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Public Financing Of Elections In The States

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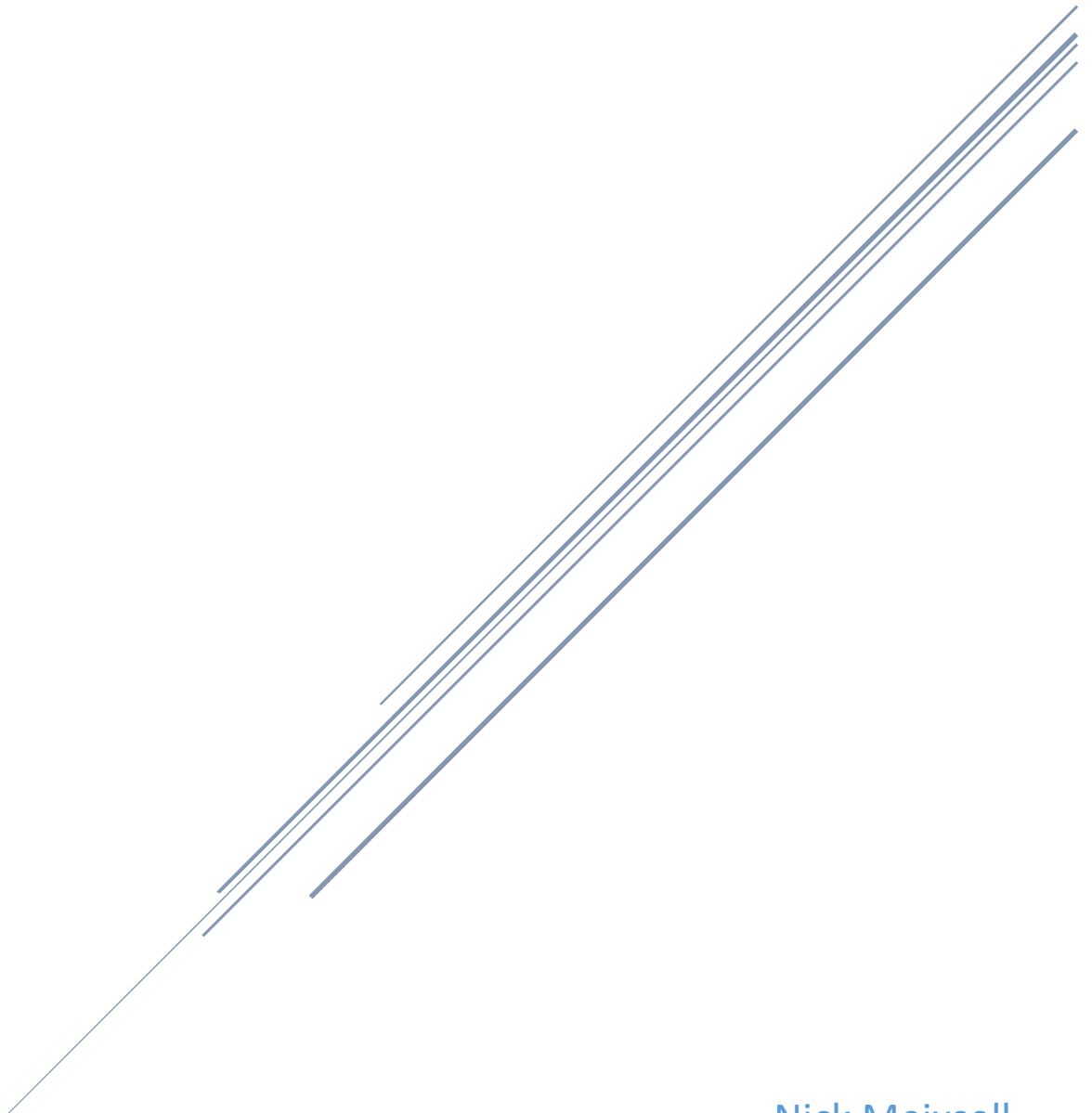
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PUBLIC FINANCING OF ELECTIONS IN THE STATES



Nick Meixsell
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Thesis Abstract

In the US, there is a history of the courts striking down campaign finance reform measures as unconstitutional. As such, there are few avenues remaining for someone who is interested in 'clean government' reforms. One such avenue is publicly financed elections, where the state actually provides funding for campaigns. These systems can be quite varied in the restrictions and contingencies they attach to the money, and for examples one has to look no further than the states. There are many states that have some form of public financing for elections, and by looking at the different states' systems we are able to glean what makes these systems successful or not. By using these states as models, I am advocating for the use of public funds to help address one of the most consequential issues of our time, the distorting effects of large amounts of money in politics.

Chapter 1: Introduction

The influence of money in politics is a subject for debate that likely will never go away. There will always be reformers who believe that there is too much money flowing into politics, and there will always be people with money who wish to keep that flow as unrestricted as possible. The issue of money in politics is a very broad topic, and as such it is difficult to grapple with how to approach it. I am interested in looking at what can be considered an outgrowth of money in politics, that of campaign finance reform. Still by no means a small topic, but one in which there is a clear linear progression of history, with attempted reforms and legislation being easy to follow, as well as the setbacks. There are also much more clear-cut options that one has for reform when looking exclusively at campaigns. But simply because those reform options are clearer does not mean that there is a particularly easy path to them. Really, it is difficult to look at the history of campaign finance legislation and feel anything other than pessimism at the prospect of future reform.

By its very nature, reform faces difficulties, as money always seems to find a way to slip through the cracks of whatever rules may be put in place. Moneyed interests will always be looking for ways to circumvent the limits that are placed on campaign finance in order to influence elections. In America, these difficulties are compounded by the courts' interpretation of the First Amendment, and any reformist thus has a dual battle to fight against both the moneyed interests and the courts. In fact, in the story of campaign finance reform in America the courts have been the most significant impediment in enacting major changes, going back to the beginning of modern campaign finance law. Beginning with Watergate, modern campaign

finance reform has had a rough time in gaining traction, and since then there has not been much good news for those who wish to reform the system. Many different approaches have been attempted, and frankly most of them have not worked out for one reason or another. This is in large part due to court decisions, and this combined with the natural difficulties of passing reforms to begin with means that there are not many meaningful limitations on campaign finance in America. And, due to the permanent nature of court decisions on constitutionality, there are also very few avenues that are still open for campaign finance reform.

Following Watergate, there was a national push for reform generally in response to the unprecedented scandals that the nation bore witness to. The 1972 election saw large scale corruption being uncovered, and there was a push by Congress to pass legislation to prevent a repeat of this. This manifested itself in 1974 as an overhaul of the 1971 Federal Election Campaign Act. The 1974 version of FECA was the beginning of modern campaign finance legislation, and was an attempt to enact new sweeping changes to federal campaign finance law. It is a prime example of the type of change that reformers clamor for, with provisions in it that limited spending by campaigns, limited contributions to candidates for federal office, required the disclosure of political contributions, limited candidate expenditures from personal funds, and established a system for publicly funding elections presidential elections. This laundry list of features that were introduced by the law is genuinely impressive, and marked a real attempt at curbing corruption and the appearance of corruption. It is probably the single most wide reaching piece of campaign finance reform legislation that has ever been passed or will ever be passed in the United States, but the law was not to remain in its original form for

long. What came next in *Buckley v. Valeo* would be the first in a long string of court cases that limited the scope and scale of campaign finance reform in the US.

Although there was a national push for these reforms, there was also an immediate pushback from the courts on what were seen as excessive restrictions on freedom of speech. It becomes quite clear when looking at the limitations that were put in place by the FECA legislation, that campaign finance reform measures focus on restricting the way that money is used in elections. And, since the way you spend your money is considered a matter of free speech, these restrictions need to pass the litmus test of court cases, and must demonstrate that there is significant reason why they need to be put in place. In the history of public financing court cases become exceptionally important, and it will be imperative to look at various court cases and the impact that they had on the systems that could be put in place. The restriction of speech is typically couched in the desire to prevent corruption, but the courts need to agree that the tradeoff is worth it. The constitutionality of any provision must be weighed against the precedents set in place by the courts, and this will be useful not just when looking at the stories of different state systems, but also in the quest to craft a federal system. What is and is not allowed is a vital issue in the crafting of any system, and as the options became diminished over the years, the ability for lawmakers and reformers to achieve their goals of limiting corruption became harder and harder. That is not to say that it is currently impossible to enact meaningful reform, but the scope of that reform is severely limited by what the courts allow.

Naturally, as the 1974 overhaul of FECA was the first sweeping change to federal campaign finance law, it was also the subject of the first major court decision on these laws.

Buckley v. Valeo was a monumental case, as it set the stage for many of the future challenges to campaign finance laws, as well as showing the unique challenge that these types of reforms face in the US. FECA included an impressive list of features that reformers often aim for, but many of them were deemed to be unconstitutional violations of the first amendment. The court struck down expenditure limits both on the candidates and outside actors, as well as finding that its disclosure limits were unconstitutionally broad. It did however uphold FECA's contribution limits to candidates, and also ruled that the public funding of presidential elections was constitutional, and that attaching provisions to that system such as spending limits or disclosure requirements was allowed. This decision is important in that it shows the type of influence that the courts have had and continue to have on any campaign finance legislation. This court case is where express advocacy was first defined using a set of eight magic words, where for the most part as long as those words were avoided then it did not classify as advocating for a particular candidate, and thus the provisions of the campaign finance law did not apply. This case was only the first in a long string of court cases that shaped how campaign finance could be regulated.

Citizens United v FEC marked a major turning point in the history of campaign finance reform in America. It gutted the BCRA, and since my next chapter will go more into detail on these cases, suffice to say that it significantly cut back on the way that money could be regulated in campaigns. The proverbial floodgates were opened to spend unlimited amounts of money in campaigns, and subsequently the price of campaigns, especially presidential, have skyrocketed since this decision. It allowed what are for all intents and purposes extensions of a candidate's campaign to receive and spend unlimited amounts on ads and publicity. Disclosure

requirements are now easily bypassed, as it is possible for anyone who wishes to remain anonymous to donate to one of these 'unaffiliated' groups, and not need to worry about their name being public. The Citizens United decision has made it nearly impossible to effect major change in the realm of campaign finance, and frankly has also made it clear why reform is so desirable to so many people, as the amount of money that is being anonymously spent on campaigns continues to balloon.

With these court cases laid out, it becomes clear why the prospect for campaign finance reform is so grim. Outside of a constitutional amendment, it seems impossible to truly regulate the type of money that goes into a campaign or where that money comes from, and there certainly doesn't seem to be a possible way to limit the amount that gets used in campaigns; the courts seem to have only left table scraps for reformers. It is little consolation that direct contributions to candidates are still able to be regulated when circumventing those regulations are so simple. There are of course still campaign finance and disclosure laws on the books, so overt corruption can still be legislated against, and people do still go to jail and get in trouble over these laws. However, these laws are very limited, and the fact that a candidate's campaign expenditures can be limited is in many ways meaningless when a Super PAC or 501(c) acting in that candidate's name can spend as much as they want on anything they want, and in some cases do it anonymously. This is an important caveat that also goes along with every public financing system that I will be looking at or advocating for: they can only restrict the actions of candidates, not independent expenditures.

Despite this, there are still options available, even while being constrained by court decisions as we are. One of the only major avenues of reform that is left is the mechanism of

public funding of elections. An important caveat left by the Supreme Court was that spending limits, contribution limits and constraints, and other restrictive measures on campaign money that would otherwise be unconstitutional is permissible, as long as the candidate is accepting public funds. This meant that many of the restrictions that reformers want can be implemented in some form, as long as candidates are willing to use public money. And this also means that there is potential for future reform that includes limitations on expenditure and contribution, as long as it's wrapped up in a public financing system.

Using public funding, you are able to achieve at least some of the changes that were previously attempted. The way that this works is that governments will give candidates money to fund their campaign, and through this money can affect the way the campaign is run. An easy way to think of it is as if publicly financed elections act as conditional loans that are being given to the candidates. The government attaches certain rules and stipulations to the way that the campaign can be run in exchange for the ability to receive the public funding. This allows you to not only place limits on how much the candidate is allowed to raise, but also from whom they are allowed to raise, as well as placing limits on their expenditures. Through this, you are able to make the politicians more reliant on smaller donations, or perhaps through a full funding system have no need to fundraise at all and focus purely on campaigning or legislating. The freedom that you have with crafting limitations that can be tacked on to the funding is what makes publicly financing elections an attractive option.

One of things that makes public funding attractive to reformers is the number of options that there are for how to construct a system. The first and obvious choice is for which office you want to institute a public funding system for. The variety that is seen in this regard is quite

impressive, with New Jersey only funding the gubernatorial race, West Virginia only funding judicial races, or Minnesota providing funding for legislative, state wide and gubernatorial elections. Then there is the question of qualifying for the system, as there has to be some way to discern who is going to productively use the money. This is actually a rare point of consistency, as all systems that I have looked at have some variation on fundraising requirements, with the candidate raising a certain amount of money, oftentimes in certain amount or from a particular type of donor. Once you know which offices are going to be receiving public money, the next question is the source of this money.

One of the most important aspects of a publicly funded election system is where the actual funding comes from for the public funding. A classic way of funding used in many early systems such as the Federal System that is also relatively easy politically is through a simple tax checkoff, where a taxpayer can check a box saying they want a small sum of their taxes to be diverted from the main fund to a special public elections fund. The problem with this is that it relies on people to consistently check that box, and as time has gone on these tax checkoffs have become less and less effective at funding as fewer and fewer people actually do the checkoff. As such, most systems rely on more consistent forms of funding, with the simplest being direct appropriations in the budget for publicly funded elections. However, this can be difficult politically, and thus there is a hodgepodge of ways that states fund their systems, with various surcharges, fines, and even donations being used as sources of revenue.

Once the funds have been acquired through whatever means can be thought of, there is then the issue of disbursing the funds to the candidates. There are two main ways of doing this, one is through block grants and the other is through matching funds. Block grants can be a very

simple way of setting up a public financing system, with there being a maximum amount that candidates can receive based on the office that they are running for. Block grants in their most extreme form can be what are called clean election systems, where the public funding system provides full funding for participating candidates and bars them from taking any outside money past the qualifying amounts. Matching grants on the other hand allow a system to encourage focusing on certain types of donations, usually small individual donations. They also can be cheaper, especially in comparison to clean election systems. There is always going to be a political desire to limit the amount of money that you are spending on your public financing system, so there is a natural inclination for publicly funded systems to not give out large amounts of money. One must be careful though, as offering too little money in a system becomes a problem of its own, and can easily render the system pointless.

There are major limitations to the changes that you can achieve, the main being that the only place where your restrictions apply is within the campaigns of those who accepted the public funding. This is because the courts have ruled that you can't force candidates to take part in the system, which makes changing the scope of a whole election becomes much harder. Now, when designing a public funding system, it is necessarily optional, and you must make that option as enticing as you can to candidates to ensure that a good number will choose to use it. Thus, there must be enough money that is being offered to make candidates willing to accept the restrictions that come with that money. If what is being offered is paltry in comparison to what could be raised outside the system, then why would a candidate take upon themselves the extra burdens being imposed by the system? At the end of the day, the amount of money that is enough is the amount that allows a candidate to win using public funding. If

the amount being offered is too low and candidates are unable to be competitive while using the system, then candidates will stop taking public funding and the system will fall apart. Even if there are candidates who support public funding and genuinely want to use the system, not being able to be elected is a major deterrent to a politician. And, once nobody is using a system, it may as well not exist.

This can be evidenced by the Federal system for publicly funding presidential elections. The current state of the system really is this, where no candidates are taking public funds, and thus no candidates are subject to the rules they entail, and so it might as well not exist. That's actually not entirely true, as there are still a couple of candidates who use public funds, but it literally is a couple. In the 2016 presidential election, the only candidates that used public funding during the whole campaign were Martin O'Malley and Jill Stein, and only during the primaries. This marks a stark shift, as from the 1976 election to the 2008 election every major party candidate took public funding for the general election, and nearly every candidate used funding for the primary. Clearly, the courts are not the only danger to reform measures. Having a system that peters out and is no longer attractive to candidates means that functionally you don't have a system anymore. In that way having a system that is no longer utilized by candidates is just as bad as if it were struck down or repealed, or if there never was a system in the first place. Understanding what causes this, and more importantly how to prevent a similar situation from happening, is vital to creating a successful system and is why looking at the federal system is so important.

With a ruleset in place where the government can't mandate candidates use public funding, there became an incentive for lawmakers to build in a tool to their system whereby a

publicly funded candidate would still be able to win against a well-funded, privately funded opponent. This led to the creation of trigger provisions, which are parts of the law that only come into effect when a candidate has triggered it, which can mean a candidate raised past a certain amount, or simply that a candidate opted out of the system. This then would usually lead to an increase in the amount of money that the publicly funded candidate(s) receive, and often increasing their expenditure limit as well, allowing more money to be utilized by participants than they would have otherwise. Examples of a system like this could have been seen in Nebraska or Arizona, where the trigger provisions were actually quite effective in making a system that the vast majority of candidates used. Trigger provisions help to mitigate one of the major problems that public funding faces, namely a publicly funded candidate being well outspent by privately funded candidates. In this way, that problem could be dealt with without expending undue amounts of money when there wasn't a well-funded candidate outside of the public funding system. However, these provisions have since been declared unconstitutional as well, making it that much more difficult to make public financing an attractive and viable option for candidates who wish to take part.

Davis v FEC in 2008 was the first case where triggering provisions were deemed to be unconstitutional, although not in the context of public funding. It was in fact striking down a portion of the BCRA known as the millionaire's amendment, which was a portion of the law which triggered when a candidate's personal funds they planned on using for the election exceeded a certain amount. This would then raise the expenditure limits for the non-self-financing candidate, as well as allowing them to receive unlimited contributions from their respective party. This was deemed by the court to place too much of a burden on the first

amendment right to spend one's own money on a campaign, as what the law did was discourage candidates from spending more than the trigger amount on their candidacy. Although this case was not actually aimed at public financing, it did set the stage for future court cases which actually did directly involve public funding systems with trigger provision, which until this point had been a fairly common tactic. *McComish v. Bennet* was the case that actually dealt with public financing, and using the same logic as *Davis v FEC* struck down Arizona's triggering mechanism in 2011, which then led to all other systems with those provisions having them struck down and removed.

Despite state systems being put through the judicial wringer, there are still many states with systems in place, including Arizona. In publicly financing elections, the states truly are the laboratory of democracy. There are 17 states which currently have or recently had some form of public funding systems for their elections, which provides many instances and variations of public funding. This allows me to look at what kinds of public financing are effective, as well as looking at what is not. There are plenty of examples of failure, such as with court cases in Nevada, or by fizzling out in Wisconsin, or by being outright abolished in North Carolina. We can also look at more active systems and observe their failures and successes. Although the cases of states where systems became no longer useful is important, there are other states where the problems might not result in the demise of the system, at least not yet. Things such as declining participation rate can be indicative of a system that, while still capturing enough candidates to make an impact, might be slowly creeping towards irrelevance and eventual repeal.

But it isn't all doom and gloom in the realm of public financing, which isn't something one can usually say when talking about campaign finance reform. Just as important as the

states where something went wrong or is going wrong are the states where things are actually going well. Many of the states that I will be looking at have robust public financing systems that the majority of candidates use, that are supported both by the public and the lawmakers, and likely won't be going anywhere anytime soon. Looking at the how and why of these successful states is useful not just in trying to come up with a federal proposal, but also more generally in the search for a winning formula for public financing. Although it is always instructive to look at failure, if one wants success you need more than just examples of how to fail. As such I will be looking at many states that have quite successful public funding systems, with the goal being to find what aspects of these systems allow them to thrive.

Another problem with any reform is the partisan divide, with Democrats being much more likely to support measures than Republicans. Although there is a certain ideological component to this, it seems that one of the main reasons for this is the perception that Citizens United, and increased campaign spending in general, disproportionately helps Republicans. Regardless of the truth of that, the fact of the matter is that very often Democrats are viewed as the ones who both advocate for and benefit from these types of reforms, and Republicans are viewed as the ones who oppose these reforms. That is not always the case though. As we will see by looking at the various states that have public financing and how that plays out, there are Republican states with public financing, and there are Republicans who support it. In addition, there are definitely examples of Democrats who have actively opposed public funding. However, the majority of the states that have these systems are fairly blue, and I don't think that it would be too controversial to say that trying to enact public funding would be more difficult in a red state. That is a problem, although it is one that is well outside what I am trying

to address here, so I mention it only to say that it is something that should be kept in mind when discussing public funding.

An important point to make are the goals of public funding, as these will play a significant role in determining their success or failure. I have been focusing mostly on the ability of public financing impose limits on campaigns, whether those be limiting the amount of money that can be raised or used or where that money can come from. That is certainly an important part of public financing, but those are also elements that aren't inherent to public financing. If it wasn't for the problem of constitutionality, then these regulations could be put in place outside of a public funding system and work just as well. But public financing is more than simply a fallback option for these types of reforms, and has merits that are unique to public funding and reasons to enact it that are true regardless of the context. In other words, even if every other reform option was available and constitutional, there would still be reasons to use public financing. With public funding, candidates don't have to be reliant on fundraising and donations for their campaigns, and this is one of the biggest draws. For anti-corruption purposes this makes public funding one of the most effective reforms, as it means that there is less of an ability to use campaign donations to influence politicians. In addition, public financing opens up running for office to people who otherwise would be unable to. If you don't need to have a wide fundraising base, then relatively unknown and unconnected people are still able to run, thus widening the pool of candidates.

The comparing and contrasting of state systems will allow me to see what has been effective and what hasn't in the implementation of public financing. The differences in office, manner of funding and source of funding all manifesting themselves in the various states will be

extremely useful in this regard. The fact that included in the states that I will be looking at there are states whose systems have either been struck down or abolished is also geared towards this, as it will allow me to see what causes a system to completely collapse. Once I have thoroughly explored the pros and cons of the various systems that are in place across the country, I will create a policy proposal for a national plan for publicly funding federal elections. At the end of the day I am interested in campaign finance reform, and publicly financing elections is the best avenue that is left in the US. Since I would like to see reform, I think it is imperative to articulate exactly what that reform should look like, and that is what I will be attempting to do.

Chapter 2: The Courts

As I mentioned in the previous chapter, court decisions have an outsized influence on the realm of campaign finance. The topic is so entangled with the courts that it is impossible to talk about any type of reform without considering the courts, and the failure of reforms very often comes because of court decisions. As such, it is a necessity to lay out the important cases and give a feeling for what has been done, what has been struck down, and what can still be done. Of course, what can still be done is always uncertain, because there's the distinct possibility that the courts will overturn precedent and strike something down that had previously been permissible. We have a clear example of that with Citizen's United, and with the continued conservative majority on the Supreme Court who have shown themselves to be fairly activist in their interpretation of the constitution, it is important to have that possibility in the back of your mind. That being said, no one can predict the future, so for our purposes here the focus will be on what the courts have already said on the matter, not on potential future decisions. In that vein, I will be outlining the most important court cases regarding campaign finance and more narrowly public funding, and through these court cases we can see the limits of constitutionality that must be worked within.

However, before I do that I would like to outline the basic premise of these cases, all of which are based upon the first amendment and the purpose of freedom of speech. As I have already alluded to previously, the courts take a fairly broad view of what counts as a violation of freedom of speech, and this has often been to the detriment of reform measures. That is because the view that the courts have traditionally taken is a rights based model, one where

everyone has a right to speak, and anything that abridges that of one's right to speak must have a justification that overrides that right, such as libel or slander laws. As far as campaign finance is concerned, the only justification that the courts have accepted has been that of preventing corruption or the appearance of corruption. However, there are other ways of viewing free speech, such as the utilitarian model with the market place of ideas, where you wish to prevent voices from being drowned out so as to ensure that the best voices and ideas rise to the top. Public funding often takes a more utilitarian approach to its rationale of what it is trying to do, and will emphasize the right to be heard as much as the right to speak. Although the court's interpretation is unlikely to change, I think it is important to note that there are other approaches that one can take to freedom of speech, and that there isn't necessarily a correct approach.

Court cases are naturally reactionary to reform movements, and following Watergate there was massive political and public desire for campaign finance reform, and thus FECA was enacted. This was immediately challenged in court, with the case *Buckley v. Valeo* coming before the Supreme Court in 1976. It was a monumental case, as it set the stage for many of the future challenges to campaign finance laws, as well as showing the unique challenge that these types of reforms face in the US due to our first amendment protections. FECA included an impressive list of features and reforms, but many of them were deemed to be unconstitutional violations of the first amendment. The court struck down expenditure limits both on the candidates and outside actors, as well as finding that its disclosure limits were unconstitutionally broad. It also struck down the limitations on self-financing your own campaign, and expenditure limits on independent expenditures. It did however uphold FECA's

contribution limits, and also ruled that the public funding of presidential elections was constitutional. Moreover, the court held that attaching provisions to that public funding such as spending limits or disclosure requirements were allowed.¹ This meant that the presidential funding system was still able to impose expenditure limits and other restrictions on the candidates who accepted federal money, and this allowance is obviously vitally important for public finance schemes.

The case of *Buckley v Valeo* is important beyond simple policy allowances, as it shows the type of influence that the courts have on any campaign finance legislation. This court case is where express advocacy was first defined using a set of eight magic words, where for the most part as long as those words were avoided then it did not classify as advocating for a particular candidate, and thus the provisions of the campaign finance law did not apply. These words were "vote for," "elect," "support", "cast your ballot for", "Smith for Congress", "vote against", "defeat", "reject", and any variations. This led directly to a preponderance of issue advocacy ads in the 90s which avoided these words and thus the law while still being designed to effect and election, and thus another round of reform with the BCRA. In addition, the logic behind defending the parts of the law that were upheld was grounded in avoiding corruption, beginning a long tradition of this being the rationale behind campaign finance reform measures. But this case was only the first in a long string of cases that define how far campaign finance reform can go, and very often the allowable box was shrunk by each consecutive case.

¹ (Buckley v. Valeo 1976)

In 1978, there was the case of the *First National Bank of Boston v. Bellotti*, which found that there could be no prohibitions on corporations from donating to ballot proposals. Although this case might seem narrow at first, it labeled corporations as a class of speaker who the state could not restrict without solid reasoning. Basically, it meant that corporations have speech rights, and thus it was not enough to simply *assume* that corporations would warp the electoral process. The courts continued in their attacks on campaign finance restrictions in the 1981 case *Citizens against Rent Control v. City of Berkley*, where the court deemed that there can be no contribution limits whatsoever to ballot initiatives. However, it wouldn't be accurate to characterize the courts as always ruling against reform measures. The 1990 case *Austin v. Michigan Chamber of Commerce* actually ruled in favor of a restriction on corporate political spending that was in place in Michigan. The law banned corporations from using money in their general treasury to either support or oppose candidates in state elections, and mandated that they create a fund especially for political expenditures. The court accepted the rationale that unfettered corporate spending and the distorting effects of having huge amounts of money thrown at an issue from one source qualified as a form of corruption, or at least could be perceived as such.

Looking further on in the timeline, *McConnel v. FEC* in 2003 is again an example where the court backed a piece of campaign finance reform legislation. The court held that the newly enacted BCRA was constitutional, and that its limits on electioneering communications were allowable due to the interest in avoiding corruption or the appearance of corruption. The Bipartisan Campaign Reform Act was an amendment to FECA that was aiming at sweeping campaign finance reform. This time the focus was squarely on soft money, which is money that

is being used to affect the outcome of an election but isn't directly tied to any candidate and thus wasn't subject to any of the existing federal regulations. This was in response to the drastic increase in these types of communications that skirted around the 8 magic words from *Buckley v. Valeo*, and an acknowledgement of the increasing role that outside groups were playing in elections. The BCRA banned electioneering communications that were funded through soft money from appearing either 30 days before a primary election or 60 days before a general, in the interest of preventing corruption. This rationale held until 2010, when the infamous Citizens United case occurred.

Citizens United v FEC is a monumental case in the history of campaign finance in the US, as the decision rendered many pieces of federal regulations on campaign finance to be basically useless. The ruling stated that as long as an organization doesn't directly align itself with a candidate, then the state cannot place any limits on its expenditures on electioneering communications as defined by the BCRA. This gutted the BCRA, as one of the main points of the legislation had been to combat the rising tide of issue advocacy ads paid for by outside groups. It also overturned the decision in *Austin v. Michigan Chamber of Commerce*, as corporation's spending on politics in any capacity is now considered under the protection of the first amendment. By considering corporations to have speech rights the court justified what amounted to a huge increase in the ability of corporations to spend on politics. The proverbial floodgates were now open to anyone, not just corporations, to spend unlimited amounts of money in campaigns, and thus the price of campaigns, especially presidential, have skyrocketed since this decision.

In addition, what is legally defined as being aligned with a candidate is unbelievably narrow. The decision led to the creation of Super PACs, and allows what are for all intents and purposes extensions of a candidate's campaign to receive and spend unlimited amounts on ads and publicity. Disclosure requirements are also now far easier to bypass, as it is possible for anyone who wishes to remain anonymous to donate to one of these 'unaffiliated' groups, and not need to worry about their name being public. However, there do still exist restrictions on donating to candidates, but Super PACs often align themselves with one specific candidate and act as an indispensable arm of their campaign, so again these regulations become comically easy to bypass. The Citizens United decision has made it nearly impossible to effect major change in the realm of campaign finance, and frankly has also made it clear why reform is so desirable to so many people, as the amount of money that is being anonymously spent on campaigns continues to balloon. The ease with which one can donate anonymously also opens up the doors to very legitimate concerns with corruption, and thus there definitely exists the possibility of a legal challenge even within the court's own logic.

One of the most controversial aspects of Citizens United was its insistence on calling money 'free speech', and thus protectable by the first amendment. Although the Citizens United ruling took this concept significantly further than previous cases, this concept had originally been introduced in *Buckley v Valeo*. The caveat to this was that this speech could be limited in the interest of preventing corruption or the appearance of corruption. This essentially pigeonholed any and all campaign finance restrictions to be about corruption and only

corruption, and thus you have every reform measure being framed in that manner.² This is both incredibly limiting to potential reform measures and subject to the court's changing viewpoints on what can be viewed as a corrupting influence. Another aspect of Citizens United, the idea that corporations have free speech rights that can be protected by the constitution, also comes from a previous court case. The case of *First National Bank of Boston v Bellotti* struck down a restriction in Massachusetts on corporation's spending on state referendum, which was deemed not to meet the exacting standards demanded of a state restriction on free speech. Importantly, this logic meant that corporations had constitutionally protected free speech rights, and this became the basis for that argument in Citizens United.

Beyond the general campaign finance decisions, there are cases that deal directly with public funding. Specifically systems with trigger mechanisms, as was exemplified by Nebraska and Arizona. Both of these had provisions where candidates who were taking part in the publicly funded system would receive extra money if they were facing a candidate who was privately funded, and thus not subject to any of the rules that were imposed by those systems. In Arizona, the system was set up so that if a publicly funded candidate was against a privately funded candidate, they received additional money in response to the privately funded candidate's fundraising. In 2011, the case *McComish v. Bennett* was brought before the Supreme Court and resulted in the overturning of the triggering provisions in Arizona's system. The court determined that the system placed an undue burden on a candidate's right to privately finance their own campaign, and that the provision forced candidates to raise less money in order to

² (Hasen 2016)

avoid triggering matching funds, and thus was an imposition on their freedom of speech. An important caveat to this decision is that it still left the rest of the law in place, and thus Arizona still has public funding in place.

This was not the case however in Nebraska. Similar to the way in which the Arizona system was set up, in Nebraska a candidate would receive additional money if a candidate wasn't participating in the system. However, it was more reliant on the triggering mechanism than Arizona, as the only time any funding was disbursed by the state was if a candidate did not agree to abide by the expenditure limits set in place by the system. The candidates who did agree to those expenditure limits would then be given funds that were directly responsive to those raised by the non-abiding candidate(s). In comparison, Arizona's system gave a set amount to every candidate who opted in irrespective of any funds raised by opponents who did not. Following the ruling in *McComish v. Bennet*, the Supreme Court of Nebraska was asked by the state attorney general to decide whether the public funding scheme was still constitutional. The court subsequently struck down the entirety of Nebraska's system, thus ending public funding in the state. An interesting side note in these cases is that in the dissenting opinion for the Arizona case, the system was characterized as simply an anti-corruption measure, even though it is fairly blatant that one of the goals was to level the playing field for candidates running against high spending opponents.

Having laid out the limitations that the court has placed on reform efforts, there are three options available to us. One is to attempt to pass a constitutional amendment ensuring that campaign finance laws won't run afoul of the First Amendment, either by redefining what qualifies as speech or making allowances for certain restrictions in the name of fairness or

corruption. While attractive, a constitutional amendment is a difficult proposition, and hedging your bets on one is not necessarily a wise move. A worthwhile venture perhaps, but not the most realistic. A second option is to wait until we have a Supreme Court who would be willing to reverse course on rulings and be more open to reform. Both of these options have the ability to do away with the more troublesome aspects of precedent, from the viewpoint of a reformer. The court's focus exclusively on corruption, when many reform measures have a focus more on equality and trying to decrease the inherent unfairness of money in politics, is one which probably should be done away with if we want to have an honest debate about the goals of reform measures. While reframing the debate through court appointees or an amendment may be long term strategies for opening up options for reform, they don't help us in the present when trying to pass reform.

So, lastly, we have the option of attempting to work within the framework that has been created by court decisions. Although not ideal, the courts are not likely to change their minds anytime soon and a constitutional amendment is a long ways off. For reform options right now, there are many restrictions that hamstring efforts right from the start. First among the problems is that private expenditures are completely out of the regulatory mandate, meaning that corporations or unions are able to spend unlimited amount of money on their own to promote a candidate or issue. According to the courts they are protected by the first amendment, and the way they spend their money is free speech, period. The laws regarding what qualifies as independent expenditures are also quite loose, allowing candidates to have PACs that are essential parts of their campaign without being, by legal definitions, associated with the candidate. Even with the candidates own funds able to be regulated, those regulations

are still limited to contributions and not expenditures. Within these limitations then, what options are available to reformers?

The answer is not many. By the courts ruling, money in politics is defended by the first amendment nine times out of ten, and the only valid reason to restrict it is to avoid corruption or the appearance of corruption. But there is the all-important caveat left by the Supreme Court back in *Buckley v Valeo*, that restrictions are allowed to be placed on candidates if they accept money from the government. Public funding of elections acts almost like a bargain with the candidate, where they agree to restrictions that otherwise could not be placed upon them in exchange for funds. Even when public funding systems have been directly challenged by the courts as in *McComish v Bennet*, this fundamental aspect has not been questioned. So, although we can never be completely sure that the courts won't overturn that somewhere down the line, it is well within the bounds of constitutionality currently. On its own there are inherent limitations to public financing as reform, as it has no influence on outside actors wishing to effect the outcome of an election, but that is also currently outside what is constitutional. So, as far as current possibilities go, publicly funded elections are perhaps the only option that can work within the constitutional framework provided by the courts.

Chapter 3: Arizona and Triggering Mechanisms

Arizona is a unique case in public financing, as it had a ruling in *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett* that struck down a major part of its law, yet it still has a system of public financing. This is an interesting place to be, having had major tenets of your public funding scheme be struck down while having others remain. And, even more interestingly, the system has continued unabated in the years since the decision. Despite the lack of matching funds, there are still many candidates in Arizona who continue to participate in the system, and it can hardly be said that the Supreme Court rang the death knell for Arizona's public financing in 2011. However, that's not to say that the effects are entirely nonexistent, as there has been a noticeable decline in the participation of candidates since 2011. With Arizona, we get to look at the direct effects of the courts on a system, and see how an unfavorable court decision is not necessarily an endpoint. However, before we see its effects, let us first look at the system that Arizona put into place.

Arizona has what has been dubbed a "clean election system," which is a type of block grant system. Like a normal block grant system, Arizona gives a set amount of money to candidates who have qualified for public funding and imposes restrictions on the way that the money can be spent. The amount that is given to a candidate depends on the office that the candidate is running for, with a candidate for governor receiving more than a candidate for superintendent of public instruction. What a clean election system means is that, outside of the funds that are required to initially qualify for public funding, no other fundraising by the candidate is allowed, and thus beyond the initial qualifying contributions, all of the money the

candidate uses is from the government. This means that anyone who qualifies for the system, qualifies to have their entire campaign funded by the state. This is different than a normal block grant system, which would allow the candidate to continue fundraising, albeit in a limited manner. The only other state that has a clean election system is Maine, although Connecticut is quite close, allowing the candidate to only continue to raise money in amounts of \$100 or less, which is the limit on qualifying contributions. That is to say, this type of system is somewhat unusual for public funding in the states.

This brings us to the qualifying requirements of the system. In order for a candidate to demonstrate that they are both serious and viable in an election, they must raise a specific amount of money dependent on the office they are running for. This must be in \$5 contributions, with the threshold ranging from \$200 for a candidate for the legislature to \$4,000 for a candidate for governor³. These contributions must come from registered voters within that candidate's district if they are a legislative candidate, or if they are statewide candidate the contributions must come from voters in Arizona. This style of qualifying is fairly common for public financing systems, as it is an easy way to demonstrate that one has support within the state and can thus run a competitive campaign. Along the same vein, and another commonality with other states, is that Arizona naturally keeps track of the way that the candidates spend their money to make sure that the state's funds are being used appropriately. There are audits on candidates who participate in order to ensure that the money is being used in accordance with the law, and these audits are conducted by the administrative organization

³ (C. C. Commission, How Clean Funding Works 2017)

that runs the system, the Citizens Clean Elections Commission. All of the public financing systems that I will be looking at do some form of audit, as states have an obvious vested interest in making sure that the money being provided candidates is spent properly.

Once a candidate qualifies to receive public funding for their campaign, they can then apply to receive the public funding grant. Arizona's system is set up in such a way that candidates are fully funded by the system, but due to the delay between the beginning of a campaign and when they receive the grant, they are able to raise early contributions that they can spend during their exploratory period and up until April 21st of the election year, which is when a candidate must have their qualifying contributions by. The amount that candidates are allowed to raise can be seen below.

Governor	Secretary of State	Attorney General	Treasurer	Supt. of Public Instruction	Corporation Commission	Mine Inspector	Legislature
\$58,810	\$55,630	\$55,630	\$27,811	\$27,811	\$27,811	\$13,909	\$4,345

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These early contribution limits are additionally restricted in that they may only come from individuals, and only in amounts of up to \$160. Candidates are able to contribute their own personal funds as well, but only up to \$740 for legislative candidates and up to \$1,460 for statewide candidates. Any traditional candidate who decides that they want to participate in the clean elections system later on must not have raised money past these amounts, and may not have spent any contributions that violate the requirements of individual donations of under \$160.

⁴ (C. C. Commission, 2018 Candidate Information Sheet 2018)

Following this, the candidate will receive money, which again is dependent on which office the candidate is running for.

Election Funding	Governor	Secretary of State	Attorney General	Treasurer	Supt. of Public Instruction	Corporation Commission	Mine Inspector	Legislature
Primary	\$839,704	\$217,589	\$217,589	\$108,779	\$108,779	\$108,779	\$54,405	\$16,995
General	\$1,259,556	\$326,384	\$326,384	\$163,169	\$163,169	\$163,169	\$81,608	\$25,493
Independents	\$1,469,482	\$380,781	\$380,781	\$190,364	\$190,364	\$190,364	\$95,209	\$29,742

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Once a candidate receives this money, they are no longer allowed to fundraise, and must only spend the cash on hand. Included in this are the early contributions that the candidate already received, as well as the funding that they received from the state. The expenditure limits are also equal to the amount of funding that is received from the state, so there are no incentives for candidates to go on a fundraising spree prior to receiving funds, as it will simply decrease the amount of state money they will be able to spend. As is the case with other systems, any funding provided by the state that is not used is returned to the Citizens Clean Elections Commission along with a description of how the money was used, as there are also a host of restrictions on how the money may be spent. The amounts given are also not consistent, and the secretary of state modifies them biennially to reflect inflation. The commission can also modify the ratio of money that is given in the primary versus general election.

The Citizens Clean Elections Commission is the independent, non-partisan body that administrates the public funding system. It is composed of five members, with two Democrats, two Republicans and an independent. These commissioners are political appointees, but beyond that the program is run independently and at the commissioner's discretion. The

⁵ (C. C. Commission, 2018 Candidate Information Sheet 2018)

commissioners and their staff are responsible for both the administration and enforcement of the Clean Elections program, but that is not the only role that they play. They also sponsor and participate in voter education initiatives and have hosted numerous candidate debates, meaning that they have a broader role than simply administering the public financing of elections. They are tasked with carrying out the will of the Clean Elections Act, which while mainly focused on elections is not solely focused on it. Similarly, while the funds that are raised by the Citizens Clean Elections Commission go primarily to publically funded elections, they don't go exclusively to them.

An interesting aspect of Arizona's system is the way in which it is funded. A perennial problem of public funding, and perhaps the single biggest impediment to it as a way of reform, is the simple fact that it is predicated on giving government money to candidates. It costs money, and especially in larger and more important elections, it can cost a lot of money. The fact of the matter is that it is very easy to portray public funding in a negative light because of this. The idea that public funds should not be going towards political campaigns, and would be better spent on education for example, is a line of attack that one hears often in regards to public financing⁶. Arizona sidesteps some of these criticisms by not relying on the general fund for its source of revenue. Instead, Arizona has a 10% surcharges on all civil penalties and criminal fines, which brings in the overwhelming majority of its money. In 2016, of the \$7,338,783 worth of funding that the commission had, \$7,242,242 of it came from the courts. In fact, the Clean Elections Commission actually donates excess money to the general fund,

⁶ (Samples 2005)

having given \$74 million through 2016. The other main source of income used to be a tax checkoff where people could set aside \$5 of their taxes to go to the Clean Elections Fund, but that was repealed and thus the system relies solely on surcharges.

With the basics of the Arizona system established, let's move to how and why it was enacted. Arizona put its public financing system in place through a ballot initiative in 1998⁷. This was in response to the Azscam scandal, which was a major corruption case where multiple prominent political figures were indicted. Nearly 10% of the Arizona legislature were caught in direct corruption in the early 90s, accepting money in exchange for supporting a piece of legislation. Funnily enough, this is an incredibly clear cut example of a reform being passed with an almost exclusively anti-corruption rationale. It is also an example of a bipartisan reform, perhaps as much due to the public outcry as Arizona's history of reformism, as can be seen with John McCain whose name is actually attached to the BCRA, or the McCain Feingold Act. With its anti-corruption rationale, it seems as though the defense of the system would be remarkably easy in the courts. After all, there is a clear and potent example of corruption that one can point to in Arizona's history, and the clean elections were designed in direct response to this scandal. However, the courts took issue with the system that Arizona voters had put into place, specifically the triggering mechanism.

An integral part of Arizona's public financing system, and one of the reasons it had such success originally, was its triggering funds. The provision of additional funds to a publicly financed candidate in response to a high spending opponent allowed the system to be both

⁷ (Miller 2015)

flexible and politically viable, as candidates received larger sums in response to an expensive race. One of the problems of public financing is that it is typically fixed, as the limitations that are put on candidates aren't responsive to an individual campaign. Spending limits are a natural part of publicly funded elections, but one must find a sweet spot where candidates are able to win using the system, without the system being either too expensive, or have limits that are so high so as to make the limits meaningless. That is where triggering mechanisms come in, with the money being given to candidates and the spending limits being responsive to the amount of money being raised in the campaign by candidates who aren't participating in the public funding.

The provision of Arizona's triggering mechanism took effect only in an election when there was a candidate who both wasn't participating in public financing and raised more than the original spending limit. What then occurred was the participating candidate received extra money up to 3 times the original spending limit, in response to money raised by their opponent. For example, if John Smith was publicly funded and running for an office whose normal spending limit was \$50,000, he could potentially receive up to \$150,000 depending on his opponent's fundraising levels, as well as independent expenditures that explicitly endorsed his opponent or condemned him. So, up to that \$150,000, John Smith would be on equal financial footing with his opponent. It was here that the Supreme Court took issue with the Arizona law, viewing the triggering mechanism and the matching funds as unconstitutional. This is because the law gives additional money to a publically financed opponent in direct response to fundraising by a traditional candidate, making them less likely to fundraise past the original spending limit of the law. This was determined to be an unconstitutional imposition on freedom

of speech, since it was burdening the political speech of candidates who opted out of the program.

I am not in the business of telling the Supreme Court how the law ought to be interpreted, but I take issue with the logic that was used by the Roberts Court in its striking down of the matching funds that Arizona provided. The language that was used by the majority portrays the matching funds as a restriction on the speech of a non-publicly funded candidate, due to the concern of them triggering these funds. The idea is that, since their spending of additional money means that their opponents receive additional money, they are disincentivized from raising money, and thus their speech is being burdened by the law. However, the law does not make it illegal for these candidates to raise beyond what a publicly funded candidate is allowed to use, even with the matching funds. The law does not penalize the candidate for spending as much as they would like. The only thing that the law does is to subsidize a response to their spending; it only increases the amount of speech. Furthermore, any candidate who is running without public funding is doing so because they chose not to accept the funding, not because the government refused it to them. There are many other objections that could be made to the decision in *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, and I will refer anyone interested in reading on these in detail to the dissent by Justice Kagan.

As I mentioned earlier, I don't want to gloss over the negative effects of the court's decision. Looking at the data, it is clear that the loss of the trigger mechanism coincided with a steady drop-off in candidate's opting into Arizona's public financing system. In 2010, there was

a 49%⁸ participation rate in the general election, which was more than halved by 2016, which had a participation rate of 23%⁹. In 2012, the year following the decision, 37% of candidates in the general election participated. This is to show that, while there has been a slow decline since the decision, there was a major drop-off in participation rates immediately following the Supreme Court's ruling. This is to be expected, as the ability of publicly funded candidates to be viable in an election where their opponent is spending large sums of money has been decreased. In addition, although some changes were made to the law following the 2011 decision, there were no additions to the law that replaced the matching funds that were given to candidates prior to the ruling. So, in the eyes of candidates, the system is now less viable for them if they want to win, and thus there is a trend of slow decline in the participation rates in the system.

Does this mean that Arizona's Clean Election Program is doomed to slowly wither away? No, but it does mean that there is legislative action that needs to be taken in order to encourage more participation in the system and make it more viable in the eyes of candidates. A triggering mechanism, while perhaps the best way to combat a high spending opponent, is not the only way. There are other avenues that could be taken in Arizona, and in fact have been proposed by the Citizens Clean Elections Committee. In the 2011 annual report that the committee publishes, there were two proposed replacements for matching funds. One of these is the immediately apparent solution of increasing the fixed amounts given to participating candidates. In the absence of a triggering mechanism, simply increasing the amount of money

⁸ (Fairman 2010)

⁹ (Titla 2016)

that is available to every publicly funded candidate is always an option. In that same vein, the other proposal was a small donor program, where donations of under \$100 would be matched, up to the limits that existed under the old matching funds system. This would also allow candidates to raise more money, without abandoning the principle of avoiding corruption and special interest money.

However, despite the commission suggesting in 2011 that something needed to be done to the law to replace the function that the triggering funds had served, the legislature has done none of this. This is the biggest takeaway from Arizona, that you can have a successful and popular system in place, but that does not mean that the system will always be like that. The most successful systems are those that experience consistent maintenance, those that are able to respond to changes in the political landscape and thus remain relevant. If there is not a consistent effort to keep a system viable, then it will more likely than not be fairly ineffective at getting candidates elected, and the less candidates who participate the less effect the system is able to have. In Arizona, there needs to be action from the legislature or through a ballot initiative to reinvigorate the system, otherwise the future does not look bright for public funding in Arizona.

Chapter 4: Legislative Funding in Maine and Connecticut

In Arizona we had an example of a state that was forced to weather a court challenge to its public funding system, and yet still had the remains of that system. As such, we saw a state system that had been battered and was slowly decreasing in relevance as the years passed following the decision. And since one of the major reasons that the system has been decreasing in popularity amongst candidates was the loss of the trigger provision and its matching funds, there is a question that naturally arises. Namely, can you have a successful public financing system without matching funds? The answer as we will see is a definitive yes, and in order to prove that I will be looking at the systems in place in both Connecticut and Maine. Both of these states are relatively similar to Arizona, as both of them offer public funding to legislators, with Maine fully funding candidates and Connecticut only allowing fundraising in amounts of \$100 or less. Both of them have active public financing programs with a large participation rate, and neither of them had to endure a large drop-off in the number of candidates who are opting in. There are also differences of course, but importantly both have maintained successful systems that have maintained popularity politically, and in both legislatures the majority participate.

I will begin with Maine, as Maine shares the Clean Election tag with Arizona. Maine also fully funds any qualifying candidate once they have raised the required money to be able to participate, with candidates then not being able to raise money past that¹⁰. Maine's system was

¹⁰ (Practices, Maine Clean Election Act Overview 2000-2016 2016)

put into place in 1996 by ballot initiative, again akin to Arizona. However, a major distinction between the two is that Maine's law wasn't triggered by a major scandal or corruption case. Rather, it was simply a general good government reform effort in response to a perceived influence of money on elections. Another similarity that Maine shares with Arizona is that it too had matching funds prior to *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*. In Maine, these funds would trigger in response to spending by opponents or outside groups, and functioned as a way to allocate scarce public resources effectively, and ensure that the money was being used where it was needed. However, following the Supreme Court's decision, the US district court of Maine was asked by the legislature to rule on the constitutionality of the triggering provision in the law, which the court then struck down.

Although essentially the same thing happened in both Arizona and Maine, the aftermath in these two states has been markedly different. Maine in 2016 had 64%¹¹ of its 186 current legislators participating in the program, showing strong participation in the state. This is down from a high of 85% in 2008, but it still begs the question of why Maine was able to maintain high participation after a major provision of its law was gotten rid of. As we saw in Arizona, a loss of confidence among candidates that one can be viable while using public funding can have a major chilling effect on candidate's willingness to participate. So what is it that Maine did that separates it from Arizona? There are two main contributing factors, with the first being that voters in 2015 approved an increase in funding for the system, meaning that more money became available for candidates to use. This resulted in the amount of money used in 2016

¹¹ (Practices, Maine Clean Election Act Overview 2000-2016 2016)

being significantly larger than in 2014, with the total amount given to legislative candidates going from a little less than \$2 million to \$3.3 million. The second, and in my opinion more interesting, reason that Maine has continued to be successful with its public funding of elections is the way that Maine distributes its money.

Here I want to explain in more detail exactly the process of giving lump sum grants, as the name lump sum is a bit deceiving. It sounds as though once a candidate qualifies they immediately receive the total amount that a candidate is able to receive, and this is not often the case. In Maine, the lump sums are split up over multiple different grants, with candidates being able to qualify for additional grants by obtaining more qualifying contributions. Qualifying contributions are in amounts of \$5, with House candidate requiring 60 contributions, Senate candidates requiring 175 contributions, and gubernatorial candidates requiring 3,200¹². Once a candidate has raised the qualifying contributions, they then have available to them the basic payment, which is dependent on both office and the election (primary vs general)

Initial Distributions for Candidates in the 2019 & 2020 Elections

Candidate	Primary	General
State Representative, Contested	\$2,650	\$5,300
State Representative, Uncontested	\$525	\$1,600
State Senate, Contested	\$10,575	\$21,175
State Senate, Uncontested	\$2,125	\$6,350

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The initial distribution amounts have not yet been calculated for gubernatorial candidates as the next race for governor is in 2022, but by looking above you can get a sense of what type of

¹² (Practices, <https://www.maine.gov/ethics/mcea/qualify.htm> 2019)

¹³ (Practices, <https://www.maine.gov/ethics/mcea/initialdist.htm> 2019)

ratio exists between primary and general elections, and between contested and uncontested candidates. And, on top of the original payments, candidates also have available to them supplemental payments.

In the 2015 reform of the bill, voters added on additional levels of payment, with the amounts of each level and the number of qualifying contributions (QC) displayed on the graph below.

Levels of Supplemental Payments for the General Election								
	1	2	3	4	5	6	7	8
House	\$1,325 15 QCs	\$2,650 30 QCs	\$3,975 45 QCs	\$5,300 60 QCs	\$6,625 75 QCs	\$7,950 90 QCs	\$9,725 105 QCs	\$10,600 120 QCs
Senate	\$5,300 45 QCs	\$10,600 90 QCs	\$15,900 135 QCs	\$21,200 180 QCs	\$26,500 225 QCs	\$31,800 270 QCs	\$37,100 315 QCs	\$42,400 360 QCs
Governor	\$185,225 1,200 QCs	\$370,450 2,400 QCs	\$555,675 3,600 QCs	\$740,900 4,800 QCs	\$926,125 6,000 QCs	\$1,111,350 7,200 QCs	\$1,296,575 8,400 QCs	\$1,481,800 9,600 QCs

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In the chart above, the qualifying contributions as well as the amounts are cumulative, meaning that the second column of supplemental payments includes the QCs required and the money disbursed for both the first and second payments. These amounts are in addition to the initial money disbursed, and are also only available to candidates who are in a contested election. These supplemental payment amounts are the same for both primary and general elections, and are available in both. In addition, the supplemental payments do not have set time intervals that a candidate must wait before requesting the next level of payments, so a candidate can always apply for more supplemental payments if they have the qualifying

¹⁴ (Practices, <https://www.maine.gov/ethics/mcea/initialdist.htm> 2019)

contributions and the date is before October 16th¹⁵. For candidates who are running uncontested, a reduced amount is available for the primary and general elections. For example, a contested Senate seat candidate would be able to receive \$21,175 originally and then be able to apply for supplemental payments, whereas an uncontested Senate candidate would only have access to \$6,350 total.

Through this system, Maine is able to approximate the effect that the triggering funds had before. Maine doesn't have to give huge funds to all candidates simply because some races become very expensive, but additional funds are given to candidates who need them. We can see that many candidates are happy with the base amount, with 63 house candidates in the 2016 general election only asking for the basic payment of \$5,000, and a grand total of 8 candidates getting the full \$15,000¹⁶. This is out of a total of 151 members in the Maine's house. These supplemental funds have yet to be challenged in court, but the way in which it is set up is fundamentally different to the triggering mechanism. The amount of money raised by an opposing candidate plays no role in the amount of money that a participating candidate receives. Rather, the deciding factors are whether the candidate is running opposed, and whether the candidate has raised the required amount to qualify for the funds. So, for now, the stand-in for trigger provisions that Maine has is constitutional, although that could always change.

Another interesting factor about Maine's system, and Maine in general, is that Maine is a purple state, and thus the support for public financing has to be bipartisan for it to be

¹⁵ (Practices, <https://www.maine.gov/ethics/mcea/initialdist.htm> 2019)

¹⁶ (Practices, Maine Clean Election Act Overview 2000-2016 2016)

successful. Reform measures are typically associated with Democrats, particularly campaign finance reform. But, we have Arizona, a red state, and Maine, a purple state, with public financing systems, showing that there can be support from the Republican side for these types of measures. Maine helpfully publishes participating candidates by party, and so we are able to look at the partisan split of who is accepting money. In Maine's House, we can see that in 2016 80% of the Democratic caucus and 45% of the Republican caucus participated, and in the Senate the participation rates were 79% for Democrats and 56% for Republicans¹⁷. While Democrats seem to use the system more if we look further back, there are still large amounts of Republicans who opt in, making it a solidly bipartisan arrangement.

Connecticut passed its public financing bill in 2005, and interestingly in this case it was passed by the Connecticut General Assembly and not through a ballot initiative. The reasoning was much the same as in Maine, with it being more of a general good government, anti-corruption law rather than a response to any specific incident. The system itself is slightly different than in Maine, with the specifics of the money disbursements and qualifying contributions being different. Connecticut still has very restrictive rules on candidate's ability to fundraise once they have opted into the program, with the allowable funds that a candidate can use being restricted to qualifying contributions, although this amount can be sizeable. Connecticut also allows candidates who opt into the Citizens Election Program, or CEP, to use personal funds as well, but there are caveats. These funds can be used in the campaign prior to applying for the initial grant, and the grant amount will be reduced by the personal funds used.

¹⁷ (Practices, Maine Clean Election Act Overview 2000-2016 2016)

There are also limits on the amount that a candidate may use of their own money, going from \$1,000 for state representative candidates up to \$20,000 for gubernatorial candidates.

In order to qualify for the program, candidates in Connecticut also have a certain amount that they must raise in amounts of \$5 to \$100, and we can see the amount they must raise depending on the office in the table below.

Qualification Thresholds for Statewide Offices			
Office Sought	Aggregate Contribution Requirement—Individuals Only	Minimum Amount of In-State Contributions	Contribution Limits
Governor	\$250,000	\$225,000	\$5 to \$100
Lieutenant Governor	\$75,000	\$67,500	\$5 to \$100
Secretary of the State	\$76,600	\$68,900	\$5 to \$100
State Comptroller	\$76,600	\$68,900	\$5 to \$100
State Treasurer	\$76,600	\$68,900	\$5 to \$100
Attorney General	\$76,600	\$68,900	\$5 to \$100

Qualification Thresholds for General Assembly Offices			
Office Sought	Aggregate Contribution Requirement—Individuals Only	Minimum Individual Resident Contributions	Contribution Limits
State Senator	\$15,300	300 residents of municipalities included, in whole or in part, in the district	\$5 to \$250
State Representative	\$5,100	150 residents of municipalities included, in whole or in part, in the district	\$5 to \$250

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¹⁸ (S. E. Commission, Citizens' Election Program Overview 2018)

Here we can see a common feature in public financing schemes, which is a residency requirement. This is set in place to ensure that the candidates who are running and qualifying for state money enjoy support with state residents, not just out of state donors. A candidate in Connecticut who participates in the Citizens Election Program, or CEP, is able to continue to use their qualifying contributions as a source of funds for their campaign, and is different from some other states in that the amount that is required is fairly high. In Connecticut, a gubernatorial candidate has to raise \$250,000, versus just \$16,000 in Maine. To be fair in Maine that has to be in \$5 contributions whereas it can be in amounts of up to \$100 in Connecticut, but the difference is still vast.

One can go down the list of different types of candidates in Connecticut and Maine and see the same pattern repeated over and over again. Gubernatorial candidates can receive up to \$6 million, the statewide offices up to \$750,000, and even senate and house candidates can receive up to \$85,000 and \$25,000 respectively. This then begs the question of why is Connecticut requiring its candidates to raise so much more money than Maine, and all while still receiving large sums of money from the CEP. This is because Connecticut is near New York and Boston, and generally advertising is more expensive there than it is in Maine. This leads to races being more expensive, and thus the amount of money being given out by the public funding system reflect that. This regional difference in costs is the reason why it is difficult to say what the appropriate amount of money is for publicly financed candidates to receive, as it so heavily dependent on the media costs of that particular state. In addition, Connecticut is more densely populated than Maine, and thus has more taxpayers, and thus there is different calculus that goes into calculating what the appropriate amount of money is. Here it becomes a

judgement call for the legislators on how much is enough for their particular state, since using other systems as an example is not terrifically helpful in this regard.

Connecticut doesn't have the system of supplemental grants that Maine does, so candidates are not required to continue to raise qualifying contributions in order to obtain more money. However, that does not mean that the CEP simply gives out consistent lump sums to its candidates. Rather, there are multiple factors that are considered when a candidate qualifies for the system that go into determining the amount of money that candidate will receive. Firstly, the amounts that are given out are tied to the CPI, and thus can increase accordingly. The next matter is whether it is a primary or general election, with primaries having smaller grants than general elections. In addition Connecticut defines certain districts as 'party-dominant,' where one party's enrolled voters outnumber the other major party's registered voters by 20%. In these districts, legislative candidates are eligible for increased grants in the primary, with senate candidates going from \$35,000 to \$75,000, and house candidates going from \$10,000 to \$25,000.¹⁹ This brings the grant they receive to what it would be if it was a general election, with the logic being that in party dominant districts the more important election is the primary.

For general elections, there are many more conditions, with distinctions made for when the candidate applies for a grant, whether the candidate is opposed or not, and if they are a major or minor party candidate. Opposed candidates receive the full grant and unopposed candidates receive 30% of that, but Connecticut also makes a distinction between full

¹⁹ (S. E. Commission, A 2018 Guide for Statewide Office and General Assembly Candidates Participating in the Citizen's Election Program 2018)

opposition and limited opposition. Limited opposition is when the opposing candidate is a minor party candidate or petitioning candidate who has not raised an amount equivalent to the qualifying threshold for the office, and in this case a candidate receives 60% of the full grant. This is not affected by whether or not this candidate has opted into the program. But thus far we have been assuming that the participating candidate is a major party candidate. If the candidate in question is a minor party candidate, where the amount of money received is dependent on how well the candidate's party did in the previous election for that seat. Depending on the percentage of votes received, the candidate could receive one third, two thirds, or the full grant. Finally, Connecticut differentiates its grant amounts depending on when you apply for the grants. Prior to August 27th you are entitled to the full grant, and as time goes on the amount that you are able to receive drops until October 9th, after which you can receive 40% of what you otherwise would have gotten.

Maine and Connecticut have somewhat similar systems, with the greatest similarities being in the way that they are financed. Namely, they are both financed mainly through the general fund. Maine does use certain fines to add to its fund, and Connecticut also has some more creative sources of funding, with some of the money for the system coming from revenue from sales of abandoned property, and if the amount of money available is insufficient the shortage is actually covered by revenue from corporate taxes. These are very different from Arizona's court surcharge though, as the majority of the funding for both comes from the general fund. There are also the usual additional sources of revenue with tax checkoffs and donations, but they are just that, additional. This reliance on the general fund comes with some problems, as not having a dedicated revenue source means that raiding of their coffers can

often happen when the legislature is looking for money, and also makes defunding the systems significantly easier. That's not to say that there have been major efforts to defund the systems in these specific states, but it is a danger that must be kept in mind, and a problem with relying on the general fund of a state for funding.

With Connecticut and Maine, we have examples of states that have continued to be successful in their public financing systems regardless of the situation in the courts. Out of their current legislators, 64% in Maine and 86% in Connecticut used public financing. Both of the states are relatively purple, although both seem to be becoming pretty blue. But, along with Arizona, these serve to remind us that there can be bipartisan support for public financing, and that just because a state isn't solidly Democratic does not mean that these reform measures are doomed to fail. Similarly, although it is easy to take a doom and gloom stance on the ability of reforms to be successful in the current judicial climate, these states show that there can be successful reforms even within the current boundaries of constitutionality. Here we have examples of how to publicly fund candidates in such a way that it is bipartisan, popular, and viable. Thus, it is important to note that a little optimism isn't entirely misplaced with public financing.

Both of these state also show that having a successful system isn't necessarily dependent upon having huge amounts of cash being given out to candidates. Particularly with state legislative races, it doesn't require that much money to have an effect on those races and be viable for candidates to participate in the system, as those races are local and don't typically attract large amounts of attention. As such, these types of systems don't necessarily need to worry as much about the money issue, simply because the amounts of money being used is not

that large. For example in 2014, in order to fund 282 candidates for the Connecticut legislature, there was a total of about \$11.4 million, which averages about \$40,000 per candidate²⁰.

Naturally these amounts start to balloon out immediately once we add in statewide offices, and particularly governor races into these systems. However, we will be looking at many states that provide public funding for gubernatorial races, and for now it is enough to note that public financing for state legislatures can be done effectively and fairly cheaply.

²⁰ (C. S. Commission 2015)

Chapter 5: Massachusetts

Moving beyond states that provide public funding for their legislators, we have Massachusetts. The system in Massachusetts allows for any of the six statewide office to be publicly funded, which are governor, lieutenant governor, attorney general, secretary of state, treasurer and auditor²¹. So, we can take a fairly granular look at individual offices and races and see how publicly funded candidates compared to their privately funded counterparts. However, this is not the only noteworthy part of Massachusetts' public financing scheme. Massachusetts also has some of the more interesting history for its system, with the legislature actually repealing a section of the law that was meant to apply to them. So, there is a lesson to be learned about support within the legislature and what that can mean for publicly funded elections. But there is also a lesson to be learned about funding, as Massachusetts is the first state that I have looked at that doesn't have an alternative source of funding beyond tax checkoffs. This means that the entire budget for public funding comes from magnanimous tax payers, and we will see the effects of that on the system.

Massachusetts has a long history with public funding, with the first system being put in place in 1975, immediately after Watergate. This period following Watergate was the first wave of public funding laws being put into place all across the country, with easily the most famous of these being the federal system for publicly funded presidential elections. But, there were also system put in place in states such as New Jersey, Wisconsin, Maryland and of course

²¹ (Finance, Public Finance Handbook)

Massachusetts. An interesting aspect of the law implemented in 1975 is that it didn't impose any expenditure limits on the candidates who received public funding. So, as it was originally implemented, the system simply gave matching funds to candidates to use as an alternative to traditional fundraising. This places it apart from all of the systems we have looked at so far, and from most modern systems in general. The focus of the law as it was originally implemented wasn't on limiting the amount of money that was used, but simply on changing the source of some of that money. In addition, the only candidates who were eligible for funding were statewide candidates. This was changed in 1998, when a Clean Election ballot initiative was passed.

The passage of Clean Elections was a major overhaul of the existing law, with new restrictions being placed on candidates. It was through this ballot initiative that expenditure limits were first introduced, a feature that remains in place today. However, this was an incredibly contentious law, because it also added the legislature to the list of offices which could receive public funding. Here we have our first real example of political pushback, and from the politicians rather than from the public. The legislature absolutely did not want to fund this new law, despite the fact that the ballot initiative specifically instructed the legislature to do so. In fact, there was a protracted legal battle that resulted in the courts requiring the state to auction off property in order to fund it²², and the legislature eventually agreed to fund clean elections for the 2002 election. Since their options from then on were to either properly fund the program or repeal the law, the clean election law was then promptly repealed in 2003. This

²² (Massachusetts Legislature Repeals Clean Elections Law)

put the system back to only applying to statewide candidates, and meant that legislators no longer had the burden of maybe receiving public funds and having expenditure limits. The limits on expenditures were kept, meaning that candidates who accept public funding now must agree to limit their spending, and this is really the only aspect of the clean elections reform that the legislature allowed to survive.

As I mentioned above, unlike the other systems that we have looked at, Massachusetts doesn't have a real source of money for its public funding system. It relies solely on tax checkoffs, where taxpayers may designate a dollar or two of their tax liabilities to be directed towards the State Election Campaign Fund, or the SECF. While fine as a supplemental source of income, using exclusively checkoffs as a funding source means that the SECF is simply underfunded. Even with the limited number of offices that public funding applies to, there still isn't enough money for the SECF to provide the full amount of funds that the law mandates. This means that publicly financed candidates aren't able to rely on public funds in the same way as they could in states like Connecticut or Arizona. For example, in 2018 the SECF had a total of \$1.2 million available, which if we look at the maximum amounts that could be distributed wouldn't even be enough to fully fund a single gubernatorial candidate. And this is despite the fact that there are multiple different offices who theoretically should be able to receive public funding for their campaigns. Below, you can see the maximum amounts that could potentially be distributed to candidates for different offices.

Maximum Distributions for Public Financing Participants

	Primary	General	Total
Governor	\$750,000	\$750,000	\$1,500,000
Lt. Governor	\$312,500	*	\$312,500
Attorney General	\$312,500	\$312,500	\$625,000
Treasurer	\$187,500	\$187,500	\$375,000
Secretary of State	\$187,500	\$187,500	\$375,000
Auditor	\$187,500	\$187,500	\$375,000

* Because the nominees for governor and lieutenant governor run as a “candidate team” after the primary, they are both included in the gubernatorial candidate’s general election spending limit and maximum matching funds amounts.

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The law actually mandates that gubernatorial candidates must be funded first, with the remaining moneys being distributed to other candidates. So, let’s take a closer look at the 2018 election to see how the system works.

In 2018, there were 12 total candidates in both the primary and general elections who agreed to participate in the public funding system, which amounted to about 57% of candidates who could have opted in. However, only two of these candidates received money, as they were gubernatorial candidates and thus took precedence over the other candidates. These other candidates still had to abide by expenditure limits though, which are double the maximum of what could have been available to them had the SECF had the money. For the two candidates that did receive funds, in order to be eligible to receive money they had to collect \$250 in qualifying contributions. This is simply the first \$250 of individual contributions that a candidate receives, which must be properly filed with the OCPF (the regulatory body for campaign finance in Massachusetts), and then the candidate is able to continue to apply for matching funds as

²³ (Finance, Public Finance Handbook)

the campaign continues²⁴. This seems genuinely odd for qualifying contribution requirements, and frankly is more or less meaningless. But it should be noted that the qualifying contributions are significantly less impactful here than in the other systems that we have looked at so far because Massachusetts uses the matching funds method of distributing the money for publicly funded candidates. This means that candidates only receive money if they have raised the requisite amount of money, and since Massachusetts is giving 1 to 1 grants, if a candidate raises \$1,000 they receive a \$1,000. In the 2018 race for governor, two gubernatorial candidates for the Democrats opted in, Jay Gonzalez and Robert Massie, and one gubernatorial candidate for the Republicans, Scott Lively.

For the primaries, both Democrats were participating and thus the system worked much as we might expect, both candidates abided by the expenditure limits and both received matching funds²⁵. The way that the funding works is that it is split in half, so that half of the available money goes to the primary and half goes to the general, with whatever money wasn't used in the primary also going to the general election. Since Massachusetts uses matching funds, it is up to the candidate to consistently raise money and request matching funds if they want to receive public money, so candidates will often not receive the maximum they could have. For example, Robert Massie only received \$164,842, whereas Jay Gonzalez received almost double that with \$302,564. It is interesting to note that Massie spent \$633,730, so he could have been eligible to receive more matching funds had he applied for them. But, although it may be fun to wonder why Massie didn't apply for more funds, the story becomes

²⁴ (Finance, Public Finance Handbook)

²⁵ (Finance, State Election Campaign Fund 2017-18 Report)

significantly more interesting and more problematic for Massachusetts' public funding when we include the Republicans, specifically incumbent, non-participant, and eventual winner of the race, Governor Charley Baker. In the primaries, Governor Baker ran against Scott Lively, who had agreed to expenditure limits but did not actually apply for matching funds. This may have been because he was running against Baker, who set his own spending limit at \$9 million dollars, which is possible due to the way that the system deals with non-participating candidates running against participating candidates.

Now as we have seen, Massachusetts has the possibility where candidates can opt into the expenditure limits without being publicly funded. This is because, before one can be eligible to receive funds, one must first agree to the limitations placed on candidates. In this way, a candidate like Scott Lively is 'participating' in the rules of the public funding system without actually being publicly funded. However, it is questionable to me whether or not the authors of the law actually wanted to place restrictions on candidates, as it can be seen also as a side effect of system that simply doesn't have enough money available for the candidates who are willing to take part. What ends up happening, as happened in the 2018 election, is that candidates who may have wanted to participate in public financing can't because there isn't enough money available to financing their campaigns. I am focusing on the gubernatorial race because that is the only race in 2018 where some candidates received public funding, but there were candidates for all of the other state wide offices who opted into the public funding system without being able to receive public funding. But, in Massachusetts, once a candidate has accepted the expenditure limits they are classified as a participating candidate. So, even if you're James McMahon, a candidate for Attorney General who agreed to expenditure limits but

never had a chance to receive funds in the 2018 election, you still count as a participating candidate.

There is a provision in the law where if a candidate is running unopposed then they receive no funds but still have to abide by the expenditure limits. Similarly simple is a case in which all candidates are participating, such as in the Democratic primary, when everyone is eligible for public funding assuming there are available funds, and everyone is subject to the spending limits of the law. It is when there are both participating and non-participating candidates in an election where Massachusetts' law becomes singular. In Massachusetts, when both types of candidates are participating in an election, the non-participating candidates are required to set their own spending limits. This can be set to whatever they want, but they must set a spending limit for themselves. Then, once those have been set by the individual candidates, the spending limit for all candidates becomes the highest spending limit set by an individual candidate. So if there are two candidates for governor, one who is participating, and one who sets their individual spending limit at \$9 million, the spending limits for all candidates move up to \$9 million, including the participating candidate. The participating candidate is still eligible for the same amount of money as they were before, but now are able to raise significantly more if they want to. Hypothetically if there had been a third candidate in the Republican primary who set their spending limit to \$10 million, then the spending limits for all candidates would have then been raised to \$10 million.

Now that that aspect of the law is explained, we can return to the 2018 gubernatorial race. Jay Gonzalez and Governor Baker won their respective primaries, and went on to face each other in the general election, with Gonzalez being publicly funded and Baker setting the

spending limit again, this time at \$20 million dollars. This meant that Gonzalez was then allowed to spend up to \$20 million dollars, up from the statutory limit of \$1.5 million. Unlike Scott Lively he still used public funds in the face of Baker's spending, receiving \$626,333 for the general and bringing the total amount that he received to about \$930,000. But this public funding didn't even come close to bringing parity to the amount spent by the two candidates. Governor Baker spent a total of \$11 million in the election, as compared to Gonzalez's \$2 million. Scott Lively clocked in at a paltry \$141,498, and we can now see the major problem with the Massachusetts system. It is chronically underfunded, and even for the lucky few who do receive funds, they don't receive as much as the law entitles them to. And, when gubernatorial candidates opt into the system and start asking for money, it results in candidates for other offices being entirely unable to receive funds, since they just aren't there. Of the four elections since Clean Elections was repealed in 2003, only once, in 2010, have there been funds available for non-gubernatorial candidates, and that was simply because no gubernatorial candidates opted into the program. On a side note, within this sample is one instance of a publicly funded candidate winning the governorship with Deval Patrick in 2006, so there is at least the possibility of that happening.

With the rules such as they are in Massachusetts, a natural question is why would a candidate opt into the public financing system? There doesn't seem to be much benefit to candidates, as more often than not all it amounts to is agreeing to expenditure limits and receiving no money at all. Perhaps first and foremost is that it also doesn't have major drawbacks for candidates, as the expenditure limits are always universal for all candidates, regardless of whether or not the other candidates are opted into the system. This means that

even if the candidate doesn't receive funds, they're not being held back by the expenditure limit. So, you can have candidates who are participating but whose campaign is still primarily funded by traditional donations. There is also the ever present factor of independent expenditures, which the public funding law doesn't touch. Beyond that, it looks good for candidates to opt in, and can be a good pr move. So, even though the public funding system itself might not be terrible effective, it is set up in such a way that candidates can participate in it without being held back by its limitations.

So, in Massachusetts, there are a couple of lessons that can be learned. The primary one is that the support of incumbent politicians is vital to the success of public funding schemes. There were all sorts of reasons put forth for why clean elections needed to be repealed, with one Democratic representative even saying that "it has long been clear to me that the people of Massachusetts had no appetite for publicly funded political campaigns", while conveniently ignoring the fact that publicly funded political campaigns had been passed through a ballot measure by the people of Massachusetts²⁶. The vote for or against public funding was also structured so that in order to vote for public funding one would have to vote against the entire budget, which would have involved voting against a host of other popular measures. Governor Romney stated that it didn't make sense to throw people off their Medicare rolls while still publicly funding campaigns, as if one had to make a choice between the two. As we can see, there was zero desire politically to actually institute most of the changes that the 1998 Clean Elections ballot initiative called for, with incumbent politicians seeming to say 'the previous

²⁶ (Massachusetts Legislature Repeals Clean Elections Law)

system was just fine, thank you.’ Secondly, it shows that Democrats, while often associated with reform, are not automatically allies to reform measures. Here we have a state that is quite Democratic and famously liberal, that had a strong resistance to a publicly funded campaign reform measure. Thus, there should never be an assumption simply based on party affiliation on the support for or against reform measures.

I have talked a lot about the limitations that the system in Massachusetts has, and I want to reiterate that the root source of these problems are the legislature. We have seen how in states like Connecticut or Maine the laws that were put in place were well designed and thought out, and how there was a conscious effort to make the system a success. In Massachusetts we have the opposite, where the legislature very deliberately dropped the ball on a program that they did not want to see succeed, at least not in a meaningful way that might make people think that the system should be expanded again. The Democrats in Massachusetts’ legislature clearly thought that publicly funded elections were against their own political interests and did their best to undermine the system. Thus, we have a piecemeal system that is a combination of multiple variations of public financing, with no concerted legislative effort to fix the shortcomings of the law as it stands. Although this may be disappointing, it is important to know that there are many legislatures who would have had the same reaction, and that reformers should be prepared to experience backlash from self-interested politicians.

Finally, Massachusetts gives us our first example of how the funding part of publicly funded elections can be a major issue. Where the public funds come from is probably the most difficult question for a publicly financed election scheme to answer. There is a reason why

many states use odd funding sources to supplement money available to publicly funded candidates, because lack of funding will kill a system. If politicians raid the election fund or decide that the general fund can't afford to give money to publicly funded elections, then it is difficult to have a successful system. No matter how well thought out certain provisions are, no matter how much effort goes into making sure that the amounts that are given are adequate, no matter how popular it might be with potential candidates, there can be no public funding without funds. It is the fundamental problem with publicly funded elections, and without a consistent and adequate source of funds publicly funded elections simply can't do what they are meant to. We have a clear example of that in Massachusetts, where many candidates who are willing to participate and abide by the restrictions of public financing are unable to receive funds because those funds simply don't exist. One has only to look at the amount distributed over the course of the system's history to see that it isn't adequate.

**Disbursements to Candidates from the
State Election Campaign Fund
1978-2018 Statewide Elections**

<i>Year</i>	<i>Amount Available</i>	<i>Amount Disbursed</i>
1978	\$175,161	\$162,521
1982	\$679,930	\$489,912
1986	\$888,498	\$865,412
1990	\$450,003	\$380,356
1994	\$358,438	\$256,758
1998	\$1,753,463	\$1,719,614
2002	\$4,088,405	\$4,088,405
2006	\$1,613,689	\$1,361,222
2010	\$1,563,839	\$1,419,852
2014	\$1,235,905	\$1,065,704
2018	\$1,210,257	\$1,093,739

Note: Any funds remaining after the election are carried over to the next statewide election.

With the sole exception of 2002, when the Clean Election system was in place and thus some funding was appropriated from the general fund, there was simply never enough money in the system. Moreover, Massachusetts as a state is fairly expensive anyways, so the idea that such

half-baked funding can meaningfully replace even some fundraising seems almost ridiculous. This serves to illustrate that, as much as the specifics of fund disbursement and qualifying candidates and other nitty gritty details really do matter, it is all superseded by the matter of funding.

But, and this is an important but for Massachusetts in particular, this is assuming that the main goal of the public funding law is to publicly fund candidates. I know that sounds odd, but if we really look at the way that the Massachusetts law is set up it becomes apparent that the minds behind the system weren't solely concerned with freeing candidates from the burden of being forced to raise money and have a significant portion of their campaign be fundraising. Rather, there is a large emphasis in the Massachusetts law on expenditure limits and generally limiting the amount of money that gets spent by candidates. Massachusetts already has contribution limits completely separate from the public funding law, and through public funding Massachusetts is able to impose expenditure limits as well. And, in quite a clever way, they are able to impose some kind of expenditure limits on candidates who didn't opt into public financing by allowing them to set their own limits when running against a 'publicly financed' opponent, even when odds are that opponent is not receiving public money. Now, I personally think that it's absurd that Massachusetts doesn't fund its program properly, and also am of the opinion that allowing candidate to impose their own spending limits often results in spending limits so high so as to be more or less meaningless, as evidenced by the hardly austere limit self-imposed by Governor Baker of \$20 million for the general election. However, the point is that public financing systems do more than just provide money to be spent on campaigns, and thus can be effective outside of just the funds being disbursed. Again though, in order for the

system to be fully functional, it really does need to be properly financed, as there are surely many more candidates who would opt into the system if there was a higher chance they would actually be publicly financed.

Chapter 6: Public Funding in the Midwest

There are various ways that one can categorize public financing systems in the states. So far we have done this through the mechanics of the systems, such as which offices they apply to, what restrictions they place on the candidates, how they disseminate the money to candidates, and other things of that ilk. We have also done this to some extent through the histories of the law, the ways that they were enacted, the court challenges they've faced, and the general trend of participation of candidates. One way of classification that we have thus far ignored though is regional, simply where these systems are implemented. And, outside of Arizona, every state that I have examined so far has been in New England. In all of these manners of classification, diversity is something that we're looking for, as the more variation we have in the systems that more able we are to compare and contrast the differences. So, for this chapter, we are moving off the East coast and looking at the systems that are in place in the Midwest. Both Minnesota and Michigan have public funding systems in place, and we will be seeing how public funding has played out in these places.

Before we get to Michigan and Minnesota, I'd like to quickly mention Wisconsin, as it seems the odd one out. Although Wisconsin doesn't currently have public funding in place, it actually had a system up until 2011 when it was repealed by Governor Walker. In Wisconsin, there was the Wisconsin Election Campaign Fund (WECF) that was created in 1977. It was an opt-in system through a check off on the state income tax, designating one dollar of one's tax obligation to go to the WECF and not the general fund, similar to Massachusetts. It funded governor, lieutenant governor, attorney general, state treasurer, secretary of state,

superintendent of public instruction, Justice of the Supreme Court, State Senator and Member of the Assembly. Originally the size of grants given were tied to inflation, but this was repealed in 1986, and less and less people accepted the grants and their spending limits due to the small size of the grants, and thus when the whole system was repealed in 2011, it had mostly fallen into disuse.

Although Wisconsin doesn't have the system anymore, it is not particularly anomalous in the region. In fact, it passed its public funding system around the same time that Michigan and Minnesota did, with Minnesota in 1974, Michigan in 1976, and Wisconsin in 1977. All of these were passed following Watergate, and were part of the nationwide sweep of campaign finance reforms that occurred due to the scandal. Michigan's system was also partly put in place due to the Supreme Court's decision in *Buckley v. Valeo* that spending limits could not be imposed unless a candidate was accepting public funds²⁷. As such, the system imposes a \$2 million limit per election limit on expenditures for candidates who opt in. This means that there is a separate expenditure limit for both the primary and general elections. However, these expenditure limits can actually be waived in the face of a candidate who is raising large sum of money. In the primary and general election, if a participating candidate has an opponent who is not seeking public funds and who contributes to their own committee or whose immediate family contributes to their committee an amount of \$340,000 or more, the expenditure limit is lifted²⁸. Essentially, if you have a wealthy candidate who is self-financing their own campaign, expenditure limits are lifted. In addition, any publicly funded candidate is limited in the amount

²⁷ (Buckley v. Valeo 1976)

²⁸ (State 2019)

that they can self-finance themselves, with the limit set at \$50,000 for the candidate and their immediate family (spouse, parents, siblings and children). These limits are cumulative for the entire election cycle.

Similar to Massachusetts, Michigan relies solely on tax checkoffs for its source of money. Taxpayers may designate \$1 of their tax obligation to go towards the State Campaign Fund (SCF) rather than the General Fund. Interestingly, Michigan hasn't had as many issues with running out of money as Massachusetts has, and this is due primarily to the fact that Michigan only funds gubernatorial candidates, and as such there is a small pool of candidates who must be funded, and only once every four years. This means that there are four years of accumulated tax checkoffs that go towards each election, and since every candidate does not accept money there is less likely to be a shortage. This is despite the fact that the willingness of taxpayers to participate in the checkoffs has been steadily decreasing over the years. This is also true more broadly, as public faith in government has gone down so too has the willingness to do tax checkoffs. This is one of the major problems in relying solely on these checkoffs to fund public financing, as the amount that is designated by taxpayers declines as a function of time. For example, in Michigan in 1976 26.1% of taxpayers designate a dollar for the SCF, whereas in 2014 4% of taxpayers did. Monetarily, this meant a drop from \$2.6 million to a little over \$750,000. Despite this, in 2014, the most recent election that we have data for, there was \$4.5 million remaining in the fund after the election²⁹.

²⁹ (Johnson, 2014 Gubernatorial Financial Campaign Summary)

That does not mean that there is no precedence for running out of money in Michigan, quite the contrary in fact. However, it isn't endemic to the system, and isn't a perennial issue. That is because the major case of the SCF running out of money was due to the state legislature raiding it to help fund other aspects of the government³⁰. In 2007, the Michigan legislature took \$7.2 million from the SCF, leaving about 50 grand left in the fund. This was likely because there was a fairly large amount of money sitting in the SCF following the 2006 gubernatorial election, where only one candidate had opted to take public financing. Unfortunately, in 2010 five candidates in the primaries opted to take public funding, and with the SCF having recently been raided there was only \$2 million available to the candidates in the primary. This meant that candidates were unable to receive the maximum \$990,000 that should have been available to each of them, and no one really came close to being properly funded. Following this, the legislature was properly reprimanded, and they resolved to never raid the SCF again. Not really, but they haven't done it again since, and although it would be nice if we could be sure that they won't, there is always going to be the possibility that it could happen again.

To go more in depth in how the system functions, let's take a closer look at the 2010 gubernatorial election. Since it is the most recent election that we know had multiple candidates taking part in public funding, it should provide a good idea of how the system is supposed to work. In order for these candidates to be eligible to receive any funds, they first were required to raise \$75,000 in qualifying contributions. These are individual contributions of \$100 or less, with the contributor required to be a resident of Michigan. Michigan then has a

³⁰ (Johnson, Michigan Gubernatorial Public Funding Update for 2010 Elections 2010)

matching grant system in place, with qualifying contributions being matched 2-1. If the candidate desires any additional money, they must raise more qualifying contributions, which in the primary means that in order for the candidate to receive the full \$990,000, they must raise \$495,000 in qualifying contributions. In addition to the expenditure limits, there are also contribution limits, as can be seen below.

Contribution Limits

CONTRIBUTOR → OFFICE ↓	Individual	Political Committee	Independent Committee	Caucus Committee	Political Party (District/County)	Political Party (State)
Governor/Lt. Governor (w/Public Funding)*	\$6,800.00	\$6,800.00	\$68,000.00	\$68,000.00	\$30,000.00	\$750,000.00
Governor/Lt. Governor (w/out Public Funding)	\$6,800.00	\$6,800.00	\$68,000.00	\$68,000.00	\$68,000.00	\$136,000.00

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You may notice that an individual may contribute up to \$6,800, which means that an individual can well exceed the amount of a qualifying contribution. The first \$100 of a larger contribution can be a qualifying contribution, but naturally one donation of \$6,800 can't be split into 68 qualifying contributions. In other words, as with nearly all the states, an individual can only make one qualifying contribution.

³¹ (State 2019)

So, for our five candidates who have recently raised \$75,000, what happens next?

Before any of the candidates qualify, Michigan sets aside money for the general election: \$2.25 million for the major parties and \$250,000 for potential third party candidates. The remainder of this in 2010 was about \$2.1 million, which was designated for the primary election. Michigan then splits this up in a proportional basis, not on a first come first serve basis, so all candidates have an equal pool of money to draw from. And, four of the five candidates were Republicans, who were all running against each other, as well as Rick Snyder, who was self-funding enough to lift expenditure limits for them. Even so, the publicly funded candidate who spent the most, Mike Cox, only spent \$3.6 million. Each primary candidate was able to receive money, with the candidate receiving the most public funding being Pete Hoekstra, who received around \$490,000. In the end, the Republican primary was won by Snyder, who defeated all of his publicly funded opponents. However, in the Democratic field, Virg Bernero won his primary while receiving \$267,000 from the SCF and spending only about \$1.1 million. Because his opponent was not self-financed and thus did not lift the expenditure limit for the Democratic primary, Bernero was also the only candidate who was publicly funded in 2010 who was subject to the \$2 million expenditure limit.

For the primary, it was Bernero, a publicly funded candidate, versus the self-financed Snyder. This meant that Snyder yet again lifted the expenditure limits for his opponents, but yet again it didn't matter. Snyder spent over \$11 million³² on his campaign, whereas Bernero spent a little over \$2 million. This meant that Snyder outspent his opponent nearly five to one, and

³² (Staff 2010)

shows that one cannot rely on public funding to beat a well-funded opponent in Michigan. If one cannot effectively fundraise on a level that's somewhat comparable to one's opponent, there is no real hope for victory. Beyond this election, it is important to note that the current governor of Michigan, Governor Whitmer, used public funding. She won the 2018 election, so although much of the information has yet to be published by Michigan's Department of State, we do have a recent example that candidates can win using public funding. In addition, Governor Granholm, who was governor from 2003 to 2011, won in both 2002 and 2006 while using public funding. However, in 2006 this occurred in an election where the expenditure limit had been lifted due to her opponent's self-funding, so she ended up spending about \$13 million during the election. Candidates may still be using the system, and even winning with it, but whether it's functioning as intended is certainly questionable when that amount of money is being tossed around.

Now we turn to Minnesota, which is a very different beast than Michigan. Where Michigan only has public financing available to gubernatorial candidates, Minnesota provides funding for candidates for Governor, Attorney General, Secretary of State, State Auditor and the legislature. Minnesota is also one of those rare states where the legislature is actually mandated to fund the public financing system through the general fund. So, every election year, \$1.25 million is designated to the State Elections Campaign Fund (SECF). This is in addition to the \$5 tax checkoff that also goes to the SECF. However, Minnesota does checkoffs differently than any of the other states we've looked at so far. When you designate money for the SECF, you designate which party you wish that money to go to. So, during election years, tax designations for each party are paid directly to the campaign committees of qualifying

candidates from that party. Taxpayers also have the option of not designating any particular party, with that money being distributed among candidates of all major parties. This means that, within the SECF, each party has its own account, with candidates receiving money from both their party's account and the general campaign fund, which is funded by non-partisan checkoffs. In addition, the appropriation from the General Fund is split equally for Democratic and Republican candidates. It is also important to note that these party accounts aren't run by the parties and are not available for anything other than the state-run public financing system³³. They are simply accounts that have money set aside to be paid out to candidates of a specific party.

In order to qualify for subsidies, a candidate in Minnesota must collect qualifying contributions from eligible voters in the state in amounts of \$50 or less. For Governor the required amount is \$35,000, Attorney General is \$15,000, Secretary of State and State Auditor are \$6,000, Senate is \$3,000, and House of Representatives is \$1,500. The candidate must also be opposed if they wish to receive money, as well as agree to the expenditure limits of the law. A candidate also benefits greatly from being a part of one of the two major parties, as one of the tenets of the law revolves around tax checkoffs going to the major parties to help fund their candidates. I always find it unfortunate when states fail to take into consideration third party candidates, as enabling candidates to run who might not have been able to is a major positive to public funding. And, as we will see in a moment, in a system as popular and successful as the one in Minnesota, it is a particular shame that third party candidates are at a disadvantage.

³³ (M. C. Board 2018)

After talking about the small number of candidates who were participating in Michigan, it should be heartening to hear that Minnesota has an incredibly high participation rate for eligible candidates at a staggering 91% in 2018. The current governor, attorney general, state auditor and secretary of state were all participants in the public funding system, as were all of their major party opponents and the overwhelming majority of the legislature. The reason for this essentially boils down to Minnesota's expenditure limits being high enough and subsidy amounts being large enough that candidates are willing to consistently participate. Minnesota is different than other states that we have looked at though, as the way that it handles its public financing system makes it inherently difficult to talk about simple dollar amounts for things like expenditure limits and the size of the subsidies.

Minnesota is difficult to talk about due to how much change occurs between elections in the specific amounts in the law. The expenditure limits are re-calculated periodically by the legislature, and are also adjusted during general election years by the director of the board based on the CPI. For example, the expenditure limits for 2019-2020 are pictured below.

CAMPAIGN EXPENDITURE LIMITS FOR 2019 – 2020 ELECTION CYCLE SEGMENT

All expenditure limits apply to the total campaign expenditures incurred during the two-year period from January 1, 2019, through December 31, 2020. All expenditure limits apply only to candidates who sign a public subsidy agreement.

Office	A 2019 - 2020 Base Spending Limit	B Limit for Candidate Running for Office for the First Time	C Limit for Candidate with Closely Contested Primary	D Limit for First Time Candidate with Closely Contested Primary
Governor/Lt. Governor	\$1,636,200	\$1,799,820	NA	NA
Attorney General	\$218,300	\$240,130	NA	NA
Secretary of State, State Auditor	\$109,200	\$120,120	NA	NA
Senate*	\$98,300	\$108,130	\$117,960	\$129,756
House of Representatives*	\$65,500	\$72,050	\$78,600	\$86,460

*Estimated amounts – final spending limits will be calculated in April of 2020

If the statewide offices seem like they have small spending limits, that is because 2019-2020 are not election years for those offices, so candidate's committees are naturally more restricted in the amount of money they are able to spend. The closely contested primary in column C entails a 20% increase in the spending limit, which occurs after the primary election if the candidate won the primary with fewer than twice as many votes as any of their opponents. There are also first time candidates, who are candidates who have not run for the office before (with legislature this disregards specific districts and applies to the legislature as a whole), and who have not run for another office whose territory included over 1/3 of the population of the office they are currently running for. They are eligible for a 10% increase in the expenditure limit, which can compound with the closely contested primary rule to a 30% increase, as can be seen in column D of the chart.

In addition to the variable spending limits, the amount that each candidate receives is also variable across the years, as it is dependent on a number of factors. Naturally the office

matters, with Governor receiving the most, and a slow drop as one moves from Attorney General to Secretary of State to State Auditor, then the Senate, with the House of Representatives receiving the smallest subsidies. The amount of money available also matters, as the general account must be divided amongst all candidates, and the party account being divided amongst all of the party's candidates. In this way party matters as well, as different parties have different amounts of money available in their accounts. For example, in 2018 the Democrats received \$1.3 million across all candidates whereas the Republicans received \$910,000, meaning that Republican candidates received less money across the board than Democratic candidates. In the race for governor, this meant that Tim Walz (D) received \$480,000 when his opponent Jeff Johnson (R) received \$361,000, which is a pretty significant difference. The magnitude of this difference depended on the office, and in the smallest races it is the least apparent, and in some cases it is even reversed. For example, in House district 9B Stephen Browning (D) received \$3,100 when Ronald Kresha (R) received \$3,200. This is because the amount given by the parties is dependent on the district, so certain House and Senate candidates will receive more or less depending on where their seat is³⁴.

Looking at these amounts, there is something that is quite apparent about Minnesota, and that is the fairly small amount of money actually being given out. The total amount given out in 2018 was just \$2.2 million, which is astonishing considering that 91% of candidates were publicly funded, including the legislature. This is because, beyond the expenditure limits that are imposed when one opts into the public financing system, Minnesota has some incredibly

³⁴ (M. C. Board 2018)

harsh contribution limits for all candidates, not just for publicly funded ones. Below are the aggregate contribution limits for all contributions made by lobbyists, political committees or political funds, and any association not registered with the Minnesota Campaign Finance and Public Disclosure Board.

Office	Aggregate Limit for 2019 -2020 Election Cycle Segment
Governor/Lt. Governor	\$327,200
Attorney General	\$43,700
Secretary of State, State Auditor	\$21,800
Senate*	\$19,700
House of Representatives*	\$13,100

***Estimated amounts – final aggregate contribution limits will be calculated in April of 2020**

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There are also contribution limits for individuals to candidate committees, with individual political party units also having limits. The expenditure limits do help to tell part of the story, but an equally big part of Minnesota's success in my opinion is that it is already popular. Candidates are able to win using the system, if they're an incumbent they likely are already familiar with it, and most of their opponents are using it is well. And this is not to mention the fact that it is being closely monitored and updated as time moves on so that the viability of the system in place remains intact.

Between Minnesota and Michigan, we have two wildly different stories. In Michigan, one is reminded in some ways of the situation in Massachusetts. The funding level is not particularly high, and the expenditure limit is often lifted by non-participating opponents. Even though publicly funded candidates can certainly get elected, the public funding seems almost incidental a lot of the time. When there is an opponent who has already self-funded to the

³⁵ (M. C. Board 2018)

point that the expenditure limit would be lifted, there is essentially no reason why a candidate wouldn't opt into the public financing. At that point there aren't any real downsides, outside of the hassle of getting the \$75,000 qualifying contributions that the candidate would have raised at some point anyways. It's difficult to call it a success, but it's also difficult to call it a failure just due to the fact that, despite its downsides, candidates are still willing to opt in. There is at least some public funding being done, but the system really needs an upgrade in terms of the base amounts, but also a better mechanism to deal with candidates who aren't participating, as a simple lifting of the expenditure limits isn't the best solution. Still, it gives candidates a boost in the beginning of the election in terms of funding, which is commendable.

In Minnesota, we have what is likely to be the highest participation rate in any system in the country at any time period, past or future. Minnesota has successfully managed to convince candidates that it is in their best interest to opt into public financing, and they've done it without handing out exorbitant amounts of money as well. As far as a model for other states, I think that the way that they have made the system so flexible is one of the biggest advantages of how Minnesota implemented public financing. Particularly in the constant updating of the amounts that candidates are allowed to spend the system shines, as it is the ability of candidates to raise enough additional money to not be completely outspent by non-participating candidates that allows it to continue to enjoy high participation. Since the expenditure limits are constantly being updated, Minnesota also doesn't need to rely on a mechanism like in Michigan where the expenditure limit gets lifted altogether, but rather smaller and less drastic increases in an individual's limits. Although this loses some of the purity of systems in states like Maine or Arizona, where a candidate can rely solely on public funding

and not need to worry about fundraising, a system like Minnesota is cheaper for the state and consequently easier to pass. Michigan could learn a thing or two from Minnesota frankly, although without an additional source of funding it is questionable whether any other change to the law would make much of an effect.

Chapter 7: Hawaii and Florida

Continuing with the theme of giving our analysis more geographic variety, the next states that I will be examining are Florida and Hawaii. Both of these states employ public funding systems for statewide offices, both use matching funds, and both have systems that have been in place for decades. These two states have two fairly similar systems on the surface, but there is actually a fair amount of difference between the two states, and these differences will provide interesting points of comparison between them. And, in what was an admittedly surprising twist for me, the famously liberal Hawaii ends up with far more problems with its system than what is in place in Florida. This again mainly comes down to the issue of money, and how inadequate funding will cripple a system. As such, we will begin the chapter with a look at Hawaii and how the state approaches its publicly financed elections.

Hawaii was yet another of the states that established its system in the wake of Watergate, passing public funding into law in 1978. The funding for the system comes primarily through a \$3 tax checkoff, which as usual does not increase the tax burden. Due to its reliance solely on tax checkoffs, Hawaii does not have a particularly large amount of money available, with annual revenue over the past 10 years being about \$190,000. As such, there isn't the ability to provide large amounts of funding to candidates without quickly depleting what is available. Correspondingly, Hawaii employs a matching grant system that provides 1-1 matching grants to participating candidates. This system is not in any way designed to, or capable of, replacing fundraising, but rather is more a way to augment it, and decrease the burden somewhat on candidates.

As to which candidates can receive money, Hawaii is actually very unique. There is funding available for offices that we have come to expect like governor and state legislature, but Hawaii also provides funding for local offices. County Council candidates and mayoral candidates for Honolulu, Hawaii, Maui and Kauai are all able to receive public funds. This is interesting because it means that the state is providing funds to offices that are not state offices, and it shows that state level public financing programs don't need to apply only to state level offices. As for the amounts that are given out to various candidates, due to the reliance on the populations of the district, there is immense variation in the amounts that one can receive. For example, a mayoral candidate in Honolulu was able to receive up to \$95,836 in 2018, whereas a mayoral candidate in Kauai was only able to receive a maximum of \$8,047. As for expenditure limits, these are actually tied into the amounts available, with gubernatorial and mayoral candidates' maximum funds available being 10% of the expenditure limits, and county council, prosecuting attorney, and state legislative candidates' maximum amount of funds available being 15% of the expenditure limit. The only candidate who have a consistent amount available are OHA candidates, who are also the only ones whose expenditure limits is not tied to those amounts. OHA is a department of the state of Hawaii that is semi-independent and doesn't concern us much here aside from their unique public funding rules.

To demonstrate how the rules work in practice, let's look at an example from the 2016 election. In 2016, there 28 candidates who participated in the public funding system, 12 of whom won with their being about \$202,000 disbursed between all of them³⁶. To zero in on one

³⁶ (H. C. Commission, 2016 Election Summary 2017)

candidate, we will be looking at Rose Martinez, a candidate for the State House, for District 40. Before she was able to receive public funds, she first needed to agree to the expenditure limits that she would be subject to. Then, she collected qualifying contributions, which in Hawaii are in amounts of \$100 or less and must come from an individual who is also a Hawaiian resident.

Governor – \$100,000
Lieutenant Governor – \$50,000

Mayor
County of Honolulu – \$50,000
County of Hawaii – \$15,000
County of Maui – \$10,000
County of Kauai – \$ 5,000

Prosecuting Attorney
County of Honolulu – \$30,000
County of Hawaii – \$10,000
County of Kauai – \$5,000

County Council
County of Honolulu – \$5,000
County of Hawaii – \$1,500
County of Maui – \$5,000
County of Kauai – \$3,000

State Senate – \$2,500

State House of Representative – \$1,500

Office of Hawaiian Affairs – \$1,500

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As we can see above, as a candidate for the State House she would have had to raise \$1,500 in order to be eligible to receive public funds. Hawaii has separate maximum amounts for how much a candidate can receive in a primary versus general election, and thus also has separate expenditure limits, which consequently means that in order to receive funding for the primary a candidate must raise the minimum amount of qualifying contributions in time for the primary.

³⁷ (H. C. Commission, 2020 Minimum Qualifying Contributions 2019)

The dollar amounts are actually the same, Rose Martinez was able to do this in time to receive funds during the primary, but once she did this she did not have to do it once again for the general.

During the primary, Martinez was thus able to receive funds through the matching grant system, with the requirements for the donations being matched the same as the requirements for the qualifying contributions. She received \$2,140, which is fairly close to the current limit of funds that one can receive in District 40 during the primary of \$2,571. We can thus calculate with the maximum being \$2,571 that in the primary in District 40, the expenditure limit is \$17,140. If we look at the average amount spent across all 118 candidates for the Hawaiian House of Representatives, it is about \$24,000,³⁸ which shows that the expenditure limits being placed on candidates, or at least legislative candidates, are not terribly far off from what is being spent by all candidates. This average also includes the combined primary and general spending as well as candidates who were only present during the primary, but it is useful to look at. In addition, due to the differences in population and thus expenditure limits as well as the amount of money one can receive, different districts will have significant variations in the amounts available for public funding. Anyways, for the general election, Martinez again received \$2,140 of public funding, thus receiving a total of \$4,280 of public funding. She ran against the non-publicly funded candidate Bob McDermott, and actually ended up losing the election as well as being significantly outspent. Martinez's total expenditures tallied around \$13,000 whereas McDermott had expenditures of about \$47,000, showing that public funding doesn't necessarily

³⁸ (H. C. Commission, 2016 Election Summary 2017)

lead to candidates winning. To be fair, McDermott was also an incumbent, but this example speaks to the fact that the amounts available in Hawaii are often not sufficient for candidates to win.

As I mentioned, there were 28 candidates who opted into public funding in 2016 in Hawaii, which amounted to about 10% of the potential candidates who could have. This is not a large number of candidates who are participating, and in 2018 it shrunk even further to only 18 participating candidates. However, built into the system there is also the option for candidates to not participate in public funding but to voluntarily abide by the expenditure limits. In 2016, a little over 50% of the candidates were abiding by the expenditure limits, which means that there were actually 121 candidates who accepted the expenditure limits and not the public funding. This to me is indicative of a system that is woefully inadequate, as there is a clear desire amongst the politicians in Hawaii to participate in clean government type programs. However, the public funds that are being provided are so lackluster that they aren't even opting into to receive them, even while accepting the same restrictions that would have come with the funds. That being said, candidates can still win with the system, for example in 2014 David Ige won the governorship as a participating candidate. However, he received about \$100,000 from the system and spent about \$2.3 million, so how much help he actually received from public funding is debatable³⁹. Hawaii is another example of a state that has a remarkably underfunded system, which is a shame considering the system clearly had some level of thought put into it. I

³⁹ (H. C. Commission, 2014 Election 2014)

think that with some simple increases in the amounts being provided, as well as finding a new source of revenue for it, Hawaii could very much have a successful system.

In Florida, we have a very different story to tell, which is particularly apparent with the amounts of money that are being dealt with. In 2018, Hawaii's public funding system gave out a little over \$100,000. In Florida in 2018, the amount given out was \$9.8 million⁴⁰. Florida is the most well-funded and expensive system out of any of the states that I have looked at, with the gubernatorial election being easily the most expensive race in 2018.

Totals

Office	Total Distribution
Governor	\$8,151,124.58
Chief Financial Officer	\$334,604.00
Attorney General	\$933,187.02
Commissioner of Agriculture	\$433,690.16
Total	\$9,852,605.76

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The large amounts being given have a couple of factors that contribute. First of all, the way that Florida funds the system is by simple appropriation from the general fund, with the money from the general fund simply matching however much money is required by the system, so there is never any issue of an unfunded mandate. Second, the money that the system gives out

⁴⁰ (H. C. Commission, 2020 Minimum Qualifying Contributions 2019)

⁴¹ (Elections, Public Campaign Finance 2018 2019)

is so large because there's not actually a set limit on the amount that the system can provide to individual candidates. Florida uses matching grants, with the original qualifying contributions being matched 2-1 and all other contributions after that being matched 1-1. These contributions have to come from an individual who is a registered voter in Florida and must be in amounts of \$250 or less. These requirements will naturally limit the amounts of money given out to some extent, but even so we can see that Florida absolutely does not have the same issue as Hawaii does of not having adequate funding available.

This type of system makes sense though, particularly if one looks at the original reasoning behind the passage of the public financing law. Florida put its system in place in 1986 by the legislature, as it perceived the cost of elections to be discouraging people from running⁴². As such, Florida's goal was to put in place a system that would encourage qualified people to run as well as keep the elections competitive. Florida provides funding for gubernatorial and statewide candidates, with the statewide offices being CFO, attorney general and commissioner of agriculture. There are a couple of requirements in order to be able to receive funds, with qualifying contributions of \$150,000 for gubernatorial candidates and \$100,000 for the other offices. Unlike Hawaii, Florida does make a distinction between candidates who are opposed and unopposed, with unopposed candidates not being able to receive public funds. There also is a \$25,000 limit on the amount you can donate to your campaign, and a \$250,000 limit on contributions from executive committees of political parties. Finally, the candidate must agree to the expenditure limits.

⁴² (Elections, 2018 Public Campaign Financing Handbook 2018)

Similar to Hawaii, the expenditure limits on candidates are dependent on the number of registered voters in the respective voting district in the previous election. For gubernatorial candidates this is calculate as \$2 for every registered Florida voter, and for the other state wide offices it is \$1 for every registered Florida voter. This means that in 2018, the expenditure limit for governor was about \$27 million, and the other offices had a limit of around \$13.5 million. These limits are quite high, particularly when compared to other state's limits, and this also contributes to the overall price of the system⁴³. For candidates who only face opposition in the primary, the expenditure limit is 60% of what it otherwise would be, meaning a candidate for attorney general who did not have an opponent in the general election but had one in the primary would have to limit their expenditures to a little over \$8 million. So, with the fundamentals of the system laid out, let's take a look at the 2018 gubernatorial election and see how the system functioned there.

In the 2018 election, there were four candidates for governor who accepted public funds: Ron DeSantis, Andrew Gillum, Gwen Graham, and Adam Putnam. Andrew Gillum and Gwen Graham were the two top Democratic candidates, with Ron DeSantis and Adam Putnam being the top two Republican candidates. Florida disburses money on weekly intervals beginning 32 days before the primary election, assuming that the candidate has additional funds to match. Graham and Putnam both lost their respective primaries, after receiving around \$1 million dollars each in matching funds, with Graham spending a total of \$6 million and Putnam a total of \$8 million. Ron DeSantis and Andrew Gillum then faced each other in the

⁴³ (Elections, 2018 Public Campaign Financing Handbook 2018)

general, and were able to receive significantly more due to the extra time they had to raise funds that could be matched by the system. DeSantis ended up receiving about \$3.2 million, and Gillum received \$2.6 million, with each spending a total of \$13.8 million and \$16.5 million respectively. So, as you can see, these races ended up being quite expensive despite the fact that all of the most prominent candidates were participating in the public funding system, and even then none of the candidates were in danger of brushing up against the expenditure limits.

With such high expenditure limits and such large amounts of money being spent in these races, it may be tempting to view the Florida system as being too lenient. While I understand that viewpoint, I think that Florida actually represents a good model for how a system can be made to reflect the reality on the ground. Governor's races are expensive, and the expenditure limits should reflect that. If we look at other races in 2018 like that for the position of chief financial officer of the state, Jimmy Patronis was the only participating candidate, receiving \$330,000 and in total spending around \$2.4 million, hardly staggering sums of money. More generally, although the total amounts of money being dispersed through the grants was large, if you look at the amounts that individual candidates were receiving, it wasn't anything ridiculous. The most amount of money that anyone received was DeSantis, and even then \$3.2 million throughout the entire race is not an unreasonable amount to give a candidate for governor. Florida is perhaps the best example of a system incentivizing candidates to participate, as the restrictions that candidates must abide by are not that stringent. There is no worry in Florida of not being able to receive funds due to there not being any money available, and thus the goals that were laid out at the beginning of the system are being met.

I mentioned the CFO race, but Florida had participating candidates in all of the races for statewide office. Just to show the general quality of the system, let's take a look at the race for Attorney General. Again we have both parties participating, with the two nominees for the general election participating. Sean Shaw was the Democratic nominee, and he ended up receiving \$365,590 during the campaign⁴⁴. The Republican nominee was Ashley Moody, who received slightly more money at \$478,902. In addition to receiving more public funding, she also outspent Shaw, spending a total of \$4.2 million to his \$2.2 million, and Moody went on to win the election. Again, we see both parties participating in the election, and the candidates who participated were competitive, and won the election. In addition, the expenditure limits proved to not be an issue whatsoever, with neither candidates approaching spending \$13 million. We can similar stories in the other elections as well, with candidates from both parties participating, and candidates not being held back by the expenditure limits.

The same however cannot be said for Hawaii. Hawaii has a system that isn't inherently flawed, the way that it handles distribution and how the amount available to candidates is tied to the size of their potential constituency are certainly points in its favor. However, again we see that funding is an indispensable part of public funding. In Massachusetts and again here, there is simply no recourse for a system that isn't providing candidates with enough money, or for a system that doesn't have enough money available to begin with. The big takeaway from comparing these two systems is that there must be good incentives for candidates to participate in public financing. Hawaii is particularly odd due to the high number of candidates

⁴⁴ (Elections, Public Campaign Finance 2018 2019)

who voluntarily take on expenditure limits, and if Hawaii adopts a funding system a little closer to Florida's I think that there is a strong possibility that it could become as successful as any of the states we have looked at. Simply adding an additional and consistent source of funding to the checkoffs would go a long way towards making things more attractive, but thus far there has been no effort to update the system on the part of the legislature. It is now up to them whether or not Hawaii's system fades. In addition, although this problem has most certainly not occurred as of yet, since Florida's expenditure limits aren't indexed to anything, there may come a point in the future where the current formula is inadequate and must be changed to perhaps \$3 per registered voter. In both cases, there needs to be a legislature ready to deal with issues that arise with these systems if they want to be able to weather problems.

Chapter 8: Conclusions

In the US, the states are often called the laboratories of democracy, as they are able to try out many different types of policies and the rest of the country is able to learn from their examples. After having examined many different state's approaches towards publicly financed elections, we are able to look at what results the laboratories are producing and say with some certainty what does and does not work with these systems. Now that we have gone through many chapters worth of analysis, we can take our conclusions from these states and construct a basic framework for how public funding ought to be implemented, and the various challenges that states must face when enacting these laws. Although every state has different circumstances that it must contend with, the factors that must be taken into account by lawmakers when crafting the system are relatively consistent. As such, I will be looking at the most important pieces of the public funding puzzle, and how states can approach their solutions to the problems presented.

Probably the most important question that any public funding system must answer is where the funds are actually coming from. As we have seen in states like Massachusetts, having an inadequate amount of funding can cripple a system, and more generally as a method of reform that relies on providing funding to candidates, there needs to be a consistent source of revenue that can replenish the coffers of whatever fund is set up for public financing. One source which is fairly uncontroversial and very common is the tax checkoff, where taxpayers have the option of allotting a certain amount of their tax burden to go to the public funding system. Every state we looked at except Arizona has this in place, and it is politically very easy to have a system like this, as it requires no consistent funding from the legislature and no increase in taxes. It is important to note that even though this requires no legislative action to

move money from the general fund, it is still diverting money away from the general treasury. On its own, it is unlikely to be enough, unless the system is like Michigan and only funding gubernatorial elections every four years, and even then we saw that that wasn't quite sufficient. As such, there needs to be an additional source of funding.

The most obvious source of funding that one can point to is the general fund, and this is certainly one that is used by many states. Maine, Connecticut, and Minnesota all rely on the general fund to varying degrees, and all of them have fairly successful systems. But, in order for you to be able to rely upon the general fund, there must be support within the legislature for the public financing system, and this is most certainly not always the case. Sometimes you have a case such as Massachusetts where the legislature aggressively opposed the system, and other cases like Arizona there isn't so much opposition but apathy, allowing the system to slowly shrink without any major effort to tweak the law and make the system more popular again. But looking at Arizona we actually have one of the more unique sources of funding, which is their reliance on a 10% surcharge on criminal penalties. This is the major source of funding for their system, and it has actually led to the system having more money than it needs and being able to donate excess funds to the general fund. I'm not necessarily advocating for a system of funding exactly like this, but if one does not wish to rely on the general fund for the majority of their funding, it clearly shows that there are other effective options that one can use if it is necessary. Even if it isn't necessary, having excess money is a far better problem to have than not having enough money.

Straying outside of examples from states that we have looked at, there are many options that are potentially available for funding a system. One option that wasn't explored

much in any of the systems that we looked at is actually establishing a new tax that is used to directly fund the system. For example, a state could establish a sin tax or a gas tax and have that money be directly deposited into the fund for public financing. If there were any excess funds, those could then be deposited into the general fund, similar to what happens in Arizona. This is to say, just because the states offer good examples of what can be done, these examples are not exhaustive. A new system need not restrict itself to only what has been implemented elsewhere, as there are many chances for tweaks and changes to the way in which a system can be set up. Where a system gets funded in particular is open to experimentation, and as consistent funding is so vital to a successful system, there needs to be a source from the very beginning that isn't easily cut off or diminished.

Beyond the source of funding, there is the next question, which is perhaps the defining question of publicly financed campaigns, which is how should we give funds to candidates, and how large should the subsidies be. This is an incredibly broad topic which encompasses a whole host of factors, so this is where states will need to craft an individualistic and unique system that fits for what the conditions are in that particular state. Perhaps the first thing that one must think about is what offices are being provided funding, and their levels of funding respective to each other. The cost of running as a state representative for example is across the board fairly cheap, with most systems providing a couple of thousand dollars to legislative candidates, and typically more to senatorial candidates than house candidates. This is because first of all, the size of the constituency is small, and thus the cost of reaching voters is significantly less. In addition, the nature of the campaign is such that there likely are not going to be expensive advertisements being run, the campaign's themselves are not large operations,

and there simply isn't as much attention given to state legislative races as other races in the state. However, there can be complexities even within state legislative races, particularly when there are some districts that are significantly more expensive than others, for example running in Western Massachusetts versus Boston. We will discuss this a little later, but it is important to note that it might not always be appropriate to give the same amounts of money to all legislative candidates.

The other offices that get funded are typically state wide offices, and which offices get elected statewide is dependent on the state that one is in. With these statewide candidates, there needs to be established a sort of hierarchy of offices. In other words a decision has to be made by looking the costs of elections to those offices and a determination has to be made about which ones will receive more or less funding relative to each other. Since all of these offices have the same sized constituency, one needs rely on solely on the costs of previous elections to calculate what an appropriate amount of money would be for candidates. Beyond the intrastate comparison of costs, states are able to look at the costs in other states and see the amounts that are being provided to candidates there. Although this can be helpful, one must be careful of using other states as models in this regard because there is so much variation between states when it comes to those state's offices. Things like the sizes of districts, the sizes of the constituency, and media costs are all different across states, so those differences must be taken into account when looking at the amounts that are given for different races.

Invariably gubernatorial races are the most expensive races that get funded, and as such present particular problems for public funding systems. There is going to be significantly more

money spent per candidate than in any of the other state wide offices like comptroller or attorney general, and in particular the upper limit of that spending can be ridiculous. Thus it can be difficult to provide adequate funding to gubernatorial candidates, and difficult to have a system that allows candidates to be viable. In states with histories of expensive races, it will not be possible to fully fund gubernatorial candidates, and thus there needs to be flexibility in the types of funding and limitations for gubernatorial races. This can be taken too far like in Massachusetts, where the public funding for gubernatorial candidates is essentially just free money much of the time, as the expenditure limits can get lifted into the stratosphere by high spending opponents. Then we have a state like Michigan, where the funding provided is entirely inadequate in the face of a well-funded opponent. There needs to be a balance struck of providing enough funds and/or enough room for additional fundraising while still making a difference in the way that the campaigns are run and the amount being spent. Otherwise, it is hard to justify having a public funding system in the first place.

This brings us to the next question that needs to be answered, which is how are the funds being divested to candidates. We have gone over two basic options, which are lump sum and matching grant systems. They both have their positives, and depending on what the end goal of the system is, one can be better than the other. If the goal is a clean election system, such as in Maine or Arizona, the only way for that type of system to work is to provide lump sums. Here we have a candidate who, once they qualify for the system, receive all of their funding from the state and are barred from doing anymore fundraising. This is a radical shift in the way that campaigns are run and can be quite successful as we have seen in Maine. However, the major downside to this is simply that is expensive, as it requires the state to fully

fund the candidate's campaign. And, if campaigns get more expensive as time goes on, the bill that the state must foot grows larger. That being said, it also allows candidates to never have to worry about fundraising, and simply focus on the constituents on the campaign. Whether or not that is worth it is something that must be determined by the state.

There are other lump sum systems that can be used that do allow candidates to be less concerned with fundraising, but also are less costly to the state. These systems provide grants but also impose spending limits, which in the clean election system is unnecessary since the only funds available are what are given to you by the state. In these systems, candidates are allowed to raise additional funds up to a certain amount, and thus there is more flexibility built into the system. It allows for candidates who need the extra money to go and raise it, with the candidates who are able to win without additional fundraising not being affected. In addition, many of the state who use systems like this have it set up so that the amount given is broken up into multiple payments, with candidates having to request additional payments beyond the first amount. This can be seen in Maine, where candidates who need the extra funding simply need to provide additional qualifying contributions, and then they have access to the next supplemental payment. This way of funding also addresses the problem that I raised earlier about different candidates in different districts requiring different amounts of money, as there is available additional payments if those are needed. In this way the state doesn't need to pay every candidate the same amount as the most expensive district requires, but rather allows the candidates to determine for themselves the level of funding that they desire.

This then leads into the other major option for payment, which is matching grants. Similar to what I was just discussing, matching grants allow candidates to determine how much

money they desire, as they only receive funds if they raise corresponding amount of money.

This is different than Maine's required qualifying contributions, as these funds will be matched in a 1-1 or 2-1 scheme, rather than having to raise for example 15 \$5 contributions and receiving a lump sum of \$1,300. For example in Michigan, one must raise \$495,000 in order to receive a matching grant of \$495,000. This type of system differs greatly in what the goal is than when providing lump sum grants, as naturally you aren't trying to make candidates less dependent on fundraising in a system like this. Rather, you are trying to make candidates more reliant on a certain type of donor, and consequently less reliant on other types. As such, matching grant systems will have requirements that the donations that are being matched only come from individuals, they only come from residents, and perhaps even that they only come in certain amounts, for example an individual can only provide \$1000 or something of that ilk. Through these types of restrictions on the types of donations that are matched as well as spending limits on participating candidates, matching grant systems force candidates to be reliant on smaller individual donors. Thus, when looking at what type of system to implement, the question that needs to be asked is what am I trying to change about the way elections are done in my state? Either you want to make candidates less dependent (or not at all dependent) on fundraising as whole, or you want to make candidates more reliant on a particular type of fundraising.

Another factor that needs to be considered is when to begin providing funding.

Primaries don't necessarily have a set start date, so there needs to be a decision made as to when is a reasonable time to begin the program. For the states that we have looked at, the dates that candidates can begin receiving funding typically between late spring and summer,

sometime between April and August. Correspondingly, there needs to be thought given to how the length of time affects the size of the grants that are being given out. One could have a system such as Arizona, where there are allowances made for early contributions and early spending, with the money that candidate raise in the period prior to their participation being regulated by the system. That might not be necessary, but in any event the length of the elections and how long candidates will be publicly funded is a decision that will affect the way that the system is set up.

Lastly there is a question that needs to be asked, which is why are some states more successful than others? Why is it that we have such a broad range of participation rates in these systems which are, on the surface, not that different from each other? As they say, the devil is in the details, and that is especially true when it comes to policies such as this. Small changes in the way that these systems are set up have huge ramifications for the attractiveness of these systems to candidates. At the end of the day, the most important thing that a system needs to do is to make candidates want to use it. This is why a system like Arizona's has had a slowly decreasing participation rate for the past seven years, because there has not been an effort to make the system more attractive since the triggering mechanism was struck down. This can be contrasted quite nicely with Maine, where the exact same mechanism was struck down at about the same time, but the legislature increased the funding available to candidates, and thus there wasn't a loss of faith in the viability of the system. A state like Minnesota has an incredibly high participation rate, and the amounts that are given out are not by any stretch of the imagination particularly large. However, there is constant review of the amounts being given and changes being made, as well as the system itself being incredibly flexible with each

district receiving different amounts of funding. The perception of the system by the candidates is an underrated but incredibly important part of every public financing system, and is something that does need to be taken into consideration by anyone who wishes to implement these systems in the future.

Naturally, this perception is also informed by the experiences of candidates who have participated in the system in the past. In other words, in order for a system to succeed, at the end of the day, candidates must be able to win using the system. When constructing a public financing system, this needs to be in the back of everyone's mind. When thinking about how much money to give a candidate, about what you are incentivizing through your system, you always need to think about the question of 'can a candidate win with this?' The reform potential of publicly funded elections is there, but there is a pragmatic element to it that must be built in to every system. Public financing has the ability to do a fair amount, it can limit the amount of money that is spent in elections, it can shift the focus of candidates during campaigns, and it can make candidates less concerned with the money raising aspect of campaigning. Of course, it is no magic bullet, and like all campaign finance reform measures it has been handicapped by the Supreme Court and its litany of decision against reform. However, unlikely many other areas of reform that have been completely struck down, there is still room for action within the realm of public financing. As we have seen, there are successful public funding systems, and thus if done properly there can be more. There is still the ability to enact these systems, and outside of court decisions, publicly funding elections is really the best option that we have available for these reforms. As such, for anyone who is interested in campaign

finance reform, I think that there should be increased attention on public financing, as it is an area where actual legislation and reform can be done right now.

As to what options are available for reformers that we didn't see in the states, you could have a public funding system that uses vouchers, either instead of or in addition to actual cash payments. What this would mean is getting local media to agree to accept these vouchers for a certain amount of ads, either airtime for radio and television or set amount of space in a newspaper. This would most likely require the state to compensate the media company for that ad space and thus would probably not decrease the actual cost for the state, but it would mean that the state would be able to determine the amount that a campaign could 'spend' on ads. Beyond that, there is potential for the state to require a media company to play a certain amount of ads for candidates, perhaps even free of cost for the candidate, with the amount obviously depending on which office and all of the other factors that typically come into play when paying money out to candidates directly. This type of reform would most likely be outside the prerogative of the states and would rely on the federal government stepping in and setting this up. As such, I would like to briefly explore how what we have been looking at and learning from the states could be applicable to the federal government.

I have mentioned in passing the system in place for publicly funding presidential candidates, but this system has become essentially obsolete since the 2008 election. The way that the system is set up is actually a combination of matching grants and block grants, with matching grants being given out during the primary and block grants given out during the

general election⁴⁵. Due to the national level of the system, there are requirements for the money to come from at least 20 states, at least \$5,000 coming from each. This must be in amounts of at most \$250 from individuals, with candidates needing to agree to expenditure limits for both the primary and general elections. This is where one of the first problems comes in, with the expenditure limits being unrealistically small. The expenditure limits are tied to a cost of living adjustment and thus do increase overtime, but in 2016 the limit for primaries was \$48 million and generals was \$96 million. The costs of presidential elections have quickly ballooned to such absurd proportions that these amounts would likely have to be multiplied by 10 in order for candidates to participate. This gets to the next big problem, which is that the system is funded entirely through tax checkoffs, meaning that it almost certainly would not be able to afford funding a modern presidential campaign.

Clearly, the current system of federal public funding leaves a lot to desired, and has a lot that can be learned from the states. First off, there needs to be an alternative source of funding, and there are plenty of options that have been displayed by the states. Secondly, there needs to be an increase in the amounts available to candidates both in the primary and general elections. The system clearly was thought through, as there are state by state expenditure limits that vary depending on the size of the voting population, but there needs to be changes to make it viable in a modern presidential race. As for the potential of a system for congress, the states certainly offer plenty of examples for how to set one up. If there were to be legislative funding, it would make sense to link it to the same fund as for presidential

⁴⁵ (F. E. Commission 2019)

campaigns, and would necessitate finding a more consistent source of funding than tax checkoffs. Congress has the same issue of variable costs as the states, but in a significantly more exaggerated fashion. Running in North Dakota is naturally going to be more expensive than running in Rhode Island, so there needs to be an acknowledgement of that in the way that money is disbursed. Frankly though, the biggest impediment to a federal publicly funded system is the political will of congress, because there's no options for a ballot initiative on a national level.

Overall, publicly financed elections are the best reform option that is currently available. They have the ability to impose both contribution and expenditure limits on candidates, as well as provide candidates with an alternative to the typical fundraising and donation cycle. It is always important to note the downsides of a system, with no public funding system able to impose restrictions on candidates who aren't participating unless it's something like with Massachusetts, where non-participating candidates set their own limits. In addition, like other reform measure, independent expenditures are not affected whatsoever by these laws. However irritating it may be to reformers to have to work around these limitations, there are still many reasons why reformers should still try to implement public funding system. Beyond being the 'reform of last resort', there are inherent benefits to public financing that should not be ignored, and I think that it would a step in the right direction for politics in this country if more states enacted these systems, or even the federal government.

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