



February 8, 2018

The Honorable Jennifer Williamson
Oregon House of Representatives
900 Court Street, NE
Room H-295
Salem, OR 97301

The Honorable Mike McLane
Oregon House of Representatives
900 Court Street, NE
Room H-395
Salem, OR 97301

The Honorable Dan Rayfield
Oregon House of Representatives
900 Court Street, NE
Room H-286
Salem, OR 97301

Re: H.B. 4076; Taxpayer-Financed Campaigns – A Failed and Costly Policy

Dear Chair Williamson, Vice-Chair McLane, Vice-Chair Rayfield, and Members of the House Rules Committee:

On behalf of the Institute for Free Speech (the “Institute”),¹ I respectfully submit the following comments concerning myriad policy issues with House Bill 4076, as introduced and scheduled for a Public Hearing and possible Work Session before the House Rules Committee on February 8, 2018. H.B. 4076 would institute a voluntary taxpayer-financed campaign program for state legislative races in Oregon.

While proponents of so-called “matching funds” proposals tout these programs as a panacea for eliminating corruption and “fixing” perceived ills in government, the experiences of existing programs in New York City, Los Angeles, Arizona, Connecticut, and Maine – all of which have similar programs to that proposed in H.B. 4076 – is very telling. Since the inception of taxpayer-financing programs, much research has been devoted to assessing whether these schemes truly realize the many claims made by their proponents or result in better government. Quite simply, there is no evidence to support these claims. These programs have failed to live up to their lofty expectations, while wasting precious taxpayer dollars, and forcing citizens to subsidize the candidacies of individuals with which they may disagree on many issues, including at times highly controversial candidates with which many, if not most, taxpayers may disagree.

Of note, any attempts to institute a statewide tax-financing program in Oregon must be done carefully and in accordance with Supreme Court precedent, which deemed a “rescue fund” aspect of Arizona’s statewide taxpayer-funded campaign program unconstitutional in 2011.² For more information on potential constitutional issues inherent in existing tax-financing programs, please see Institute for Free Speech Academic Advisor and respected First Amendment lawyer Joel Gora’s analysis in “Don’t Feed the Alligators: Government Funding of Political Speech and the Unyielding Vigilance of the First Amendment,” which analyzes the constitutionality of various aspects of tax-financing programs in light of the Court’s 2011 decision.³

I highlight a number of policy issues in my analysis: (I) recent corruption scandals in Oregon would have been unaffected by the existence of a tax-financing program; (II) New York City’s matching funds

¹ The Institute is a nonpartisan, nonprofit § 501(c)(3) organization that promotes and protects the First Amendment political rights of speech, press, assembly, and petition. Originally known as the Center for Competitive Politics, it was founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission. In addition to scholarly and educational work, the Institute is actively involved in targeted litigation against unconstitutional laws at both the state and federal levels. Its attorneys have secured judgments in federal court striking down laws in Colorado, Utah, and South Dakota on First Amendment grounds. The Institute is also currently involved in litigation against California, Missouri, Multnomah County, Oregon, and the federal government.

² *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 131 S. Ct. 2806 (2011).

³ Joel M. Gora, “Don’t Feed the Alligators: Government Funding of Political Speech and the Unyielding Vigilance of the First Amendment,” 2010-2011 CATO SUP. CT. REV. 81 (2011).

program, one of the oldest in the country, is fraught with corruption; (III) similar programs in Arizona, Maine, and Los Angeles have also experienced much corruption since their inception; (IV) academic studies have found no evidence that these programs decrease the incidence of public corruption or improve trust in government; (V) an analysis of Connecticut’s tax-financing program has demonstrated its failure to change legislative voting patterns; (VI) existing statewide programs have done little to diminish alleged “interest group” influence; (VII) many other claims by advocates of “clean elections” have also been shown to be false; and (VIII) the cost of a statewide program in Oregon is likely to be immensely expensive *and* rise in cost over time.

For a more comprehensive analysis of the failure of tax-financing programs as a policy prescription, please consult the Institute for Free Speech’s Policy Primer on the issue, “Taxpayer-Financed Campaigns: A Costly and Failed Policy.”⁴

I. Recent corruption scandals in Oregon would have been unaffected by the existence of a matching funds program like the one proposed in H.B. 4076.

In 2015, then-Oregon Governor John Kitzhaber resigned amid allegations that his fiancée, Cylvia Hayes, had inappropriately used public resources for private ends. Since 2011, Hayes had acted simultaneously as a public official, advising the former governor on energy policy, and as a well-paid advocate for a private green energy consulting firm, 3E Strategies, for which she is Founder and CEO. Both Kitzhaber and Hayes failed to disclose this connection, leading to an ethics investigation and the Governor’s eventual resignation in February of 2015.⁵

It is important to note that the Kitzhaber scandal was not, in any manner, campaign finance-related. Oregon’s existing campaign finance laws were sufficient to prevent both Kitzhaber and Hayes from using private resources raised through Kitzhaber’s re-election campaign in a corrupt manner. Indeed, the arrangement that Hayes engaged in – being paid to consult for a company while simultaneously pushing those same policies as an unpaid economic policy advisor in Governor Kitzhaber’s office – was suspect under the law and, as such, was investigated by federal authorities (though no charges were ultimately filed).⁶ Although supporters of H.B. 4076 present the bill as an anti-corruption measure, doling out taxpayer dollars to Kitzhaber’s campaign, an option the former governor could have taken if this bill also applied to gubernatorial races and was law during his 2014 race, would have done nothing to prevent or mitigate the actions of Hayes and Kitzhaber. Rather, providing taxpayer dollars to those engaging in corrupt arrangements would only have served to add fuel to this or future fires. Far from weeding out corruption, a matching funds program like the one articulated in H.B. 4076 opens the door for more potential abuses of public resources. Ultimately, proposing to get rid of corruption with more tax dollars is like proposing to get rid of sharks with fresh meat.

Oregon taxpayers shouldn’t be forced to pay for what amounts to earmarks for politicians, or foot the bill for corrupt candidates and their crooked schemes. Instead of asking for government subsidies, politicians should spend time addressing the real concerns of the people they represent.

⁴ Matt Nese, “Policy Primer: Taxpayer-Financed Campaigns: A Costly and Failed Policy,” Institute for Free Speech. Retrieved on February 8, 2018. Available at: http://www.ifs.org/wp-content/uploads/2014/07/2014-07-16_IFS-Policy-Primer_Taxpayer-Financed-Campaigns.pdf (July 16, 2014).

⁵ Hannah Hoffman, “How Ore. governor’s ethics scandal became his downfall,” *Statesman Journal*. Retrieved on February 8, 2018. Available at: <http://www.usatoday.com/story/news/politics/2015/02/15/oregon-governor-john-kitzhaber-downfall/23461703/> (February 15, 2015).

⁶ Aimee Green, “End of criminal investigation into Kitzhaber, Hayes comes as no surprise to experts,” *The Oregonian*. Retrieved on February 8, 2018. Available at: http://www.oregonlive.com/politics/index.ssf/2017/06/feds_decision_to_drop_case_aga.html (June 18, 2017).

II. The Institute for Free Speech examined publicly available information on corruption in Arizona, Maine, and New York City’s taxpayer-financed campaign systems. The report found disturbing amounts of corruption in these programs and New York City’s program in particular.

For a litany of examples of so-called “clean elections” programs’ failure to stem corruption, one need look no further than New York City, which has had a citywide matching funds program similar to the one proposed in H.B. 4076 since 1988. The Institute published an extensive report in August 2013 compiling public data from news reports and official sources on corruption in Arizona, Maine, and New York City’s tax-financing programs.⁷ The report sought to evaluate the claims of these programs’ proponents that such systems deter either corruption or the appearance of corruption. The abuse of tax-financed funds is so pervasive, particularly in New York City’s program, that such a system cannot possibly live up to the “clean” moniker that has been assigned to it by its supporters.

The following sections spotlight some key findings of the Institute’s report. Although this report was published in 2013, since that time, additional incidents of public officials misusing or abusing matching fund systems have continued to be a regular feature of these programs, including in jurisdictions that have only recently enacted or fully funded these programs, such as Los Angeles and Connecticut. Nevertheless, the pattern remains the same: wherever tax-financing has been enacted, abuses of these programs – and, by extension, taxpayer dollars – have followed.

The corrupt experience of New York City’s program is particularly instructive, as H.B. 4076 appears to be modeled after the structure of that system.

a. The Astonishing Public Cost to Taxpayers of Corruption in New York City

The Institute’s study found that between 2001 and 2013, a staggering total of **\$19,232,067** in taxpayer dollars was distributed to participating candidates in New York City’s so-called “clean elections” program, who were then investigated for – and, in many cases, convicted of – abuse, fraud, and other forms of public corruption.⁸

In 1988, New York City began a voluntary Campaign Finance Program, which provides tax funds to qualifying candidates for mayor, public advocate, comptroller, borough president, and City Council. The details of the program have changed over the years, and the program has offered richer matches, which has led to an increase in its cost. Currently, New York City offers qualified candidates matching funds at a ratio of \$6 in tax funds for every \$1 raised from a contributor, with a maximum of \$1,050 in tax dollars granted to a participating candidate per individual contributor.⁹ The New York City Campaign Finance Board (CFB), which administers the program, also sets spending limits for participating candidates based on the type of race being run.¹⁰ In certain situations, these limits are lifted if a candidate who participates in the program is running against a high-spending non-participating candidate.¹¹ To be eligible for taxpayer funds,

⁷ Matt Nese and Tom Swanson, “Issue Review: Clean Elections and Scandal: Case Studies from Maine, Arizona, and New York City,” Institute for Free Speech. Retrieved on February 8, 2018. Available at: http://www.ifs.org/wp-content/uploads/2013/08/2013-08-05_Issue-Review_Swanson_Clean-Elections-Scandal-Case-Studies-From-Maine-Arizona-And-New-York-City.pdf (August 14, 2013). The Center for Competitive Politics is now the Institute for Free Speech.

⁸ *Ibid.*, p. 36-37.

⁹ For individuals residing in New York City, the program matches contributions up to \$175 at a 6:1 rate. This means that an individual giving \$175 to a participating candidate enables that candidate to then receive \$1,050 in matching funds. See “How it Works,” New York City Campaign Finance Board. Retrieved on February 8, 2018. Available at: <http://www.nyccfb.info/program/how-it-works/> (2017).

¹⁰ “Campaign Finance Handbook: 2017 Election Cycle | Version 3,” New York City Campaign Finance Board. Retrieved on February 8, 2018. Available at: <http://www.nyccfb.info/candidate-services/handbook/> (February 2017), p. 38.

¹¹ *Ibid.*, p. 40.

candidates must have an opponent on the ballot, be on the ballot themselves, and comply with all program regulations, or face fines. In many ways, these requirements mirror those in H.B. 4076.

Interestingly enough, by its own account, the NYC CFB has come up short in fulfilling the goals of the program to “level the playing field” by assisting candidates with fewer fundraising resources. In its report on the 2003 City Council elections, the CFB lamented that “the program’s requirements...appear to have contributed to greater disparities between office holders’ and challengers’ campaign finances...” The Board further admitted that “the Public Fund has helped to finance possibly unnecessary campaign expenses and uncompetitive campaigns.”¹²

Since its inception 30 years ago, New York City’s taxpayer-financed matching funds system has been abused through a variety of nefarious methods by a number of candidates and entities. The following sections detail just a handful of major instances of abuse of millions of dollars in taxpayer funds.

b. Taxpayer-Funded Hate

In 2017, Thomas Lopez-Pierre campaigned for a New York City Council seat on the platform of making “greedy Jewish Landlords” pay.¹³ Ultimately, Lopez-Pierre qualified for \$99,000 in taxpayer dollars to help spread his hateful message.¹⁴ New Yorkers, including those on the City Council, were rightly appalled by Lopez-Pierre’s anti-Semitic message. Council Speaker Melissa Mark-Viverito said that to “have someone be able to spend [taxpayer dollars] to put forth that kind of a message is despicable.”¹⁵ But under New York’s matching fund system, there was nothing the City could do. The First Amendment prohibits laws from discriminating against individuals based on the content of their message. As such, if H.B. 4076 is enacted, Oregon would be constitutionally required to fund the speech of all candidates that meet the qualifications for matching funds – including those with racist, anti-Semitic, sexist, homophobic, transphobic, or otherwise hateful messages. As Lopez-Pierre’s campaign proves, this is not an unfounded fear.

c. John Liu’s Straw Donors

Two former aides to former New York City Comptroller and 2013 mayoral candidate John Liu were convicted and found guilty of conspiracy to commit wire fraud and attempted wire fraud in a straw donor scheme.¹⁶ Although Liu’s involvement and knowledge of this operation has never been proven, his campaign treasurer and an associated fundraiser were found guilty in a scheme to obtain matching funds in New York City’s tax-financing program using fake contributors in an effort to loot the matching funds program and evade existing contribution limits. Although never charged, Liu’s former Press Secretary admitted in her testimony at the trial of Liu’s aides to offering to reimburse potential donors for their

¹² “The 2003 City Council Elections: A Report by the Campaign Finance Board,” New York City Campaign Finance Board. Retrieved on February 8, 2018. Available at: http://www.nycfb.info/PDF/per/2003_PER/PER_complete.pdf (Vol. 1, September 2004), p. 9.

¹³ Editorial Board, “Taxpayer-funded hate, thanks to the city campaign-finance system,” *New York Post*. Retrieved on February 8, 2018. Available at: <http://nypost.com/2017/03/03/taxpayer-funded-hate-thanks-to-the-city-campaign-finance-system/> (March 3, 2017).

¹⁴ Josh Nathan-Kazis, “Candidate Who Condemned ‘Greedy Jewish Landlords’ Faces Uphill Election Bid,” *Forward*. Retrieved on February 8, 2018. Available at: <https://forward.com/news/382466/candidate-who-condemned-greedy-jewish-landlords-faces-uphill-election-bid/> (September 12, 2017).

¹⁵ *Ibid.* 13.

¹⁶ Benjamin Weiser, “Two Former Liu Associates Are Found Guilty in Campaign-Finance Scheme,” *The New York Times*. Retrieved on February 8, 2018. Available at: <http://www.nytimes.com/2013/05/03/nyregion/former-liu-associates-convicted-in-fund-raising-case.html> (May 2, 2013).

contributions to Liu's 2013 mayoral campaign.¹⁷ Regardless of the particulars of this scheme, one thing is certain: as would be the case in Oregon, the lure of a lavish tax-financed matching funds program appears to have motivated Liu's aides to falsify donors in order to attempt a raid on the city's tax coffers.

d. Illegal Coordination with Independent Expenditures from Labor Unions

H.B. 4076 states that any candidate that accepts matching funds may not "coordinate election activities with any entity that makes independent expenditures..."¹⁸ A similar provision exists in New York City's program, but, despite this, matching funds have been shown to exacerbate, not limit, such coordination. For example, two New York City Council candidates have been investigated for collusion with New York's Health and Human Services Union, 1199/SEIU, AFL-CIO, known more simply as 1199 SEIU.

1199 SEIU's well-documented involvement with Fernando Ferrer's 2005 mayoral campaign was investigated by the CFB, which found the relationship between the union and the campaign were sufficiently close to question its legality. According to the CFB's report:

Notably, key personnel on leave from their positions at 1199 SEIU were involved with organizing the campaign's field operations and get-out-the-vote efforts, which extensively utilized 1199 SEIU members. Moreover, 1199 SEIU officials attended a campaign strategy meeting in the month preceding the election with Mr. Ferrer and campaign staff. 1199 SEIU also printed and distributed hundreds of thousands of glossy brochures in support of Ferrer.¹⁹

The Board concluded in July 2009 that SEIU's activity on behalf of the campaign amounted to coordinated activity and assessed a \$10,000 penalty against Ferrer's campaign committee for accepting over-the-limit and in-kind contributions.²⁰

In October 2007, New York City Councilwoman Annabel Palma was fined \$30,000 by the New York City Campaign Finance Board for illegally coordinating with 1199 SEIU during her 2003 campaign. CFB found the union provided in-kind contributions in excess of local limits. At the time, Ms. Palma claimed no desire to seek taxpayer dollars for her future campaigns, but was a recipient of tax-financed funding through the CFB program during the 2009 election.²¹

However, Palma's close relationship with 1199 SEIU didn't end in 2003. She managed to receive *twenty times* the legally limited contribution from SEIU, which skirted campaign finance restrictions by donating \$51,675 to her legal defense fund. According to the *New York Post*, individuals, corporations, and unions are ordinarily limited to donating \$2,750 to a City Council candidate per cycle. By routing cash through Palma's legal defense fund, 1199 SEIU was able to give Palma an amount greater than all her other campaign contributions combined, effectively paying her CFB fine without jeopardizing her eligibility for

¹⁷ Christina Boyle, "Controller John Liu former press secretary admits to offering to reimburse donors," *New York Daily News*. Retrieved on February 8, 2018. Available at: <http://www.nydailynews.com/news/politics/ex-liu-press-secretary-admits-offering-reimburse-donors-article-1.1326906> (April 25, 2013).

¹⁸ H.B. 4076, § 3(5)(a).

¹⁹ "New Yorkers Make Their Voices Heard: A Report on the 2009 Elections," New York City Campaign Finance Board. Retrieved on February 8, 2018. Available at: http://www.nycfb.info/PDF/per/2009_PER/2009PostElectionReport.pdf (2010), p. 74.

²⁰ *Ibid.*

²¹ Azi Paybarah, "After Fine, Palma Will Reject Matching Funds," *New York Observer*. Retrieved on February 8, 2018. Available at: <http://observer.com/2007/10/after-fine-palma-will-reject-matching-funds/> (October 17, 2007).

tax-financed matching funds.²² Palma served on the City Council until accepting a city agency appointment in late 2017.

e. The Conviction of “Cash and Carry Larry” Seabrook

Others who have accepted taxpayer funding for their campaigns have been investigated for unsavory behavior, indicating that the “clean election” tag may be anything but when it comes to New York City politics.

Former Councilman Lawrence Seabrook, known colloquially as “Cash and Carry Larry,”²³ was charged with a litany of abuses dating back to at least 2003 in a mammoth 66-page, 13-count federal indictment in February 2010.²⁴ Seabrook, who was re-elected in 2009 with an overwhelming 90.3% of the vote, accepted \$16,542 in taxpayer dollars from the CFB for that campaign.²⁵

Among other crimes, Seabrook was convicted of accepting bribes, extorting money, and other questionable behavior that netted him approximately \$200,000 in “illegal rent, expenses and payoffs,” including extorting a Bronx boiler company executive who collected a \$283,000 Yankee Stadium contract with Seabrook’s alleged assistance.²⁶ Seabrook was eventually convicted on nine of twelve counts and was sentenced to five years in prison on January 8, 2013.²⁷ As with prior examples, the city’s matching funds program did nothing to prevent Seabrook’s bribery schemes.

f. Fraudulent Disclosures, Personal Use of Taxpayer Funds, and Criminal Conspiracy

Recipients of taxpayer dollars under New York City’s tax-financing program have manipulated the system in a variety of other ways as well.

In December 2008, the CFB won its case against former City Council member and then-New York Senate Majority Leader Pedro Espada, Jr. regarding improprieties in his 2001 campaign for Bronx Borough President. The CFB found, among other violations, that Espada had not properly disclosed the use of corporate contributions and had repeatedly failed to provide full disclosure of campaign expenditures. He was summarily denied matching funds due to the violations, but during the post-election audit, the CFB discovered additional violations, including the campaign’s acceptance of in-kind contributions from entities controlled by Espada, such as Soundview HealthCare Network, whose employees had been reimbursed for their contributions to his campaign. The Board found Espada to be in violation of 22 campaign finance laws and assessed his campaign \$61,750 in penalties. After months of legal wrangling, during which Espada unsuccessfully sued the CFB and demanded payment to his campaign of the \$173,000 in matching funds he had originally qualified for, Espada paid the penalties he owed in August 2009.²⁸

²² Editorial, “Labor’s artful dodgers,” *New York Post*. Retrieved on February 8, 2018. Available at: <http://nypost.com/2010/06/07/labors-artful-dodgers/> (June 7, 2010).

²³ Celeste Katz, “Bronx Councilman ‘Cash And Carry Larry’ Seabrook In Trouble Again,” *New York Daily News*. Retrieved on February 8, 2018. Available at: <http://www.nydailynews.com/blogs/dailypolitics/bronx-councilman-cash-carry-larry-seabrook-trouble-blog-entry-1.1679243> (December 18, 2010).

²⁴ Alison Gendar and Larry McShane, “Bronx City Council member Larry Seabrook hit with laundry list of corruption charges,” *New York Daily News*. Retrieved on February 8, 2018. Available at: <http://www.nydailynews.com/new-york/bronx-city-council-member-larry-seabrook-hit-laundry-list-corruption-charges-article-1.194822> (February 9, 2010).

²⁵ *Ibid.* 19, at 119.

²⁶ *Ibid.* 24.

²⁷ Robert Gearty and Ginger Adams Otis, “Former city councilman Larry Seabrook sentenced to five years for misappropriation of funds,” *New York Daily News*. Retrieved on February 8, 2018. Available at: <http://www.nydailynews.com/new-york/larry-seabrook-sentenced-years-misappropriation-funds-article-1.1235667> (January 8, 2013).

²⁸ *Ibid.* 19, at 73-74.

Similarly, former City Councilman Miguel Martinez was granted \$128,786 in matching funds for his 2001 campaign. During routine audits by the CFB, Martinez failed to disclose documentation that justified his use of public funds. The CFB issued a draft audit report finding that the campaign had been unable to document any qualified expenditures and would have to repay all the public funds received. In response, the campaign subsequently produced documents that appeared to have been fabricated, “including apparently altered invoices, discrepancies in signatures, and false endorsements of checks.” The CFB fined Martinez \$44,780 and demanded he return all \$128,786 in public funds he had received. Martinez sued, but CFB won the case in December 2008. Martinez later “pleaded guilty to federal corruption charges alleging that he converted over \$100,000 in taxpayer funds to personal use through various illegal schemes in which he approved and submitted fabricated documentation to the City.” He was sentenced to five years in prison.²⁹

CFB also audited Michael Roth, a 2005 City Council candidate who received \$20,392 in matching funds, and found that he converted \$17,223 of those funds for personal use. CFB claimed that “Roth made eighty expenditures from campaign funds totaling \$8,035 that were unrelated to his election, such as payments for groceries, gas and car expenses, and MetroCards.” Following the election, Roth spent an additional \$9,188 on a flight to Florida, tourist attractions, restaurant tabs, more MetroCards, and phone bills. The Board assessed \$20,000 in penalties against Roth in December 2008 for failing to prove that the expenditures were campaign-related and for knowingly making fraudulent expenditures. After the CFB received a judgment against Roth in June 2010, he repaid all the public funds.³⁰

Veteran City Councilman Sheldon Leffler was convicted in New York Supreme Court in November 2003 on charges of “attempting to defraud the CFB of \$38,000 in public funds,” during his failed 2001 bid for Queens Borough President. According to Queens real estate executive Rita Stark, she and Leffler schemed to divide her \$10,000 contribution into 38 “clean elections”-compliant \$250 contributions to qualify for the then-\$4 to \$1 match in tax-financed funds. The Board noticed “irregularities” in the campaign’s documentation and Leffler was denied public funds and eventually indicted on 13 counts of criminal conspiracy, attempted grand larceny, forgery, and filing of false documents. Leffler was found guilty on seven counts, sentenced to five years of probation, ordered to pay a \$5,000 fine, and serve 540 hours of community service.³¹

Although the above stories represent just a small sample, the litany and sheer variety of abuses in New York City’s matching funds program prove one thing: providing politicians with taxpayer dollars, as H.B. 4076 seeks to do, only provides more avenues for corruption, not less.

III. Corruption and misuse of tax-financed funds is not limited to New York City, as the experiences of tax-financing programs elsewhere demonstrate.

It is important to note that other jurisdictions have suffered from corruption in their taxpayer-financed campaign programs as well.

a. Fake Contributions in Los Angeles

In 2015, Los Angeles City Council Candidate Robert L. Cole, Jr. was caught attempting to receive matching funds for fraudulent small dollar donations.³² Cole claimed qualifying donations in an amount

²⁹ *Ibid.* 19, at 74-75.

³⁰ *Ibid.* 19, at 76.

³¹ *Ibid.* 12, at 8.

³² Jean Merl, “Ex-L.A. council candidate fined for fraudulent bid for matching funds,” *Los Angeles Times*. Retrieved on February 8, 2018. Available at: <http://www.latimes.com/local/cityhall/la-me-ethics-fine-20150604-story.html> (June 3, 2015).

over \$60,000, including from at least five dead constituents, and was fined over \$91,000 after it was discovered that 71% of the small dollar donations he claimed for matching funds were fraudulent.

While the Ethics Commission in Los Angeles caught Robert Cole's fraud, they failed to detect the same scheme from Councilwoman Nury Martinez.³³ Martinez is currently under investigation by the FBI for fraudulently claiming small qualifying donations from contributors that did not give to her campaign. While the investigation is ongoing, numerous contributors contacted by the FBI and *Los Angeles Times* claimed they had not given any contribution. Martinez received over \$65,000 in matching funds and won her re-election bid.

It is worth noting that Los Angeles's matching fund program uses a 2 to 1 scheme. If this fraud had occurred under the system proposed by H.B. 4076, Oregonians would have lost three times as much money.

b. Corruption in Arizona's Citizens Clean Elections Act (CCEA)

The eighteen-year-old CCEA has been expertly gamed by Arizona candidates, political action committees, political parties, and other interest groups, who have found myriad ways to not only evade reporting requirements and spending limits, but have actually used state campaign finance laws to their advantage, contrary to the intent of the "Clean Elections" Act.

One such legislative candidate, Yurikino Cenit "Yuri" Downing, was criminally indicted on six felony counts in July 2004, claiming he misused over \$100,000 in public matching funds during his campaign and the campaigns of his two friends, Trevor Clevenger and Paul DeDonati, for which he served as campaign manager and treasurer. Downing, who claimed to be running a "youth-oriented" libertarian campaign when he ran for State Representative in 2002, spent taxpayer funds on parties at Scottsdale nightclubs and restaurants, on vehicle rentals, and to purchase expensive office equipment. Colleen Connor, then-Executive Director of the Arizona Citizens Clean Elections Commission, said in April 2003 that she could find no evidence that there was a serious bid for public office by Downing or the other two candidates, Clevenger and DeDonati. Downing and the other candidates were ordered by the Commission to repay the entire sum of the public funding they received, but both Clevenger and DeDonati had their fines reduced to \$15,000 each.³⁴

Unsuccessful Republican State Senate candidate Andre Campos ran in 2008 and was granted \$45,841 in taxpayer funds, spending \$23,155 of his funding at a company he owned, Image Design Communications.³⁵ Another Republican candidate for state representative, John Fillmore, paid himself \$2,861 in "petty cash/miscellaneous" expenses from his pool of matching funds, allegedly to avoid his bank's checking fees. He also paid \$17,350 to an attorney, Daniel Washburn, for "communications."³⁶

In November 2010, former Arizona State Senate candidate Robert Green was indicted for submitting false documents with the Arizona Clean Elections Fund to collect more than \$21,000 in taxpayer dollars to run his campaign.³⁷ Green had actually been removed from the matching funds program by the

³³ David Zahniser, "Federal investigators focus on small campaign donations to L.A. Councilwoman Nury Martinez," *Los Angeles Times*. Retrieved on February 8, 2018. Available at: <http://www.latimes.com/local/california/la-me-martinez-donors-grand-jury-20160122-story.html> (January 21, 2016).

³⁴ *Ibid.*, 7, at 6.

³⁵ Sarah Fenske, "The Dirty Truth about 'Clean' Elections," *Phoenix New Times*. Retrieved on February 8, 2018. Available at: <http://www.phoenixnewtimes.com/2009-04-02/news/the-dirty-truth-about-clean-elections/> (April 2, 2009).

³⁶ *Ibid.*

³⁷ "Former Legislature candidate indicted on fraud, theft charges," *The Arizona Republic*. Retrieved on February 8, 2018. Available at: <http://www.azcentral.com/news/articles/20101102former-arizona-legislature-candidate-indicted02-ON.html> (November 2, 2010).

Citizens Clean Elections Commission the previous May and was ordered to repay \$20,000.³⁸ According to the indictment, Green lied about receiving qualifying contributions, knowingly accepted contributions in the name of another, and lied about the violations.³⁹ In 2011, Green signed a plea agreement that sentenced him to probation and ordered him to pay a nearly \$10,000 fine and over \$11,000 in restitution to the Arizona Secretary of State and the Citizens Clean Elections Commission.⁴⁰

The Downing, Campos, Fillmore, and Green examples are just a small sampling of the abuse and corruption surrounding Arizona's Citizens Clean Elections Act. In total, **\$2,237,925** in taxpayer dollars was granted to participating candidates in Arizona who were investigated for campaign finance abuses between 2001 and 2012.⁴¹ In similar fashion to New York City, over 2.2 million dollars in taxpayer money was spent on frivolous purchases, used for personal expenses, or obtained fraudulently.

c. Corruption under Maine's Clean Election Act

As with New York City and Arizona, Maine's Clean Election Program has dealt with its share of corruption as well. A 2007 report on the Maine Clean Election Act prepared by the Maine Commission on Governmental Ethics and Election Practices, detailed numerous instances of corruption stemming from the program.

Examples ranged from more minor instances of candidates inappropriately using taxpayer funding to pay for personal expenses, like car maintenance costs and new shoes,⁴² to a variety of serious misdeeds, like the forging of signatures in order to meet the qualifying contribution requirement.⁴³ In another incident that at least raises the appearance of corruption, a gubernatorial candidate in Maine paid her husband over \$100,000 in campaign consulting fees using taxpayer dollars.⁴⁴

By the Institute's count, a total of **\$184,940** in Mainers' tax dollars was granted to so-called "clean elections" candidates, who were later investigated for abuses of taxpayer dollars between 2001 and 2012.⁴⁵

IV. In addition, academic studies have found that state-level campaign finance reforms, including taxpayer-financed campaigns, fail to decrease the incidence of public corruption or improve public trust and confidence in government.

In April 2013, Professor of Economics at the University of Missouri, Jeff Milyo, and Adriana Cordis, then-Assistant Professor of Economics at the University of South Carolina Upstate, released a working paper, which systematically examined the effects of campaign finance laws on actual corruption rates in the states.⁴⁶ In addition to other measures, the paper specifically evaluated the corruption

³⁸ *Ibid.* 7, at 6.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.* 7, at 12-13.

⁴² "2007 Study Report: Has Public Funding Improved Maine Elections?," Maine Commission on Governmental Ethics and Election Practices. Retrieved on February 8, 2018. Available at: https://www1.maine.gov/ethics/pdf/publications/2007_study_report.pdf (April 2007), p. 84.

⁴³ *Ibid.*, p. 86.

⁴⁴ "Amended Minutes of the July 16, 2007 Meeting of the Commission on Governmental Ethics and Election Practices," Maine Commission on Governmental Ethics and Election Practices. Retrieved on February 8, 2018. Available at: <http://www.maine.gov/ethics/pdf/meetings/20070716/20070716minutes.pdf> (July 16, 2007), p. 12.

⁴⁵ *Ibid.* 7, at 21-22.

⁴⁶ Adriana Cordis and Jeff Milyo, "Working Paper No. 13-09: Do State Campaign Finance Reforms Reduce Public Corruption?" Mercatus Center at George Mason University. Retrieved on February 8, 2018. Available at: mercatus.org/sites/default/files/Milyo_CampaignFinanceReforms_v2.pdf (April 2013). Jeff Milyo is an Academic Advisor to the Institute for Free Speech. Adriana Cordis is now an Assistant Professor of Accounting in the College of Business Administration at Winthrop University.

convictions of public officials in states with existing tax-financed campaign programs in its analysis of the effects of campaign finance regulations.⁴⁷

Cordis and Milyo assessed the effects of state campaign finance reforms on both convictions and filings in cases of public corruption over the past 25 years. Ultimately, the authors found “no strong or convincing evidence that state campaign finance reforms reduce public corruption.”⁴⁸ Earlier research from Milyo and David Primo, an Associate Professor of Political Science and Business Administration at the University of Rochester, also found that state campaign finance reforms fail to increase public trust and confidence in government in any meaningful way.⁴⁹ Taken together, this research further calls into question both the claims of matching funds proponents and the likely long-term effects of the implementation of a tax-financed campaign program in Oregon.

V. An analysis of Connecticut’s tax-financed campaign program demonstrates that such systems fail to change legislative voting patterns in any meaningful manner.

Advocates of tax-financed campaigns systems often claim that such programs will reduce the impact of special interests. However, there is no evidence to support this claim. In a 2012 report, the Institute measured changes in the voting patterns of legislators who served in the Connecticut General Assembly during the 2007-2008 and 2009-2010 legislative sessions and accepted taxpayer dollars for their 2008 re-election campaigns through the state’s Citizens’ Election Program (CEP).⁵⁰ The study compared the voting records of “clean elections” participant legislators in the session before the state’s tax-financing program went into effect (2007-2008) and in the session afterwards (2009-2010) with the priority legislation of the top five interest groups in the state.

The report concluded that the CEP had not changed the frequency with which state legislators voted in favor of the positions of organized interest groups.⁵¹ In many cases, the number of times that legislators voted in favor of the interest groups’ studied actually *rose* after Connecticut’s Citizens’ Election Program went into effect.⁵² These findings were consistent with an earlier study of voting patterns of state legislators in Arizona the first year after that state offered taxpayer-financed political campaigns, which found that Arizona’s program had no effect on the voting patterns of participant legislators.⁵³

Contrary to the contentions of “clean elections” advocates that taxpayer-financed campaign programs change legislative behavior by decreasing the influence of “special interests,” the experiences of both Connecticut and Arizona strongly suggest otherwise.

VI. Tax-financed campaign programs have not diminished interest group involvement in campaigns. New Jersey’s failed experiment with taxpayer-financed campaigns for select legislative races serves as a lesson to Oregon.

⁴⁷ *Ibid.*, p. 17.

⁴⁸ *Ibid.*, p. 2.

⁴⁹ David M. Primo and Jeffrey Milyo, “Campaign Finance Laws and Political Efficacy: Evidence from the States,” *Election Law Journal* Volume 5, No. 1. Retrieved on February 8, 2018. Available at: <http://www.rochester.edu/college/psc/primo/primomilyoelj.pdf> (2006). David Primo is an Academic Advisor to the Institute for Free Speech.

⁵⁰ Jason Farrell, Sean Parnell, & Brett Sullivan, “Issue Review: Meet the New Legislature, Same as the Old Legislature: A quantitative analysis of the Connecticut Citizens’ Election Program,” Institute for Free Speech. Retrieved on February 8, 2018. Available at: <http://www.ifs.org/wp-content/uploads/2012/11/Connecticut-Clean-Elections.pdf> (October 22, 2012), p. 3.

⁵¹ *Ibid.*, p. 9.

⁵² *Ibid.*, p. 10.

⁵³ Robert J. Franciosi, “Is Cleanliness Political Godliness?: Arizona’s Clean Elections Law after Its First Year,” The Goldwater Institute. Retrieved on February 8, 2018. Available at: <https://goldwaterinstitute.org/article/is-cleanliness-political-godliness-arizonas-clean/> (November 2001).

Proponents of tax-financing systems regularly claim that these programs will decrease “interest group” involvement in campaigns, “level the playing field,” reduce campaign spending, increase voter turnout, and end negative campaigning, among other lofty goals. As far as interest groups are concerned, states with similar programs have continued to witness considerable interest group involvement in campaigns, as these groups often organize to help candidates raise the required qualifying contributions necessary to receive tax-funding. This has happened in Arizona, Maine, and Los Angeles as well as in New Jersey’s failed pilot project. In Arizona’s statewide tax-financing program, this practice is so widespread that one news report noted that “...special interest groups routinely collect the necessary number of \$5 contributions to help candidates qualify for tax-financed funding.”⁵⁴

For evidence of these programs’ failures to achieve their high expectations, Oregonians should look to New Jersey, which experimented with a pilot program for taxpayer-financed campaigns for state legislative candidates in a limited number of districts in 2007. In “Appendix 5: Conclusions & Recommendations on New Jersey’s ‘Clean Election’ Experiment,” the Institute compared the program’s outcomes with its stated goals to determine whether the pilot program was a success.⁵⁵ Our research demonstrated that the pilot program failed to achieve the majority of its stated goals, including limiting interest group involvement, and the New Jersey Legislature wisely decided to abandon the program in 2008.

VII. Additional research has proven that many other claims of “clean elections” advocates are false.

Supporters of taxpayer-funded campaign programs often argue that replacing private contributions with taxpayer dollars will lead to a decrease in both the number of lobbyists and the influence of “special interests.” In 2013, the Institute tested this claim by examining lobbyist registrations in Arizona and Maine both before and after those states’ tax-financed campaign programs went into effect.⁵⁶ Our analysis found no relationship between the existence of these programs and changes in the number of registered lobbyists.⁵⁷

Proponents of tax-financed campaigns also argue that these programs will lead to more diverse legislatures featuring “non-traditional candidates,” commonly characterized as those candidates lacking backgrounds in either law or business. The Institute also scrutinized this claim by surveying the occupations of legislators in both Arizona and Maine, both before and after each state’s taxpayer-financing programs went into effect.⁵⁸ We witnessed no decline in the number of legislators from “traditional” backgrounds, and concluded that “so-called “clean elections” systems do not increase the diversity of occupations in legislatures.”⁵⁹

Tax-financed campaign advocates also assert that matching funds programs increase the proportion of women in state legislatures. Again, the Institute examined this argument by analyzing the number of women legislators in Arizona and Maine, both before and after those states’ taxpayer-funded campaign

⁵⁴ “Clean Elections Institute loses money stream, seeks donations,” *Arizona Capitol Times*. Retrieved on February 8, 2018. Available at: <http://azcapitoltimes.com/news/2009/01/02/clean-elections-institute-loses-money-stream-seeks-donations/> (January 2, 2009).

⁵⁵ “Appendix 5: Conclusions & Recommendations on New Jersey’s ‘Clean Election’ Experiment,” Institute for Free Speech. Retrieved on February 8, 2018. Available at: http://www.ifs.org/wp-content/uploads/2008/05/2008-05-01_Policy-Briefing-No.-1_CCP_Appendix-5-NJ-Clean-Elections.pdf (May 27, 2008).

⁵⁶ Matt Nese and Luke Wachob, “Issue Analysis No. 1: Do Taxpayer-Funded Campaigns Reduce Lobbyist and Special Interest Influence?,” Institute for Free Speech. Retrieved on February 8, 2018. Available at: <http://www.ifs.org/wp-content/uploads/2013/08/Issue-Analysis-1.pdf> (August 14, 2013).

⁵⁷ *Ibid.*, p. 3.

⁵⁸ Alex Cordell, “Issue Analysis No. 2: Legislator Occupations – Change or Status Quo After Tax-Funded Campaigns?,” Institute for Free Speech. Retrieved on February 8, 2018. Available at: http://www.ifs.org/wp-content/uploads/2013/08/2017-06-28_Issue-Analysis-2_Cordell_Legislator-Occupations-Change-Or-Status-Quo-After-Tax-Funded-Campaigns.pdf (June 28, 2017).

⁵⁹ *Ibid.*, p. 3.

programs began.⁶⁰ We found that the average number of women legislators in both states actually *declined* slightly after Arizona and Maine began providing taxpayer dollars to state legislative candidates.⁶¹

Champions of tax-financing programs have also alleged that such programs save taxpayer dollars due to a predicted decrease in so-called “special interest” influence. The Institute tested this theory by evaluating per capita spending and the rate of government growth in Arizona and Maine both before and after each state’s tax-financing program went into effect.⁶² The Institute found that “[i]n Arizona and Maine, the implementation of taxpayer-funded campaigns coincided with more rapid government growth and stable trends in per capita spending.”⁶³ As a result, we concluded that “there is no evidence supporting the contention that replacing private, voluntary contributions to candidates with tax dollars leads to savings for taxpayers, either in the form of decreased government growth or reduced per capita spending.”⁶⁴

Tax-financed campaign programs are also credited with increasing competition in elections. The Institute examined this claim as well, and found it too was unfounded. In looking at incumbency re-election rates of state legislative officials from 2010-2016, we found that there was no statistical difference between states with tax-financing programs and those without.⁶⁵ The report concluded that, “states with tax-financed campaigns see comparable incumbent victory rates in primaries and general elections to states with privately-funded campaigns.”⁶⁶

Finally, those who advocate for taxpayer-funded campaign schemes argue that these programs will stimulate voter turnout. The Institute tested that claim too by examining Arizona and Maine’s voter turnout rates before and after their implementation of taxpayer-financed campaign programs in 2000, and comparing their experiences with the nationwide turnout rate.⁶⁷ Ultimately, our analysis found no evidence from the data in Arizona and Maine to defend the claim that taxpayer-funded campaigns increase voter turnout. As our study notes, “since implementing taxpayer-funded campaigns, Arizona and Maine have experienced an average *decrease* in turnout for non-Presidential elections while the national rate has risen. In presidential elections, both Arizona and Maine have experienced a significantly slower rate of increase in voter turnout than the national average since 2000.”⁶⁸

VIII. Lastly, a tax-financed program in Oregon is likely to be expensive and rise in cost over time.

While cost estimates for a taxpayer-financed campaign program in Oregon are still largely unknown, at the very least, one can extrapolate from the “maximum public match” allocations as specified

⁶⁰ Alex Cordell, “Issue Analysis No. 3: Do Tax-Funded Campaigns Increase the Percentage of Women in State Legislatures?,” Institute for Free Speech. Retrieved on February 8, 2018. Available at: http://www.ifs.org/wp-content/uploads/2013/08/2017-07-11_Issue-Analysis-3_Cordell_Do-Tax-Funded-Campaigns-Increase-The-Percentage-Of-Women-In-State-Legislatures.pdf (July 11, 2017).

⁶¹ *Ibid.*, p. 3.

⁶² Matt Nese and Luke Wachob, “Issue Analysis No. 4: Do Taxpayer-Funded Campaigns Actually Save Taxpayer Dollars?,” Institute for Free Speech. Retrieved on February 8, 2018. Available at: http://www.ifs.org/wp-content/uploads/2013/11/2013-11-19_Issue-Analysis-4_Do-Taxpayer-Funded-Campaign-Actually-Save-Taxpayer-Dollars.pdf (November 1, 2013).

⁶³ *Ibid.*, p. 3.

⁶⁴ *Ibid.*

⁶⁵ Joe Albanese, “Issue Analysis No. 10: Do Taxpayer-Funded Campaigns Increase Political Competitiveness?,” Institute for Free Speech. Retrieved on February 8, 2018. Available at: http://www.ifs.org/wp-content/uploads/2017/06/2017-06-05_Issue-Analysis-10_Albanese_Do-Taxpayer-Funded-Campaigns-Increase-Political-Competitiveness.pdf (June 7, 2017).

⁶⁶ *Ibid.*, p. 3.

⁶⁷ Luke Wachob, “Issue Analysis No. 8: Do Taxpayer-Funded Campaigns Increase Voter Turnout?,” Institute for Free Speech. Retrieved on February 8, 2018. Available at: http://www.ifs.org/wp-content/uploads/2013/12/2013-12-03_Issue-Analysis-8_Do-Taxpayer-Funded-Campaign-Increase-Voter-Turnout.pdf (December 11, 2013).

⁶⁸ *Ibid.*, p. 3 (emphasis added).

in Section 8(1) of H.B. 4076. If only two State Senate candidates qualify for the maximum public match in every race in the 2020 general election, taxpayers would foot a \$32 million bill.⁶⁹ This bill allocates funds for candidates for the offices of State Senate and State House.⁷⁰ Even at modest participation levels, H.B. 4076 will cost Oregon taxpayers untold millions. Further, this estimate is still likely conservative given the unknown nature of the administrative and enforcement costs that the state would incur through the creation of the program itself, a cost not specified in the bill.

Additionally, the history of such programs illustrates that costs tend to increase over time, as supporters greatly expand the original program. For example, New York City’s program started with a \$1 to \$1 match, which is now a \$6 to \$1 match today.⁷¹

As another example, the federal Presidential Election Campaign Fund started with a \$1 check off, which is now \$3 per taxpayer, and there are proposals to increase the amount to \$5 or \$10 per taxpayer. At the same time, participation in this program by taxpayers has fallen dramatically. According to Federal Election Commission data, “[i]n 1980, 28.7 percent of tax returns had a checked box, the peak year of participation. But that support began to steadily erode, and by 2013, participation had fallen to 6 percent of all tax returns.”⁷²

Finally, H.B. 4076 continues to allow candidates to receive some matching funds, even if unopposed. (In this situation, candidates are eligible to receive 5% of the funds granted to those in contested primary elections⁷³ and 5% of the funds granted to those in contested general elections.⁷⁴) What this means is that under H.B. 4076, candidates can continue to fill their campaign coffers with taxpayer dollars even when there’s no campaign to run.

Ultimately, it remains to be seen how many millions of dollars will be taken from the wallets of Oregon residents to fund the creation of a taxpayer-financed campaign program.

* * *

A litany of information exists to dismiss nearly all claims of those who desire to implement a system of taxpayer-funded campaigns in Oregon. One need only look to the experiences of New York City – let alone Arizona, Connecticut, Maine, or Los Angeles – to realize these systems breed new forms of corruption while failing to achieve the goals set by such programs’ advocates.

In discussing taxpayer-financing proposals, perhaps John Samples said it best in an essay in his book, *Welfare for Politicians? Taxpayer Financing of Campaigns*: “Such proposals, especially the ‘clean elections’ variant, simply transfer wealth from taxpayers to a preferred set of candidates and causes.... Far

⁶⁹ H.B. 4076 provides that candidates for the office of state Senator in the 2020 general election may receive a “maximum public match” of \$1,000,000. If two candidates each in all 16 State Senate races qualify for the maximum public match in the 2020 general election, taxpayers will be on the hook for a \$32 million bill. See H.B. 4076 § 8(1).

⁷⁰ H.B. 4076, § 8(1) and (2).

⁷¹ “History of the CFB,” New York City Campaign Finance Board. Retrieved on February 8, 2018. Available at: <http://www.nycfb.info/about/history> (2016).

⁷² Andrew Flowers, “A Checkbox On Your Tax Return Helped Kill Public Campaign Funding,” FiveThirtyEight. Retrieved on February 8, 2018. Available at: <https://fivethirtyeight.com/features/a-checkbox-on-your-tax-return-helped-kill-public-campaign-funding/> (April 9, 2015).

⁷³ H.B. 4076, § 2(b)(A).

⁷⁴ H.B. 4076, § 2(b)(B).

from being a reform, government financing offers more ‘politics as usual...’⁷⁵ Certainly, members of this Committee should think carefully before sanctioning “more ‘politics as usual.’”

Thank you for the opportunity to provide these comments on House Bill 4076. Should you have any further questions regarding this legislation, please do not hesitate to contact me at (703) 894-6835 or by e-mail at mnese@ifs.org.

Respectfully,

A handwritten signature in blue ink that reads "Matt Nese". The signature is written in a cursive, flowing style.

Matt Nese
Director of External Relations
Institute for Free Speech

⁷⁵ John Samples, “Introduction: Taxpayer Financing of Campaigns,” in *Welfare for Politicians? Taxpayer Financing of Campaigns*, ed. John Samples (the Cato Institute, 2005), p. 17. John Samples is a Vice President and the Founder and Director of the Center for Representative Government at the Cato Institute. He is an Academic Advisor to the Institute for Free Speech.