

# Fairly Flawed:

Analysis of the 2009 Fair Elections Now Act

(H.R.1826 and S. 752)



CENTER *for*  
COMPETITIVE  
POLITICS

*Congress shall make no law...*



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Prepared by



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# INTRODUCTION

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On March 31, 2009, Senators Arlen Specter (D-Pa.) and Dick Durbin (D-Ill.) and Representatives John Larson (D-Conn.) and Walter Jones (R-N.C.) introduced almost identical bills in the House and Senate to establish taxpayer financed campaigns for Congressional races. H.R.1826 and S. 752, known as the Fair Elections Now Act, seek to establish a system of public funding to combat the “undermining of democracy by campaign contributions from private sources.”<sup>1</sup>

The sponsors of the legislation, and the “good government” groups advocating for its passage have focused on the perceived ills of the current fundraising system, and also stories from states with similar taxpayer financing schemes including Maine, Arizona, and Connecticut.

Careful analysis of these programs shows the claimed successes do not exist other than in the rhetorical excesses of the campaign finance regulation community. Far too often, euphemisms and wild exaggeration substitute for the close scrutiny that should be applied to the purported benefits of taxpayer financed political campaigns.

*Fairly Flawed* aims to provide to Congress with relevant research and analysis with the hope that it will inform and educate Members and their staff as they consider the Fair Elections Now

Act. It draws on original research done by the Center for Competitive Politics (CCP) as well academic studies, public opinion polls, legislative reports, testimony by participants in similar state-level programs, and official reports by state and municipal agencies that administer and oversee similar programs.

*Fairly Flawed* examines, to the extent possible, the seven policy goals described in the “Findings and Declarations” of H.R.1826 and S. 752 and compares these goals with the actual experiences of states and cities with similar programs. Because the goals are often somewhat vague and imprecise and rely primarily on euphemisms, slogans, and rhetoric, we have done our best to discern what the specific anticipated outcomes are in each goal.

A similar approach was taken in New Jersey, where CCP compared the goals of that state’s 2007 pilot project with the actual results. This comparison provided legislators with the information they needed to fully assess a proposal to extend and expand the program, and contributed to the ultimate decision to reject further taxpayer financing for legislative candidates.

The remainder of this report provides a brief summary of the Fair Elections Now Act and the goals of the act as described in the “Findings and Declarations” section of the bill, followed by analysis of each of these goals and our conclusions.

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<sup>1</sup> H.R. 1826, 111th Cong. §101(a) (2009). The language of S. 752 is identical.

## SUMMARY OF FAIR ELECTIONS NOW ACT

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The Fair Elections Now Act (S. 752 and H.R. 1826) was introduced in the Senate by Sens. Dick Durbin (D-Ill.) and Arlen Specter (D-Pa.) and in the House of Representatives by Reps. John Larson (D-Conn.) and Walter Jones, Jr. (R-N.C.). The bill would allow federal candidates to receive taxpayer funds for their campaigns. The key provisions include:

- Candidates would be limited to contributions of no more than \$100 for each of the primary, qualifying, and general election periods.
- Candidates for the U.S. House of Representatives would have to gather 1,500 contributions from people in their state and raise a total of \$50,000.
- U.S. Senate candidates would need to raise 2,000 contributions plus an additional 500 contributions per congressional district in the state. The dollar amount raised would need to total 10% of the Fair Elections funding available to primary candidates.
- House candidates who qualify receive a lump-sum payment of \$360,000 in taxpayer funds for the primary, and if they win their primary will receive an additional \$540,000 for the general election.
- Senate candidates who qualify receive a lump-sum payment of \$500,000 plus another \$100,000 per congressional district for the primary, and \$750,000 plus another \$150,000 per congressional district for the general election.
- Donations of \$100 or less from in-state contributors would be matched on a four-to-one basis – four dollars in taxpayer funds for every one dollar from in-state contributors. Total matching funds are capped at two times the total lump-sum payments.
- Senate candidates who win their primaries will receive a \$100,000 voucher for each congressional district in their state to pay for broadcast advertising, while House candidates receive a single \$100,000 media voucher. Vouchers can be exchanged for cash with their national political party committee.
- Candidates also receive a 20% discount on broadcast advertising rates.
- Cost estimates vary by expected participation, ranging from several hundred million dollars to potentially three or four billion dollars per cycle.

## SUMMARY OF POLICY GOALS

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H.R. 1826 lists seven ways in which publicly funding campaigns will lead to the “enhancement of democracy.”<sup>2</sup> They include the following:

(1) Reducing the actual or perceived conflicts of interest created by fully private financing of the election campaigns of public officials and restoring public confidence in the integrity and fairness of the electoral and legislative processes through the program which allows participating candidates to adhere to substantially lower contribution limits for contributors with an assurance that there will be sufficient funds for such candidates to run viable electoral campaigns;

(2) Increasing the public’s confidence in the accountability of Members to the constituents who elect them, which derives from the programs qualifying criteria to participate in the voluntary program and the conclusions that constituents may draw regarding candidates who qualify and participate in the program;

(3) Helping to reduce the ability to make large campaign contributions as a determinant of a citizen’s influence within the political process by facilitating the expression of voters at every level of wealth, encouraging political participation, incentivizing participation on the part of

Members through the matching of small dollar contributions;

(4) Potentially saving taxpayers billions of dollars that may be (or that are perceived to be) currently allocated based upon legislative and regulatory agendas skewed by the influence of campaign contributions;

(5) Creating genuine opportunities for all Americans to run for the House of Representatives and encouraging more competitive elections;

(6) Encouraging participation in the electoral process by citizens of every level of wealth; and

(7) Freeing Members from the incessant preoccupation with raising money, and allowing them more time to carry out their public responsibilities.

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<sup>2</sup> H.R. 1826, 111th Cong. §101(b) (2009). The text of S. 752 is substantively identical.

## ANALYSIS OF GOAL 1

Sec. 101(b)(1)

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*Reducing the actual or perceived conflicts of interest created by fully private financing of the election campaigns of public officials and restoring public confidence in the integrity and fairness of the electoral and legislative processes through the program which allows participating candidates to adhere to substantially lower contribution limits for contributors with an assurance that there will be sufficient funds for such candidates to run viable electoral campaigns*

The language in this goal plainly indicates that the sponsors of the legislation feel that campaign contributions above a certain threshold, or from certain individuals, create a conflict of interest for legislators that leads to public policy decisions based not on the best interests of the public, but instead reflects the interests of contributors.<sup>3</sup> If true, such conflicts of interest and improper influence would be removed if elected officials relied upon taxpayer dollars for their campaigns rather than private contributions.

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<sup>3</sup> Note that the sponsors must believe, therefore, that current federal contribution limits – which prohibit corporate and union contributions and limit individuals to an amount that, in inflation adjusted terms, is less than 60 percent that of 1974, are insufficient to offset this public perception.

However, the assumption that campaign contributions influence legislators' votes is not supported by research. A substantial majority of academic research on the subject has shown that there is little connection between contributions and legislative votes or actions.

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A 2004 study by Massachusetts Institute of Technology professors Stephen Anselobehere, James M. Snyder Jr., and Michiko Ueda, reviewed 40 peer reviewed studies on the effects of contributions on legislative behavior, and found that “the large majority of studies find no significant effects of hard money contributions on public policy...”<sup>4</sup>

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<sup>4</sup> Stephen Ansolabehere, James M. Snyder, Jr., and Michiko Ueda, *Did Firms Profit from Soft Money?*, 3

The study then went on to find that even six figure soft money contributions by corporations had no noticeable impact on corporate profitability, concluding, “we are not in a world of excessively large returns to campaign contributors.”<sup>5</sup>

Another MIT study similarly found that “legislators’ votes depend almost entirely on their own beliefs and the preferences of their voters and their party,” and “contributions have no detectable effects on legislative behavior.”<sup>6</sup>

Political scientists Stephen Bronars and John Lott also found that campaign contributions are driven by ideology, and that legislators vote according to their own beliefs, their party loyalty, and the views of their constituents – not contributions.<sup>7</sup> Their tests “strongly reject the notion that campaign contributions buy

politicians’ vote,” and they conclude instead that “just like voters, contributors appear able to sort into office politicians who intrinsically value the same things that they do,” and donate to those candidates accordingly.<sup>8</sup>

One study specifically addresses the question of whether moving from privately-funded to taxpayer financed campaigns leads to a shift in the way elected officials vote. Examining Arizona

legislators elected with taxpayer dollars, researchers concluded that legislators funded with taxpayer dollars “voted no differently from legislators who accepted private contributions.”<sup>9</sup>

For reasons explained in detail in the discussion of Goals 5 and 7, the Fair Elections program is likely to primarily

benefit incumbents, with few non-incumbents able to qualify for funding and an increased role for organized interest groups supporting favored candidates. If this is correct, it is extremely unlikely that Fair Elections will “restore public confidence in the integrity and fairness of the

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Election L. J. 193 (2004).

5 Ibid

6 Stephen Ansolabehere, John de Figueiredo, and James M. Snyder Jr., *Why Is There So Little Money in U.S. Politics* 17 J. Econ. Perspectives 105 (2003).

7 Stephen G. Bronars and John R. Lott, *Do Campaign Donations Alter How a Politician Votes? Or, Do Donors Support Candidates Who Value the Same Things That They Do?*, 40 J. LAW & ECON. 317, 346-47 (1997).

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8 Ibid at pp. 346-47

9 Robert J. Francosi, *Is Cleanliness Political Godliness?* p. 16, November 2001, Goldwater Institute.

electoral and legislative [process],” and may even erode such confidence.

In fact, FENA’s four-to-one matching formula for putting taxpayer money into elections could well become a source of corruption or the appearance of corruption in and of itself. As former Federal Election Commission Chairman David Mason notes, “the presence of matching funds provides a dramatically increased incentive for conduit contributions: the returns of the illegal scheme are increased by the government match... With government subsidies of 400 or 500% of small contributions, it is all too easy to imagine an ACORN-like scheme in which an army of street-level fundraisers are paid bounties to find small donors with no questions asked.”<sup>10</sup>

Additionally, the complexity of the law itself creates new, if often inadvertent violations, which are then reported as themselves a form of “corruption.”

Research on public attitudes suggests that campaign finance regulations have not correlated with greater public confidence in electoral and legislative institutions or greater voter turnout.<sup>11</sup> Indeed, some

researchers have argued that reform laws create and increase cynicism and mistrust.<sup>12</sup> This is discussed further in the following analysis of Goal 2.

Thus, the end result is that FENA could well contribute to, rather than reverse, the decline in public confidence in the electoral and legislative processes.

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10 David M. Mason, *No Cure for Corruption: Public Financing Under Constitutional Constraints*, 10 Engage 89, 91 (2009).

11 Beth Ann Rosenson, *The Effect of Political Reform Measures on Perceptions of Corruption*, 8 Election L. J. 31, 42 (2009) (“one of the key rationales for [campaign finance] reforms – decreasing perceptions of corruption – is not borne out by this research”); David M. Primo and Jeffrey Milyo, *Campaign Finance Laws and Political Efficacy*, 5 Election L. J. 23 (2006) (studying public opinion in states and concluding, “the effect of campaign finance laws [on perceptions of democratic rule] is sometimes perverse,

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rarely positive, and never more than modest”); David M. Primo, *Public Opinion and Campaign Finance: Reformers Versus Reality*, 7 Independent Review 207 (2002).

12 Donald A. Gross and Robert K. Goidel, *The States of Campaign Finance Reform* (The Ohio State University Press 2003).

## ANALYSIS OF GOAL 2

Sec. 101(b)(2)

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*Increasing the public's confidence in the accountability of Members to the constituents who elect them, which derives from the programs qualifying criteria to participate in the voluntary program and the conclusions that constituents may draw regarding candidates who qualify and participate in the program*

There is little evidence to support the idea that the Fair Elections Now Act will achieve the goal of improving public confidence in Congress.

In a system of representative democracy, elected officials are ultimately held accountable by voters who decide whether they deserve re-election or not. However, the high level of incumbency retention has been cited by some as a cause of concern regarding accountability and a main justification for expanding these programs.<sup>13</sup>

Building on the belief that high incumbency retention rates signify a lack of accountability, proponents of the Fair Elections Now Act suggest that adopting taxpayer financed political campaigns will lessen the advantages of incumbency and lead to lower incumbent re-election rates.<sup>14</sup>

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13 Public Campaign, "The Challenge of Incumbency," available at <http://www.publiccampaign.org/blog/2006/07/31/the-challenge-of-incumbency>; see also Connecticut Office of Legislative Research, "Survey of Research on the Impact of Public Financing," August 2005, available at <http://www.cga.ct.gov/2005/rpt/2005-R-0620.htm>.

14 "Group works for publicly funded politics", Bill

But the actual experience of those few states and cities that operate such programs do not support this idea. Arizona and Maine each enacted so-called "clean elections" laws effective with the 2000 elections. Incumbent re-election appears to have fallen in the Arizona State House in the 2002 and 2004 elections, but by 2006 it was back to its normal high rate. The Arizona Senate has seen little change. In Maine, incumbent re-election rates appear to have held relatively steady, aside from a temporary decline in the 2004 Senate elections, which disappeared in 2006.<sup>15</sup>

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McCallister, KTUU Television, Sept. 3 2007, <http://www.ktuu.com/Global/story.asp?s=7021009> and "Prop 89," Kathay Feng and Deborah Burger, *Orange County Register*, Oct. 15, 2006, [http://www.oregister.com/oregister/opinion/readerrebuttals/article\\_1312156.php](http://www.oregister.com/oregister/opinion/readerrebuttals/article_1312156.php). One academic study supports this finding, Neil Malhotra, *The Impact of Public Financing on Electoral Competition: Evidence from Arizona and Maine*, 8 State Politics and Policy Quarterly 263 (2008).

15 Comparisons of Arizona's and Maine's incumbent re-election figures are complicated by the fact that both states imposed term limits at the same time as their "clean elections" programs began. Term limits are likely to decrease incumbent re-election rates over time because they incumbents have less time in office to build the primary natural advantage of incumbency, name recognition. See also United States General Accounting Office, *Campaign Finance Reform: Early Experience of Two States That Offer Full Public Funding for Political Candidates*, May

### Incumbent Retention Rates for Arizona<sup>16</sup>

Year	House (%)	Senate (%)
1992	93	90
1994	95	100
1996	93	95
1998	98	96
2000	92	100
2002	70	87
2004	81	96
2006	95	87

### Incumbent Retention Rates for Maine<sup>17</sup>

Year	House (%)	Senate (%)
1992	84	86
1994	83	90
1996	82	87
1998	86	100
2000	88	91
2002	84	92
2004	83	73
2006	83	90

2003 (noting that many factors, such as term limits, redistricting, and more affect competitiveness, and “it is difficult to separate or disassociate the effects of these factors from the effects of the public financing programs,” but finding no notable increase in competitive measures).

16 Author’s calculations using data from The Wisconsin Campaign Finance Project, available at <http://campfin.polisci.wisc.edu/ArizonaData.asp>.

17 Author’s calculations using data from The Wisconsin Campaign Finance Project, available at <http://campfin.polisci.wisc.edu/MaineData.asp>.

Similarly, in Connecticut, where “clean elections” began in 2008, the Office of Legislative Research reports that “in 2006, 100% (32 of 32) of Senate incumbents won reelection, while in 2008, 96.9% (31 of 32) won reelection. Likewise, 95.7% (133 of 139) House incumbents won reelection in 2006 while in 2008, 95.4% (125 of 131) won.”<sup>18</sup>

New York’s record on incumbent re-election rates is little better. In the most recent 2005 city elections, 43 of 44 incumbent city council members won.<sup>19</sup> The only incumbent to lose his re-election campaign was Allen Jennings, who was accused of discrimination and harassment by staff members and was fined tens of thousands of dollars by the Campaign Finance Board for his 2001 campaign. Jennings was defeated by a former city council member who had been term-limited out of office in 2001.<sup>20</sup>

As for public trust in government, political scientist David Primo writes that “...data show in two ways that rising campaign spending was not the cause of public mistrust of government,”<sup>21</sup> and

18 The Citizens’ Election Program: A Comparison of the 2006 Legislative Races With The 2008 Races, Kristen Sullivan, Connecticut Office of Legislative Research, Feb. 9, 2009, <http://www.cga.ct.gov/2009/rpt/2009-R-0099.htm>.

19 Public Dollars for the Public Good: A Report on the 2005 Elections, p. 20, New York City Campaign Finance Board, 2006, [http://www.nyccfb.info/PDF/per/2005\\_PER/2005\\_Post\\_Election\\_Report.pdf](http://www.nyccfb.info/PDF/per/2005_PER/2005_Post_Election_Report.pdf).

20 Ibid at p. 23

21 Primo, David M. “Public Opinion and Campaign Finance: Reformers Versus Reality,” *The Independent Review*, v.VII, n.2, Fall 2002, 2002, pp. 207– 219, pg 211, available at <http://www.rochester.edu/college/psc/primo/primoindrev.pdf>.

that in terms of polling public trust in government in response to specific reforms, “the public seems to favor almost any reform simply in the name of reform.”<sup>22</sup> Professor Primo concluded that, “trust in government is not linked to campaign spending.”<sup>23</sup>

Public opinion polls conducted after New Jersey’s public financing pilot programs showed that there was no increase in favorable public opinion about their legislature.<sup>24</sup> In 2005, 75% of respondents said they trust the state legislature to do what is right “only some or none of the time,” and in 2007 that had increased to 80%. The poll concluded that “to the extent... Clean Elections [are] designed to foster confidence in elections and governance... much more work remains.”<sup>25</sup>

Research by the Center for Competitive Politics on New Jersey’s 2007 “clean elections” pilot project provides one possible reason why replacing private

contributions to candidates with taxpayer funds is unlikely to improve citizens’ confidence in government: partisan and ideological differences were the primary factors leading to citizens’

belief that their elected officials favored so-called special interests and party leadership over constituent interests.<sup>26</sup> If a voter’s partisanship vis the officeholder’s party affiliation is the primary determinate of the perception of corruption, then the manner in which the officeholder financed

his campaign will matter little.<sup>27</sup>

Moreover, it will be difficult to improve public opinion if citizens are broadly unaware of the Fair Elections program and the supposed benefits it provides. According to the most recent available data, half of Arizona citizens were unaware of

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22 Ibid at p. 212

23 Ibid at p. 203. See also citations at footnote 11 for studies indicating no beneficial effect, and sometimes harmful effects, of public financing on public confidence and trust.

24 Rutgers Eagleton Institute of Politics, “Public Attitudes Toward the Clean Elections Initiative,” Nov. 2007, p. 2, available at [http://eagletonpoll.rutgers.edu/polls/CE\\_FinalReport\\_1\\_1\\_07.pdf](http://eagletonpoll.rutgers.edu/polls/CE_FinalReport_1_1_07.pdf).

25 Ibid at p. 8

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26 *Special Interests, Partisan Pouts, and the Usual Suspects*, p. 9, Sean Parnell, Laura Renz, Sarah Falkenstein, Center for Competitive Politics, February 2009, [http://www.campaignfreedom.org/docLib/20090223\\_SR1NJ.pdf](http://www.campaignfreedom.org/docLib/20090223_SR1NJ.pdf).

27 See also Nathaniel Persily and Kelli Lammie, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 53 U. Penn. L. Rev. 119 (2004) (finding partisan identification of voters vis officeholders to be a primary determinant of perceptions of government corruption).

that state's program,<sup>28</sup> and among the half who are aware of the program roughly 20 percent and possibly more did not know what the program does.<sup>29</sup> More than a third of those familiar with the program gave "unfavorable," "very unfavorable," or "not sure" as responses when asked for their opinion of the program.<sup>30</sup> This suggests widespread ignorance, indifference, or opposition to the Arizona program after five election cycles, making the program unlikely to improve public opinion.

Regarding "the conclusions that constituents may draw regarding candidates

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who qualify and participate in the program," such a goal potentially raises issues of whether the state is attempting to endorse certain candidates. Effort by the government to educate and inform citizens about the program and that create the impression that participating candidates are somehow preferable to non-participating candidates could raise concerns that the state is attempting to dictate electoral outcomes.<sup>31</sup>

In just such an effort to raise public awareness of "clean elections" and guide "conclusions that constituents may draw," New Jersey's 2007 pilot project identified "clean elections" candidates on the ballot and also ran

radio, television, and newspaper ads promoting the program.<sup>32</sup> These ads included language suggesting that the program would "take special interest money out of the election process" and similar language

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28 *Awareness and Attitude Study, January 2006*, p. 2, prepared for the Arizona Citizens Clean Elections Commission, conducted by Behavior Research Center. Note that after 2006, subsequent studies screened out survey respondents who were not aware of the program.

29 *Statewide Voter Survey, December 2008*, p. 6, prepared for the Arizona Citizens Clean Elections Commission, conducted by Behavior Research Center. 58% of those who said they were "not very familiar" with the program responded "don't know" when asked what the program did, and 26% gave answers that were wrong. These questions were only asked of the 26% of all survey takers who said they were "not very familiar" with "clean elections. It is possible (likely?) that some number of those responding "somewhat familiar" or "very familiar" in fact do not understand what "clean elections" do, increasing the number of citizens who are unaware of the program and what it does.

30 *Ibid* at p. 7

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31 In *Cook v. Gralike*, 531 U.S. 510, 525 (2001), the Supreme Court struck down a provision in Missouri that identified on the ballot which candidates supported a specific term limits law and which did not, including language stating that those who did not had "disregarded voters instructions on term limits." ("Article VIII is plainly designed to favor candidates who are willing to support the particular form of a term limits amendment ... and to disfavor those who ... oppose term limits").

32 New Jersey Election Law Enforcement Commission, <http://www.njcleanelections.com/advertising.html>.

suggesting that citizens should prefer candidates who participate in the program.<sup>33</sup>

Discussing the identification of “clean elections” candidates on the ballot in New Jersey, the Center for Government Studies notes that, “The ‘clean elections candidate’ designation raises constitutional issues... [it] may be found to support participating candidates, and therefore... the state would be regulating an electoral outcome.”<sup>34</sup> Running ads touting the benefits of the program that suggest positive attributes of participating candidates may also raise similar concerns.

Such public education and promotion of the program also may undermine the supposed voluntary nature of the program. By encouraging constituents to draw positive conclusions about candidates who participate in the program, and, one can safely assume, negative conclusions about candidates who chose to fundraise traditionally, the Fair Elections program potentially imposes a burden on the decision by a candidate not to participate in the program.

The danger that candidates choosing not to

participate in the program would suffer is a very real one. For example, a 2005 report by the New York City Campaign Finance Board, which has administered a matching program since the late 1980’s, stated that in their experience, “For many candidates, declining to join the program generated negative press and editorial attention.”<sup>35</sup>

There is little to suggest that taxpayer financing programs are capable of improving the public’s perception of Congress. Arizonans after 10 years seem largely indifferent to, ignorant of, or opposed to that state’s program, hardly indicative of a program that will increase public confidence. Public education efforts could be undertaken to promote

awareness, understanding, and support for the program, but would potentially raise constitutional concerns about whether the government is attempting to “dictate electoral outcomes”<sup>36</sup> and push unwilling candidates into the program.

**Arizonans after 10 years seem largely indifferent to, ignorant of, or opposed to that state’s program**

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33 Ibid

34 Jessica Levinson, *Public Campaign Financing: The New Jersey Legislature, A Pilot Project Takes Flight*, p. 26, Center for Government Studies, 2008, available at: [http://www.cgs.org/images/publications/cgs\\_nj\\_leg\\_final\\_081808.pdf](http://www.cgs.org/images/publications/cgs_nj_leg_final_081808.pdf).

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35 Ibid at note 19, p. 6

36 Ibid at note 33

## ANALYSIS OF GOAL 3

Sec. 101(b)(2)

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*Helping to reduce the ability to make large campaign contributions as a determinant of a citizen's influence within the political process by facilitating the expression of voters at every level of wealth, encouraging political participation, and incentivizing participation on the part of Members through the matching of small dollar contributions*

The assumptions at the core of this goal ignore both recent political realities and established trends in voter participation through monetary contributions, and contributions of time and talent during the campaign period, and through Election Day. There are a number of ways citizens can, and do, participate and have an influence on the political process, and the conclusion that eliminating the ability to contribute larger sums of money will increase voter participation in the political process is simplistic and incorrect.

The most common form of political participation is voting, and increased turnout is often cited as a benefit of taxpayer financed political campaigns.<sup>37</sup>

The assumption that implementation of the Fair Elections Now Act or similar measures will increase voter turnout is not supported by evidence, as shown in Maine and Arizona, the two states with the longest history of such programs. Maine's voter

turnout averaged 60.8% in the years before "clean elections" were adopted, and has averaged 63.4% since, for an increase of 4.3%. Arizona's turnout has increased a more significant 7.4% over that same time period, from 43% before "clean elections" to 46.2% since.

National turnout has increased over the same period, averaging 45.4% from 1990 through 1998 and 51.2% since 2000, for an increase of 8.4%. Maine began with a turnout rate considerably above the national average, so raising that rate should be more difficult. But by that same reasoning, Arizona's turnout rate at the time "clean elections" were implemented was below the national rate, suggesting Arizona should have been able to increase voter turnout faster than the national average. In fact, both "clean elections" states have lagged national voter turnout growth since they began providing taxpayer dollars to political candidates.

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37 Common Cause, "The Benefits of Clean Elections Reform," available at <http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/CLEAN%20ELECTIONS%20BENEFITS.PDF>.

### Turnout Figures for 1990-2008<sup>38</sup>

	Maine	Arizona	National
1990	57%	42%	38%
1992*	74%	56%	58%
1994	56%	39%	41%
1996*	65%	46%	52%
1998	52%	32%	38%
2000*	67%	46%	54%
2002	51%	36%	40%
2004*	74%	54%	60%
2006	54%	39%	40%
2008*	71%	56%	62%

Goal 3 also ignores the fact that there are other ways citizens can have influence in the political process besides contributing financially. Volunteers are a key component of almost every campaign, and can play a decisive role in who wins or loses on election day. Many credit the efforts of 85,000 volunteers in Ohio for delivering that state’s electoral votes to George W. Bush in 2004,<sup>39</sup> and President Obama’s 2008 victory in both the Democratic nomination contest and the general election were fueled in large part by an energetic volunteer base.<sup>40</sup>

The language of Goal 3 also suggests a desire to limit giving “as a determinate of political influence” by those citizens capable of making larger donations than the \$100 limit that Fair Elections candidates are allowed to solicit. This effort is directly contrary to the Supreme Court’s holding in *Buckley v. Valeo*<sup>41</sup> and *Davis v. Federal Election Commission*<sup>42</sup> that restrictions on political speech, in the form of campaign finance limits, cannot be based on a desire to silence some voices in order to enhance others.

**The Fair Elections Now Act is likely to increase the funding available to independent groups, who would no longer have to compete with candidates for the contributions of politically-minded citizens beyond the \$100 limit**

38 George Mason University. United States Elections Project: Voter Turnout, available at [http://elections.gmu.edu/voter\\_turnout.htm](http://elections.gmu.edu/voter_turnout.htm). Asterisk denotes presidential election year.

39 Farhi, Paul and James V. Grimaldi, GOP Won With Accent On Rural and Traditional, Nov. 4, 2004, *Washington Post*, <http://www.washingtonpost.com/wp-dyn/articles/A23754-2004Nov3.html>.

40 *The Campaign Manual*, dubbed the “benchmark of the campaign industry,” by consultant Mary Matalin, (See Amazon.com, [http://www.amazon.com/gp/product/product-description/0942805100/ref=dp\\_proddesc\\_0?ie=UTF8&n=2](http://www.amazon.com/gp/product/product-description/0942805100/ref=dp_proddesc_0?ie=UTF8&n=2)

83155&s=books) describes several key roles that frequently volunteers fill in campaign organizations. Among those listed are phone bank volunteers, precinct captains, poll watchers, canvassers, get-out-the-vote drivers, event hosts, researcher, and volunteer coordinator. As any successful candidate for office knows, these just touch the surface of all the many important roles campaign volunteers fill. S.J. Guzzetta, *The Campaign Manual*, 7th Edition, pp. 238 – 246, Linus Publications, 2006.

41 424 U.S. 1 (1976).

42 554 U.S., 128 S. Ct. 2759 (2008).

Beyond this serious constitutional problem, however, this goal is unlikely to be realized because donors capable of making gifts larger than \$100 who wish to support certain candidates remain free to contribute to political parties and committees, political action committees, and groups that engage in independent expenditures. Ironically, the Fair Elections Now Act is likely to increase the funding available to such groups, who would no longer have to compete with candidates for the contributions of politically-minded citizens beyond the \$100 limit.

For example, since public financing began in Maine in 2000 the total amount spent on independent expenditures has risen 323%.<sup>43</sup> Contributions to these groups come from citizens from every level of wealth who frequently are prohibited, as they would be under this legislation, from giving more than a small contribution to candidates.

California's experience with contribution limits is also instructive. Previously unlimited contributions were capped for the first time at \$1,000 for the 2002 election. By 2006, independent expenditures on legislative races had increased by 6,144% over the 2000 election, the last without contribution limits.<sup>44</sup>

Finally, the explosion in so-called 527-groups in the 2004 election cycle in the wake of McCain-Feingold should serve to warn against efforts

to restrain the politically-oriented spending of wealthier Americans.

There is also little reason to believe that the Fair Elections Now Act will noticeably alter the demographics of who gives to candidates. This is explored further in the discussion of Goal 6.

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43 Maine Commission on Governmental Ethics and Election Practices. "2007 Study Report: Has Public Funding Improved Maine Elections?" p. 40.

44 California Fair Political Practices Commission. "Independent Expenditures: The Giant Gorilla in Campaign Finance", p. 9, May 2008.

## ANALYSIS OF GOAL 4

Sec. 101(b)(4)

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*Potentially saving taxpayers billions of dollars that may be (or that are perceived to be) currently allocated based upon legislative and regulatory agendas skewed by the influence of campaign contributions*

There are a number of studies cited earlier in this briefing indicating that there is no relationship between campaign contributions and “quid pro quo” favors done by politicians.<sup>45</sup> Assuming the bulk of research on this topic is correct, there is no reason to believe the Fair Elections Now Act would save any dollars. FENA would be a net loss to taxpayers because of the billions of public dollars given to politicians for their campaigns each election cycle.

In fact, the actual experience of Maine and Arizona since they implemented their taxpayer financing programs is directly contrary to the idea that FENA will save taxpayer money. If the assumptions of the Fair Elections Now Act and the similar state “clean elections” programs are correct, we would expect to see evidence supporting this claim in the spending patterns of these two states. Specifically, we should see declines in spending growth in both states relative to the national average.

Instead, since implementing “clean elections” expenditure growth in both states has exceeded that of the rest of the nation, while before adoption of “clean elections” both Arizona and Maine were

below the national average in expenditure growth.<sup>46</sup> The fact that Arizona is facing the second largest budget deficit in the U.S for fiscal year 2010 also does not bode well for claims of improved fiscal responsibility in “clean elections” states.<sup>47</sup>

As recent coverage and commentary on so-called “pork barrel” spending and earmarks have demonstrated, elected officials have no shortage of reasons to approve spending for what may be questionable projects. A recent op-ed noted that Congressman John Murtha is “...a major dispenser of appropriations earmarks... [that earn] him accolades in his home district, where a banner reads ‘We Support John Murtha. He Delivers for Us.’”<sup>48</sup>

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<sup>45</sup> See footnotes 4, 6, 7, and 9.

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<sup>46</sup> Center for Competitive Politics. “Do Taxpayer-Funded Campaigns Save Taxpayer Dollars?” September 2008, available at <http://www.campaignfreedom.org/research/detail/issue-analysis-4-do-taxpayer-funded-campaigns-save-taxpayer-dollars>.

<sup>47</sup> Center on Budget and Policy Priorities. “State Budget Trouble Worsen,” June 29, 2009, available at <http://www.cbpp.org/cms/index.cfm?fa=view&id=711>. Based on percentage of deficit compared to total budget.

<sup>48</sup> Monica Youen, “Fair Elections: Ending the Earmark Game,” Roll Call, May 7, 2009, [http://www.rollcall.com/issues/54\\_127/guest/34668-1.html](http://www.rollcall.com/issues/54_127/guest/34668-1.html).

Another prominent elected official, former Senator Hillary Clinton, stated that she was “...very proud of my earmarks. It’s one of the reasons I won 67 percent of the vote, because I took care of my people.”<sup>49</sup>

While such accolades may or may not produce tangible votes for incumbents,<sup>50</sup> there can be little doubt that the belief that such spending helps incumbents will provide a significant incentive for elected officials to engage in questionable spending regardless of the funding source for their campaigns.

Similarly, as discussed below under Goal 7, many officeholders are highly likely to “outsource” their fundraising to well-organized interest groups. There is little reason to believe an officeholder allegedly unable to resist showering federal largesse on campaign contributors will prove any more resistant to organized interest groups who provide significant support to their campaigns by helping to raise the Qualifying Contributions and Qualified Small Dollar Contributions necessary to qualify for millions in taxpayer dollars.

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49 Wereschagin, Mike; Brown, David; and Salena Zito, “Clinton: Wright ‘would not have been my pastor,’” March 28, Pittsburgh Tribune-Review, [http://www.pittsburghlive.com/x/pittsburghtrib/news/breaking/s\\_558930.html](http://www.pittsburghlive.com/x/pittsburghtrib/news/breaking/s_558930.html).

50 Bickers, Kenneth; Evans, Diana; Stein, Robert; and Wrinkle, Robert, “The Electoral Effect of Credit Claiming for Pork Barrel Projects in Congress,” presentation at the Workshop on Elections and Distribution, Yale University, Oct. 26-27, 2007, casting doubt on the effectiveness of government spending providing a benefit to officeholders, and; Levitt, Steven D. and Snyder, James M., “The Impact of Federal Spending on House Election Outcomes,” Feb. 1997, *The Journal of Political Economy*, supporting the assertion that government spending provides benefits to officeholders.

## ANALYSIS OF GOAL 5

Sec. 101(b)(5)

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### *Creating genuine opportunities for all Americans to run for the House of Representatives (or Senate) and encouraging more competitive elections*

Despite claims that “average citizens” are somehow empowered to run for office under taxpayer financed political campaigns, the Fair Elections Now Act is far more likely to simply provide significant taxpayer subsidies to incumbents, celebrity candidates, and candidates backed by their party establishment and well-organized interest groups – in other words, the same candidates that are able to run with little difficulty under today’s system of voluntary, private contributions from citizens to candidates they support.

This is primarily because of the extraordinarily high qualifying standards that candidates would be required to meet in order to receive taxpayer dollars under this program.

The Fair Elections Now Act requires candidates for the U.S. House of Representatives to raise a total of \$50,000 from 1,500 residents of the state they are running in, and to do this in only 4 months while accepting contributions of no more than \$100.<sup>51</sup> The requirements for Senate candidates are higher and vary by state, between 2,500 contributions (AK,

DE, MT, ND, SD, VT, WY) and 28,500 (CA).<sup>52</sup>

These requirements would be extremely daunting for all but incumbents, celebrity candidates with high name recognition and media coverage of their candidacies, and those with substantial backing from political parties and major organized interest groups.

In particular, the low limit of \$100 on individual contributions to candidates participating in the Fair Elections Now Act would make it nearly impossible for most challengers to raise the extremely important early money needed to launch a viable campaign.

Former Republican National Committee Finance Chair Rodney Smith refers to campaign fundraising as an “industry like any other which requires a capital investment in order to go into production.”<sup>53</sup> The capital investment is necessary for any candidate to begin the process of mounting a serious campaign or to challenge an incumbent, and this typically comes in the form of large contributions made early

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51 H.R. 1826, 111th Cong. §512 (a) (2009).

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52 S. 752, 111th Cong §512 (a) (2009).

53 Smith, Rodney A. “Money, Power & Elections: How Campaign Finance Reform Subverts American Democracy.” Louisiana State UP: 2006, p. 145.

in the cycle, allowing candidates to develop name recognition and the infrastructure to raise large numbers of small contributions.<sup>54</sup>

This point is made clear in a recent study by Michael Malbin, executive director of the Campaign Finance Institute. Examining the pattern of large (\$1,000 or greater) and small (\$200 or less) contributions in the 2008 presidential campaign, Malbin found that “...all of the candidates emphasized large contributions in the early stage,”<sup>55</sup> and that “[for] all of the candidates with viable campaigns, small contributions increased over time as the candidates gained name recognition.”<sup>56</sup>

In further discussion of the policy implications, Malbin says “...raising large amounts of money through small contributions presupposes

visibility,”<sup>57</sup> and concludes that “[candidates] typically have to start by persuading a few people to give much larger amounts before s/he can branch downward and outward.”<sup>58</sup>

Malbin and Smith are not alone in acknowledging the importance of early money in a campaign. *The Campaign Manual* refers to the fact that “the necessary capital, or seed money... is between 10 and 20% of the campaign’s budget... the less known a candidate is at the start of the campaign, the higher the percentage.”<sup>59</sup>

*The Campaign Manual* then notes that start-up candidates normally “... turn to friends and family who believe in you and

the possibility of your campaign winning...” to raise needed seed money because political parties and strangers “...will not assist... at this stage because [the candidate is] an unknown quantity as

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Period**

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54 Ibid at p. 160

55 Malbin, Michael, “Small Donors, Large Donors and the Internet: The Case for Public Financing after Obama,” Campaign Finance Institute, April 2009, p. 13.

56 Ibid

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57 Ibid

58 Ibid at p. 14

59 S.J. Guzzetta, *The Campaign Manual*, 7th Edition, Linus Publications, 2006, p. 82.

a campaigner.”<sup>60</sup> Incumbents, on the other hand, “...should find it relatively easy to raise funds...”<sup>61</sup>

Without the vital seed money that large donations represent early in a campaign, candidates are unable to engage in the sort of fundraising practices that might allow them to build a donor base that would permit them to raise 1,500 contributions during the relatively short Qualifying Period.

Direct mail, a very popular fundraising technique, would be out of the question as the following example from a campaign fundraising strategy book demonstrates:

Assume that [a] prospecting list contains 40,000 names. Production costs and postage for this large group might run approximately \$0.70 per letter, for a total of \$28,000. The campaign might receive a 2 or 3 percent response rate from a prospecting list, meaning that a great letter will bring about 1,000 respondents. The average contribution from the group as a whole will generally be rather small, maybe \$19. The gross income from this mailing would therefore be \$19,000, in which case the campaign has incurred a \$9,000 loss.<sup>62</sup>

This example, of course, assumes that the candidate

has \$28,000 to pay for the mailing – something a challenger in the start-up phase would not have under the Fair Elections Now Act. Because prospect mailings are expected to lose money while the list is being built, mailing in smaller batches and using the resulting revenue to fund further mailings is not a viable option because each subsequent mailing will go to fewer people and bring in less revenue, quickly extinguishing any seed money while the candidate is still well short of the needed donor base.

For this reason, the *Campaign Manual* observes that direct mail programs of the type described above are “...best used by (1) an incumbent, (2) an officeholder running for higher office, or (3) a challenger running for the second time...”<sup>63</sup>

Dr. JoAnn Gurenlian participated in New Jersey’s 2005 “clean elections” pilot project, which required her to obtain 1,500 contributions in order to qualify to taxpayer financing. She estimates that, with the limited amount of seed money, she and her running mate were together able to send out approximately 10,000 mail pieces to potential donors in their district.<sup>64</sup> But returns were minimal and, combined with other fundraising efforts, Gurenlian and her running mate only collected approximately 58% of

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60 Ibid

61 Ibid

62 Shea, Daniel M. and Michael John Burton. “Campaign Craft: The Strategies, Tactics, and Art of Political Campaign Management.” Praeger Publishers: 2006, p. 147.

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63 Ibid at note 59 p. 296

64 Testimony of 2005 New Jersey State Assembly candidate JoAnn Gurenlian before a meeting of the New Jersey Citizen’s Clean Elections Commission, November 22, 2005 p. 121 of the official transcript, available at: <http://www.njleg.state.nj.us/legislativepub/pubhear/cec112205.pdf> as well as follow-up conversations between Gurenlian, campaign manager Jeff Kasko, and CCP president Sean Parnell, May 2009.

the needed contributions and failed to qualify for funding.<sup>65</sup> In fact, only 2 of 10 candidates who tried to qualify under New Jersey’s 2005 pilot project were able to do so, one an incumbent and the other his slate partner.<sup>66</sup>

Even incumbents can have trouble raising the large number of contributions through mail without necessary seed money. Testifying at a meeting of the New Jersey Citizen’s Clean Elections Commission, State Assemblyman Samuel D. Thompson spoke of the significant difficulty of using direct mail as a way of raising the contributions necessary to participate in New Jersey’s 2005 pilot project.

Door-to-door solicitation by candidates is also not a realistic option for such a large number of contributions, as both incumbents and challengers discovered in New Jersey’s failed 2005 experiment. Dr. Gurenlian noted in her testimony that, as a

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65 Testimony of Jeff Kasko, campaign manager JoAnn Gurenlian in 2005, before a meeting of the New Jersey Citizen’s Clean Elections Commission, November 22, 2005 p. 136 of the official transcript, available at: <http://www.njleg.state.nj.us/legislativepub/pubhear/cec112205.pdf>.

66 New Jersey Citizens’ Clean Elections Commission: Preliminary Report, p. 49, February 7, 2006. New Jersey legislators often run together on slates, and Assembly members are elected in multi-seat districts.

method of fundraising, “The least effective was door-to-door. It was extremely time-consuming... It was very, very difficult to do.”<sup>67</sup>

Assemblyman Louis Greenwald, a sponsor of New Jersey’s “clean elections” pilot project, was among the many other candidates who reported on the failure of door-to-door solicitations. “We started door-to-door knocking... we found that we were successful on about a 10 percent ratio. That was it. We would never have gotten the 3,000 contributions if we stayed with the door-knocking.”<sup>68</sup>

**Door-to-door solicitation by candidates is not a realistic option for such a large number of contributions, as both incumbents and challengers discovered in New Jersey’s failed 2005 experiment**

The one method of fundraising that “clean elections” candidates in New Jersey did have some success with was small events, including “house parties, barbeques, picnics, and other gatherings.”<sup>69</sup> However, challengers would still find this an extraordinarily difficult way of raising funds in the primary and Fair Elections Qualifying Period. New Jersey’s 2005 “clean elections” participants

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67 Ibid at note 64, p. 120

68 Testimony of New Jersey State Assemblyman Louis Greenwald, before a meeting of the New Jersey Citizen’s Clean Elections Commission, October 6, 2005 p. 33 of the official transcript, available at: <http://www.njleg.state.nj.us/legislativepub/pubhear/cec100605.pdf>.

69 Ibid, p. 34

had already won their party's primary nomination, meaning they could count on the support of their political parties in helping to hold small events. As Assemblyman Greenwald testified, "[The Democratic and Republican] parties... have a list, of people who traditionally hold coffees for their candidates. We went to that list of people..."<sup>70</sup>

For a non-incumbent, even with party backing, it was far more difficult to organize these small events. Dr. Gurenlian noted that they had "a network through the county [party]" along with mayors who joined friends and family members who helped put together small events.<sup>71</sup> But even with that assistance, she and her running mate still failed to qualify: "We just didn't have, I think, the network... We were the unknown candidates. We're not an incumbent. We didn't have the reputation of having been a legislator for 10 years. We didn't have a machine behind us."<sup>72</sup>

Candidates participating in the Fair Elections program, however, would have to raise their Qualifying Contributions prior to the primary,<sup>73</sup> meaning the support of political parties for candidates is unlikely for most non-incumbent

candidates, especially those that challenge incumbents in a primary. For this reason, it is extremely unlikely that small events, the only effective way candidates in New Jersey's 2005 "clean elections" pilot project were able to raise qualifying contributions, would be a viable option for most non-incumbent candidates. It should also be noted again that 8 out of 10 candidates failed to qualify for taxpayer funding in New Jersey's 2005 pilot project.

The preliminary report to the legislature of New Jersey's Citizens' Clean Elections Commission also noted the special problems facing non-incumbents, determining that "...challengers... are usually lesser-known to the electorate and may have more difficulty raising contributions."<sup>74</sup>

In short, the types of candidates who can raise contributions in small "qualifying" donations are the same candidates who can raise larger contributions.

As to the effect taxpayer funding has on the competitiveness of elections, using Maine and Arizona as the best examples, there is some indication of an increase in competition, but it is sporadic and does not follow a pattern, possibly a result of the many factors that indicate why a race is competitive beyond the source of funding.

### **Competitive Races in the General Election in**

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70 Testimony of New Jersey State Assemblyman Louis Greenwald, before a meeting of the New Jersey Citizen's Clean Elections Commission, November 22, 2005 p. 56 of the official transcript, available at: <http://www.njleg.state.nj.us/legislativepub/pubhear/cec112205.pdf>.

71 Ibid at note 64, p. 120

72 Ibid at note 64, p. 122

73 Text of H.R. 1826, the Fair Elections Now Act, Title V, Sec. 501, subsections 3 and 4.

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74 Ibid at note 66, p. 7

## Maine<sup>75</sup>

	House	Senate
1992	49/151 – 32%	13/35 – 37%
1994	40/151 – 26%	11/35 – 31%
1996	53/151 – 35%	10/35 – 29%
1998	38/151 – 25%	11/35 – 31%
2000	45/151 – 30%	7/35 – 20%
2002	40/151 – 26%	15/35 – 43%
2004	63/151 – 42%	18/35 – 51%
2006	61/151 – 40%	18/35 – 51%

## Competitive Races in the General Election in Arizona<sup>76</sup>

	House	Senate
1992	12/60 – 20%	6/30 – 20%
1994	13/60 – 22%	0/30 – 0%
1996	17/60 – 28%	4/30 – 13%
1998	16/60 – 27%	2/30 – 7%
2000	24/60 – 40%	6/30 – 20%
2002	20/60 – 33%	2/30 – 7%
2004	18/60 – 30%	5/30 – 17%
2006	21/60 – 35%	10/30 – 33%

Finally, regardless of whether candidates choose

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75 Kenneth R. Mayer, Timothy Werner, and Amanda Williams, “Do Public Funding Programs Enhance Electoral Competition?” paper presented at the Fourth Annual Conference on State Politics and Policy Laboratories of Democracy: Public Policy in the American States, Kent State University (updated March 2005), available at <http://campfin.polisci.wisc.edu/Wisc%20Camp%20Fin%20Proj%20-%20Public%20Funding%20and%20Competition.pdf>, p. 6.

76 Ibid

to fundraise privately or participate in public financing, the source of funding does not change the time intensive nature of campaigning aside from raising money. Traveling, meeting voters, and building a base of support require more time than most people with ordinary jobs and income could spare. In *The Campaign Manual*, it is recommended that candidates “...try to arrange their schedules so they are able to spend about 20 hours a week on the campaign through May, and full-time from then until the election.”<sup>77</sup> Few Americans are able to devote this amount of time to a campaign.

As Rodney Smith puts it, “for challengers without wealth, the task of raising enough money from small donors to defeat an incumbent ranges between virtually to completely impossible.”<sup>78</sup> Former Federal Election Commission Chairman Bradley A. Smith makes a similar observation, noting that low contribution limits prevent candidates from tapping family members or friends for the larger contributions that could get their campaigns off the ground. Smith describes how for a newcomer, funding a campaign is like raising capital for a business when no bank may loan more than a small amount – nearly impossible.<sup>79</sup>

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77 S.J. Guzzetta, *The Campaign Manual*, 7th Edition, Linus Publications, 2006, p. 151.

78 Smith, Rodney A. “Money, Power & Elections: How Campaign Finance Reform Subverts American Democracy.” Louisiana State UP: 2006, p. 148.

79 Bradley A. Smith, *Unfree Speech: The Folly of Campaign Finance Reform*, 2001, p. 72.

## ANALYSIS OF GOAL 6

Sec. 101 (b)(6)

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### *Encouraging participation in the electoral process by citizens of every level of wealth*

This goal assumes that donors to candidates participating in the Fair Elections program would be noticeably different in economic status from those who currently give to congressional candidates. Research on this subject does not support this contention.

**New Jersey’s “clean elections”  
experiment failed to noticeably  
change the demographics of  
who gives to campaigns**

A study by the Center for Competitive Politics found that donors to “clean elections” candidates in New Jersey’s 2007 pilot project were very similar to “... donors to federal candidates, which [are] dominated by business executives, attorneys, medical professionals, and individuals from the education or media industries.”<sup>80</sup> The study concludes that New Jersey’s “clean elections” experiment had “...

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80 Parnell, Sean, Renz, Laura, and Sarah Falkenstein, *Special Interests, Partisan Pouts, and the Usual Suspects*, Center for Competitive Politics, February 2009, [http://www.campaignfreedom.org/docLib/20090223\\_SR1NJ.pdf](http://www.campaignfreedom.org/docLib/20090223_SR1NJ.pdf), p. 13.

failed to noticeably change the demographics of who gives to campaigns...”<sup>81</sup>

A recent study explored the diversity of small donors in more depth, including the demographics of individuals who donated small, medium, and large amounts to a campaign. Almost half of all non-donors reported an income of less than \$40,000, whereas only 11% of small donors (defined as \$100 or less) reported the same.<sup>82</sup>

One recent study, *All Over the Map: Small Donors Bring Diversity to Arizona’s Elections*, does purport to show that citizens contributing to “clean elections” candidates are more economically and socially diverse than those contributing to candidates relying on private, voluntary contributions.<sup>83</sup> However, the study has been discredited because of poor methodology – the authors of the report did not have access to information about small dollar donors to the privately funded candidates, and only

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81 Ibid, p. 17

82 Joe, Wesley Y., et. al. “Do Small Donors Improve Representation? Some Answers from Recent Gubernatorial and State Legislative Elections,” (Washington DC: Campaign Finance Institute, 2008) Table 1.

83 Watzman, Nancy, “All Over the Map: Small Donors Bring Diversity to Arizona’s Elections,” Public Campaign, <http://www.publiccampaign.org/allverthemap>, 2008.

compared “clean election” donors to donors of \$200 or more to recent Arizona U.S. Senate candidates.<sup>84</sup>

In other words, *All Over the Map* compared apples to oranges — the diversity and number of small donors under “clean elections” versus the diversity and number of large donors (a minority of all donors) under systems of voluntary, private contributions. A proper study would have compared “clean elections” donors to the thousands of small donors to privately funded campaigns.

Based on this evidence, there is very little reason to believe that the economic status of donors to candidates would noticeably change as a result of the Fair Elections Now Act.

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84 Sean Parnell, “Pay no attention to those 30,000 people behind the curtain,” 9/23/2008, Center for Competitive Politics, <http://www.campaignfreedom.org/blog/detail/pay-no-attention-to-those-30000-people-behind-the-curtain>.

## ANALYSIS OF GOAL 7

Sec. 101(b)(7)

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### *Freeing Members from the incessant preoccupation with raising money, and allowing them more time to carry out their public responsibilities*

At the press conference unveiling the Fair Elections Now Act, Senator Richard Durbin claimed that “Americans would be shocked if they knew how much time Members of Congress and candidates seeking office must spend dialing for dollars and attending fundraisers.”<sup>85</sup> Amplifying that theme, Common Cause stated “When members of the House and Senate spend, literally, 3-4 hours per day raising money, it removes them from dealing with real issues or regular people.”<sup>86</sup>

Despite such statements, there is no evidence that such claims are anything more than dramatic exaggeration for the majority of Senators and Representatives.

Most members of Congress do not face significant re-election challenges, making it extremely unlikely that those in “safe” seats would devote to fundraising anything near the time suggested by Senator Durbin and Common Cause. The Campaign Finance Institute, for example, reported

only 65 incumbents in potentially competitive races midway through the 2008 cycle,<sup>87</sup> while by the end of the cycle respected campaign analyst Larry Sabato tracked only 67 races involving incumbents as potentially competitive in the U.S. House.<sup>88</sup> It is hard to believe that candidates in non-competitive races are consistently spending “3-4 hours per day raising money” in races that don’t require significant campaign funds.

Even among those incumbents facing stiff re-election challenges, it is extremely implausible that they spend anything near 3 to 4 hours making fundraising calls on more than a handful of days. With established fundraising networks, volunteer bundlers willing to assist with fundraising, and paid campaign fundraisers who organize events and produce mailings, there is little need for incumbents to spend the type of time on fundraising as suggested by proponents of the Fair Elections program.

It is likely, however, that many candidates

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85 U.S. Senator Dick Durbin, statement introducing the Fair Elections Now Act, March 31 2009, available at: <http://durbin.senate.gov/showRelease.cfm?releaseId=310864>.

86 Common Cause. “At the bill introduction, talk of fundraising burden,” posted on April 1, 2009, available at <http://www.commonblog.com/story/2009/4/1/10330/31083>.

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87 Potentially Competitive House Seats and Best-Funded Candidates, Listed Individually, Campaign Finance Institute, available at: [http://www.cfinst.org/congress/pdf/08\\_12M\\_Table7.pdf](http://www.cfinst.org/congress/pdf/08_12M_Table7.pdf).

88 Sabato, Larry, House Race Update, October 23 2008, available at <http://www.centerforpolitics.org/crystalball/article.php?id=LJS2008102305>.

participating in the Fair Elections program would spend less time than the currently do on fundraising, particularly incumbents.

With existing donor bases and a party establishment supporting them, incumbents would have little trouble raising early funding for their campaigns and quickly raising the needed contributions during the Fair Elections Qualifying Period and beyond. Aside from attendance at events organized by campaign staff, an incumbent would not need to devote much time to fundraising efforts.

For most non-incumbents hoping to participate in the program, however, mail and events are not viable options for reasons described in the analysis of Goal 5. The most and possibly only viable alternative for a non-incumbent candidate would be to “outsource” or at least closely coordinate their fundraising activities with well-organized interest groups that want to see them elected.

This is in fact what appears to have happened in Arizona and New Jersey. Research by the Center for Competitive Politics found that approximately half of the “clean elections” donors in New Jersey’s 2007 pilot project were connected to large interest groups, primarily the National Rifle Association, NJ Education Association, the Communications

Workers of America, NARAL Pro-Choice New Jersey, the Sierra Club, and New Jersey Right to Life.<sup>89</sup>

This should not be surprising given that several candidates in New Jersey’s failed 2005 pilot project complained that the program barred overt assistance from organized interest groups. One candidate,

Michael Dasaro, said after the 2005 pilot project “We need...the assistance of the citizen action groups. These people are hard workers, good workers, and I support their causes. And I believe with their assistance, this can work, because it’s a monumental task for individuals to collect... these contributions.”<sup>90</sup>

Assemblyman Samuel

Thompson also testified in 2005 to the need to get organized interest groups involved, saying “...I think it is essential that we be able to get assistance from supportive organizations out there that want to

**The most and possibly only viable alternative for a non-incumbent candidate hoping to qualify for taxpayer financing would be to “outsource” their fundraising activities with well-organized interest groups**

89 *Special Interests, Partisan Pouts, and the Usual Suspects*, Sean Parnell, Laura Renz, Sarah Falkenstein, Center for Competitive Politics, February 2009, [http://www.campaignfreedom.org/docLib/20090223\\_SR1NJ.pdf](http://www.campaignfreedom.org/docLib/20090223_SR1NJ.pdf), p. 4.

90 Testimony of candidate Michael Dasaro before a meeting of the New Jersey Citizen’s Clean Elections Commission, August 18, 2005 p. 48 of the official transcript, available at: <http://www.njleg.state.nj.us/legislativepub/pubhear/cec081805.pdf>.

be able to help us.”<sup>91</sup> He also noted that he had been endorsed by “...many organizations – business, labor, tenants associations, Senior Truth Squad, etc. A number of these organizations wanted to write to their members and suggest they make a Clean Elections contribution to me.”<sup>92</sup>

As a result of these complaints, the 2007 legislation specifically allowed for the assistance of organized interest groups in helping to raise qualifying contributions.<sup>93</sup>

In Arizona, organized labor helped then-candidate Janet Napolitano raise nearly one quarter of the necessary signatures and small contributions needed to qualify for that state’s “clean elections” program during her 2002 gubernatorial campaign.<sup>94</sup> The practice of organized interest groups aiding favored candidates in qualifying for taxpayer financing is common enough in Arizona that the *Arizona Capitol Times* reports that “special interest groups routinely collect the necessary number

of individual \$5 contributions to help candidates qualify for public funding.”<sup>95</sup>

The degree to which non-incumbent candidates participating the Fair Elections program would be required to “outsource” or closely collaborate their fundraising efforts in order to have any chance of qualifying for taxpayer dollars would seem to work against one of the main goals often offered by proponents of such schemes, the idea of reducing “special interest” influence on candidates.

Leading Fair Elections proponent Public Campaign, for example, says “Rather than being forced to rely on special interest donors to pay for their campaigns, candidates have the opportunity to qualify for full public funding which ends their reliance on special interest campaign cash,” while the bill authorizing New Jersey’s 2007 “clean elections” pilot project included as its first goal “To end the undue influence of special interest money.”<sup>96</sup>

While non-incumbents would be forced to rely on well-organized interest groups in order to qualify for the Fair Elections program, there is no reason to believe incumbents wouldn’t also avail themselves of such assistance and outsource significant portions of their fundraising operations to organized interest groups.

The Fair Elections Now Act promises much, but

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91 Testimony of New Jersey State Assemblyman Samuel D. Thompson before a meeting of the New Jersey Citizen’s Clean Elections Commission, August 18, 2005 p. 82 of the official transcript, available at: <http://www.njleg.state.nj.us/legislativepub/pubhear/cec081805.pdf>.

92 Testimony of New Jersey State Assemblyman Samuel D. Thompson before a meeting of the New Jersey Citizen’s Clean Elections Commission, November 29, 2005 p. 9 of the official transcript, available at: <http://www.njleg.state.nj.us/legislativepub/pubhear/cec112905.pdf>.

93 P.L. 2007 Chapter 60, No. A100, Sec. 6 sub. F, available at [http://www.njleg.state.nj.us/2006/Bills/AL07/60\\_.PDF](http://www.njleg.state.nj.us/2006/Bills/AL07/60_.PDF).

94 Chip Mellor, Three Lessons from Arizona, Welfare for Politicians, pp. 31, 37-8 (John Samples, ed. Cato Institute, 2005).

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95 Christian Palmer, “Clean Elections Institute loses national money stream, seeks donations,” December 29, 2008, available at: <http://www.azcapitoltimes.com/story.cfm?id=10095#>.

96 New Jersey Election Law Enforcement Commission, *2007 Fair and Clean Elections Report*, March 2008, pp. i-ii.

## CONCLUSION

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a careful review of similar programs as well as existing research on related topics demonstrates that there is little likelihood of success. Specifically, our review finds:

1. The “conflict of interest” that Representatives and Senators are presumed to face in deciding between constituent and donor interests is largely mythical, and elected officials generally do vote their constituents interests as they perceive them.
2. There is little reason to believe that public confidence will increase as a result of this program, and may in fact decline.
3. Similar programs have not led to increased voter participation, and the assumptions of the Fair Elections Now Act ignore the many ways other than financially that citizens can participate in the political process. Additionally, it ignores the likely increase in independent expenditures that would result from extremely low contribution limits.
4. There will be no savings to taxpayers through a reduction in spending that is allegedly skewed by the influence of campaign contributions.
5. The Fair Elections Now Act will primarily benefit incumbents, celebrity candidates, or those fortunate enough to enjoy the backing of their political party or well-organized interest groups, while it will be much more difficult for most other candidates to qualify.
6. The economic status of those who contribute to candidates or otherwise participate in the political process is unlikely to noticeably change.
7. The “outsourcing” of fundraising by incumbents to well-organized political parties and interest groups may in fact reduce the amount of time Members and Senators must spend on fundraising, particularly those in competitive races. Challengers who are not able to “outsource” their fundraising to political parties and interest groups, however, will find fundraising to be a nearly all-consuming task.

The failure of the Fair Elections Now Act will not be simply that it does not achieve the goals promoted by its supporters. More worrisome, the program will quite likely do damage to the citizen trust in government and the fairness of the campaign process. The above analysis provides two main causes for concern. Each are dealt with separately below.

## **Incumbents will be the primary beneficiary of the Fair Elections Now Act**

As described in the discussion of Goal 5, the high qualifying standard will be impossible for almost any candidate who isn't an incumbent, or a celebrity candidate or one fortunate enough to be supported from the beginning by their political party or well-organized interest groups.

The obvious solution to this would seem to be to lower the qualifying standards, but this opens up a different problem, namely that the lower the standard, the easier it will be for marginal or fringe candidates to qualify for millions of taxpayer dollars. Programs that distribute public funds to political candidates for their campaigns face two competing priorities – on the one hand they must try to ensure that only “serious” candidates are able to qualify, while on the other hand they cannot be so restrictive that only incumbents and well-connected candidates are able to participate.

There is no solution to this quandary. The Fair Elections Now Act has clearly come down on the side of high qualifying standards that discourage all but the political elite from participating. This directly contradicts the goal of allowing “all Americans to run for the House

of Representatives [and Senate],” and is likely to spark voter anger.

Building a campaign organization for a non-incumbent candidate that can raise the required Qualifying Contributions and Qualified Small Dollar Contributions will be nearly impossible without the large contributions that candidates typically rely on in the early stages of their campaign. The only viable option for surmounting this hurdle creates its own problems, however – reliance on organized interest groups for fundraising.

**Candidates will become even more reliant on the political establishment and organized interest groups for fundraising**

Getting “special interests” out of politics, or at least reducing or eliminating candidates’ reliance on them for their fundraising, is often cited as a key goal of the Fair Elections Now Act and similar programs. But the fact is that candidates are not just encouraged to rely on organized interest groups for fundraising under this program, they are in many situations going to be forced to do so if they expect to have any chance at all of meeting the high qualifying standards, particularly in the case of challengers and outsiders.

Incumbents will typically have the backing of their political party, and can rely on their

**The high qualifying standards of the Fair Elections Now Act discourage all but the political elite from participating.**

assistance to raise the needed funds. Many, however, can be expected to also rely on interest groups to aid them in their fundraising.

Most challengers, however, will not have party backing, as most parties prohibit early endorsements of candidates in which a primary is expected. Instead, challengers or candidates vying for open seats will be forced to turn to interest groups sympathetic to their message and with whom they may already have a relationship. With paid staff, membership lists, access to media, and a ready supply of committed volunteers, such interest groups are tailor-made for candidates needing an already existing organized infrastructure to meet the high qualifying standards for participation in the Fair Elections Now Act.

Given the stated aim of this and similar programs to limit or eliminate the ability of “special interests” to support candidates, it is more than ironic that the actual impact is likely to be the exact opposite – greater, not lesser reliance on organized interest groups for candidate fundraising.

Both of these failures — that the program primarily benefits incumbents and other well-connected candidates, and increases candidate reliance on well-organized interest groups – are certain to decrease, not increase, the public’s confidence in their Members of Congress and Senators once they are discovered by the public.

The history of taxpayer funded campaigns is filled

with bold promises of reform and ethical progress. The actual results, however, fall well short of what has been pledged and are likely to make matters worse. For this reason, Congress should be wary of enacting the Fair Elections Now Act of 2009.

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## SUMMARY OF CONCLUSIONS

Goal		Conclusion
Change the way elected officials vote?	➔	<b>NO</b>
Increase public confidence?	➔	<b>NO</b>
Encourage political participation?	➔	<b>NO</b>
Reduce influence of large contributions?	➔	<b>NO</b>
Save taxpayer money?	➔	<b>NO</b>
Create opportunities for all Americans to run for Congress?	➔	<b>NO</b>
Increase competition?	➔	<b>UNKNOWN</b>
Encourage participation in political process?	➔	<b>NO</b>
Reduce time candidates spend fundraising?	➔	<b>YES</b> (for incumbents) <b>NO</b> (for outsiders/challengers)





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