund”).
- ⁷⁶ United States Census Bureau. “Annual Population Estimates 2000 to 2007.” Available from, <http://www.census.gov/popest/states/NST-ann-est.html>. Last accessed: Mar. 18, 2008.
- ⁷⁷ National Conference of State Legislatures. “Constituents per State Legislative District.” Available from, <http://www.ncsl.org/programs/legman/elect/cnstprst.htm>. Last accessed: Mar. 18, 2008.
- ⁷⁸ National Conference of State Legislatures. “Term Limits Laws.” Available from, <http://www.ncsl.org/programs/legman/about/citations.htm>. Last accessed: Mar. 18, 2008.
- ⁷⁹ The Green Papers. “Statutory Election Information of the Several States.” Available from, <http://www.thegreenpapers.com/slg/sei.phtml>. Last accessed: Mar. 18, 2008.
- ⁸⁰ Ariz. Rev. Stat. Ann. § 16-959 (2007) (“Inflationary and Other Adjustments of Dollar Values”).
- ⁸¹ Ariz. Rev. Stat. Ann. § 16-956 (2007) (“Voter Education and Enforcement Duties”).

⁸² Arizona Citizens' Clean Elections Commission. "2007 CCEC Rule Change." Available from, <http://www.azcleelections.gov/ccecweb/ccecays/docs/2007RuleChanges.pdf>. Last accessed: Mar. 18, 2008.

⁸³ Arizona Secretary of State. "Clean Elections Act 2007 Biennial Adjustments." Available from, http://www.azsos.gov/election/2008/info/CCEC_Biennial_Adjustment_Charts.htm. Last accessed: Mar. 18, 2008.

⁸⁴ Ariz. Rev. Stat. Ann. § 16-951 (2007) ("Clean Campaign Funding"); *see also* Ariz. Rev. Stat. Ann. § 16-961 (2007) ("Definitions").

⁸⁵ Ariz. Rev. Stat. Ann. § 16-952 (2007) ("Equal Funding of Candidates").

⁸⁶ Ariz. Rev. Stat. Ann. § 16-954 (2007) ("Clean Elections Tax Reduction; Return of Excess Monies").

⁸⁷ Ariz. Rev. Stat. Ann. § 16-955 (2007) ("Citizens Clean Election Commission; Structure").

⁸⁸ *Citizens Clean Elections Commissioners v. Myers*, 196 Ariz. 516 (2000).

⁸⁹ Ariz. Rev. Stat. Ann. § 16-941 (2007) ("Limits on Spending and Contributions for Political Campaigns"); *see also* Ariz. Rev. Stat. Ann. § 16-958 (2007) ("Manner of Filing Reports").

⁹⁰ United States Census Bureau. "Annual Population Estimates 2000 to 2007." Available from, <http://www.census.gov/popest/states/NST-ann-est.html>. Last accessed: Mar. 18, 2008.

⁹¹ Massachusetts's legislative body is formally known as the *Great and General Court of the Commonwealth of Massachusetts*, or simply as *The Massachusetts General Court*, a name held over from the colonial era when the legislature also sat in judgment of appeals from lower judicial authorities.

⁹² National Conference of State Legislatures. "Constituents per State Legislative District." Available from, <http://www.ncsl.org/programs/legman/elect/cnstprst.htm>. Last accessed: Mar. 18, 2008.

⁹³ In 1994, The Massachusetts General Court enacted term limits for all elected officials in the state, including the state's congressional delegation (Mass. Gen. Laws Ann. ch. 53, § 48). Though this law technically remains on the books, it has been effectively annulled by the courts. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995); *see also League of Women Voters v. Secretary of the Commonwealth*, 425 Mass. 424 (1997).

⁹⁴ The Green Papers. "Statutory Election Information of the Several States." Available from, <http://www.thegreenpapers.com/sg/sei.phtml>. Last accessed: Mar. 18, 2008.

⁹⁵ Fiscal Year 2004 Appropriations Act, 2003 Mass. Acts 26.

⁹⁶ Mass. Gen. Laws Ann. ch. 55A, § 1 (2008) ("Definitions"); *see also* Mass. Gen. Laws Ann. ch. 55A, § 6 (2008) ("Expenditure Limits"); *see also* Mass. Gen. Laws Ann. ch. 55A, § 7 (2008) ("Clean Election Funds"); *see also* Mass. Gen. Laws Ann. ch. 55A, § 9 (2008) ("Allowable Contributions"), *all repealed* by 2003 Mass. Acts 26.

⁹⁷ Mass. Gen. Laws Ann. ch. 55A, § 4 (2008) ("Qualifying Contributions"), *repealed* by 2003 Mass. Acts 26.

⁹⁸ Mass. Gen. Laws Ann. ch. 55A, § 7 (2008) ("Clean Election Funds"), *repealed* by 2003 Mass. Acts 26.

⁹⁹ Mass. Gen. Laws Ann. ch. 55A, § 11 (2008) ("Matching Funds"), *repealed* by 2003 Mass. Acts 26.

¹⁰⁰ Mass. Gen. Laws Ann. ch. 55A, § 13 (2008) ("Adjustment by Consumer Price Index"), *repealed* by 2003 Mass. Acts 26.

¹⁰¹ Mass. Gen. Laws Ann. ch. 55A, § 17 (2008) ("Review Commission"), *repealed* by 2003 Mass. Acts 26.

¹⁰² State Library of Massachusetts. "State Senate Political Complexion (1867 to Date)." Available from, <http://www.mass.gov/lib/facts/spc.htm>; "State House of Representatives Political Complexion (1867 to Date)." Available from, <http://www.mass.gov/lib/facts/hpc.htm>. Last accessed: Mar. 17, 2008.

¹⁰³ Mass. Const. art XLVIII, pt. 2, § 2.

¹⁰⁴ United States Census Bureau. “Annual Population Estimates 2000 to 2007.” Available from, <http://www.census.gov/popest/states/NST-ann-est.html>. Last accessed: Mar. 18, 2008.

¹⁰⁵ National Conference of State Legislatures. “Constituents per State Legislative District.” Available from, <http://www.ncsl.org/programs/legman/elect/cnstprst.htm>. Last accessed: Mar. 18, 2008.

¹⁰⁶ This unusual sequence means that the entire legislature (including all 40 Senate seats and all 80 Assembly seats) stands for election in years ending with 1, 3 and 7.

¹⁰⁷ Beginning in 2009, the governor and lieutenant governor will be elected at the same time and will be subject to the same term limitations. The Green Papers. “2008 Governor’s Chairs by State.” Available from, <http://www.thegreenpapers.com/G08/Governor.phtml>. Last accessed: Mar. 19, 2008.

¹⁰⁸ The Green Papers. “Statutory Election Information of the Several States.” Available from, <http://www.thegreenpapers.com/slg/sei.phtml>. Last accessed: Mar. 18, 2008.

¹⁰⁹ New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121.

¹¹⁰ Susan Haigh. “Lawmakers Debate Campaign Finance Reform Bill.” *The Associated Press*. Nov. 30, 2005.

¹¹¹ A.1, 2003-04 Leg. Sess. (N.J. 2004) (“New Jersey Fair and Clean Elections Pilot Project”) (Bill Statement § 20 at 16). Available from, http://www.njleg.state.nj.us/2004/bills/a104/121_.pdf. Last accessed: Mar. 19, 2008.

¹¹² 2004 N.J. Laws 121 at 6 (“New Jersey Fair and Clean Elections Pilot Project”).

¹¹³ Even upon considering the entire delegation, including both Assembly members and the state Senator, five of the six eligible districts were held by a single party in 2004. The exception was the Seventh district, which had elected two Democratic Assembly members and a Republican Senator in 2003. State of New Jersey. Manual of the Legislature of New Jersey: Two Hundred and Eleventh Legislature (First Session). Newark, NJ: Skinder-Strauss Associates, 2004.

¹¹⁴ New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121, § 3.

¹¹⁵ New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121, §§ 3, 8.

¹¹⁶ New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121, § 10.

¹¹⁷ New Jersey Citizens’ Clean Elections Commission. “Preliminary Report Submitted to the Legislature of the State of New Jersey.” William E. Schluter, chair. Feb. 7, 2006 at 44. Available from, http://www.njleg.state.nj.us/committees/PRELIM_REPORT_FINAL2.pdf. Last accessed: Mar. 19, 2008.

¹¹⁸ New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121, § 12.

¹¹⁹ This in fact occurred during New Jersey’s 2005 pilot, when one pair of Assembly candidates failed to raise the required number of qualifying contributions.

¹²⁰ New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121, § 5.

¹²¹ New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121, §§ 7-13, 15-16.

¹²² New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121, § 17.

¹²³ New Jersey Citizens’ Clean Elections Commission. “Final Report Submitted to the Legislature of the State of New Jersey.” William E. Schluter, chair. May 8, 2006 at 1. Available from, http://www.njleg.state.nj.us/committees/NJCCEC_FINAL.pdf. Last accessed: Mar. 17, 2008.

¹²⁴ 2007 New Jersey Fair and Clean Elections Pilot Project Act, 2007 N.J. Laws 60.

¹²⁵ NJCCEC, “Preliminary Report Submitted to the Legislature of the State of New Jersey” at 21-22.

¹²⁶ United States Census Bureau. “Annual Population Estimates 2000 to 2007.” Available from, <http://www.census.gov/popest/states/NST-ann-est.html>. Last accessed: Mar. 18, 2008.

¹²⁷ National Conference of State Legislatures. “Constituents per State Legislative District.” Available from, <http://www.ncsl.org/programs/legman/elect/cnstprst.htm>. Last accessed: Mar. 18, 2008.

¹²⁸ The Green Papers. “Statutory Election Information of the Several States.” Available from, <http://www.thegreenpapers.com/slg/sei.phtml>. Last accessed: Mar. 18, 2008.

¹²⁹ An act concerning comprehensive campaign finance reform for state-wide constitutional and General Assembly offices, 2005 Conn. Pub. Acts 5 (Spec. Sess.).

¹³⁰ Conn. Gen. Stat. § 9-704 (2007) (“Qualifying contributions”).

¹³¹ Conn. Gen. Stat. § 9-705 (2007) (“Grants for primary and general election campaigns. Supplemental grants for petitioning and minor party candidates”).

¹³² Conn. Gen. Stat. § 9-705 (2007) (“Grants for primary and general election campaigns. Supplemental grants for petitioning and minor party candidates”).

¹³³ Conn. Gen. Stat. § 9-705 (2007) (“Grants for primary and general election campaigns. Supplemental grants for petitioning and minor party candidates”).

¹³⁴ Conn. Gen. Stat. § 9-705 (2007) (“Grants for primary and general election campaigns. Supplemental grants for petitioning and minor party candidates”).

¹³⁵ An act concerning the campaign finance reform legislation and certain election law and ethics provisions, 2006 Conn. Pub. Acts 137 (Reg. Sess.).

¹³⁶ Conn. Gen. Stat. § 3-69a (2007) (“Deposit of funds in General Fund and Citizens’ Election Fund”); *see also* Conn. Gen. Stat. § 9-750 (2007) (“Portion of revenues from tax under chapter 208 to be deposited in Citizens’ Election Fund if insufficient funds available under section 3-69a”).

— CHAPTER THREE —

STORIES BEHIND THE REFORM

How Politics Shaped *Clean Elections* in Six States

“
If there is any safe axiom in American politics, it is that our
legislators get the funds with which they run from the very people
who have the greatest stake in the legislation they will pass.
”

INTRODUCTION

The first modern attempt to establish *Clean Elections*—full public financing of political campaigns for public office—originated during the 1990s in the state of Maine. This effort culminated in a 1996 ballot question approved by the voters by a twelve-point margin.¹ The campaign to adopt this ballot question and establish the *Clean Elections* program began years earlier. A number of advocacy groups, led by Maine’s Money and Politics Implementation Project, spent months deliberating and refining the details of a completely new system of elections in their state. The ultimate goal of this collaboration was to reduce the influence of private money in Maine’s political system. Advocates reasoned that the most direct means of achieving this goal was to offer candidates for public office an alternative to raising the private funds necessary to mount competitive campaigns. The chosen alternative was a system of public grants to candidates who satisfied predetermined criteria and agreed to abide by comprehensive restrictions on soliciting, raising and spending private dollars. These grants would be drawn from a public source, constituting a new form of government spending.

In developing Maine’s program, reformers focused their efforts around a series of assumptions regarding the effect of private fundraising in campaigns for public office:

- The burden of private fundraising is a significant deterrent to running for public office. Reducing this burden would increase the number of candidates running for office, particularly those who are traditionally underrepresented in government, including women, minorities and those of modest means. Increasing the number of candidates would create greater voter choice and higher voter turnout on Election Day.
- Significant time is required to raise enough private funds to mount a credible and competitive campaign, time that could be spent discussing issues and meeting constituents. Devoting more attention to issues and constituents would create a more engaged and better informed electorate.
- The combined effect of these changes would create competitive, issue-oriented campaigns, responsive government, and would strengthen the democratic process.

In order to comply with the U.S. Supreme Court’s 1976 ruling in *Buckley v. Valeo*,² which equated money with protected political speech and declared mandatory spending limits unconstitutional, participation in a public financing program needed to be made voluntary. Candidates who declined to participate would still be permitted

* David S. Broder. “Epilogue: Assessing Campaign Reform: Lessons for the Future.” In Herbert E. Alexander, ed. *Campaign Money: Reform and Reality in the States*. New York: The Free Press, 1976, 313.

to fundraise by traditional means, with no limit on the amount they could spend during their campaigns for office. *Buckley's* constitutional restriction would pose a challenge for Maine reformers. To be successful, public financing needed to attract participants who would freely abandon a potentially unlimited reserve of private funds and accept a limited quantity of carefully regulated public funding.

The framers of *Clean Elections* believed candidates would find several advantages in doing so. Perhaps most attractive would be the reduced fundraising demands on those who received public money. By limiting the time dedicated to these activities, candidates could dedicate more time to other activities, such as engaging voters personally and discussing the issues. Moreover, public funding would enable aspiring public servants of modest means and those who lack established networks of political support to mount credible and competitive campaigns. The *Clean Elections* framers also believed that candidates who could rely entirely on public funding would have the political freedom to craft campaign messages without undue or unwelcome influence from private interests. Public officials who ran such campaigns would then be free to govern without fear of alienating the interests whose support they would need to win reelection.

In *Clean Elections*, advocates believed they had found a winning concept: a new system of campaign financing that would neutralize the corrosive effect of private money in campaigns for public office and still pass constitutional muster.

Evaluating *Clean Elections* is no easy task. Campaigns are often messy affairs that defy observation and confound systematic study. Interstate comparison is further complicated by differing rules, regulations and definitions for such critical terms as *contribution* and *committee*. The criteria advanced as relevant by *Clean Elections* advocates only make matters more difficult. Claims of *strengthened democracy* and *responsive government* cannot be proved. Variables that are susceptible to measurement, such a voter turnout and aggregate spending, may be influenced by innumerable, unobservable forces.

These difficulties counsel caution when evaluating any campaign finance reform, particularly those that lack a long operational history, such as *Clean Elections*. With this caveat in mind, it is safe to say *Clean Elections* in Maine has not failed. Even after operating through several election cycles, however, its success on several measures remains an actively debated question. Scholars and partisans alike have cited the program's high participation rate, an increasing number of candidates on the ballot and stabilized campaign expenditures to rebut these challenges.

Notwithstanding this ongoing debate, the apparent success of Maine's program has inspired the adoption of similar measures by several other states across the country. In 1997, Vermont became the second state to enact *Clean Elections* and the first to do so by legislative action. However, the enabling legislation was quickly challenged in court and its revised contribution and expenditure limits, designed to encourage participation in the program, were invalidated by the U.S. Supreme Court in 2006, rendering *Clean Elections* in Vermont essentially defunct.³ Both Arizona and Massachusetts established *Clean Elections* in 1998. As in Maine, these states adopted their programs by popular initiative, rather than through the legislative process. While Arizona's program has survived several legal challenges, Massachusetts's program was never adequately funded and was repealed by the legislature before it could be fully implemented. In 2005, New Jersey attempted a limited trial of *Clean Elections* that was widely considered a disappointment after most eligible candidates were unable to qualify for participation in the program. The state reenacted a revised and expanded version of the same program in 2007, with somewhat greater success. Finally, in 2005, Connecticut established full public financing for campaigns beginning with the 2008 election cycle.

The various *Clean Elections* laws noted above and detailed in Chapter Two are similar in many respects, with minor deviations to suit each state's political and electoral landscape. This similarity is unsurprising because, in most cases, these programs drew inspiration from a common source: Maine's original Clean Election Act. Since the noble experiment with *Clean Elections* began in 1996, several government reform organizations have developed model legislation to assist legislative bodies and citizens' groups with adopting *Clean Elections* in their states and municipalities.⁴ While Vermont, Arizona, Massachusetts, New Jersey and Connecticut have each implemented unique public financing programs, they share a common philosophy and framework, as well as the specific components described in Chapter Two. Differences often arise when, to paraphrase the old adage, as Maine goes, the nation goes no longer.⁵ No two electoral systems are the same and Maine has many peculiar characteristics that may cause a specific policy to succeed there but nowhere else. Nonetheless, owing to Maine's positive experience, most subsequent *Clean Elections* programs represent variations of the original.

STORIES OF REFORM IN THE STATES

Each of the states that have adopted *Clean Elections* has its own story of how it did so. In several cases, the agents of change were reform-minded citizens, who through popular initiatives were able to transform the nature of campaign financing without legislative action. In others, lawmakers took the initiative and enacted *Clean Elections* through the usual legislative process. This chapter continues with the stories behind *Clean Elections* in each of the six states discussed above. The order follows the sequence in which these states adopted their programs, beginning with Maine (1996) and concluding with Connecticut (2005).

Maine

When Maine voters went to the polling booth in November 1996, they faced eight popular initiatives on a variety of matters including bond issues, congressional term limits, and sustainable forestry. Question Three asked, “[d]o you want Maine to adopt new campaign finance laws and give public funding to candidates for state office who agree to spending limits?”⁶ By a twelve-point margin, including majorities in fifteen of the state's 16 counties, Mainers said “yes,” thereby approving the nation's first voluntary system of full public financing for political campaigns.⁷

Approval of Question Three was the final step in a long road toward election reform that began with several political developments during the late 1980s and early 1990s. Among the galvanizing issues were a proliferation of wealthy and self-financed candidates, a divisive government shutdown⁸ and a ballot-stuffing scandal involving Maine's Speaker of the House of Representatives.⁹ As veteran campaign finance reformer David Donnelly later recalled, “Mainers were persuaded to support campaign finance reform by studies showing an explosion in the cost to run for governor . . . and in targeted special interest giving to influence policy decisions.”¹⁰ To illustrate his second point, Donnelly cited a number of legislative actions perceived to have thwarted the popular will at the behest of special interests. Among these was the Tired Truckers bill, which increased penalties for accidental death or injury caused by truckers' violation of safety regulations.¹¹ The bill enjoyed strong and well-documented public support, but was perceived to have been “watered down” by legislators, many of who had received substantial contributions from the trucking industry.¹²

Despite growing public support, the path toward change in Maine was anything but clear-cut. Between 1986 and 1996, the state legislature considered forty proposals aimed at reforming the state's government. Most failed.

The lone survivor established voluntary spending limits for legislative races that were roughly double the cost of similar races during previous election cycles.¹³ These events led editors of the *Bangor Daily News* to observe, dryly “[t]he Maine Legislature has not welcomed campaign-finance reform.”¹⁴ After failing to gain traction with lawmakers, reform-minded citizens and advocacy groups believed they had no choice but to circumvent their elected officials. Fortunately for *Clean Elections* advocates, Maine is one of twenty-seven states with a constitution that provides for some form of direct democracy: initiative, referendum and recall.¹⁵ Specifically, Maine’s constitution empowers its citizens with the *referendum* and *indirect initiative*.¹⁶ Using the referendum power, citizens may vote to annul any act of the legislature. Using the indirect initiative power, citizens may propose to the legislature specific measures for their consideration, excluding constitutional amendments. If the legislature declines to approve the measure, or does so with amendment, the original text is then submitted to voters for their consideration. In the latter case, the legislature may also submit their amended proposal to voters as a competing measure.¹⁷ In Maine, an initiative petition must receive signatures in excess of 10 percent of the number of votes cast for governor during the most recent gubernatorial election.

Maine Voters for Clean Elections, an organization established to bring the issue of campaign finance reform directly to the voters, was formed in 1995 as an alliance of public interest groups including Common Cause, the League of Women Voters, AARP and the Maine AFL-CIO. United by a common cause, these groups spent two years crafting a new system of campaign financing in Maine. Once complete, the language was cast as a popular initiative for legislative consideration. In a remarkable feat of coordination and brute force campaigning, volunteers canvassed the state on Election Day 1995 and within fourteen hours had gathered 62,320 signatures, 11,000 more than were necessary to forward the initiative to the legislature.¹⁸

Many Maine lawmakers were not pleased with the apparent usurpation of their legislative authority. In March 1996, a legislative committee reported a bill to the House floor that was identical to the citizen-led initiative. In reporting the measure, the committee reasoned “the Legislature would have more control over the legislation, and could more easily amend it, if lawmakers passed the measure on their own.”¹⁹ In light of the legislature’s recent record on campaign finance reform, initiative supporters were skeptical of the committee’s warm embrace, suspicious it might be “a way of voting for reform while keeping open the possibility of drastically changing [the program] in the future.”²⁰ In a move that baffled observers, the committee reversed course during an unpublicized work session the following week.²¹ Although Maine’s Senate continued to press for the measure’s immediate adoption through the legislative process,²² the two houses failed to reach an agreement, killing the legislation.²³

One more obstacle still lay between the *Clean Elections* initiative and the voters. Under the state constitution, Justices of Maine’s Supreme Judicial Court are obligated “to give their opinion upon important questions of law . . . upon solemn occasions, when required by the Governor, Senate or House of Representatives.”²⁴ Invoking this seldom used provision, the House transmitted to the Court a list of “important questions of law” regarding the initiative.²⁵ This move was perceived by reformers to be “another pointless exercise by a Legislature unwilling to slap controls on campaign spending.”²⁶ Ultimately, the Court opined that “the failure of both chambers to agree to the passage of the [*Clean Elections*] bill . . . [means] a solemn occasion no longer exists.”²⁷ The Court judiciously declined to give its opinion on the questions propounded by the House.

With the proposal finally cleared for the ballot, public sentiment appeared divided. The *Bangor Daily News* came out against Question Three, warning “the Maine Clean Elections Act leaves too many unanswered questions — particularly over its cost to taxpayers — to be supported.”²⁸ The *Portland Press Herald* was more supportive: “[a] ‘yes’ vote for Question 3 will initiate important campaign finance reform in this state.”²⁹ With so much time and effort already invested in shepherding *Clean Elections* through Maine’s initiative process and in warding off

legislative interference, reformers were motivated to succeed. In a retrospective of the effort, Donnelly described the strategy for winning public support:

The campaign waged by Maine Voters For Clean Elections was a result of years of research, coalition building, and grassroots organizing . . . Building a reputation for fair and nonpartisan research, the Maine reformers reached out to all parts of the political spectrum to build the basic coalition necessary to move the issue forward. Coalition partners . . . met for two and a half years to draft a solution that would withstand constitutional challenge, effectively address the problem, and be politically viable. The idea was to be principled and to win.³⁰

And win they did. Question Three was approved by a twelve-point margin on Election Day 1996 and, despite several legal challenges, the law remains fundamentally intact as of this writing.

Vermont

Vermont is among the twenty-three states that do not empower its citizens with direct democratic means. While *Clean Elections* in Maine was adopted *despite* legislative inaction, a similar measure in Vermont could be adopted only *by* legislative action. Vermont's story began in January 1997 when then-Governor Howard Dean stood before a joint legislative session to deliver his third inaugural address. "In order to serve in this building, [e]ach one of us must raise money to run a political campaign [and] it is important that we remove any perception of impropriety in the way money is raised and spent in political campaigns." Governor Dean proceeded to make a surprisingly candid admission: "money does buy access and we're kidding ourselves and Vermonters if we deny it."³¹ On the same day, the state House of Representatives introduced comprehensive campaign finance legislation designed to "reinvigorate the political process."³² In addition to establishing *Clean Elections* for gubernatorial candidates, the measure made other changes to the existing law, including significant reductions to individual contribution and expenditure limits.

Since the legislature was the primary actor in advancing this reform, the public record is rich with detail of the policy debate. In the course of only five months, the state legislature held more than sixty hearings, receiving detailed testimony from 145 individuals.³³ In contrast to Maine reformers, legislators in Vermont did not point to corruption as the primary motivation for reform. Findings of the five legislative committees that considered the reform package illuminate a different set of concerns. Leading the list was the rapidly rising costs of running for state office that, in the words of one state Senator, "precludes normal people . . . from getting into the running for [office]."³⁴ Controls on spending were justified by another state Senator who argued that publicly financed campaigns would "increase participation between voters and candidates [and] increase[] time for real debate."³⁵

Passage through the legislature was uneventful and in June 1997, Governor Dean signed the comprehensive act into law. During the legislation's journey through state government, opposition was generally mild and concerned with details rather than broad policy objectives. Among the details, however, one in particular loomed large: *Buckley v. Valeo*. There, the Court addressed the constitutionality of campaign contribution and expenditure limits, finding both interfered with forms of protected political speech. "The First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise."³⁶ Nonetheless, the Court also acknowledged a "basic governmental interest in safeguarding the integrity of the electoral process" and concluded that under certain circumstances, the ability of campaign finance limits to advance this interest would justify their encroachment upon protected speech.³⁷ The *Buckley* Court invalidated the expenditure limits at issue, finding their impact unjustifiably "direct and substantial."³⁸ On the other hand, the

Court upheld the contribution limits as effective means “to limit the actuality and appearance of corruption resulting from large individual financial contributions.”³⁹ With *Buckley*, the Court signaled that subsequent campaign finance limits would be subject to “exacting scrutiny” and a similar ad hoc balancing of competing interests.

Vermont’s law would test *Buckley*’s thirty year-old equation of campaign contributions with protected speech. In addition to providing for publicly financed elections, Vermont’s Act reduced existing individual contribution limits by 80 percent and imposed strict new limits on aggregate spending. Both limits were challenged in court within months of taking effect. Governor Dean expressed confidence that “[t]his is one of the areas where the Supreme Court is out of step with what the average person on the street wants.”⁴⁰ Relying heavily on *Buckley*, a federal trial court in Vermont ruled the contribution and expenditure limits were unconstitutional in August 2000.⁴¹ An appeals court reversed the decision in August 2002. Noting that *Buckley* permitted limits under certain circumstances, the court remanded the case for trial on whether those circumstances were met, including whether the provisions were narrowly tailored to advance an important government interest and whether any less restrictive alternatives were available.⁴² Before this analysis could occur, the U.S. Supreme Court accepted the case for review and, in June 2006, invalidated both the contribution and expenditure limits for infringing upon protected political speech.⁴³

Because of this decision, the old expenditure and contribution limits remained in force, along with the new public financing provisions. Because *Clean Elections* in Vermont, unlike most other states, does not provide for additional funding when participating candidates are outspent by non-participating candidates, reinstatement of the higher limits has rendered the program unattractive to most candidates, who fear a competitive fundraising disadvantage. A subsequent attempt to enact moderated limits was vetoed by Governor Dean’s successor in 2007 and today the program is essentially defunct.⁴⁴

Arizona

While reformers in Arizona began to consider *Clean Elections* as early as 1995, their movement did not gain significant traction until September 1997, when Governor J. Fife Symington III involuntarily resigned from office upon conviction for bank and wire fraud.⁴⁵ That year, an alliance of public interest groups including Arizona Clean Action, the League of Women Voters and United We Stand established Arizonans for Clean Elections (“ACE”) to create a new system of campaign finance in their state. Just as Maine reformers had decided two years earlier, the Arizona coalition determined their best chances for success lay not in legislative action but through the initiative process. Unlike Maine, however, Arizonans are empowered by the *direct* initiative, whereby citizens can place specific measures directly on the ballot *without* prior legislative consideration. The threshold of required signatures in Arizona is 10 percent of all qualified voters.⁴⁶

In February 1998, ACE began collecting the signatures necessary to qualify their initiative for the ballot.⁴⁷ ACE simultaneously conducted an elaborate educational and political campaign intended to build support for their new vision of public financing. As in Maine, support was sharply divided on a measure that “[p]roponents and foes alike agree . . . could cause a tectonic shift in Arizona’s political landscape.”⁴⁸ The Arizona Trial Lawyers Association warned of “real long-term implications that people just haven’t looked at.” One Democratic state senator, referring to the panoply of interest groups opposing the measure, opined “maybe we’re on the right track.”

Meanwhile, opponents looked to the courts to derail the initiative process. Their argument was highly technical. The state's constitution requires that "[e]ach sheet containing petitioners' signatures shall be attached to a full and correct copy of the title *and* text of the measure" (emphasis added).⁴⁹ The initiative's text was included, but the title was printed not on the first line, where titles usually appear, but on the third line following an enactment clause. *Clean Elections* opponents seized upon the hairsplitting opportunity. Plaintiffs argued the title's placement violated the constitution and disqualified the initiative. The Arizona Supreme Court disagreed, applying a "substantial compliance" standard out of "deference to the people's power to legislate."⁵⁰

The initiative was allowed to proceed and, ultimately, organized opposition failed to materialize. The Arizona Citizens' Clean Elections Act was approved by a two-point margin on Election Day 1998, a significantly narrower victory than in Maine two years earlier.⁵¹

Massachusetts

Adoption of *Clean Elections* in Massachusetts followed a path similar to Maine and Arizona's experience. In all three states, citizens and not legislators led the way to reform. This was possible because each state's constitution empowers its citizens with direct democratic means. In Massachusetts, the people are specifically vested with the referendum and indirect initiative powers.⁵² Though the initiative power in Massachusetts extends to constitutional amendment, it stops short of appropriation.⁵³ Citizens can adopt a measure, but only the legislature can fund it. As in Maine, legislators in Massachusetts were not pleased with the apparent usurpation of their legislative authority and were wary of *Clean Elections* from the outset.

Massachusetts's story begins in August 1997 when a number of advocacy groups, alarmed by the increasing sums of money being spent on campaigns for commonwealth-wide office, established Massachusetts Voters for Clean Elections ("Mass Voters") to reform their campaign finance system. Advocates cited previous campaigns for governor, including William Weld's 1994 reelection bid, during which he raised more than \$70,000 each week before Election Day. Further, with two years to go until the 1998 gubernatorial election, the four presumptive candidates had already raised a record-breaking \$7 million.⁵⁴ Responding to these trends, Mass Voters proceeded to draft an initiative to establish public funding for candidates running for legislative and most commonwealth-wide offices.

Compared with Maine and Arizona, the process of qualifying an initiative for the ballot is more complicated in Massachusetts, where petitioners face signature requirements in three distinct stages.⁵⁵ The first stage requires ten signatures (known as the original sponsors). When gathered by early August in the year preceding the election, this qualifies the petition for certification. The second stage requires signatures exceeding three percent of the votes cast for governor in the most recent election, with no more than twenty-five percent of the signers residing in a single county. Mass Voters received celebrity assistance from actor Alec Baldwin and Watergate special prosecutor Archibald Cox who rallied volunteers and canvassed for the 64,928 signatures required during the second phase.⁵⁶ Cox said at the time: "[*Clean Elections*] will help restore confidence in government and will make elected officials more accountable to voters rather than special interest money."⁵⁷ On December 3, seventeen days before the due date, organizers submitted more than 90,000 signatures.

Massachusetts law allows the legislature to consider the initiative until May. As in Maine, if the legislature declines to approve the measure or does so with amendment, the original text is then submitted to voters for their consideration. In the latter case, the legislature may also submit their amended proposal to voters as a competing measure. Massachusetts lawmakers did not embrace the *Clean Elections* initiative. Responding to testimony

suggesting a connection between private fundraising and public corruption, the chairman of the powerful House Ways and Means Committee said, “I think we’re all very much offended by your suggestion.”⁵⁸ This sentiment was shared by several other legislators who had difficulty understanding public perception of candidates’ “addiction to special interest money.”

Passage of the May deadline for legislative action triggered the third and final signature stage, requiring additional signatures exceeding one-half of one percent of the votes cast for governor in the most recent election. Mass Voters collected nearly twice the number of signatures required, sending *Clean Elections* to the voters.

Meanwhile, *The Boston Globe* excoriated the legislature for its failure to act, writing, “the Legislature, in summarily spurning the proposal in May, reinforced our belief that it is not the best body to determine how its members are selected. After all, every sitting member has a reason to support the existing system, which provided him or her with victory.”⁵⁹ The more conservative *Boston Herald* held a contrary view, likening the reform movement’s own fundraising practices to those they sought to ban:

Mass. Voters for Clean Elections has such a well-scrubbed sound to it [but] we have a much clearer picture of who some of these clean-election types are and how much of their own money they have put up to bankroll this effort to bring public financing of political campaigns to Massachusetts Apparently all of these big-money donors see no irony or even a conflict in kicking in all those bucks to back a law so that other folks couldn’t do precisely that in the future.⁶⁰

Notwithstanding the war of words, *Clean Elections* went on to approval by a nearly two-to-one margin, including substantial majorities across the commonwealth. In contrast to Maine’s Clean Election Act, the Massachusetts measure still faced a serious obstacle created by a peculiarity of the commonwealth’s initiative process. Under the Massachusetts constitution, initiatives may not “make[] a specific appropriation of money from the treasury of the commonwealth.”⁶¹ Although voters had adopted campaign finance reform by a wide margin, it was incumbent upon the legislature to fund the initiative.

Massachusetts’s constitution continues, “if a law approved by the people is not repealed, the [legislature] shall raise by taxation or otherwise and shall appropriate such money as may be necessary to carry such law into effect.” For years, the legislature’s refusal to fund the *Clean Elections* program prevented its full implementation. Finally, as the 2002 election cycle got under way, supporters went to court seeking to compel the commonwealth to do so. Massachusetts’s high court held that the commonwealth could not simply ignore a clear statutory mandate to fund the program. Thus, the legislature had only two options: to fund *Clean Elections* or repeal it.⁶² Ultimately, it chose the latter course and, only five years after voters overwhelmingly approved *Clean Elections*, the program was repealed.⁶³

New Jersey

Despite drawing inspiration from Maine’s Clean Election Act, New Jersey’s Fair and Clean Elections Pilot Project of 2005 was unique for its narrow applicability and finite period of existence. New Jersey’s story nonetheless shares a common theme with Maine’s: adoption of *Clean Elections* occurred in the context of political scandal and a subsequent push for ethics reform.

New Jersey’s state and local elections are held during off-years (i.e., 2009 and 2011). Five weeks before Election Day 2003, the seven Gannett Company-owned newspapers across the state ran an eight-part series provocatively

titled, “Profiting From Public Service: How NJ Legislators Exploit the System.” Every day for eight days, these papers detailed the routine practices of state legislators. The series began:

The New Jersey Legislature has become a personal money machine for many lawmakers who parlay their public service into private gain, a *Gannett* New Jersey newspapers investigation found. Lawmakers have used their connections to land multiple government jobs, obtain lucrative no-bid contracts and fatten their state pensions, the investigation found. Call it legislated greed. It’s all legal. And it’s bankrolled by you, the taxpayer.⁶⁴

Most of the activities detailed by the series complied with the letter, if not the spirit of the law, a point repeatedly stressed to highlight the need for comprehensive reform. The *Gannett* series, subsequently awarded a number of honors for its coverage, is widely credited for having raised ethics in government as a prominent campaign issue during the final weeks of the 2003 election season. The coverage is also believed to have ended the political careers of at least two veteran legislators, including the highest-ranking elected Republican in the state, who were cited repeatedly throughout the series.⁶⁵

In response to these electoral upsets and a growing chorus of citizens, government watchdogs and editorial boards calling for political and ethical reform, the legislature began to address several of the institutional issues facing state government. The result was a comprehensive ethics reform package unveiled in March 2004. By summer’s end, all but one proposal had been signed into law.⁶⁶

Entitled “Restoring the Public’s Trust,” the initiative included twenty-five bills, each directed at a distinct public problem including campaign finance, dual office-holding and public contracting. Legislation was also introduced to restrict nepotism, impose stricter lobbyist disclosure, lower financial reporting thresholds, boost penalties for ethics violations, and increase funding for the agency charged with administering that state’s campaign finance law. Leading the agenda was Assembly Bill No. 1, the “New Jersey Fair and Clean Elections Pilot Project,” establishing “a pilot project for the public financing of the campaigns of candidates seeking election to the office of member of the General Assembly.”⁶⁷ Sponsors hailed the complete package as “bold, unprecedented, and extensive.”⁶⁸ *The Asbury Park Press*, which had carried the “Profiting from Public Service” series, was less enthusiastic: “[the reform package] marks the boundaries for how far [Governor] McGreevey and the state’s power brokers are willing to go on pay-to-play: in essence, nowhere.”⁶⁹ Several minority Republican legislators accused Democrats of touting toothless legislation for the sake of appearing to address the problem.

Public reaction to the reform package was also mixed. Compared to previous anemic attempts at ethics reform, the 2004 effort could be cast as bold, unprecedented and extensive. However, one prominent New Jersey commentator predicted the reform package “[would] not fundamentally change the way political campaigns in the state are funded.”⁷⁰ Others observed that several of the twenty-five bills contained thinly disguised loopholes, rendering them less revolutionary than they at first appeared.

Mixed excitement and disappointment soon turned to morbid fascination during the summer of 2004 as news broke over a series of fundraising scandals involving several prominent state Democrats, including Governor James E. McGreevey. These events culminated in the Governor’s stunning announcement that he would resign his office, ostensibly because he was a “gay American.” While memory of the ethics package was quickly overshadowed by these events, Assembly Bill No. 1 would not be forgotten. The day before McGreevey’s revelation, he signed into law the “New Jersey Fair and Clean Elections Pilot Project,” ensuring a provisional and limited trial of full public financing during the 2005 election cycle.

Connecticut

“Like daffodils in Connecticut, the concept of public financing of state election campaigns pops up in the General Assembly every spring.”⁷¹ Connecticut’s story is a long one, beginning as early as 1997. Since then, state lawmakers considered *Clean Elections* on at least a half-dozen occasions before its eventual adoption in 2005.

Like residents of Vermont and New Jersey, those of Connecticut are not empowered with direct democratic means. Any attempt at campaign finance reform must therefore be approved by the state legislature. Like Maine, Arizona and New Jersey, the push for *Clean Elections* received a considerable boost from political scandal.

In 1999, the former Treasurer of Connecticut pled guilty to federal charges that he had “improperly used his position of public trust to enrich himself, his friends and to subvert the electoral laws of the State of Connecticut.”⁷² Shortly thereafter, Governor John G. Rowland, who had appointed the disgraced treasurer, publicly called for campaign finance reform, telling the state’s Election Enforcement Commission, “I want [the legislature] to come up with a reform package that we can all work with in a nonpartisan way.”⁷³ The following spring, the legislature heeded Rowland’s call, sending “An Act Proposing Comprehensive Campaign Finance Reform” to his desk.⁷⁴ Days later, Doris “Granny D” Haddock, the New Hampshire grandmother who walked across the continent to advocate campaign finance reform, arrived in Connecticut to call upon the Governor personally to approve the measure.⁷⁵ Rowland vetoed the bill, telling the press “I don’t think we should be spending as close to \$40 million to fund campaigns for candidates It became an incumbent protection plan.”⁷⁶

Several years later, higher-ranking scandal rekindled interest in public financing. In 2004, Rowland himself was under investigation amid allegations of official misconduct. Several advocacy groups, including Common Cause and Public Campaign, sensed renewed support for reform and began pressing the legislature to reconsider *Clean Elections*. Again, the effort led nowhere as the latest version of public financing languished in committee just as impeachments proceedings against Rowland were getting underway.

Rowland resigned in July and Connecticut’s Lieutenant Governor M. Jodi Rell assumed the state’s highest office. Initially opposed to the idea of public financing, Rell changed course during her first year as Governor, conditioned her support for public financing on adoption of additional reform measures, including bans on contributions from state contractors, lobbyists and political action committees.⁷⁷ As the regular legislative session drew to a close, Rell assumed the mantle of peacemaker as Democratic majorities in both chambers haggled over the details.⁷⁸ Ultimately, the parties failed to reach an agreement and the 2005 legislative session ended in June with no action taken.

An effort was made to revive campaign finance reform when Rell convened a bipartisan task force to hammer out a new proposal during the summer months.⁷⁹ When consensus failed to emerge, the Governor called the legislature into special session for the sole purpose of adopting reform legislation. “It is time for real leadership on this issue,” Rell told lawmakers. Noting the recent spate of high-profile political investigations, indictments and guilty pleas nationwide, she added, “[t]he need for campaign finance reform has never been clearer, or the opportunity greater.”⁸⁰ Nevertheless, the legislature remained unprepared to reach an agreement and called itself into a rare second special session in mid-October.⁸¹ After several more weeks of negotiation, legislators in November finally approved, and the Governor signed into law, “An Act Concerning Comprehensive Campaign Finance Reform For State-Wide Constitutional And General Assembly Offices.”⁸² In addition to providing full public financing, the Act also lowered limits on contributions to political campaigns and prohibited contributions from certain contractors and lobbyists. The new contribution limits went into effect in 2007, and public financing

of legislative campaigns became available in 2008, with public funding of campaigns for statewide office to follow in 2010.

Specific criticisms of the reform emerged even before Governor Rell had signed the law. Among these was the unequal treatment of minor party candidates, who would face higher qualifying thresholds to receive public funding than major party candidates would. The new rules also contained loopholes allowing legislative leadership committees to provide unlimited in-kind contributions to candidates who receive public financing. Additionally, trade organizations threatened suit over the contractor contribution ban. Yet after years of false starts, lawmakers were content simply to have gotten comprehensive reform off the ground. At the bill signing ceremony, Rell acknowledged the lingering issues and looming litigation saying, “I think as we see concerns . . . we can start to address [them] at the next legislative session.”⁸³ Nearly a decade after first contemplating *Clean Elections*, the program had finally become law in Connecticut.

CHAPTER THREE

ENDNOTES

¹ State of Maine, Citizen Initiative Question No. 3 (Nov. 1996) (“Do you want Maine to adopt new campaign finance laws and give public funding to candidates for state office who agree to spending limits?”). Available from, <http://www.maine.gov/sos/cec/elec/intcon.htm#q3>. Last accessed: Mar. 19, 2008.

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

³ *Randall v. Sorrell*, 548 U.S. 230 (2006).

⁴ See, e.g., Public Campaign. “Annotated Model Legislation for Clean Money/Clean Elections Reform.” Available from, <http://www.publiccampaign.org/modelbill>. Last accessed: Mar. 19, 2008.

⁵ Wikipedia, the Free Encyclopedia. “As Maine goes, so goes the nation.” Available from, http://en.wikipedia.org/wiki/As_Maine_goes,_so_goes_the_nation. Last accessed: Mar. 19, 2008.

⁶ State of Maine, Citizen Initiative Question No. 3 (Nov. 1996).

⁷ Maine Department of the Secretary of State, Elections Division. “Referendum Election Results – November 5, 1996, Questions 1-4.” Available from, <http://www.maine.gov/sos/cec/elec/ref96n1.htm>. Last accessed: Mar. 19, 2008.

⁸ See, e.g., Adam Pertman. “Budget OK Ends Maine Impasse.” *The Boston Globe*. July 17, 1991 at 21.

⁹ See, e.g., Adam Pertman. “For how sickened voters can get, look to Maine.” *The Boston Globe*. June 1, 1993 at 15.

¹⁰ David Donnelly, Janice Fine and Ellen S. Miller. *Money and Politics: Financing Our Elections Democratically*. Joshua Cohen and Joel Rogers, eds. Boston, Mass.: Beacon Press, 1999 at 9.

¹¹ See, e.g., D. Murphy Edward. “Bill Rejected Forcing Probe Of Truck Fatal.” *Portland Press Herald* (Maine). Mar. 22, 1996 at 1A.

¹² Donnelly et al. *Money and Politics: Financing Our Elections Democratically* at 9.

¹³ Donnelly et al. *Money and Politics: Financing Our Elections Democratically* at 26.

¹⁴ Editorial. “Campaign Finance Reform.” *Bangor Daily News* (Maine). 20 March 1996.

¹⁵ National Conference of State Legislatures. “Initiative, Referendum and Recall.” Available from, <http://www.ncsl.org/programs/legismgt/elect/initiat.htm>. Last accessed: Mar. 20, 2008.

¹⁶ Me. Const. art. IV, pt. 3, §§ 17-19.

¹⁷ This mechanism is in contrast to the *direct* initiative, whereby citizens may petition to place specific measures directly on the ballot *without* prior legislative consideration.

¹⁸ During the 1996 election cycle, 51,131 signatures were required to forward an initiative for legislative consideration. During the 2008 election cycle, 55,087 signatures were required. See Maine Department of the Secretary of State, Elections Division. “Deadlines for Current Citizen Initiatives.” Available from, <http://maine.gov/sos/cec/elec/pets02/pets02de.htm>. Last accessed: Mar. 20, 2008.

¹⁹ John Hale. “Panel approves campaign reforms; Finance laws head for general overhaul.” *Bangor Daily News* (Maine). 15 March 1996.

²⁰ Hale, “Panel approves campaign reforms; Finance laws head for general overhaul.”

²¹ John Hale. “Panel reverses vote to enact reform bill; Bowing to criticism, legislators decide on referendum route.” *Bangor Daily News* (Maine). 23 March 1996.

²² John Hale. “Campaign bill remains alive in state Senate; Supreme Court opinion sought.” *Bangor Daily News* (Maine). 30 March 1996.

²³ A. Jay Higgins and John Hale. “Legislature OKs resolve on new party; Action seeks to mend rift between state, Reformers.” *Bangor Daily News* (Maine). Apr. 2, 1996.

²⁴ Me. Const. art. VI, § 3.

²⁵ *Opinion of the Justices*, 674 A.2d 501 (1996).

²⁶ John Hale. “Campaign reform bill may head to court; Lawmaker seeks review by state’s supreme court justices on measure’s constitutionality.” *Bangor Daily News* (Maine). Mar. 27, 1996.

²⁷ *Opinion of the Justices*, 674 A.2d at 502.

²⁸ Editorial. “NO on Question 3.” *Bangor Daily News* (Maine). Oct. 29, 1996.

²⁹ Editorial. “‘Yes’ on Question 3 Can Improve Elections; it will reduce big money’s role in many Maine races.” *Portland Daily Herald* (Maine). Oct. 31, 1996 at 12A.

³⁰ Donnelly et al. Money and Politics: Financing Our Elections Democratically at 25-26.

³¹ Howard B. Dean, Governor, State of Vermont, Third Inaugural Address. (Jan. 9, 1997). Available from, <http://www.leg.state.vt.us/docs/1998/journal/ja970109b.htm>. Last accessed: Mar. 20, 2008.

³² H. Journal, 1997-98 Leg. Sess. (Vt. 1997) at 26. Available from, <http://www.leg.state.vt.us/docs/1998/journal/HJ970109.htm>. Last accessed: Mar. 20, 2008.

³³ National Voting Rights Institute. “Vermont’s Comprehensive Campaign Finance Reform Law.” Available from, http://www.nvri.org/campaignspending/cs_vermont.html. Last accessed: Mar. 20, 2008.

³⁴ Elizabeth Ready, Senator, State of Vermont. Testimony in *Landell v. Sorrell*, 118 F.Supp.2d 459 (D.Vt. 2000), *rev’d sub nom. Randall v. Sorrell*, 548 U.S. 230 (2006).

³⁵ S. Journal, 1997-98 Leg. Sess. (Vt. 1997) at 1384. Available from, <http://www.leg.state.vt.us/docs/1998/journal/SJ970612.htm>. Last accessed: Mar. 20, 2008.

³⁶ *Buckley*, 424 U.S. at 57.

³⁷ *Buckley*, 424 U.S. at 29, 58.

³⁸ *Buckley*, 424 U.S. at 39.

³⁹ *Buckley*, 424 U.S. at 25-26.

⁴⁰ David Nyhan. “The General Practice of Reform in Vermont.” *The Boston Globe*. July 13, 1997 at C4.

⁴¹ *Landell v. Sorrell*, 118 F.Supp.2d 459 (D.Vt. 2000), *rev’d sub nom. Randall v. Sorrell*, 548 U.S. 230 (2006).

⁴² *Landell v. Sorrell*, 382 F.3d 91 (2d Cir. 2002), *amended opinion issued Aug. 2004, rev’d sub nom. Randall v. Sorrell*, 548 U.S. 230 (2006).

⁴³ *Randall v. Sorrell*, 548 U.S. 230 (2006).

⁴⁴ S. 0164, 2007-08 Leg. Sess. (Vt. 2007) (“An Act Relating to Campaign Finance”).

⁴⁵ Arizona's constitution does not permit convicted felons to hold public office (Ariz. Const. art. 7, §§ 2 and 15). On appeal, Symington's conviction was overturned for improper dismissal of a trial juror (*United States v. Symington*, 195 F.3d 1080 (1999)). Before retrial could occur, Symington was pardoned by President Bill Clinton on his last day in office (see United States Department of Justice. "Pardons Granted by President Clinton (1993-2001)." Available from, http://www.usdoj.gov/pardon/clintonpardon_grants.htm#january202001. Last accessed: Mar. 20, 2008.).

⁴⁶ Also unlike Maine, Arizonans may use the initiative power to propose amendments to their state's constitution. This type of initiative has a higher signature threshold requirement of 15 percent. Ariz. Const. art. IV, pt. 1, § 1.

⁴⁷ During the 1998 election cycle, 112,961 signatures were required to qualify an initiative for the ballot. Arizona organizers collected more than 195,000 by the submission deadline. In 2008, the number of signatures required to qualify an initiative for the ballot had risen to 230,047. See Arizona Secretary of State. Initiative, Referendum and Recall Applications." Available from, <http://www.azsos.gov/election/2008/General/Initiatives.htm>. Last accessed: Mar. 20, 2008.

⁴⁸ Jeremy Voas. "The Serene Clean Elections Machine." *Phoenix New Times* (Arizona). Oct. 29, 1998.

⁴⁹ Ariz. Const. art. IV, pt. 1, § 1.

⁵⁰ *Meyers v. Bayless*, 192 Ariz. 376, 377 (1998).

⁵¹ Arizona Secretary of State. "State of Arizona Official Canvass; 1998 General Election." Available from, <http://www.azsos.gov/election/1998/General/Canvass1998GE.pdf>. Last accessed: Mar. 18, 2008.

⁵² Mass. Const. art. XLVIII, pt. 1.

⁵³ Mass. Const. art. XLVIII, pt. 2, § 2.

⁵⁴ Tim Connolly. "Watchdogs seek to limit campaign contributions." *Telegram and Gazette* (Massachusetts). Aug. 9, 1997 at A3.

⁵⁵ Mass. Const. art. Articles XLVIII; see also Mass. Const. amends. LXXIV and LXXXI.

⁵⁶ In 2008, the number of signatures required to transmit an initiative to the legislature was 66,593. Upon rejection by the legislature, in 1998 the number of signatures required to place an initiative on the ballot was 10,981. In 2008, this figure has risen to 11,099. See Secretary of the Commonwealth, Elections Division. "State Ballot Question Petitions." Available from, <http://www.sec.state.ma.us/Ele/eleguide/guidelaw.htm>. Last accessed: Mar. 20, 2008.

⁵⁷ Carolyn Ryan and Maggie Mulvihill. "Term limits question axed, tax cut may not make ballot." *The Boston Herald*. Dec. 4, 1997.

⁵⁸ Brian S. McNiff. "Campaign-spending bill finds legislators indignant." *Worcester Telegram & Gazette* (Massachusetts). Apr. 24, 1998 at A2.

⁵⁹ Editorial. "Clean Elections in Massachusetts." *The Boston Globe*. July 2, 1998 at A18.

⁶⁰ Editorial. "Campaign Law Hypocrites." *The Boston Herald*. Oct. 15 1998 at 30.

⁶¹ Mass. Const. art XLVIII, pt. 2, § 2.

⁶² *Bates v. Dir. of the Office of Campaign & Political Fin.*, 436 Mass. 144 (2002).

⁶³ Fiscal Year 2004 Appropriations Act, 2003 Mass. Acts 26.

⁶⁴ Paul D'Ambrosio. "Patronage, Fat Pensions, Other Perks All Permitted." *The Asbury Park Press* (New Jersey). Sept. 21, 2003.

⁶⁵ Senate President John O. Bennett, a twelve-term legislator, was defeated after his law practice was discovered to have routinely double-billed several municipalities for legal services; Democratic Assemblyman Gary L. Guear failed in his bid to

win a third term after he was discovered to have put his wife on the state payroll. Guear was the only incumbent Democrat ousted in 2003. Both legislators were heavily profiled by the series.

⁶⁶ AJR21, 2004-05 Leg. Sess. (N.J. 2004), establishing a commission to study the common practice of dual office-holding was never enacted. Identical legislation introduced during the next legislative session (AJR-72, 2006-07 Leg. Sess. (N.J. 2006)) died in committee. Before the great wave of retirement in 2008, roughly one-third of New Jersey legislators held at least two public offices.

⁶⁷ A1, 2004-05 Leg. Sess. (N.J. 2004). Available from, http://www.njleg.state.nj.us/2004/Bills/PL04/121_.PDF. Last accessed: Mar. 20, 2008.

⁶⁸ Press Release, Joseph Roberts, Democratic Maj. Leader and Albio Sires, Speaker of the Gen. Assembly. "Sires/Roberts Unveil 'Restoring The Public's Trust' 25-Point Ethics Reform Package." Mar. 16, 2004. Available from, <http://njcitizenaction.org/news/cfr004.html>. Last accessed: Mar. 20, 2008.

⁶⁹ Editorial. "Playing games with pay-to-play." *The Asbury Park Press* (New Jersey). Mar. 21, 2001.

⁷⁰ Herb Jackson. "Reforms won't close campaign cash spigot; Package of ethics measures leaves system largely intact." *The Bergen Record* (New Jersey). Aug. 16, 2004 at A1.

⁷¹ Editorial. "Public Financing Pushes Up Anew." *Connecticut Post*. Apr. 29, 2004.

⁷² Mike Allen. "Ex-Treasurer In Connecticut Pleads Guilty." *The New York Times*. Sept. 24, 1999 at B1.

⁷³ Adam Gorlick. "State agency first to investigate Silvester." *The Associated Press*. Oct. 6, 1999.

⁷⁴ An act proposing comprehensive campaign finance reform for state-wide constitutional offices and General Assembly offices., Conn. Pub. Act No. 00-44, *vetoed by Governor*.

⁷⁵ "Action in the General Assembly on Thursday." *The Associated Press*. Apr. 27, 2000.

⁷⁶ Adam Gorlick. "Governor Vetoes Campaign Finance Bill." *The Associated Press*. May 5, 2000.

⁷⁷ Susan Haigh. "Rell, Republicans agree to public financing of campaigns." *The Associated Press*. June 3, 2005.

⁷⁸ Susan Haigh. "Rell, new legislative leaders test political skills." *The Associated Press*. June 13, 2005.

⁷⁹ Susan Haigh. "Lawmakers, Rell take another stab at campaign reform." *The Associated Press*. July 15, 2005.

⁸⁰ Press Release, Jodi M. Rell, Governor of Conn. "Governor Rell Calls Special Session for Campaign Finance Reform; 'Immense Opportunity Now Before You,' Governor Says." Sept. 29, 2005. Available from, <http://www.ct.gov/governorrell/cwp/view.asp?Q=303872&A=1761>. Last accessed: Mar. 20, 2008.

⁸¹ Susan Haigh. "Democrats adjourn Rell's session, call own Oct. 18 date." *The Associated Press*. Oct. 12, 2005.

⁸² An act concerning comprehensive campaign finance reform for state-wide constitutional and General Assembly offices, 2005 Conn. Pub. Acts 5 (Spec. Sess.).

⁸³ Stephen Singer. "Rell Signs Legislation Seeking to Push Special Interests Out of Elections." *The Associated Press*. Dec. 8, 2005.

— CHAPTER FOUR —

CLEAN ELECTIONS IN NEW JERSEY

How New Jersey Enacted and Administered the Fair and
Clean Elections Pilot Projects of 2005 and 2007

“
In New Jersey, you contribute money not for access
but results. Anybody who doesn't admit that is lying.*
”

INTRODUCTION

New Jersey's first experience with public financing of elections began in 1977 with a matching-funds program for gubernatorial candidates.¹ In return for public funding, participants agreed to aggregate expenditure limits. The Gubernatorial Public Financing Program was made available to candidates during both the primary and general election cycles and was used successfully until 2005, when both major party candidates opted not to participate.

Until recently, the concept of *Clean Elections*—voluntary public financing for candidates who first demonstrate threshold public support by collecting numerous nominal contributions—was virtually unknown to New Jersey. As was the case in Maine, Arizona and Massachusetts, awareness and demand for *Clean Elections* in New Jersey did not arise simply from the conviction of the state's elected officials. In a state where direct democratic means such as initiative and referendum are not available, however, *Clean Elections* also could not arise simply from a well-organized citizens' campaign. Instead, the *Clean Elections* reform effort in New Jersey resulted from both: a legislative response to growing public demand for reform channeled by media accounts and editorial statements highlighting a series of real and perceived ethical lapses by public officials.

The *New Jersey Fair and Clean Elections Pilot Project* was first in a 25-part suite of reform bills introduced by the Democratic majority of the state General Assembly in 2004.² Entitled *Restoring the Public's Trust*, the initiative sought to address a range of ethics and campaign finance issues. Included was legislation to restrict nepotism, impose stricter lobbyist disclosure, lower financial reporting thresholds, boost penalties for ethics violations, and increase funding for the agency charged with administering the state's campaign finance law. The Pilot Project itself was introduced as a limited and provisional trial of *Clean Elections* in the state. During the 2005 election cycle, two legislative districts were selected to participate (the “2005 Pilot”). During the 2007 election cycle, a revised program based primarily upon the 2005 experience included three legislative districts (the “2007 Pilot”). New Jersey's state and local elections are held during off-years.

The 2005 Pilot was widely viewed as having serious flaws.³ Due to high threshold qualification requirements, only two of ten eligible candidates qualified for public funding. Nevertheless, this experience was only the first round. After careful review and evaluation of the 2005 Pilot, the New Jersey Citizens' Clean Elections Commission emphatically recommended “continuation of the Fair and Clean Elections Pilot Project in 2007.”⁴ New Jersey legislators proceeded to revise the program, adopting several of the Commission's recommendations and expanding the program to include Assembly and Senate races in three legislative districts during the 2007 election cycle.

* Alan Marcus, lobbyist and founder of the Marcus Group. Quoted in Craig Horowitz. “Jim McGreevey and His Main Man.” *New York Magazine*. Sept. 13, 2004.

This chapter examines New Jersey's adoption of a *Clean Elections* pilot project in 2004 and its implementation in 2005. The chapter continues with a review of the 2006 decision to continue the program and the adoption of a revised *Clean Elections* pilot project in 2007.

PROLOGUE: ADOPTING *CLEAN ELECTIONS* IN 2004

Just as reformers had previously done in other states, advocates of *Clean Elections* in New Jersey drew heavily from Maine's experience. To aid in the design process, Assembly Majority Leader Joseph J. Roberts, Jr. led a fact-finding mission to Maine in May 2004 to assess the performance of that state's 1996 Clean Election Act (discussed in Chapter Two).⁵ Rounding out the delegation was Assemblywoman Linda R. Greenstein, Beth Schroeder of the Assembly Majority Office, and Staci Berger of New Jersey Citizen Action, an outspoken reform advocacy group in the state. During his visit, Majority Leader Roberts informed the *Bangor Daily News*:

We don't need to be convinced that this is the way to go, we're already convinced of that . . . We want a road map that takes into account the fine tuning that's been done here in Maine so that when we start the process [in New Jersey], we can do it based on some of the good work that's been done here.⁶

To aid its mission, the delegation met with Maine legislative leaders, legislators who successfully ran *Clean Elections* campaigns, and representatives of Maine's Commission on Governmental Ethics and Election Practices, the agency responsible for administering state election laws, including the *Clean Elections* program. At the end of his trip, Roberts said, "I think the folks in Maine realize that *Clean Elections* has allowed them to have a government that's more cost-effective."⁷

Legislative Approval

Events moved swiftly upon the delegation's return to New Jersey. Within weeks, draft *Clean Elections* legislation was presented for public discussion at a special meeting of the Assembly's State Government Committee at Montclair State College. A number of advocacy groups including New Jersey Citizen Action, AARP, the New Jersey Environmental Federation and the New Jersey League of Women Voters spoke in favor of the proposal. None spoke against it.⁸ Legislation was formally introduced in the Assembly two weeks later, on June 3, and promptly referred to the State Government Committee. The state Senate followed suit, introducing companion legislation on June 7.

Perhaps to underscore the bill's priority for legislators, the *New Jersey Fair and Clean Elections Act Pilot Project* was designated Assembly Bill No. 1 ("A1"). Included among the primary sponsors were such legislative heavyweights as Assembly Speaker Albio Sires, Majority Leader Roberts, Appropriations Committee Chairman Louis D. Greenwald and Bonnie Watson Coleman, chair of the state Democratic Party. In a rare joint session of the Senate and Assembly State Government Committees, testimony on A1 was received on the day of its Assembly introduction. Roberts began the discussion, telling committee members he had "reached the conclusion that *Clean Elections* [holds] the best hope for our state as we attempt to confront our commitment to campaign finance reform."⁹ Anticipating the argument that other elements of the 25-part package were sufficient to address New Jersey's ethics problems, the Majority Leader stressed the need for comprehensive reform:

If we've learned anything from the federal experience . . . it is that there is no silver bullet when it comes to reforming our campaign finance system . . . the growth of the independent expenditure entities—the 527s—the degree to which people have found ways to manipulate the system at the federal level, has suggested that as one door is closed, another door becomes open [W]e should take a much more holistic approach to trying to solve this problem. Removing some of the money from politics is certainly a worthy goal . . . but our goal has to be to radically reform the system, and to eliminate to the extent that we can the corrosive influence of money in politics.¹⁰

The *Clean Elections* pilot, Roberts argued, was an indispensable part of the 25-part reform package awaiting legislative consideration. Further, the Majority Leader assured committee members that their consideration of A1 need not be final. “This is something that will most likely require fine tuning.” Roberts noted that the bill called for creation of a nine-member Citizens’ Clean Elections Commission (“NJCEC”) to review and evaluate the 2005 Pilot. Guided by the Commission’s recommendations, “the demonstration project . . . [is] to be expanded to include . . . four districts at a minimum, and also the primary elections in 2007.”¹¹

Criticism of the entire reform package, including the *Clean Elections* pilot, was immediate and advanced almost entirely by minority Republican legislators. Though the points of contention were several, most can be categorized as either process- or program-related. The former was brought into focus by veteran state Senator Leonard T. Connors, who protested the legislation’s unavailability for inspection before the hearing. In particular, A1 had been introduced in the Assembly only two hours earlier in the day. And while Senators were asked to participate at the joint hearing, companion legislation had yet to be introduced in the Senate. “This is nothing more than a sham,” lamented Connors. “We have to . . . go back and touch first [base] and make sure that the process is done right.”¹²

Republicans were also critical of the bill’s substance, in particular the required number of qualifying contributions to be collected before public funding would be available to candidates. Michael Patrick Carroll, a pillar of the Assembly’s conservative bloc, predicted great difficulty in satisfying the high dual-threshold of one thousand \$5 and five hundred \$30 qualifying contributions. Assemblyman Carroll further noted that candidates for the lower legislative chamber in both Maine and Arizona were required to collect significantly fewer contributions of a single, five-dollar denomination. In Maine, House candidates need only gather fifty such contributions; in Arizona, only about two hundred are required.¹³ Despite New Jersey’s larger population in each legislative district, Carroll observed “the number of hours in a day is the same in Maine as it is in New Jersey . . . calling fifty people takes exactly the same amount of time in Maine as it does in New Jersey.”¹⁴ The issue would resurface during the 2005 Pilot and would become a focal point of the NJCEC’s post-election review.

Several of the advocacy groups at the Montclair State College hearing in May repeated their favorable testimony at June’s joint committee meeting. Supporters hailed the *Clean Elections* pilot as “the most important good government proposal within the 25-bill package” and “the most important issue that you will probably vote on while you’re in office.”¹⁵ Stuart D. Shaw of Clean Money United, however, was less enthusiastic. While underscoring his support for *Clean Elections*, Shaw focused his criticism on several issues, including two that would resurface after the 2005 Pilot had run its course. The first pertained to third party candidates who sought public funding. “Where does the independent [candidate] come in,” Shaw asked committee members. “If the independent goes through this process, they get one half of the funding?” Shaw also expressed dismay that primary elections were not included in the 2005 Pilot. Although Majority Leader Roberts stated in earlier testimony that the pilot would be expanded in 2007 to include these contests, Shaw believed their exclusion in 2005 would be

detrimental to non-traditional candidates such as minorities and those of modest means. “If you don’t cover the primary . . . they’re never going to make it.”¹⁶

Despite these and several other concerns expressed at the joint hearing, A1 was favorably and unanimously reported to the Assembly floor less than six hours after it had been introduced there. Two Republican assemblymen—Michael Patrick Carroll and Joseph Azzolina—abstained. Carroll remained concerned about the difficulty and expense of collecting 1,500 qualifying contributions, and Azzolina maintained the issue required additional study.¹⁷

The following week, companion legislation was introduced in the state Senate. Meanwhile, public debate of A1 resumed during a voting session of the General Assembly on June 10. From the Assembly floor, Majority Leader Roberts reiterated his support for the pilot and deflected criticism that legislative consideration of the measure had been rushed at the expense of public input. Labeling such claims “preposterous,” Roberts cited five hearings held around the state and portrayed the prior week’s joint committee hearing as the “culmination” of five months’ of deliberation in public view.¹⁸ Notwithstanding the Majority Leader’s able and articulate defense of the bill, he could not appease all who would be critical. Among those publicly expressing their opposition, all were members of the Republican minority. Assemblyman Richard A. Merkt described A1 as “an infamous first in New Jersey and in our history . . . the first occasion of politicians raiding the public fisc—our treasury—for legislative campaign cash.”¹⁹ Assemblyman Michael J. Doherty accused Democrats of manipulating the electoral system by conditioning public funding on numerous small qualifying contributions. “Members from Democratic areas have a lot more union members and I think . . . we’re going to see union contributors giving \$5 as part of their union obligation.”²⁰ After more than an hour of debate, the Assembly approved the pilot by a 52-to-18 margin, with nine abstentions.²¹

Within the hour, A1 was transmitted across the State House to the Senate, which was in a concurrent voting session. Debate there lasted only twenty-five minutes.²² After defeating a procedural move to amend A1, which would have delayed its passage, the Senate approved the pilot by a 21-to-17 margin.²³ In both chambers, a small handful of Republicans joined with majority Democrats to approve the legislation.

Gubernatorial Approval

With A1 approved by both legislative houses, it proceeded to the desk of Governor James E. McGreevey, where it remained for nine weeks. While the 2003 election cycle had brought heightened public scrutiny of the legislature, scrutiny that hastened the *Restoring the Public’s Trust* initiative, during the summer of 2004, the focus was squarely on the executive. In July, federal investigators announced the governor had been recorded while making an ineloquent reference to Machiavelli’s *The Prince*, supposedly signaling his willingness to intervene on a land deal in exchange for campaign contributions.²⁴ Days later, the governor’s long-time adviser and top party fundraiser was indicted in a bizarre scheme involving prostitution, witness tampering and illegal campaign financing.²⁵

It was in this ethically challenged atmosphere that McGreevey signed the *Clean Elections* pilot into law on August 11.²⁶ The next day, the Governor shocked observers with his resignation, informing the state that he was a “gay American.”

THE NEW JERSEY FAIR AND CLEAN ELECTIONS PILOT PROJECT OF 2005

Laying the Groundwork

Months before participating districts would be chosen, administrative preparation for the 2005 Pilot was already underway. To begin, party leaders appointed nine individuals, including five members of the public and four legislators, to the ad hoc New Jersey Citizens' Elections Commission ("NJCEC"), which would oversee and evaluate the pilot. At their organizational meeting in March 2005, the commissioners unanimously selected as their chairman former state Senator William E. Schluter, a venerated advocate of government reform and a renowned maverick during his long service in the legislature.²⁷

As the Commission quickly discovered, drafters of *Clean Elections* in New Jersey did not anticipate every eventuality that might affect the new program's success. The experiences of Maine and Arizona illustrate that is to be expected. As these states learned from watching *Clean Elections* in action, both found it necessary to adjust details of their programs. The difficulty in doing so varies by a number of factors, including the authority of the legislature to amend the program. In Maine, the legislature had unfettered authority to amend statutes passed by voter initiative, and the legislature did so on several occasions.²⁸ Arizona's legislature is prohibited from amending voter initiatives, "unless the amending legislation furthers [its] the purposes . . . and at least three-fourths of the members of each house of the legislature [agree]."²⁹ Such a tall hurdle to revision has limited amendment of Arizona's *Clean Elections* legislation to administrative rulemaking within the confines of the initiative's original language.

New Jersey's situation is somewhat more complicated than Maine and Arizona's. Unlike these states, the *Clean Elections* pilot was entirely a creature of the legislature. Nonetheless, the unusual degree of specificity in the enabling legislation constrained the Election Law Enforcement Commission ("ELEC"), which was responsible for promulgating the administrative rules necessary to implement the 2005 Pilot. New Jersey's statute required nearly 7,400 words to establish a four-month pilot for a single public office in two of the state's 40 legislative districts. By contrast, the Maine Clean Election Act used only 3,650 words to establish *Clean Elections* in perpetuity for all statewide and legislative elected offices. The exacting detail of New Jersey's law left ELEC and the NJCEC with limited freedom to adjust the pilot to exigent circumstances that the legislature had not anticipated.

The legislature may have complicated matters further by failing to address eventualities that *were* foreseeable, namely those specifically raised by members of the Republican minority. During the seven days between the bill's introduction and final legislative approval, the *Clean Elections* legislation was never amended, notwithstanding the various concerns expressed in committee and on the Assembly and Senate floors. While some majority Democrats expressed concern that doing so would delay final passage, leaving insufficient time to implement the pilot, this claim is dubious in light of the nine weeks that elapsed before Governor McGreevey signed the bill into law.

Nonetheless, ELEC and the NJCEC sought to address late-breaking programmatic issues as best they could. At the Commission's second meeting in April, ELEC presented commissioners with a proposed body of regulations to implement the pilot.³⁰ Commissioner Bill Baroni, a Republican Assemblyman, was first to note a potential fairness issue regarding the proposed allocation of *Clean Elections* funds. In the event a *Clean Elections* candidate faced a nonparticipating opponent, the former would receive the latter's share of public funding *in addition*

to her own.³¹ While the intent of the provision was clear: to provide participating candidates with sufficient public funding to compete against privately and perhaps more lavishly funded opponents, Baroni described a situation where the non-participating candidate had made a good faith effort to participate, but fell short of the qualifying contribution threshold. In this case, double-funding the participating candidate would be tantamount to penalizing the candidate who had tried, but failed to qualify for public funding. The NJCCEC communicated this concern to ELEC and requested that it be addressed in their administrative rulemaking. ELEC responded, “[i]n the absence of such a statutory provision or standard, the Commission does not believe that it has the latitude to create [a new qualification benchmark] by its rulemaking.”³² ELEC proceeded to adopt its proposed rules package without change.³³

District Selection

The Act nominated six legislative districts in two slates—one Democratic-leaning and the other Republican-leaning—for participation in the 2005 Pilot. All were deemed “competitive and moderately competitive districts that would lend themselves as meaningful ‘test districts.’”³⁴ From these six districts, one from each slate was to be selected by the respective state party committee chairperson. In his testimony before the Assembly and Senate State Government committees one year earlier, Majority Leader Roberts commented on the selection process. Moderately competitive districts, he said, are those “held by one party or the other, but are within the legitimate reach of the opposing party.”³⁵ Roberts explained that the use of safe districts “would not represent a fair place for us to demonstrate whether or not [*Clean Elections*] could be successful.” On the other hand, use of highly competitive districts would also be counterproductive because “there frankly is too much at stake [and external political forces] would be impediments” to the pilot’s success.³⁶

Final selection of the participating districts was made on June 27, twenty days after the primary election. In a statement following her selection of the Sixth legislative district, Assemblywoman and Democratic State Committee chair Bonnie Watson Coleman noted the district “has the 2nd highest number of registered voters . . . 55 percent of whom [*sic*] are unaffiliated with either political party.”³⁷ She also noted Republicans had held both Assembly seats as recently as 1996. The candidates who became eligible to participate in the Sixth district were Pamela Rosen Lampitt and incumbent Louis D. Greenwald, both Democrats, and challengers JoAnn Gurenlian and Marc Fleischner, both Republicans. All four had been nominated in uncontested primary elections and each would become eligible to receive \$65,100 in public funding upon qualification as a *Clean Elections* candidate.³⁸

Republican State Committee chair Tom Wilson was less enthusiastic about his choice of the Thirteenth legislative district. In a statement following the selection, Wilson described “serious and significant shortcomings” of the program. “While the concept behind this law has merit . . . after a careful and thorough review I am left with no choice but to conclude that the law . . . is fatally flawed and destined to fail.”³⁹ In particular, Wilson considered the qualifying contribution threshold “simply too high” and detrimental to the law’s purpose of reducing the burden of fundraising. Wilson also called attention to the issue of independent expenditures. “Under the scheme enacted in New Jersey,” he said, “a third party could expend hundreds of thousands of dollars on behalf of candidates participating in this pilot program. Should that occur, the offended candidates will be entitled to a comparative drop in the financial bucket.” The candidates who became eligible to participate in the Thirteenth district were Republicans Amy Handlin and incumbent Samuel D. Thompson, Democratic challengers Bill Flynn and Michael Dasaro, and Green Party candidates Mike Hall and Greg Orr. Unlike the Sixth district, the major party candidates emerged from a contested primary election.⁴⁰ Each of the major party candidates would become eligible to receive \$59,175 in public funding upon qualification as a *Clean Elections* candidate. Candidates

nominated by the Green Party, considered a minor party, would each become eligible to receive only half of this amount, or \$29,587.50.

Candidate Qualification

About seven weeks into the ten-week qualifying period, it became clear that most of the candidates were having difficulty collecting the required number of \$5 and \$30 qualifying contributions. Several candidates appeared likely to miss the September 7 deadline, raising the possibility that some would be unable to qualify for public funding, despite their effort to do so.

Several candidates raised this issue at the NJCCEC's August 18 meeting, telling the Commission that the qualifying period was too short and the number of required qualifying contributions too high. Assemblyman Thompson testified that the pilot had not reduced the burden of fundraising because the qualification requirements were "onerous and unnecessarily burdensome."⁴¹ Amy Handlin asked the Commission to broaden the permissible financial instruments to allow cash and check cards to be used to transact the small contributions.⁴² The following week, ELEC issued an advisory opinion permitting qualifying contributions by check card since, like paper checks, they provided an auditable paper trail leading to the individual contributor.⁴³

Despite this relaxation of the rules, the success of most participating candidates remained in doubt. On August 31, seven days before the qualification deadline, Governor Richard J. Codey issued an executive order extending the qualifying period by two weeks, to September 21. "I will do everything in my power to ensure this project's success," the Governor said. "By ensuring the integrity of the New Jersey's elections we are building a stronger government that our residents can trust."⁴⁴

When the extended qualifying period finally ended, only two of the ten candidates had raised enough contributions to qualify for public funding. Assemblyman Greenwald raised 1,473 five-dollar contributions (473 more than required) and 690 thirty-dollar contributions (190 more than required).⁴⁵ His running mate, Pamela Lampitt, collected 1,404 and 594, respectively. Their Republican opponents, Marc Fleischner and JoAnn Gurenlian, each raised about 800 five-dollar and 250 thirty-dollar qualifying contributions, the next highest number of the other participating candidates, but still short of the 1,000 and 500 thresholds. Because their opponents failed to qualify, Greenwald and Lampitt each received \$130,200, including their allotment of \$65,100, as well as their opponents' allotment. With only seven weeks remaining until Election Day, Fleischner and Gurenlian received nothing.

An Unprecedented Offer

Nonetheless, the would-be *Clean Elections* candidates would not have to resort to private fundraising. In an unexpected and politically unprecedented move, certified *Clean Elections* candidates Greenwald and Lampitt offered to transfer to their opponents an amount of public funds proportional to the number of qualifying contributions they had been able to obtain before the deadline. In return, Fleischner and Gurenlian would sign a pledge committing their campaign to abide by the *Clean Elections* rules and restrictions. During the second week of October, ELEC certified that Fleischner and Gurenlian had collected 58 percent of the dollar value required to qualify for public funding. As a result, Greenwald and Lampitt made a \$75,516 campaign "contribution" to their opponents, almost certainly the largest of its kind in the history of New Jersey politics.⁴⁶ In a statement made

after they had completed the transfer of funds, Greenwald and Lampitt said that by doing so “New Jersey will be in a better position to examine the success of *Clean Elections* and how it should be expanded in years to come.”⁴⁷

While only the Democratic slate was *Clean Elections* certified, their Republican opponents nonetheless campaigned as if they were as well. *The Associated Press* observed at the time, “[t]he Democrats will still have more campaign cash than their challengers, but the spending will be more balanced than usual.”⁴⁸ Ultimately, the Democrats were victorious, winning in a near landslide with 59.9 percent of the major party vote, nearly identical to the outcome in 2003, when Democrats won with 59.5 percent of the major party vote.⁴⁹ In the Thirteenth district, none of the six candidates met the qualifying contribution threshold to become *Clean Elections* certified.

Assessing the 2005 Pilot Project

The success of the 2005 Pilot can be assessed using several different measures. Perhaps most readily apparent is the program’s operational success. Did the pilot function as intended? Clearly, the answer is no. Despite good faith efforts including ELEC’s advisory opinion allowing contributions to be made by check card, and Governor Codey’s last-minute extension of the qualification deadline, only two out of ten candidates qualified as *Clean Elections* candidates. The 2005 Pilot can also be viewed as a successful failure, in that the experience revealed fundamental shortcomings in the program and enabled the legislature to make adjustments for the 2007 election cycle. Among the more notable problems included the number and multiple denominations of required qualifying contributions and the insufficient period prescribed to collect them.

Other metrics for evaluation of the 2005 Pilot include the goals set out by its framers. These criteria, like so many others, are difficult to assess because of the small number of participating candidates and the insufficiency of data created as a result. Essentially, there was only one *Clean Elections* race in 2005. Any analysis is further confounded by the broad language used by those who drafted the legislation. It is notable that many of the reasons provided by the legislature when introducing *Clean Elections* were styled to highlight the shortcomings of citizens’ *perceptions* of state government rather than the government itself. Stripped of this language, the purposes of Assembly Bill No. 1, as enumerated by its findings and declarations, are:

1. To reduce the undue influence of individuals and committees that contribute large amounts of money to the political process.
2. To protect free speech rights of candidates and voters who are not wealthy.
3. To remove access to wealth as a major determinant of a citizen’s political influence.
4. To reverse the escalating cost of elections.
5. To release participating candidates from the chore of raising money.
6. To allow *Clean Elections* candidates more time to conduct their official duties and communicate with their constituents.⁵⁰

The experience of the 2005 Pilot is simply too limited to assess such broad goals.

Another place to look for suitable means of evaluation is the legislative history. In his testimony before the Assembly and Senate State Government committees in 2004, Majority Leader Roberts told committee members “*Clean Elections* . . . holds the greatest promise to radically reform our system in New Jersey and to eliminate our

dependence on money in politics in our state.”⁵¹ Assemblywoman Linda R. Greenstein, another primary sponsor of the legislation, cited the pilot project as “an opportunity to achieve competitive balance in our electoral system and to encourage greater public participation in the political process.”⁵² Greenstein elaborated to suggest that public financing would encourage the candidacies of those who are traditionally underrepresented in government, including women, minorities and those of modest means. So to the above list, one might add:

7. To eliminate the interdependence of money and politics in New Jersey.
8. To achieve competitive balance in the state’s electoral system.
9. To encourage greater public participation in the political process, particularly by non-traditional candidates.

These points provide some insight to the professed purpose of *Clean Elections* in New Jersey, but the bill and its legislative history offer little to suggest how these broad statements were intended to be evaluated. Even if this were clear, a confounding lack of data persists. Meaningful evaluation of *Clean Elections* in New Jersey must await additional data, which can come only from an expansion of the program in the state.

The NJCCEC Evaluation

Perhaps the greatest value of the 2005 Pilot was realized from its shortcomings. Within weeks of Election Day, the NJCCEC began analyzing how and why the pilot failed to work as intended, focusing on whether and how to continue the experiment in 2007. At the Commission’s first post-election meeting, Majority Leader Roberts outlined the task ahead as “a long look at the *Clean Elections* demonstration . . . the good, the bad, and the ugly.”⁵³

First among the concerns discussed was voters’ general lack of awareness of the pilot itself. A joint survey by Fairleigh Dickinson University and Rutgers’s Eagleton Center for Public Interest Polling revealed “eight out of 10 voters in the State had heard little or nothing about the clean elections program and more than two-thirds of voters in the [participating] districts did not know that the pilot project would occur in their district.”⁵⁴ The study was aptly titled “The Well-Kept Secret of Clean Elections.”⁵⁵ Majority Leader Roberts attributed this ignorance in part to “the absence of any State involvement in promoting the program [and to] the most expensive gubernatorial campaign in State history.”⁵⁶ Ingrid Reed, director of Eagleton’s New Jersey Project, further noted that if a central purpose of the pilot was to restore the public’s trust in government, the general ignorance of the pilot’s existence was an impediment to that goal.⁵⁷

The second, equally important concern addressed by the Commission was the high qualifying contribution threshold, the primary reason so few candidates qualified for public funding. On this issue, Roberts urged the Commission “to make qualifying for *Clean Elections* easier, but also to maintain a system with taxpayer safeguards Qualifying for *Clean Elections* should not be automatic, but neither should it be impossible.”⁵⁸ Roberts suggested further that selection of participating districts should be made before the primary election to allow participating candidates to begin collecting qualifying contributions earlier in the election cycle. In the event a candidate was defeated in a primary contest, qualifying contributions previously gathered could be returned.⁵⁹ Others gave similar testimony, reiterating Roberts’s central points. These speakers included the Sixth district candidates Assemblyman Greenwald and Assemblywoman-elect Lampitt, who both qualified for public funding, Republican candidate Gurenlian, who did not, and Gurenlian’s campaign manager, Jeff Kasco. The

preponderance of testimony reinforced voter awareness and qualifying requirements as the 2005 Pilot's greatest shortcomings.

At its second post-election meeting, the Commission received testimony from Thirteenth district Assemblyman Thompson and Assemblywoman-elect Handlin, who did not qualify for public funding. Both reiterated concerns about voter ignorance of *Clean Elections* and the tall hurdle to qualification. They also offered specific solutions. Assemblyman Thompson offered that potential qualifying contributors were confused by having to make their \$5 or \$30 checks payable to the state, rather than the candidates themselves. Changing this requirement would not only reduce confusion, Thompson argued, but would also enable candidates who fail to qualify for public funding to retain and spend the qualifying contributions instead.⁶⁰ Assemblywoman-elect Handlin proposed placing *Clean Elections* on the 2006 ballot for voter approval, which would serve to increase public awareness of the program.⁶¹

The NJCCEC's Recommendations

Between the general election and release of its final report the following May, the nine-member New Jersey Citizens' Clean Elections met on eight occasions to receive testimony from the public, advocacy groups and candidates who participated in the 2005 Pilot. On February 7, 2006, the Commission submitted to the New Jersey Legislature, as required by law, its preliminary report containing a thorough review of the 2005 Pilot experience, including an evaluation of the concerns noted above.⁶² On May 8, the Commission submitted its final report, which emphatically recommended "the continuation of the Fair and Clean Elections Pilot Project in 2007."⁶³ Chairman William E. Schluter portrayed the Commission's work and recommendations as offering "a balanced and comprehensive approach that will address many of the concerns raised about the 2005 pilot project."⁶⁴ On November 3, the 180th day after issuing its final report, the New Jersey Citizens' Clean Elections Commission was dissolved.

In addition to a series of recommendations, the Commission's final report also included draft proposed legislation creating a 2007 Pilot.⁶⁵ Despite only two candidates having been certified as *Clean Elections* candidates, the draft legislation deemed the 2005 experience "a success in the sense that all the candidates in each of the selected districts sought election as 'clean elections' candidates."⁶⁶

INTERLUDE: READOPTING *CLEAN ELECTIONS* IN 2006-07

On December 14, 2006, the General Assembly approved Assembly Bill No. 100 ("A100"), the *2007 New Jersey Fair and Clean Elections Pilot Project Act*, by a 67-to-11 margin, with two abstentions. Assembly Speaker Joseph J. Roberts, Jr., a primary sponsor of the bill, explained the legislation was "based on findings from a four-member bipartisan Assembly working group . . . and the recommendations of the New Jersey Citizens' Clean Elections Commission."⁶⁷ Members of the working group included Assemblypersons Linda Greenstein and Bill Baroni, past members of the NJCCEC, and Assemblywoman Amy Handlin, a 2005 Pilot participant. All three were sponsors of the new legislation.

While A100 followed many of the Commission's recommendations, it also departed from them in several respects. Among the most significant changes were to the qualifying contribution requirement, which the Commission found needed significant revision.⁶⁸ The threshold for qualification was substantially reduced and the dual-denomination requirement was eliminated. To guard against the all-or-nothing danger of coming up one

qualifying contribution short, the new law created a sliding scale for public funding. Once candidates crossed a modest threshold (400 qualifying contributions), they would become eligible for a minimum amount of public funding that would increase as the number of qualifying contributions increased (up to a maximum of 800). The legislation also broadened the permissible means of making such contributions to include cash, checks, money orders, debit cards and credit cards.

The 2007 Pilot did not provide public funding during the primary election cycle, contrary to the Commission's 2006 recommendation,⁶⁹ the 2005 Act's vision,⁷⁰ and then-Majority Leader Roberts's 2004 testimony.⁷¹ Nor did the 2007 Pilot provide equal funding to minor party candidates, which the Commission had also recommended.⁷² Minor party candidates in 2007 continued to be eligible for only 50 percent of major party allocations.⁷³

The Commission had also recommended that the 2007 Pilot be expanded to include six legislative districts, two each in North, Central and South Jersey, selected in a bipartisan fashion. Assembly Bill No. 100 did expand the pilot, but only to three districts, with no geographical distribution or minimum partisan competition requirements. The 2005 Pilot districts were not required to participate, as the Commission had recommended, which would have enhanced their study value considerably. Instead, the new legislation required that two of the 2007 districts be one-party-dominant and selected by legislative leaders from the dominant party. The third district was to be politically split and chosen by legislative leaders of both major parties.⁷⁴ The 2007 legislation also provided that *each* qualifying candidate in this "split district" would receive "the average amount of money expended by *all* candidates for the office of member of the General Assembly *and* the office of member of the Senate in that legislative district in the two immediately preceding general elections for those offices" (emphasis added).⁷⁵ The result was substantially greater public funding for candidates in the split district.⁷⁶ The Commission had recommended uniform public subsidy across all districts.⁷⁷

On the matter of seed money, A100 increased the individual contribution limit to \$500, contrary to the Commission's recommendation that this limit be *reduced*.⁷⁸ The 2007 legislation, however, did follow the Commission's recommendation to increase the aggregate limit from \$3,000 to \$10,000.⁷⁹

The 2007 legislation expressly conditioned the continuation of *Clean Elections* in 2009 on the 2007 Pilot's "success," defined as "at least 50 percent" of the major party participants qualifying for *Clean Elections* funding,⁸⁰ a condition not satisfied by the 2005 Pilot. This language was not included in the 2005 legislation, nor was the issue addressed in the Commission's reports.

Despite the relative ease with which the Assembly approved A100, the legislation encountered significantly more resistance in the Senate, where companion legislation was introduced on January 8, 2007. Even after a favorable committee report three weeks later, several members of the Senate State Government Committee were equivocal in their support for the bill. The legislation was subsequently second-referenced to the Senate Budget and Appropriations Committee, which considered the proposal on February 8. Although committee members had intended to receive testimony from several witnesses, only former NJCCEC chair William E. Schluter was permitted to address the committee. During his testimony, Schluter reiterated the goal of "cleaning up the election process and . . . removing the bad influences of money" and protested the "major, major differences" between the proposed legislation and the Commission's recommendations.⁸¹ In particular, Schluter warned the committee,

To eliminate primaries from the process is only doing a part of the job because if money is going to corrupt when it is given for a general election, it's going to corrupt and have that bad influence if it's given for the primary election.⁸²

Because most candidate selection is made during the primary election cycle, Schluter concluded, the unavailability of funds during these contests would hinder other important *Clean Elections* goals, including encouragement of those candidates who are frequently underrepresented in government, including women and minorities. "I . . . give you . . . the famous quote of Boss Tweed of Tammany Hall . . . 'I don't care who does the electing, just so that I can do the nominating.'"⁸³ Schluter also criticized legislators' decision to publicly fund campaigns in only three districts, rather than the six recommended by the Commission, and urged that the selected districts be geographically disparate and at least minimally competitive.⁸⁴ Schluter also commented unfavorably on the lack of funding parity for minor party candidates, the inordinately high level of public funds available in the "split district," the increase in the seed money contribution limit to \$500, and the absence of an independent commission to evaluate the program.

The Budget Committee ultimately reported the bill to the Senate floor without recommendation, with several members concluding that a flawed pilot was better than no pilot at all. With election season drawing near, the Senate legislation was amended to compress the 2007 Pilot calendar. After a number of procedural obstacles were cleared, the Senate approved the legislation on March 15, by a 23-to-9 margin. The Assembly concurred in the Senate amendments later in the day. Governor Jon S. Corzine signed the bill into law on March 28, telling the state that *Clean Elections* would "enhance public confidence in the political process" and move New Jersey "closer to having a more open government that is accountable only to the people."⁸⁵

In contrast to his unwavering support of the 2005 Pilot, Schluter found much to dislike in the 2007 Pilot. He was not alone in criticizing provisions of the bill that emerged from the legislature. Throughout the negotiations leading to reauthorization of the pilot, many Democratic and Republican leaders recognized that the 2005 Pilot had fallen short of its goals and some questioned whether changes made to the 2007 Pilot were enough to ensure its success. Advocacy groups were similarly torn. As the 2007 Pilot awaited the Governor's signature in March, Sandra Matsen of the League of Women Voters told *The Philadelphia Inquirer* that even though she had hoped *Clean Elections* would include all of the NJCCEC's recommendations, a flawed pilot was better than no pilot at all. "It wasn't much of a step forward, but it was a step forward," Matsen said. "If the bill had died, it would have been a very heavy lift to get it back up."⁸⁶ Abigail Field of NJPIRG argued that the renewed program was simply too flawed to be supported. Among her concerns were exclusion of the primary election cycle and the ability of candidates to opt-out of the program after accepting public money, so long as they returned the funds to the state. "If an incumbent were losing, Field said, he or she might turn to deep private pockets to pull ahead."

THE NEW JERSEY FAIR AND CLEAN ELECTIONS PILOT PROJECT OF 2007

District Selection

Selection of the 2007 Pilot districts was left to the state's legislative leaders, with no selection criteria specified by the enabling legislation. Democrats chose the Thirty-seventh legislative district, which includes suburban portions of Bergen County. Republicans chose the Twenty-fourth district, which includes all of rural Sussex

County and parts of Hunterdon and Morris counties. Neither district was included on the list of those recommended by the NJCCEC.

Because legislative leaders from the major political parties could not agree on the final district—the politically “split district”—this determination was made by a five-member ad hoc committee, as provided for in the 2007 Act.⁸⁷ The four legislative leaders—those who had failed to reach an agreement in the first place—each selected one member of the committee. A fifth member was chosen by the Assembly Speaker and Senate President, both Democrats, from among former New Jersey governors. Committee members included former state Democratic chairman Thomas Byrne and NJCCEC veterans Steven Lenox, Carol Murphy and Chairman Schluter. Former Governor James J. Florio provided the fifth vote. On April 15, the committee selected the Fourteenth district, which was favored by Democrats Byrne and Lenox and includes portions of suburban Mercer and Middlesex counties. Republicans Murphy and Schluter, on the other hand, had preferred the Twelfth district, which includes portions of Monmouth and Mercer counties. To explain his tie-breaking vote, Governor Florio stated that he had been swayed by the potential for electoral competition. “In the Fourteenth [district], we have a non-incumbency race in the Senate and a non-incumbency race in the Assembly. That is persuasive to me.”⁸⁸ In 2007, the Twelfth district had only one open Assembly seat.

Candidate Qualification and the General Election

Among the more significant changes made to the 2007 Pilot was an extension of the qualifying period, which ran from April 23 until September 30 and was about three months longer than the same period in 2005. To facilitate the process of collecting qualifying contributions, candidates were permitted to collect private “seed money” contributions of \$500 or less, up to a total of \$10,000. This was a significant increase over the 2005 Pilot, when seed money contributions were capped at \$200 each, up to a total of only \$3,000. Furthermore, the required number of qualifying contributions was lowered to only 400 in 2007, from 1,500 in 2005. Together, these changes enabled sixteen out of 20 participating candidates—80 percent—to become certified as *Clean Elections* candidates.⁸⁹ This represented a notable improvement over 2005, when only two out of 10 candidates—20 percent—became certified.

The 2007 Pilot varied the amount of public funding available based on the number of qualifying contributions a candidate collected during the qualifying period. At 400, candidates became eligible for a minimum amount of public funding, which increased until the candidates raised a maximum of 800 qualifying contributions. Public funding was then decreased by the dollar value of qualifying contributions collected, which candidates were permitted to retain and spend. In the Thirty-seventh district, the three Democratic candidates received a maximum grant of \$92,000; the three Republicans failed to qualify for public funding. In the Twenty-fourth district, the three Republican candidates received the maximum grant of \$92,000; the three Democrats received roughly two-thirds of this amount, reflecting the 500-plus qualifying contributions they collected. In the Fourteenth “split district,” each major party candidate received the maximum grant of \$526,735. The minor party candidate received \$23,521, exactly \$2,521 above the minimum grant available to minor parties, reflecting the 448 qualifying contributions he had collected.⁹⁰

The two Democratic candidates for Assembly in the Fourteenth district were awarded additional public funding—so-called “rescue money”—upon being targeted by negative advertising sponsored by an independent and privately-funded advocacy group. Incumbent Linda Greenstein received the maximum allowed, \$100,000, while her running mate, challenger Wayne DeAngelo, received \$14,255 in additional funding.⁹¹

When the votes were tallied, few were surprised by the results. In the competitive Fourteenth district, Republican Bill Baroni bested non-incumbent Seema Singh in the Senate race by a 24-point margin, nearly identical to the 20-point margin of victory enjoyed by Baroni's Republican predecessor in 2003.⁹² The race for Assembly was closer, with Democrat Greenstein holding her seat and widening her margin of victory to four points from a razor-thin 0.9 points in 2003. Non-incumbent DeAngelo, also a Democrat, led his nearest rival by one point.⁹³

In the Republican-leaning Twenty-fourth district, Republicans held the entire legislative delegation by landslide margins similar to those enjoyed in 2003.

In the Democratic-leaning Thirty-seventh district, where none of the Republican challengers were *Clean Elections* certified, Democrats held the entire legislative delegation by landslide margins similar to those enjoyed in 2003.

Assessing the 2007 Pilot Project

Compared to its oft-maligned 2005 predecessor, the 2007 Pilot was more successful. Perhaps the most readily apparent measure of success is that written into the enabling legislation itself: "at least 50 percent" of the major party participants qualifying for *Clean Elections* funding.⁹⁴ With 15 out of 18 major party participants—83 percent—ultimately becoming *Clean Elections* certified, this threshold was easily crossed. From an operational perspective as well, the 2007 Pilot marked a significant improvement over 2005.

The 2007 Act contains additional evaluative criteria within its findings and declarations section:

As with [the 2005 Pilot], the 2007 pilot project's goal is to improve the unfavorable opinion that many residents of this State have toward the political process and to strengthen the integrity of that process and improve access to it by many individuals and groups who have traditionally not been part of it.⁹⁵

The six races included in the 2007 Pilot, although greater in number than the single race included by the 2005 Pilot, remain too few to draw any meaningful conclusions regarding such broad statements of purpose. As was the case in 2005, a confounding lack of data persists.

Public reaction to the 2007 Pilot was understandably muted. Surveys conducted fall 2007, similar to those conducted by Fairleigh Dickinson University and Eagleton during the 2005 Pilot, shed some light on public awareness of the program.⁹⁶ Statewide, eight out of 10 voters reported hearing "little or nothing at all" about *Clean Elections*, nearly identical to the 2005 response.⁹⁷ Within *Clean Elections* districts, however, 44 percent had heard "quite a lot or some" about the program, a significant improvement over 29 percent in 2005, suggesting that publicity efforts within participating districts may have had their intended effect.

Likely voters within *Clean Elections* districts held similar views in 2005 and 2007 regarding the influence of campaign contributions on the state legislature. In 2007, fully 92 percent claimed to be "very or somewhat concerned" about this influence, compared to 89 percent in 2005.⁹⁸ Confidence that *Clean Elections* would reduce the influence of large contributions was also unchanged, with 54 percent of likely voters saying they were "very or somewhat confident," compared to 52 percent in 2005.⁹⁹

Informed observers' reaction to the 2007 Pilot was mixed. Ingrid Reed of the Eagleton Institute of Politics at Rutgers University deemed it "a good investment," concluding that New Jersey "learned enough to know we're on the right track to making this work."¹⁰⁰ Gregg Edwards of the Center for Policy Research was less supportive,

noting the pilot had been afflicted by an unintended side effect of expenditure ceilings: increased independent expenditures. In the same article, former NJCCEC Chairman Schulter cautioned against over-reliance on piecemeal reform. “If people think that *Clean Elections* are going to take the dirty money out of politics, they’re vastly mistaken . . . [doing so] involves a lot of other campaign finance reforms.”

Editorial board response was similarly critical of the 2007 Pilot’s limited nature and several agreed that any continuation of the program must include primaries and incorporate other reform measures. *The Star-Ledger* of Newark claimed the 2007 pilot had “squandered \$5 million in taxpayer money,” concluding that “[t]he only way to significantly change things is to include all 120 legislative races in the *Clean Elections* program.”¹⁰¹ *The Bergen Record* expressed a similar sentiment: “[t]here’s no point in pursuing publicly funded legislative races if primaries are not included . . . it’s the only way to level the playing field and give newcomers a fair chance.”¹⁰² The *Record* expressed a widely-shared sentiment when concluding “[w]e’re not convinced *Clean Elections* can defeat that power-hungry backroom system, but we’re eager to give it a chance.”¹⁰³

ELEC’s Fair and Clean Elections Report

The 2007 Act did not establish an independent body empowered with oversight and evaluation authority, as the NJCCEC had been in 2005. Instead, ELEC was tasked with administrative authority and was required to issue a “strictly fact-based” report to legislative leaders containing “no recommendations with respect to any future pilot projects.”¹⁰⁴ ELEC’s report, issued in March 2008, adhered to this mandate and is devoid of any conclusions regarding the 2007 Pilot.¹⁰⁵

Preparation of this report included a single public hearing held in December 2007 at which testimony was given by nearly two dozen individuals, including eleven of the 20 participating candidates and representatives from several advocacy organizations.¹⁰⁶ From their statements, ELEC’s report distills a number of “areas for review” touching upon most aspects of *Clean Elections*, including primary elections, reporting requirements and funding levels.¹⁰⁷ Because these areas were simply listed and not otherwise ranked or annotated, it is impossible to know which were intended to receive greater attention.

The report also details ELEC’s attempt to educate the public about *Clean Elections*, noting that “[a] major concern of proponents of Clean Elections was that the pioneering effort in 2005 had not been adequately promoted.”¹⁰⁸ The 2007 Act appropriated \$600,000 for this purpose, which ELEC used to disseminate “2007 Voters Guides” and participating candidate ballot statements, all of which were made available on a newly created and regularly updated Web site, www.njcleanelections.com.¹⁰⁹

ELEC also commissioned a tracking survey, separate from the Fairleigh Dickinson/Eagleton survey described above, to determine the nature and extent of the public’s awareness of the 2007 Pilot. In contrast to the first pilot, which in September 2005 was unknown to 80 percent of voters in the state,¹¹⁰ by September 2007 this figure had fallen to 60 percent.¹¹¹ Perhaps more remarkable, as late as June 2007, more than 90 percent of voters had been unaware of the pilot, providing indirect evidence that ELEC’s promotional efforts may have been useful.

ELEC’s report also included detailed numerical data from the 2007 Pilot, including funding amounts disbursed to candidates, election results in each participating district compared with previous legislative elections, and voter turnout figures for each of the four preceding legislative elections.¹¹² Of the three participating districts, only District 24 showed an increase in turnout from 2007 over 2003, the most recent non-gubernatorial, legislative

election year. Turnout in District 14 was level and District 37 saw a small decrease over the same period. Four competitive districts received thorough media coverage in 2007: Districts 1, 2, 12 and *Clean Elections* District 14. Candidates in District 14 spent \$3.4 million in *Clean Elections* funds or about \$2.5 million less than the District 12 candidates whose campaigns were funded exclusively from private sources.

ELEC concludes by noting that its report remains faithful to the no-recommendations mandate and seeks only “to provide factual information that will allow legislators to gain important perspectives on the issues that arose and the initiatives that were taken in implementing the 2007 Clean Elections Program.”¹¹³ To that end, ELEC emphasizes that the 2007 Pilot operated as envisioned by the enabling legislation and that the success criterion of 50 percent candidate participation was met.

EPILOGUE: THE WAY FORWARD

With 15 out of 18 major party participants—83 percent—becoming *Clean Elections* certified in 2007, the 50 percent success criterion was easily surpassed. Contrary to media reports declaring the “[p]ilot program for public campaign funding extended,” however, continuation of *Clean Elections* is not automatic.¹¹⁴ In an August 2007 op-ed, former NJCCEC Chairman Bill Schluter wrote:

[D]espite general impressions, legislative action will be necessary to extend Clean Elections beyond 2007. Absent a constitutional command, not even unmitigated success can compel a future Legislature to continue a program enacted by its predecessor. Given the protracted battle to enact [the 2007] pilot, renewal in 2009 is far from assured.¹¹⁵

Nonetheless, Governor Corzine and Speaker Roberts have both signaled their support for the program’s extension beyond 2007. Upon signing the enabling legislation into law, the Governor hailed *Clean Elections* as “an important first step forward that gets us closer to having a more open government that is accountable only to the people.”¹¹⁶ Roberts was more direct in a statement issued the day ELEC’s report was released: “[t]he future of Clean Elections should not be in doubt. The fight for public financing in legislative races must continue to go forward.”¹¹⁷ Roberts continued:

The next step should provide for the inclusion of primary races, increasing the number of participating districts, reducing campaign spending and leveling the playing field for third party candidates. Additionally, a thorough examination of how best to address the outside influence of independent expenditures that undermine the spirit of the program is essential.

By most accounts, the 2007 Pilot was a greater success than its 2005 predecessor. And with two of the state’s Democratic leaders on record as supporting the continuation of *Clean Elections*, the prospects for public financing in 2009 appear strong. As new enabling legislation is drafted, legislators will face two fundamental questions. First, should *Clean Elections* funding be made available to candidates in all forty legislative districts, or should the program’s expansion continue only gradually? Second, should *Clean Elections* be extended to the primary election cycle, where much of the electoral competition in New Jersey takes place, or should it remain confined to the general election cycle?

Four years have passed since Assembly Bill No. 1, the *New Jersey Fair and Clean Elections Pilot Project* was introduced in 2004. Since then, two pilot projects have occurred, dozens of public meetings have been held and

\$4.3 million in public funding has been disbursed to eighteen certified candidates.¹¹⁸ With the 2007 Pilot, New Jerseyans glimpsed the possibility that public financing of elections can succeed in their state, just as it has in Arizona, Connecticut, Maine, New Mexico and North Carolina.

The foremost goal of *Clean Elections* is to reduce the amount of private funds in campaigns for public office, thereby reducing the corrosive influence of money in politics. The 2007 Pilot professed even greater ambition in seeking “to improve the unfavorable opinion that many residents of this State have toward the political process and to strengthen the integrity of that process and improve access to it by many individuals and groups who have traditionally not been a part of it.”¹¹⁹ With only a handful of publicly funded races to draw from, there remains too little data generated over too short a period to draw any conclusions regarding the ability of public financing to achieve these lofty goals in New Jersey. More robust evaluation must await the expansion of *Clean Elections* to primary elections and to candidates around the state.

The way forward is now for the legislature to determine. Considering the positive 2007 experience and strong words of support from the state’s political leaders, for the first time in its history, New Jersey appears poised to take a significant step toward fundamental reform of campaigns and elections in the state.

THE PILOTS COMPARED

The 2007 Pilot differed substantially from draft legislation proposed by the New Jersey Citizens' Clean Election Commission, which in turn recommended significant changes from the 2005 Pilot. These differences are compared in the following table.

		2005 PILOT PROJECT	NJCCEC RECOMMENDATION	2007 PILOT PROJECT
Citation		2004 N.J. LAWS 121	NJCCEC FINAL REPORT	2007 N.J. LAWS 60
Election Cycle(s) Included		General only	Primary and General	General only
Participating Districts	<i>Number</i>	Two	Six	Three
	<i>Selection</i>	Two slates of three "competitive and moderately competitive" districts. One slate Democratic-leaning and one slate Republican-leaning. State party chairs choose one district from their slate.	Same as 2005 Pilot except districts distributed geographically throughout the State. NJCCEC chair determines by lot which state party chair makes the first selection. The 2005 Pilot districts are automatically included for participation.	One district selected by the Democratic legislative leaders; one district selected by Republican legislative leaders; a third district selected by all legislative leaders. If no agreement, five-member ad hoc committee convened to make the selection. Members of the committee are appointed by legislative leaders. No geographical distribution or minimum partisan competition requirements. The 2005 Pilot districts are not required to participate.
Seed Money	<i>Maximum Contributions</i>	\$ 200.	\$ 100.	\$ 500.
	<i>Aggregate Limits</i>	\$ 3,000.	\$ 10,000.	\$ 10,000.
	<i>Permissible Forms</i>	Check or money order only	Cash, check, money order, electronic check, debit card, or credit card	Cash, check, money order, electronic check, debit card or credit card
Qualifying Contributions	<i>Number Required</i>	1,000 \$5 contributions 500 \$30 contributions	800 \$10 contributions	400 (\$10) <i>min</i> 800 (\$10) <i>max</i>
	<i>Permissible Forms</i>	Check or money order only, payable to the <i>Clean Elections</i> fund. ELEC later issued an advisory opinion specifically permitting qualifying contributions by check card	Cash, check, money order, electronic check, debit card, or credit card; may be payable to more than on candidate	Cash, check, money order, electronic check, debit card or credit. ELEC to allow online contributions possible through its website
	<i>Qualifying Period</i>	Jul. 2 – Sept. 7, 2005	Jan. 1 – May 10, 2007 (PE) Jan. 1 – Aug. 31, 2007 (GE)	Apr. 23 – Sep. 30, 2007
Initial Public Funding	<i>Contested Races</i>	Seventy-five percent of average cost of similar campaigns during the previous two election cycles	\$ 100,000.	"Split District" — average amount expended by "all candidates for the office of member of the General Assembly and the office of member of the Senate in that legislative district in the two immediately preceding general elections" Other districts: \$ 50,000 <i>min</i> \$ 100,000 <i>max</i>
	<i>Uncontested Races</i>	<i>same as above</i>	\$ 50,000.	Fifty percent of contested race funding
	<i>Minor Party Candidates</i>	Fifty percent of major party funding	Full parity	Fifty percent of major party funding, but not more than \$ 50,000
Additional Funding		Dollar-for-dollar, up to \$50,000, if outspent by privately financed candidate or targeted by independent expenditures	Dollar-for-dollar, up to 100 percent of initial allocation, if outspent by privately financed candidate or targeted by independent expenditures	Dollar-for-dollar, up to \$100,000 (\$50,000 for minor party candidates), if outspent by privately financed candidate or targeted by independent expenditures
Administration		ELEC (administrative and operational), NJCCEC (oversight and evaluation) and OLS (advisory)	ELEC (administrative, operational and educational) and NJCCEC (advisory)	ELEC (administrative and operational)

CHAPTER FOUR

ENDNOTES

¹ Gubernatorial Public Financing Program, N.J. Stat. Ann. § 19:44A-27 *et seq.*

² New Jersey Fair and Clean Elections Pilot Project, A1, 2004-05 Leg. Sess. (N.J. 2004). Available from, http://www.njleg.state.nj.us/2004/Bills/PL04/121_PDF. Last accessed: Mar. 20, 2008.

³ See Glenn Adams. “Public campaign funding system has growing pains.” *The Associated Press*. Nov. 17, 2005; see also Barbara Solow. “Small-Check Politics: Did It Work?” *The New York Times*. Nov. 6, 2005 at 8; see also Marc Fleischer and JoAnn Gurenlian, 2005 Pilot participants. “Changes needed to make it work.” *The Philadelphia Inquirer*. Oct. 16, 2005 at L12. *But see also* Assemblyman Louis D. Greenwald and Pamela Rosen Lampitt, 2005 Pilot participants. “Major achievement worthy of our pride.” Oct. 16, 2005 at L12.

⁴ New Jersey Citizens’ Clean Elections Commission. “Final Report Submitted to the Legislature of the State of New Jersey.” William E. Schluter, chair. May 8, 2006 at 1. Available from, http://www.njleg.state.nj.us/committees/NJCCEC_FINAL.pdf. Last accessed: Mar. 17, 2008.

⁵ Maine Clean Election Act, Me. Rev. Stat. Ann. tit. 21-A, § 1121 *et seq.* (2007).

⁶ A.J. Higgins. “N.J. Leader Likes Maine Clean Elections Law.” *Bangor Daily News* (Maine). May 5, 2004 at B5.

⁷ A.J. Higgins, “N.J. Leader Likes Maine Clean Elections Law.”

⁸ New Jersey Citizens’ Clean Elections Commission. “Preliminary Report Submitted to the Legislature of the State of New Jersey.” William E. Schluter, chair. Feb. 7, 2006 at 35. Available from, http://www.njleg.state.nj.us/committees/PRELIM_REPORT_FINAL2.pdf. Last accessed: Mar. 19, 2008.

⁹ Joint Meeting of the Assembly and Senate State Government Committees on A1 and other matters, 2004-05 Leg. Sess. (N.J. 2004) (testimony of Asm. Joseph J. Roberts, Jr., Maj. Leader, June 3, 2004) at 05’54”. Available from, <http://rmsserver.njleg.state.nj.us/internet/2004/SSG/0603-0100PM-1.wma>. Last accessed: Mar. 21, 2008.

¹⁰ Joint State Government Committees Meeting (Roberts testimony) at 19’05”.

¹¹ Joint State Government Committees Meeting (Roberts testimony) at 12’12”.

¹² Joint State Government Committees Meeting (testimony of Sen. Leonard T. Connors) at 42’41”.

¹³ The number of qualifying contributions required of Arizona candidates may be adjusted by administrative rule every four years. In 2007, the number required of candidates for state legislative office was increased to 220. See Chapter Two; see also Ariz. Rev. Stat. Ann. § 16-956 (2007) (“Voter Education and Enforcement Duties”).

¹⁴ Joint State Government Committees Meeting (testimony of Asm. Michael Patrick Carroll) at 59’02”.

¹⁵ Joint State Government Committees Meeting (testimony of Marilyn Askin, pres., AARP of N.J.) at 01h 05’20”; Joint State Government Committees Meeting (testimony of Matt Shapiro, pres., N.J. Tenants Org.) at 01h 20’03”.

¹⁶ Joint State Government Committees Meeting (testimony of Stuart D. Shaw, pres., Clean Money United) at 01h 30’18”.

¹⁷ Joint State Government Committees Meeting (roll call vote to report A1 with a favorable recommendation) at 04h 30’22”.

¹⁸ Voting Session of the General Assembly, 2004-05 Leg. Sess. (N.J. 2004) (testimony of Asm. Joseph J. Roberts, Jr., Maj. Leader, June 10, 2004) at 01h 44'01". Available from, <http://rmsserver.njleg.state.nj.us/internet/2004/A/0610-0100PM-1.wmv>. Last accessed: Mar. 21, 2008.

¹⁹ General Assembly Voting Session (testimony of Asm. Richard A. Merkt) at 01h 25'01".

²⁰ General Assembly Voting Session (testimony of Asm. Michael J. Doherty) at 02h 18'39".

²¹ General Assembly Voting Session (roll call vote to approve A1 on third reading and final passage) at 02h 19'20".

²² Voting Session of the Senate, 2004-05 Leg. Sess. (N.J. 2004) (testimony on A1, June 10, 2004) at 01h 58'28". Available from, <http://rmsserver.njleg.state.nj.us/internet/2004/S/0610-0200PM-1.wma>. Last accessed: Mar. 21, 2008.

²³ Senate Voting Session (roll call vote to approve A1 on third reading and final passage) at 02h 22'20".

²⁴ Jeff Whelan and Robert Schwaneberg. "After governor mentioned a book, the plot thickened." *The Star-Ledger* (New Jersey). July 7, 2004 at 1.

²⁵ Steve Strunsky. "Top Dem fund-raiser charged with trying to block federal probe." *The Associated Press*. July 13, 2004.

²⁶ New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121.

²⁷ New Jersey Citizens' Clean Elections Commission. Mar. 2, 2005 Meeting Transcript at 17. Available from, <http://www.njleg.state.nj.us/legislativepub/pubhear/cec030205.pdf>. Last accessed: Mar. 21, 2008.

²⁸ Me. Const. art. IV, pt. 3, §§ 18-19.

²⁹ Ariz. Const. art. IV, pt. 1, § 1.

³⁰ New Jersey Citizens' Clean Elections Commission. Apr. 26, 2005 Meeting Transcript at 9-78. Available from, <http://www.njleg.state.nj.us/legislativepub/pubhear/cec042605.pdf>. Last accessed: Mar. 21, 2008.

³¹ New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121, § 11.

³² Rule Adoptions, Regulations of the Election Law Enforcement Commission, New Jersey Fair and Clean Elections Pilot Project, 37 N.J.R. 3051(b) (2005).

³³ N.J. Admin. Code § 19:25-23 *et seq.* (2005). Available from, http://www.nj.gov/treasury/clean_election/index.html. Last accessed: Mar. 21, 2008.

³⁴ New Jersey Fair and Clean Elections Pilot Project, A1, 2004-05 Leg. Sess. (N.J. 2004) (Bill Statement § 20) at 16. Available from, http://www.njleg.state.nj.us/2004/bills/a104/121_.pdf. Last accessed: Mar. 19, 2008.

³⁵ Joint State Government Committees Meeting (Roberts testimony) at 15'06".

³⁶ Joint State Government Committees Meeting (Roberts testimony) at 16'13".

³⁷ Press Release, Asw. Bonnie Watson Coleman, chair, Democratic State Committee. "Watson Coleman Designates 6th District for 'Fair & Clean' Election Program." June 27, 2005.

³⁸ Public funding allocations were defined by the Act as seventy-five percent of the average cost of similar campaigns during the previous two election cycles. *See* New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121, § 10.

³⁹ Press Release. Tom Wilson. "GOP Reluctantly Designates 'Clean Campaign' District: Cites Significant Loopholes and Flaws that Make Program Doomed to Fail." June 27, 2005.

⁴⁰ For the Democrats, competition was nominal: the victors earned a combined 85.5 percent of votes cast. The Republican primary, however, saw the dramatic ouster of 24-year incumbent Joseph Azzolina. See Joe Donohue. “Voters unseat two assemblymen.” *The Star-Ledger* (New Jersey). June 8, 2005 at 17.

⁴¹ New Jersey Citizens’ Clean Elections Commission. Aug. 18, 2005 Meeting Transcript (testimony of Asm. Samuel D. Thompson) at 77. Available from, <http://www.njleg.state.nj.us/legislativepub/pubhear/cec081805.pdf>. Last accessed: Mar. 21, 2008.

⁴² NJCCEC Aug. 18, 2005 Meeting Transcript (testimony of Amy Handlin) at 55-56.

⁴³ New Jersey Election Law Enforcement Commission. Advisory Opinion No. 03-2005. Aug. 26, 2005 at 2. Available from, <http://www.elec.state.nj.us/pdffiles/AO/ao032005.pdf>.

⁴⁴ Richard J. Codey. Executive Order of Aug. 31, 2005. Available from, <http://www.state.nj.us/infobank/circular/eoc51.htm>. Last accessed: Mar. 21, 2008. See also, Press Release, Richard J. Codey, Governor of N.J. “Codey Announces Website to Receive Contributions for Participants in the Clean Election Law Project; Codey Signs Executive Order to Extend Contribution Deadline.” Aug. 31, 2005. Available from, http://www.nj.gov/cgi-bin/governor/njnewsline/view_article.pl?id=2692. Last accessed: Mar. 21, 2008.

⁴⁵ New Jersey Citizens’ Clean Elections Commission, “Preliminary Report Submitted to the Legislature of the State of New Jersey” at 50.

⁴⁶ New Jersey Citizens’ Clean Elections Commission, “Preliminary Report Submitted to the Legislature of the State of New Jersey” at 15. Because the transfer was between candidates for the same political office in the same legislative district, it was not subject to the usual contribution limitations. See N.J. Stat. Ann. 19:44A-11.3 (2007).

⁴⁷ Press Release, Asm. Louis D. Greenwald and Pam Rosen Lampitt. “Greenwald/Rosen Lampitt Make \$75,000 Contribution to Opponents’ Campaign.” Oct. 14, 2005. Available from, <http://politickernj.com/greenwald-and-lampitt-state-assembly-0>. Last accessed: Mar. 21, 2008.

⁴⁸ “Assembly candidates donating to their opponents.” *The Associated Press*. Oct. 7, 2005.

⁴⁹ New Jersey Department of Law & Public Safety, Division of Elections. “Official 2005 General Election Results: General Assembly.” Available from, http://www.nj.gov/oag/elections/2005results/05_generalelection/2005_Official_General_Assembly_tallies.pdf. Last accessed: Mar. 28, 2008.

⁵⁰ New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121, § 2.

⁵¹ Joint State Government Committees Meeting (Roberts testimony) at 20’02”.

⁵² Joint State Government Committees Meeting (testimony of Asw. Linda R. Greenstein) at 21’18”.

⁵³ New Jersey Citizens’ Clean Elections Commission. Nov. 22, 2005 Meeting Transcript (testimony of Asm. Joseph J. Roberts, Jr.) at 3. Available from, <http://www.njleg.state.nj.us/legislativepub/pubhear/cec112205.pdf>. Last accessed: Mar. 21, 2008.

⁵⁴ New Jersey Citizens’ Clean Elections Commission, “Preliminary Report Submitted to the Legislature of the State of New Jersey” at 19.

⁵⁵ Peter Woolley and Tim Vercellotti. “The Well-Kept Secret of Clean Elections; Draft Report to the New Jersey Citizens’ Clean Election Commission.” Nov. 21, 2005. Available from, <http://www.eagleton.rutgers.edu/News-Research/CEReport.pdf>. Last accessed: Mar. 21, 2008.

⁵⁶ NJCCEC Nov. 22, 2005 Meeting Transcript (Roberts testimony) at 3.

⁵⁷ NJCCEC Nov. 22, 2005 Meeting Transcript (testimony of Ingrid W. Reed) at 8.

⁵⁸ NJCCEC Nov. 22, 2005 Meeting Transcript (Roberts testimony) at 4-5.

⁵⁹ NJCCEC Nov. 22, 2005 Meeting Transcript (Roberts testimony) at 6.

⁶⁰ New Jersey Citizens' Clean Elections Commission. Nov. 29, 2005 Meeting Transcript (testimony of Asm. Samuel D. Thompson) at 15-16. Available from, <http://www.njleg.state.nj.us/legislativepub/pubhear/cec112905.pdf>. Last accessed: Mar. 22, 2008.

⁶¹ NJCCEC Nov. 29, 2005 Meeting Transcript (testimony of Asw.-elect Amy D. Handlin) at 14-15.

⁶² New Jersey Citizens' Clean Elections Commission, "Preliminary Report Submitted to the Legislature of the State of New Jersey," at 35.

⁶³ New Jersey Citizens' Clean Elections Commission, "Final Report Submitted to the Legislature of the State of New Jersey" at 1.

⁶⁴ Press Release, William E. Schluter, chair, New Jersey Citizens' Clean Elections Commission. "'Clean Elections' Final Report Released." May 8, 2006. Available from, <http://www.njleg.state.nj.us/committees/Final%20rpt%20PR.pdf>. Last accessed: Mar. 22, 2008.

⁶⁵ New Jersey Citizens' Clean Elections Commission, "Final Report Submitted to the Legislature of the State of New Jersey" at 16-38.

⁶⁶ New Jersey Citizens' Clean Elections Commission, "Final Report Submitted to the Legislature of the State of New Jersey" at 16.

⁶⁷ Press Release, Asm. Joseph J. Robert, Jr., Speaker of the Gen. Assemb. "Clean Elections Reauthorization Signed into Law; Measure Expands, Strengthens Public Financing Project for 2007 Legislative Races." Mar. 28, 2007. Available from, <http://www.assemblydems.com/pdf/pral00c.pdf>. Last accessed: Mar. 22, 2008.

⁶⁸ 2007 New Jersey Fair and Clean Elections Pilot Project Act, 2007 N.J. Laws 60, § 8.

⁶⁹ New Jersey Citizens' Clean Elections Commission, "Preliminary Report Submitted to the Legislature of the State of New Jersey" at 35.

⁷⁰ New Jersey Fair and Clean Elections Pilot Project, 2004 N.J. Laws 121, § 17.

⁷¹ Joint State Government Committees Meeting (Roberts testimony) at 12'12".

⁷² New Jersey Citizens' Clean Elections Commission, "Final Report Submitted to the Legislature of the State of New Jersey" at 3.

⁷³ 2007 New Jersey Fair and Clean Elections Pilot Project Act, 2007 N.J. Laws 60 § 11.

⁷⁴ 2007 New Jersey Fair and Clean Elections Pilot Project Act, 2007 N.J. Laws 60 § 6.

⁷⁵ 2007 New Jersey Fair and Clean Elections Pilot Project Act, 2007 N.J. Laws 60 § 11.

⁷⁶ In the "split" Fourteenth district, candidates received an initial allocation of \$526,375, compared to an initial allocation of \$92,000 in the one-party-dominant Twenty-fourth and Thirty-seventh districts. *See* New Jersey Election Law Enforcement Commission. "2007 Clean Elections Funds Disbursed To Date." Available from, <http://www.njcleanelections.com/downloads/fundsdisbursed.pdf>. Last accessed: Mar. 22, 2008.

⁷⁷ New Jersey Citizens' Clean Elections Commission, "Final Report Submitted to the Legislature of the State of New Jersey" at 27.

⁷⁸ 2007 New Jersey Fair and Clean Elections Pilot Project Act, 2007 N.J. Laws 60 § 11.

⁷⁹ New Jersey Citizens' Clean Elections Commission, "Final Report Submitted to the Legislature of the State of New Jersey" at 1.

⁸⁰ 2007 New Jersey Fair and Clean Elections Pilot Project Act, 2007 N.J. Laws 60 § 21.

⁸¹ Meeting of the Senate Budget and Appropriations Committee on S2438 and other matters, 2006-07 Leg. Sess. (N.J. 2007) (testimony of William E. Schluter, Feb. 8, 2007) at 01h 04'10". Available from, <http://rmsserver.njleg.state.nj.us/internet/2004/SSG/0603-0100PM-1.wma>. Last accessed: Mar. 22, 2008.

⁸² Senate Budget and Appropriations Committee meeting (Schluter testimony) at 01h 05'05".

⁸³ Senate Budget and Appropriations Committee meeting (Schluter testimony) at 01h 05'18".

⁸⁴ Senate Budget and Appropriations Committee meeting (Schluter testimony) at 01h 10'43".

⁸⁵ Press Release, Jon S. Corzine, Governor of N.J. "Governor Signs Fair and Clean Elections Legislation." Mar 28, 2007.

⁸⁶ Jennifer Moroz. "Campaign finance, Part 2; N.J. law tries once again to keep big-money influence out of elections." *The Philadelphia Inquirer*. Mar. 23, 2007 at B01.

⁸⁷ 2007 New Jersey Fair and Clean Elections Pilot Project Act, 2007 N.J. Laws 60, § 6.

⁸⁸ Tom Hester, Jr. "14th District picked to join pilot program for 'clean elections.'" *The Star-Ledger* (New Jersey). Apr. 17, 2007 at 40.

⁸⁹ New Jersey Election Law Enforcement Commission. "2007 Fair and Clean Elections Report." Mar. 28, 2008 at 28-29. Available from, http://www.njcleanelections.com/downloads/ce_report2007.pdf. Last accessed: Mar. 28, 2008.

⁹⁰ New Jersey Election Law Enforcement Commission. "2007 Clean Elections Funds Disbursed To Date." Available from, <http://www.njcleanelections.com/downloads/fundsdisbursed.pdf>. Last accessed: Mar. 22, 2008.

⁹¹ The constitutionality of such contingency funding has been called into question by the Supreme Court's June 2008 decision in *Davis v. Federal Election Comm'n*, 128 S. Ct. 2759 (2008).

⁹² New Jersey Department of Law & Public Safety, Division of Elections. "Official 2007 General Election Results: State Senate." Available from, [http://www.nj.gov/oag/elections/2007results/07general-election/07-official-general-election-tallies\(ss\)-12.3.07.pdf](http://www.nj.gov/oag/elections/2007results/07general-election/07-official-general-election-tallies(ss)-12.3.07.pdf). Last accessed: Mar. 28, 2008.

⁹³ New Jersey Department of Law & Public Safety, Division of Elections. "Official 2007 General Election Results: General Assembly." Available from, [http://www.nj.gov/oag/elections/2007results/07general-election/07-official-general-election-tallies\(ga\)-12.12.07.pdf](http://www.nj.gov/oag/elections/2007results/07general-election/07-official-general-election-tallies(ga)-12.12.07.pdf). Last accessed: Mar. 28, 2008.

⁹⁴ 2007 New Jersey Fair and Clean Elections Pilot Project Act, 2007 N.J. Laws 60, § 21.

⁹⁵ 2007 New Jersey Fair and Clean Elections Pilot Project Act, 2007 N.J. Laws 60, § 2.

⁹⁶ Peter Wooley and Tim Vercellotti. "Public Attitudes Toward the Clean Elections Initiative." Nov. 27, 2007. Available from http://eagletonpoll.rutgers.edu/polls/CE_FinalReport_11_07.pdf. Last accessed April 29, 2008.

⁹⁷ Wooley and Vercellotti. "Public Attitudes Toward the Clean Elections Initiative" at 2.

⁹⁸ Wooley and Vercellotti. "Public Attitudes Toward the Clean Elections Initiative" at 5.

⁹⁹ Wooley and Vercellotti. "Public Attitudes Toward the Clean Elections Initiative" at 5.

¹⁰⁰ Robert Schwaneberg. "Opinions divided on 'clean elections'; Some, but not all, call experiment a success." *The Star-Ledger* (New Jersey). Dec. 10, 2007 at 13.

¹⁰¹ Editorial. “Halfway reform won’t help.” *The Star-Ledger* (New Jersey). Dec. 20, 2007 at 20.

¹⁰² Editorial. “Clean slates; Include primaries in publicly funded campaigns.” *The Bergen Record* (New Jersey). Dec. 20, 2007 at L06.

¹⁰³ Editorial. “A clean slate; Pilot election program could curb corruption.” *The Bergen Record* (New Jersey). Aug. 10, 2007 at L12.

¹⁰⁴ 2007 New Jersey Fair and Clean Elections Pilot Project Act, 2007 N.J. Laws 60, § 20.

¹⁰⁵ New Jersey Election Law Enforcement Commission. “2007 Fair and Clean Elections Report.” Mar. 28, 2008. Available from, http://www.njcleanelections.com/downloads/ce_report2007.pdf. Last accessed: Mar. 28, 2008.

¹⁰⁶ New Jersey Election Law Enforcement Commission, “2007 Fair and Clean Elections Report” at 20.

¹⁰⁷ New Jersey Election Law Enforcement Commission, “2007 Fair and Clean Elections Report” at 21-24.

¹⁰⁸ New Jersey Election Law Enforcement Commission, “2007 Fair and Clean Elections Report” at 13.

¹⁰⁹ 2007 New Jersey Fair and Clean Elections Pilot Project Act, 2007 N.J. Laws 60, § 22.

¹¹⁰ Peter Woolley and Tim Vercellotti. “The Well-Kept Secret of Clean Elections; Draft Report to the New Jersey Citizens’ Clean Election Commission.” Nov. 21, 2005. Available from, <http://www.eagleton.rutgers.edu/News-Research/CEReport.pdf>. Last accessed: Mar. 21, 2008.

¹¹¹ New Jersey Election Law Enforcement Commission, “2007 Fair and Clean Elections Report” at app.1, p.12.

¹¹² New Jersey Election Law Enforcement Commission, “2007 Fair and Clean Elections Report” at 25-44.

¹¹³ New Jersey Election Law Enforcement Commission, “2007 Fair and Clean Elections Report” at 51.

¹¹⁴ Tom Hester, Jr. “Pilot program for public campaign funding extended.” *The Associated Press*. Aug. 22, 2007.

¹¹⁵ Op-Ed, Bill Schluter and Benjamin Brickner. “Clearing the air about Clean Elections.” *The Times of Trenton* (New Jersey). Aug. 14, 2007.

¹¹⁶ Press Release, Jon S. Corzine, Governor of N.J. “Governor Signs Fair and Clean Elections Legislation.” Mar. 28, 2007. Available from, <http://www.state.nj.us/governor/news/news/approved/20070328a.html>. Last accessed: Mar. 28, 2008.

¹¹⁷ Press Release, Joseph J. Roberts, Jr., Speaker of the Gen. Assembly. “Roberts Statement on Clean Elections Report.” Mar. 28, 2008. Available from, <http://www.politickernj.com/jduthie/17807/roberts-statement-clean-elections-report>. Last accessed: Mar. 28, 2008.

¹¹⁸ New Jersey Citizens’ Clean Elections Commission, “Preliminary Report Submitted to the Legislature of the State of New Jersey” at 41; *see also* New Jersey Election Law Enforcement Commission, “2007 Fair and Clean Elections Report” at 31.

¹¹⁹ 2007 New Jersey Fair and Clean Elections Pilot Project Act, 2007 N.J. Laws 60, § 2.

— **APPENDIX** —

**A SIDE-BY-SIDE COMPARISON OF
CLEAN ELECTIONS IN SIX STATES**

MAINE
VERMONT
ARIZONA
MASSACHUSETTS
CONNECTICUT
NEW JERSEY

Clean Elections: Public Financing in Six States, including New Jersey's Pilot Project

Clean Elections Programs Compared in Six States

	MAINE	VERMONT	ARIZONA	MASSACHUSETTS	CONNECTICUT	NEW JERSEY
<i>Name of Law</i>	Maine Clean Election Act	Vermont Campaign Finance Option	Citizens' Clean Elections Act	Clean Elections Law	Citizens' Clean Election Program	2007 New Jersey Fair and Clean Elections Pilot Project Act
<i>Citation</i>	ME. REV. STAT. ANN. tit. 21-A, § 1121 et seq.	Vt. STAT. ANN. tit. 17, § 2851 et seq.	ARIZ. REV. STAT. ANN. § 16-940 et seq.	1998 MASS. ACTS 395	CONN. GEN. STAT. § 9-700 et seq.	2007 N.J. LAWS 60
<i>Year of Enactment</i>	1996	1997	1998	1998	2006	2007
<i>Offices Covered</i>	Executive and Legislature	Executive only	Executive and Legislature	Executive and Legislature	Executive and Legislature	Legislature (three districts only)
<i>State Population (2007 est.)</i>	1,317,207	621,254	6,338,755	6,449,755	3,502,309	8,685,920
<i>Maximum Contributions</i>	\$ 100.	n/a	Individuals: \$ 130. Self (Legis.): \$ 610. Self (Gov.): \$ 1,230.	n/a	n/a	\$ 500.
<i>Aggregate Limits</i>	Governor: \$ 50,000. Senate: \$ 1,500. House: \$ 500.	n/a	Governor: \$ 49,180. Legislature: \$ 3,230.	n/a	Governor: \$ 20,000. Lt. Governor: 10,000. Senate: 2,000. House: 1,000.	Senate: \$ 10,000. Assembly: \$ 10,000.
<i>Permissible Sources</i>	Individuals including family and excluding lobbyists and their clients	n/a	Individuals including family and excluding PACs, businesses, political parties, labor unions and corporations	n/a	Self only	Individuals including family and excluding political committees
<i>Permissible Uses</i>	All goods and services received prior to certification	n/a	Not specified	n/a	Candidate committee activities	Not specified
<i>Denomination Required</i>	\$ 5.	no more than \$ 50.	\$ 5.	at least \$ 5. and no more than \$ 100.	at least \$ 5. and no more than \$ 100.	\$ 10.
<i>Number Required</i>	Governor: 3,250. Senate: 150. House: 50.	Governor: 1,500. Lt. Governor: 750.	Governor: 4,410. Legislature: 220.	Governor: 6,000. Lt. Governor: 3,000. Senate: 450. House: 200.	Governor: 2,500. Lt. Governor: 750. Senate: 300. House: 150.	Senate: 400-800. Assembly: 400-800. <i>(initial public funding determined by # received)</i>
<i>Aggregate Required</i>	Governor: \$ 16,250. Senate: \$ 750. House: \$ 250.	Governor: \$ 35,000. Lt. Governor: \$ 17,500.	Governor: \$ 22,050. Legislature: \$ 1,100.	Governor: \$ 30,000+. Lt. Governor: \$ 15,000+. Senate: \$ 2,250+. House: \$ 1,000+.	Governor: \$ 250,000. Lt. Governor: \$ 75,000. Senate: \$ 15,000. House: \$ 5,000.	Senate: \$ 4,000-8,000. Assembly: \$ 4,000-8,000. <i>(initial public funding determined by # received)</i>
<i>Qualifying Period</i>	Not less than 3.5 months	Not less than 5 months	Not less than 7.5 months	Not less than 5 months	Not less than 10 months	Five months, one week

Clean Elections: Public Financing in Six States, including New Jersey's Pilot Project

	MAINE	VERMONT	ARIZONA	MASSACHUSETTS	CONNECTICUT	NEW JERSEY
Qualifying Contributions	Permissible Sources	Registered voters in the area sought to be represented	Registered voters in the area sought to be represented	Registered voters in the area sought to be represented	Mostly registered voters in the area sought to be represented	Registered voters in the area sought to be represented
	Permissible Forms	Check, Money Order	Cash, Check, Money Order	Not specified	Not specified	Cash, Check, Money Order, Electronic Check, Debit Card, Credit Card
	Disposition	Paid to Maine Clean Election Fund	Paid to Arizona Clean Elections Fund	Candidates may retain and spend	Candidates may retain and spend	Candidates may retain and spend
Other Obligations of Participating Candidates	Private Fund Raising	Only seed money and qualifying contributions	Only seed money and qualifying contributions	Only qualifying contributions	Only seed money and qualifying contributions	Only seed money and qualifying contributions
	Candidate Debates	None required	Required for participating candidates; optional for non-participating candidates	None required	None required	At least two required for participating candidates
Initial Public Funding	Primary Contested Races	Governor: \$ 200,000. Senate: \$ 7,746. House: \$ 1,504.	Governor: \$ 638,222. Legislature: \$ 12,921.	Governor: \$ 1,622,000. Lt. Governor: \$ 414,200. Senate: \$ 46,500. House: \$ 16,200. <i>(in 2002)</i>	Governor: \$ 1,250,000. Lt. Governor: \$ 375,000. Senate: \$ 35,000. House: \$ 10,000.	<i>n/a</i>
	Primary Uncontested Races	Governor: \$200,000. Senate: \$1,927. House: \$512.	Governor: ≈ \$ 22,050. Legislature: ≈ \$ 1,100. <i>(same value as qualifying contributions collected)</i>	Governor: \$ 811,000. Lt. Governor: \$ 207,100. Senate: \$ 23,250. House: \$ 8,100. <i>(in 2002)</i>	Governor: \$ 1,250,000. Lt. Governor: \$ 375,000. Senate: \$ 35,000. House: \$ 10,000.	<i>n/a</i>
	General Contested Races	Governor: \$ 400,000. Senate: \$ 20,082. House: \$ 4,362.	Governor: \$ 75,000. Lt. Governor: \$ 25,000. <i>(incumbents receive 85%)</i>	Governor: \$ 957,333. Legislature: \$ 19,382.	Governor: \$ 3,000,000. Lt. Governor: \$ 750,000. Senate: \$ 85,000. House: \$ 25,000.	Senate: \$ 50,000. <i>min</i> \$ 100,000. <i>max</i> Assembly: \$ 50,000. <i>min</i> \$ 100,000. <i>max</i> <i>(varies by # of qualifying contributions received)</i>
General Uncontested Races	Governor: \$ 400,000. Senate: \$ 8,033. House: \$ 1,745.	Governor: \$ 0. Lt. Governor: \$ 0. <i>(candidates may raise from private sources up to contested race limits)</i>	Governor: ≈ \$ 22,050. Legislature: ≈ \$ 1,100. <i>(same value as qualifying contributions collected)</i>	Governor: \$ 567,750. Lt. Governor: \$ 137,900. Senate: \$ 15,700. House: \$ 4,850. <i>(in 2002)</i>	Governor: \$ 900,000. Lt. Governor: \$ 225,000. Senate: \$ 25,500. House: \$ 7,500.	Senate: \$ 25,000. <i>min</i> \$ 50,000. <i>max</i> Assembly: \$ 25,000. <i>min</i> \$ 50,000. <i>max</i> <i>(varies by # of qualifying contributions received)</i>
Minor Party Candidates	In primary elections: same as uncontested major party candidates; in general elections: same as major party candidates	Same treatment as major party candidates	For the year: 70% of total primary and general election amounts allocated to major party candidates	<i>n/a</i>	Primary elections: no funding; general elections: funding scaled to party's performance in previous election cycle	For the pilot project: 50% of amount allocated to major party candidates

Clean Elections: Public Financing in Six States, including New Jersey's Pilot Project

	MAINE	VERMONT	ARIZONA	MASSACHUSETTS	CONNECTICUT	NEW JERSEY	
Initial Public Funding	<i>Single Party Dominance</i>	<i>n/a</i>	Candidates in "one-party-dominant" districts may reallocate some funding to primary	<i>n/a</i> <i>(Primary contest funding already higher)</i>	Candidates in "party dominant" districts receive additional primary funding	<i>n/a</i>	
	<i>Indexing of Funds</i>	Funding in legislative races indexed to average cost of similar campaigns during the previous two election cycles	Adjusted biennially for inflation and in proportion to number of income tax returns filed	Adjusted biennially for inflation	Beginning in 2014, adjusted quadrennially for inflation	<i>n/a</i>	
	<i>Contingency for Shortfall of Public Funds</i>	Participating candidates may cover with private contributions of up to \$250 for legislative and \$500 for gubernatorial races	Proportional reduction of allocations and participating candidates may cover with private contributions	Reduction of matching funds, then reduction of initial allocations, then participating candidates may cover with private contributions	None specified, however, in 2002, the state liquidated assets to comply with a court order to fund the program	Funds reallocated from corporate business tax revenues	None specified
Additional Public Funding	<i>Facing a Non-participating Candidate</i>	<i>n/a</i> (Vermont significantly lowered individual contributions ceilings when enacting its public financing law; these limits were invalidated in 2006)	Participating candidates receive a dollar-for-dollar match if the amount spent by a non-participating opponent exceeds the amount allocated to the participating candidate	Participating candidates receive a dollar-for-dollar match if the amount spent by a non-participating opponent exceeds the amount allocated to the participating candidate	Participating candidates receive a dollar-for-dollar match if the amount spent by a non-participating opponent exceeds the amount allocated to the participating candidate	Participating candidates receive a dollar-for-dollar match if the amount spent by a non-participating opponent exceeds the amount allocated to the participating candidate	
	<i>Independent Expenditures</i>	Independent expenditures are treated as if they were made by the non-participating opponent. Independent expenditures made <i>on behalf of</i> a participating candidate may reduce that candidate's eligibility for matching funds	<i>n/a</i>	Not specified	In general, independent expenditures are treated as if they were made by the non-participating opponent	In general, independent expenditures are treated as if they were made by the non-participating opponent	
	<i>Additional Funding Ceiling</i>	Two times the original allocation	<i>n/a</i>	Three times the original allocation	Two times the original allocation	Two times the original allocation	Major Party Candidate: \$ 100,000. Minor Party Candidate: \$ 50,000.
Administration and Enforcement	<i>Administrative Agency</i>	Commission on Governmental Ethics & Elections Practices www.maine.gov/ethics/	Secretary of State www.sec.state.vt.us	Citizens' Clean Elections Commission www.ccec.state.az.us	Office of Campaign and Political Finance (<i>prior to repeal</i>) www.mass.gov/ocpl/	State Elections Enforcement Commission www.ct.gov/seec/	Election Law Enforcement Commission www.elec.state.nj.us
	<i>Web site</i>						