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# Subcommittee Report on Public Financing of Campaigns

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**Governor’s Ethics and Campaign Finance Reform Task Force Subcommittee**  
**Report on Public Financing of Campaigns**

**Group Leader:**

Matt Brix

**Other Task Force Participants:** Senator Dede Feldman, Stuart Bluestone, Stuart Udall, Mary Graña

**1. Issue Identification:** How does the issue relate to ethics or campaign finance reform?

Broadly speaking, the Ethics and Campaign Reform Task Force has been assembled to develop constructive methods for removing the adverse effects of money on the political system and improving public confidence in the integrity of state government operations. There probably is no single more effective way to achieve this broad mandate than to remove the influence, access and problems due to political campaign contributions by having New Mexico join the leading vanguard of states and municipalities that provide public financing of elections. Not only would public financing help remove the real influence of money on the political process, it would remove the *perception* of money’s corrupting influence. Restoring public confidence in the political process and the perception that government is working for all people is especially important right now in New Mexico. Ongoing political corruption scandals in our state have eroded public confidence and enhanced the perception that money is the most powerful force in the political process.

The act of making a campaign contribution to show support for a political candidate is the right of every American. The problem, however, is that running for office at every level is becoming increasingly expensive. As costs go up, candidates are forced to spend more time raising money, and subsequently less time making contact with ordinary citizens. Furthermore, legitimate questions can be raised about whether or not the person contributing the largest amount of money to a campaign has more influence than other donors, or members of the general public. As Barry Goldwater stated, “Representative government assumes that elections will be controlled by the citizenry at large, not by those who give the most money.”

Voters understand that the de facto fundraising arms races in many of today’s political campaigns are damaging our democracy. In fact, placing limits on campaign spending is an idea that is consistently favored by voters.<sup>1</sup> Mandatory limits on campaign spending were held to be a violation of free speech as part of the 1976 decision of the United States Supreme Court entitled *Buckley v. Valeo*. But, there is a way to limit campaign spending that is both Constitutional and acceptable to the values voters have professed in poll after poll; voluntary limits on campaign spending, coupled with voluntary public financing. The voluntary limits comply with judicial restrictions against

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<sup>1</sup> For example, a 2001 Albuquerque Journal poll of likely voters found that 74% of respondents favored maintaining that city’s mandatory limits on campaign spending.

mandatory spending caps, while the offer of public financing allows candidates to run viable campaigns.

The justifications for public financing of campaigns have been reviewed in many publications. In the increasing number of jurisdictions which have adopted this system, it has not only succeeded in diluting or eliminating the influence of money on elections, but has also (1) increased the number and diversity of candidates for public office<sup>2</sup>, (2) reduced the time office-holders and candidates need to spend in fund-raising activities, and (3) greatly increased direct contact by candidates with all classes of voters. In all jurisdictions, the annual cost has been more than affordable - in most cases not more than a few dollars per registered voter on an annual basis. It is the contention of the subcommittee that the method in which political campaigns are financed is perhaps *the* fundamental issue in any discussion of ethics and campaign finance reform.

**2. Options:** What options for reform might the task force consider? Options should be very specific.

### *Issue Overview*

Six states and two municipalities, including Albuquerque, have enacted systems that provide for voluntary limits on campaign spending and voluntary public campaign financing for all or some offices. While the programs vary in specific detail, public financing essentially provides qualified candidates with public funds to run their campaign if they agree not to spend in excess of that disbursement and accept no private money for their campaign.

Public financing systems are marked by very specific trade-offs; trade-offs on the part of those aspiring to hold political office. The first trade-off is that candidates wishing to gain access to a public stipend must gather a required amount of qualifying contributions (usually \$5) from a specified number of registered voters statewide, or in the district they hope to represent. This provision, common to all states in which full public financing systems exist, is designed to demonstrate voters' support for a candidate. The provision also ensures the state is being a good steward of public money because only those candidates whose support is legitimate will receive funding. When the public financing oversight authority (chief elections official or independent commission) verifies the required number of qualifying contributions have been collected, the oversight authority certifies a candidate as a participating candidate and distributes a predetermined stipend to the candidate's campaign fund. The second trade-off in full public financing systems is that candidates must limit their campaign spending to only the funds they receive from the public stipend. Matching funds are available up to a certain limit for participating candidates should a nonparticipating opponent spend more than the voluntary limit. However, once candidates have received their stipend, they have finished raising money for the remainder of the campaign.

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<sup>2</sup> See [www.azclean.org](http://www.azclean.org) for 2004 candidate participation data in Arizona, [www.mainelection.org](http://www.mainelection.org) for 2004 candidate participation data in Maine and [www.democracy-nc.org](http://www.democracy-nc.org) for 2004 candidate participation data from North Carolina.

Participating candidates who violate provisions of a full public financing system face severe penalties. Arizona includes as one of its statutory penalties removal from public office. The Voter Action Act (New Mexico PRC system) provides for a civil penalty of up to \$10,000 per violation and the requirement to return all fund amounts distributed to the candidate from the public fund. A person who knowingly violates the provisions of the Voter Action Act, or the rules set forth by the secretary of state is guilty of a fourth degree felony.

### *Option Overview*

**Option # 1:** Recommend legislation to provide voluntary limits on campaign spending, coupled with voluntary public financing of campaigns for all legislative, Constitutional (statewide) and contested judicial appellate court elections. Such systems exist in Maine (enacted through popular initiative in 1996), Arizona (enacted by popular initiative in 1998) and Connecticut (enacted by the legislature in 2005).

#### Pros:

- A. In keeping with the directive to “be bold,” this would be the most far-reaching reform.
- B. Would allow for more voter participation, in terms of numerous small contributions (\$5 qualifying contributions), as well as increasing the voter turn out rate.
- C. Would be the best method for improving public confidence in the political process.
- D. Affords all elected officials in New Mexico the opportunity to participate in the system.

#### Cons:

- A. Perhaps the most politically challenging, in terms of passing legislation.
- B. Funding mechanism and total cost would have to be well thought-out.

**Option # 2:** Recommend legislation to provide for voluntary limits on campaign spending, coupled with voluntary public financing of campaigns for all or some Constitutional (statewide) offices. Vermont enacted a full public financing option for governor and lieutenant governor in 1998. New Jersey created a pilot program for public financing in two legislative districts for the 2005 election, with a proposal for expansion to six districts in 2007.

#### Pros:

- A. Would address the most expensive campaigns.
- B. Would change the status quo.
- B. Would limit the influence of the largest donations.

#### Con:

- A. Does not apply equally to all offices (no legislative coverage or judicial appellate court coverage).

**Option # 3:** Recommend legislation to provide for voluntary limits on campaigns spending, coupled with voluntary public financing of campaigns for contested judicial appellate court elections. North Carolina enacted a judicial public financing law in 2002.

Pros:

- A. Track record of legislation already passing the New Mexico House in 2005.
- B. It is awkward for judges to raise money for partisan political races.

Con:

- A. Does not go far enough to change the status quo (not terribly “bold”).
- B. May not inspire greater confidence in the political process.

**Option # 4:** Status quo.

3. **Recommendations of Subcommittee:** Which options does the subcommittee recommend?

**Option # 1:** *The subcommittee recommends the establishment of voluntary limits on campaign spending, coupled with voluntary public financing of campaigns for all legislative, Constitutional (statewide) and contested judicial appellate court elections.*

By recommending a full voluntary public financing system for all statewide, legislative and judicial appellate court contested elections, the task force would be following a precedent set by other states, as well as here in New Mexico. In 2003, the legislature passed, and the governor signed the Voter Action Act, creating public financing for Public Regulation Commission races. In 2005, voters in Albuquerque approved a ballot referendum by 69%-31% that developed a system of public financing for future mayoral and council races in that city. The following analysis examines some of the finer points of a possible wide-reaching public financing system in New Mexico. Issues to be addressed include the candidate qualification process, system oversight, penalties and system funding.

#### *Candidate Qualification Process*

In Section Two, we outlined the fundamental trade-offs found in all full public financing systems. We recommend the trade-offs of gathering a specified number of qualifying contributions, as well as limiting participating candidate spending to only that which is distributed from the public fund. The following are some key concepts that must be incorporated into the extension of public financing to all statewide, legislative and judicial appellate court elections in New Mexico.

- **Seed Money:** Private money candidates may raise during the exploratory and qualifying periods. Candidates can raise only a limited amount of money, with specific limits on individual contributions and limits on self financing. Seed money serves the purpose of paying for the limited, initial costs of starting a campaign (exploring candidacy, gathering qualifying contributions, etc.).
- **Exploratory Period:** This is the specifically defined time period during which candidates attempt to determine if they will try to qualify for public financing.
- **Declaration of Intent:** Candidates file a declaration of intent with the proper oversight authority. By filing the declaration of intent, the candidate agrees to continuing adherence to the seed money limits set forth. The candidate files the declaration of intent at the beginning of the qualifying period.
- **Qualifying Contributions:** After filing the declaration of intent, the candidate has a specified time period during which he/she must gather a predetermined amount of qualifying contributions from registered voters in their district, or statewide for judicial appellate court and statewide candidates. The process to determine the proper number of qualifying contributions should be deliberative and well thought out. Qualifying contributions for the Public Regulation Commission system are based on a fraction of a percentage of the total number of gubernatorial votes cast in the respective district in the last gubernatorial election. Qualifying contributions in the Albuquerque system are determined by a percentage of registered voters in specific districts for council candidates, or a percentage of registered voters citywide for mayoral candidates.
- **Certification:** After gathering the required number of qualifying contributions, the candidate submits the qualifying contributions, with the proper documentation for each individual contribution to the system's oversight authority. The oversight authority then examines the qualifying contributions and accompanying documentation. If it is determined the candidate has met the qualifying requirements, the candidate is certified by the oversight authority. Once certified, the candidate signs an affidavit with the oversight authority, agreeing to limit campaign spending to only that which is received from the public fund.
- **Matching Funds:** If a candidate who is not participating in the system spends more than the voluntary limit for candidates participating in the public financing system, matching funds would be available. In the case of the PRC system, matching funds are available up to twice the original stipend. The Albuquerque system offers a match equal to that of the original stipend. The key to determining the proper amount of matching funds when drafting legislation is to make it fit with the original stipend. For example, if the original stipend is on the higher end of what a candidate might expect to spend, the matching funds available might be lower. If the original stipend is on the lower end of what a candidate might expect to spend, the available matching funds might be higher.

### *System Oversight*

Extending public financing options in New Mexico to all statewide, legislative and contested judicial appellate court elections will require robust, efficient and capable oversight. The oversight function must also be carried out by an entity that is at least one

step removed from the political process (an elected official should not oversee the system). Therefore, we recommend new public financing systems should be overseen by an independent ethics or campaign finance commission. Such a commission could have additional oversight duties in the areas of ethics and campaign finance, such that were described by the subcommittee on the development of an independent ethics commission. There is precedent for independent commissions serving as the oversight authority for public financing systems.

**Arizona:** *Citizens Clean Election Commission (established when the public financing initiative was approved by Arizona voters in 1998).*

**Connecticut:** *State Elections Enforcement Commission (a pre-existing commission whose authority and funding has been expanded to oversee the new public financing system).*

**Maine:** *Commission on Governmental Ethics and Election Practices (like Connecticut, this was a pre-existing commission whose authority was expanded to include oversight of the Maine public financing law).*

**New Jersey:** *New Jersey Citizens' Clean Elections Commission (established to evaluate the pilot program and make recommendations for expansion) and the Election Law Enforcement Commission (administrative duties).*

**North Carolina:** *State Board of Elections (management duties) and an Advisory Council (oversight) share administrative responsibilities.*

#### *Penalties*

The subcommittee recommends extending the civil and criminal penalties found in the Voter Action Act to public financing systems for other offices in New Mexico.

#### *System Funding*

On the matter of paying for the system, the primary sources of funding for states and municipalities with full public financing systems are listed below. Of course, other funding sources exist, such as unspent seed money, qualifying contributions, voluntary contributions to the fund and unspent money from public funds released to prior participating candidates. One or more of the following funding methods could be options for paying for the extension of public financing in New Mexico.

**Arizona:** 10% surcharge on civil and criminal fines

**Connecticut:** Sale of abandoned property in state custody. Fiscal year '06 and '07 appropriations from this source are \$17 million and \$16 million, respectively.

**Maine:** \$2 million annual general fund appropriation. Maine also has a voluntary \$3 tax check-off.

**New Jersey (pilot program-two legislative districts):** General fund allocation for 2005 pilot project.

**New Mexico PRC:** \$100,000 each from utility inspection and supervision fees, utility and carrier inspection fees and insurance premium tax.

**North Carolina Appellate Court Elections:** \$3 tax check-off, \$50 mandatory fee when attorneys pay for their law license, legislative appropriations have been necessary.

**Vermont:** 5% tax on annual expenditures in excess of \$2,500 of lobbyists and lobbyists employers, voluntary state tax income contribution (any amount), 40% and 33% annual report fees for domestic and foreign corporations, respectively.

**Albuquerque:** Annual appropriation in the amount of 1/10 of 1% of the city's general fund.

**Portland:** Annual appropriation.

4. **Method of Implementation:** Includes an estimate of costs and analysis of statutory changes, etc. Background materials may be included in an appendix to the report.

#### *Implementation Method and Timeline*

The subcommittee recommends the development of new statute as the method of implementation. The legislature could look to the state of Connecticut, which passed a new public financing statute in 2005. The legislature could also refer to the Voter Action Act (the bill creating the PRC public financing system), as well as previous public financing bills for further reference regarding implementation.<sup>3</sup> The subcommittee recommends passing legislation for full public financing of all statewide, legislative and contested judicial appellate court elections during the 2007 session, with full implementation complete in time for the 2010 gubernatorial election. As a step toward full implementation, a public financing fund would have to be established immediately and begin to accumulate funds.

#### *Projected Costs*

One of the keys to developing viable public financing systems is to make certain the system provides participating candidates with enough money to run a viable race, while also keeping the costs of campaigns at a reasonable level. The subcommittee has developed preliminary stipend amounts. Each would provide for matching funds of up to

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<sup>3</sup> See the Appendix for examples of public financing legislation (Public Regulation Commission and Albuquerque).

two times the original amount. For example, if a participating candidate were to max out on matching in a gubernatorial general election race, they would receive \$750,000 initially, plus an additional \$1.5 million for a total of \$2.25 million. It is the belief of the subcommittee that this would provide the right amount of resources to conduct a viable race, while also striving to keep the cost of campaigns under control. To account for the inevitable cost of running a viable campaign, the subcommittee also recommends a periodic inflation adjustment of stipend amounts.

The following breakdown of recommended stipend amounts is based on an examination of campaign costs for all candidates over the past three election cycles. For example, we examined the years 1994, 1998 and 2002 for statewide races, and 2000, 2002 and 2004 for House races.

### **Projected Statewide Stipend**

Governor: \$200,000 primary, \$750,000 general (*\$979,000 Average*)  
Lt. Governor: \$100,000 primary, \$400,000 general (*\$318,897 Average*)  
Secretary of State: \$50,000 primary, \$100,000 general (*\$44,750 Average*)  
Attorney General: \$75,000 primary, \$200,000 (*\$199,055 Average*)  
Land Commissioner: \$50,000 primary, \$100,000 general (*\$108,128 Average*)  
Treasurer: \$25,000 primary, \$50,000 general (*\$66,206 Average*)  
Auditor: \$25,000 primary, \$50,000 general (*\$47,700 Average*)

### **Projected Legislative Stipend**

Senate: \$7,500 primary, \$27,500 general (*\$34,698 Average*)  
House: \$3,500 primary, \$16,500 general (*\$19,098 Average*)

### **Projected Judicial Stipend**

Supreme Court: \$25,000 primary, \$175,000 general (*\$139,000 Average*)  
Court of Appeals: \$12,500 primary, \$112,500 general (*No average available*)

Assuming the treasurer and auditor remain elected positions (this may change, given the impending task force recommendation), the public financing fund would have to raise at least \$6 million every four years to cover the costs of statewide races. This would amount to roughly \$1.5 million annually. The public financing fund would have to raise an additional \$3 million every two years to cover House races. This is assuming all 70 House seats have competitive races in which two candidates use the public financing system (a generous assumption considering more than half of the current House races are uncontested for the 2006 election cycle). Raising the proper resources to cover Senate races would require roughly the same amount as House races, with the cost of judicial appellate court races being significantly less. The best estimate, on an annual basis would be between \$4 million and \$5 million. This amounts to a little more than \$2 per New Mexican on an annual basis.

### *Appendix Contents*

Voter Action Act

Open and Ethical Elections Code

## Jim Annis Opinion Piece